

# **A Model County Shoreland Zoning Ordinance for Protecting Wisconsin's Shorelands**

**October 18, 2023**





MODEL COUNTY  
SHORELAND ZONING ORDINANCE

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## **PREFACE**

### **PURPOSE**

This model County Shoreland Zoning Ordinance is written to reflect the objectives and requirements of s. 59.692, Stats, and ch. NR 115, Wis. Admin. Code, and represents one way for counties to meet the requirements of s. NR 115.06(2)(b)1, Wis. Admin. Code, to adopt legal shoreland zoning standards. A county ordinance may achieve more effective shoreland management than what may be afforded by the model ordinance alone by creating standards for topics in NR 115 without specific standards and/or by addressing other matters that may be regulated.

This model ordinance is the latest update of the Wisconsin Shoreland Protection Ordinance which was developed by the Department of Natural Resources in December of 1967. The initial revision was necessary when ch. NR 115 was repealed and recreated in November 1980 to include wetland protection in shoreland areas. Since then, numerous revisions have been made to the model ordinance to reflect changes to s. 59.692, Stats, and/or NR 115 over time. As experience, case law, and statutory revisions demand, this model ordinance will be revised to stay consistent with current standards.

### **STATUTORY REFERENCES**

Throughout the model, the Department has referenced the section of s. 59.692, Stats., ch. NR 115, Wis. Admin. Code (or alternatively NR 115), or other Statute or Administrative Code that particular portion of the model is based on. A county is not required to adopt these references in its ordinance but may utilize the references for organizational purposes or for better understanding during ordinance development.

### **NOTICE, HEARING, AND CERTIFICATE OF COMPLIANCE**

A Class 2 notice under ch. 985, Stats, is required prior to holding a public hearing regarding or a county adopting a revised shoreland zoning ordinance. A Class 2 notice consists of publication of the hearing notice on 2 consecutive weeks, the last at least 7 days prior to the hearing. Notice of the proposed hearing shall be provided to the appropriate Department of Natural Resources staff person. Subsequently, the county shall provide the Department of Natural Resources with a copy of the adopted ordinance language, and a signed and dated copy of the county board resolution or decision document that includes the resolution or ordinance number on it. The Department of Natural Resources shall review the adopted county shoreland zoning ordinance and prepare a certificate of compliance, as appropriate, that is mailed to the county clerk.

NOTE: The department recommends the county submit draft ordinance amendments for review prior to moving to the public hearing phase.

### **MISCELLANEOUS**

Note the following shoreland zoning-related regulations that are not typical to include within the ordinance itself:

Section 59.692(1d)(a), Stats, prohibits this shoreland zoning ordinance (an ordinance enacted under s. 59.692, Stats) from regulating a matter more restrictively than the matter is regulated by a shoreland zoning standard.

Section 59.692(1d)(b), Stats, allows this shoreland zoning ordinance (an ordinance enacted under s. 59.692, Stats) to regulate a matter that is not regulated by a shoreland zoning standard.

Per s. 59.692(1)(c), Stats, a “shoreland zoning standard” means a standard for ordinances enacted under s. 59.692, Stats, that is promulgated as a rule by the department (Wisconsin DNR). In

practical terms a shoreland zoning standard is one of the seven standards under s. NR 115.05(1).

Section 59.692(1f)(a), Stats, prohibits counties from requiring a property owner to establish a vegetative buffer zone on previously developed land or expand an existing vegetative buffer zone. However, as part of a county's shoreland mitigation standards or enforcement where vegetation removal is prohibited, the establishment or expansion of the vegetative buffer may remain an option.

Section 59.692(1f)(b), Stats, allows counties to require a property owner to maintain a vegetative buffer zone that existed on July 14, 2015, in concert with the provisions of s. 9.2(2) of this model ordinance.

Section 59.692(1k)(a)1, Stats, establishes that this ordinance may not require any approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibit or regulate outdoor lighting in shorelands if the lighting is designed or intended for residential use.

Section 59.692(7), Stats, establishes that the construction and maintenance of a facility is considered to satisfy the requirements of a county shoreland zoning ordinance enacted under s. 59.692, Stats, if any of the following applies:

(a) The department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283.

(b) No department permit or approval under subsection (a) is required for the construction or maintenance and the construction or maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control stormwater runoff from the facility.

A "facility" means any property or equipment of a public utility, as defined in s. 196.01 (5), Stats, or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

Section 59.692(2m), Stats, establishes that this ordinance may not regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards for substandard lots.

## **SHORELAND PROTECTION ORDINANCE**

### **1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE.**

1.1 STATUTORY AUTHORIZATION. This ordinance is adopted pursuant to the authorization in s. 59.692, Stats, to implement 59.692 and 281.31, Stats.

1.2 FINDING OF FACT. Uncontrolled use of the shorelands and pollution of the navigable waters of \_\_\_\_\_ County will adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties 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 to reserve shore cover and natural beauty. This responsibility is hereby recognized by \_\_\_\_\_ County, Wisconsin.

1.3 PURPOSE AND INTENT. (s. 281.31(1), Stats, s. 59.692(1c), Stats, NR 115.01) To promote and protect the public trust in navigable waters and to effect the purposes of s. 281.31, Stats, by aiding in the fulfillment of the state's role as trustee of its navigable waters; limiting the direct and cumulative impacts of shoreland development; and promoting the public health, safety, convenience and general welfare, this ordinance has been established to:

(1) FURTHER THE MAINTENANCE OF SAFE AND HEALTHFUL CONDITIONS AND PREVENT AND CONTROL WATER POLLUTION THROUGH:

- (a) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
- (b) Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
- (c) Controlling filling and grading to prevent soil erosion problems.
- (d) Limiting impervious surfaces to control runoff which carries pollutants.

(2) PROTECT SPAWNING GROUNDS, FISH AND AQUATIC LIFE THROUGH:

- (a) Preserving wetlands and other fish and aquatic habitat.
- (b) Regulating pollution sources.
- (c) Controlling shoreline alterations, dredging and lagooning.

(3) CONTROL BUILDING SITES, PLACEMENT OF STRUCTURES AND LAND USES THROUGH:

- (a) Prohibiting certain uses detrimental to the shoreland-wetlands.
- (b) Setting minimum lot sizes and widths.
- (c) Setting minimum building setbacks from waterways.
- (d) Setting the maximum height of near shore structures.

(4) RESERVE SHORE COVER AND NATURAL BEAUTY

- (a) Restricting the removal of natural shoreland cover.
- (b) Preventing shoreline encroachment by structures.
- (c) Controlling shoreland excavation and other earth moving activities.
- (d) Regulating the use and placement of boathouses and other structures.

1.4 TITLE. Shoreland Protection Ordinance for \_\_\_\_\_ County, Wisconsin.

### **2.0 GENERAL PROVISIONS.**

2.1 AREAS TO BE REGULATED. (NR 115.02) Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of \_\_\_\_\_ County which are:

- (1) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages (NR 115.03(8)) or within one thousand (1,000) feet of the high-water mark of navigable glacial pothole lakes (59.692(1)(b)1).

NOTE 1: Glacial till lakes are glacial depressions filled with water – typically isolated from one another with respect to surface drainage. They accumulate water from precipitation, overland runoff, groundwater and lose water through evaporation and seepage to groundwater. Glacial till lakes are also known commonly as kettle lakes.

NOTE 2: Kettles are distinct, steep sided depressions left in an outwash plain or ground moraine resulting from the later melting of ice blocks buried by the outwash or till during deposition. Kettles can range in size from small bowls less than 100 feet across to large pits encompassing several acres. This definition is from the Wisconsin DOT Geotechnical Manual March 1, 2017.

- (2) Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. (NR 115.03(8))

(3) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats, applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats, applies. (NR 115.02) Shoreland zoning requirements in annexed or incorporated areas are provided in s. 61.353 and s. 62.233, Stats.

(4) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator may contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark. The county may work with surveyors with regard to s. 59.692(1h).

(5) Under s. 281.31(2m), Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to:

- (a) Lands adjacent to farm drainage ditches if:
  1. Such lands are not adjacent to a natural navigable stream or river;
  2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (b) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

**2.2 COMPLIANCE.** The use of any land; the size, shape and placement of lots; the use, size, type and location of structures on lots; the filling, grading, lagooning, and dredging of any lands; the cutting of shoreland vegetation; and the subdivision of lots shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. Buildings, other structures, and land disturbances (including filling and grading, etc.) shall require a permit unless otherwise expressly excluded by a provision of this ordinance.

**2.3 MUNICIPALITIES AND STATE AGENCIES REGULATED.** Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when s. 13.48(13), Stats, applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022(1m), Stats, applies.

**2.4 ABROGATION AND GREATER RESTRICTIONS.** (s. 59.692(5), Stats) The provisions of this ordinance supersede any provisions in a county zoning ordinance that solely relate to shorelands. In other



words if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supersedes those provisions. However, where an ordinance adopted under a statute other than s. 59.692, Stats, does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions.

(1) (s. 59.692(2)(a), Stats) This ordinance shall not require approval or be subject to disapproval by any town or town board.

(2) (s. 59.692(2)(b), Stats) If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.

(3) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(4) (s. 59.692(2)(c)) This ordinance shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable, so far as practicable.

(5) (s. 59.692(1d)(b), Stats) This ordinance may establish standards to regulate matters that are not regulated by a shoreland zoning standard under NR 115.05(1) and that further the purposes of shoreland zoning as described in section 1.3 of this ordinance.

(6) (s. 59.692(1k)(a)3, Stats) This ordinance may not require any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

2.5 SEVERABILITY. If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

### **3.0 SHORELAND-WETLAND DISTRICT. (NR 115.04)**

3.1 PURPOSE. This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands within the shoreland zone. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

3.2 DESIGNATION. This district shall include all wetlands shown in the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

3.3 SHORELAND-WETLAND MAPS. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at <https://dnrmaps.wi.gov/H5/?Viewer=SWDV>

(1) LOCATING SHORELAND-WETLAND BOUNDARIES. (NR 115.04(2)(b)2.note) Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions, the county shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

3.4 PERMITTED USES. (NR 115.04(3)) NR 115 currently contains absolute standards for permitted uses in shoreland wetlands which cannot be made more or less restrictive. NR 115 does not prohibit counties to protect wetlands outside of the shoreland jurisdictional area.

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance:

- (1) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:
  - (a) Hiking, fishing, trapping, hunting, swimming, and boating;
  - (b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
  - (c) The pasturing of livestock and the construction and maintenance of fences;
  - (d) The cultivation of agricultural crops;
  - (e) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
  - (f) The construction or maintenance of duck blinds.
  
- (2) Uses which require the issuance of a zoning permit and must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating:
  - (a) The construction or maintenance of piers, docks or walkways built on pilings.
  - (b) The construction or maintenance of nonresidential buildings, provided that all of the following apply:
    1. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or used solely for a purpose which is compatible for wetland preservation;
    2. The building cannot, as a practical matter, be located outside the wetland;
    3. Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
  - (c) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided:
    1. no filling is done
    2. any private wildlife habitat area is used exclusively for that purpose.
    3. any ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values. Any of these activities shall comply with the floodplain ordinance and secure all other required permit related to dike and dam construction.
  
- (3) Uses which do not require the issuance of a zoning permit but which may include filling, flooding, draining, dredging, ditching, tiling, or excavating as necessary but only to the extent specifically provided below:
  - (a) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries,
  - (b) The maintenance and repair of existing agricultural drainage systems *such as ditching and tiling* necessary to maintain the level of drainage required to continue the existing agricultural use.
  - (c) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges.
  
- (4) Uses which require the issuance of a zoning permit and which may include filling, flooding, draining, dredging, ditching, tiling or excavating as necessary, but only to the extent specifically

provided below:

- (a) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
  1. The road cannot as a practical matter be located outside the wetland;
  2. The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.6(2);
  3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use; and
  4. Road construction activities are carried out in the immediate area of the roadbed only.
  5. The construction of a road for silvicultural activities for temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected.
- (b) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members provided:
  1. Such construction or maintenance is done in a manner designed to minimize flooding and adverse impact on the natural functions of the wetland enumerated in section 3.6(2).
- (c) The construction or maintenance of railroad lines provided that:
  1. The railroad lines cannot, as a practical matter, be located outside the wetland;
  2. Such construction or maintenance is done in a manner designed to minimize flooding and adverse impact upon the natural functions of the wetland enumerated in section 3.6(2).

3.5 PROHIBITED USES. (NR 115.04(4)) Any activity or use not listed in section 3.4 is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 3.6 of this ordinance and s. 59.69(5)(e), Stat.

3.6 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT. (NR 115.04(2))

- (1) For all proposed shoreland wetland rezoning requests under this ordinance, the appropriate office with the Department shall be provided with the following:
  - (a) A copy of every proposed petition for a shoreland wetland rezoning request under this ordinance, within 5 days of the filing of such request with the county clerk.
  - (b) Written notice of the public hearing to be held on a proposed shoreland wetland rezoning request at least 10 days prior to such hearing;
  - (c) A copy of the county zoning agency's findings and recommendations on each proposed shoreland wetland rezoning request within 10 days after the submission of those findings and recommendations to the county board; and
  - (d) Written notice of the county board's decision on each proposed shoreland wetland rezoning request within 10 days after it is issued.
- (2) (NR 115.04(2)(c)4) A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
  - (a) Storm and flood water storage capacity;
  - (b) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
  - (c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - (d) Shoreline protection against soil erosion;
  - (e) Fish spawning, breeding, nursery, or feeding grounds;
  - (f) Wildlife habitat; or

(g) Areas of special recreational, scenic, or scientific interest, including scarce wetland types.

(3) (NR 115.04(2)(c)9) If the Department notifies the county zoning agency that a proposed shoreland wetland rezoning request under this ordinance may have a significant adverse impact upon any of the criteria listed in section 3.6(2) of this ordinance, that shoreland wetland rezoning request, if approved by the county board, shall contain the following provision:

"This shoreland wetland rezoning shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this shoreland wetland rezoning is mailed to the Department of Natural Resources. During that 30-day period the Department of Natural Resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under s. 59.692(6), Stat. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.692(6), Stat, adoption procedure is completed or otherwise terminated."

#### **4.0 MINIMUM LOT SIZE FOR CONFORMING LOTS. (NR 115.05(1))**

4.1 PURPOSE. (NR 115.05(1)(a)) Minimum lot sizes in the shoreland area have been established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

4.2 SEWERED LOTS. (NR 115.05(1)(a)1) For each lot served by public sanitary sewer the minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet with at least 65 feet of frontage width at the ordinary high water mark.

4.3 UNSEWERED LOTS. (NR 115.05(1)(a)2) For each lot not served by public sanitary sewer the minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage width at the ordinary high water mark.

#### **5.0 SUBSTANDARD LOTS. (NR 115.05(1)(a)3)**

5.1 A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

NOTE: The intent of this provision is to allow lots that were legally created that currently do not meet the minimum lot width and area requirements to be considered a building site provided all ordinance requirements can be met. Substandard lots that have been reconfigured by a certified survey map or consolidated into one legal description with the register of deeds, which result in a larger (closer to conforming) lot should be allowed to be utilized as a building site. Additionally, lots that have a legal description for each substandard lot on record with the Register of Deeds but have one tax parcel number assigned by the Real Property Lister or Assessor for taxing/assessing purposes should be considered separate building sites and should not be considered consolidated. Lots that have had development over the lot lines should be combined with a legal description and recorded with a new deed prior to new development occurring.

5.2 OTHER SUBSTANDARD LOTS. Except for lots which meet the requirements of section 5.1 a building permit for the improvement of a lot having lesser dimensions than those stated in sections 4.2 and 4.3 shall be issued only if a variance is granted by the board of adjustment.

## 6.0 ILLEGALLY CREATED LOTS.

6.1 An illegally created lot is one that was created in violation of the required minimum area and minimum average width requirements of the County's shoreland zoning ordinance at the time of creation. Illegally created lots shall not be used for construction purposes without the granting of a variance.

## 7.0 SETBACKS. (NR 115.05(1)(b))

7.1 PURPOSE. (NR 115.05(1)(b)) Setbacks within the shoreland area have been established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards, protect against water pollution, and otherwise limit the direct and cumulative impacts of shoreland development of the adjacent water body.

7.2 SHORELAND SETBACK. (s. 59.692(1n)(am), Stats, and NR115.05(1)(b)1) A setback of 75 feet from the ordinary high water mark of any navigable water to the nearest part of a building or structure shall be required.

## 7.3 REDUCED SHORELAND SETBACK FOR A NEW PRINCIPAL STRUCTURE.

(1) EXISTING PRINCIPAL STRUCTURES IN BOTH DIRECTIONS (I.E. TWO-SIDED AVERAGING). (s. 59.692(1n)(b), Stats) Where there are existing principal structures in both directions of a new proposed principal structure, a shoreland setback less than the required 75-foot setback from the ordinary high water mark of section 7.2 shall be permitted for a new proposed principal structure provided all of the following are met:

- (a) Both of the existing principal structures are located on lots immediately adjacent to the lot of the proposed new principal structure.
- (b) Both of the existing principal structures are located within 250 feet of the proposed new principal structure.
- (c) Both of the existing principal structures are the closest principal structure on their respective lots to the new proposed principal structure.
- (d) Both of the existing principal structures are located less than 75 feet from the ordinary high water mark.
- (e) The reduced shoreland setback shall equal the average of the distances that the two existing principal structures are set back from the ordinary high water mark.
- (f) The reduced shoreland setback shall not be reduced to less than 35 feet from the ordinary high water mark.

NOTE: Section 59.692(1d)(a), Stats, requires counties to adopt the standards for two-sided averaging consistent with section 7.3(1) for reducing the shoreland setback.

(2) EXISTING PRINCIPAL STRUCTURES IN ONLY ONE DIRECTION (I.E. ONE-SIDED AVERAGING). (s. 59.692(1n)(bm), Stats) Where there is an existing principal structure in only one direction of a new proposed principal structure, a shoreland setback less than the required 75' setback from the ordinary high water mark of section 7.2 may be permitted for a new proposed principal structure provided all of the following are met:

- (a) The existing principal structure is located on a lot immediately adjacent to the lot of the proposed new principal structure.
- (b) The existing principal structure is located within 250 feet of the proposed new principal structure.

- (c) The existing principal structure is the closest principal structure on its lot to the new proposed principal structure.
- (d) The existing principal structure is located less than 75 feet from the ordinary high water mark.
- (e) The reduced shoreland setback shall equal the average of 75 feet and the distance that the existing principal structure is set back from the ordinary high water mark.
- (f) The reduced shoreland setback shall not be reduced to less than 35 feet from the ordinary high water mark.

NOTE: Adopting the standards for one-sided averaging consistent with section 7.3(2) for reducing the shoreland setback is optional, and not required.

**7.4 INCREASED SHORELAND SETBACK FOR A NEW PRINCIPAL STRUCTURE.** (s. 59.692(1n)(c), Stats)

(1) Where there are existing principal structures in both directions of a new proposed principal structure, a shoreland setback greater than the required 75-foot setback from the ordinary high water mark of section 7.2 may be permitted for a new proposed principal structure provided all of the following are met:

- (a) Both of the existing principal structures are located on lots immediately adjacent to the lot of the proposed new principal structure.
- (b) Both of the existing principal structures are located within 200 feet of the proposed new principal structure.
- (c) Both of the existing principal structures are the closest principal structure on their respective lots to the new proposed principal structure.
- (d) Both of the existing principal structures are located greater than 75 feet from the ordinary high water mark.
- (e) Both of the existing principal structures when built were required to be located at a shoreland setback greater than 75' from the ordinary high water mark.
- (f) The increased shoreland setback shall equal the average of the distances that the two existing principal structures are set back from the ordinary high water mark.
- (g) The increased shoreland setback shall not apply if the resulting setback limits the placement to an area on which the structure cannot be built.

NOTE: Adopting the standards for increased shoreland setback averaging consistent with section 7.4 for increasing the shoreland setback is optional, and not required. If adopted the county should identify the previous ordinance language that required the shoreland setback be greater than 75 feet.

**7.5 EXEMPT STRUCTURES IN THE SHORELAND SETBACK AREA.** (s. 59.692(1n)(d), Stats, s. 59.692(1k)(a)(6), Stats, NR 115.05(1)(b)1m) All of the following structures are exempt from the shoreland setback established under section 7.2:

NOTE 1: Structures not identified in section 7.5 as exempt are prohibited.

(1) DRY BOATHOUSES. Boathouses located entirely above the ordinary high water mark, entirely within the access and viewing corridor, that do not contain plumbing, and are not used for human habitation. (s. 59.692(1o), Stats) The roof of a boathouse may be used as a deck provided that:

- (a) The boathouse has a flat roof.
- (b) The roof has no side walls or screens.
- (c) The roof may have a railing that meets the Department of Safety and Professional Services standards.

NOTE 1: A county may create requirements for the construction of new boathouses provided they do not effectively prohibit the exemption in section 7.5(1).

NOTE 2: Section 7.5(1) does not apply to "wet" boathouses regulated under s. 30.121.

(2) NO SIDE, OPEN-SIDED, AND SCREENED STRUCTURES. (s. 59.692(1v), Stats) No side, open-sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area, provided the following requirements of s. 59.692(1v), Stats, are met:

- (a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
- (b) The total floor area of all the structures in the shoreland setback area of the property will not exceed 200 square feet. Boathouses shall be excluded from the calculation.
- (c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- (d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

NOTE: The statutory requirement under 59.692(1v)(d) to preserve or establish a vegetative buffer zone for the construction of structures under 59.692(1v) is not superseded by 59.692(1f)(a).

(3) FISHING RAFTS. Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats.

(4) BROADCAST SIGNAL RECEIVERS. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

(5) UTILITY STRUCTURES. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, and private on-site wastewater treatment systems that comply with ch. SPS 383, Wis. Admin. Code, and other utility structures that have no feasible alternative location outside of the minimum setback and that are constructed and placed using best management practices to infiltrate or otherwise control storm water runoff from the structure.

(6) WALKWAY, STAIRWAY, OR RAIL SYSTEM. A walkway, stairway, or rail system that is necessary to provide pedestrian access to the shoreline and is a maximum of 60-inches in width.

(7) DEVICES OR SYSTEMS USED TO TREAT RUNOFF FROM IMPERVIOUS SURFACES. (s. 59.692(1k)(a)6, Stats, and s. 59.692(1k)(am)1, Stats) Devices or systems used to treat runoff from impervious surfaces, provided the requirements of s. 59.692(1k)(a)6, Stats, and s. 59.692(1k)(am)1, Stats, are met.

(8) FENCE. (s. 59.692(1n)(d)7, Stats) A fence along a roadway that meets all of the following requirements:

- (a) Is not taller than 15 feet.
- (b) Is located not less than 2 feet landward of the ordinary high water mark.
- (c) Is located entirely outside of a highway right-of-way.
- (d) Is located not less than 10 feet from the edge of a roadway and not more than 40 feet from the edge of a roadway or highway right-of-way, whichever is greater.
- (e) Is generally perpendicular to the shoreline.

(9) BRIDGES. A bridge for which the department has issued a permit under s. 30.123, Stats.

## **8.0 STRUCTURES IN THE FLOODPLAIN. (NR 115.05(1)(b)2)**

8.1 Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

## **9.0 VEGETATION. (NR 115.05(1)(c))**

9.1 PURPOSE. (NR 115.05(1)(c)1) To protect natural scenic beauty, fish and wildlife habitat, and water quality, vegetation removal shall be regulated in a manner to protect water quality and reduce soil erosion and the flow of effluents, sediments and nutrients.

9.2 ACTIVITIES ALLOWED WITHIN A VEGETATIVE BUFFER ZONE. (s. 59.692(1f)(b), Stats, NR 115.05(1)(c)2) A vegetative buffer zone is maintained or created to protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote the preservation and restoration of native vegetation. The vegetative buffer zone is the area that extends from the ordinary high water mark to 35 feet landward. Removal or destruction of vegetation in the vegetative buffer zone shall be prohibited except as follows:

- (1) Routine maintenance of vegetation which means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (2) The removal or destruction of vegetation for the creation of an access and viewing corridor provided the following requirements are met:
  - (a) The access and viewing corridor remains a strip of vegetated land for the purpose of providing safe pedestrian access to the shore through the vegetative buffer zone.
  - (b) The access and viewing corridor may be 35% of the shoreline frontage but in no case shall it be less than 10 feet or greater than 200 feet.
  - (c) The viewing corridor may run contiguously for the entire maximum width allowed based on the shoreline frontage owned.

NOTE 1: Regarding section 9.2(2)(b) there is no prohibition for the establishment of an access and viewing corridor of less than 10 feet in width.

NOTE 2: The county may require a property owner to maintain a vegetative buffer zone that existed on July 14, 2015, in concert with the provisions of s. 9.2(2).

- (3) The removal of trees and shrubs on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in NR 1.25(2)(b), Wis. Adm. Code, and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.
- (4) The removal of vegetation to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard provided that any vegetation removed be replaced by replanting in the same area with native species as soon as practicable.
- (5) The County may authorize by permit additional vegetation management activities such as prescribed burns or other vegetation management or removal activities where there is a demonstrable need for the additional management activity. Any permit issued by the County under this section shall include an enforceable restriction to preserve the newly restored area. Prior to issuing a permit under this Section, the County shall require the following information to be provided by the permittee:
  - (a) Detailed plans documenting the need and purpose are submitted and approved by the County.
  - (b) Sufficient information within the plans showing that it is designed to:
    1. control erosion by limiting sedimentation into the waterbody;
    2. improve the plant community by replanting in the same area; and
    3. maintain and monitor the newly restored area.

Note: Section 59.692(1f)(a), Stats, prohibits counties from requiring a property owner to establish a



vegetative buffer zone on previously developed land or expand an existing vegetative buffer zone. However, as part of a county's shoreland mitigation standards or enforcement where vegetation removal is prohibited, the establishment or expansion of the vegetative buffer may remain an option.

**10.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING, AND EXCAVATING.**  
**(NR115.05(1)(d))**

10.1 PURPOSE. To protect natural scenic beauty, fish and wildlife habitat, and water quality, land disturbances may be allowed and authorized only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

10.2 APPLICABILITY. Filling, grading, lagooning, dredging, ditching, and excavating may be authorized by permit according to sections 10.3 and 10.4, and only if done in a manner that meets the purpose of section 10.1.

NOTE 1: In addition to meeting the provisions of section 10.2, filling, grading, lagooning, dredging, ditching, and excavating may also be allowed and authorized only in accordance with the requirements of ch. 30, Stats, and other state and federal laws where applicable, and only if done in a manner that meets the purpose of section 10.1.

NOTE 2: In order to allow land disturbances that meet the purposes of section 10.1 the department offers and strongly suggests sections 10.3 and 10.4 as a permit system for land disturbance activities that a county may adopt for implementing section 10.2:

10.3 GENERAL REQUIREMENTS. In order to implement section 10.2, a permit for filling, grading, lagooning, dredging, ditching or excavating within in the shoreland area may be granted provided that:

(1) A permit is required to be issued for filling, grading, lagooning, dredging, ditching, or excavating within 300 feet of the ordinary high water mark of navigable waters.

NOTE: A county may continue to permit land disturbances to depths currently identified and justified within their shoreland zoning ordinance that differ from 300 feet from the ordinary high water mark of navigable waters.

(2) It is not done within the vegetative buffer zone unless necessary for establishing or expanding the vegetative buffer or for the construction of an exempt structure under section 7.5.

(3) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

(4) Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of section 3.

(5) All applicable federal, state, and local authority is obtained in addition to a permit under this ordinance.

(6) Any fill placed in the shoreland area is protected against erosion by the use of vegetative cover or stabilized in another acceptable and approved manner.

10.4 PERMIT CONDITIONS. In granting a permit under section 10.3(1), attach any of the following conditions, as appropriate:

(1) The smallest amount of bare ground shall be exposed for as short a time as feasible.

(2) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative

cover shall be established.

(3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.

(4) Lagoons shall be constructed to avoid fish trap conditions.

(5) Fill shall be stabilized according to accepted engineering standards.

(6) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.

(7) Construction associated with land disturbances are encouraged to incorporate slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated and stabilized.

(8) Other project-related conditions may be considered.

## **11.0 IMPERVIOUS SURFACE STANDARDS. (NR 115.05(1)(e))**

11.1 PURPOSE. Impervious surface standards shall be established to protect water quality, fish and wildlife habitat, and to protect against pollution of navigable waters.

11.2 APPLICABILITY. (NR 115.05(1)(e)1) Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

(1) A riparian lot or parcel.

(2) A non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.

11.3 CALCULATION OF PERCENTAGE OF IMPERVIOUS SURFACE. (NR 115.05(1)(e)1m), 59.692(1k)(am)1) Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in sections 11.4 and 11.5 shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

NOTE 1: NR 115.05(1)(e)1m clarifies that if an outlot lies between the OHWM and the developed lot or parcel and both are in common ownership, then the lot or parcel should be considered one property for the purposes of calculating the percentage of impervious surfaces. If there is an outlot, parcel or road that is owned by some other entity, for example a hydroelectric facility or a town or county, then the county should determine what level of control the property owner has over that portion of the lot. Can the property owner place structures, such as shoreline protection, piers, stairs, boathouses etc.... on that portion of the lot or does some other entity have control over development? If a property owner has no or little say over construction on that portion of the lot then impervious surfaces on that portion of the lot should be calculated separately.

NOTE 2: For properties that have been "condominiumized" the impervious surface calculations apply to the entire property. The property is still under one legal description and the proposed expansion to a unit is not the only impervious surface calculated since the regulation states lot or parcel and not a unit. It will be important to remember also that mitigation applies to the property as a whole and not just to the portion of

the frontage that might be in front of the unit impacted.

**11.4 TREATED IMPERVIOUS SURFACES.** (NR115.05(1)(e)3m and s. 59.692(1k)(am)1, Stats)  
Impervious surfaces that can be documented to demonstrate they meet either of the following standards shall be excluded from the impervious surface calculations under section 11.3:

- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.

NOTE 1: The provisions in section 11.4 act similarly to an exemption by excluding certain impervious surfaces from being included in the calculation of impervious surface and as such should be read and construed narrowly. A property owner is entitled to the exclusion under section 11.4 only when the property owner can demonstrate (see NOTE 2) that the runoff from a specific and specific area of impervious surface is being treated by and/or infiltrated consistent with section 11.4. If demonstrated, that specific impervious surface will not be included in the calculation of impervious surface for the purposes of implementing the impervious surface standards in this ordinance.

NOTE 2: To qualify for the exclusion under section 11.4, a property owner shall submit a complete permit application, that is reviewed and approved by the county. The application shall include 1) calculations showing how much runoff is coming from each of the impervious surface areas and cumulatively on the property; 2) documentation that the runoff from the impervious surface is being treated by a proposed treatment system, treatment device, or internally drained area; and 3) an implementation and maintenance schedule. The county shall create an enforceable obligation with the property owner to establish and maintain the functional operability of the treatment system, treatment devices, or internally drained area. The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds prior to the issuance of the permit.

NOTE 3: If a property owner or subsequent property owner fails to maintain the treatment system or treatment device to manufacturer and/or installer operational specifications, and/or maintain the existence and functional operation of an internally drained area, the associated impervious surface is no longer to be excluded from the calculation of impervious surface under section 11.3. Under such a scenario the treatment system or treatment device no longer serves as a means for reducing the impervious surface on the property owner's lot and the impervious surface on the property is to be recalculated immediately. If the percentage of impervious surface exceeds the standard of section 11.6, the standards of section 11.7 shall be met.

NOTE 4: If under section 11.4(2) the runoff does drain to and infiltrate on a parcel other than the property where development is proposed it must be demonstrated that the runoff is being retained and infiltrated on the other property. It must also be demonstrated that the runoff is not being directly piped to or otherwise directed towards the neighboring property unless as a part of a subdivision or PUD plat that contains a stormwater runoff plan. The area on the existing or neighboring property that is retaining and infiltrating the runoff must be noted in the county file so that it is not developed in the future. If the parcel that is retaining and infiltrating the runoff is developed in the future it no longer serves as a means for reducing the impervious surface on the property owner's lot. Under such scenario the impervious surface on the property is to be recalculated immediately. If the percentage of impervious surface exceeds the standard of section 11.6, the standards of section 11.7 shall be met.

**11.5 ROADWAYS & SIDEWALKS.** (59.692(1k)(am)3, Stats) Roadways defined in s. 340.01(54), Stats, and sidewalks defined in s. 340.01(58), Stats, shall be excluded from the impervious surface calculation under section 11.3.

NOTE: The roadways and sidewalks of section 11.5 are only those as defined. The exclusion from the impervious surface calculation does not apply to all driveways and sidewalks.

11.6 GENERAL IMPERVIOUS SURFACE STANDARD. (NR 115.05(1)(e)2) The percentage of impervious surface allowed on a lot or parcel described under section 11.2 and as calculated under section 11.3 shall not exceed 15%.

11.7 MAXIMUM IMPERVIOUS SURFACE STANDARD. (NR 115.05(1)(e)3) A lot or parcel may exceed the impervious surface standard under section 11.6 provided the following standards are met:

(1) A lot or parcel described under section 11.2, calculated under section 11.3, and under the general impervious surface standard of section 11.6 may have greater than 15% impervious surface but not more than 30% impervious surface.

(2) For lots or parcels that exceed the standard under section 11.6 but do not exceed the maximum standard section 11.7(1), a permit can be issued for development with a mitigation plan that meets the standards found in section 18.

11.8 EXISTING IMPERVIOUS SURFACES. (NR 115.05(1)(e)4) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 11.6 or the maximum impervious surface standard in section 11.7, the property owner may do any of the following:

(1) Maintain and repair the existing impervious surfaces;

(2) Replace existing impervious surfaces with similar surfaces within the existing building envelope;  
or

(3) Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in section 7.

11.9 IMPERVIOUS SURFACE STANDARD FOR HIGHLY DEVELOPED SHORELINES. (NR 115.05(1)(e)2m and s. 59.692(1k)(am)2, Stats)

(1) A highly developed shoreline is one that meets either of the following:

(a) A shoreline within an area identified as an Urbanized Area or Urban Cluster in the 2010 US Census or a shoreline that has a commercial, industrial, or business land use as of January 31, 2013.

(b) Shorelines not listed under section 11.9(1)(a) that 1) are at least 500 feet wide at the shoreline; 2) include either a majority of lots with more than 30% of impervious surface area, a majority of lots of less than 20,000 square feet in area, and/or lots located on a lake served by a sewerage system as defined in s. 281.01(14), Stats; and 3) are mapped after receiving approval from the department following a county-held hearing.

(2) Standards for highly developed shorelines: For a lot or parcel meeting the conditions of section 11.9(1) allow up to 30% impervious surface for residential land use and up to 40% impervious surface for commercial, industrial, or business land uses.

NOTE: Counties are not required under s. 59.692, Stats, to adopt the impervious surface standards for highly developed shorelines in section 11.9 but are required to adopt the general impervious surface standard in section 11.6.

11.10 MAXIMUM IMPERVIOUS SURFACE STANDARD FOR HIGHLY DEVELOPED SHORELINES. (NR 115.05(1)(e)3) A lot or parcel may exceed the impervious surface standard under section 11.9

provided the following standards are met:

- (1) Where the impervious surface standard for highly developed shorelines applies under section 11.9, a lot or parcel may have more than 30% impervious surface but not more than 40% impervious surface for residential land uses.
- (2) Where the impervious surface standard for highly developed shorelines applies under section 11.9, a lot or parcel may have more than 40% impervious surface but not more than 60% impervious surface for commercial, industrial or business land uses.
- (3) For a lot or parcel that exceeds the standard under section 11.9 but does not exceed the maximum standard under sections 11.10(1) or 11.10 (2), a permit can be issued for development with a mitigation plan that meets the standards found in section 18.

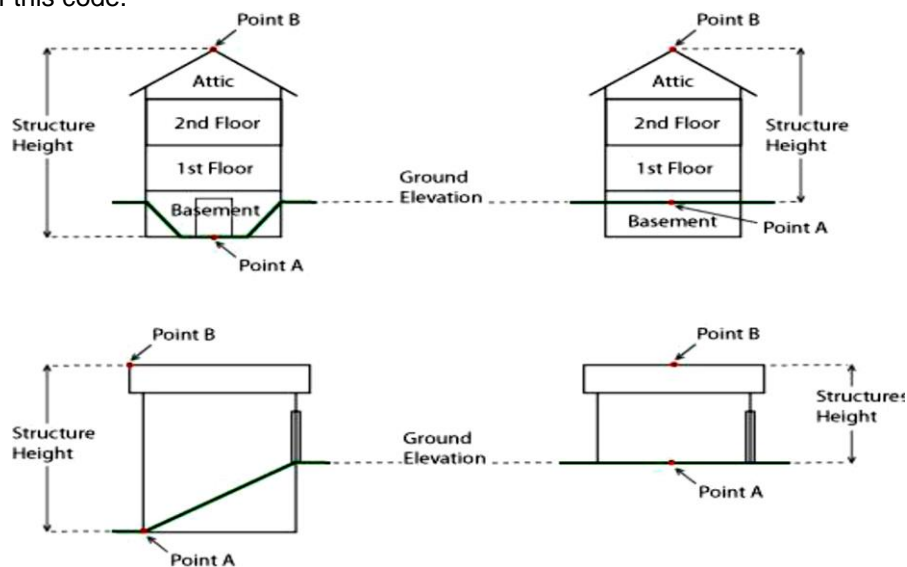
NOTE: Counties that do not adopt the impervious surface standards for highly developed shorelines are not required to adopt section 11.10.

## 12.0 HEIGHT. (NR 115.05(1)(f))

12.1 PURPOSE: To protect and preserve wildlife habitat and natural scenic beauty.

12.2 HEIGHT STANDARD. A structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters is prohibited

12.3 MEASURING HEIGHT. Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



NOTE 1: There is no prohibition against regulating the height of structures beyond 75 feet from the ordinary high water mark.

NOTE 2: Counties are encouraged to include definitions of "floor", "attic", "basement", etc. within the ordinance to provide clarity.

**13.0 NONCONFORMING USES. (NR 115.05(1)(g)1-3, s. 59.69(10), Stats)**

13.1 APPLICABILITY. This section applies to a use of a dwelling, building, or parcel of land that existed lawfully before the existing zoning ordinance was enacted or amended, but that does not conform to the allowed uses in the current ordinance. (s. 59.69(10)(ab), Stats)

13.2 GENERAL RULE. (s. 59.69(10), Stats)

(1) The continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinance takes effect may not be prohibited. (s. 59.69(10)(am), Stats, NR 115.05(1)(g)1)

(2) The alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. (s. 59.69(10)(am), Stats)

(3) The county may prohibit the continuance of the nonconforming use of a temporary structure. (115.05(1)(g)2)

(4) If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance. (115.05(1)(g)3)

(5) A manufactured home community licensed under s.101.935, Stats, that is a nonconforming use continues to be a nonconforming use notwithstanding the occurrence of any of the following activities within the community: (s. 59.69(10)(at), Stats)

(a) Repair or replacement of homes.

(b) Repair or replacement of infrastructure.

NOTE: Under general zoning any change of use must meet underlying zoning provisions.

**14.0 NONCONFORMING STRUCTURES. (NR 115.05(1)(g)4-6, s. 59.692(1k)(a)2, 4 and (b), Stats)**

14.1 APPLICABILITY. This section applies to an existing principal or accessory structure that was lawfully placed when constructed but that does not comply with the current required ordinary high water mark setback of a navigable waterway.

14.2 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES. (s. 59.692(1k)(a)2,4 and (b), Stats) A structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per section 7 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, a structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The expansion of a structure beyond the existing footprint may be allowed if the expansion is necessary to comply with applicable state or federal requirements.

NOTE: Sections 59.692(1k)(a) 2,4 and (b), Stats, prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 14.2. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or stormwater erosion control.

14.3 LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURES WITHIN THE SETBACK. (NR 115.05(1)(g)5) An existing principal structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per section 7 may be expanded laterally,

provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) Issue a permit that requires an approved mitigation plan that shall be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 18.
- (5) All other provisions of the shoreland ordinance shall be met.

**14.4 EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURES BEYOND THE SETBACK.** (NR 115.05(1)(g)5m) An existing principal structure that was lawfully placed when constructed but that does not comply with the required shoreland setback under section 7 may be expanded horizontally, landward, or vertically provided that the expanded area meets the shoreland setback requirements per section 7 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per sections 11.7 or 11.10.

**14.5 RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURES.** (NR 115.05(1)(g)6) An existing principal structure that was lawfully placed when constructed but that does not comply with the required shoreland setback per section 7 may be relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for relocation that will result in compliance with the shoreland setback requirement per section 7.
- (5) The county issues a permit that requires an approved mitigation plan that shall be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 18.
- (6) All other provisions of the shoreland ordinance shall be met.

**15.0 MAINTENANCE, REPAIR, REPLACEMENT, OR VERTICAL EXPANSION OF A STRUCTURE AUTHORIZED BY VARIANCE.** (s. 59.692(1k)(a)2 and 4, and (b), Stats)

15.1 A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015, may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The expansion of a structure beyond the existing footprint may be allowed if the expansion is

necessary to comply with applicable state or federal requirements

NOTE 1: Any conditions placed on a previously granted variance remain binding and thus may override allowances in section 15.1 in part or in whole depending on the specific details of the condition(s).

NOTE 2: Section 59.692(1k)(a)2, Stats, prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 15.1. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or stormwater erosion control.

**16.0 MAINTENANCE, REPAIR, OR REPLACEMENT OF AN EXISTING EXEMPT STRUCTURE IN THE SHORELAND SETBACK AREA.** (s. 59.692(1k)(a)2m, Stats, s. 59.692(1k)(a)6, Stats, s. 59.692(1k)(b), Stats, s. 59.692(1k)(bm), Stats)

16.1 All or any part of an existing exempt structures under section 7.5 (s. 59.692(1n)(d), Stats) may be maintained, repaired, replaced, restored, rebuilt or remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure.

16.2 An activity allowed under section 16.1 shall be allowed to expand the footprint of the structure provided it is the minimal expansion necessary to comply with applicable state or federal requirements.

NOTE: Section 59.692(1k)(a)2m, Stats, prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the structures or activities specified in section 16. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, land disturbance, or stormwater erosion control.

**17.0 MAINTENANCE, REPAIR, OR REPLACEMENT OF A BUILDING OR STRUCTURE IN VIOLATION OF A COUNTY SHORELAND ZONING ORDINANCE THAT MAY NOT BE ENFORCED.** (s. 59.692(1t), Stats, s. 59.692(1k)(a)2.c, Stats)

17.1 An enforcement action may not commence against a person who owns a building or structure that is in violation of a shoreland zoning standard or this shoreland zoning ordinance if it has been in place for more than ten years.

17.2 A building or structure that is in violation of a shoreland zoning standard or this shoreland zoning ordinance but has been in place for more than ten years may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. However, the structure may not be vertically or laterally expanded.

**18.0 MITIGATION.** (NR 115.05 (1)(e)3c, (g)5d, (g)6e)

18.1 **PURPOSE.** The purpose of mitigation is to establish and maintain measures adequate to offset the impacts of development on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.

18.2 **APPLICABILITY.** When a permit requiring mitigation under sections 11.7(2), 11.10(3), 14.3(4), and 14.5(5) is issued the property owner shall submit a complete permit application that is reviewed and approved by the county. The application shall include the following:

- (1) A site plan that describes the proposed mitigation measures.
  - (a) The site plan shall be designed and implemented to restore natural functions lost through



- development and human activities.
- (b) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty.

(2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.

- (a) The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds.

NOTE: Each county must select a mitigation system and codify that system in the county shoreland zoning ordinance that states the exact requirements.

## **19.0 LAND DIVISION REVIEW. (NR 115.05(2))**

19.1 Pursuant to s. 236.45, Stats, all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less shall be reviewed within a 5-year period. All of the following factors shall be considered during such a review:

- (1) Hazards to the health, safety or welfare of future residents.
- (2) Proper relationship to adjoining areas.
- (3) Public access to navigable waters, as required by law.
- (4) Adequate stormwater drainage facilities.
- (5) Conformity to state law and administrative code provisions.

## **20.0 PLANNED UNIT DEVELOPMENT (PUD). (NR 115.05(1)(a)4)**

20.1 PURPOSE. The Planned Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Unit Development at the time of its approval.

20.2 REQUIREMENTS FOR PLANNED UNIT DEVELOPMENTS. A Planned Unit Development may be approved upon finding, after a public hearing, that all of the following facts exist:

- (1) AREA. A planned unit development may be allowed on a single lot that is at minimum 2 acres in size and has a minimum of 200 feet of frontage on a navigable water.
- (2) INDIVIDUAL LOTS.
  - (a) Riparian lots need to meet the requirements of sections 4.2 and 4.3.
  - (b) Non-riparian lots may be less than the required minimums found in sections 4.2 and 4.3. The zoning committee shall consider whether the proposed lot sizes and widths provide adequate building area after considerations of all setbacks and required impervious surface percentages are met as well as reviewing potential impacts to prevent pollution, erosion and impacts to natural scenic beauty.
- (3) SHORELAND SETBACK. In exchange for the allowance of reduced non-riparian lots, the shoreland setback shall be greater than 75 feet from the ordinary high water mark. Recommended setbacks of 100 – 150 feet from the ordinary highwater mark shall help offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty. An increased shoreland setback

shall be a condition of approval.

(4) **VEGETATIVE BUFFERS.** The vegetative buffer on a lot within a proposed planned unit development shall be greater than 35 feet landward of the ordinary high water mark. Recommended buffers of 50 -70 feet shall help offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty. An increased vegetative buffer shall be a condition of approval.

(5) **IMPERVIOUS SURFACE REQUIREMENTS.** All impervious surface requirements shall be met. There is no relaxation for required impervious surface ratio maximums.

### **20.3 APPLICATION AND PERMIT REQUIREMENTS.**

- (1) An application for a conditional use permit shall be required.
- (2) Information on the total area of the lot, to-scale map showing location and size of all proposed lots, any preserved open space, number and type of dwelling units, other buildings and other requested information to describe the project.
- (3) Proposed greater shoreland setback and greater vegetative buffer that offsets the development impacts for committee consideration.
- (4) Location of shoreland-wetlands.
- (5) A recorded plat or certified survey map is required prior to any construction activities.
- (6) No construction activities shall commence without the issuance of a regular zoning permit for each structure.

NOTE 1: Counties should be aware that the planned unit development standards, as written, grant back lot access (key holing) without applying frontage requirement standards to determine overall density, as allowed under NR115.05(1)(a)4. Counties may optionally include requirements to limit overall density based upon minimum frontage standards.

NOTE 2: The provisions of NR 115.05(1)(a)4 apply to these types of developments where there may be a combination of a density bonus, smaller lot size and preservation of open space.

NOTE 3: These types of developments may also be known as conservation subdivisions or planned residential development.

### **21.0 SANITARY REGULATIONS. (NR 115.05(3))**

21.1 **PURPOSE.** Sanitary regulations for the protection of health and the preservation and enhancement of water quality shall be adopted.

21.2 Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.

21.3 Where a public sewage collection and treatment system is not available, design and construction of private on-site wastewater treatment systems shall, prior to July 1, 1980, be required to comply with ch. SPS 383, Wis. Adm. Code, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Stats.

### **22.0 ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. (NR 115.05(4))**

22.1 In order to establish, maintain, implement, and enforce this shoreland zoning ordinance each of the following shall be required:

- (1) The appointment of an administrator and such additional staff as the workload may require.

- (2) The creation of a zoning agency as authorized by s. 59.69(2), Stats, a board of adjustment as authorized by s. 59.694, Stat., and a county planning agency as defined in s. 236.02(3), Stats, and required by s. 59.692(3), Stats.
- (3) A system of permits for establishing uses, land disturbances, new construction, development, reconstruction, structural alteration, or moving of buildings and structures, unless prohibited by s. 59.692(1k), Stats.
- (4) Regular inspection of permitted work in progress to ensure compliance of finished structures or completed land disturbance activities with the terms of the ordinance.
- (5) A variance procedure which authorizes the board of adjustment to grant 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 shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.
- (6) A conditional use permit (special exception permit) procedure in which a permit states that a use permitted as a conditional use (special exception) may be established, expanded, or enlarged subject to any conditions placed on the authorization and the provisions of this ordinance. The conditions (exceptions) should not be contradictory to the purposes of this ordinance as identified in section 1.3.
- (7) The county shall keep a complete record of all proceedings before the board of adjustment, zoning committee, and/or planning agency.
- (8) Written notice to the appropriate department staff at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, administrative appeal for a map or text interpretation, and map or text amendment.
- (9) Submission of copies of all proposed land divisions to the appropriate department staff within 10 days after they are submitted to the county for review under section 19.
- (10) Submission to the appropriate department staff, within 10 days after grant or denial, copies of any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.
- (11) Development and maintenance of an official map of all mapped zoning district boundaries, amendments, and recordings. The official map for the shoreland-wetland zoning district is the Wisconsin Wetland Inventory found on the department's Surface Water Data Viewer.
- (12) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by appropriate forfeitures utilizing citation authority and by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.
- (13) Pursuing the prosecution of violations of the shoreland ordinance
- (14) Shoreland wetland rezone (map amendment) procedures according to s. NR 115.04. Every petition for a shoreland-wetland map amendment filed with the county clerk shall be referred to the county zoning agency and shall follow section 3.6.

## **23.0 DEFINITIONS.**

23.1 **PURPOSE.** For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

23.2 The following terms used in this ordinance mean:

(1) "Access and viewing corridor" (NR 115.03(1d)) means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(2) "Accessory structure" (S. 59.692(1)(e), Stats) means a subordinate structure which is devoted to a use incidental to the principal use of the property. Accessory structures include, but are not limited to, a detached garage, shed, barn, boathouse, gazebo, patio, deck, porch, fire pit, swimming pool, hot tub, fence, retaining wall, driveway, parking lot, sidewalk, walkway, detached stairway and lift.

(3) "Boathouse" (NR 115.03(1h)) means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(4) "Building envelope" (NR 115.03(1p)) means the three dimensional space within which a structure is built.

(5) "County zoning agency" (NR 115.03(2)) means that committee or commission created or designated by the county board under s. 59.69(2)(a), Stats, to act in all matters pertaining to county planning and zoning.

(6) "Department" (NR 115.03(3)) means the Department of Natural Resources.

(7) "Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

(8) "Existing development pattern" (NR 115.03(3m)) means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(9) "Floodplain" (NR 115.03(4)) means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.

(10) "Footprint" means the land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall and eave if present, projected to natural grade. For structures without walls (decks, stairways, patios, carports) a single horizontal plane bounded by the furthest portion of the structure projected to natural grade. Note: For the purposes of replacing or reconstructing a nonconforming building with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade. This constitutes a lateral expansion under NR 115 and would need to follow NR 115.05 (1)(g)5.

(11) "Generally accepted forestry management practices" (NR 1.25(2)(b), Wis. Adm. Code) means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

(12) "Impervious surface" (NR 115.03(4g)) means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops,

sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54), Wis. Adm. Code, or sidewalks as defined in s. 340.01(58), Wis. Adm. Code, are not to be calculated as impervious surfaces.

"Roadway" means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder. In a divided highway the term "roadway" refers to each roadway separately but not to all such roadways collectively. "Sidewalk" means that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, constructed for use of pedestrians.

(13) "Lot" means a continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance.

(14) "Lot area" means the area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters.

(15) "Lot of record" means any lot, the description of which is properly recorded with the Register of Deeds, which at the time of its recordation complied with all applicable laws, ordinances, and regulations.

(16) "Mitigation" (NR 115.03(4r)) means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(17) "Navigable waters" (NR 115.03(5)) means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31(2)(m), Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:

- (a) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (b) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body

(18) "Ordinary high-water mark" (NR 115.03(6)) means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

(19) "Previously developed" means a lot or parcel that was developed with a structure legally placed upon it.

(20) "Regional flood" (NR 115.03(7)) means 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, once in every 100 years.

(21) "Routine maintenance of vegetation" (NR 115.03(7m)) means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(22) "Shoreland" (NR 115.03(8)) means lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(23) "Shoreland setback" also known as the "Shoreland setback area" in s. 59.692(1)(bn), Stats, means an area in a shoreland that is within a certain distance of the ordinary high-water mark in

which the construction or placement of structures has been limited or prohibited under an ordinance enacted under section 59.692, Stats.

(24) "Shoreland-wetland zoning district" (NR 115.03(9)) means a zoning district, created as a part of a county zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

(25) "Special exception (conditional use)" (NR 115.03(10)) means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(26) "Structure" (S. 59.692(1)(e), Stats) means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, or fire pit.

(27) "Substandard Lots" means a legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current requirements for a new lot.

(28) "Unnecessary hardship" (NR 115.03(11)) means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

(29) "Variance" means an authorization granted by the board of adjustment to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.

(30) "Wetlands" (NR 115.03(13)) means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

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