Wisconsin Coastal Zone Management Program

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

THE ROLE OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES IN THE PROTECTION OF THE PUBLIC INTEREST IN NAVIGABLE WATERS

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APRIL, 1978

ANN PREZYNA, ROBERT L. TAYLOR

Financial assistance for the preparation of this report has been provided through the Wisconsin Coastal Management Program by the Coastal Zone Management Act of 1972, administered by the Federal Office of Coastal Zone Management, National Oceanic and Atmospheric Administration.

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HE631 .W6 P74 1978 c.3

ACKNOWLEDGEMENTS

This report could not have been completed without the assistance of a number of individuals that provided us with the guidance and support that we most always were in need of. The following persons contributed significant amounts of time, energy and expertise toward the completion of this report:

Edmund Brick, Chief, Water Regulation Section, Department of Natural Resources

Heather Coleman, Office of Coastal Zone Management, NOAA, Washington, D.C.

Kathryn Curtner, Bureau of Legal Services, Department of Natural Resources

John Donatell, Water Management Investigator, Northwest District, Department of Natural Resources

Ronald Fassbender, Water Management Investigator, Lake Michigan District, Department of Natural Resources

Scott Hausman, Water Management Investigator, Southeast District, Department of Natural Resources

James Kurtz, Director, Bureau of Legal Services, Department of Natural Resources

George Meyer, Bureau of Legal Services, Department of Natural Resources

David Owens, State Planning Office, Department of Administration

Louis Posekany, Bureau of Environmental Impact, Department of Natural Resources

Peter Peshek, Public Intervenor, Department of Justice

A special acknowledgement to Mr. Ted Lauf for having confidence in our ability to perform this task and acting as our "red tape cutter" and chief troubleshooter. Of course, none of what you are reading could be possible without the assistance of our clerical support staff. Ms. Laura Grady's expertise in this area is greatly appreciated.

A word about the authors. Ann Prezyna is a member of the District of Columbia Bar and a graduate of the George Washington School of Law. Robert L. Taylor is currently a second year law student at the University of Wisconsin School of Law-Madison.

THE ROLE OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES IN THE PROTECTION OF THE PUBLIC INTEREST IN NAVIGABLE WATERS.

I. Historical Background

In order to fully understand the department's role in the protection of the public interest in navigable waters, it is helpful to understand the historic underpinnings of public and private rights and interests in the state's waters - when and how they originated and evolved both in the legislature and in court. A convenient starting point is Revolutionary War times.

After the Revolutionary War the thirteen original states, while still impoverished, were confronted with the spectre of paying off war debts. States without western lands were demanding that states, like Virginia, claiming lands to the west cede these lands to the Confederation to be sold to pay off their debts. In 1783 the Virginia Legislature authorized cession of the Northwest Territory to the Confederation.

The actual deed of conveyance was executed in 1784 and was subject to two conditions. First, new states were to be admitted to the Union with the same sovereign rights as the original states. Second, at Virginia's insistence, navigable water flowing into the Mississippi and St. Lawrence Rivers, and the carrying places in between, were to be free public highways.

The latter condition was based on the fear that states created from the Northwest Territory might impose toll charges for the use of their waterways. Both conditions were incorporated into the Northwest Ordinance of 1787 which set up the government for the Northwest Territory.

Section 1, Article IX of the Wisconsin Constitution, adopted in 1848 and approved by the Act of Congress admitting Wisconsin to the Union, incorporated word-for-word the language of the Northwest Ordinance regarding navigable waters. Essentially, it provides that the state shall have concurrent jurisdiction on all rivers and lakes bordering on the state so far as the rivers or lakes form a common boundary between the state and any other state or territory. In addition, it provides that the Mississippi River, the navigable waters leading into the Mississippi and St. Lawrence Rivers, and the carrying places in between are common highways, forever free to state inhabitants and other U.S. citizens alike, without tax, impost or duty.

The Northwest Ordinance merely provides that navigable waters are to be public highways. It does not define the term "navigable water". Nor did the federal government offer guidance to the states. Therefore the definition of navigable water became a problem for determination by each state individually.

Each state adopted a test to suit its own particular needs and interests. For example, states along the Atlantic seaboard rely on the salt water test of navigability. Using this test, streams are considered to be navigable up to the point where the tide ebbs and flows. Thus streams may fail to meet this standard even with a width of more than 100 yards.

In Wisconsin the time-honored definition of navigability is "navigable in fact." What determines where a body of water is "navigable in fact", however, has varied with the times.

In the nineteenth century, the saw-log definition of navigability which emerged was based on the early economic activity of the area. The vast timberlands of Northern Wisconsin attracted lumbering operations as early as 1809. In order to accommodate the timber barons, therefore, the saw-log rule was established by the state Supreme Court in Olson v. Merrill (1877). In this case the stream in question had sufficient water to permit the running of logs only in certain seasons of the year. Trees had to be cleared out of the waterway and men stationed along the banks in order to keep the logs moving. In holding the stream to be navigable, the court stated that the public interest in the pine-growing regions of the state required such a finding.

Since 1911 it has become unnecessary in determining the navigability of a stream to establish a past history of floating logs or other commercial use. Rather, any stream is deemed "navigable in fact" if it is capable of floating a boat, skiff or canoe of the shallowest draft used for recreational purposes (Muench v. Public Service Commission (1952)). Thus, in line with changes in public attitudes, the Wisconsin Supreme Court has breadened the test of navigability to include recreational as well as commercial uses of water.

Similarly, the court has stated may times that the state holds title to the beds of navigable waters, including the Great Lakes, in trust for the public uses and purposes of navigation, fishing, and other rights incident to public waters at common law (see, for example, Angelo v. Railroad Commission (1927)). This trust was transferred from the federal government to Wisconsin upon its admission to the union by terms of the Northwest Ordinance (Illinois Steel Co. v. Bilot (1901) at 426).

Because the state is the owner in fee of the beds of the Great Lakes, with the exception of the lake bed grants made to municipalities under Section 24.39(4), Wis. Stats. and various session laws, these lands are subject to state regulation and control, as well as to whatever requirements Congress imposes with respect to public navigation and commerce (McLennan v. Prentice (1893) at 443). The common law rights of riparians along the banks of the Great Lakes to enjoy a reasonable use of the water may therefore be qualified by statute in addition to being subject to the rights of other riparians and of the public at large. When these rights come into conflict, public rights generally prevail (Beuscher 1970 at sec. 308a).

At common law, as rights appurtenant to ownership of the banks, a riparian owner along a navigable water can extend his/her possession beyond, or otherwise intrude within, the natural shore of a navigable water in one of two ways. One way is to construct a wharf or a pier from the front of the riparian's land out into the lake just far enough to achieve access to water sufficiently deep to navigate boats (Yates v. City of Milwaukee (1870)). This right, being held to further public use of the water to which public ownership of the bed is subordinate, is passively licensed by the state. The second way, based on the necessity of self-preservation, is to intrude into the water as far as is necessary to construct works to protect the land when water is naturally wearing away and overtopping the banks, the so-called "common enemy" doctrine (Diedrich v. Northwest Union Railway Co. (1877) at 262-3).

As mentioned above, these common law rights are subject to several limitations. First, even at common law a riparian owner cannot extend a structure out into the water more than is reasonably necessary for navigation purposes or for the protection of property, as the case may be. Otherwise, the structure is deemed an unlawful obstruction subject to abatement as a public nuisance. (Cohen v. Wausau Boom Co. (1879)). Second, as private rights, riparian rights are subject to the public trust in navigable waters and the beds of navigable waters. In addition to navigation in the original sense of the word, public rights under the trust doctrine have been expanded to encompass recreational uses of the state's waters including but not limited to rowing, canoeing, bathing, sailing, fishing, swimming, hunting, skating, and enjoyment of scenic beauty - sometimes referred to as the "incidents of navigation" Nekoosa-Edwards Paper Co. v. Railroad Commission (1930) at 46 and State v. Public Service Commission (1956). Third, riparian rights are subject to the rights of other riparian owners along the lake (Union Mill Co. v.Shores (1886) at 479). Last, riparian rights may be regulated or prohibited by statute (Kanneberg 1946 at 377).

The first exercise of authority over navigable waters by the Wisconsin legislature was not designed to protect the public trust but rather to protect the interest of the big guy (read lumber baron) against encroachment by the little guy (read general public). That is, the statutes were drafted to literally clear the way for the transport of logs to market by declaring obstructions of navigable waters, as defined by the saw-log test (above), to be contrary to public policy and, therefore, subject to abatement as public nuisances (Posekany 1978).

But at the marketplace, new groups, mainly the farmers, were gaining in power and making their interests known to the legislature. The farmers, as well as the lumbermen who preceded them to power, were demanding legislative accommodation of mills - mills to turn saws and mills to turn grinding stones. So early on the legislature passed the first Mill Dam Act. This act declared waters to be nonnavigable for purposes of furnishing mill power. This exception got everyone excited, so the following legislature rescinded the act. A second Mill Dam Act was passed in 1855. For the purpose of erecting mill dams, it declared a stream to be nonnavigable, but only to the extent that a mill could be erected and not so far as to prohibit navigation (read log passage), God forbid. This act, too, received the judicial axe (Posekany 1978).

Fortunately, a trust-minded and public opinion-conscious court showed the legislature the way to the protection of public as well as private rights in navigable waters. Originally the legislature regulated the respective rights of riparian owners and the public. That is, the legislature itself granted franchises and permits (Bond v. Wojahn (1954) at 239-240). In general, these first statutes were vague, making enforcement and punative action difficult, if not impossible, to obtain. After numerous court tests and redrafts, however, the legislature delegated its authority to protect navigable waters, as well as some of its trust responsibilities, to the Railroad Commission in 1910 (Posekany 1978).

The Railroad Commission was renamed the Public Service Commission in 1933. Control over navigable waters was at that time delegated to the Water Powers Section which consisted of only four people. As an engineering outfit, the Water Powers Section was primarily concerned with the design of structures - their safety features. They also tended to be sympathetic to local economic arguments; that is, the needs of the individual applicant and other members of the private sector carried considerably more weight then than now (Sayles 1978).

With only four staff members, enforcement action was seldom taken at the initiative of the commission itself but rather in response to complaints from outside the organization. Even so, the vast majority of all enforcement actions were directed toward individuals acting without a permit. Once a permit was obtained, however, little follow-up was pursued (Sayles 1978).

Nor was cooperation with the federal regulatory authorities in this area very apparent. In fact, when the Corps of Engineers and the PSC were not being openly aggressive towards one another, they were most likely ignoring each other (Sayles 1978).

Events leading up to legislative reorganization and the subsequent transfer of authority from the PSC to the Department of Resource Development in 1965 were a long time in coming. Politically and conceptually, DRD originated during the 1958 gubernatorial campaign, when the economic position of Wisconsin relative to the other states became a major issue. Each candidate offered a prescription for the economic growth and development of the state. Candidate Gaylord Nelson's proposal - relying heavily for spiritual guidance on the ideas of the eminant legal scholar, Jacob Beuscher - was to create a new state agency solely devoted to solving the varied resource problems of Wisconsin (Lehmann, Wiley and Hall 1977).

Water was viewed as the state's most valuable resource from the point of view of its development potential - both in terms of the commercial prospects of the Great Lakes following the opening of the St. Lawrence Seaway and the recreational attractions of Northern Wisconsin. Whereas the PSC could only deal with the state's water resources within a narrow purview - primarily the problems of hydro-electric power - it was thought that a new super-agency could provide a managerial overview and permit badly needed water use planning that had been almost wholly lacking in the state up to this time. When Nelson became governor, his reorganization plans were realized although his predictions about the future development potential of Wisconsin's waterways were only half right (Lehmann, Wiley and Hall 1977).

Further centralization and consolidation of functions occurred in 1967, when the Department of Resource Development merged with the Wisconsin Conservation Commission to form the Department of Natural Resources. In contrast to the days of the Water Powers Section, there has been a great increase in the size of the office with a corresponding tendency to diversification, both functionally and geographically (Sayles 1978). Due to the development of standards, the department is also less permissive than was the PSC with respect to the types of projects that it will certify. Specifically, the physical effect (environmental impact) of a project is carefully scrutinized, especially its impact on water quality. In part, this change is due to the fact that the "opposition" (Izaak Walton types) has become increasingly well organized (Sayles 1978).

II. Federal statutes and their effect on the state's regulation of its navigable waters

The Department of the Army, acting through the Corps of Engineers, is responsible for administering Federal laws regulating activities in navigable waters of the U.S., including the Great Lakes. Authority for these regulatory programs is based primarily on Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §401) and Section 404 of the Federal Clean Water Act, as amended (33 U.S.C. §1344).

Basically, a Corps permit is required to locate a structure, excavate or discharge dredged or fill material in waters of the United States. Activities requiring permits include, but are not limited to, the following: beach nourishment; construction of boat ramps, breakwaters, bulkheads, groins, jetties, piers and wharves; dredging; filling; mooring buoys; and installing riprap.

Until 1968, the Corps administered the 1899 Act regulatory program only to protect navigation and the navigable capacity of the nation's waters. In that year, however, the Department of the Army revised its policy with respect to the review of permit applications under Section 10. It published a list of factors, in addition to navigation, to be considered in reviewing these applications: fish, wildlife, conservation, pollution, aesthetics, ecology and the general public interest. (33 C.F.R. §209.120). This change in policy identified the new type of review as a "public interest review". It was adopted in response to a growing national concern for environmental values relating to our nation's water resources and in response to related Federal legislation.

On April 4, 1974, the Corps of Engineers published final revisions of its permit regulations (33 C.F.R. §209.120). Among other changes, these revisions adopted additional factors of concern in the public interest review, including: economics, historic values, flood damage prevention, land use classification, recreation, water supply and water quality.

Section 404 of the Federal Clean Water Act established a permit program administered for the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into waters of the United States. Applications for Section 404 permits are evaluated by using guidelines. The Chief of Engineers can decide to issue a permit in apparent violation of these guidelines, however, if the interests of navigation require. In addition, the Administrator of EPA may restrict or prohibit the discharge of any dredged or fill material that may have an unacceptable adverse effect on municipal water supplies, shell fish beds, fishery areas, wildlife or recreation areas.

In July 1977, all regulations pertaining to the permit program of the Corps of Engineers were published in a new series of Title 33, C.F.R.

Part 320 describes the general policies used by the Corps in reviewing permit applications, including: the public interest review; policies on wetlands, fish, wildlife, water quality, and historic, scenic or recreational values; interference with adjacent properties or Federal projects; and requirements for other permits or certifications. With respect to the public interest review, three additional factors were added: energy needs, safety and food requirements. With respect to the Corps' policy regarding other permits or certifications required for the same activity, the Corps will process permit applications concurrently with other required applications. If another required permit or certification is denied, they will not issue a permit. The district engineer is authorized to process a permit to conclusion, however, if the other agency fails to take definitive action within three months after issuance of public notice by the Corps.

Part 322 describes the specific policies and procedures followed by the Corps in evaluating applications for structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899. In addition, some activities will also require permits under Section 404.

Four types of authorizations are used in the issuance of Section 10 permits: (1) The nationwide permit process encompasses activities previously grandfathered or exempted from the Section 10 permit requirement and small structures having only a minimal impact on the environment. (2) Letters of permission are issued on an individual basis under abbreviated review procedures if the district engineer thinks that the proposed work is minor and without significant impact on environmental values and no opposition is expected. (3) Individual permits are issued on an ad hoc basis. (4) Lastly, general permits are issued for future minor works or structures in a particular geographic region if the proposed activity is shown to have only a minimal impact, individually or in combination with other related activities, on the environment.

Similarly, Part 323 describes the specific policies and procedures to be followed by the Corps in evaluating applications under Section 404.

In sum, district engineers have been delegated expanded authority to deny permits, including those deemed not in the public interest. Denial authority previously was limited to navigational conflicts or denial of state or local authorization or certification.

Recent amendments to the Clean Water Act include provisions granting states with approved programs authority to issue permits for dredge and fill activities in most waters and wetland areas (PL 95-217, signed December 2, 1977). State programs must demonstrate themselves capable of accomplishing the same objectives as the Federal permit program if they are to be approved by the EPA administrator. Thus state permit programs must include enforcement authority comparable to the Federal program, adequate resources including staff and funds, and ensure full and complete coordination with all related Federal, state and local programs.

III. Regarding the process by which permits and authority are granted to do work on the bed of the Great Lakes

A. Issuance of Water Regulatory Permits Under Chapter 30

Prior to April 20, 1977, permits, except for contested cases or cases delegated to the district director, were processed by the central office - that is, by the Bureau of Water Regulation and Zoning. Authority to approve or deny permit applications was first vested in the administrator of the Division of Environmental Protection (5/5/72), later in the administrator of the Division of Enforcement (5/5/75). Since that time, however, there has been a continual shift toward decentralization of the permit procedure, from the central office in Madison out to the three coastal districts - Northwest, Lake Michigan, and Southeast. In general, the district now serves as the clearinghouse while the bureau keeps a lookout for unusual or controversial activities and maintains professional staff with expertise in certain subject areas.

The generalized procedure for Chapter 30 permits is set out in Manual Code 3506.1 (Appendix C). Under this process the applicant submits a permit request to the district director. In the Northwest and Lake Michigan districts, the district office fields the application out to the appropriate area office for investigation (Figure 2). In the Southeast district, which has no area offices, the field investigation is conducted by the district office. Copies of the application are also sent by the district office to the central office (Bureaus of Water Regulation and Zoning and Environmental Impact) and to the county zoning administrator.

Field review is conducted by the area fish manager, the area wildlife manager, the area conservation warden, and the area water management investigator in the Northwest and Lake Michigan districts and by their functional counterparts in the Southeast district office. The field report is primarily environmental (Form 3500-23). It examines impacts on fish, considering the value of the species, its class and abundance; impacts on productivity, especially the effect on nursery and spawning areas; habitat, including bottom type and vegetation; wildlife (considering their value and

abundance); the stability of the shoreline; flood plain and shoreland zoning considerations (zoning classification; present land use within 300 feet of the shoreline; conflicts with NR 115 or 116, Wis. Adm. Code; and the existence of other required regulatory authority - village or city, town, county, and federal (Corps of Engineers)); special environmental considerations (aesthetic values, for example); and the overall impact on the environment, considering the ecological diversity of the area and its contribution to the stability of the lake. In addition to these environmental considerations, the water regulation investigation also looks at present public use of the project site (for navigation, hunting, fishing, trapping, swimming, etc.); the presence of areas of historic, scientific, or archeological value; and the impact on adjacent property owners. Copies of the field report are sent to the central office for review. In addition, the central office will be consulted where technical input beyond that available at the district level is required.

The area supervisor will return the completed field report to the district office with the area office's recommendations: no objection or objection on the basis of written facts. Manual Code 3551.1 requires the district's evaluation to reflect standards for flood plain management (under Sec. 87.30, Wis. Stats. and NR 116, Wis. Adm. Code), shoreland standards (under Sec. 144.26, Wis. Stats. and NR 115, Wis. Adm. Code) and erosion hazards (under Executive Order 67, dated 11/26/73).

Once the field report is deemed sufficient, the application is forwarded to the district's environmental impact coordinator for assessment pursuant to NR 150, Wis. Adm. Code. The impact coordinator will prepare Form 1600-1, the environmental impact assessment screening worksheet. The EIA considers the existing environment, the purpose of and need for the project, all beneficial and adverse impacts (physical, biological, economic and social), the probability of adverse impacts that cannot be avoided, any irreversible or irretrievable commitments of resources, and the possibility of implementing reasonable alternatives. On this basis, the impact coordinator will evaluate any perceived secondary effects, new environmental effects, the effects on geographically scarce resources, energy impacts, economic impacts and social impacts. In the course of this evaluation, the following questions will be answered: will the action be precedent setting? Do reasonable alternatives exist? How controversial is the project? Will it be consistent with long-range policies and plans? Are there foreseeable cumulative impacts which are major or significant? What is the impact on historic, scientific or archeological sites? Will future options be foreclosed?

On the basis of the field report and the environmental impact assessment worksheet, a final assessment, consisting of both a technical analysis and professional opinion, will be made of the probable environmental impact of the proposed project. If the permit request is not subject to notice and hearing under Sections 30.02 and 31.06, Wis. Stats., the district director will proceed to grant or deny the request at this point. Summary action can be taken on applications for bulkhead lines under Section 30.11, Wis. Stats. (although adoption of a municipal ordinance does require notice and hearing); sand blankets, fish cribs and rip-rap under Section 30.12, Wis. Stats.; and dredging under Section 30.20, Wis. Stats. All are processed almost entirely at the district level, although informal interaction with the central office is maintained regarding questions which cannot be locally answered.

The reasons for exempting certain types of permit actions from the requirements of notice and hearing is based on the legislative judgment that most projects of these types are of relatively minor public impact and generally are noncontroversial in nature. That is, past experience indicates a lack of public concern for the great majority of these projects. Of course, an additional consideration is expediting the process vis-a-vis the applicant, making it easier both in terms of the expense and the time involved (Meyer 1978).

In particular, riprap permits are excluded because the right to protect property against the action of water by building works along the banks is a basic riparian right at common law. Installing riprap is also important to erosion control. Therefore, it was thought desirable to make the process short and simple. Similarly, the desirability of fish cribs for fish management purposes encouraged simplification of the permit review process (Meyer 1978).

All other types of permit requests, namely applications for structures under Section 30.12, Wis. Stats. and waterway enlargements under Section 30.19, Wis. Stats., are subject to notice and hearing. In lieu of once-mandatory hearing requirements, however, permits of this type are now subject to the so-called 30-day notification procedure (Chapter 90, Laws of 1973).

Section 31.06, Wis. Stats. provides that upon receipt of an application for a permit, the department may order a hearing of its own accord, or it may waive the hearing requirement absent a specific request for one being submitted within 30 days. The district office will send copies of the notice to DNR personnel (the Bureau of Legal Services, the Bureau of Water Quality, the Bureau of Environmental Impact, the Bureau of Water Regulation and Zoning and the Office of Coastal Zone Management), the Scientific Areas Preservation Council, the Department of Health and Social

Services, the State Board of Soil and Water Conservation Districts, the attorney general's office, various environmental groups, the applicant, the local zoning administrator, county and municipal clerks, adjacent property owners and the Corps of Engineers. In addition, the central office sends notification to the local newspaper for informational purposes. The applicant is required to publish notice as well in each county in which affected riparian lands are located (Lawry 1978).

After publication of notice, the district must wait 30 days before continuing the permit review process. If no objections are received, the water management investigator consults with the environmental impact coordinator and submits recommendations to the district director. The district director will then approve or deny the permit. Copies of the district's order are sent to the Bureaus of Water Regulation and Zoning, Legal Services and Environmental Impact and to the county zoning administrator.

If there are written objections to a particular project, the water management investigator will draft a memo to Madison requesting a hearing and transferring the environmental assessment and other files to the Bureaus of Water Regulation and Zoning, and Legal Services. Objections may be initiated from within the department itself or from without. If objections are made, a hearing will be held. At the conclusion of the hearing, the hearing examiner will determine whether a permit will be issued. From that point on, the process is in the hands of the central office (Manual Code 3505.1).

In 1976, there were approximately 63 permit applications submitted to do work on the beds of the Great Lakes. Of this total, 58 were approved, one denied and four pending. The one denial was based on two grounds: that the proposed spoil deposition site was below the ordinary high water mark in violation of Section 30.12, and that the project as a whole would be a futile effort from an engineering standpoint.

The 63 permit applications included the following activity types: bulkhead lines under Section 30.11 - none; structures and deposits under Section 30.12(2)(a) - 19; sand blankets under Section 30.12(2)(b) - none; fish cribs under Section 30.12(2)(c) - none; riprap under Section 30.12(2)(d) - 19; waterway enlargements under Section 30.19 - two; and dredging under Section 30.20 - 23. Of these 63 requests, 45 were submitted to the Lake Michigan district office (LMD), 14 to the Northwest District Office (NWD), and four to the Southeast District Office (SED) (Table 1).

Table 1: Distribution by type and district of Chapter 30 permit applications submitted in 1976.

Activity Type	LMD	NWD	SED
Bulkheads	0	0	0
Structures and Deposits	12	6	1
Sand Blankets	0	0	0
Fish Cribs	0	0	0
Riprap	17	1	1
Waterway Enlargement	0	0	2
Dredging	16	7	0
	45	14	4

In deciding whether to grant or deny permit applications for physical alterations to navigable waters, the districts look to statutory standards, administrative code provisions, court decisions, internal operating procedures, executive orders and administrative practices. Only the criteria established by statute, administrative code, and the Supreme Court are mandatory considerations. The rest are policy considerations which often provide the criteria for determining what the "public interest" is on a case-by-case basis.

B. Section 30.11: Establishment of bulkhead lines

A bulkhead line is a legislatively determined "shoreline" defining the boundary between upland and water. This artificial shoreline may differ from the existing natural shoreline and from the low and high watermarks.

Under Section 30.11, any municipality (defined by Subsection 30.01(1) to mean any village, city, town or county) may establish a bulkhead line along any section of a navigable water within its boundaries by municipal ordinance. The Department of Natural Resources must approve under Subsection 30.11(3) (see Form 3500-21).

The purpose of a bulkhead line is to prevent major physical encroachment into a navigable waterway, except where such encroachment would be in the public interest. For example, bulkhead lines may be used to regularize shorelines. They also enable installation of shore protective works, construction of improved dock and recreational facilities, elimination of debris pockets and beautification of shoreline appearances by allowing placement of structures or fill to accomplish these purposes. That is, it is lawful to deposit material and place structures upon the bed of a navigable water only within the limitations of a lawfully established bulkhead line.

Be that as it may, although a bulkhead line has been established, a riparian owner must still obtain a permit or a contract under Section 30.20 before removing material from the bed of a navigable water landward of a bulkhead line but within the original ordinary high watermark. A riparian does not have to obtain a permit pursuant to Section 30.12(2)(b), however, in order to place a sand blanket between the bulkhead line and the ordinary high watermark (1974 O.A.G. 445).

In addition, under Subsection 24.39(4) (created by Chapter 535, Laws of 1961) the state may lease rights to submerged lands. This provision is applicable to Lake Michigan and Superior, the Mississippi and St. Croix rivers, the Fox river from Green Bay upstream to the point where it meets the Wolf river, and to the segments of all other bodies of water in which the U.S. Army Corps of Engineers provides and maintains commercial navigation channels. A lease may be granted to an individual for the purposes of aiding navigation and constructing or improving harbor facilities. A lease may be granted to a municipality for the purpose of constructing or improving recreation facilities related to navigation for public use. Bulkhead line approval must be obtained, however, before filling or placing of structures may be done on leased lands.

Dock and pier lines were first regulated under Section 30.02, Stats. 1917. Regulation of shore lines (later termed bulkhead lines) was incorporated into the statute by amendment in 1933. All lines had to be established in the interest of the public. Shore lines were to conform as nearly as possible to the natural shoreline.

Section 30.02 was renumbered to become 30.11 by Chapter 449, Laws of 1959. The 1959 amendments also changed the term "shoreline" to "bulkhead line" to conform to federal terminology. The 1933 standards for establishing shorelines, however, were retained for bulkhead lines. Counties were also granted the right to establish bulkhead lines. Previously, only villages, cities and towns enjoyed this authority. In addition, Sections 30.04 (deeming shorelines lawfully established prior to 1960 to be bulkhead lines subsequent to January 1, 1960), 30.05 (excluding municipally-owned submerged shorelands in Lake Michigan from the provisions of Chapter 30), and 30.06 (enabling the department to waive the applicability to specified navigable waters of all or part of Section 30.11, among other provisions) were created at this time.

Subsequent amendments have modified Subsection (2) to allow bulkhead lines to be farther out from shore than otherwise if part of a lease (Chapter 535, Laws of 1961), created Subsection (5) requiring that leases be executed in the public interest (Chapter 535, Laws of 1961), modified the notice requirements of Subsection (5)(c) (Chapter 252, Laws of 1965), and provided that lease disapproval be based on apparent threatened excessive destruction of wildlife habitat rather than objection of the Wisconsin Conservation Commission (Chapter 276, Laws of 1969).

Standards for approving bulkhead lines in nonleased areas are more stringent than standards for approving bulkhead lines in leased areas. Bulkhead lines in nonleased lands may be approved if found to be in strict geographic conformance with the natural shoreline and if found to be in the public interest.

Regarding the first requirement, Town of Ashwaubenon v. Public Service Commission (1963) implies that strict geographic conformity alone cannot be used as a basis for denial of a bulkhead line. Rather, the court said that such discretionary factors as the existing and potential use of the intermediate area, the existence of engineering complications, the cost of dredging and filling, the prospect of damage to scenic or recreational use of the river, the presence of pollution, and the influence upon navigation may be considered. This case was based on Section 30.11 prior to its amendment in 1969, however. Therefore, that it represents the current state of the law is not clear (Meyer 1978).

To be on the safe side, the factors cited in Ashwaubenon should be addressed in determining whether a proposed bulkhead line meets the geographic conformity requirement. Indeed, many of these same considerations are used by the department to determine whether a proposed bulkhead line is in the public interest. In cases where only the strict geographic conformance standard is not met, however, the staff should still oppose approval.

Establishment of a bulkhead line must also be found to be in the public interest (Subsection 30.11(2)). In general, any use which has a public benefit that significantly outweighs a potential private benefit will be deemed to be in the public interest. Structures and fill consistent with this public purpose may be placed behind the bulkhead line.

Another factor which the department must consider is the impact on water quality. The potential of water pollutants leaching from fill material or of polluted runoff from activities conducted on top of the filled area must be evaluated. The department may withhold approval until the

applicant can assure placement of proper fill up to and along the entire length of the bulkhead line within a specified time period. Conditional approval may be granted if a municipality agrees to placement of fill within that time period.

Other conditions which may be required include assurances that the project will not adversely affect flows, assurances that shoreland zoning standards promulgated under NR 115 will be complied with, limitations on the height of fill, and prohibition of structures. Bulkhead lines in violation of any law, especially flood plain or shoreland zoning ordinances, cannot be approved under any circumstances.

Establishment of a bulkhead line cannot interfere with the rights of nonconsenting riparian owners. A bulkhead line can cross upland if the owner agrees, or if just compensation is paid for the loss of the property. In addition, the upland area may be removed if necessary to promote the public interest.

Bulkhead lines may not be approved where to do so would violate the trust by which the state holds lands for public use. For example, the DNR may not approve a bulkhead line where the net effect would be to transform a substantial amount of lake bed into upland. The reason is that approval may result in the appropriation by private riparian owners of land which is held in trust by the state for the public. Such land can be transferred only to a public body for public purposes (1960 O.A.G. 126).

In addition, a hearing may be held where the line is of considerable length, involves a relatively large area of lake bed, is a matter of concern for governmental agencies or for the general public, or for any other reason deemed appropriate.

The department has no power to regulate the establishment of bulkhead lines on submerged lands in Lake Michigan, where the title to such has been granted to a municipality.

The only significant difference in approving bulkhead lines in leased areas is that conformance to the shoreline is not required. Prior to the execution of a lease by the board of commissioners of public lands, the DNR must determine whether the proposed physical changes are consistent with the public interest, and that execution of the lease will not threaten excessive destruction of wildlife habitat. These factors must also be considered for bulkhead lines in nonleased areas (Weinberg 1977).

C. Section 30.12: Permits for structures and deposits in navigable waters

Section 30.02(1)(b), now part of Section 30.12, was inserted in the statutes by the 1933 legislature. It prohibited the deposit of any material or the placement of any structure upon the bed of a navigable water, (1) where no shoreline had been established or (2) beyond a shoreline where established. Wisconsin common law was to the same effect (Diedrich v. Northwestern Union Railway Co. (1877) at 266).

The legislature first provided for the issuance of permits to build structures on the beds of navigable waters in 1949 (Chapter 335, Laws of 1949). In that year, Section 30.02(1)(b) was amended to enable the Public Service Commission to grant to any riparian owner the right to build a structure, or to maintain a preexisting structure, for the riparian's own use, if the structure did not materially obstruct navigation.

Section 30.02(1)(b) was again changed in 1951 (Chapter 712, Laws of 1951). Two additional standards were to be met before a riparian would be granted the right to build or maintain a structure in navigable water. The structure could not reduce the effective flood flow capacity of a stream and could not prove detrimental to the public interest.

The law remained unchanged until after submission of the 1959 report by the Wisconsin Legislative Council. The report proposed the replacement of Section 30.02(1)(b) by a new Section 30.12(2)(a). The revised language provided for the issuance of permits, after notice and hearing, by the Public Service Commission, to build or maintain, for a riparian's own use, a structure in navigable water, if the same three conditions as in the 1951 version of the statutes were met.

As presently written, Section 30.12(1) makes it unlawful to deposit any material or to place any structure on the bed of a navigable water where no bulkhead line has been established (Subsection (a)) or beyond a lawfully established bulkhead line (Subsection (b)) absent a permit from DNR. DNR may grant a permit to a riparian owner to build or maintain a structure for the riparian's own use if three conditions are met. The proposed structure must not materially obstruct navigation, reduce the effective flood flow capacity of a stream, or prove detrimental to the public interest.

As to the first requirement - that the permit applicant be a riparian owner - there is considerable support for the proposition that it includes any person with a defined interest in real estate (a tenant, for example).

Regarding the definition of structure, Subsection 30.12(2) does not provide for the issuance of a permit for the deposit of material. Many works are made of sand, gravel or concrete which is merely dumped. Whether such a pile of material qualifies as a structure or not was addressed by 1950 O.A.G. 230, holding that the term structure, as used in an earlier version of the statutes, included any artificial creation possessing utility because of its form, rather than a mere deposit of material. These two principles must always be found for a permit to be granted (Kurtz 1978). Again, the determination is one which the DNR makes only after examining all the facts and circumstances of a particular case.

The three statutory standards - effect on navigation, impact on stream capacity and the public interest test - are at the crux of the approval process. These standards being general in nature, however, considerable leeway is allowed regarding the type of evidence that can/should be presented.

In determining whether a particular structure is a material obstruction to navigation, the department employs a balancing test to determine whether the obstruction to navigation is greater than any offsetting aid to navigation either in the area adjacent to the fill or in the entire lake. The department will also deny a permit if it feels that a project will impede navigation (Hixon v. Public Service Commission (1966)).

The public interest test includes any factor which bears on whether the proposed structure will be detrimental to the navigable water in question, the rights of other riparian owners or the public trust. In general, the factors which the districts consider in determining whether a proposed project will be in the public interest or not may be divided into three groups: biological parameters, physical parameters and social parameters.

Within the biological category, three areas of concern require protection: sport and commercial fisheries, game species and threatened or endangered plant and animal species. In this regard, a district will consider the impact of a proposed project on habitat. Factors to be considered include the possibility and extent of lake bottom disturbance, impact on wetlands in both a qualitative and a quantitative sense, and impact on specified areas of concern, such as spawning and nursery areas.

The second question asked is what effect a project will have on the health and stability of the lake ecosystem. Issues which arise include the impact on the diversity and productivity of an area and whether there will be significant adverse environmental changes without compensatory replacement or improvement.

Considerations of physical change address possibilities of soil erosion along the shoreline; effects on littoral drift patterns, especially the possibility and extent of downdrift deposition or updrift deposition and downdrift beach starvation; and changes in wave action and ice formation.

Evaluation of the social or cultural impacts of a proposal is the most elusive and least thoroughly looked at area of investigation. Public health is a factor, primarily the effect on water quality. Indeed, the Department of Health and Social Services is involved in waterway enlargement notices under Section 30.19. Public safety considerations address questions of navigational hazards - for example, whether the project will pose a hazard to recreational boaters. Public welfare encompasses many considerations, including: aesthetics; surface water use conflicts and interference with shoreline uses; presence of scientific areas; presence of archeological or historic sites; controversy; impact on adjoining property owners; purpose, especially the potential for public use or the criticalness to private use; economic impact on the surrounding area and neighboring facilities; effectiveness and useful life; and the financial capacity of the applicant.

A last consideration is compliance with other regulatory authorities: county, municipal and federal. Local authority requirements usually involve compliance with flood plain and shoreland zoning ordinances and building codes. Federal authority requirements usually involve compliance with U.S. Army Corps of Engineers' permit requirements under Section 10 of the River and Harbor Act and Sections 403 and 404 of the Federal Clean Water Act, as amended.

The Supreme Court of Wisconsin has interpreted the "public interest test" on a number of occasions. In Clafin v. Department of Natural Resources (1973), the court held that the determination that a specific structure is detrimental to the public interest on the ground that it impairs the natural beauty of a lake is a proper basis for denial of a permit. Similarly, the court upheld action by the DNR requiring abutting landowners to remove fill from a lake bed in order to protect the public

interest in maintaining one of the state's most important resources (State v. McFarren (1974)). Compare this with Hixon v. Public Service Commission (1966), in which the PSC denied a permit on grounds that the proposal would constitute an unnecessary obstruction to navigation, would not allow for the free flow of water, and would be detrimental to the public interest. Here the court sustained the PSC's findings without a statement of the reasons why the commission determined that the project would be detrimental to the public interest!

In addition, some municipalities have adopted zoning ordinances requiring compliance before certain structures can be built. DNR policy encourages an applicant to secure a municipal permit before applying for a departmental permit.

Manual Code 3535.1 (effective 2/19/75) describes the procedure for handling applications for permits to place a layer of sand or similar material on a lake bed under Section 30.12(2)(b). Once an applicant submits a request to DNR, the receiving office forwards a request to the district director. The district director will then send Form 3500-17, Application for a Sand Blanket Permit, to the applicant. After the applicant returns the completed form, the district director will arrange for site inspection and completion of a field report, Form 3500-23. The district director will then approve or deny the application. If approved, conditions of approval might require use of pea gravel instead of sand, prohibition of use of plastic liner instead of sand, or reduced area or depth of coverage. Copies of completed Form 3500-17 are sent to the applicant, Bureau of Water Regulation and Zoning, Bureau of Environmental Impact, and area supervisor, among others.

Manual Code 3526.1 provides guidelines for installing riprap shore protection. Section 30.12(2)(d), Stats. (created by Chapter 250, Laws of 1975) states that riprap or other similar material may be placed on the bed and bank of a navigable body of water upon obtaining a permit from DNR. It was enacted at the request of the department to simplify the processing of permits for riprap or other shore protection by eliminating the typical Section 30.12 permit requirements of notice and hearing. This section should not be used, therefore, where the purpose of the project is to create upland or regularize the shoreline as under Section 30.11, which would require bulkhead line approval.

"Riprap or other similar material" for purposes of Section 30.12(2)(d) includes rock or broken concrete without protruding reinforcing rods, retaining walls constructed of concrete, concrete blocks, logs, wood planks, piling, and other similar erosion control or shore protective works. These latter materials are included since the intent of the statute is to provide a rapid permitting procedure to allow a riparian owner to construct reasonable shore protective works with a minimum of delay to protect the property from further soil loss. Inclusion of these materials is also necessary to ensure compatibility of state and federal permit procedures because a general permit issued by the Corps of Engineers allows authorization of similar shore protection and erosion control devices for the Lake Michigan shoreline. Wood chunks, car bodies, unsorted demolition material, brick, plaster, black top or other material that could produce leachates or otherwise violate NR 151 are prohibited.

Issuance or denial of a permit under this section is a Type III action and does not require the preparation of an Environmental Impact Assessment Worksheet (Form 1600-1). Hence no EIS is required.

Agency interpretation of Section 30.12(2)(b) grants an exception to the permit requirements as a matter of policy. Sudden loss of riparian land due to an unusual natural occurrence may be restored and the land protected without a permit if the land is restored within a one-year period. The restored land may be protected where the necessary structure is placed at or beyond the original ordinary high water mark. This exemption cannot be used, however, to restore land lost over a period of many years.

Whether a permit is required or not, general guidelines on placement of riprap include the following. Riprap or other material may intrude into the waterway only as far as necessary to provide a stable foundation. Although a riprap layer or structure 18 inches thick will provide adequate protection in most cases, increased thickness is required along the shorelines of the Great Lakes. The riprap and other shore protection works should conform to the existing shoreline. Nor may the riprap or other structure materially impair navigation, place a burden on adjoining riparians, or be detrimental to the public interest - that is, reduce the effective flood flow capacity of a stream, destroy spawning beds, impair water quality, destroy scenic beauty, etc. (as above).

The procedure for processing applications for permits to place riprap and other similar materials under Section 30.12(2)(b) is as follows. The applicant who must be a riparian owner or lessee, first submits a request to DNR. The district director will then send Form 3500-42, a riprap permit application, to the applicant. Once the applicant returns the completed application form, the district director will arrange for inspection of the site and completion of Form 3500-23, the field investigation report. The water management investigator will determine the dimensions of the riprap and the distances from recoverable landmarks. At this point, the district director will approve or deny the application. Conditions of approval might include removal of bank material or sloping prior to

placement, use of different materials, reduced thickness, or less encroachment on the lake bed. Copies of the permit are sent to the applicant, the district office, the Bureau of Water Regulation and Zoning, the Bureau of Environmental Impact, the area supervisor, the county zoning administrator, and the Corps of Engineers. Surveillance is maintained whether or not the project is approved.

D. Section 30.13: Wharves, piers and pierhead lines

A riparian owner has the common law right to build a pier, wharf, or other structure in aid of navigation - that is, extending out to navigable water. This right, however, is subject to public rights of navigation and to the rights of the state as trustee over navigable waters. Therefore, it may be required or prohibited by law (Colson v. Salzman (1956), Bond v. Wojahn (1955), Doemel v. Jantz (1923), Madison v. Mayers (1897)).

Wharves and piers receive special treatment under the statutes (see Section 30.13, created by Chapter 441, Laws of 1959). That is, unlike all other types of structures built or maintained in navigable waters, wharves and piers may be constructed without a permit under Section 30.12, provided certain conditions are met. "Wharf or pier" for Section 30.13 purposes includes any structure whose primary purpose is that of a wharf or pier. If the primary purpose is to act as a jetty, breakwater, boathouse, etc., Section 30.12 will apply.

The key question to be asked under Section 30.13 is whether a proposed pier or wharf will interfere with public rights in navigable waters or with the rights of other riparian owners. If there is no interference, a riparian owner may construct a pier or wharf out to a pierhead line - if one is established - without a permit under Section 30.12. Such a determination is made on an ad hoc basis. Regardless of whether or not a permit under Section 30.12 is required, however, any wharf or pier extending beyond the natural shoreline or established bulkhead line must be so constructed as to allow the free flow of water underneath and as not to cause the formation of land upon the lake bed (Subsection 30.13(2)).

A full-scale investigation and hearing is not feasible, as a practical matter, because of the numerous inquiries received. In actual practice, therefore, the DNR will advise that no permit is necessary if a pier or wharf is of the usual type and extends out into the water only far enough to provide for navigation. A permit is required, however, if a complaint is filed or the proposed structure is controversial (Subsection 30.12(2)(a)).

Riparian owners sometimes submit complaints that a wharf or pier has been constructed without a permit and interferes with private rights. In this case, the department will investigate to determine whether public rights or interests might be involved (Subsection 30.14(2)).

The DNR determines whether a wharf or pier interferes with public rights in a navigable water based on all the facts and circumstances of the particular case. Factors taken into consideration include: the length, size and position of the structure in relation to others in the vicinity, to the topography of the shore and to adjacent property lines; the size and nature of the navigable water involved; the draft of the boat to be moored; and the type of structure and the manner in which it is to be constructed. As a general rule, any pier or wharf extending beyond similar structures in the vicinity or which impedes the ability of adjoining riparians, among others, to navigate and have reasonable access to and from the shore in the vicinity of the structure will not be acceptable. Likewise, a proposed pier or wharf has a greater chance of succeeding if the distance it extends out from shore is in proportion to the size of the navigable water involved and of the parcel owned by the riparian constructing it. In addition, every pier or wharf has to be constructed in such a way as to avoid the accumulation of debris or the creation of undesirable conditions (Subsection 30.13(2)).

Subsection 30.13(4) stipulates that any pier or wharf extending into a navigable water beyond a lawfully established pierhead line constitutes an unlawful obstruction absent a permit. As a general rule, any municipality which can establish a bulkhead line under Section 30.11 can establish a pierhead line under Subsection 30.13(3), and in the same manner.

The statutory standards for approval of pierhead lines, however, differ from that of bulkhead lines. Section 30.13(3) requires that a municipality establish a pierhead line "in the interest of the preservation and protection of its harbor or of public rights in navigable waters". These standards being general in nature, it is difficult to suggest the type of evidence to be presented. Again, the generality of the statutory standards compels the DNR to base its decision on individual facts and circumstances.

It is interesting to note that the 1957 standard for approval of pierhead lines required that they be established "in the interest of the public" (Subsection 30.02(1)(a), Stats. 1956). According to Legislative Council notes for this section, the revised test (above) replaced this public interest standard in order to provide a somewhat better guide for the establishment of pierhead lines, "public rights in navigable waters" having taken on a definite meaning through judicial interpretation. (This subsection as a whole was adopted as per the recommendations of the final report of the Legislative Council's Ports and Navigation Committee in 1958. The impetus for revision of the laws relating to harbors and navigation came originally from the Great Lakes' Ports' Committee of the 1955 to 1957 Legislative Council, which inspired joint resolution No. 7, A in anticipation of increased commerce on the Great Lakes in the aftermath of the opening of the St. Lawrence Seaway.)

Historically, municipalities have been authorized to remove obstructions to navigation as far back as 1906 (Supplement 1906, Section 950-90). As commercial navigation began to assume importance on the Great Lakes and as the need arose to maintain control over the development of inner harbors, municipalities were given additional authority to establish dock or wharf lines - established lines which limit the distance that a dock or wharf can be extended out from shore (Subsection 30.02(1), Stats. 1917). In 1919, Section 30.02 was amended to provide that all such lines conform as nearly as possible to the original meander lines (Chapter 247, Laws of 1919).

In 1933 the Public Service Commission came into the picture. The commission gained regulatory authority over the establishment of shore, dock and pier lines by a municipality. Moreover, the first statutory standards were promulgated - that is, establishment in the public interest and conformance to the shoreline.

This same legislation authorized the PSC to regulate the building and maintenance of wharves and piers under the following sections of the newly created Subsection 30.02(1) (the former Subsection 30.02(1) was repealed at this time):

(1) Subsection 30.02(1)(b) rendered it unlawful to deposit any material or to place any structure upon the bed of a navigable water where no shoreline has been established or beyond an established shoreline.

(2) Subsection 30.02(1)(c) prohibited a riparian proprietor from extending a wharf or pier into navigable water beyond an established shoreline.

(3) Subsection 30.02(1)(d) required that all wharves and piers extending beyond the shoreline allow the free flow of the water underneath and not cause formation of land upon the lake bed.

(4) Section 31.25 declared every obstruction built or maintained in any navigable water of Wisconsin to be a public nuisance and subject to injunction or abatement, respectively, by action of the state or any citizen.

Subsection 30.02(1)(c) (1957) made it unlawful for any riparian proprietor to extend a wharf or pier into navigable water beyond an established line <u>if such extension materially interfered with or obstructed navigation</u>. The italicized part was added by amendment in 1949 (Chapter 335) when it became evident, in an attempt to enforce the law on certain lakes, that a strict enforcement of the law as written prior to 1949 would work great hardship on lake cottage owners, many of whom had piers extending beyond dock lines. The 1949 amendment made dock lines virtually meaningless, for it became necessary to determine in each case whether a wharf or pier materially interfered with or obstructed navigation. If so, it would be unlawful whether a dock line existed or not.

This situation was remedied in 1959 (Chapter 441, Laws of 1959). The general rule then became that wharves and piers extending beyond lawfully established pierhead lines would be unlawful absent a permit from the PSC. The PSC could grant a permit if it found that the structure would not materially obstruct navigation, reduce the effective flood flow capacity of a stream, or be detrimental to the public interest. This new subsection gave meaning to pierhead lines without causing undue hardship to riparian owners whose wharves or piers extended beyond such lines.

Subsections 30.02(1)(b) and 30.02(1)(c) have since become: Subsection 30.12(1), prohibiting the placement of a structure upon the bed of a navigable water where no bulkhead line has been established, or beyond a lawfully established bulkhead line, without a DNR permit or legislative authorization; Subsection 30.12(2)(a), authorizing DNR to grant a permit to a riparian owner to build or maintain a structure on the bed of a navigable water for the riparian's own use, provided that it does not materially obstruct navigation, reduce the effective flood flow capacity of a stream, or prove detrimental to the public interest; Subsection 30.13(4), declaring a wharf or pier extending into a navigable water beyond a lawfully established pierhead line to be an unlawful obstruction of a navigable water unless a permit has been obtained; and Subsection 30.14(2), enabling the department to hold a hearing upon the complaint of any person that a wharf or pier exists in a navigable water in violation of Chapter 30. Section 31.25 is now Subsection 30.15(4).

E. Section 30.19: Enlargement of waterways

"Waterway enlargement" encompasses such activities as the digging of a ditch or channel to provide a boat basin and grading on the bank. It can affect the nature and characteristics of a lake and cause pollution. In recognition of these problems and to provide control over development, the legislature enacted Section 30.19 (Chapter 284, Laws of 1961).

Upon receiving an application, the DNR will send notification to departmental personnel (Bureau of Legal Services, Bureau of Water Quality, Bureau of Environmental Impact, Scientific Areas Council, and either the district director or the Bureau of Water Regulation and Zoning), the Department of Health and Social Services, the Board of Soil and Water Conservation Districts, the public intervenor, private environmental groups (Wisconsin Ecological Society, Sierra Club, Congress of Natural Resource Associations and Trout Unlimited), the applicant and attorney, the local zoning administrator, the clerk of the municipality and county in which the project or affected bodies of water are located, five adjacent property owners, and the U.S. Army Corps of Engineers. If written objection is filed within 30 days after mailing of the application, a hearing will be held. Notice of the hearing is given by publication and by mailing a copy of the notice to the Bureau of Legal Services, the Bureau of Environmental Impact, the Board of Soil and Water Conservation Districts, the public intervenor, the applicant, the applicant's attorney, the local zoning administrator, the district office, the five adjacent property owners, the Board of Health, the municipal and county clerks, and any other person objecting to or otherwise showing an interest in the project.

The DNR will grant a permit if it finds that the project: will not injure public rights or interests, including fish or game habitat; will not cause environmental pollution (defined as contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life); complies with Chapter 236 and with state sanitation laws; and will not materially injure the rights of any riparian owner on the affected body of water.

If the department grants a permit, it will require that the waterway be designated as public. Conditions might be included in the permit - regarding the size, depth and side slopes of the waterway, for example - if the DNR deems them reasonably necessary to protect public health, safety, welfare, rights and interest as well as private rights and property.

F. Section 30.20: Removal of material from beds of navigable waters

Material on the beds of the Great Lakes - for example, deposits of sand, gravel or marl - may be of economic value. Or it may constitute an accumulation of silt, vegetation or debris which fills in a portion of the lake and requires removal to restore the area to its former depth and navigability.

Legislation regarding removal of material from the beds of Lake Michigan, Lake Superior, Green Bay, and other navigable waters within the jurisdiction of the state was first adopted in 1915. Chapter 185, s. 4570, Stats. 1915 declared the digging, removing or carrying away of rock or stone from the natural bed of a navigable water to be an offense against public policy unless the actor was a riparian owner at the place of removal and had obtained the consent of the town supervisors, city common council, or village trustees. Chapter 137, Laws of 1919 added "sand, gravel, clay or other substance" to the list of regulated materials.

Enactment of Chapter 410, Laws of 1923 granted the Railroad Commission (known as the Public Service Commission from 1933 on) control over the removal of any material from the bed of a navigable lake. Subsection 31.02(5) empowered the commission to enter into contracts on behalf of the state for the lease, sale or removal of any such material. Conditions could be imposed for the protection of the public interest or the interests of the state. The statute was passed in recognition of the fact that the state owns the beds of navigable waters in trust and that in providing the means for a person to acquire the right to remove material from a lake bed, the state is selling property having economic value. Angelo v. Railroad Commission (1928) upheld the constitutionality of this provision.

Chapter 219, Laws of 1941 extended the commission's (now the Public Service Commission) powers to the beds of outlying waters on the same basis as in the case of navigable lakes (Subsection 31.02(6), Stats. 1941). Chapter 441, Laws of 1959 amended Subsection 30.20(3) to declare that "outlying water" have the same meaning as in Subsection 29.01(4) (including Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere).

Chapter 632, Laws of 1961 created Subsection 30.20(b), authorizing the Public Service Commission to enter into contracts on the state's behalf for the removal of any mineral, ore or other material from beneath the bed of a navigable lake, subject to whatever conditions were deemed necessary to the protection of public and state interests.

Subsection 30.20(2)(a) now requires a dredging contract for removal of material from the beds of the Great Lakes, ownership of the beds being in the state up to the ordinary high water mark. Contracts may be entered into by the department acting on behalf of the state for a period up to five years. Similarily, Subsection 30.20(2)(b) governs the removal of any mineral, ore or material from beneath the bed of navigable lakes and waters, where the waters would not be disturbed during removal operations, and for the lease and sale of such material. Each contract must contain conditions to protect the public interest and the interests of the state. Contracts may run for a period up to 75 years. As of 1965, no one had applied for a contract under Section 30.20.

The attorney general has held that where a bulkhead line has been established, a riparian owner must also obtain a contract under Section 30.20 prior to removing material from the lake bed landward of the bulkhead line and within the original ordinary high water mark (1974 O.A.G.). Interpretation by the Supreme Court lists adverse effects on water quality and increase in water pollution as major factors requiring serious consideration by the Department of Natural Resources in acting upon a permit (Reuter v. Department of Natural Resources (1969)). Indeed, DNR has interpreted this case to extend to all Chapter 30-31 matters (Kurtz 1978). Therefore, the DNR must make specific findings to this effect.

As a result of low water conditions in Lakes Michigan and Superior, Section 30.205 - zoning for certain lake bed removals - was created (Chapter 359, Laws of 1963). Subsection (1) provides a means whereby a lake area in an outlying water, rendered unfit for recreational use by low water or siltation, may be restored to recreational use. In essence, Section 30.205 authorizes DNR to establish zones within which a riparian owner of developed land can remove the offending material. Once a zone is established, the full bureaucratic procedures under Subsection 30.20(2)(a) no longer apply. To date, no application has ever been filed under this section.

Manual Code 3537.1 (effective 3/19/75) governs applications for dredging. Unusual dredging projects are referred to the Bureau of Water Regulation and Zoning for initial review prior to final approval by the district director. In all other cases, requests are first forwarded to the district director who will send Form 3500-19, Application for Authority to Remove Materials from the Bed of a Waterway, to the applicant. Copies are sent to the Bureaus of Water Regulation and Zoning and Environmental Impact. The county zoning administrator is also informed of the proposed project. The district director will then arrange for inspection of the proposed work and spoil disposal sites and evaluate any environmental effects. Form 3500-23, Investigator's Form, and Form 1600-1, EIA Work Sheet, are completed.

In addition to the factors discussed with respect to structures under Section 30.12, the "public interest" in dredging situations also requires consideration of spoil deposition. In this regard, it is especially important that an upland site be provided, that spoil deposition not be in the hydraulic floodway of a stream, and that no known prehistoric area be adversely affected. Fall dredging requires special provision for spoil stabilization to prevent erosion of materials into surface waters before vegetation can be established in the spring.

Public notice and hearings are not required under Section 30.20. If the district director feels a hearing is necessary, however, or if a hearing is requested by the applicant, the procedure in M.C. 3506.1 and environmental impact directives will apply. NR 200.03(2)(g), Wis. Adm. Code, however, exempts dredge carriage returns when dredging is done under a Section 30.20 permit or contract.

If the request is denied, the applicant will receive a written statement of the reasons for denial. If granted, authority is returned to the applicant with appropriate instructions and conditions for completion of the contract. In theory, surveillance is maintained over the project whether approved or not.

IV. Conclusions and Recommendations:

There were a number of expectations expressed and directions suggested with regard to this study. All evinced a concern for the generality of the legislative guidelines established for Chapter 30, especially for the public interest test. There appears to be neither a unified nor a consistent theory to describe how the public interest is defined within the context of administrative decision making. Views vary considerably on whether or not this presents a problem and, if so, what is to be done about it.

The Federal government, in the process of reviewing Wisconsin's proposed Coastal Management Program, evinced a concern for their ability to monitor the state's program absent guidelines for the generalized statutory standards (Coleman 1977). At the state level, response to the absence of guidelines varies considerably.

The Public Intervenor contends that the ad hoc, standardless approach currently in effect runs the risk of violating due process and equal protection rights guaranteed an applicant for a Chapter 30 permit (Peshek 1978). The Department of Administration is sympathetic to the contention that the use of unwritten standards may constitute a violation of due process or the Administrative Procedure Act; therefore, it views this report as paving the way for the Natural Resources Board to adopt administrative rules on Chapter 30 (Owens 1977).

The Madison office of the Department of Natural Resources, meanwhile, asserts that there are no administrative rules because the Bureau of Water Regulation and Zoning is not historically attuned to writing rules; that is, Chapter 30 has traditionally been administered on an ad hoc basis. Also, the department contends that significant guidelines have evolved through the case law, and that rules would tend to "cut the DNR short". DNR proposes, rather, that rules be implemented where an area of regulation is not transparent to the public, where legal interpretation is unclear, or as an aid to hearing examiners - in sum, in any area where the development of important decisions is not readily recognizable to public or agency decision makers. In addition, the DNR feels that individual departmental policies should be codified where clarity prevails (Meyer 1978).

Each district office has its own perspective, differing both from that of the central office and from the other district offices. For example, the Southeast District's water management investigator feels that there are too many standards, that what is really needed is a technical handbook to serve as a guide for implementing Chapter 30 (Hausmann 1977). The Lake Michigan District's water management investigator, on the other hand, on balance favors the idea of administrative standards because, although it would tie his hands, it would also expedite denials (Fassbender 1977). The other side, of course, is that it is easier to point to a piece of paper on which standards are written rather than to make judgement calls (Posekany 1978).

Thus there are several "solutions" to the current ad hoc approach of administering Chapter 30, if a "solution" is indeed needed. One approach is to recodify Chapter 30 by statutory amendment. One supporter of recodification is Edmund Brick, Chief of the Bureau of Water Regulation and Zoning, who feels that Chapter 30 is a hodgepodge and wants a uniform statute. The other side of the argument has been expressed by Jim Kurtz, Chief of the Bureau of Legal Services, who has assigned recodification a low priority because he fears that a lot of what is already in the statutes would be lost by recodification (Curtner 1978). Lou Posekany, on the other hand, feels that, although Chapter 30 is rife with ambiguity and that many of the definitions are unclear or at least unworkable, we are simply "not smart enough" to attempt a rewriting (Posekany 1978).

A second approach is to write administrative rules akin to those of the Army Corps of Engineers, to enhance uniformity and make the field employees' job easier. This alternative is espoused by those who believe that the quality of the regulatory effort varies from district to district (Peshek 1978).

One objection to casting the public interest in concrete, as it were, is that we are dealing with dynamic systems of varying natural parameters, which must be assessed through experience rather than by discrete, quantifiable factors (Fassbender 1977).

A third approach, currently being implemented, is to put together a handbook for use by district personnel in evaluating permit applications and in enforcement proceedings. Like the Manual Code, this handbook will merely comprise an internal operating procedure and be without the force of law beyond the agency staff.

Having discussed differing viewpoints on how the public interest in navigable waters is defined, it may be useful here to examine which public interests in our coastal areas are currently receiving legislative or other recognition or protection.

By virtue of Section 165.07, Wis. Stats., the Scientific Areas Preservation Council receives notice of all proceedings under Chapter 30. Their legislative mandate encompasses protection of Scientific Areas, including Natural Areas, Geological Sites, Archeological Sites, and Rare Species Habitats. A Natural Area is defined as a tract of land or water so little modified by man's activity or sufficiently recovered that it contains intact native plant or animal communities believed to be representative of the presettlement landscape; Geological Sites are sites containing features of geological interest; Archeological Sites; and Rare Species Habitats, including the habitats of rare, threatened or endangered species of plants or animals.

In 1976 the Council put together a Natural Areas Inventory for the Wisconsin Great Lakes coast, taking into account the presence of terrestrial and aquatic plant communities, geological sites, archeological sites, threatened or endangered plants or animals, and natural features. In general, if a district office is not doing an adequate job of protecting this interest or if they lack expertise, the Scientific Areas Preservation Council will intervene if an area is of statewide significance. Their task will be furthered by a coastal survey of archeological sites to be undertaken soon by the State Historical Society.

Under current law, many species of endangered plants and animals receive some protection (Section 29.415 and 29.546, Wis. Stats.). Proposed legislation would extend additional protection to all nongame and threatened species of wildlife and wild plants as well (1977 A.B. 432) in light of the legislative finding that the activities of individuals and govermental agencies are destroying the few remaining whole plant and animal communities in Wisconsin.

Of obvious concern is protection of the Great Lakes fishery. In 1976 the commercial value of the Lake Superior fishery was approximately $560,000 and of the Lake Michigan fishery approximately $2.5 million. The value of the sports fishery was equally significant (Poff 1978). Of course, of principal concern to the regulation of coastal activities is preservation of spawning and nursery areas as well as prevention of water pollution.

The state Supreme Court has been an active participant in this process. As discussed in the main body of the paper, the court is the prime actor in the expansion of the term "public interest" from a narrowly-defined interest in navigation to include a vast array of public uses of water (boating, fishing, hunting, swimming, etc.), the enjoyment of scenic beauty, the prevention of water pollution, and the protection of riparian rights.

Recommendations:

Recommendations are proposed based on the following assumptions:

1. That the public interest is not readily defined - indeed, that it is sufficiently changeable with the overall needs of the people that perhaps it should not be defined;

2. That activity along the Great Lakes is generally non-controversial;

3. That if adminstrative standards were to be adopted to better define the public interest test, they would likely be subject to the same criticisms as is the current procedure with regard to: uniformity of application among districts; equality of consideration for similar projects; selectivity of application among applicants; and exercise of professional judgement by the evaluator; and

4. That there are two components of the public interest in Wisconsin's coastal areas, one protective and the other developmental.

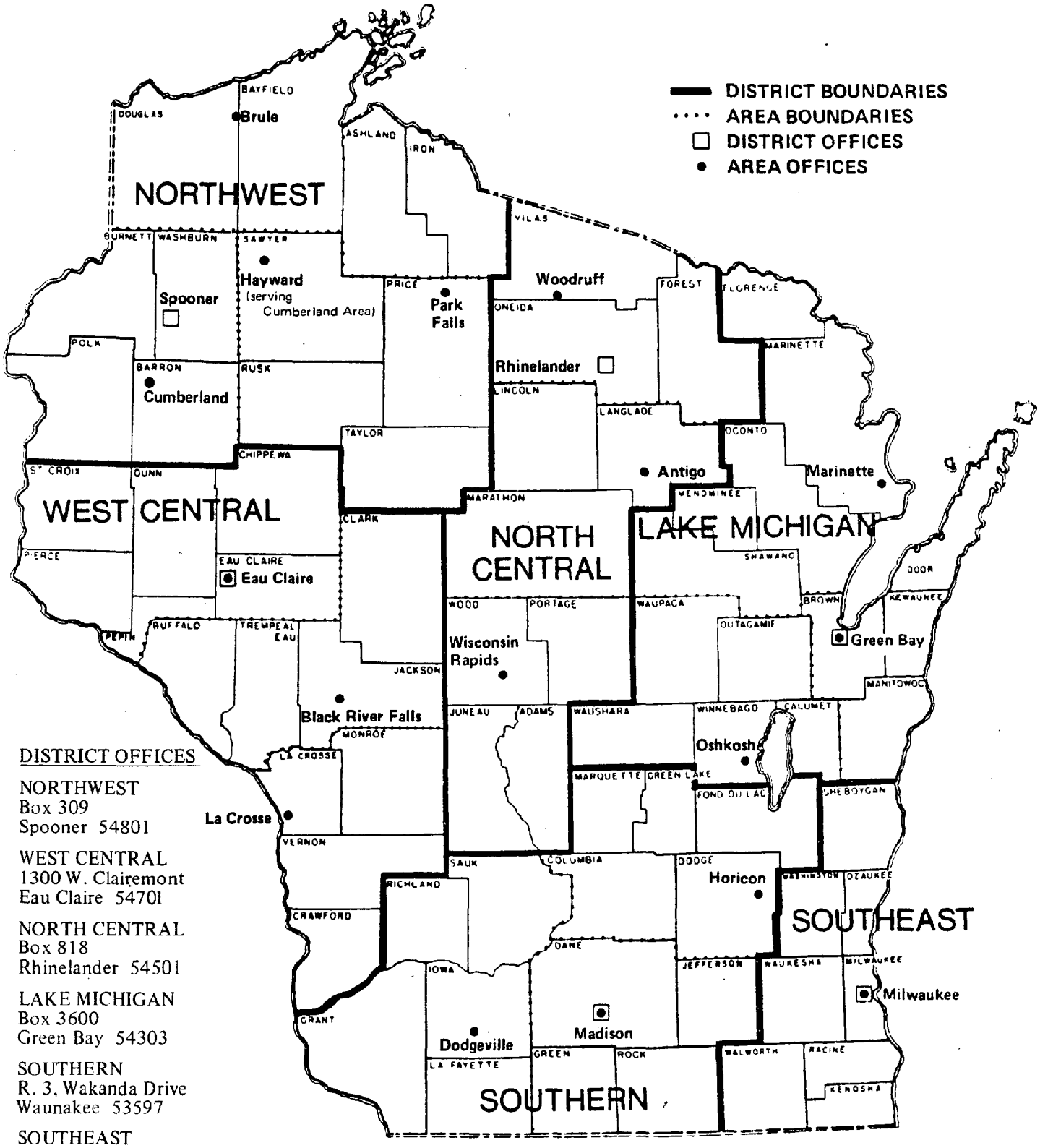
Keeping these assumptions in mind, the alternative which would receive the least resistance yet still meet the needs of federal, state and individual interests is the preparation of a guidebook. This guidebook could provide basic, general information of a non-technical nature to assist applicants applying for a departmental permit. It should include a description of the DNR permit program, explain why and when a permit is required, provide a sample application form and sample application drawings, provide an overall application checklist, define any specialized terms, and provide a map of relevant DNR districts, including the location of district and area offices, with addresses, phone numbers and contact personnel as appropriate.

If a more far-reaching solution is sought, recodification of Chapter 30 could be attempted. Edmund Brick, Chief of the Bureau of Water Regulation and Zoning, recommends provision for differing evaluation procedures based upon an administrative finding that a given action is of major or minor impact, akin to NR 150 action types. The processing of minor actions would be expedited, whereas major actions would still require provision of extensive information by the applicant. This would address the federal interest in implementing categories for shortened review like the Corps of Engineers letter of permission procedure, described above (Coleman 1977).

In either case, the factors upon which a decision to grant or deny a permit is based should be carefully documented. Currently, permit denials and approvals are usually phrased in highly generalized terms without a specific statement as to why a particular decision was reached. This approach was acceptable in the days of the Hixon case, but current decisions are more demanding (see, for example, Wisconsin Environmental Decade v. Public Service Commission, 79 Wis. 2d 409 (1977)).

Figure 1.

DNR FIELD DISTRICTS and AREAS



DISTRICT OFFICES

NORTHWEST
Box 309
Spooner 54801

WEST CENTRAL
1300 W. Clairemont
Eau Claire 54701

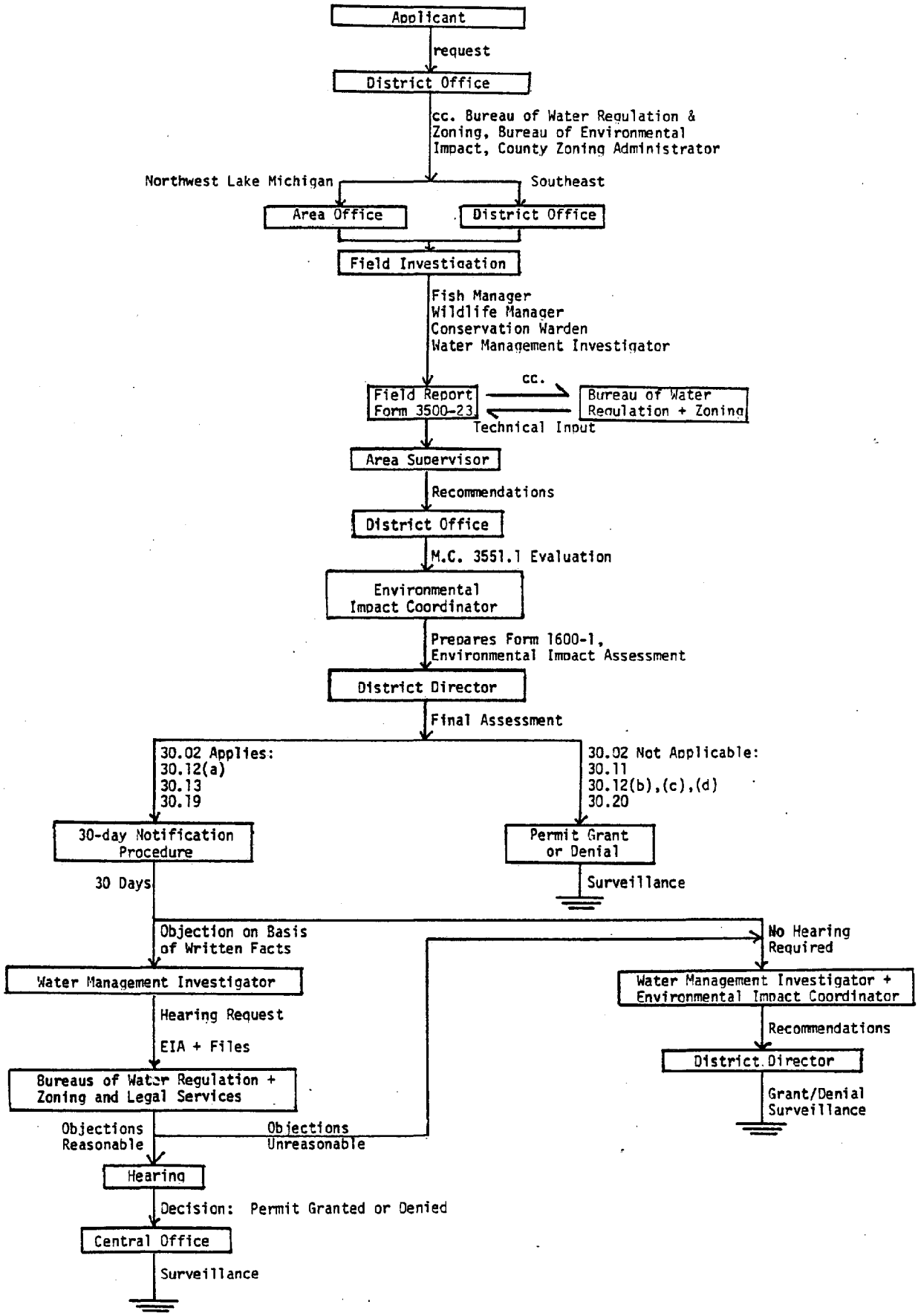
NORTH CENTRAL
Box 818
Rhinelander 54501

LAKE MICHIGAN
Box 3600
Green Bay 54303

SOUTHERN
R. 3, Wakanda Drive
Waunakee 53597

SOUTHEAST
Box 13248
Milwaukee 53226

Figure 2: Permit Procedure Flow Chart.



Appendix A

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

TOWARD A DEFINITION OF THE PUBLIC INTEREST

Work Plan & Products

1. Identify and document the process through which permits and authority are granted to do work on the beds of the Great Lakes, paying particular attention to the factors applied in reviewing permit applications.

2. Research and document the various sections of the statutes which provide authority for various actions which are predicted to be in the public interest paying particular attention to the purposes and goals of the section. The end result is to be the definition of the interests of the public sought to be protected.

3. Prepare a written report, including recommendations, concerning the definitions of the public interest and their role in regulatory decision making for the Coastal Management Council and the DNR Board.

Schedule

	O N D J F M	
1. Permit Process Identification	├──┤	
2. Research	├────┤	
3. Report with recommendations	├──────┤	(Complete 3/31/78. Draft Report Available 3/1/78)

Budget

Salary & Fringe Benefits (includes Secretarial Support)	$9,300
Travel	400
Supplies, Printing, etc.	300
TOTAL	$10,000
Inkind - DNR Services	$ 2,000

THIS IS 100% RECYCLED PAPER

Appendix B: Selected Subsections from Chapter 30, Wisconsin Statutes

11 Establishment of bulkhead lines
12 Structures and deposits in navigable waters
13 Regulation of wharves and piers
19 Enlargement and protection of waterways
20 Removal of material from the beds of navigable waters

30.11 Establishment of bulkhead lines. (1) WHO MAY ESTABLISH. Any municipality may, subject to the approval of the department, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries.

(2) STANDARDS FOR ESTABLISHING. Bulkhead lines shall be established in the public interest and shall conform as nearly as practicable to the existing shores, except that in the case of leases under sub. (5) and s. 24.39 (4) bulkhead lines may be approved farther from the existing shoreline if they are consistent with and a part of any lease executed by the board of commissioners of public lands.

(3) HOW ESTABLISHED. Whenever any municipality proposes to establish a bulkhead line or to reestablish such a line already in existence, the municipality shall indicate both the existing shore and such proposed bulkhead line upon a map and shall file with the department for its approval 3 copies thereof together with 3 copies of the ordinance establishing the bulkhead line. Such map shall use a scale of not less than 100 feet to an inch or such other scale as may be required by the department. Upon approval by the department, the municipality shall file the copies of the map and ordinance as follows: one in the office of the department, one in the office of the clerk of the municipality, and one in the office of the register of deeds of the county in which the waters lie. No such lines are legally established until such copies of the map and ordinance have been so approved and filed.

(4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian proprietors. Riparian proprietors may place solid structures or fill up to such line.

(5) FINDING OF PUBLIC INTEREST. (a) Prior to the execution of any lease by the board of commissioners of public lands of rights to submerged lands or rights to fill in submerged lands held in trust for the public under s. 24.39, the department of natural resources shall determine either with or without a public hearing whether or not the proposed physical changes in the area contemplated as a result of the execution of such lease are consistent with the public interest. Thirty days before determining whether such finding should or should not be made the department of natural resources shall notify in writing the clerk of the county and clerk of the city, village or town in which such changes are contemplated, the department of health and social services, and the U.S. Army Corps of Engineers, of the application for the lease. In making its finding the department of natural resources shall give consideration to all reports submitted to it. For leases applied for under s. 24.39 (4) (a) 2, the department shall not approve the lease if it appears to threaten excessive destruction of wildlife habitat.

(b) When considering leases to allow certain initial improvements such as, but not restricted to, filling on submerged lands to create sites for further facilities, the department may determine whether such initial improvements are consistent with the public interest in the navigable waters involved even though the exact final use to which these improvements will be put is not known. The department, at the time it finds that a proposed lease would be consistent with the public interest in the navigable waters involved, may include in its findings such limitations upon the use of improvements as it considers necessary to confine their use to functions primarily related to water transportation or otherwise of public benefit. The board of commissioners of public lands shall include in the lease such limitations on final use as is determined by the department.

(c) Upon the complaint of any person to the department that current use made of rights leased under s. 24.39 (4) is inconsistent with both 1. its original findings, and 2. the public interest, the department shall hold a public hearing thereon after the publication of a class 2 notice, under ch. 985. If the department finds that the present use conforms neither to its original finding nor to the present public interest, it shall submit its findings to the governor, and the governor may cause the attorney general or the district attorney of the proper county to bring action in the name of the state in a court of competent jurisdiction to declare the lease terminated and to institute appropriate action for removal of structures or cessation of practices in violation of such lease.

A bulkhead line is not merely the natural shoreline but one legislatively established by a municipality, hence it may differ from the existing shoreline and is also distinguishable from the low- and high-water marks as heretofore judicially defined. State v. McFarren, 62 W (2d) 492, 215 NW (2d) 459.

Where a bulkhead line has been established, a riparian owner must nonetheless obtain a permit or contract pursuant to 30.20 prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 63 Atty. Gen. 445.

30.12 Structures and deposits in navigable waters prohibited; exceptions; penalty. (1) GENERAL PROHIBITION. Unless a permit has been granted by the department pursuant to statute or the legislature has otherwise authorized structures or deposits in navigable waters, it is unlawful:

(a) To deposit any material or to place any structure upon the bed of any navigable water where no bulkhead line has been established; or

(b) To deposit any material or to place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

(2) PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS. (a) The department may, upon application and after notice and hearing, grant to any riparian owner a permit to build or maintain for his own use a structure otherwise prohibited by statute, provided such structure does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest.

(b) A riparian owner may place a layer of sand or other similar material on the bed of a lake adjacent to his property for the purpose of improving recreational use upon obtaining approval as stated in this paragraph. An application for approval to put sand or other similar material on the bed of a lake for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of his application.

(c) A riparian owner may place a fish crib or other similar device on the bed of a lake for the purpose of improving fish habitat upon obtaining approval as stated in this paragraph. An application for approval to put a fish crib or other similar device on the bed of a lake for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of the application.

(d) A riparian owner may place riprap or other similar material on the bed and bank of navigable waters adjacent to the owner's property for the purpose of protecting the stream bank or lake shore and adjacent land from erosion upon obtaining approval as stated in this paragraph. An application for approval to put riprap or other similar material on the bed of navigable waters for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of the application.

(3) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall be fined not more than $1,000 or imprisoned not more than 6 months or both.

History: 1975 c. 250, 421.

In a state proceeding to enforce a department order requiring an owner of land abutting a navigable lake to remove a quantity of fill, the burden of proof is on the state to establish the nonexistence of a bulkhead line. State v. McFarren, 62 W (2d) 492, 215 NW (2d) 459.

(1) (a) was not intended to apply to conduct which only indirectly and unintentionally results in deposits on lake beds. State v. Deetz, 66 W (2d) 1, 224 NW (2d) 407.

See note to 30.11, citing 63 Atty. Gen. 445.

30.13 Regulation of wharves and piers; establishment of pierhead lines. (1) RIGHTS OF RIPARIAN PROPRIETORS. Riparian proprietors may construct wharves or piers in navigable water in aid of navigation without obtaining a permit under s. 30.12, provided such wharves or piers do not interfere with public rights in navigable waters or with rights of other riparian proprietors, and subject to any pierhead line which may have been established and to the regulations contained in sub. (2) and in any ordinances enacted pursuant thereto. Except as otherwise expressly provided, any wharf or pier which does not comply with this subsection constitutes an unlawful obstruction of navigable waters.

(2) WHARVES AND PIERS REGULATED. All wharves and piers extending beyond the natural shore or established bulkhead line shall be so constructed as to allow the free movement of water underneath and in such manner as will not cause the formation of land upon the bed of the water. A municipality may enact ordinances not inconsistent with this section regulating the construction of wharves and piers located within, or attached to land within, such municipality.

(3) ESTABLISHMENT OF PIERHEAD LINES. Any municipality authorized by s. 30.11 to establish a bulkhead line may also establish a pierhead line in the same manner as it is authorized to establish a bulkhead line, except that if such municipality has created a board of harbor commissioners, the municipality must obtain the approval of such board to the establishment of the pierhead line in addition to the approval of the department. Any pierhead line established by a municipality shall be established in the interest of the preservation and protection of its harbor or of public rights in navigable waters.

(4) WHARVES AND PIERS BEYOND PIERHEAD LINES PROHIBITED; EXCEPTIONS. Any wharf or pier extending into navigable water beyond a lawfully established pierhead line constitutes an unlawful obstruction of navigable water unless a permit for such wharf or pier has been obtained pursuant to s. 30.12 (2).

30.19 Enlargement and protection of waterways. (1) PERMITS REQUIRED. Unless a permit has been granted by the department or authorization has been granted by the legislature, it is unlawful:

(a) To construct, dredge, commence or do any work with respect to any artificial waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway where the purpose is ultimate connection with an existing navigable stream, lake or other body of navigable water, or where any part of such artificial waterway is located within 500 feet of the ordinary high-water mark of an existing navigable stream, lake or other body of navigable water.

(b) To connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway with an existing body of navigable water, for navigation or any other purpose.

(c) To grade or otherwise remove top soil from the bank of any navigable stream, lake or other body of navigable water where the area exposed by such grading or removal will exceed 10,000 square feet.

(d) This section shall not apply to the construction and repair of public highways or to any agricultural uses of land, nor to any navigable body of water located wholly or partly in any county having a population of 500,000 or more.

(2) PERMITS FOR WORK OR TO ENLARGE WATERWAYS. Before any work or connection specified in sub. (1) is undertaken the applicant shall file an application with the department setting forth the following:

(a) The name and address of the applicant.

(b) The legal description of the lands included in the project.

(c) A summary statement of the purpose of the project.

(d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of the waterways to be constructed or grading to be undertaken.

(e) The name and address of the secretary of any property owners' association pertaining to the bodies of water affected by the project or if there is no such association, the names and addresses of at least 5 persons who own real property located adjacent to the bodies of water. If fewer than 5 persons own real property located adjacent to the bodies of water, the names and addresses of such persons that own real estate so located shall be given.

(f) Such other information that may be required by the department.

(3) NOTICE OF HEARING. Upon receipt of the application the department shall mail copies to the department of health and social services, clerks of the municipality and county in which the project or bodies of water affected are located, and to the other persons named in sub. (2) (e), accompanied by a statement that unless written objection is filed with the department of natural resources within 30 days after the mailing of the application, the department may take action to grant the application without public hearing. If the application affects the Milwaukee river, the Menomonee river, the Kinnickinnic river, the Root river or any of the tributaries thereof, notice shall also be given to the metropolitan sewerage district of the county of Milwaukee. If timely objection is filed, the department shall set the application for public hearing. Notice of such hearing shall be given by publication and by mailing a copy of the notice, as provided in s. 31.06, to the persons named in this subsection.

(4) ISSUANCE OF PERMIT. If the department finds that the project will not injure public rights or interest, including fish and game habitat, that the project will not cause environmental pollution as defined in s. 144.30 (9), that the project conforms to the requirement of laws for the platting of land and for sanitation and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue a permit authorizing the enlargement of the waterways affected.

(5) CONDITIONS OF PERMIT. The permit shall provide that all artificial waterways constructed under this section shall be public waterways. The department may impose such further conditions in the permit that it finds reasonably necessary to protect public health, safety, welfare, rights and interest and to protect private rights and property.

(6) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall forfeit not more than $1,000.

History: 1971 c. 273.

See note to 88.21, citing 63 Atty. Gen. 355.

See note to 30.11, citing 63 Atty. Gen. 445.

30.20 Removal of material from beds of navigable waters. (1) UNLAWFUL REMOVAL. (a) No person shall remove any material from the bed of any navigable lake or from the bed of any outlying waters of this state without first obtaining a contract therefor as provided in sub. (2).

(b) No person shall remove any material from the bed of any lake or stream not mentioned in par. (a) without first obtaining a permit from the department under sub. (2)(c).

(c) Any person violating this section shall forfeit not more than $1,000 for each such violation.

(2) CONTRACTS FOR REMOVAL. (a) The department, whenever consistent with public rights, may enter into contracts on behalf of the state for the removal of any material from the bed of any navigable lake or any of the outlying waters, and for the lease or sale of such material. Every such contract shall contain such conditions as may be necessary for the protection of the public interest and the interests of the state and shall fix the compensation to be paid to the state for material so removed, except that no compensation shall be paid for such material if the contract is with a municipality and the material is to be used for a municipal purpose and not for resale. No contract entered into pursuant to this paragraph shall run for a longer period than 5 years.

(b) The department, whenever consistent with public rights, may enter into contracts on behalf of the state for the removal of any mineral, ore and material from beneath the bed of navigable lakes and waters, where the waters would not be disturbed in the removal operation and for the lease and sale of such mineral, material and ore and provide the necessary regulations for all acts incident thereto. Every such contract shall contain such conditions as may be necessary for the protection of the public interest and the interests of the state, and shall fix the compensation to be paid to the state for the material, mineral and ore so removed. No contract entered into, pursuant to this paragraph, shall run for a longer period than 75 years. Should any doubt exist as to whether the state, in fact, owns such lake bed or stream bed such contract or lease shall be for such interests, if any, as the state may own. Title to the royalties to be paid when mining operations are begun shall be determined at such future time as royalties for ores so sold are paid or are due and payable.

(c) A permit to remove material from the bed of any lake or stream not included in sub. (1)(a) may be issued by the department if it finds that the issuance of such a permit will be consistent with the public interest in the water involved. The department may adopt rules to enable it to administer this section.

(3) OUTLYING WATERS DEFINED. In this section, "outlying waters" has the meaning designated in s. 29.01 (4).

See note to 30.11, citing 63 Atty Gen 445.

Appendix C: Selected Sections from the Policies and Procedures Manual of the Wisconsin Department of Natural Resources

1600-1	Environmental Impact Assessment Screening Worksheet
3500-12	Application for Enlargement of Waterways
3500-17	Application for Sand Blanket Permit
3500-19	Application for authority to remove materials from the bed of a waterway
3500-21	Establishment of Bulkhead Lines
3500-23	Water Regulation Investigation
3500-28	Application for a Permit for a Structure in Navigable Waters
3500-41	Application for a Fish Crib Permit
3500-42	Application for a Riprap Permit

3506.1	Permit and/or Approval Procedure: Chapters 30 and 31
3535.1	Application for Sand Blanket Permit
3536.1	Riprap Shore Protection
3537.1	Application for Dredging
3551.1	Flood Plain Management

(For All DNR Type II Regulatory Actions)

FORM 1600-1
REV. 7-77

DEPARTMENT OF NATURAL RESOURCES

DISTRICT OR BUREAU
DOCKET NUMBER

ENVIRONMENTAL IMPACT ASSESSMENT SCREENING WORKSHEET

Title of Proposal:

Location: County _____
Township _____ North, Range _____ East, West
Section(s) _____
Political Town _____

Existing Environment:

Project:

1) Description (overview)

2) Purpose and Need

Statutory Authority:

Estimated Project Costs:

BENEFICIAL AND ADVERSE ENVIRONMENTAL IMPACTS

1) **Physical**

2) **Biological**

3) **Economic**

4) **Social**

5) **Energy**

PROBABLE ADVERSE IMPACTS THAT CANNOT BE AVOIDED

IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES

ALTERNATIVES

EVALUATION (Respond to all categories)

ITEM	YES	NO	UNKNOWN
1) Does the action stimulate secondary effects?			
2) Does the action create a new environmental effect?			
3) Is the resource affected geographically scarce?			
4) Is the action precedent setting?			
5) Are there reasonable alternatives?			
6) Is the action highly controversial?			
7) Is the action inconsistent with long-range plans or policies?			
8) Are there cumulative impacts which (in total) are major and significant?			
9) Does the action affect historical, scientific or archeological sites?			
10) Does the action foreclose future options?			
11) Are there considerable energy impacts?			
12) Are there considerable economic impacts?			
13) Are there considerable social impacts?			
14) Other			

Project Title:

Docket Number:

RECOMMENDATION

EIS Not Required . . . . . ☐

Refer to Office of the Secretary . . . . . ☐

Major and Significant Action: Prepare EIS . . . . . ☐

Insufficient Data - EIR Requested . . . . . ☐

STATEMENT OF NON-SIGNIFICANT IMPACT

State reasons why the proposed action does not require an EIS

	SIGNATURE OF EVALUATOR	DATE

CERTIFIED TO BE IN COMPLIANCE WITH WEPA	
DISTRICT OR BUREAU DIRECTOR, OR DESIGNEE	DATE

APPROVED (if required by Manual Code)	
DIRECTOR, BEI	DATE

This decision is not final until approved by Bureau or District Director (or Designee); or Director, BEI.

Application for Enlargement of Waterways
(Section 30.19, Wisconsin Statutes)
Form 3500-12

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

PLEASE SUBMIT 2 COMPLETE COPIES OF THE APPLICATION TO THE APPROPRIATE DNR DISTRICT OFFICE. The enclosed map indicates DNR district boundaries and district office locations. Assistance in completing applications is available at the district offices. Please complete all parts of the application, including the 5 names and addresses for notification.

Applicant_____

Mail Address_____
Zip Code

Name of Adjacent Waterway_____County_____

Location of Project:_____quarter of the_____quarter of section_____, township
(east)
_____north, Range_____(west), Town of_____

Property Description: (Attach copy of deed or use additional sheets, if necessary)

_____

_____

Purpose of Project: (to be_____feet long,_____feet wide,_____feet deep, average)

1. Unconnected pond: farm_____, fish and wildlife_____, private swimming____, public swimming_____, other_____

2. Connected waterway: boat channel or basin_____, swimming_____, fish and wildlife_____, farm_____, real estate development with (individual seepage systems_____) or (municipal sewerage system_____), other_____

_____

Map or Diagram Required: (use 8½" x 13" sheets of paper, if possible)

1. Number required:
   (a) If 8½" x 13" or smaller, submit 2 copies.
   (b) If larger in either dimension than 8½" x 13", submit a tracing suitable for blueprinting or 25 copies.
2. In unconnected pond, include:
   (a) Plan view, to scale, showing property lines, existing waterways, proposed enlargement, and spoil disposal area.
   (b) Cross sections, to scale, showing elevations and depth of spoil banks.

3. If connected waterway, also include on the map:
   (a) One foot contours of land involved, with relative elevation of water level at time of survey and ordinary high water of the waterway, referred to a permanent point or benchmark.
   (b) Borings at not less than one per acre of area with log of materials and ground water depth.
   (c) Locations and dimensions of lots, if dividing the project land into smaller parcels.
   (d) On the cross sections, show elevation of finished grade, including the spoil disposal area, with depth and kind of fill material.

Prior Approvals: (Since January 1, 1968, counties have been required to zone shorelands.) Submit a copy of the county zoning permit for this project or show that no permit is required from the county, city, or village.

For Notification:

1. List below the name and mailing address of the persons owning shoreland property on the adjacent waterway on each side of the applicant's property:

   1._____

   2._____

2. (a) List the name and mailing address of the secretary of any property owner's association pertaining to the adjacent waterway; or if there is no such organization;
   (b) List the names and mailing addresses of 5 persons who own shoreland property on the adjacent waterway in the vicinity of the project lands:

   1._____

   2._____

   3._____

   4._____

   5._____

   If fewer than 5 persons own all the shoreland property on the adjacent waterway, give names and addresses of all such persons and state that there are no more.

Applicant's Signature_____Date_____

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, Wisconsin 53707

APPLICATION FOR SAND BLANKET PERMIT
(Section 30.12(2)(b), Wis. Stats.)
Form 3500-17
Rev. 7-76

Instructions: Complete items 1 through 8, sign, date and return.

1. The applicant and riparian property owner herein is:

   Name _____

   Mail Address _____ Zip Code _____

   Address of Lakeshore Home _____ Fire No. or Identification No. _____

2. Name of Lake _____ County _____

3. Location of Project: _____ quarter of the _____ quarter of section _____, township _____ north, range _____ (east) (west), Town of _____

   Property Description: (Attach copy of deed or use additional sheets, if necessary)

   _____

   _____

   NOTE: A complete legal description of the property must be submitted.

4. The purpose for which said layer of sand or other similar material is to be placed on the bed of said lake is: _____

   _____

5. Ownership of lands immediately adjacent to applicant's lakeshore property is as follows:

   Name _____ Address _____

   Name _____ Address _____

6. It is proposed to place a _____-inch layer of material to cover an area _____ feet in length (measured along the shore) by _____ feet lakeward, starting _____ feet from the existing shoreline as shown on the sketch on the reverse side.

7. The depths of the water in the vicinity of the area involved are as follows: Normal depth of water 1 foot from shoreline is _____ inches. Normal depth of water at the point to which the proposed layer will extend is _____ inches.

8. Shown on sketch below, the area of the lakebed on which it is proposed to place the layer of sand or other similar material, showing length and width of the layer of material. Also describe or show by a sketch the highway route by which the site may be reached by the inspector.

Dated_____

_____
Signature of Owner of Described Lakeshore Property

LEAVE BLANK - DEPARTMENT USE ONLY

ORDER APPROVING OR DENYING APPLICATION

Your application for authority to place a layer of sand or similar material on the bed of _____ Lake, in _____ County, is hereby:

1. ☐ Approved as applied for.

2. ☐ Approved as limited herewith:_____

_____

_____

3. ☐ Denied for the following reason:_____.

_____

_____

When application is approved the permit expires 12 months from date as indicated below.

State of Wisconsin
Department of Natural Resources

For the Secretary

By_____
District Director

Date_____

Form 3500-19

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Application for Authority to Remove Materials from the Bed of a Waterway — Section 30.20, Wisconsin Statutes

PLEASE SUBMIT 2 COMPLETE COPIES OF THE APPLICATION TO THE APPROPRIATE DNR DISTRICT OFFICE. The enclosed map indicates DNR district boundaries and district office locations. Assistance in completing applications is available at the district offices. A contract is required on natural lakes, a permit is required on any other lake or stream.

Applicant_____

Mail Address_____
Zip Code

Name of Waterway_____ County_____

If a lake, is there a dam on the outlet stream: Yes_____ No_____

Location of Project:_____ quarter of the_____ quarter of section_____,
(east)
Township_____ North, Range_____ (west), Town of_____

Property description: (Attach copy of deed or use additional sheets, if necessary.) If one person acts as agent for a group, include names and property description of each riparian involved.

_____

Purpose of Project_____
(designate whether for improving lakebed, channel for navigation,

_____
filling uplands)

Quantity of material to be removed:_____ cubic yards.

Location of Spoil Disposal Area_____

Since January 1, 1968, counties have been required to zone shorelands. If the disposal area is within 1,000 feet of a lake or stream, submit a copy of your zoning permit for filling, or proof that a permit is not required from the county.

For Notification

The name and address of persons who own property on the waterway on either side of the applicant's property:

1. _____
Zip Code

2. _____
Zip Code

The name and mailing address of the secretary of any property owners' association pertaining to the body of water affected by the project:

_____

Map or Diagram - Submit a map showing the general location of the project and a scale drawing showing the proposed work, property lines, high water shoreline, proposed disposal area, dimensions in feet, and cross sections with elevations. Use 8½" by 13" paper, or submit 12 copies of drawings or a tracing suitable for making blueprints. The services of a registered land surveyor or professional engineer are advisable.

Applicant's signature
(The applicant must be the owner of the project lands or his authorized representative)

Signature_____ Date_____

Rev. 3-72

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, Wisconsin 53707

Form 3500-21
Rev. 7-76

Section 30.11(3), Wis. Stats.

ORDINANCE NUMBER _____

Introduced By _____

WHEREAS the city of _____, _____ County, Wisconsin, by and through its city council, proposes to establish in the interest of the public and pursuant to Section 30.11, Wisconsin Statutes, a new bulkhead line along a part of the shore of _____, _____ County, as hereinafter described, and does ordain as follows:

1. That the bulkhead line of that part of the _____ shore of _____, hereinafter described and more particularly shown by the attached map, is established and determined as set forth in the following description and the attached map, subject to the approval of the Department of Natural Resources, namely:

   (Here give description of new bulkhead line by courses and distances.)

2. That three certified copies of the ordinance, together with three true and correct copies of such map, be submitted to the Department of Natural Resources for its approval

3. That upon the return and receipt of such approved maps, the same be filed as follows:

   One in the office of the Department of Natural Resources;

   One in the office of the city clerk of the City of _____, Wisconsin; and

   One in the office of the register of deeds for and in _____ County, Wisconsin.

Passed this _____ day of _____, 19____.

_____
President of Council

I, _____, City Clerk, hereby certify that the above is a true and correct copy of Ordinance Number _____, passed by the Council of the City of _____, Wisconsin, on _____, 19_____.

_____
City Clerk

Form 3500-23
Rev. 7-77

Department of Natural Resources
INTRA-DEPARTMENT
MEMORANDUM

_____
Station

Date_____ IN REPLY REFER TO: 3500

TO: Docket Number: _____

FROM: Assignment Number: _____

SUBJECT: Water Regulation Investigation, _____ County

Location: ____¼ ____¼, Section ____, T____N, R____E

Investigation Date: _____ Water _____ ( ) Lake ( ) Flowage ( ) Stream

Applicant's Name: _____

Address: _____

Applicant contacted during inspection: Yes ____ No ____

Nature of proposed project: (Check one or more)

____ Stream Straightening
____ Dam Construction
____ Dredging
____ Pond or Channel (Dug)
____ Other (Describe) _____
____ Diversion
____ Sand Blanket
____ Structure (Describe) _____
____ Grading (in excess of 10,000 sq. ft.)

Tillable acreage determination - riparian land:

Describe area prior to proposed alteration:

Permit required? Yes ____ No ____

Plan approval required? Yes ____ No ____
(bridges or dams only)

REVIEW ORIGINAL APPLICATION FOR ACCURACY:
Name of water correct according to waters inventory report? Yes ____ No ____
Legal description of project site correct? Yes ____ No ____
Names of adjacent property owners complete? Yes ____ No ____
Other errors or omissions observed in application: _____

LAKE ( ) FLOWAGE ( )
Surface (acres) _____
Depth (feet) Max. ____ Avg. ____
Depth of area to be altered _____ (feet)
Public access: Yes ___ No ___

If available, attach lake survey map showing area to be altered.

STREAM:
Total length _____ miles
Dimensions of stream at site of proposed alteration: Width ___ Depth ___ Length ___
Flow in cfs: ____ Date _____
Flow was: ____ estimated ____ metered
____ floating chip
Navigable: Yes ____ No ____
If no, explain why: _____

Water Mgt: Trout: Yes _____ No _____ Species _____ Class 1,2 or 3
Muskie: Yes _____ No _____ Class A, B, or C (Circle one)
Other: (List and indicate abundance) _____

Fish spawning area: Trout _____ Muskie _____ Bass _____ Walleye _____ Northern _____
Bluegill _____ Crappie _____ Other _____

Bottom type at site: Rubble ____% Gravel ____% Sand ____% Silt ____% Organic ____%

Vegetation: Upland _____
Aquatic _____

Wildlife Mgt: (Value) Beaver _____ Muskrat _____ Mink _____ Waterfowl _____
Shore birds _____ Others (List and indicate abundance) _____

Present public use: Hunting _____ Fishing _____ Trapping _____ Swimming _____
Navigation _____ Others _____

Shoreline stability: Stable _____ Unstable _____ (Describe) _____
_____

Describe spoil deposition area if applicable: _____
_____

Scientific Areas Preservation Council Interest: Yes _____ No _____
State Historical Society Interest: Yes _____ No _____

FLOODPLAIN AND SHORELAND ZONING CONSIDERATIONS:
Zoning classification of project site: _____
Permit(s) required from the following: Corp Eng: Yes _____ No _____
County: Yes _____ No _____
Town: Yes _____ No _____
Village or City: Yes _____ No _____

State any conflicts with NR 115 and NR 116, Wisconsin Administrative Code, the proposed project will have.

Present land use (within 300 feet of shoreline):

SPECIAL ENVIRONMENTAL CONSIDERATIONS: Aesthetic values (describe the unique attractiveness and natural setting of the area and what damage may be caused)

State opinion regarding impact of project as proposed on the environment and adjacent property owners (consider the ecological diversity of the area and what contribution this diversity makes to the stability of the lake or stream involved):

Additional data required:

Special condition to be incorporated in permit if granted:

State objections, if any, in detail below with any other comments relevant to the proposal:

By _____ Date _____
Area Fish Manager

Object to proposal: Yes _____ No _____

If yes, explain:

By _____ Date _____
Area Wildlife Manager

Object to proposal: Yes _____ No _____

If yes, explain:

By _____ Date _____
Area Warden

Object to proposal: Yes _____ No _____

If yes, explain:

By _____ Date _____
Area Water Mgt. Investigator

Object to proposal: Yes _____ No _____

If yes, explain:

Name of investigator(s): _____

_____

District recommendation: Opposed _____ No Opposition _____

For District Director _____

Note: Attach diagrams or maps if needed to fully explain your evaluation. Submit one original to District Headquarters. Keep copies as needed for your files.

Application for a Permit for a Structure in Navigable Waters (Section 30.12, Wis. Stats.)

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

PLEASE SUBMIT 2 COMPLETE COPIES OF THE APPLICATION TO THE APPROPRIATE DNR DISTRICT OFFICE. The enclosed map indicates DNR district boundaries and district office locations. Assistance in completing applications is available at the district offices. Twelve copies of the map and plans on 8½" x 11" sheets of paper must be submitted with application.

Owner: _____

Address: _____
Zip Code

Name of Waterway _____ County _____

Location of Structure: _____ quarter of the _____ quarter of section ____, township _____ north, range _____ (east) (west), Town of _____

Legal description of property abutting waterway (attach copy of deed) _____

_____

_____

_____

_____

Nature of Ownership: Deed _____ Land Contract _____ Lease _____

Other _____

Type of Structure: _____

Description (dimensions and materials): _____

_____

Purpose: _____

Reason structure must be located in waterway: _____

_____

_____

Building Permits: Have permits been obtained from the following, where required?

Corps of Engineers _____ County_____ Local Municipality _____.

Name and address of persons who own the property abutting the waterway on each side of applicant's property:

_____

_____

Name and address of secretary of property owner's association on waterway (if one exists).

_____

Financial Responsibility: Is the owner financially capable of constructing, maintaining, and removing the structure, if necessary? _____

Can you submit proof of financial status, if required? _____

Applicant's Signature _____ Date _____

Required Project Information

I. Map and Plan Requirements

A. Location map with a scale not less than 1 inch = 6 miles indicating the relationship of the project site to major highways and at least one city or village.

B. Plan view of project site with a scale not less than 1 inch = 200 feet.

C. Structure plan and cross-sections (longitudinal and transverse) with a scale not less than 1 inch = 20 feet indicating dimensions, slopes, types of materials, ordinary high water elevation and existing shoreline.

II. Hydraulic cross-section and profile for structures proposed on navigable streams (elevations to be tied to mean sea level or permanent benchmarks).

A. Cross-section of the stream at the site of the proposed structure and extending landward on both sides of the stream to an elevation 10 feet above the immediate bank or a distance of 1000 feet. Scale: not less than 1" = 200 feet horizontal and 1" = 5 feet vertical.

B. Elevations of the water surface 1000 feet upstream and 1000 feet downstream from the proposed structure.

III. Planimetric information

A. Location of existing waterways

B. Landowners property lines

C. Roads, bridges or buildings

D. Location of site with respect to section, township and range

E. Proposed structure

NOTE: On navigable streams the hydraulic cross-section and profile must be certified by a state or Federal agency, a registered land surveyor or registered engineer.

State of Wisconsin
Department of Natural Resources

APPLICATION FOR FISH CRIB PERMIT
Section 30.12 (2) (c) Wis. Stats.
Form 3500-41
7-76

Instructions: Complete items 1 through 7, sign, date and return to appropriate DNR District Headquarters.

1. The applicant and riparian property owner herein is:

Name _____

Mail Address _____ Zip Code _____

Address at Project Location _____ Fire No. or Identification No. _____

2. Name of Lake _____ County _____

3. Location of Project : _____ quarter of the _____ quarter of section _____, township _____ north, range _____ (east) (west), Town of _____

Property Description: (Attach copy of deed. Use additional sheets, if necessary)

_____

_____

NOTE: A complete legal description of the property must be submitted.

4. Ownership of lands immediately on either side of applicant's lakeshore property is as follows:

Name _____ Address _____

Name _____ Address _____

5. It is proposed to place a crib _____ ft. long by _____ ft. wide by _____ ft. deep and _____ ft. lakeward from the shore as shown on the attached sketch. Crib will be constructed of _____

6. The normal depth of the water in the vicinity of the crib is _____ ft.

Depth of water during periods of drawdown (for impoundments) is _____ ft.

7. Show on an attached sketch the area of the lakebed on which it is proposed to place the fish crib, showing length, width, and depth of the crib on both plan and cross-section views. Show your property boundaries and the location of nearby piers, buoys, rafts, etc. Indicate how crib will be anchored to the lakebed to prevent its floating to the surface and show how crib location will be marked. Also describe or show by a sketch the highway route by which the site may be reached by the inspector.

Dated _____

_____
Signature of Owner of Described Lakeshore Property

LEAVE BLANK - DEPARTMENT USE ONLY

ORDER APPROVING OR DENYING APPLICATION

Your application for authority to place a fish crib on the bed of

_____ Lake, in _____ County, is

hereby:

1. Approved as applied for.

2. Approved as limited herewith: _____

_____

_____

3. Denied for the following reason: _____

_____

_____

When application is approved the permit expires 12 months from date as indicated below.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By _____
District Director

Date _____

Instructions: Complete items 1 through 8, sign, date and return to appropriate DNR District Headquarters (see attached map). Incomplete applications will not be processed and will be returned.

1. The applicant and riparian property owner herein is:

Name _____

Mail Address _____

Telephone _____

Address of Project Location _____ Fire No. or Identification No. _____

2. Name of Water Body _____ County _____

3. Location of Project: _____ quarter of the _____ quarter of section ____, township _____ north, range _____ (east) (west), Town of _____.

Property Description: (Attach a copy of deed, lease, land contract, or other document. Use additional sheets, if necessary.)

NOTE: A complete legal description of the property must be submitted.

4. Ownership of lands immediately adjacent to applicant's property on both sides is as follows (if on a river, list owners of property downstream and, if applicable, across the stream):

Name _____ Address _____

Name _____ Address _____

5. It is proposed to place a _____-inch layer of _____-inch rock (or _____) to cover an area _____ feet in length (measured along the bank or shore) by _____ feet up the bank, extending _____ feet waterward, as shown on the attached sketch.

6. The depths of the water in the vicinity of the area involved are as follows: Normal depth of water 1 foot from bank or shoreline is _____ inches. Normal depth of water at the point to which the proposed riprap layer will extend is _____ inches.

7. (If on a stream) The width of the channel at normal flow is _____ feet. The toe of the riprap will extend _____ feet into the water from the bank. The top of the riprap will be (_____ feet below) (even with) (_____ feet above) the top of the adjacent bank.

8. Show on an attached sketch the area of the bed and/or bank on which it is proposed to place the layer of riprap or similar material, showing length and width of the layer of material. Include both plan and cross-section views. Show the slope at which riprap will be placed. Also describe or show by a sketch the highway route by which the site may be reached by the inspector. The location of the riprap must be clearly shown in relation to a readily identifiable and reasonably permanent object (lot or section corner, building corner, large tree, or other feature).

Date _____ _____
Signature of Owner of Described Property

_____

_____

LEAVE BLANK - DEPARTMENT USE ONLY

ORDER APPROVING OR DENYING APPLICATION

Your application for authority to place a layer of riprap or similar material on the bed and/or bank of _____ in _____ County, is hereby:

☐ 1. Approved as applied for.

☐ 2. Approved as limited herewith: _____

_____

_____

☐ 3. Denied for the following reason(s): _____

_____

_____

When application is approved, the permit expires 12 months from date as indicated below.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By _____
District Director

By _____
Water Management Investigator

Date _____

Manual Code 3535.1

State of Wisconsin
Department of Natural Resources

SUBJECT: Application for Sand Blanket Permit

Procedures for handling applications for permits to place a layer of sand or similar material on lake beds under Sec. 30.12(2)(b), Wis. Stats., are as follows:

Applicant*	1.	Submits request to Department of Natural Resources.
DNR Receiving Office	2.	Sends request to appropriate district director.
District Director	3.	Sends Form 3500-17, Application for Sand Blanket Permit, to applicant.
Applicant	4.	Completes items 1-8 of form, signs, dates and returns to district director.
District Director	5.	Arranges for inspection of proposed work site *and completion of Form 3500-23, Investigators Form.*
	6.	Completes Form 3500-17, approving or denying application. *Conditions of approval may require: use of pea gravel instead of sand, prohibition of use of plastic liner, reduced area, depth of coverage, etc.*
	7.	Distributes completed Form 3500-17 as follows:

a. Original retained in District Office.

b. Copy to applicant, by mail, with letter of explanation, if needed.

c. Copy to Water Regulation Section, *Bureau of Water Regulation and Zoning,* Madison.

d. Copy to Bureau of Environmental Impact, Madison.

e. Copy to Area Supervisor.

f. Other copies distributed as deemed necessary.

*Applicant must be the owner of riparian lands adjacent to the proposed sand blanket. Section *30.12(2)(b)*, Wisconsin Statutes, refers only to the placing of sand on the bed of a lake. This is interpreted to mean a pond held by a dam (in still water), as well as a lake. Placing material on the bed of a river or stream (running water) is not authorized by Sec. 30.12(2)(b).

SECRETARY'S DIRECTIVE _____

Date February 19, 1975

Distribution:

All Manual Holders

Special Instructions:
Rescinds and replaces M.C. 3535.1 (7-11-72)
(See script for changes)
ds

State of Wisconsin
Department of Natural Resources

Manual Code 3536.1

SUBJECT: Riprap Shore Protection

PURPOSE: To provide guidelines for implementing Section 30.12(2)(d), Wisconsin Statutes, created by Chapter 250, Laws of 1975.

Section 30.12(2)(d), Wisconsin Statutes, was enacted at the request of the Department to simplify the processing of permits for riprap and other shore protective works. The "riprap or other similar material" for the purposes of this section include rock or broken concrete without protruding reinforcing rods, retaining walls constructed of concrete, concrete blocks, logs, wood planks, piling, etc.,or similar erosion control and shore protective works.

These latter materials are included since the intent of this paragraph of the statutes is to provide a rapid permitting procedure to allow a riparian owner to construct reasonable shore protective works with a minimum of delay to protect the property from further erosion loss.

A "General Permit" issued by the District Engineer, Chicago District of the Corps of Engineers, allows authorization of similar shore protection and erosion control devices for the Lake Michigan shoreline within ten work days of receipt of an application. Therefore, inclusion of the above materials is necessary and further justified to be compatible and responsive to the general permit conditions of the U.S. Corps of Engineers.

Specifically prohibited should be wood chunks, unsorted demolition material, brick, plaster, blacktop and any other material that could produce leachates or would violate provisions of NR 151.

Although the new law states that riprap or other similar material may be placed on the bed and bank of navigable waters upon obtaining a permit from the Department, the property owner is not required to obtain a permit from the Department for such structures landward of the ordinary high watermark. However, the landowner should be advised that a local zoning permit may be required. Also, grading or removal of topsoil exceeding 10,000 square feet would require a 30.19(1)(c) permit.

Section 30.12(2)(d) simplifies the issuance of permits by removing the noticing and hearing requirements of the typical Section 30.12 permit. This section, 30.12(2)(d), should <u>not</u> be used where the purpose of the project is to make upland or to regularize the shoreline as provided by Section 30.11, Wisconsin Statutes, which would require a bulkhead line approval.

The sudden loss of riparian land due to an unusual natural occurrence may be restored and protected without a permit within a reasonable time (one year). This section could be used to provide protection for that restored land where the necessary structure is placed at or beyond the original ordinary high watermark. This section should not be used for restoring land loss over many years as land lost in an unusual natural occurrence which was not restored within a reasonable time.

Issuance or denial of a permit under this section has been determined to be a type III action which does not require an EIS or EIA worksheet.

General guidelines on placement of riprap, etc., should include the following:

1. Riprap or other material may intrude into the waterway only as far as necessary to provide a stable foundation. A stable foundation usually exists or can be developed at the intersection of the bank and the bed of the waterway.

2. In most cases, a riprap layer or structure 18 inches in thickness will provide adequate protection. Increased thickness would be required on shorelines of Lakes Michigan, Superior and Winnebago or where engineeringly justified by applicant.

3. The riprap and other shore protective works should conform to the existing shoreline.

4. The riprap or structure may not materially impair navigation, place a burden on adjoining riparians, or be detrimental to the public interest (e.g. reduce the effective flood flow capacity of a stream, destroy essential spawning beds, impair water quality, destroy scenic beauty, etc.)

(more)

SECRETARY'S DIRECTIVE _____

Distribution:

Date November 17, 1976

Group E Manual Holders

Special Instructions:

ss

The procedures for processing applications for permits to place riprap and other similar materials under Section 30.12, Wisconsin Statutes, are as follows:

Applicant (must be riparian owner or lessee)	1. Submits request to Department of Natural Resources.
District Director	2. Sends Form 3500-42, Riprap Permit Application, to applicant.
Applicant	3. Completes form, signs, dates and returns to district director.
District Director	4. Arranges for: inspection of proposed project site and completion of Form 3500-23, Field Investigation Report. Investigator must determine appropriate dimensions of riprap and distances from recoverable landmarks and document using sketches and/or photos.
	5. Approves or denies application (Form 3500-42). Conditions of approval may require: removal of bank material or sloping prior to placement, use of different materials, reduced thickness or encroachment on bed of waterway, etc.
	6. Distributes permit as follows: a. Original to applicant. b. Copy retained in district office. c. Copy to Bureau of Water Regulation and Zoning. d. Copy to Bureau of Environmental Impact. e. Copy to area supervisor. f. Copy to Army Corps of Engineers, District Office. g. Copy to County Zoning Administrator. h. Other copies as deemed necessary.
	7. Maintains surveillance over project whether approved or not and processes violations as per M.C. 3506.2.

State of Wisconsin
Department of Natural Resources

Manual Code 3537.1

SUBJECT: Applications for Dredging

Section 30.20, Wis. Stats., requires a dredging contract for removal of material from the beds of natural lakes and outlying waters, and requires a permit for removal of material from the beds of streams, rivers, raised lakes and impoundments.

Unless otherwise directed by the Secretary, procedures for handling applications under Section 30.20 are indicated below. Unusual dredging projects, or requests for dredging authority under Section 30.205, Wis. Stats., (zoned dredging), shall be referred to the *Bureau of Water Regulation and Zoning* for initial review and discussion prior to final approval by District Director.

A dredging permit or contract is required for all waterway crossings involving the removal of material from the bed of a navigable waterway. This includes any domestic corporation or cooperative organized to furnish telegraph or telephone service or transmit heat, power or electric current. (Section 30.20, being a specific statute, takes precedence over the exclusions cited in Section 182.017, Wis. Stats.) This section would also apply to the exploration and/or mining in or below the bed of any navigable water.

Applicant	1.	Submits requests to DNR.
DNR Receiving Office	2.	Sends requests to appropriate District Director.
District Director	3.	Sends Form 3500-19, Application for Authority to Remove Materials from the Bed of a Waterway, to applicant.
Applicant	4.	Completes application form, signs, dates, and returns to District Director.
District Director	5.	Sends copy of application to Bureaus of *Water Regulation and Zoning* and Environmental Impact.
	6.	Arranges for inspection of proposed work *and spoil disposal sites and evaluates any environmental effects. Completes Form 3500-23, Investigators Form, and Form 1600-1, EIA Work Sheet.*
		Public notice and hearings are not required under Sec. 30.20. However, if the District Director feels a hearing is necessary, or if a hearing is requested by the applicant, the procedure in M.C. 3506.1 and environmental impact directives will apply.

(more)

SECRETARY'S DIRECTIVE _____

Date March 19, 1975

Distribution:

All Manual Holders

Special Instructions:

Rescinds and replaces M.C. 3537.1 (11-20-73)
(See script for changes)

lw

7. Informs County Zoning Administrator of proposed dredging project with requests for comments as appropriate.

8. Receives *and reviews* inspection report *and environmental impact assessment worksheet. Processes EIA in accordance with M.C. 1606.1.*

9. If denial of the request is appropriate, informs applicant in written form stating the reasons for denial. Signs "For the Secretary".

10. If a grant of the request is appropriate, sends contract (or permit) to applicant with instructions to:

    a. Sign contract;
    b. Provide bond; and
    c. Submit remittance in the amounts indicated in the contract when a contract is involved.

Applicant

11. Signs contract, provides bond, and remits appropriate amounts as indicated in the contract when a contract is involved.

District Director

12. Submits remittance to Bureau of Finance when a contract is involved.

13. Returns authority to applicant with instruction that authority is then in force (cc *Bureau of Water Regulation and Zoning* and County Zoning Administrator).

14. Instructs applicant to notify District Office 5 days before dredging project is to begin that the project will be commenced.

Applicant

15. Performs project (progress reports are required for lengthy projects).

16. When project is completed, notifies District Office by affidavit that project is completed.

District Director

17. Has follow-up inspection performed.

18. Informs applicant that the project has been satisfactorily completed and that the file is, therefore, closed (cc bonding company, *Bureau of Water Regulation and Zoning*, and County Zoning Administrator).

19. Maintains surveillance over project whether approved or not and processes violations as per M.C. 3506.2.

Under Section 30.20, Wisconsin Statutes, a dredging contract is issued for removal of bed material from the bed of any natural lake. Ownership of a bed of a natural lake is in the State of Wisconsin and extends to the ordinary high water line. *The state sells the bed material at the rate of 5¢ a cubic yard.* A bond is required so that if the dredging is not done in accordance with terms of the contract, the Department can require the bonding company to complete the work according to that contract.

For the dredging of a raised lake (lake or pond held by a dam) or for the removal of bed material from a stream where the course is not changed, the Department issues a permit as the waters of a pond or lake held by a dam presumably flow overland which is in the ownership of the riparian. He will, therefore, be removing bed material which is owned by him; hence, the Department issues a permit for him to do so. No charge for the removal of material is made nor is any bond required. Dredging from harbors where a duly authorized harbor commission exists is authorized by approval of plans pursuant with Section 30.31(2), Wis. Stats.

State of Wisconsin
Department fo Natural Resources

Manual Code 3551.1

SUBJECT: Floodplain Management

REASON FOR CHANGE: Redelegates floodplain management responsibility

The following guidance is provided pertaining to floodplain responsibilities of the Department:

1. Responsibilities. Where applicable, all decisions, permits, orders, land transactions or similar action must reflect standards for floodplain management (Section 87.30, Wisconsin Statutes, and NR 116, Wisconsin Administrative Code), shoreland standards (Section 144.26, Wisconsin Statutes, and NR 115, Wisconsin Administrative Code), and erosion hazards pursuant to Governor's Executive Order #67 dated November 26, 1973. The evaluation of existing or potential flood hazards is necessary for all Department sponsored projects and for all projects for which the Department has review, approval or permitting authority.

2. Procedures. Information on floodplains, shoreland, and erosion problems for a particular project is available through the Floodplain-Shoreland Management Section of the Bureau of Water Regulation and Zoning or the appropriate district. In those areas where floodplain delineation is not available, the Floodplain-Shoreland Management Section may require certain field surveys before delineation can be generated. Bureaus, sections, and districts are encouraged to make their own flood effect evaluations if adequate expertise is available. The Floodplain-Shoreland Management Section will provide assistance, access to computer programs, instructions and necessary training and review calculations done by others.

3. District Responsibilities. Coordination of district involvement in floodplain, shoreland, and erosion hazards shall be the responsibility of the *district director (or his designated floodplain management coordinator)*. Careful coordination is required since floodplain management involves hydrological and hydraulic expertise to collect necessary flood data, designate needed cross-sections, calculate flood flows and levels, evaluate flood hazards and effects, delineate floodplains and floodways, etc. The district, expecially environmental engineers and water management investigators, shall implement and reflect the requirements of the Floodplain-Shoreland Management Rules (NR 115 and NR 116). Proposed Chapters 30 and 31 projects shall be reviewed for their consistency with the rules. The district staff shall consider the potential floodplain, shoreland, and erosion problems of such projects as siting sewage treatment plants, water supply systems, sanitary landfills, developments, highways, industrial waste disposal and treatment facilities, etc.

   The evaluations and requests for flood data information, training sessions and assistance from the Floodplain-Shoreland Management Section shall be coordinated with the *district director (or his designated floodplain management coordinator)*.

SECRETARY'S DIRECTIVE DE

Date December 1, 1976

Distribution:

All Manual Holders

Special Instructions:
Rescinds and replaces M.C. 3551.1 (10-9-74)
(See script for changes)

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Appendix D: Selected Chapters from the Administrative Code

NR 115 Wisconsin's Shoreland Management Program

NR 116 Wisconsin's Flood Plain Management Program

Chapter NR 116

WISCONSIN'S FLOOD PLAIN MANAGEMENT PROGRAM

NR 116.01 Purpose
NR 116.02 Applicability
NR 116.03 Definitions
NR 116.04 Severability
NR 116.05 Adoption and upgrading of flood plain zoning ordinances
NR 116.06 Areas to be regulated
NR 116.07 Regional flood flow determination
NR 116.08 Water surface profile of the regional flood
NR 116.09 Data required to be shown on flood plain zoning maps
NR 116.10 Conflicts between water surface profile and flood plain zoning maps
NR 116.11 Initial delineation of floodway lines
NR 116.12 Amendments of official floodway lines
NR 116.13 Uses in floodway areas
NR 116.14 Uses in flood fringe areas (outside of the floodway)
NR 116.15 Nonconforming uses
NR 116.16 Flood proofing
NR 116.17 Flood control works
NR 116.18 Procedures for changing flood plain and floodway limits
NR 116.19 Appointment and duties of zoning administrator, zoning agency and board of adjustment/appeals
NR 116.20 County, city and village responsibilities
NR 116.21 Permits, special exceptions (conditional uses), variances, appeals and amendments
NR 116.22 Department duties

Note: Chapter NR 116 as it existed on July 31, 1977, was repealed and a new chapter NR 116 was created effective August 1, 1977.

NR 116.01 Purpose. (1) The Wisconsin legislature in enacting chapter 614, laws of 1965, recognized that flood plain zoning is a necessary tool to protect human life, health and to minimize property damages and economic losses. Counties, cities and villages are required by section 87.30, Wis. Stats., to adopt reasonable and effective flood plain zoning ordinances within their respective jurisdictions to regulate all flood plains where serious flood damage may occur.

(2) The purpose of these rules is to provide a uniform basis for the preparation and implementation of sound flood plain regulations for all Wisconsin flood plains to:

(a) Protect life, health and property;

(b) Minimize expenditures of public monies for costly flood control projects;

(c) Minimize rescue and relief efforts, generally undertaken at the expense of the general public;

(d) Minimize business interruptions;

(e) Minimize damage to public facilities on the flood plains such as water mains, sewer lines, streets and bridges;

(f) Minimize the occurrence of future flood blight areas on flood plains; and

(g) Discourage the victimization of unwary land and home buyers.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.02 Applicability. The provisions of this chapter are applicable to flood plain management by counties, cities and villages. Unless otherwise specifically exempted by law, section 13.48(13), Wis. Stats., requires that all state agencies obtain all necessary permits required by local zoning ordinances.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.03 Definitions. (1) ACCESSORY USE. An accessory use is any facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.

(2) CERTIFICATE OF COMPLIANCE. A certificate of compliance is issued to a property owner by a county, city or village and certifies that the use of land or a building in the flood plain area is in conformance with the provisions of the flood plain zoning ordinance.

(3) CHANNEL. A channel is a natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.

(4) DEPARTMENT. Department refers to the state of Wisconsin department of natural resources.

(5) ENCROACHMENT. An encroachment is any fill, structure, building, use, accessory use or development in the floodway.

(6) ENCROACHMENT/FLOODWAY LINES. Encroachment/floodway lines are limits of obstruction to flood flows. These lines are on both sides of and generally parallel to the river or stream. The lines are established by assuming that the area landward (outside) of the encroachment/floodway lines will be ultimately developed in such a way that it will not be available to convey flood flows.

(7) EQUAL DEGREE OF HYDRAULIC ENCROACHMENT. The effect of any encroachment into the floodway must be computed by assuming an equal degree of hydraulic encroachment on the other side of a river or stream for a hydraulic reach. This computation assures that property owners up, down or across the river or stream will have the same rights of hydraulic encroachment. Encroachments are analyzed on the basis of the effect upon hydraulic conveyance, not upon the distance the encroachment extends into the floodway. Also see: Hydraulic Reach.

(8) FLOOD. A general and temporary condition of partial or complete inundation of normally dry land areas caused by the overflow or rise of rivers, streams or lakes.

(9) FLOOD FREQUENCY. The term flood frequency is a means of expressing the probability of flood occurrences and is generally determined from statistical analyses. The frequency of a particular flood flow is usually expressed as occurring, on the average, once in a specified number of years. Any particular flood flow could, however, occur more frequently than once in any given year.

(10) FLOOD FRINGE. The flood fringe is that portion of the flood plain outside of the floodway, which is covered by flood waters during the regional flood; it is generally associated with standing water rather than rapidly flowing water.

(11) FLOOD PLAIN. The flood plain is the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe.

(12) FLOOD PLAIN MANAGEMENT. Flood plain management involves the full range of public policy and action for insuring wise use of flood plains. It includes everything from the collection and dissemination of flood control information to actual acquisition of flood plain lands; and the enactment and administration of codes, ordinances, and statutes for land use in the flood plain.

(13) FLOOD PROOFING. Flood proofing involves any combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to properties, water and sanitary facilities, structures and contents of buildings in flood hazard areas.

(14) FLOOD PROTECTION ELEVATION. The flood protection elevation shall correspond to a point 2 feet of freeboard above the water surface profile associated with the regional flood and the official floodway lines. Also see: Freeboard.

(15) FLOODWAY. The floodway is the channel of a river or stream and those portions of the flood plain adjoining the channel required to carry and discharge the flood water or flood flows associated with the regional flood.

(16) FREEBOARD. Freeboard is a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.

(17) HIGH FLOOD DAMAGE POTENTIAL. High flood damage potential is associated with any danger to life or health and any significant economic loss to a structure or building or its contents.

(18) HYDRAULIC FLOODWAY LINES. Hydraulic floodway lines shall delineate the channel of the river or stream and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood flow without any measurable increase in flood heights.

(19) HYDRAULIC REACH. A hydraulic reach along a river or stream is that portion of the river or stream extending from one significant change in the hydraulic character of the river or stream to the next significant change. These changes are usually associated with breaks in the slope of the water surface profile, and may be caused by bridges, dams, expansion and contraction of the water flow, and changes in stream bed slope or vegetation.

(20) LEVEE. A levee is a continuous dike or embankment of earth constructed parallel to a river or stream to prevent flooding of certain areas of land.

(21) NONCONFORMING USE. A nonconforming use is an existing lawful use of a structure, building or accessory use which is not in conformity with the provisions of the flood plain zoning ordinance for the area of the flood plain which it occupies.

(22) OFFICIAL FLOODWAY LINES. Official floodway lines are those lines which have been adopted by the county, city or village, approved by the department, and which are shown on the official flood plain zoning maps and used for regulatory purposes.

(23) OPEN SPACE USE. Open space uses are those uses having a relatively low flood damage potential, such as those uses associated with agriculture, recreation, parking, storage yards, or certain sand and gravel operations.

(24) REGIONAL FLOOD. The regional flood is a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The regional flood is based upon a statistical analysis of streamflow records available for the watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years; this means that in any given year there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(25) SPECIAL EXCEPTION (CONDITIONAL USES). A special exception (also called a conditional use) is a use which is permitted by the flood plain zoning ordinance provided certain conditions specified in the ordinance are met and a permit is granted by the board of adjustment/appeals or, where appropriate, the zoning committee.

(26) STANDARD PROJECT FLOOD. The standard project flood is a hypothetical flood, estimated by the corps of engineers, representing the flood runoff volume and peak discharge that may be expected from the most severe combination of meteorological and hydrologic conditions that are considered reasonably characteristic of the geographical region involved, excluding extremely rare combinations.

(27) STRUCTURE. A structure is any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed.

(28) UNNECESSARY HARDSHIP. Unnecessary hardship is any unique and extreme inability to conform to the provisions of a flood plain zoning ordinance due to physical factors which are not solely related to economic gain or loss. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.

(29) VARIANCE. A variance authorizes the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards contained in the flood plain zoning ordinance. A variance can only be granted by the board of adjustment/appeals. A variance shall not permit a use of property otherwise prohibited by the flood plain zoning ordinance; it may permit deviations from dimensional standards.

(30) WATERSHED. A watershed is a region or area contributing ultimately to the water supply of a particular watercourse or body of water.

(31) WATER SURFACE PROFILE. The water surface profile is a graphical representation of the height of the water surface throughout a county, city or village based upon a certain flow passing through the river or stream. A water surface profile based upon flows occurring during a regional flood is used in regulating the flood plain areas.

(32) WELL. A well is an excavation or opening in the ground made by digging, boring, drilling, driving or other methods, for the purpose of obtaining ground water.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.04 Severability. Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.05 Adoption and upgrading of flood plain zoning ordinances. (1) ADOPTION. Counties, cities and villages shall adopt, and continue to administer and enforce, reasonable flood plain zoning ordinances for all streams and flood plains within their respective jurisdictions. These ordinances shall meet or exceed the standards in this chapter.

(2) INCLUSION IN LOCAL REGULATIONS, CODES AND PROGRAMS. Where necessary to insure the effectiveness of flood plain zoning ordinances, the standards in this chapter shall be included in subdivision regulations, building and sanitary codes, flood insurance regulations, and other related programs.

(3) SUBSTITUTION. Where the department finds that one or more of the following regulations, codes or programs will accomplish the purpose of section NR 116.01, these regulations, codes or programs may be substituted in lieu of all or portions of flood plain zoning ordinances:

(a) Acquisition of flooding easements to insure open space uses in flood plain areas.

(b) Flood warning systems.

(c) Building codes.

(d) Subdivision regulations.

(e) Sanitary codes.

(f) Zoning or purchase of the entire flood plain to permit only open space uses.

(4) UPGRADING ORDINANCES. Within 6 months from the time any of the information listed below is available, local units of government shall upgrade flood plain zoning ordinances, using the amendment procedure in section NR 116.21, to reflect current information such as the following:

(a) Flood data.

(b) Flood plain management statutes.

(c) Flood plain management rules.

(d) Flood plain management case law.

(e) Hydrologic data.

(f) Improved technical information and methods.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.06 Areas to be regulated. Counties, cities and villages shall develop flood plain zoning maps, reflecting the best available data, which show the areas to be regulated. They shall also develop flood plain zoning ordinances to define proper uses in those regulated areas. These flood plain maps and zoning ordinances shall regulate all flood plains, and the minimum limits for regulatory purposes shall be all those areas covered by waters during the regional flood.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.07 Regional flood flow determination. The method of determining the discharge for the regional flood shall be based upon the guidelines contained herein.

(1) COMPREHENSIVE STUDIES - GENERAL RULE. Comprehensive studies to determine the regional flood flow discharge for a significant segment of a river or stream shall generally use the log-Pearson Type III distribution method as described in Bulletin #17 of the Hydrology Committee, U.S. Water Resources Council, entitled "Guidelines For Determining Flood Flow Frequency", March 1976. The technique described in Bulletin #17 shall be modified under the following circumstances:

(a) When determining skew, a log-normal analysis (zero skew) shall be used instead of the generalized skew map found in Bulletin # 17.

(b) When less than 100 years of adequate data is available for the applicable watershed gaging station, regional flood flow frequency discharge shall be determined by more than one method in accordance with the chart on page 17 of said Bulletin #17.

(c) Where the discharge events of record can be separated into those occurring due to rainfall and those due to melting snow, those events shall be analyzed separately and separate frequency curves developed. These curves shall then be combined to determine the critical flood flow frequency discharge.

(d) Outliers are defined in Bulletin #17. The technique described in Bulletin #17 eliminates low outliers. Computations which do not eliminate low outliers shall be made to determine flood flow frequency discharges. These computations shall be compared to those which eliminate low outliers, and then shall be submitted to the department for its determination of reasonable flood flow frequency discharge.

(2) COMPREHENSIVE STUDIES - EXCEPTIONAL TECHNIQUES. Comprehensive studies to determine regional flood flow discharges for significant segments of a river or stream shall be computed using synthetic hydrographs, which are combined and routed through the

basin to critical locations within the municipal limits, when any of the following conditions exist in the watershed:

(a) The watershed is or has been rapidly urbanizing so that runoff during storms is significantly increased relative to conditions existing during that period of available record. This method shall apply when significant increases in urbanization occur. One example of significant urbanization is where more than 20% of the watershed has been urbanized or where the urbanization of the watershed has exceeded a 10% growth rate in any 10-year period.

(b) Dams upstream of the study area affect the validity of gaging records on the river or stream.

(c) Flood plain development upstream of the study area has significantly altered storage capacity of the river or stream so as to affect the validity of gaging records.

(3) CASE-BY-CASE ANALYSIS. Where comprehensive studies do not exist for a given river or stream, a case-by-case analysis is required for regional flood flow discharge determinations. This case-by-case analysis on proposed developments in the flood plain areas shall be made using several acceptable techniques, which include at least one of the following:

(a) When adequate gaging data exists, the applicable technique described in subsection (1) or subsection (2) shall be used.

(b) When inadequate gaging data exists, acceptable hydrologic techniques shall be used, which include at least one of the following:

1. The current USGS empirical equations, developed from regression analysis of stream gaging data, using a positive upper confidence interval equal to one standard error of estimate. (See USGS Publication entitled "Estimating Magnitude and Frequency of Floods in Wisconsin", by Conger.)

2. Current USDA soil conservation service techniques, such as found in Section 4, SCS National Engineering Handbook (NEH4), entitled "Hydrology", SCS, U.S.D.A.; Technical Release No. 55 (TR55), entitled "Urban Hydrology For Small Watersheds", Engineering Division, SCS, U.S.D.A., January, 1975.

(c) Drainage area comparisons shall be used only in combination with one of the above techniques.

(4) ADDITIONAL REQUIREMENTS - RAPIDLY URBANIZING WATERSHEDS. In watersheds where significant future development is projected, the county, city or village may require that computations for regional flood flow discharges shall reflect increased runoff from such anticipated future development. These computations shall be made using one of the following techniques:

(a) A synthetic hydrograph based upon projected watershed development shall be produced at various locations, and then combined and routed through the basin to critical locations within the study limits.

(b) A mathematical model shall be developed to determine the effects of various projected developments in the watershed on the regional flood flow discharge. Local units of government may project

what percentage of watershed development they will allow and shall determine regional flood flow discharges based upon that data. Where watersheds contain more than one local unit of government, agreements between those local units of government may be necessary to restrict future watershed development. In order to insure that future flood flows do not exceed the regional flood flow discharges used in regulations by those local units of government, future watershed development may be restricted to a certain percentage of the watershed.

(5) APPROVAL OF OTHER METHODS OF COMPUTATION. In special instances the department may use or authorize the use of other acceptable hydrologic methods for determining regional flood flow discharges.

(6) The document referred to in Subsection (1) is available for inspection at the U.S. Water Resources Council, 2120 L Street, Northwest, Suite 800, Washington, D.C. 20037; it may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (mention title and stock number 052-045-00031-2). The document referred to in Subsection (3) (b) 1 is available for inspection at the Geological Survey - Water Resource Division, U.S. Department of the Interior, at the following four locations: 1815 University Avenue, Madison, Wisconsin 53706; 1 East Eau Claire Street, Rice Lake, Wisconsin 54868; 1029 ½ East Main Street, Merrill, Wisconsin 54452; 500 Riverview Avenue, Waukesha, Wisconsin 53186. The documents referred to in Subsection (3) (b) 2 are available for inspection at the Soil Conservation Service, U.S. Department of Agriculture, 4601 Hammersley Road, Madison, Wisconsin 53711; they may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22151 (mention title and appropriate accession number: NEH4 = PB244463/AS; TR55 = PB244531/AS).

(7) Copies of the documents referred to in subsections (1), (3) (b) 1 and (3) (b) 2 are also available for inspection in the following offices:

(a) The Department of Natural Resources, 4610 University Avenue, Madison, Wisconsin;

(b) The Office of the Secretary of State, Capitol, Madison, Wisconsin;

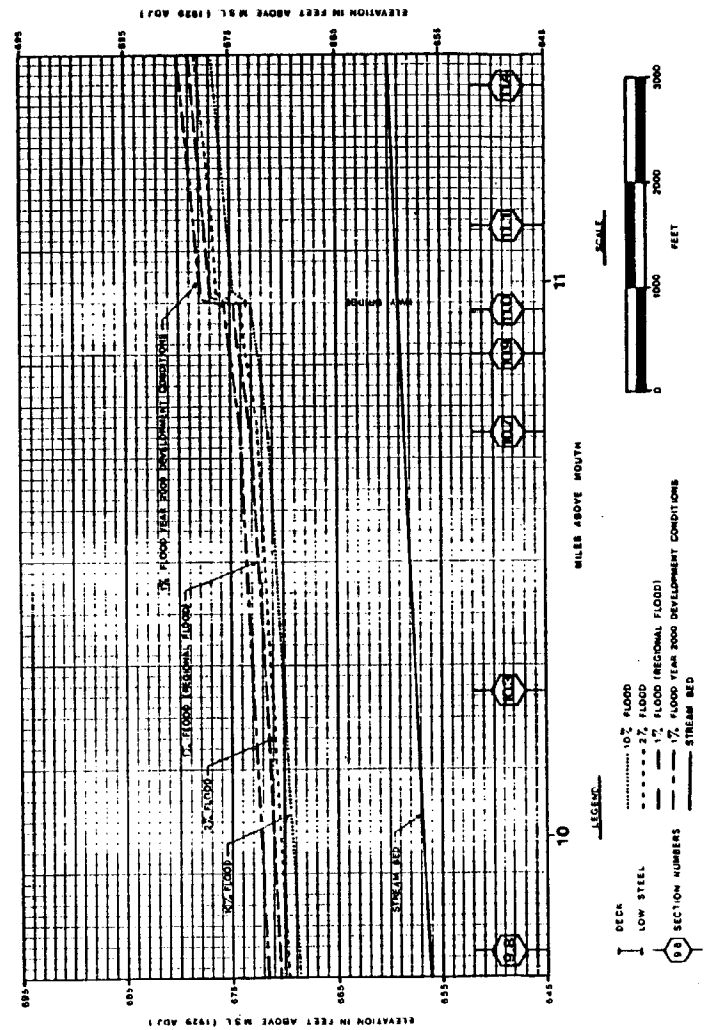
(c) The Office of the Revisor of Statutes, Capitol, Madison, Wisconsin.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.08 Water surface profile of the regional flood. After computation of the regional flood flow discharge, using the methods contained in section NR 116.07, a water surface profile based upon that data shall be developed showing the elevations of the regional flood along the streams and flood plains in the county, city or village. The elevations on this profile shall be used to develop the flood plain zoning maps.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

Figure 1
HIGH WATER AND STREAM BED PROFILES
OF THE
NAME ____ RIVER
CITY ____ WISCONSIN



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NR 116.09 Data required to be shown on flood plain zoning maps. The flood plain zoning maps shall delineate the entire flood plain (that area covered during the regional flood).

(1) WHERE ADEQUATE ENGINEERING DATA EXISTS. Where adequate engineering data exists the maps shall show the following:

(a) The floodway area (that area necessary to pass the regional flood);

(b) The flood fringe area (that area outside the floodway but still covered by the regional flood);

(c) The regional flood elevation, consistent with the water surface profile of the regional flood, should be clearly lettered at identifiable positions on the official flood plain zoning maps. If for any reason that elevation is not shown on the maps, the profile shall be attached to and made part of said maps; and

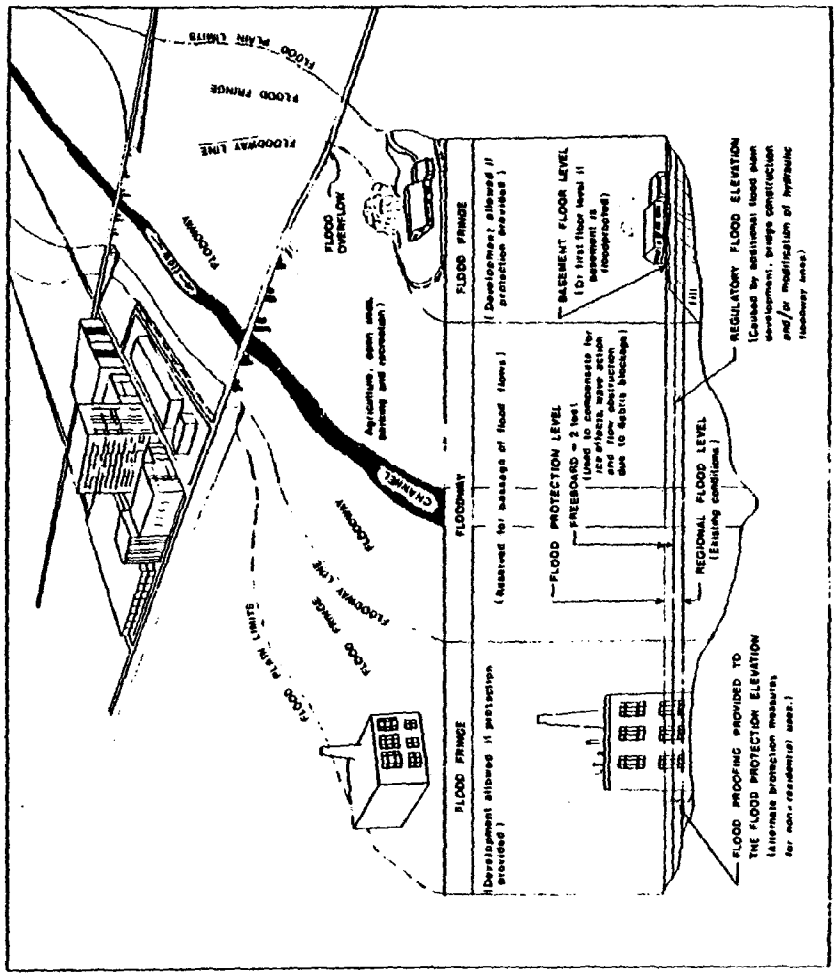
(d) Where technical information is available to ascertain the magnitude of floods larger than the regional flood (such as the standard project flood), the flood plain limits of these large floods may be reflected on the official flood plain zoning maps for public information purposes.

(2) WHERE ADEQUATE ENGINEERING DATA DOES NOT EXIST. Where adequate engineering data does not exist, maps based upon historical floods, flood prone area maps, flood hazard boundary maps, aerial photos or detailed soils maps may initially serve as a basis for flood plain delineation, provided that:

(a) The associated text of the zoning ordinance provides for a procedure similar to sections NR 116.20(2) and NR 116.21(3) to ascertain the effects of the proposed construction of every project upon flood flows and the flood protection elevation; and

(b) The local unit of government has initiated a program to ultimately obtain an engineering study for regional flood data in problem areas.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.



NR 116.10 Conflicts between water surface profiles and flood plain zoning maps. Accepted engineering principles and other techniques shall govern the delineation of the flood plain limits on the official flood plain zoning maps. Where a conflict exists between the flood plain limits illustrated on the maps and the actual field conditions, the elevations from the water surface profile as related to actual field elevations shall be the governing factor in locating regulatory flood plain limits.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.11 Initial delineation of floodway lines. (1) GENERAL RULE-HYDRAULIC FLOODWAY LINES. As a general rule, the official floodway line shown on the flood plain zoning maps shall be the hydraulic floodway lines. These hydraulic floodway lines shall be determined by hydraulic and engineering studies based upon existing conditions unless the county, city or village elects to require that regional flood flow computations shall be based upon projected future development (see section NR 116.07(4)). These hydraulic floodway lines shall reflect the outer limits of effective flow in a river or stream.

(2) RIVERWARD MODIFICATION OF HYDRAULIC FLOODWAY LINES TO DELINEATE OFFICIAL FLOODWAY LINES. (a) In some instances, the official floodway lines may be delineated riverward from the hydraulic floodway lines, but only to accommodate existing development (not a single use), comprehensive community plans, or flood protection facilities such as levees.

(b) The provisions herein shall apply to the delineation of official floodway lines.

1. Any increase equal to or greater than 0.1 foot (3 centimeters) in the height of the regional flood due to the delineation of the official floodway lines riverward from the hydraulic floodway lines must be approved by the department prior to becoming effective. The department may approve the increase, provided:

a. Appropriate legal arrangements have been made with all affected local units of government and all property owners for any increased flood elevations on those properties.

b. All such affected local units of government shall amend their water surface profiles, flood plain zoning maps, and zoning ordinances to reflect the increased flood elevations.

2. The effects of delineating the official floodway lines riverward from the hydraulic floodway lines:

a. Shall be calculated using an equal degree of hydraulic encroachment from the hydraulic floodway lines for a hydraulic reach on both sides of a river or stream; and

b. Shall be determined by hydraulic and engineering studies which are calculated to the nearest 0.1 foot (3 centimeters).

(3) LANDWARD MODIFICATIONS OF HYDRAULIC FLOODWAY LINES TO DELINATE OFFICIAL FLOODWAY LINES. In some instances the official floodway lines may be delineated landward from the hydraulic floodway lines to be consistent with other local codes, ordinances, and

the state law. In these cases, only the official floodway lines shall be shown on the flood plain zoning maps; the current hydraulic floodway lines, which reflect the water surface profile used for regulation, shall be kept on file by the county, city or village.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.12 Amendments of official floodway lines. (1) INITIAL DETERMINATIONS. Prior to amending official floodway lines, for whatever reason, a county, city or village shall:

(a) Assure that the provisions of section NR 116.11(2) (b) are met;

(b) Require adequate technical data from the applicant and submit such data to the department for review and concurrence in the effect of the proposed amendment on the height of the regional flood; and

(c) Assure that the proposed amendments meet the purpose of section NR 116.01.

(2) AMENDMENT PROCESS. Upon completion of the steps in subsection (1) above, the county, city or village shall meet all applicable legal requirements for amending its water surface profiles, flood plain zoning maps, and zoning ordinances.

(3) SUBMISSION TO THE DEPARTMENT FOR APPROVAL. If the county, city or village amends its official floodway lines, it shall also amend its water surface profiles, flood plain zoning maps and flood plain zoning ordinances and submit these amendments to the department for approval pursuant to section NR 116.21(6).

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.13 Uses in floodway areas. (1) PROHIBITED USES. The following uses are generally prohibited in floodway areas: Any fill, deposit, obstruction, excavation, storage of materials, or structure which, acting alone or in combination with existing or future similar works, will cause an increase equal to or greater than 0.1 foot (3 cm.) in the height of the regional flood or will affect the existing drainage courses or facilities. Said increase shall be calculated using an equal degree of hydraulic encroachment from the hydraulic floodway lines for a hydraulic reach on both sides of a river or stream. Increases equal to or greater than 0.1 foot (3 cm.) may be permitted, but only if amendments are made to the official floodway lines, water surface profile, flood plain zoning maps and flood plain zoning ordinances. All such amendments shall meet the provisions of sections NR 116.12 and NR 116.21(6). Notwithstanding any of the above language, the following uses are always prohibited in floodway areas:

(a) Any structures that are:

1. Designed for human habitation; or

2. Associated with high flood damage potential; or

3. Not associated with permanent open space uses.

(b) Any storage of materials that are buoyant, flammable, explosive, or injurious to human, animal, plant, fish or other aquatic life.

(c) Any uses which are not in harmony with, or which may be detrimental to, the uses permitted in the adjoining districts.

(d) Any on-site sewage disposal system, whether public or private, except portable latrines that are removed during flooding, or systems associated with public recreational areas that meet the applicable provisions of local zoning ordinances and Wis. Adm. Code section H 62.20.

(e) Any wells, whether public or private, which are used to obtain water for ultimate human consumption.

(f) Any solid waste disposal site, whether public or private.

(2) PERMITTED USES. Counties, cities and villages, using the appropriate procedure described in section NR 116.21, may issue permits allowing the uses in floodway areas described below, but only if the effects of such uses are consistent with all of the standards contained in subsection (1) above.

(a) Open space uses having a relatively low flood damage potential, such as those uses associated with agriculture, recreation, parking, storage yards, or certain sand and gravel operations.

(b) Certain structures which are accessory to permitted open space uses or historical areas, if the structures meet all of the following criteria:

1. Are not designed for human habitation;

2. Have a low flood damage potential;

3. Are to be constructed and placed on the building site so as to offer minimum obstruction to the flow of flood waters. Whenever possible, structures will be constructed with the longitudinal axis parallel to the direction of flow of flood waters, and will be placed with their longitudinal axes approximately on the same line as those of adjoining structures;

4. Are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river; and

5. All service facilities, such as electrical and heating equipment, must be at or above the flood protection elevation for the particular area.

(c) Campgrounds, provided all of the following criteria are met and approval is granted by the department:

1. The character of the river system and the elevation of all portions of the campground are such that 72 hours warning of an approaching flood can be given to all persons using that campground;

2. An adequate flood warning system is in existence which will provide for proper notice to all persons in the campground and make evacuation mandatory. Such a system shall involve an annual renewable written agreement between the weather bureau or corps of engineers, and the county sheriff or city police which shall specify a flood elevation at which evacuation shall occur;

3. The campground complies with all applicable local and state laws and regulations, including those of the department of health and social services;

4. The campground shall have signs at all entrances warning of the flood hazard involved;

5. Only mobile recreational vehicles with self-contained holding tanks or easily removable tents are allowable. No other habitable structures or buildings are permitted;

6. No roads are filled more than 0.5 foot (15 cm.) above the natural ground elevation;

7. On-site sewage disposal systems may be permitted provided they meet the applicable provisions of Wis. Adm. Code section H 62.20 (this is an exception to section NR 116.13(1) (d)).

8. Litter collection facilities shall be placed at or flood proofed to the flood protection elevation or be removed during flooding.

(d) Uses permitted by the department pursuant to chapters 30 and 31, Wis. Stats., provided that the necessary permits and amendments are granted by the county, city or village to the official floodway lines, water surface profiles, flood plain zoning maps and flood plain zoning ordinances.

(e) Public utilities, streets and bridges provided that:

1. Adequate flood proofing measures are provided to the flood protection elevation;

2. Construction shall not cause any increase equal to or greater than 0.1 foot (3 cm.) in the height of the regional flood as reflected in the water surface profile based upon existing conditions, except that reasonable increases shall be approved if the conditions of section NR 116.11 (2) (b) are met; and

3. The county, city or village amends its official floodway lines, water surface profiles, flood plain zoning maps and flood plain zoning ordinances to reflect any changes resulting from such construction in accordance with the provisions of sections NR 116.12 and NR 116.21 (6).

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.14 Uses in flood fringe areas (outside of the floodway). (1) GENERAL. (a) Counties, cities and villages, using the appropriate procedure described in section NR 116.21, may issue permits allowing uses in flood fringe areas which are compatible with the criteria in this section.

(b) All flood fringe developments shall be compatible with local comprehensive plans. In the absence of formal plans, development shall be compatible with the uses permitted in adjoining districts.

(c) Flood fringe developments may be permitted only when such developments do not cause any increase equal to or greater than 0.1 foot (3 cm.) in the height of the regional flood of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. Increases greater than 0.1 foot (3 cm.) may be permitted, but only if amendments are made to the affected official floodway

lines, water surface profiles, flood plain zoning maps and flood plain zoning ordinances in accordance with the provisions of sections NR 116.12 and NR 116.21 (6).

(d) Flood fringe developments may be permitted only when such developments do not materially affect the storage capacity of the flood plains, based upon an equal degree of hydrologic encroachment (volume of storage area that is lost), particularly in flood plain areas upstream from urban areas. For the purposes of this subsection, "materially" is defined as any increase in the discharge of the regional flood which causes a rise in the water surface profile of 0.1 foot (3 cm.).

(2) RESIDENTIAL USES. (a) Any structure or building used for human habitation (seasonal or permanent), which is to be erected, constructed, reconstructed, altered, or moved into the flood fringe area shall be placed on fill, with the finished surface of the first floor at or above the flood protection elevation. If any such structure or building has a basement, it shall be flood proofed in accordance with section NR 116.16. Any community that is eligible for the federal flood insurance program must comply with the HUD standards which currently do not allow basements in flood plain areas. An exception to that basement requirement may be granted by HUD, but only on a community-by-community basis.

(b) Fill elevation shall:

1. Be one foot above the regional flood profile elevation, which is based upon the official floodway lines;

2. Extend at such elevation at least 15 feet beyond the limits of any structure or building erected thereon; and

3. Be contiguous to lands outside the flood plain where the depth and duration of flood waters are sufficient to cause rescue and relief problems.

(c) Where existing streets or sewer lines are at elevations which make compliance with these provisions impractical, the department may authorize the use of other flood proofing measures or methods in accordance with section NR 116.16. The structure or building shall be flood proofed to the flood protection elevation.

(3) ACCESSORY USES. An accessory structure (not connected to a principal structure) shall meet the applicable provisions of section NR 116.13(2) (b) 1., 2., 4. and 5. A lesser degree of protection, compatible with these criteria and the criteria in subsection (4) below, may be permissible for any such accessory structure.

(4) COMMERCIAL USES. Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall meet the requirements of subsections (2) (a) and (b) above. Certain yards, parking lots and other accessory land uses may be at lower elevations. However, no such area in general use by the public shall be inundated to a depth greater than 2 feet or subjected to flood velocities greater than 4 feet per second upon the occurrence of the regional flood. Depths greater than 2 feet may be permitted by the department provided an adequate warning system exists to protect life and property.

(5) MANUFACTURING AND INDUSTRIAL USES. Any manufacturing or industrial structure or building which is to be erected, constructed, reconstructed, altered or moved into the flood fringe area shall be protected to the flood protection elevation utilizing fill, levees, floodwalls, adequate flood proofing measures or any combination thereof. On streams or rivers having protracted flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with these criteria and the criteria in subsection (4) above, may be permissible for storage yards, parking lots and other auxiliary uses.

(6) STORAGE OF MATERIALS. Storage of any materials which are buoyant, flammable, or explosive, or which in times of flooding could be injurious to property, water quality, or human, animal, plant, fish or aquatic life, shall be either flood proofed to or placed at or above the flood protection elevation. Adequate measures shall be taken to assure that said materials will not enter the river or stream during flooding.

(7) PUBLIC UTILITIES, STREETS AND BRIDGES. (a) When failure or interruption of public facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, adequate flood proofing measures shall be provided to the flood protection elevation; a lesser degree of protection may be provided for minor or auxiliary roads or utilities when these conditions do not exist.

(b) Public utilities, streets and bridges on the flood fringe should be designed to be compatible with the local comprehensive flood plain development plans.

(8) SEWAGE SYSTEMS. All on-site sewage disposal systems shall meet the applicable provisions of the local zoning ordinances and Wis. Adm. Code section H 62.20 and chapter H 65.

(9) WELLS. All wells, whether public or private, shall be flood proofed to the flood protection elevation and shall meet the applicable provisions of Wis. Adm. Code chapters NR 111 and NR 112.

(10) SOLID WASTE DISPOSAL SITES. All solid waste disposal sites, whether public or private, are prohibited in flood fringe areas.

(11) DEPOSITION OF MATERIALS. Any deposition of materials for any purpose may be permitted only if the provisions of this section are met.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.15 Nonconforming uses. (1) GENERAL. Insofar as the standards in this section are not inconsistent with the provisions of sections 59.97(10) and 62.23(7) (h), Wis. Stats., they shall apply to all nonconforming uses. The existing lawful use of a structure or building or its accessory use which is not in conformity with the provisions of a flood plain zoning ordinance may be continued subject to the following conditions:

(a) No modifications or additions to a nonconforming use shall be permitted unless they are made in conformity with the provisions of this section. For the purposes of this section, the words "modification" and "addition" shall include, but not be limited to,

any alteration, addition, modification, rebuilding or replacement of any such existing structure or accessory use. Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components; and

(b) If a nonconforming use is discontinued for 12 consecutive months, it is no longer permitted and any future use of the structure or building shall conform with the appropriate provisions of the flood plain zoning ordinance for floodway and flood fringe areas.

(2) COUNTY, CITY AND VILLAGE RESPONSIBILITIES. (a) County, city and village flood plain zoning ordinances shall regulate nonconforming uses in a manner consistent with this section and the applicable state statutes. These regulations shall apply to the modification or addition of any structure or to the use of any structure or premises which was lawful before the passage of the flood plain zoning ordinance or any amendment thereto.

(b) As requests are received for modifications or additions to nonconforming structures in the floodway, counties, cities and villages shall develop a list of those nonconforming structures, their assessed value and a list of the cost of those activities associated with changes to those structures enumerated in section NR 116.15(3) (a).

(3) FLOODWAY AREAS. (a) No modifications or additions shall be allowed to any existing structures which are not in compliance with permitted floodway standards or uses, unless such modifications or additions have been granted by permit, special exception (conditional use) or variance and meet all of the following criteria:

1. The modifications or additions to a structure will not increase the amount of obstruction to flood flows;

2. Any addition to a structure shall be flood proofed, by means other than the use of fill, to the flood protection elevation;

3. In areas regulated by counties, no structural repairs, modifications or additions to a structure, which exceed over the life of the structure 50% of its present equalized assessed value shall be allowed unless the entire structure is flood proofed, by means other than the use of fill, to the flood protection elevation. In areas regulated by cities and villages, no structural repairs, modifications or additions to a structure, which exceed over the life of the structure 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming use; and

4. If any nonconforming structure is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed, or rebuilt unless the provisions of sections NR 116.13 and NR 116.14 are met. For the purposes of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50% of the present equalized assessed value of said structure. Where such damage occurs in areas regulated by counties, the entire structure shall be flood proofed to the flood protection elevation, by means other than fill.

(b) No new on-site sewage disposal system, or additions to existing on-site sewage disposal systems, shall be allowed in a floodway area.

Any replacement, repair or maintenance of an on-site sewage disposal system in a floodway area shall meet the applicable provisions of the flood plain zoning ordinance and Wis. Adm. Code section H 62.20.

(c) No new well or modifications to an existing well, used to obtain water for ultimate human consumption shall be allowed in a floodway area. Any replacement, repair or maintenance of a well in a floodway area shall meet the applicable provisions of the flood plain zoning ordinance and Wis. Adm. Code chapters NR 111 and NR 112.

(4) FLOOD FRINGE AREAS. (a) No modifications or additions to any existing structure or building in the flood fringe area shall be permitted unless such modifications and additions comply with the applicable regulations for that particular use in flood fringe areas as contained in the local ordinances.

(b) Where compliance with the provisions of paragraph (a) above would result in unnecessary hardship, and only where the structure will not be either used for human habitation or be associated with a high flood damage potential, the county, city or village may grant a variance from those provisions, using the criteria listed below. Modifications or additions to structures or buildings which are protected to elevations lower than the flood protection elevation may be permitted if:

1. Human lives are not endangered;

2. Public facilities, such as water or sewer, are not to be installed;

3. Flood depths will not exceed 4 feet;

4. Flood velocities will not exceed 2 feet per second; and

5. The structure will not be used for storage of materials described in section NR 116.14(6).

(c) Any new, addition to, replacement, repair or maintenance of an on-site sewage disposal system in a flood fringe area shall meet all the applicable provisions of the flood plain zoning ordinances and Wis. Adm. Code section H 62.20 and chapter H 65.

(d) Any new, addition to, replacement, repair or maintenance of a well in a flood fringe area shall meet the applicable provisions of the flood plain zoning ordinance and Wis. Adm. Code chapters NR 111 and NR 112.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.16 Flood proofing. (1) GENERAL. When flood proofing measures are required by either local ordinances of chapter NR 116, such measures shall be designed to withstand the flood velocities, depths, forces, flotation and other factors associated with the regional flood, to assure protection to the flood protection elevation. A plan or document, certified by a registered professional engineer or architect that the flood proofing measures are adequately designed, shall be submitted to the local unit of government prior to its authorization to proceed.

(2) FLOOD PROOFING MEASURES. Flood proofing measures shall include, but are not limited to, the following:

(a) Anchorage of structures to foundations.

(b) Installation of water-tight doors, bulkheads and shutters.

(c) Reinforcement of walls and floors to resist water pressures.

(d) Use of paints, membranes or mortars to reduce seepage of water through walls.

(e) Addition of mass or weight to structures to prevent flotation.

(f) Installation of pumps to lower water levels in structures.

(g) Construction of wells, water supply and waste treatment systems so as to prevent the entrance of flood waters into such systems.

(h) Subsurface drainage systems, including pumping facilities, to relieve external foundation wall and basement flood pressures.

(i) Cutoff valves on sewer lines or the elimination of gravity flow basement drains.

(j) Placement of essential utilities above flood protection elevations.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.17 Flood control works or protective works. (1) LEVEES OR FLOODWALLS. (a) No increase equal to or greater than 0.1 foot (3 cm.) in the height of the regional flood caused by construction of levees or floodwalls shall be allowed unless the increase is wholly contained within the upstream extent of such levee or flood wall, or unless amendments are made to the official floodway lines, water surface profiles, flood plain zoning maps and flood plain zoning ordinances in accordance with the provisions of sections NR 116.12 and NR 116.21(6).

(b) The minimum height and design of any levee or floodwall shall be calculated using whichever of the following provides the greater protection from floods:

1. The flood profile of the regional flood, with that regional flood confined between the proposed levees or floodwalls, plus 3 feet of freeboard; or

2. The standard project flood and/or the 500-year flood confined between the proposed levees or floodwalls.

(c) Exceptions to the standards prescribed in paragraph (b) above may be granted by the department on a case-by-case basis for levees and floodwalls not used to protect human life.

(d) All flood plain developments landward of any levee or floodwall shall provide for interior drainage using designated ponding areas, pumps or other similar means.

(e) The criteria in section NR 116.14 shall apply to flood fringe development until such time as the levees and floodwalls are constructed and operative. If such levees or floodwalls become inadequate or inoperative, the zoning regulations shall be amended to reflect the preconstruction conditions.

(2) AGRICULTURAL LEVEES. (a) Counties, cities and villages may permit agricultural levees which meet all applicable provisions of this subsection. For purposes of this section, an agricultural levee is one

constructed to protect agricultural lands from lower floods (10-year frequency or more often).

(b) Agricultural levees shall be designed and constructed so that the levees will overtop upon the occurrence of the 10-year frequency flood.

(c) Increases in flood heights in the area upstream from agricultural levees shall not exceed 0.5 foot (15 cm.) for the 10-year frequency flood, based upon an assumption of equal degree of hydraulic encroachment on both sides of a river or stream for a hydraulic reach. No increase is allowed unless the written consent of the affected property owners is obtained prior to construction.

(d) Agricultural levees shall be designed and constructed to be overtopped and to cause no increase during the occurrence of the regional flood.

(e) The zoning administrator shall notify the department of the construction of any agricultural levees.

(3) RESERVOIRS AND CHANNEL IMPROVEMENTS. No anticipated changes in the flood protection elevations or flood plain and floodway limits, based upon proposed reservoir or channel improvements, shall be effective until the reservoir or channel improvements are constructed and operative. If such improvements become inoperative or ineffective, the zoning regulations shall be amended to reflect the preconstruction conditions.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.18 Procedures for changing flood plain and floodway limits. Counties, cities or villages shall not change the limits of the flood plain or the floodway without first amending the applicable portions of the water surface profiles, flood plain zoning maps and flood plain zoning ordinances and securing department approval to such amendments. The flood fringe designation on flood plain maps shall not be removed from any area unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside the flood plain.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.19 Appointment and duties of zoning administrator, zoning agency and board of adjustment/appeals. (1) APPOINTMENT POWERS. Counties, cities and villages shall provide in their flood plain zoning ordinances for the appointment of appropriate boards and staff, and the development of necessary policies and procedures, to administer the flood plain zoning ordinance in accordance with this section. Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under sections 59.97, 59.971 or 62.23(7), Wis. Stats., these officials shall also administer the flood plain zoning ordinance.

(2) ZONING ADMINISTRATOR. A zoning administrator and such additional staff as needed shall be appointed and given the duties and powers to:

(a) Advise applicants of the provisions of the flood plain zoning ordinance and provide assistance in preparing permit applications and appeals;

(b) Issue permits and inspect properties for compliance with the flood plain zoning ordinance;

(c) Keep the official records of all water surface profiles, flood plain zoning maps, flood plain zoning ordinances, nonconforming uses and changes thereto, permit applications, permits, appeals, variances and amendments related to the flood plain zoning ordinance;

(d) Submit copies of any required data, special exception permits, variances, amendments, case-by-case analyses, annual reports, and any other required information to the department. An annual summary showing only the number and types of zoning actions taken by the county, city or village shall be submitted to the department by the zoning administrator; and

(e) Investigate, prepare reports and report violations of the flood plain zoning ordinance to the appropriate county, city or village committee and to the municipal attorney, corporation counsel or district attorney, with copies to the appropriate department district office.

(3) ZONING AGENCY. A zoning agency or committee shall be appointed and given the duties and powers to:

(a) Oversee the functions of the office of the zoning administrator;

(b) Review and act upon all proposed amendments to the flood plain zoning ordinance;

(c) In some cases, a zoning committee may act in place of the board of adjustment/appeals, if so designated by the municipality, to hear and decide special exception permits (conditional uses). However, a zoning committee cannot act upon requests for a variance; and

(d) Maintain a complete public record of all its proceedings.

(4) BOARD OF ADJUSTMENT/APPEALS. A board of adjustment (in counties) or board of appeals (in cities and villages) shall be appointed and given the duties and powers in accordance with sections 59.99 and 62.23(7), Wis. Stats., to:

(a) Hear and decide appeals where there is an alleged error in any interpretation, order, requirement, decision, or determination made by the zoning administrator in the enforcement or administration of the flood plain zoning ordinance;

(b) Hear and decide all requested special exceptions (conditional uses) to the terms of the flood plain zoning ordinance, using the criteria found in section NR 116.21(3);

(c) Hear and decide all requested variances to the terms of the flood plain zoning ordinance;

(d) Maintain a complete public record of all its proceedings; and

(e) Make all of its decisions within a reasonable time and in the form of a written statement, resolution or order signed by the secretary. The zoning administrators shall not be the secretary of the board of adjustment/appeals.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.20 County, city and village responsibilities. (1) JURISDICTION. The flood plain zoning ordinance shall require authorization (permits, special exceptions, variances and amendments) from the appropriate county, city or village for any of the following activities in flood plain areas:

(a) Any new use or change in use of land or water.

(b) Any new use or change in use of a structure or building.

(c) The above activities include, but are not limited to, the following:

1. Any structure or building or accessory use which is to be erected, constructed, reconstructed, altered or moved into the flood plain area;

2. Any alteration, addition, modification, rebuilding or replacement of any existing structure or building or accessory use;

3. Any deposition of materials for any purpose; and

4. Any sanitary waste disposal or water supply facilities, both public and private.

(2) ADMINISTRATIVE PROCEDURES. The flood plain zoning ordinance shall establish administrative procedures for obtaining all required permits, special exceptions (conditional uses), variances, appeals and amendments. These procedures shall provide for the following:

(a) An application shall be made to the zoning administrator for all zoning permits, special exceptions (conditional uses), variances and amendments. The application shall include, but not be limited to, the information listed below.

1. The name and address of the applicant and property owner(s);

2. The legal description of the property and the type of proposed use;

3. A map plan which accurately locates or describes the proposal with respect to the floodway and flood plain, and which provides all pertinent information such as the fill dimensions and elevations, building floor elevations, and flood proofing data; and

4. For all subdivision proposals, and all other proposals if the area affected exceeds 5 acres or the estimated cost of the proposal exceeds $75,000, the applicant shall provide all computations which are required to show the effect of the proposal on flood heights, velocities and flood plain storage. The county, city or village may transmit this data to the department for review.

(b) In those instances where inadequate data exists and the conditions in subsection (2)(a)4. above are not present, the county, city or village may transmit the above information to the department for a determination of flood protection elevations and for an evaluation of the effects of the proposal upon flood heights, velocities and flood plain storage. Additional information, such as valley cross sections or

survey data, may be required by the department when needed to determine the effects of the proposal; this information shall then be obtained from the applicant by the county, city or village.

The department shall advise the county, city or village of its findings within 30 days after receiving the data, or within 30 days after receiving all requested additional information. Failure of the department to respond within 30 days may be construed to mean it has no comment.

(c) Public hearings shall be held by counties, cities or villages on all special exceptions (conditional uses), variances, appeals and amendments. Proper notice shall be given of such public hearings in accordance with appropriate statutes; mailed notice of such public hearings and a copy of the application shall be given to the department. Such notice shall specify the time and place of the hearing and give sufficient details concerning the subject matter of the public hearing.

(d) A copy of all decisions granting or denying a special exception (conditional use), variance or amendment to the flood plain zoning ordinance shall be mailed within 10 days to the department.

(3) CERTIFICATE OF COMPLIANCE. No vacant land in the flood plain, and no building hereafter erected, altered or moved into the flood plain, shall be occupied or used until the applicant obtains a certificate of compliance from the county, city or village. Counties, cities and villages may require that said certificate shall be issued only after the applicant has submitted to the local zoning administrator or building inspector a certification by a registered professional engineer or registered land surveyor that the following items were accomplished in compliance with the flood plain zoning ordinance:

(a) The elevation of fill;

(b) The elevation of the first floor; and

(c) Any other technical information required by the county, city or village.

(4) ENFORCEMENT AND PENALTIES. Each flood plain zoning ordinance shall include a separate section establishing appropriate penalties for violations of various provisions of the ordinance. An appropriate penalty, as reflected in section 87.30(2), Wis. Stats., may include an injunction, abatement, removal and/or fine or forfeiture. Any violation of the provisions of the flood plain zoning ordinance shall be investigated and reported to the appropriate municipal attorney, corporation counsel or district attorney who shall expeditiously prosecute the violator.

(5) PUBLIC INFORMATION. (a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the flood plain.

(b) All available information in the form of maps, engineering data and regulations should be readily available and widely distributed.

(c) All legal descriptions of property in the flood plain should include information relative to the zoning classification when such property is transferred.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.21 Permits, special exceptions (conditional uses), variances, appeals and amendments. (1) GENERAL. The flood plain zoning ordinance shall list the specific types of uses which may be authorized by permit, special exception (conditional use), variance or amendment, indicating the particular authorization required for each type of use. These authorizations shall not be contrary to the provisions of this chapter or other state law, or to applicable municipal ordinances.

(2) PERMITS. Counties, cities and villages shall issue permits for uses in flood plain areas which are in compliance with the applicable provisions for permitted uses in their flood plain zoning ordinances. These permits shall be issued by the zoning administrator.

(3) SPECIAL EXCEPTIONS (CONDITIONAL USES). Any use requiring a special exception (conditional use) permit may be allowed only upon application to the zoning administrator, public hearing and issuance of a special exception (conditional use) permit by the board of adjustment/appeals or, where appropriate, the zoning committee. When determining whether to grant or deny a special exception (conditional use) permit, the board of adjustment/appeals shall assure compliance of the proposal with:

(a) The provisions of the flood plain zoning ordinance;

(b) The purpose and objective of flood plain management, as enumerated in section NR 116.01; and

(c) Local comprehensive plans and other land use controls.

(4) VARIANCES. Any prohibited deviation from the standards of the flood plain zoning ordinance, for which a permit has been denied by the zoning administrator, may be allowed only upon written request for a variance submitted to the zoning administrator, public hearing, and issuance of a variance by the board of adjustment/appeals. The board may authorize in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the flood plain zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. A variance:

(a) Shall be consistent with the spirit of the flood plain zoning ordinance.

(b) Shall not permit a lower degree of flood protection in the floodway area than the flood protection elevation.

(c) Shall not be granted for a use that is common to a group of adjacent lots or premises. (In such a case, the zoning ordinance would have to be amended through proper procedures.)

(d) Shall not be granted unless it is shown that the variance will not be contrary to the public interest or damaging to the rights of other persons or property values in the area.

(e) Shall not be granted for actions which require an amendment to the flood plain zoning ordinance as described in subsection (6) below.

(f) Shall not have the effect of granting or increasing a use of property which is prohibited in that zoning district by the flood plain zoning ordinance.

(g) Shall not be granted solely on the basis of economic gain or loss.

(h) Shall not be granted for a self-created hardship.

(5) APPEALS. Appeals to the board of adjustment/appeals may be taken by any party aggrieved by any decision of the zoning administrator. Requests for special exception (conditional use) permits may be considered as appeals. Such appeals shall specify the grounds thereof and be filed within a reasonable period of time with the zoning administrator. The flood plain zoning ordinance shall set forth the time limitations for filing appeals. The zoning administrator shall forthwith transmit to the board of adjustment/appeals all records of the matter concerning the appeal. After public hearing, the board's decision shall either affirm, reverse, vary or modify in whole or in part the order, requirement, decision, or determination appealed from. All appeal decisions must conform to the applicable provisions of the flood plain zoning ordinance. The board's decision may be appealed to the courts in accordance with applicable state law.

(6) AMENDMENTS. (a) Official amendments are required for any changes in the official floodway lines, water surface profiles, flood plain zoning maps or flood plain zoning ordinance. Actions which require an amendment by the county, city or village include, but are not limited to, the following:

1. Any change in the official floodway lines or in the boundary of the flood plain area;

2. Settlement of conflicts between the water surface profiles and flood plain zoning maps, in accordance with section NR 116.10;

3. Any fill or encroachment into the floodway which will result in raising the elevation of an area in the floodway to a height at or above the elevation of the regional flood;

4. Any fill or encroachment that will cause a change in the water surface profiles of the regional flood; and

5. Any upgrading of flood plain zoning ordinances in accordance with section NR 116.05.

(b) Amendments may be made upon petition of any interested party in accordance with the appropriate provisions of sections 59.97(3) and (4) and 62.23(7)(d), Wis. Stats.

(c) All proposed amendments shall be referred to the appropriate county, city or village zoning agency for a public hearing and recommendation to the governing body which shall approve or disapprove the proposed amendment.

(d) Amendments of official floodway lines shall meet the provisions of section NR 116.12.

(e) No amendments to official floodway lines, water surface profiles, flood plain zoning maps or flood plain zoning ordinances shall become effective until they have been approved by the department.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

NR 116.22 Department duties. (1) ASSISTANCE TO COUNTIES, CITIES AND VILLAGES. The department shall provide assistance to counties, cities and villages in the development, adoption and administration of their official floodway lines, water surface profiles, flood plain zoning maps and flood plain zoning ordinances. Such assistance shall include, but not be limited to, the activities described below.

(a) The department shall establish and upgrade standards for local flood plain zoning ordinances.

(b) When requested by a county, city or village, the department shall evaluate flood hazards and the effects of proposals in flood plain areas upon water surface profiles, floodway limits and flood velocities as provided in section NR 116.20(2). Requests for such evaluations must come from a county, city or village, not from individual property owners or applicants.

(c) The department shall work with federal agencies to provide technical guidance and computer facilities for certain hydrologic, hydraulic and engineering studies. Generally, the necessary topographic and other base maps and field surveys will be the responsibility of the county, city or village.

(d) The department shall establish priorities for engineering studies to be done in counties, cities and villages by federal agencies.

(e) The department shall respond to the requests from counties, cities and villages to provide them assistance in enforcement actions against violations of their flood plain zoning ordinances.

(f) The department shall respond to requests from counties, cities and villages for assistance in developing hydraulic and official floodway lines.

(g) The department shall review all regional flood flow determinations. No such determination shall be used until department approval has been secured.

(2) REVIEW AND APPROVAL OF FLOOD PLAIN ZONING ORDINANCES. The department shall issue a certificate of approval to a county, city or village upon a finding that the adopted flood plain zoning ordinance meets the provisions of this chapter. The department review of flood plain zoning ordinances may include, but is not limited to, determinations that:

(a) The most accurate maps were utilized in delineating the flood plains;

(b) All flood plain zoning maps and flood plain zoning ordinances are compatible with all other shoreland regulations, existing zoning and land use plans;

(c) All water surface profiles, flood plain zoning maps and flood plain zoning ordinances are compatible with those of the adjoining communities on the same streams or rivers; and

(d) The floodway and flood plain lines shown on the flood plain zoning maps are accurate.

(3) MONITORING. The department shall monitor the administration and enforcement of flood plain zoning ordinances in counties, cities and villages. In so doing, the department may:

(a) Establish and upgrade standards for the review and evaluation of the administration and enforcement of flood plain zoning ordinances.

(b) Review and approve or deny proposed amendments to water surface profiles, flood plain zoning maps and flood plain zoning ordinances.

(c) Review flood plain zoning permits, and all special exceptions (conditional uses), variances and amendments to flood plain zoning ordinances, to ensure in each instance compliance with the applicable flood plain zoning ordinances and this chapter.

(d) Review state and federal projects to assure that public works proposals in flood plain are compatible with local flood plain zoning ordinances and the provisions of this chapter.

(4) ENFORCEMENT. The department shall assist counties, cities and villages in achieving a consistent statewide approach to flood plain enforcement. This assistance may include, but is not limited to, the measures listed below.

(a) The department may request that corrective action be taken by the county, city or village where construction is occurring in a flood plain area which is either contrary to an existing flood plain zoning ordinance or which would be contrary to an approved flood plain zoning ordinance. Such corrective action may include, where appropriate, the following:

1. Active prosecution of violations of the flood plain zoning ordinance;

2. An injunction to stop construction until an adequate flood plain zoning ordinance can be adopted and approved by the department; and

3. Adoption of an adequate flood plain zoning ordinance and submittal to the department for approval.

(b) The department may seek an injunction to stop construction in the flood plain area until an adequate flood plain zoning ordinance is adopted and approved, when the construction would violate such an approved flood plain zoning ordinance.

(c) The department may seek adoption of an adequate flood plain zoning ordinance in accordance with the provisions of section 87.30(1), Wis. Stats.

(d) The department may seek an injunction, abatement, removal and/or fine for any violation of a flood plain zoning ordinance in accordance with section 87.30(2), Wis. Stats.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

Chapter NR 115

WISCONSIN'S SHORELAND MANAGEMENT PROGRAM

NR 115.01 Introduction
NR 115.02 Nature of the program
NR 115.03 Shoreland regulation standards and criteria
NR 115.04 Role of the department of Natural Resources
NR 115.05 Assistance to counties

History: Chapter RD 15 as it existed on August 31, 1970 was repealed and a new chapter numbered NR 115 was created, Register, August, 1970, No. 176, effective September 1, 1970.

NR 115.01 Introduction. (1) The water resources act (chapter 614, laws of 1965) requires counties to enact regulations for the protection of all shorelands in unincorporated areas by January 1, 1968. Shorelands as defined by the law are lands within 1,000 feet of a navigable lake, pond or flowage and lands within 300 feet of a river or navigable stream or to the landward side of the floodplain, whichever distance is greater.

(2) The statute defines the purposes of regulations enacted for shoreland protection: "to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses and reserve shore cover and natural beauty."

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.02 Nature of the program. (1) The water resources act creates section 59.971, Wis. Stats., which requires the zoning of shorelands in the unincorporated areas of each county. Such zoning shall not require the approval of the town boards. To assure that such zoning will be accomplished, section 59.971 (6), Wis. Stats., states that if any county does not adopt an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county had adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives, the department shall adopt such an ordinance.

(2) To comply with the water resources act, it is necessary for a county to enact shoreland regulations, including zoning provisions, land division controls, sanitary regulations and administrative provisions ensuring enforcement of the regulations.

(3) It is the policy of the department, in the discharge of its responsibility under section 144.26, to require adherence to certain specific standards and criteria. The standards and criteria are intended to define the objectives of the regulations.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70; am. (1), Register, May, 1971, No. 185, eff. 6-1-71.

NR 115.03 Shoreland regulation standards and criteria. (1) ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Shoreland area development can usually be controlled by regulations appropriate to wetlands (conservancy district), recreation-residential districts and general purpose districts. Where detailed land use planning has been accomplished, other types of districts may also be desirable.

(2) ESTABLISHMENT OF LAND USE ZONING REGULATIONS. The zoning provisions adopted must provide sufficient control of the use of shorelands to afford the protection of water quality as specified in Wis. Adm. Code chapters NR 102 and 103. The provisions shall include the following:

(a) *Minimum lot sizes.* All future lots in the shoreland area shall afford protection against danger to health and hazard of pollution of the adjacent body of water.

1. Lots served by public sewer shall have a minimum width of 65 feet and a minimum area of 10,000 square feet.

2. Lots not served by public sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

(b) *Building setbacks.* The permitted location of buildings and structures shall conform to health requirements, preserve natural beauty and reduce flood hazards.

1. Unless an existing development pattern exists, a setback of 75 feet from the normal high waterline shall be required.

2. No building shall be erected in the floodway of a stream (see chapter NR 116, definitions).

3. Boathouses or similar structures which require a waterfront location shall not be used for habitation nor extend toward the water beyond the ordinary high waterline.

4. Buildings and structures shall be subject to any applicable floodplain zoning regulations.

(c) *Trees and shrubbery.* The cutting of trees and shrubbery shall be regulated to protect scenic beauty, control erosion and reduce the flow of effluents and nutrients from the shoreland. In the strip 35 feet inland from the normal high waterline, no more than 30 feet in any 100 feet shall be clear cut. In other areas, trees and shrub cutting shall be governed by consideration of the effect on water quality and should be in accord with accepted management practices.

(d) *Filling, grading, lagooning, dredging.* Filling, grading, lagooning and dredging may be permitted only in accord with state law and where protection against erosion, sedimentation and impairment of fish and aquatic life has been assured.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. The protection of health and the preservation and enhancement of water quality require sanitary regulations to be adopted by the county.

(a) Where public water supply systems are not available, private well construction shall conform to Wis. Adm. Code chapter NR 112.

(b) Where a public waste collection and treatment system is not available, design and construction of private sewage disposal systems shall fully comply with Wis. Adm. Code section H62.20.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. Each ordinance required by these regulations shall provide for:

(a) The appointment of an administrator and such additional staff as the work load may require.

(b) A planning agency (planning and zoning committee) and a board of adjustment as required by law.

(c) A system of permits for all new construction, reconstruction, structural alteration or moving of buildings and structures, including sanitary waste disposal and water supply facilities. A copy of all applications shall be filed in the office of the county administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure relating to the use, change of use or alteration of nonconforming lands and structures, and a special exception procedure for uses presenting special problems of pollution or flood hazard. The county shall keep a complete record of all proceedings before the board of adjustment and planning agency.

(f) Timely notice to the floodplain-shoreland management section of the department of natural resources of hearings on proposed variances, special exceptions and amendments and delivery to that section of copies of decisions on such variances, special exceptions and such amendments, when adopted.

(g) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary changes.

(h) The prosecution of all violations of shoreland zoning ordinances.

(5) ESTABLISHMENT OF LAND SUITABILITY REVIEW. The county shall review all land divisions which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors should be considered:

(a) Hazards to the health, safety or welfare of future residents.

(b) Proper relationship to adjoining areas.

(c) Public access to navigable waters, as required by law.

(d) Adequate storm drainage facilities.

(e) Conformity to state law and administrative code provisions.

History: Cr. Register, August, 1970, No. 176, 9-1-70; am. (2) intro. par., and (3) (a), Register, May, 1971, No. 185, eff. 6-1-71.

NR 115.04 Role of the Department of Natural Resources. (1) Role. The department of natural resources is directed by the legislature to assist the counties in carrying out their responsibilities under the law and to review and evaluate the administration of the regulations. If necessary, the department may recommend to the natural resources board the adoption of an ordinance for a county, if the county failed to meet these standards and criteria.

(2) COMPLIANCE DETERMINED BY EVALUATING COUNTY REGULATIONS WITH SECTION NR 115.03. (a) Compliance with the requirements of section 59.971 will be determined by comparing the county shoreland regulations with the state minimum standards for shoreland protection as contained in section NR 115.03. Counties that have enacted regulations that meet the minimum standards for shoreland protection will be considered as complying with section 59.971, Wis Stats.

(b) Compliance status shall also be maintained by the county during subsequent reevaluation of the regulations to ascertain their effectiveness in maintaining the quality of Wisconsin water. A county shall keep its regulations current, effective and workable to retain its status of compliance. Failure to do so shall be deemed noncompliance.

(c) Compliance with chapter NR 115 shall not affect a county's responsibility to comply with chapter NR 116, floodplain management standards.

(d) The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with section 59.971, Wis. Stats.

(3) NONCOMPLIANCE. (a) Counties that have regulations that do not meet the minimum rules as contained in section NR 115.03 shall be considered as not complying with the requirements of the water resources act pertaining to shoreland regulations. For these counties to achieve compliance status, they shall modify their regulations to meet the minimum standards within a time limit established by the department.

(b) Counties that have not drafted shoreland regulations shall be deemed noncomplying counties. They shall state to the department of natural resources their reasons, if any, for failure to comply with the water resources act. The department shall then require the county:

1. To proceed with regulation formation within a given time period, or;

2. a. To have the staff of the department of natural resources draft the regulations, or;

b. Contract with a consultant to draft the regulations. All costs for such actions by the department of natural resources shall be borne by the noncomplying county.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.05 Assistance to counties. To the full extent of its resources, the department of natural resources will provide advice and assistance to the counties, seeking the highest practicable degree of uniformity consistent with the objectives of the shoreland regulation provisions of the water resources act.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

Appendix: E

Case List:

Angelo v. Railroad Commission (1928), 194 Wis. 543, 217 N.W. 570

Bond v. Wojahn (1955), 269 Wis. 235, 69 N.W. (2d) 258

Clafin v. Department of Natural Resources (1973), 58 Wis. (2d) 182, 296 N.W. 2d 392

Cohn v. The Wausau Boom Co. (1978), 47 Wis. 314, 2 N.W. 546

Colson v. Salzman (1956), 272 Wis. 397, 75 N.W. (2d) 421

Diedrich v. The Northwestern Union R'y Co. (1877), 42 Wis. 248

Doemel v. Jantz (1923), 180 Wis. 225, 193 N.W. 393

Hixon v. Public Service Commission (1966), 32 Wis. (2d) 608, 146 N.W. 2d 577

Illinois Steel Co. v. Bilot (1901), 109 Wis. 418

Madison v. Mayers (1897), 97 Wis. 399, 73 N.W. 43

McLennan v. Prentice (1893) 85 Wis. 427

Muench v. Public Service Commission (1952), 261 Wis. 492, 55 N.W. (2d) 40

Nekoosa-Edwards Paper Co. v. Railroad Commission (1930), 201 Wis. 40

Olson v. Merrill (1877), 42 Wis. 203

State v. McFarren (1974), 62 Wis. (2d) 492, 215 N.W. (2d) 459

State v. Public Service Commission (1957), 275 Wis. 112, 81 N.W. (2d) 71

Town of Ashwaubenon v. Public Service Commission (1963), 22 Wis. (2d) 38, 126 N.W. (2d) 567

The Union Mill Co. v. Shores (1886), 66 Wis. 476

Yates v. City of Milwaukee (1870), 77 U.S. 497

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