

Floodplain and Shoreland Management

Notes

Proposal For Revised Shoreland Zoning Standards Released

The state is releasing a draft proposal that updates 35-year-old rules governing waterfront development and reflects two years of citizen advisory committee meetings, eight listening sessions and thousands of public comments.

The proposal has been sent to people signed up for regular notices of the rule writing effort and will be available online. The Natural Resources Board, at its May 25th meeting in Black River Falls, authorized public hearings on the proposal to gather more citizen feedback before a final version is brought to the Board for adoption.

"This is another opportunity for the public to have input in what the rule will look like, says Todd Ambs, top water official for the Department of Natural Resources. "We're a long way from considering the rule finalized."

Ambs says the proposal gives landowners significantly more flexibility on their waterfront but upholds the state's Constitutional responsibility to protect the lakes and rivers that belong to all Wisconsin citizens.

It outlines changes to Chapter NR 115 of the Wisconsin Administrative Code, which generally sets statewide minimum standards in unincorporated areas for lot sizes, how far buildings need to be set back from the water,

limits on cutting trees and plants, and other rules intended to protect water quality, fish and wildlife habitat, and natural scenic beauty. The proposal represents the sixth individual draft DNR has developed in response to advisory committee and public comments.

Under this proposal, requirements for minimum lot sizes for single family homes and the building 'setback' of 75 feet would remain the same. Setbacks are the distance that homes and other buildings must be set back from the ordinary high water mark.

But the proposal departs from the current NR 115 on some major provisions. Where the current rule limits alterations, additions or major repairs to 50 percent of the structure's current equalized assessed value over the life of the structure, the proposal defines the 50 percent rule as optional and provides additional language for regulation of nonconforming structures.

It significantly increases flexibility on repairing, rebuilding, and even expanding existing structures that are closer to the water than the current setback requirement.

"Under our proposal, people can maintain a nonconforming structure indefinitely," says Toni Herkert, the shoreland staff member leading the



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Model Ordinance Update

As you read this article, the third batch of official floodplain ordinance update notification letters are in the sure hands of the U.S. Postal Service. The first notification letters were mailed to 35 Mississippi River communities which were part of the 2001 presidential disaster declaration in August, 2004. The DNR and FEMA jointly agreed that communities which suffered a recent flood disaster should be the top priority for ordinance update assistance.

In January, 2005, the second letter was sent to 37 counties which were declared for the 2004 disaster event. The department is working closely with all 72 communities to remain compliant with both state and federal requirements.

The current notification is being sent to larger cities and villages within the above 37 counties, communities which

suffered heavy flood losses, and selected communities which have very old ordinances and also have significant floodplain development. Approximately 65 communities are being notified in the third phase of the ordinance update effort.

If you receive a letter, please be assured that the department has committed staff in both the regional and central offices to assist you with the development, review and approval of a compliant floodplain ordinance. The DNR model floodplain ordinance was revised last year in consultation with FEMA staff. The September 2004 version is available on the DNR webpage, <http://dnr.wi.gov/org/water/wm/dsfm/flood/communities.htm>. This is the version that most communities should use, unless flood storage areas have been identified or are anticipated. In that case, the December 2004

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Floodplain and Shoreland Management Notes

"Floodplain and Shoreland Management Notes" is published by the WDNR, Bureau of Watershed Management. Its purpose is to inform local zoning officials and others concerned about state and federal floodplain management, flood insurance, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome.

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Floodplain Contacts:

- Gary Heinrichs, 608-266-3093
Gary.Heinrichs@dnr.state.wi.us,
- Miriam G. Anderson, 608-266-5228
Miriam.Anderson@dnr.state.wi.us,
- Bob Watson, 608-266-8037
Bob.Watson@dnr.state.wi.us

Shoreland Contacts:

- Dave O'Malley, 608-264-6285
David.O'Malley@dnr.state.wi.us,

Dam Safety Contacts:

- Meg Galloway, 608-266-7014
Meg.Galloway@dnr.state.wi.us,
- Bill Sturtevant, 608-266-8033
William.Sturtevant@dnr.state.wi.us

Photographs in this issue were provided by DNR file photos and C. Wagner.

Implementing Revisions to NR 118 for the Lower St. Croix Scenic Riverway

Chapter NR 118 of the Wisconsin Administrative Code establishes state standards that local governments must meet when adopting and enforcing zoning ordinances within the Lower St. Croix Scenic Riverway. The Riverway includes 52 miles of the Lower St. Croix River from St. Croix Falls downstream to Prescott at the confluence with the Mississippi River, flowing through Polk, St. Croix and Pierce Counties.

Revisions to ch. NR 118, Wis. Admin. Code, for the Lower St. Croix Scenic Riverway were approved by the Wisconsin Natural Resources Board and by the Legislature in late summer 2004. These revisions were necessary to incorporate the concepts of the new federal master plan for the riverway, called the Cooperative Management Plan (CMP) which was completed in January, 2002. This approximately seven year planning process brought to light many issues that needed to be addressed since the original plan was adopted in 1976.

The effective date of the new rule was November 1, 2004, so municipalities within the Riverway are required to update their riverway ordinances to be

in compliance with the new rule. Most riverway municipalities are currently working on updates to their zoning ordinances to incorporate the new provisions. Department regional and central office staff have been providing assistance to municipalities in updating their ordinances. Municipalities that have not initiated the update process should get started as soon as possible.

The revised rule has included changes to better protect the unique features of the 52 mile Riverway while increasing flexibility for property owners to repair, maintain and, in some cases expand homes that existed within setbacks prior to enactment of the original rules in 1973. Key provisions of the rule are to provide more clarity and consistency for local governments to implement riverway standards, and new mitigation measures have been added for protection and improvement of scenic character and water quality.

For questions on ordinance updates please contact Bob Baczynski, DNR West Central Region, Baldwin at 715-684-2914, or Dave O'Malley DNR, Madison, at 608-264-6285.



- St. Croix River

Report Finds Forestry Operations Following Practices to Protect Water Quality

A new report based on audits of forestry practices in Wisconsin found that logging operations correctly followed voluntary measures to protect water quality over 90 percent of the time.

The report on the application of voluntary forestry best management practices for protection of water quality in and around logging sites is available on the Internet or in print from the Department of Natural Resources Division of Forestry. Wisconsin's forestry best management practices (BMPs) for water quality program was inaugurated in 1995 to comply with federal legislation requiring states to develop methods to control forestry-related

nonpoint sources of pollution. In Wisconsin, it is estimated that five percent of all nonpoint source pollution comes from forestry practices.

Nonpoint source pollution when rainfall or snowmelt runs across the ground picking up pollutants that are carried into streams, lakes and wetlands is one of the biggest threats to water quality in the United States. BMPs are voluntary practices designed to reduce or eliminate common problems witnessed at many logging sites said Carmen Wagner, DNR forest hydrologist. Typical problems include increased sedimentation, chemical or

petroleum spills that might reach surface water, higher water temperatures and increased streambank or shoreline erosion.

In the course of auditing timber sale logging sites on county and state forests the auditors found that the recommended best management practices for addressing these problems were applied correctly 90 percent of the time or better in the logging operations evaluated.

The current report is based on audits of county forest timber sale logging sites by DNR forester-led teams. Private sector forestry consultants audited state forestland logging sites.



To evaluate Wisconsin's Forestry BMP Program, timber sales have been randomly monitored since 1995. The 2003 report incorporates a new approach to Wisconsin's BMP monitoring methods. For the first time, sample sizes were large enough to ensure statistically significant results for state DNR lands and county forests.

To qualify as a sample site, a timber sale must have had at least one acre of harvesting on a wetland, must have been conducted within 200 feet of a lake or stream, or must have crossed a significant length of wetlands.

Sediment is the primary pollutant associated with forestry activities, especially where forest roads and skid trails cross streams. Skid trails are used to drag logs to collection points. Other pollutants that may result from forestry activities include excessive organic debris from tree tops in streams, chemicals from equipment oil or hydraulic fluids, and pesticides.

Wisconsin's Forestry BMP Program establishes guidelines for landowners, loggers and land managers to protect water quality, explains Wagner. The BMPs address a number of forest management issues, including riparian management zones, forest road construction, and timber harvesting.

When BMPs are not applied, most water quality impacts are long-term, said Wagner. It's imperative for good forestry practice that BMPs are followed when they're needed. Forest roads and skid trails present the greatest potential for improvement.

Continued monitoring of BMP

effectiveness, as well as education and training, is crucial to maintaining the voluntary nature of the BMP program, say forestry officials. Wisconsin's forestry BMPs provide practical cost-effective guidelines to assist landowners, loggers, and land managers in protecting water quality during forestry operations.

We believe that a voluntary BMP program along with existing water quality regulations, can protect water quality during forestry operations, says Paul DeLong, Wisconsin's chief state forester. With BMP education, training workshops and the random monitoring of timber sales, we can have a voluntary program that is as effective as or more effective than a regulatory program, and at a fraction of the cost.

Additional information on Wisconsin's Forestry BMPs, including the 2003 report and Wisconsin's Forestry Best Management Practices for Water Quality Field Manual, is available on the DNR Web site or by calling (608) 267-7494.

Updated Guidebook for Local Officials

Ensuring that local officials have the knowledge and tools necessary to enforce the requirements of chapters NR 115 and NR 116, Wisconsin Administrative Code has always been a goal of the DNR. To meet that goal, the DNR has updated the 1987 publication, *Floodplain-Shoreland Management: Guidebook for Local Officials*.

The updated Guidebook will provide both local elected and zoning officials with current information and tools for enforcing their local floodplain, shoreland and shoreland-wetland zoning ordinances. References to the applicable sections of the Wisconsin

Administrative Code and Wisconsin State Statutes have been included. References to the applicable federal codes will be included in the floodplain management sections. Appendices include lists of references, contacts, a flow chart for projects in the floodplain and a copy of the DNR's Annotated Model Floodplain Ordinance.

DNR regional staff will be providing printed copies of the Guidebook to all Wisconsin communities. The Guidebook will also be available on the DNR DSFS website:
<http://www.dnr.state.wi.us/org/water/wm/dsfm/section/announce.htm>.

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rule writing effort. "They will be able to tear it down and rebuild it in the same footprint if they are within 35 feet of the ordinary high water mark. In some instances, beyond 35 feet, they will be able to tear down and expand their structure."

But property owners making major changes to a nonconforming structure would be required to take steps to mitigate or offset the impact of their actions on clean water and habitat in the portion of their property right next to the water, she says.

That area is called the primary buffer, and it's the most critical area for providing habitat and clean water, Herkert says. "We're really trying to target that area to stay in a more natural state and free of structures, with a few exceptions."

When owners of nonconforming structures start a building project that requires a building permit or some other county permit, they would be required to take actions to mitigate the potential impacts of their project on the primary buffer.

They would have to restore native vegetation within the 35-foot primary buffer; get their septic system inspected and upgraded if necessary; develop an erosion control plan, and control for the impact of the hard or "impervious" surfaces on their property that contributes to runoff. They may also be required to remove accessory structures within the 35-foot primary buffer that don't have an exemption.

"All of these practices help us do our job in protecting the natural resources for all Wisconsin citizens to enjoy," Herkert says.

The net result of the proposed changes to NR 115 is that over time, more primary buffers will be restored with native plants and trees that can do a better job of filtering pollution and providing habitat, Herkert says.

To view the draft public hearing proposal, and archived material compiled since starting the revision process in fall 2002, go to DNR's Web site: <http://dnr.wi.gov>, and use the drop down topic menu and select "shoreland management."

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version has the appropriate language.

To simplify things, the two agencies have agreed that the DNR will be responsible for the final review and approval process. You will only need to work with either your regional floodplain management representative or central office staff to get approval and remain compliant with both NR 116 and the NFIP requirements.

For further information, you can consult the DNR website mentioned above, contact your local DNR repre-

sentative, or contact Gary Heinrichs (Gary.Heinrichs@dnr.state.wi.us, 608-266-3093) or Mike Klitzke (Michael.Klitzke@dnr.state.wi.us, 608-266-9273) in central office.

NE Regional Office Moves

The DNR's Northeast Regional Headquarters Green Bay Service Center has moved. The Service Center's new contact information is: 2984 Shawano Avenue, P. O. Box 10448, Green Bay, WI 54307, (920) 662-5100. A map of all DNR service centers can be found on page 11.

State Hazard Mitigation Plan Approved

The State of Wisconsin Hazard Mitigation Plan was approved by the Federal Emergency Management Agency in March 2005. Approval of the plan ensures that Wisconsin will retain its eligibility for disaster assistance programs through the Stafford Act. The Plan identifies the State's most prevalent hazards and sets forth a logical strategy for making Wisconsin a safe place to live, work and play. Wisconsin Emergency Management (WEM) was responsible for the development of the plan, which was developed in coordination with the Wisconsin Hazard Mitigation Team. The Team consists of representatives from 11 state and 6 federal agencies as well as the Association of Regional Planning Commissions; Wisconsin Association for Floodplain, Stormwater and Coastal Managers; Wisconsin Emergency Management Association; and the Great Lakes Inter-Tribal Council. The State was required to develop or in this case to revise its plan to meet certain mitigation planning requirements per federal regulations (44 CFR Section 106.)

Under the federal regulations, local

governments and tribal organizations are also required to develop all hazard mitigation plans in order to be eligible for mitigation funding. Over the past three years, more than \$2 million has been provided through the Pre-Disaster Mitigation and Hazard Mitigation Grant Programs to assist local governments and tribal organizations in the development of the mitigation plans. Currently 14 plans are approved, 3 approved pending local adoption, and 3 more submitted to FEMA for approval. There are another 32 plans under development. The statewide planning effort includes 35 counties, 11 communities, and 6 tribal organizations. WEM submitted an application for FFY05 Pre-Disaster Mitigation Program funding for the development of an additional 18 plans. Grant awards will be announced this summer.

For more information regarding the State's hazard mitigation program and to view or download the State of Wisconsin Hazard Mitigation plan, visit <http://emergencymanagement.wi.gov>, or contact WEM's mitigation staff at 608-242-3232.

Hillis Decision Reviewed

The Department of Justice has provided DNR an analysis regarding how *Hillis v. Village of Fox Point Board of Appeals* affects shoreland zoning. The DOJ concluded that the decision does not apply generally to county shoreland zoning, and specifically to county shoreland zoning provisions that impose 50% limitations on the expansion of structures in the shoreland setback. To review DOJ's analysis go to <http://dnr.wi.gov/org/water/wm/dsfm/shore/title.htm>.

ASFPM Conference

The 2005 Association of State Floodplain Managers annual conference will be held at the Monona Terrace Convention Center in Madison, Wisconsin from June 11-17. The conference is the largest and most comprehensive floodplain management conference in the world and is attended by planners, engineers, consultants, watershed managers, and educators as well as local, state and federal officials. Registration forms and brochures can be downloaded at <http://www.floods.org>.

The Language of Conservation

Have you ever found yourself fleeing into the night from a meeting pursued by irate citizens and wondering, "Was it something I said?" Sometimes the answer is yes! In 2004, Public Opinion Strategies and Fairbank, Maslin, Maullin & Associates conducted telephone interviews, and held focus groups to investigate how to translate policy speak into everyday vocabulary. The research was done on behalf of The Nature Conservancy and the Trust for Public Land. A memo entitled Lessons Learned Regarding "the Language of Conservation" From the National Research Program reporting on the results of their research included a list of do's and don'ts and explanations of the results. Some of the recommendations are very applicable to floodplain and shoreland managers.

Lessons Learned Regarding "the Language of Conservation" From the National Research Program

These "lessons learned" regarding the language of conservation are drawn from both qualitative and quantitative research conducted on behalf of The Nature Conservancy and Trust for Public Land by our two firms in 2004. As conservation experts with a very technical and specialized vocabulary, one goal of the research was how to translate "policy speak" into everyday vocabulary which resonates with the general electorate. Therefore, we are providing these recommendations in a list of easy-to-follow, broad "rules" for communication.

THE LANGUAGE OF CONSERVATION

- *DO talk about water FIRST and foremost.* Water cannot be stressed enough, and really it doesn't matter how you say it - For example, in the Western focus groups, voters automatically translated "quality" into "supply."
- *DO stress "preserving" water quality.* The focus groups and our other research on this topic indicate that voters do not view water quality as a problem NOW, rather they want to preserve the good water quality they already have.
- *Do link land conservation to preservation of "working farms and ranches."* The word "working" must ALWAYS precede farms and ranches. The word "working" is an important one as it means the land is productive and being used, and is NOT assumed.
- *DO evoke protecting wildlife, but DO NOT use "endangered species."* Voters interpret "wildlife" to fit their locale - urbanites view rabbits and birds on their lawns as "wildlife."
- *DO NOT say "open space."* "Urban open space" is even worse. Voters perceive "open space" as empty land, not near them, and not of benefit. "Urban open space" is perceived as a bench between sky scrapers, or an abandoned lot.
- *DO say "natural areas" instead.* This phrase implies a pristine state where "nothing's been touched" and "nobody is around" - the polar opposite of sprawl.
- *DO NOT focus on creating new parks for their own sake.* Instead, connect parks to a broader goal, such as safe places for children to play. Moreover, our other research has demonstrated that talking about the repair and maintenance of neigh-

neighborhood parks OR preventing the closure of neighborhood parks resonates more than creating new parks.

- *DO NOT use any of the following terms:* “Undeveloped land” (is land that has not been developed YET); “Green space” (can imply water guzzling Bermuda grass to drought-weary Westerners); “Working landscapes” (no meaning); “Natural landscapes” (too close to “landscaping” and some equated this to xeriscaping).
- *DO NOT use the threat of “sprawl” unless with CORE supporters.* It rated weakest of anything tested as a reason to protect land from development (only 41% very important). Only among more liberal audiences and traditionally more liberal urban areas, “sprawl” can resonate.
- *DO use “poorly planned growth,”* rather than “unplanned growth” or “sprawl” with the general electorate. And, stress “planning” in terms of growth. Voters want well-thought out and responsible planning for growth.
- *DO NOT allow your effort to be positioned as anti-growth.* Voters view growth as inevitable, but want it well-planned, responsible, and not negatively impacting their overall quality of life.
- *Do use phrases that imply ownership and inclusion, such as “our” and “we.”* All of the messages in the survey incorporate this language and this is in part why they all test so well. So, it is “OUR natural areas” and “WE need to protect OUR beaches, lakes, natural areas and wildlife...” etc..
- *DO NOT ask voters to protect the land for someone else* not matter how important tourism is to a state or local economy. Voters want to preserve the land for THEMSELVES to enjoy and use.
- *DO NOT focus on economic rationales* for land preservation. The potential for MORE growth is a turn-off - focus group respondents disliked messages which evoke more people coming in.
- *Do connect land conservation to “future generations.”* Evoking children and future generations consistently tests very well as a rationale for land preservation.
- *DO NOT needlessly politicize an issue which has broad appeal across the political spectrum.* Talking about federal government cut backs tended to politicize the issue immediately in the focus groups, and the survey confirms that it is a turn-off to GOP voters.
- *DO talk about yourselves as “conservationists” - not “environmentalists.”* Voters are more likely to view themselves as “conservationists” (81%) than environmentalists (73%).
- *DO NOT say “conservation easement.” DO say “land preservation agreements” or “land protection agreements.”*

	Mean score
Land preservation agreement	60.3
Conservation partnerships	56.4
Land protection agreements	54.5
Conservation agreements	50.5
Conservation easements	41.2
Purchase of development rights	37.3

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“Easements” tends to evoke being forced into doing (or not doing) something with part of your land, such as restrictions on property when you purchase a home or land.

- *DO NOT say “buying “development rights” or “buying the interest in the land” to explain the concept of land preservation agreements. The focus groups demonstrated that the voters perceive the purchase of development rights as meaning that someone wants to develop the land!*
- *DO stress the voluntary nature of land preservation agreements. Voluntary is inherent in the word “agreement,” which in part explains why phrases which incorporate the word “agreement” test far better than the word “easement.”*
- *DO provide a rationale for this strategy - especially if it is a cost effective means to preserve the land. Voters’ initial concept of land preservation is either restricting development by zoning or purchasing it outright - land preservation agreements are not on their radar screens. They need a rationale for this “new” concept and cost-effectiveness is one that resonates well.*
- *DO explain what “limiting certain types of uses” means in real life. Give examples.*
- *DO be aware that the “permanent” nature of most easements causes friction among voters. In the focus groups, this concept created a dynamic where voters empathized more with the future land owner or heir, rather than being concerned about the value of the easement for future generations or even themselves as taxpayers.*
- *DO be up-front and address voters’ concerns about fair payment /return for taxpayers. The Achilles heel for land preservation agreements among the general electorate is the potential for abuse by government. Concerns about “cronyism” are NOT directed at non-profit organizations.*

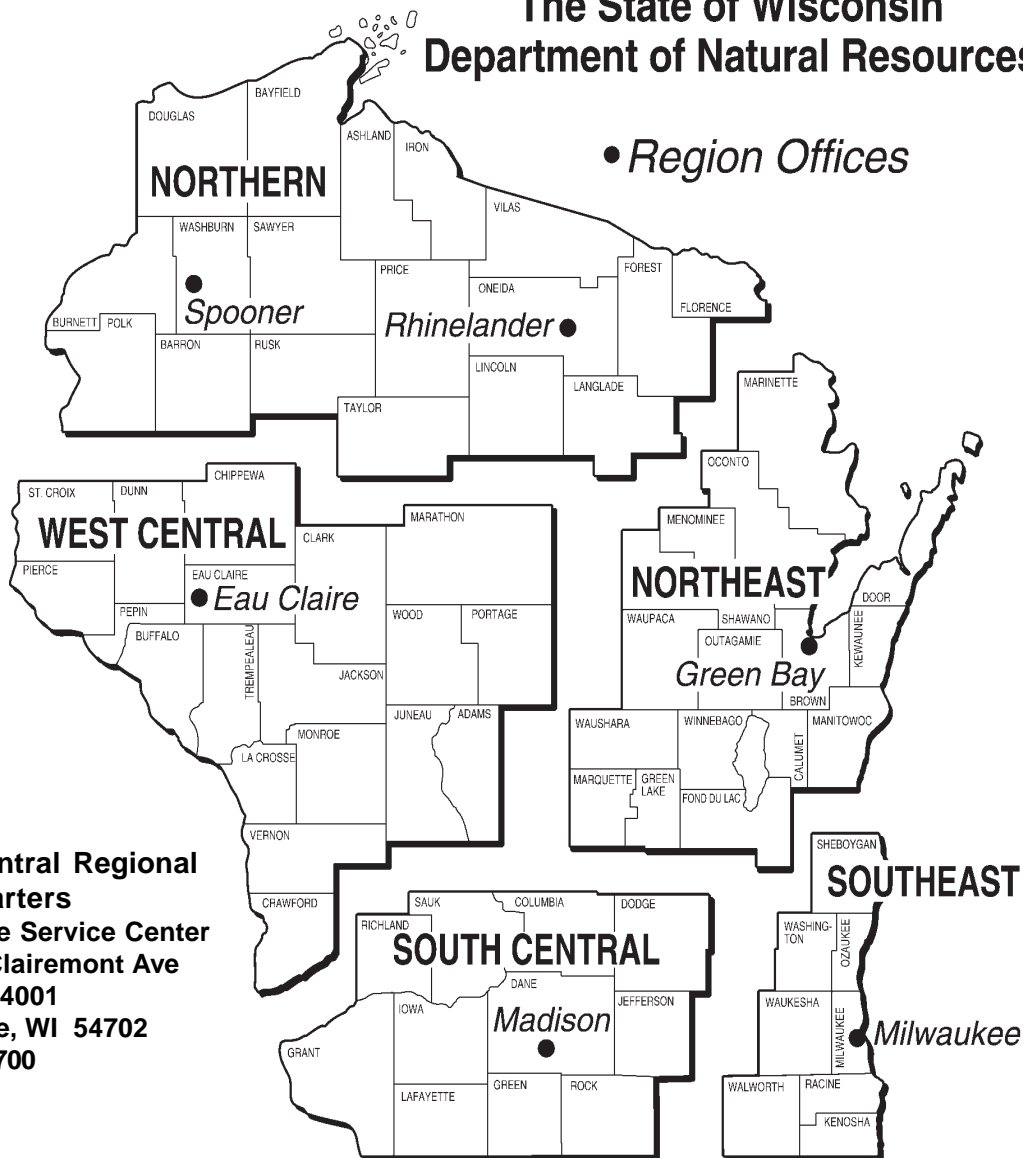
Methodology: From April 3 to 12, 2004, Fairbank, Maslin, Maullin & Associates (D) and Public Opinion Strategies (R) conducted telephone interviews with 1,500 registered voters likely to cast ballots in November 2004. The interviews included a national sample of 800 voters (with a margin of sampling error of +/-3.5 percent), an oversample of 500 voters in the western United States (specifically Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, with a regional margin of error of +/-4.4%), and 200 additional interviews with Latino voters in Arizona, California, Colorado, and New Mexico. References to “Battleground states” are to the 17 states generally viewed as pivotal in the 2004 elections (Arizona, Arkansas, Florida, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, Washington, West Virginia, and Wisconsin). The research also included a set of six focus groups with swing voters in Washington, Colorado and New Mexico.

Northern Regional Headquarters
Rhineland Service Center
 107 Sutliff Ave
 Rhineland, WI 54501
 715-365-8900

Spooner Service Center
 810 W. Maple St
 Spooner, WI 54801
 715-635-2101

Northeastern Regional Headquarters
Green Bay Service Center
 2984 Shawano Ave
 P. O. Box 10448
 Green Bay, WI 54307
 920-662-5100

**The State of Wisconsin
 Department of Natural Resources**



West-Central Regional Headquarters
Eau Claire Service Center
 1300 W. Clairemont Ave
 P. O. Box 4001
 Eau Claire, WI 54702
 715-839-3700

Southern Regional Headquarters
Madison Service Center
 3911 Fish Hatchery Rd
 Fitchburg, WI 53711
 608-275-3266

Southeastern Regional Headquarters
Milwaukee Service Center
 2300 N. Martin Luther King Dr
 Milwaukee, WI 53212
 414-263-8500

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Wisconsin Department of Natural Resources
Bureau of Watershed Management
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