

Excerpted from Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes (Program Document) updated October, 2007.

C. FEDERAL CONSISTENCY

Wisconsin has broad opportunities through federal consistency to influence federal government activities, construction, funding, permitting and other actions proposed within the coastal zone. It promotes coordination between state and federal policies, programs and agencies.

As has been noted several times in this document, the Program does not create a comprehensive set of new regulatory requirements or agencies. Rather, it relies on and seeks to improve existing state programs. Federal regulations (15 CFR 930) actually establish the basic policies and procedures for coastal states, federal agencies and other affected parties pertaining to the federal consistency review process.

The Program uses existing mechanisms, such as E.O. 12372, to review federal activities and funding. The regional and state clearinghouses continue to be the vehicles for soliciting comments on these projects.

While the Coastal Management Council, through its staff, is the state contact for receiving notice of federal activities, funding and permits, and notifying federal agencies of the state's concurrence or objection, it has a coordinative versus regulatory role in the process. Other state agencies with existing responsibility for the state laws and regulations upon which the Program is based actually provide the substantive decisions. Federal consistency is a tool the state can use to strengthen state agency coastal management efforts. The Council has the important function of coordinating and monitoring these state agency regulatory activities, serving as a forum for informal resolution of policy conflicts among state agencies, or between one or more state and federal agencies.

1. Projects subject to review.

In order to be subject to federal consistency review, a project must meet the following basic criteria. The project must:

- be located within or affect Wisconsin's coastal zone;
- involve the federal government through funding, permitting or direct action; and
- meet certain thresholds.

a) Location.

Wisconsin's coastal zone is defined as the state boundary, on the waterward side. On the landward side, it is the inland boundary of the 15 counties which are adjacent to Lake Superior and Lake Michigan. In some cases, projects outside the coastal zone may be subject to federal consistency review if the project is expected to affect the coastal zone. A project landward of the boundary in a watershed that drains into the Great Lakes might be subject to consistency review. The same holds for a project on the waterward of the boundary that alters coastal zone water quality or quantity. Federal agencies are encouraged by federal regulations to construe liberally this location criterion so as to favor inclusion of such projects subject to consistency review. Federal

consistency review may also apply to land owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government, if federal actions on such lands cause spillover impacts within the coastal zone.

b) Federal Involvement.

The federal government is involved in a range of projects within or affecting the coastal area. The involvement may be direct, for example, harbor dredging. It may include funding, for example, grants for highway construction, or it may include issuing permits, for example, for activities in wetlands. Any of these kinds of federally conducted, funded, permitted or supported projects may be subject to federal consistency review.

c) Thresholds.

If the above criteria are met, and the project is a federal action that has reasonably foreseeable effects on coastal uses or resources, it will be subject to federal consistency review. The state will focus on projects which involve a state managed use and meet associated thresholds established under the Wisconsin Environmental Policy Act which determine if they require detailed environmental review.

2. Review criteria.

Evaluation of federal consistency with the Coastal Management Program is based upon the following criteria:

- Is the activity consistent with the federally approved state coastal policies (set forth in Chapter I.C., including approved county shoreland ordinances and approved flood plain ordinances)?
- Is the activity consistent with specific management policies for designated state managed SCAs?
- Does the activity allow for an opportunity for full public participation?

As used in the following sections, "CMS" means the Coastal Management Council's staff, which handles the coordination, monitoring and administration of the federal consistency review process.

D. FEDERAL CONSISTENCY-FEDERAL GRANTS AND FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

1. Types of projects requiring consistency review.

Federal assistance is any financial assistance provided under a federal program through grants, contractual agreements, loans, subsidies, guarantees, insurance or other forms of financial aid to a state or local government to support a project that has reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

2. Review through clearinghouse procedures.

The clearinghouse will provide the proposed federal assistance application to the CMS and appropriate state agencies for review. State agency comments to the CMS will indicate if the proposed project does, or does not comply with the applicable state laws and regulations administered by the state agency, and if it does not comply, how the project could be modified in order to comply.

3. State concurrence or objection.

The CMS will notify the clearinghouse whether it concurs with or objects to the assistance application.

If the CMS concurs with the assistance application, the federal agency may grant the federal assistance. CMS concurrence can be presumed if, during the clearinghouse review process, the CMS does not object to the assistance application.

If the CMS objects to the assistance application, it will so notify the applicant and the federal agency. The federal agency shall not grant the federal assistance. The objection will explain: how the proposed project is inconsistent with the state Coastal Management Program policies; alternative measures, if they exist, which, if adopted by the applicant, would allow the project to be conducted in a consistent manner; and the right of the applicant to appeal the objection to the U.S. Secretary of Commerce. The CMS will pursue discussions with the applicant and, if appropriate, the federal agency, in order to try to resolve the disagreement.

E. FEDERAL CONSISTENCY-LICENSES AND PERMITS

1. Federal permits requiring consistency certification.

An applicant for a federal permit affecting any land or water use or natural resource in the coastal zone must provide a consistency certification to the federal agency and the CMS. Federal permits include licenses, authorizations, certifications, approvals or other forms of permission which a federal agency is empowered to issue to an applicant. Applicants are any individual or organization, except a federal agency, who file an application for a federal permit.

The following are federal permits that are likely to affect the coastal zone. (An asterisk means that there is a corresponding state permit required.) Other permits may be added to this list as provided in the federal regulations if CMS monitoring indicates that an unlisted activity affects the coastal zone:

Army Corps of Engineers. Permits for excavation, fill and construction in navigable waters (33 USC 403-404)*; and permits for discharge of dredged or fill material in navigable waters (33 USC 1344)*.

Federal Energy Regulatory Commission. Licenses for nonfederal hydroelectric projects and associated transmission lines (16 USC 797(e); certificates for construction and operation of natural gas pipeline facilities, both interstate pipeline and terminal facilities (15 USC 717f(c)); permission for the abandonment of natural gas pipeline facilities (15 USC 717f(b)).

Department of Agriculture. Permits for water easements on Forest Service lands (43 USC 1716); and permission for construction of hotels, resorts, homes, stores and facilities on Forest Service lands (16 USC 497).

Department of the Interior. Permission for construction of visitor facilities on National Park Service land (16 USC 3); and rights-of-way for electrical transmission lines on National Park Service land (16 USC 5).

Surface Transportation Board. Permission for railroad and service abandonment (49 USC 10903)*.

Nuclear Regulatory Commission. Permits and licenses for the construction and operation of nuclear facilities (42 USC 5841(f))*.

Department of Transportation. Permit for construction and modification of bridges and causeways in navigable water (33 USC 401)*; and permit for airport construction*.

2. Content of the consistency certification.

The applicant's consistency certification must contain the following statement: "The proposed activity complies with the policies of Wisconsin's approved Coastal Management Program and will be conducted in a manner consistent with such policies." The applicant must also provide supporting information. If the project requires a federal and state permit (i.e., those in 1 above with an asterisk), this includes documentation of application for the state permit. If the project requires a federal permit, but not a state permit (i.e., those in 1 above without an asterisk), the

supporting information includes: a detailed description of the project; an assessment of the probable coastal zone effects; and findings indicating that the proposed project, its associated facilities, and their effects, are consistent with Wisconsin's approved coastal management policies. The supporting information should be sufficient in a majority of cases, but the CMS will require the applicant to furnish additional information, such as NEPA documentation, if necessary.

3. State review.

CMS review begins when the required consistency certification and supporting information are received. It is reasonable to assume that the applicant will apply simultaneously for state and federal permits if both are needed. If no state permit is required, the CMS will provide the applicant's consistency determination and supporting information to appropriate state agencies for review. The comments submitted by other state agencies to the CMS will indicate if the proposed project does or does not comply with the applicable laws and regulations the state agencies administer; and, if it does not comply, how it could be modified to comply.

4. Public notice.

Public notice of the proposed project will be provided by the federal agency reviewing the application for the federal permit. If a state permit is also required for the project, the state agency reviewing the application for a state permit will provide public notice. Federal and state agencies are encouraged to issue joint public notices. This public notice gives interested persons the opportunity to comment on the consistency of proposed permits with Wisconsin's coastal management policies.

5. State concurrence or objection.

The CMS will notify the applicant and the federal agency whether it concurs with or objects to a consistency certification at the earliest practicable time. If the CMS has not issued a decision within three months of the commencement of its review, it must notify the applicant and the federal agency of the status of the matter and basis for further delay. In all cases, the CMS must notify the applicant and federal agency of its concurrence or objection within six months of the commencement of its review. Concurrence by the CMS can be presumed in the absence of its objection within six months of the commencement of its review.

If the proposed project requires a state permit in addition to the federal permit, the federal agency shall not issue the federal permit until the applicant has received the state permit. CMS concurrence shall be assumed upon the applicant's submission of documentation of receipt of the corresponding state permit.

If the proposed project does not require a state permit in addition to the federal permit, and the CMS objects to the applicant's consistency certification, it shall notify the applicant and federal agency. The federal agency shall not grant the permit. The notice will explain: how the proposed project is inconsistent with the state coastal management policies; alternative measures, if they exist, which, if adopted, would allow the proposed project to be conducted in a consistent manner; if the objection is based on the failure of the applicant to supply adequate information, the nature of the information and the necessity of having such information; and the right of the applicant to appeal the objection to the U.S. Secretary of Commerce. If the CMS disagrees with an applicant's consistency certification, it will first attempt to reach agreement through

discussions with the applicant and, if appropriate, with the federal agency in order to try to resolve the disagreement.

F. FEDERAL CONSISTENCY-DIRECT FEDERAL ACTIVITIES

1. Federal activities requiring consistency determinations.

A federal agency must provide the CMS with a determination that any federal activity that has reasonably foreseeable effects on any land or water use or natural resource of the coastal zone is consistent to the maximum extent practicable. Federal activities are activities performed by or on behalf of a federal agency, including the planning, construction, modification or removal of public works, facilities or other structures, or the acquisition, use or disposal of land or water resources.

2. Content of the consistency determination.

The federal agency consistency determination must include a detailed description of the activity, its associated facilities and their coastal zone effects, and information including NEPA documentation, sufficient to support the federal agency's determination of consistency.

3. State review procedure.

The CMS review begins when the federal agency provides the consistency determination, at least 90 days before the federal activity is to be approved, to the appropriate clearinghouse. This procedure shall also be followed when a federal agency decides that a consistency determination is not required for a federal activity and issues a negative determination.

Upon receipt, the clearinghouse will provide a copy to the CMS and other state agencies for review. The comments submitted by other state agencies to the CMS must indicate if the federal activity does or does not comply with the applicable laws and regulations the state agencies administer and, if it does not comply, how the activity could be modified in order to comply.

The CMS shall agree or disagree with the federal agency consistency determination, or inform the federal agency of the status of the review and basis for further delay, within 45 days from receipt of the consistency determination. If the state requires more time, the state must request and the federal agency must approve an extension of 15 days. Further time extensions are at the discretion of the federal agency.

If the CMS disagrees, it will explain how the proposed activity is inconsistent; the alternative measures, if they exist, which would allow the activity to be consistent; and if the disagreement is based on the failure of a federal agency to supply sufficient information, the nature of the information requested and the necessity of having it. When faced with a CMS disagreement, the federal agency is encouraged to delay or abandon the proposed federal activity pending resolution of the disagreement through discussions with the CMS.

Attachment C: Specific State Coastal Policies

1. Coastal water quality and quantity and coastal air quality.

- 1.1) The elimination of the discharge of pollutants to water is the long range goal of the state. (See Federal Clean Water Act, 33 U.S.C. 1251 and Wis. Stats. § 283.001(1)(a))
- 1.2) An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved. (See Wis. Stats. § 283.001(1)(b))
- 1.3) Discharge of effluents, including industrial, municipal and agricultural wastes, into any waters of the state shall not be allowed if they exceed federal and state water quality standards. (See Wis. Stats. §§ 283.11-.31, and Wis. Admin. Code ch. NR 221 to 297. See also managed use #8)
- 1.3.1) Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards. (See Wis. Stats. ch. 160, and Wis. Admin. Code NR 140. See also managed use #33)
- 1.4) Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. (See Wis. Stats. §§ 283.01(13), 283.31(1) and 29.601. See also managed uses #8 and #9)
- 1.5) Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for rivers emptying into these waters shall be as high as is practicable. (See Wis. Stats. § 281.11. See also managed use #8)
- 1.5.1) The state shall provide financial and technical assistance to abate point and non-point sources of water pollution. (See Wis. Stats. §§ 281.57 and 281.65, and Wis. Admin. Code chs. NR 120 and NR 128)
- 1.5.2) The state shall halt and reverse pollution of its waters by soil erosion by administering goals and standards for conservation of soil and water resources, providing for cost sharing, technical assistance and educational programs to improve land management practices, and enabling the regulation of harmful land use and land management practices. The state shall address construction site erosion control and storm water management through municipal ordinances and state plans for the protection of the state's groundwater, surface water, soil, and related resources. (See Wis. Stats. ch 92, §§ 281.33 and 283.33, and Wis. Admin. Code ch. NR 216)
- 1.6) Discharges from publicly owned treatment works shall comply with secondary treatment and best practicable waste treatment technology requirements. (See 33 U.S.C. § 1251 (Clean Water Act), and Wis. Stats. § 283.13(4). See also managed use # 17)
- 1.7) Any wastewater discharger may be required to remove excess amounts of phosphorus. Effluent limitations for total phosphorus based on surface water quality may be established where such limitations will result in an improvement in water quality, or preserve the quality of surface waters where long-term discharges may result in impairment of water quality. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.06. See also managed use # 8)
- 1.8) Waste treatment and disposal activities may be disapproved if they are not in conformance with approved

areawide water quality management plans. Sewer extensions shall be allowed only where they are consistent with and enhance the policy of the state to restore and maintain the chemical, physical and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values and enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water. (See Wis. Stats. §§ 281.17, 281.41 and 283.83, and Wis. Admin. Code ch. NR 121 and NR 110.05. See also managed use #17)

- 1.9) Thermal discharges shall not raise the receiving water temperatures more than 3 degrees F above the existing natural temperature at the boundary of mixing zones. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.07. See also managed use #8)
- 1.10) The discharge of toxic pollutants in toxic amounts shall be prohibited. (See Wis. Stats. §§ 283.01(17) and 283.001(1)(c). See also managed use #8)
- 1.11) Discharge of mercury compounds and metallic mercury to the waters of the state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. (See Wis. Stats. § 281.17(7), and Wis. Admin. Code NR 100.02. See also managed use #8)
- 1.12) No person may sell, distribute, use or dispose of any pesticide without obtaining any required licenses and following requirements of the Wisconsin Statutes, the Wisconsin Administrative Code, and local regulations. (See Wis. Stats. §§ 94.67-.70 and 29.601(4). See also managed use # 30)
- 1.13) Minimum lot sizes in shoreland areas shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet. Lots not served by public sewer shall have a minimum average width of 100 ft. and a minimum area of 20,000 sq. ft. (See Wis. Stats. §§ 281.31 and 59.692 and ch. 236, and Wis. Admin. Code ch. NR 115. See also managed uses # 18 and 25)
- 1.14) The Wisconsin department of natural resources may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. (See Wis. Stats. § 281.17(8). See also managed uses #10 and 29)
- 1.15) Withdrawals of water that could result in significant losses of water, through interbasin diversion or consumptive use, from the Great Lakes basin shall be regulated so as to protect public rights in navigable waters, public health, safety, and welfare, coastal ecosystems, coastal water quality, and in-basin water needs. All withdrawals of waters of the state averaging over 100,000 gallons per day shall be registered with the state so that the state may monitor water demand and availability in the interest of better water supply management. (See Wis. Stats. § 281.35(3)-(5) and Wis. Admin. Code NR 142. See also managed use #13)
- 1.15.1) No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification. (See Wis. Stats. § 281.17(10))
- 1.16) No new air contaminant stationary source shall be permitted to be constructed, installed or established which directly or indirectly emits air contaminants that make the air injurious to health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life without complying with federal and state air quality standards. (See Wis. Stats. §§ 285.60, 281.31, and Wis. Admin. Code ch. NR 405 and 406.03)
- 1.17) If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the Wisconsin department of natural resources may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate

protection for public health or welfare. (See Wis. Stats. § 285.21(1) and Wis. Admin. Code ch. NR 404. See also managed use #28)

- 1.18) The Wisconsin department of natural resources, in the interest of public rights in navigable waters or to promote safety and protect life, health, and property may regulate and control the level and flow of water in all navigable waters and may erect or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in the Wisconsin Statutes. The construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department. (See Wis. Stats. §. 31.02 and Wis. Admin. Code ch. NR 333)
- 1.19) The height to which water may be raised by any milldam and the length or period of time for which it may be kept up each year, may be restricted and regulated by the orders of the Wisconsin department of natural resources. No such dam shall be erected to the injury of any mill lawfully existing. (See Wis. Stats. §§ 31.33(4) and 31.32)
- 1.20) Permits to construct, operate and maintain dams may be granted to persons, corporations or municipalities. If the owner of any existing dam wishes to raise or enlarge the same, the owner may apply to the Wisconsin department of natural resources for permission to do so. (See Wis. Stats. §§ 31.04 and 31.13 (1))
- 1.21) The Wisconsin department of natural resources shall establish water quality objectives for each water basin and for each priority watershed and priority lake and identify the best management practices to achieve the water quality objectives. In cooperation with the Wisconsin department of agriculture, trade and consumer protection and the appropriate governmental unit, the Wisconsin department of natural resources shall prepare watershed plans for all priority watersheds. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation strategy. (See Wis. Stats. §§ 281.65 and 281.20, and Wis. Admin. Code ch. NR 120)
- 1.22) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25-year, 24-hour storm, whichever is greater. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface water. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and DATCP 50)
- 1.23) Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)
- 1.24) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)
- 1.25) All livestock producers shall have no overflow of manure storage facilities; shall have no unconfined manure pile in a water quality management area; shall have no direct runoff from a feedlot or stored manure into the waters of the state. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of

animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code ch. NR 151, Sub. II, and ATCP 50)

- 1.26) For a construction site that has 5 or more acres of land disturbing construction activity, a written plan shall be developed and implemented, incorporating best management practices, to control 80% of the sediment load. A written storm water management plan shall be developed and implemented for each post-construction site. (See Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III)
- 1.27) Municipalities with an average density of 1000 people per square mile or greater shall develop and implement storm water management programs, including the adoption and administration of any necessary ordinance. (See Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III)
- 1.28) Owners or operators of municipal separate storm sewer systems shall obtain coverage from a Wisconsin pollutant discharge elimination system municipal storm water permit where the owner or operator serves an incorporated area with a population of 1000,000 or more, where the owner or operator has been notified in writing by the Wisconsin department of natural resources prior to August 1, 2004, or where the owner or operator of a municipal storm sewer system is within an urbanized area. (See Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216)
- 1.29) All concentrated animal feeding operations are required to be covered by a Wisconsin pollutant discharge elimination system permit. (See Wis. Stats. chs. 281 and 283 and Wis. Admin. Code ch. NR 243)
- 1.30) The purposes of the nonpoint source pollution abatement financial assistance program are to: provide the necessary administrative framework and financial assistance for the implementation of measures to meet nonpoint source water pollution abatement needs identified in areawide water quality management plans; provide coordination with all elements of the state's water quality program; provide technical and financial assistance for the application of necessary nonpoint source water pollution abatement measures; focus limited technical and financial resources in critical geographic locations where nonpoint source related water quality problems and threats are the most severe and control is the most feasible; and provide for program evaluation, subsequent modifications, and recommendations. (See Wis. Stats. § 281.65(1) and Wis. Admin. Code NR 153 and 154)
- 1.31) The Wisconsin department of natural resources shall administer an urban nonpoint source water abatement and storm water management program in a manner that promotes: management of urban storm water and runoff from existing and developing urban areas to achieve water quality standards, to minimize flooding and to protect groundwater; coordination of urban nonpoint source management activities and the municipal storm water discharge permit program; and implementation of nonpoint source performance standards. The department may provide a cost-sharing grant for projects. (See Wis. Stats. § 281.66 and Wis. Admin. Code NR 155)

2. Coastal natural areas, wildlife habitat and fisheries.

- 2.1) State natural areas are designated for the purposes of scientific research, the teaching of conservation and natural history, and preservation of native plant and animal communities or individual members of these communities and archeological sites. The Wisconsin department of natural resources shall not permit any use of a designated state natural area which is inconsistent with or injurious to its natural values. (Wis. Stats. § 23.26-.28. See also SCA #1 and 5)
- 2.2) State parks are to be established for public recreation and education. An area may qualify by reason of the area's scenery, its plants and wildlife or its historical, archeological or geological interest. The Wisconsin department of natural resources may classify park areas as to their most logical employment and greatest usefulness. (See Wis. Stats. § 27.01(1) and (2). See also SCA #1.)

- 2.3) The Wisconsin department of natural resources shall manage state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the ecological capability of the state forest land and with the long-term maintenance of sustainable forest communities and ecosystems. (See Wis. Stats. § 28.04(2)(a). See also SCA #1 and 5)
- 2.4) Taxation of agricultural land and undeveloped land need not be uniform. An owner may apply for a farmland preservation agreement if the county in which the land is located has a certified agricultural preservation plan in effect or the land is in an area zoned for exclusive agricultural use under a certified ordinance. (See Article VIII, Sec. 1 of the Wis. Constitution, Wis. Stats. §§ 71.57-71.67 and ch. 91)
- 2.5) No person may hunt or trap on land located in state parks or state fish hatcheries unless the department of natural resources has authorized by rule the hunting of that type of game in the state park or portion of the state park, and the person holds the approval required for hunting that type of game. (See Wis. Stats. § 29.089 and Wis. Admin. Code NR 10.275. See also SCA #1)
- 2.6) The Wisconsin department of natural resources may acquire and manage lands or waters for public shooting, trapping, or fishing grounds or waters for the purpose of providing areas in which any citizen may hunt, trap or fish. Fishery, forestry, wild resources and nonconsumptive recreational objectives will be accommodated when they do not detract significantly from the primary objectives of wildlife habitat and public hunting. (See Wis. Stats. §§ 23.09(2)(d)(3) and 23.11(1), and Wis. Admin. Code NR 1.51. See also SCA #1 and 5)
- 2.7) The taking, possessing, sale, processing and distribution of fish, wildlife and plant life designated by the state and/or the U.S. as endangered, native and foreign species is prohibited. (See Wis. Stats. § 29.604 and Wis. Admin. Code NR 27. See also managed use #8)
- 2.8) The Wisconsin department of natural resources shall identify and classify trout streams to ensure adequate protection and proper management of this unique resource. (See Wis. Stats. §§ 23.09(1)-(2) and Wis. Admin. Code NR 102 and NR 1.02. See also SCA #1 and 5)
- 2.9) Sport fishing shall be managed in such a way that all have an equal opportunity to safely enjoy the aquatic resources, regulated to the extent that fish and other aquatic resources are protected and enhanced; fishing does not exceed the capabilities of the resource to sustain desirable, quality fish populations; the social, biological and economic values associated with all recreational fishing are recognized; user conflicts are minimized; and aesthetic and cultural values associated with fishing are held in trust for future generations. (See Wis. Stats. §§ 23.09(1)-(2) and Wis. Admin. Code NR 1.01(9). See also SCA #1 and 5)
- 2.9.1) The Wisconsin department of natural resources will manage fishery resources of the Great Lakes in accordance with sound biological principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among the various users and the establishment of restricted areas. (See Wis. Stats. § 23.09(1)-(2) and Wis. Admin. Code NR 1.04(4))
- 2.10) The Wisconsin department of natural resources may acquire easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty. (See Wis. Stats. § 23.09(10). See also SCA #1 and 5)

- 2.11) Sport fishing shall be managed in such a way so that all have an equal opportunity to safely enjoy the aquatic resources, regulated to the extent that aquatic resources are protected and enhanced; fishing effort does not exceed capabilities of the resource to sustain desirable, quality fish populations; the social, biological and economic values associated with all recreational fishing, competitive and non-competitive are recognized; a sense of responsibility for the resource is inherent to all who participate and enjoy fishing; user conflicts are minimized, and aesthetic and cultural values associated with fishing are held in trust for future generations. (See Wis. Stats. § 23.09 and Wis. Admin. Code NR 1.01)
- 2.11.1) The Wisconsin department of natural resources may operate state fish hatcheries. The department may breed and propagate fish, distribute information regarding the propagation and conservation of fish, and receive and dispose of fish and fish eggs. The department may manage the state fish hatcheries and all other property held by the state for the propagation of fish. (See Wis. Stats. §§ 29.709-29.713)
- 2.11.2) The Wisconsin department of natural resources may designate such localities as it finds reasonably necessary to secure the perpetuation of any species of fish and maintenance of an adequate supply of the fish. The purpose of the fish refuges is to provide safe retreats in which fish may breed and replenish adjacent fishing waters. (See Wis. Stats. § 23.09(2)(c) and Wis. Admin. Code ch. NR 26)
- 2.12) The Wisconsin department of natural resources shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure continued opportunities for good fishing, hunting, and trapping. The department may regulate hunting and fishing on and in all interstate boundary waters and outlying waters. (See Wis. Stats. §§ 29.014(1) and 29.041. See also Wis. Stats. §§ 29.219 – 29.237 and 29.514 – 29.539 , SCA #1 and 5, and managed use #11)
- 2.13) All counties shall adopt shoreland ordinances for all unincorporated lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet of a lake, pond or flowage and 300 feet of a river or stream or to the landward side of the floodplain, whichever distance is greater. Each County shall, within 6 months after receipt of final Wisconsin wetland inventory maps of the county from the Wisconsin department of natural resources, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district. Any use not permitted by rule is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance. At a minimum, shoreland ordinances shall include the following provisions:
- (a) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.
 - (b) Building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boathouses.
 - (c) The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area. In the strip of land 35 feet wide in land from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut. In shoreland areas more than 35 feet inland,

trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

(d) Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with state regulations where applicable, and only if done in a manner to designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat. (See Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115. See also managed uses #26 and 27)

- 2.14) All cities and villages shall adopt and administer shoreland-wetland zoning ordinances for wetlands or portions of wetlands 5 acres or greater in size located a) within 1,000 feet of a lake, pond or flowage and b) 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. Any use not permitted by rule is prohibited unless the wetland, or portion thereof, is rezoned by amendment of the city or village. (See Wis. Stats. §§ 61.351 and 62.231, and Wis. Admin. Code NR 117. See also managed use #27)
- 2.15) The Wisconsin department of natural resources shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse, and interspersed with healthy aquatic and terrestrial communities. Department actions must be consistent with the goal of maintaining, protecting and improving water quality. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. (See Wis. Stats. §§ 281.12(1) and 281.11, and Wis. Admin. Code NR 1.95, NR 299, NR 103 and NR 353. See also managed use #1, 2, 3, 4, 5,6, 7, 8, 9, 17, 18, 19, 21, 22)
- 2.16) The Wisconsin department of natural resources may order and require any dam heretofore or hereafter constructed to be equipped and operated, in whole or in part, as follows:
- (a) With slides and chutes for the passage of logs and timber products.
 - (b) With a lock, boat hoist, marine railway or other device of a size and construction sufficient to accommodate navigation.
 - (c) With good and sufficient fishways or fish ladders, or in lieu thereof, the owner may be permitted to enter into an agreement with the department to pay for or supply to the State of Wisconsin annually such quantities of game fish for stocking purposes as may be agreed upon by the owner and the department.
 - (d) With spillways or flood gates capable of permitting the passage through or over the same of freshets and floods during all seasons of the year.
 - (e) With booms, piers or other protection works ample to safeguard gates from trash or other floating material. (See Wis. Stats. § 31.02(4))
- 2.16.1) The Wisconsin department of natural resources may investigate and determine all reasonable methods of construction, operation, maintenance and equipment for any dam so as to conserve and protect all public rights in navigable waters and so as to protect life, health and property; and the construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department. (See Wis. Stats. § 31.02(2))
- 2.17) The Wisconsin department of natural resources may operate, repair and maintain the dams and dikes constructed across drainage ditches and streams in drainage districts in the interest of drainage control, water conservation, irrigation, conservation, pisciculture, and to provide areas

suitable for the nesting and breeding of aquatic wild bird life and the propagation of fur-bearing animals. (See Wis. Stats. § 31.02(6))

- 2.18) It is declared to be the policy of the state to prohibit forever the building or maintaining of any dam across the Brule river or any of its tributaries in Douglas County, except that a dam with an adequate fishway may be constructed across said Brule river at each of 3 sites including the Clevedon site, the Old Mill site, or the upper Rock Dam site. (See Wis. Stats. § 31.30)
 - 2.19) Unless the Wisconsin department of natural resources has issued a permit or the legislature has granted authorization, no person may change the course of or straighten a navigable stream (See Wis. Stats. § 30.195)
 - 2.20) In order to afford the people of this state an opportunity to enjoy natural streams it is in the interest of this state to preserve some rivers in a free-flowing condition and to protect them from development. (See Wis. Stats. §. 30.26)
 - 2.21) The Wisconsin department of natural resources may rely upon wetland boundary determinations made by other agencies and consultants. If there is a dispute concerning a wetland boundary delineation, the review of the delineation shall be consistent with the procedures identified in the “Basic Guide to Wisconsin’s Wetlands and Their Boundaries” (Wisconsin Department of Administration PUBL-WZ-029-94) as determined by the department. (See Wis. Stats. §§ 281.11, 281.12, and 281.36(3), and Wis. Admin. Code NR 103.08(1m))
- NOTE: This guide is based upon the “Corps of Engineers Wetlands Delineation Manual, 1987” which has been regionalized for Wisconsin. For the purposes of delineating nonfederal wetlands, the Wisconsin department of natural resources shall use the procedures contained in the wetlands delineation manual published by the U.S. Army Corps of Engineers. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document the U.S. Army Corps of Engineers issues interpreting that manual.
- 2.22) No person may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a water quality certification issued by the Wisconsin department of natural resources. No person may violate any condition imposed by the department in a water quality certification. The department may not issue a water quality certification for a nonfederal wetland unless it determines that the discharge will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(2)(a))

3. Coastal erosion and flood hazard areas.

- 3.0.1) The Wisconsin department of natural resources shall prepare a model zoning ordinance for the construction site erosion control at sites where the construction activities do not include the construction of a building in the form of an administrative rule. (See Wis. Stats. § 281.33(5) and Wis. Admin. Code NR 152.)
- 3.1) Counties, cities and villages shall adopt reasonable and effective floodplain zoning ordinances for those parts of their jurisdiction subject to serious flood damage. These ordinances shall provide that construction be strictly regulated in floodways. Construction in floodplains and floodfringe areas will also be regulated. In addition, no development shall be allowed in floodplains along Lake Superior or Lake Michigan which will be adversely affected by wave run-up or which is associated with high flood damage potential. (See Wis. Stats. § 87.30, and Wis. Admin. Code ch. NR 116. See also managed use #15)
- 3.2) Within unincorporated areas, a setback of 75 ft. from the ordinary high water mark of an adjacent body of water shall be required, unless an existing development pattern exists. A county may enact a more restrictive ordinance. (See Wis. Stats. §§ 59.692 and 281.31, and Wis. Admin. Code NR 115. See also managed use #15, 26, and 27)

- 3.4) All new subdivision plats, buildings, structures, roads, sanitary or other facilities which are reviewed by state agencies and which are in existing and potential flood hazard areas shall be prevented from exposing citizens to unnecessary hazards or cause future public expenditures for flood disaster relief. (See 1973 Executive Order No. 67. See also managed use #15)
- 3.5) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for a required individual permit in order to place the structure for the owner's use or to deposit the material. The department shall issue an individual permit to a riparian owner for a structure or deposit application if the department finds that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m). See also managed use #7 and 15.)
 - 3.5.1) The Wisconsin department of natural resources may decide to require that a person engaged in an activity that is otherwise exempt from requiring a structures permit apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that the conditions specific to the site require restrictions on the activity in order to prevent any of the following: significant adverse impacts to the public rights and interests; environmental pollution; material injury to the riparian rights of any riparian owner. (See Wis. Stats. § 30.12(2m).
- 3.6) If the Wisconsin department of natural resources finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it shall determine what alterations additions or repairs are necessary and shall order the owner or person having control of the dam or reservoir to cause those alterations, additions or repairs to be made within a time specified in the order. If the department finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it may cause to be drawn off, in whole or in part, the water in the reservoir of impounded by the dam if it determines that this action is necessary to prevent impending danger to persons or property. (See Wis. Stats. § 31.19 (5))

4. Community development.

- 4.1) All coastal counties shall adopt and enforce ordinances for all unincorporated coastal shorelands. These regulations shall: maintain safe and healthful conditions; prevent and control water pollution; protect fish and aquatic life, particularly spawning grounds; control land uses, placement of structures, and building sites; reserve and protect shore cover; and protect natural beauty. (See Wis. Stats. §§ 59.692 281.31(1), and 281.35, and Wis. Admin. Code ch. NR 115. See also managed use #26.)
- 4.2) All subdivisions creating five or more lots of one and one-half acres or less within a five-year period shall meet state standards on surveying, lot size and street width connections, and public access (See Wis. Stats. ch. 236, and Wis. Admin. Codes NR 1.93(3). See also managed use #26)
- 4.4) It is the public policy and in the public interest of the state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of citizens. The state historical society shall: conduct an ongoing statewide survey to identify and document historic properties; prepare, update and maintain the Wisconsin inventory of historic places; maintain, publish and disseminate the national and state registers of historic places in Wisconsin; prepare the state preservation plan and annually renew it; undertake a program of technical assistance to localities and private parties in furtherance of local and private historic preservation programs; cooperate with federal, state, and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation

objectives, and in overall land use planning. (See Wis. Stats. §§ 44.30 and 44.34. See also SCA #1, 5, and 6)

- 4.5) The state long-range public building program shall recognize the importance of historic properties and shall include a program of preservation and restoration of those historic properties under state control. (See Wis. Stats. § 13.48(1m)(b). See also SCA #1, 5, and 6, and managed use #19)
- 4.6) The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may have an adverse effect upon historic properties, and ameliorate the adverse effects. (See Wis. Stats. §§ 1.11 and 44.34(10). See also SCA #1, 5, and 6)
- 4.7) State aesthetic resources shall be protected and enhanced through the regulation of billboards, the screening of junkyards, the purchase of scenic easements, the development of parkways, and the establishment and operation of a Rustic Roads program. (See Wis. Stats. §§ 83.42, 84.09, 84.105, 84.30 and 84.31. See also SCA # 6 and managed use #31)
- 4.8) All subdivisions abutting navigable lakes or streams shall provide public access of at least 60 feet in width at not more than one-half mile intervals except where greater intervals and wider access are agreed upon by the Wisconsin department of natural resources and the department of administration and excluding areas where public parks or open-space streets or roads on either side of a stream are provided. (See Wis. Stats. §§ 66.1006 and 236.16(3). See also managed use #25)
 - 4.8.1) Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The Wisconsin department of natural resources shall exercise its management and regulatory responsibilities to achieve this goal and to assure that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources. (See Wis. Stats. §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92.)
- 4.9) The state shall establish a state park system and shall give principal emphasis to the acquisition of recreational lands in the heavily populated areas of the state and in places readily accessible to such areas. (See Wis. Stats. §§ 23.09 and 27.01, and Wis. Admin. Code NR 1.40. See also SCA #1 and Issue Area 2 for other discussion of state parks.)
- 4.10) Local communities shall be encouraged to provide local recreational and educational opportunities through provision of state aids. (See Wis. Stats. § 23.30(2). See also SCA #1)
 - 4.10.1) The state shall provide technical and financial assistance to municipalities for the development of recreational boating facilities (See Wis. Stats. § 30.92)
- 4.11) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners. (See Wis. Stats. §§ 30.12 and 30.11. See also SCA #2, and managed use #1, 2, 6, and 7)
 - 4.11.1) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for the individual permit that is required in order to place a structure for the owners' use or to deposit the material. The

department shall issue an individual permit if the department finds that the structure or deposit will not materially obstruct navigation, the structure or deposit will not be detrimental to the public interest, and the structure or deposit will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m))

- 4.11.2) Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters. Unless an individual or a general permit has been issued by the department or authorization has been granted by the legislature, no person may remove any materials from the bed of any lake or any navigable stream. (See Wis. Stats. § 30.20(1))
- 4.11.3) The board of commissioners of public lands may lease to riparian owners rights to the beds of lakes and rights to fill in beds of lakes or navigable streams, held by the state in trust for the public, when the purpose of the lease is for the improvement of navigation or for the improvement or construction of harbor facilities. The board of commissioners of public lands may lease such rights to municipalities in locations where the municipality is the riparian owner, when the purpose of the lease is for the improvement or provision of recreational facilities related to navigation for public use. No leases may be executed without a prior finding of the Wisconsin department of natural resources that any proposed physical change in the area contemplated as the result of the execution of any term lease is consistent with the public interest in the navigable waters involved. (See Wis. Stats. § 24.39)
- 4.11.4) A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized by permit or unless other authorization for the wharf or pier is expressly provided. A wharf or pier which interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit or unless other authorization for the pier or wharf is expressly provided. A wharf or pier which extends into navigable waters beyond an established pierhead line constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. (See Wis. Stats. § 30.13(4))
- 4.11.5) No owner of riparian land that abuts a navigable water may convey, by easement or similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material in the navigable water. This does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project. (See Wis. Stats. § 30.133)
- 4.12) Unless an individual or a general permit has been issued by the Wisconsin department of natural resources, or authorization has been granted by the legislature, no person may:
 - a) construct, dredge, or enlarge any artificial water body that connects with a navigable waterway;
 - b) construct, dredge, or enlarge any part of an artificial water body that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway, including a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events, or

c) grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet.

For activities that are not exempt and that are not subject to a general permit, a person may apply to the department for an individual permit. The department shall issue an individual permit if it finds the activity will not be detrimental to the public interest, the activity will not cause environmental pollution, any enlargement connected to a navigable waterway complies with all of the laws relating to platting of land and sanitation, and no material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity. (See Wis. Stats. §§ 30.19(1g)—(4). See also SCA #14 and managed use #3, 4, and 5)

- 4.13) Any person, firm, corporation or municipality desiring a permit to construct, operate and maintain a dam shall file an application for a permit with the Wisconsin department of natural resources. The department may require the amendment of the application. If it appears that the construction, operation or maintenance of the proposed dam is in the public interest, considering ecological, aesthetic, economic and recreational values, the department shall so find and grant a permit to the applicant, provided the department finds that the applicant has complied with for proof of ability to maintain and proof of ownership or enforceable right to purchase the flowage area, when applicable. The enjoyment of natural scenic beauty and environmental quality are declared to be public rights to be considered along with other public rights and the economic need of electric power for the full development of agriculture and industrial activity and other useful purposes in the area to be served. The department shall deny the permit if it finds that the river in its natural state offers greater recreational facilities and scenic values for a larger number of people than can by proper control of the flowage level be obtained from the use of the lake and lake shore and that the remaining sections of the river and other rivers in the area in their natural state provide an insufficient amount of recreational facilities and scenic beauty, and if it further appears that the economic need of electric power is less than the value of the recreational and scenic beauty advantages of the river in its natural state. If the department finds that approval of the permit will cause environmental pollution, the permit shall be denied. (See Wis. Stats. §§ 31.06(1)-(3), 31.05(3), 31.14(2)-(3), and 299.01(4))
- 4.14) Any person, firm, corporation or municipality desiring a permit to operate and maintain a dam shall file with the Wisconsin department of natural resources a written application. If the department finds that such operation and maintenance does not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property, a permit is hereby granted to applicant, provided the department also finds that the applicant has complied with statutory requirements of proof of ability to maintain the dam(s). (See Wis. Stats. §§ 31.07, 31.08, 31.06, and 31.14)
- 4.15) No transfer or assignment of any permit granted to construct or to operate and maintain a dam shall be of any effect whatsoever unless it is in writing and a certified copy thereof within 10 days after the execution thereof, is filed with the Wisconsin department of natural resources and unless such transfer or assignment is approved in writing by the department; and no such transfer or assignment shall be approved by the department except after an investigation and a finding that the transfer or assignment is not made or intended to be made for a purpose or to create prohibited conditions and that the transferee or assignee has complied with requirements showing proof of the ability to maintain the dam. No permit shall be transferred or assigned to a foreign corporation. (See Wis. Stats. §§ 31.21 (1), 31.06, 31.08, 31.14(2)-(3), and 196.665)
- 4.16(a) It is the policy of the state to preserve the public rights in navigable waters, including those created by dams, and to provide a means of maintaining dams and the developments which have been made adjacent to the flowage of such dams. (See Wis. Stats. § 31.14(1))
- 4.16(b) A permit shall not be granted for constructing, maintaining and operating, or raising or enlarging a dam:

(a) Unless the applicant furnishes to the Wisconsin department of natural resources proof of ability to operate and maintain the dam in good condition, either by the creation of a special assessment district or by any other means which in the department's judgment will give reasonable assurance that the dam will be maintained for a reasonable period of time not less than 10 years; or

(b) If a majority of the municipalities in which 51% or more of the dam of flowage is or will be located files with the department, prior to the granting of the permit, their objections to the granting of such permit in the form of resolutions duly adopted by the governing bodies of such municipalities.

The above permit requirements do not apply if the applicant complies with each of the following requirements:

(a) Furnishes proof satisfactory to the department that the applicant owns or has an enforceable option to purchase all the land which is or will be flowed by the impoundment, together with the shore line and an immediately adjacent strip of land at least 60 feet in width, but the department may in a particular case permit a narrower strip where the 60-foot minimum is impractical and may require ownership of a wider strip.

(b) Files with the department a writing in such form as the department requires in which the applicant agrees that following the initial filling of the proposed pond the applicant will not convey the dam to another without first obtaining department approval. The department may require from an applicant who does not have the power of eminent domain a bond or other reasonable assurances that the applicant will adhere to such agreement.

(c) Furnishes proof satisfactory to the department that the applicant has dedicated or will dedicate a parcel of land for public access to the impounded waters. (See Wis. Stats. §§ 31.14(1)-(4), 31.06, 31.08, and 31.13)

4.16(c) The Wisconsin department of natural resources may by rule require all or special classes of persons operating a dam for profit to create a fund or reserve to be used for major repairs, reconstruction or removal of the dam when necessary. This does not apply to a person who has the power of eminent domain. (See Wis. Stats. § 31.14(5))

4.17(a) The grantee of any permit and the owner of any dam constructed before permits were required by law shall maintain and operate all such dams slides, chutes, piers, booms, guide booms, weirs, tunnels, races, flumes, sluices, pits, fishways, locks, boat hoists, marine railways and all other equipment required by the Wisconsin department of natural resources for the protection of public rights in such waters, and for the preservation of life, health and property, in good repair and condition, and shall not willfully, or otherwise, injure, remove or destroy the same, or any part thereof, unless the department shall have approved such removal or destruction in writing. In the event of emergency the department shall have power, pending investigation and hearing, to order the repair of any dam without notice and hearing. (See Wis. Stat. § 31.18(1))

4.17(b) The owner of any permitted dam or any dam constructed before permits were required shall open such slide or chute for the passage of any craft or material lawfully navigating the stream, whenever requested to do so by the person in charge of such navigation, without charge or toll therefor. (See Wis. Stat. § 31.18(2))

4.17(c) Except when emergency shall require the same for the protection of life, health or property, no substantial alteration or addition shall be made to any dam without obtaining an order from the Wisconsin department of natural resources, which order may be issued only after an investigation

and upon a finding that the proposed alterations or additions will not impair the sufficiency of such dam or any existing public rights in such waters. (See Wis. Stats. § 31.18(3))

- 4.17(d) The Wisconsin department of natural resources shall, in the interest of public rights in navigable waters, or to promote safety and protect life, health and property, require the grantee of any permit, prior to flowing any lands by the construction of a dam thereunder, to remove from such lands all or any portion of the standing and fallen timber and all or any portion of the brush. Provided that in cases where the application for a permit proposes construction of a dam for water reservoir or water storage purposes, and not for operating a hydroelectric generating plant, the nature, extent, and time for such removal shall be determined prior to the granting of a permit, except that subsequent to the granting of a permit, the department may make such modification in the removal requirements as may be in the public interest and which will not materially alter the economics of the project; and in making such original determination or any modification thereof the economic need for the project shall be considered. (See Wis. Stats. §31.18(4))
- 4.18) No owner of any dam may abandon or remove or alter the dam without first obtaining a permit from the Wisconsin department of natural resources. No person may transfer ownership of a dam or the ownership of the specific piece of land on which a dam is physically located without first obtaining a permit from the department. As a prerequisite to the granting of a permit, the department may require the applicant to comply with conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health and property. (See Wis. Stats. §§ 31.185(1) and (5))
- 4.19) No private bridge shall be maintained unless its construction shall first be approved by the Wisconsin department of natural resources. Every such bridge used by the public shall at all times be maintained in a safe condition by the owners of the land abutting the approaches of the bridge. (See Wis. Stats. § 31.23(3))
- 4.20) Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters of the State of Wisconsin in violation of the Wisconsin Statutes, and every dam not furnished with a slide, chute, or other equipment prescribed by the Wisconsin department of natural resources, is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof . (See Wis. Stats. § 31.25)
- 4.21) Each person, firm or corporation maintaining a dam on any navigable stream shall pass at all times at least 25% of the natural low flow of water of such stream, except as otherwise prescribed by law. This section , however, shall not apply to a plant or dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh, nor shall it apply to cases where in the opinion of the Wisconsin department of natural resources, such minimum discharge is not necessary for the protection of fish life. (See Wis. Stats. § 31.34)
- 4.21.1) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may construct or maintain a bridge or construct, place, or maintain a culvert in, on, or over navigable waters. Any person who is issued a permit respecting a bridge that may be used by the public shall construct and maintain the bridge in a safe condition at all times. (See Wis. Stats. § 30.123(2) – (5))

- 4.22) Any public utility may, pursuant to permit granted by resolution of the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior or in the Great Lakes basin, construct, maintain and operate upon and under the bed thereof all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility. (See Wis. Stats. § 30.21(1))

5. Economic development.

- 5.1) The Wisconsin department of commerce shall foster, encourage and advocate economic development programs designed as to broaden and strengthen the state's economy. (See Wis. Stats. § 560.03. See also SCA #2)
- 5.2) The Wisconsin department of commerce shall locate and maintain information on prime industrial sites. (See Wis. Stats. § 560.03(6). See also SCA #2)
- 5.3) The Wisconsin department of transportation may direct, undertake, and expand state and federal aid for planning, promotion and protection activities in the areas of highways, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems, and for any other transportation mode. (See Wis. Stats. §§ 85.02, 194.02, and 85.09. See also managed use #21, 22, 23 and 24)
- 5.4) The Wisconsin department of tourism shall promote travel scenic, historic, natural, agricultural, educational and recreational attractions. (See § 41.11(a)-(b). See also SCA #1)
- 5.5) The orderly and ecologically sound development of commercial tourist facilities shall be coordinated and stimulated by the Wisconsin department of tourism (See Wis. Stats. § 41.11(l)(f). See also SCA #2)
- 5.6) The Wisconsin department of natural resources shall prepare a plan for each state forest that describes how the state forest will be managed. The department shall work with the public to identify the property goals and objectives that are consistent with the identified purposes and benefits of state forests. The department shall identify in each plan the objectives of management for distinct areas of the state forests. The department's natural resources board's objectives for the management of state forests and county forests is to grow forest crops by using silvicultural methods that will perpetuate the forest and maintain diversified plant and animal communities, protect soil, wetlands, streams, lakes, shorelines and wetlands, in a true multiple-use concept. (See Wis. Stats. § 28.04(3)(a))
- 5.6.1) It is the intent of the State of Wisconsin to encourage a policy of protecting from destructive or premature cutting the forest growth in the state, and of reproducing and growing for the future adequate crops through sound forestry practices of forest products on lands not more useful for other purposes, so that such lands will continue to furnish recurring forest crops for commercial use with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands. (See Wis. Stats. § 77.01)
- 5.8) The Wisconsin department of transportation, in consultation with the Wisconsin coastal management council, shall administer the harbor assistance program. The state may provide financial assistance for commercial harbor improvements. (See Wis. Stats. § 85.095(2). See also SCA #2)

- 5.9) No person may divert water from a stream in the state of Wisconsin without an individual permit if the diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream or if the diversion is for the purpose of agriculture or irrigation. No person, except a person required to obtain an approval permit of a sewage system or extension plan, may divert water from any lake or stream in this state without an individual permit if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss. (See Wis. Stats. §. 30.18)
- 5.10) The Wisconsin public service commission shall prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. (See Wis. Stats. § 196.491(2)(a). See also SCA #4 and managed use #16)
- 5.10.1) Unless specified otherwise by the Wisconsin Statutes, no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity. (See Wis. Stats. §§ 196.491(3)(a)1 – 196.491(3b) and Wis. Admin. Code PSC 112)
- 5.10.2) The Wisconsin public service commission shall approve an application for a certificate of public convenience and necessity only if the commission determines, among other findings, all of the following:
- (a) The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. This does not apply to a wholesale merchant plant.
 - (b) The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors, except that the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant. In its consideration of the environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet statutory requirements for air pollution.
 - (c) For a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high voltage transmission line provides usage, service, or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line.
 - (d) The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.
 - (e) If it is a public utility, the commission may refuse to certify a project if it appears that the completion of the project will substantially impair the efficiency of the service of the public utility, provide facilities unreasonably in excess of the probable future requirements, or when placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.
 - (f) The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved
 - (g) The proposed facility will not have a material adverse impact on competition in the relevant wholesale electric service market.

(h) For a large electric generating facility, brownfields are used to the extent practicable.

(i) The department of natural resources shall issue, or authorize proceedings under, necessary permits if it finds that the applicant has shown that the proposal does not unduly affect:

- (1) public rights and interests in navigable waterways;
- (2) the effective flood flow capacity of a stream;
- (3) the rights of riparian owners; or
- (4) water quality. (See Wis. Stats. §§ 196.491(3) and 30.025, and Wis. Admin. Code ch. PSC 111-112)

- 5.10.3) The Wisconsin public service commission may not certify any nuclear power plant unless the commission finds that a federally licensed facility, or a facility outside of the United States which the commission determines will satisfy the public welfare requirements of the people of the state, with adequate capacity to dispose of high-level nuclear waste from all nuclear power plants operating in the state will be available, as necessary, for the disposal of the waste and the proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers. (See Wis. Stats. § 196.493)
- 5.11) If installation or utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed. (See Wis. Stat § 196.491(3)(i)-(j). See also SCA #4 and managed use #16)
- 5.12) The Wisconsin department of administration shall prepare and maintain contingency plans for responding to critical energy shortages so that when the shortages occur, they can be dealt with quickly and effectively. (See Wis. Stats. § 16.95(12))
- 5.13) Except where the stream to be improved forms a boundary line between this and another state, no water power permit shall be granted or transferred until the applicant has filed with both the Wisconsin department of natural resources and the public service commission, in addition to all other things required by law to be filed, an agreement setting forth that, in the event any electric energy generated under said permit shall be transmitted or conveyed beyond the confines of this state to be there sold, the applicant will furnish to any resident of this of any corporation domiciled therein electric energy at reasonable rates to be determined by the commission, provided that the commission after public hearing shall find that public convenience and necessity require such service. (See Wis. Stats. § 31.095 (1))
- 5.14) Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter maintain the same in such condition against an effects in any manner produced by such railroad. (See Wis. Stats. § 190.08)

6. Governmental Interrelationships.

- 6.1) A Wisconsin Coastal Management Council will be created with representation from state agencies, local governments, tribal governments, the University System and the public to oversee program operations and activities. (See 1984 Executive Order #62. See also, Chapter II, Organization for Program Implementation.)

- 6.2) The Wisconsin department of administration shall evaluate the plans of all state agencies, identify both duplication and program gaps in the plans, and measure the agency plans with the state goals enacted by the Governor and the Legislature. (See Wis. Stats. § 16.95(7))
- 6.3) Structural reorganization of state government shall be a continuing process, with the goals of assuring responsiveness to popular control, improved public understanding of government, and efficient and effective administration of state policies. (See Wis. Stats. § 15.001)
- 6.4) All state agencies shall prepare detailed statements on the environmental and economic impacts of all major actions significantly affecting the quality of the human environment. Prior to making such statements, the agency shall consult with any other agency that has jurisdiction or special expertise with respect to any environmental impact involved. (See Wis. Stats. §§ 1.11(2)(c)-(d))
- 6.5) All state agencies shall study, develop and describe appropriate alternatives to their recommended courses of action in any proposal that involve unresolved conflicts concerning alternative uses of available resources. (See Wis. Stats. § 1.11(2)(e))
- 6.7) State agencies and localities shall mutually cooperate to enhance the quality, management and protection of the state's air. (See Wis. Stats. § 285.11)

7. Public Involvement.

- 7.1) The public shall be entitled to the fullest and most complete information regarding the affairs of government, compatible with the conduct of government business. To this end, all meetings of all state and local governments shall be preceded by public notice, shall be open to the public, and shall be held in places reasonably accessible to members of the public. (See Wis. Stats. §§ 19.81(1)-(2) and 19.83)
- 7.2) Except as otherwise provided by law, any requester has a right to inspect any public record. (See Wis. Stats. § 19.35)
- 7.4) The Wisconsin department of natural resources shall, upon the verified complaint of six or more citizens, hold a public hearing relating to any alleged or potential environmental pollution. The alleged or potential polluter shall be served with notice of the hearing and the department shall, within 90 days after the hearing, issue findings of fact, conclusions of law and an order. (See Wis. Stats. § 299.91)