

# Wisconsin Coastal Management Program

## A Strategic Vision for the Great Lakes



### **WISCONSIN COASTAL MANAGEMENT PROGRAM**

Wisconsin Department of Administration  
Division of Intergovernmental Relations

**October 2007**

**State of Wisconsin**  
**Jim Doyle, *Governor***

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**State of Wisconsin Department of Administration**  
**Michael L. Morgan, *Secretary***

**Division of Intergovernmental Relations**  
**Harald Jordahl, *Acting Administrator***

## **PREFACE**

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This document describes Wisconsin's federally approved Coastal Management Program for the Great Lakes. Since the Program was established in 1978 under the Federal Coastal Zone Management Act, and since the last Program Document Update, some of the Program's specific policies and procedures have been changed. This document reflects those federally approved changes.

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## TABLE OF CONTENTS

<b>I. COASTAL ISSUES AND POLICIES .....</b>	<b>6</b>
A. INTRODUCTION .....	6
B. COASTAL MANAGEMENT GOAL AND PROGRAM OBJECTIVES .....	7
1. <i>Coastal management goal.</i> .....	7
2. <i>Coastal management objectives.</i> .....	7
3. <i>Improve implementation.</i> .....	7
4. <i>Improve coordination.</i> .....	8
5. <i>Strengthen local capabilities.</i> .....	8
6. <i>Coastal advocacy.</i> .....	8
7. <i>Increase public awareness and participation.</i> .....	8
C. COASTAL ISSUES AND STATE COASTAL POLICIES .....	10
1. <i>Coastal water quality and quantity and coastal air quality.</i> .....	10
a) Issues and problems. ....	10
b) General policy statement. ....	11
c) Coastal program activities. ....	12
2. <i>Coastal natural areas, wildlife habitat and fisheries.</i> .....	12
a) Issues and problems. ....	12
b) General policy statement. ....	13
c) Coastal program activities. ....	13
3. <i>Coastal erosion and flood hazard areas.</i> .....	13
a) Issues and problems. ....	13
b) General policy statement. ....	14
c) Coastal program activities. ....	14
4. <i>Community development.</i> .....	15
a) Issues and problems. ....	15
b) General policy statement. ....	15
c) Coastal program activities. ....	16
5. <i>Economic development.</i> .....	16
a) Issues and problems. ....	16
b) General policy statement. ....	17
c) Coastal Program Activities. ....	17
6. <i>Governmental Interrelationships.</i> .....	18
a) Issues and problems. ....	18
b) General Policy Statement. ....	18
c) Program Activities. ....	19
7. <i>Public Involvement.</i> .....	19
a) Issues and Problems. ....	19
b) General Policy Statement. ....	19
c) Coastal Program Activities. ....	19
<b>II. IMPLEMENTING THE COASTAL MANAGEMENT PROGRAM IN WISCONSIN .....</b>	<b>21</b>
A. OVERVIEW .....	21
1. <i>Underlying concerns and assumptions.</i> .....	21
2. <i>Focus state attention on key coastal areas and uses.</i> .....	21
3. <i>Wisconsin Coastal Management Council.</i> .....	22
4. <i>Roles of existing governmental agencies.</i> .....	22
5. <i>Public involvement.</i> .....	22
ATTACHMENT B: MANAGING COASTAL RESOURCES AND DEVELOPMENT .....	23
B. MANAGING COASTAL RESOURCES AND DEVELOPMENT .....	23
1. <i>Special coastal areas (SCAs).</i> .....	23
a) Overview. ....	23
b) Designated areas. ....	23
c) Implications of designation. ....	25
d) Priority for assistance. ....	25
2. <i>Land and water uses of management concern.</i> .....	26

a) Overview.....	26
b) Process for identifying "managed uses".....	27
c) Identification of proposed initial "managed uses".....	27
d) Summary of techniques for managing the uses.....	28
e) Activities of regional benefit.....	37
3. <i>Program boundaries</i> .....	39
<b>C. ORGANIZATION FOR IMPLEMENTATION OF THE MANAGEMENT PROGRAM</b> .....	<b>40</b>
1. <i>Overview</i> .....	40
2. <i>Functions addressed at the state level</i> .....	40
3. <i>Wisconsin Coastal Management Council</i> .....	42
a) Staff for the Coastal Management Council.....	44
b) Establishment of the Wisconsin Coastal Management Council.....	44
4. <i>Roles of existing governmental agencies</i> .....	44
5. <i>Conflict resolution</i> .....	45
a) Office of the Governor.....	45
b) Department of Administration.....	46
c) Wisconsin Environmental Policy Act (WEPA).....	46
d) The Budget Process.....	46
e) Administrative Review Process.....	46
f) Interagency Committees.....	46
g) State Review of Federal Actions.....	46
h) Judicial Review.....	46
6. <i>Public participation in implementation of the Program</i> .....	47
<b>D. PROGRAM FUNDING</b> .....	<b>48</b>
1. <i>Overview</i> .....	48
a) Introduction.....	48
b) Program coverage.....	48
c) Accountability.....	48
2. <i>Funding sources for the Coastal Management Program</i> .....	49
a) Federal Funds.....	49
b) State Match.....	49
3. <i>Eligible funded activities and recipients</i> .....	49
4. <i>Considerations in project funding</i> .....	52
5. <i>Application process</i> .....	52
6. <i>Reporting and evaluation</i> .....	53
<b>III. FEDERAL GOVERNMENT ACTIVITIES IN THE COASTAL AREA</b> .....	<b>54</b>
A. OVERVIEW.....	54
B. THE NATIONAL INTEREST IN THE WISCONSIN COASTAL AREA.....	55
1. <i>The national interest in the Wisconsin coastal area</i> .....	55
a) Commercial Navigation.....	55
b) Energy.....	56
c) Defense Facilities.....	56
d) Other Facilities.....	57
e) National Interest in Coastal Resource Conservation and Protection.....	57
2. <i>Consideration of the national interest during Program development</i> .....	57
3. <i>Process for continuing consideration of the national interest during Program implementation</i> .....	58
C. FEDERAL CONSISTENCY.....	61
1. <i>Projects subject to review</i> .....	61
a) Location.....	61
b) Federal Involvement.....	62
c) Thresholds.....	62
2. <i>Review criteria</i> .....	62
D. FEDERAL CONSISTENCY-FEDERAL GRANTS AND FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS.....	63
1. <i>Types of projects requiring consistency review</i> .....	63
2. <i>Review through clearinghouse procedures</i> .....	63
3. <i>State concurrence or objection</i> .....	63
E. FEDERAL CONSISTENCY-LICENSES AND PERMITS.....	64

1. Federal permits requiring consistency certification.....	64
2. Content of the consistency certification.....	64
3. State review.....	65
4. Public notice.....	65
5. State concurrence or objection.....	65
F. FEDERAL CONSISTENCY-DIRECT FEDERAL ACTIVITIES .....	66
1. Federal activities requiring consistency determinations.....	66
2. Content of the consistency determination.....	66
3. State review procedure.....	66
G. TRIBAL GOVERNMENTS .....	67
H. PUBLIC PARTICIPATION .....	68
<b>IV. CONCLUSIONS .....</b>	<b>69</b>
<b>ATTACHMENT A: EXECUTIVE ORDER.....</b>	<b>70</b>
<b>ATTACHMENT B: INTERAGENCY AGREEMENTS ON COASTAL MANAGEMENT.....</b>	<b>74</b>
<b>ATTACHMENT C: SPECIFIC STATE COASTAL POLICIES .....</b>	<b>83</b>
1. Coastal water quality and quantity and coastal air quality.....	83
2. Coastal natural areas, wildlife habitat and fisheries.....	86
3. Coastal erosion and flood hazard areas.....	90
4. Community development.....	91
5. Economic development.....	96
6. Governmental Interrelationships.....	98
7. Public Involvement.....	99

## **I. COASTAL ISSUES AND POLICIES**

### **A. INTRODUCTION**

Did you know that the water in all of the Great Lakes is cleaner now than at any time in recent history? That a wave of redevelopment is sweeping city waterfronts, making them more accessible and enjoyable to the public? That there is now general agreement that every reasonable step must be taken to protect the Great Lakes because they are a key to Wisconsin's future?

Major progress has been made since 1978, when Wisconsin established this federally approved Coastal Management Program for the Great Lakes. But the job is just beginning.

While massive investments have been made in cleaning up the Great Lakes, pollution, some of it toxic, is entering the water largely unchecked from diffuse sources like street runoff, abandoned waste sites and farmland erosion. Some cities' waterfront redevelopment plans have been stymied because of toxic sediments in their harbors.

While the fresh water supply of the Great Lakes appears vast, it is threatened by the projected doubling of consumptive use of water within the region and pressure from other regions that are depleting their fresh water supplies.

While a more cooperative spirit has evolved among the many agencies that affect the Great Lakes, there is still institutional resistance to comprehensive coastal resource management efforts.

These are the kinds of concerns that dramatize the urgency of continuing to strengthen management of the Great Lakes and their coasts. Not all of the problems, or accomplishments, are as dramatic as those cited above. But the public has expressed concern that there be a comprehensive approach to addressing all Great Lakes issues. Citizens and the many governmental agencies that share jurisdiction over the Great Lakes will work at cross purposes unless this is done.

Working cooperatively with other states and provinces, Wisconsin has successfully strengthened planning, policies and programs governing a wide range of Great Lakes issues. The outlines of a comprehensive management program for the entire basin are now in place.

The biggest challenge now is to maintain the momentum. The prospects are encouraging. Federal funding for coastal management has been extended, although the state will have to make more of a financial contribution than in the past. More importantly, the level of interest in the Great Lakes among policymakers on both sides of the border throughout the region is higher than it has ever been in the last 10 years. The magnitude of the challenge will only be met by their continued enthusiasm and resolve. Organizations outside government and informed citizens can and should play a pivotal role in continuing to highlight Great Lakes issues and by asking questions about progress in Wisconsin, and in the other Great Lakes states and provinces, towards more effective resource management for the Great Lakes.

This chapter begins by setting out the state's overall coastal management goal and the five Program objectives for reaching that goal (Section I.B.). The second section of this chapter sets out specific coastal issues in Wisconsin and the state's general policy, and Coastal Program activities on each of these issues (Section I.C.). Specific statements of state policy can be found as Attachment C.

## B. COASTAL MANAGEMENT GOAL AND PROGRAM OBJECTIVES

### *1. Coastal management goal.*

To preserve, protect, develop and where possible, to restore or enhance, the resources of Wisconsin's coastal area for this and succeeding generations, with governmental coordination and public involvement, giving due consideration to the linkages and impacts to resources of inland areas.

This coastal management goal is a statement of the overall purpose of the Program. It expresses that:

- (1) a balance must be achieved between conservation and development in Wisconsin's coastal areas;
- (2) this balance must consider coastal areas and inland areas as well, when those areas affect or are affected by the coasts; and
- (3) government and citizens must work together if such a balance is to be successfully achieved.

### *2. Coastal management objectives.*

- To improve the implementation and enforcement of existing state regulatory and management policies and programs affecting key coastal uses and areas;
- To improve the coordination of existing policies and activities of governmental units and planning agencies on matters affecting key coastal uses and areas;
- To strengthen local governmental capabilities to initiate and continue effective coastal management consistent with identified state standards and criteria;
- To provide a strong voice to advocate the wise and balanced use of the coastal environment and the recognition in federal, state, and local policies of the uniqueness of the coastal environment; and
- To increase public awareness and opportunity for citizens to participate in decisions affecting the Great Lakes resources.

These five major objectives represent how the Coastal Management Program improves existing management of the Wisconsin coastal resources. The Coastal Management Council carefully selects projects which address gaps or weak points in existing management programs. The Coastal Management Council uses limited federal and state funds to bring about long-term resource management improvements. This Program is complementary to existing state and federal programs, not a substitute for them.

The following paragraphs elaborate on the five Coastal Management Program objectives. Section C explains how the Coastal Management Program, working through existing state and local management policies, addresses the coastal issues of concern to Wisconsin.

### *3. Improve implementation.*

The Coastal Management Program focuses on improvement of coastal management through better application of existing laws and programs. This includes identifying overlapping or conflicting agency functions, streamlining of regulatory processes, improved training of personnel, and providing other technical and financial assistance.

Key geographic areas and key land and water uses receive special efforts to improve management through a process of development and implementation of specific management policies. This process can be initiated by state agencies, local units of government, and citizens through their local unit of government. Designated areas and uses are eligible for Program assistance.

#### *4. Improve coordination.*

The Coastal Management Program provides coordination of existing state, regional, and local programs and policies that affect the Great Lakes resource. Coordination will take place through Coastal Management Council discussion, staff activities, and review and comment through state and regional clearinghouse processes and the National and Wisconsin Environmental Policy Acts. Additional mechanisms discussed in Section II.C. of this document provide oversight of state agency compliance and federal agency consistency with state coastal goals and policies.

#### *5. Strengthen local capabilities.*

The Coastal Management Program recognizes both state and local governmental roles in determining the future of the coastal area. While state government has a number of basic responsibilities such as stewardship of the public's interests in the waters of the state, local governments also have important responsibilities for the detailed management and planning of the coastal areas. This sharing of responsibilities suggests the need for strengthening the ability of local governments to address coastal concerns. The Program assists in strengthening local government capabilities consistent with identified state standards and criteria and with Program policies as described within this document.

#### *6. Coastal advocacy.*

A state-level Coastal Management Council provides a forum for discussion of coastal issues, addressing the need for human activity to be in harmony with the natural environment. This Council uses its advocacy role to focus attention of legislative bodies and managing agencies, whether federal, state, or local government, on coastal issues. It is a voice for the greater common interest.

Though many existing laws and programs treat them as such, the Great Lakes are not just any two of Wisconsin's 10,000 lakes. The Council advocates that the Great Lakes are unique and deserve special attention in the allocation of finite state and federal resources. Such attention can take the form of policy recognition, improved enforcement of regulations, or closer scrutiny of those plans and programs which might have significant impacts on the coastal environment.

If existing regulatory programs are not adequate to solve problems occurring along the Great Lakes, the Coastal Management Council might advocate new regulatory authority to the Wisconsin Legislature.

#### *7. Increase public awareness and participation.*

Perhaps the most valuable and long-lasting function of this Coastal Management Program is to educate citizens and officials about Great Lakes issues and create an appreciation for the need to guide development to minimize future coastal problems.

There is a need for a better understanding of the limits of the resource so that future options are seen in the light of that knowledge.

Increased opportunities for citizen involvement in the policy and decision-making process are equally important. Such mechanisms are described in Section II.C. of this document.

The thrust of the goals and objectives of this Program is to improve the quality of decision-making related to Wisconsin's Great Lakes resources. These goals are similar to the Congressional findings and policy of the Coastal Zone Management Act of 1972. As stated in Sec. 303 of the Act as amended, Congress set forth, the following national policy:

a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations,

b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development,

c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purpose of this title, and

d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental programs.

Congress further declared that in reaching this goal:

"...the key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance."

Wisconsin's Coastal Program seeks to attain these goals in the Great Lakes region. The Great Lakes coastal area of Wisconsin is a valuable ecological, economic and aesthetic state resource, and Lakes Superior and Michigan and Green Bay are recognized as vast water resource reservoirs which benefit the state. There exists a need to understand the balance of the inherent potentials and natural limitations of these resources with the needs of society. There is a public and private need to maintain and revitalize the economic, ecological, historical and visual qualities of the coastal area. The responsibility for developing and maintaining this balance between developmental and conservation interests is shared by state and local elected and appointed officials, private citizens, business/industry and agriculture and public interest groups. To have a well-balanced coastal management program, participation of these various interests must be assured.

## C. COASTAL ISSUES AND STATE COASTAL POLICIES

This section examines coastal issues in Wisconsin, sets out state coastal policies, and indicates what the state's Coastal Management Program activities will be in that issue area. This discussion is grouped into seven general issue areas:

- (1) coastal water quality and quantity and air quality;
- (2) coastal natural areas, wildlife habitat, and fisheries;
- (3) erosion and flood hazard areas;
- (4) community development;
- (5) economic development;
- (6) governmental interrelationships; and
- (7) public involvement.

There is a four-part discussion for each of these seven issue areas. First there is a summary discussion of the issues and problems facing Wisconsin relative to that issue area. Second, there is a general statement of state policy relative to that issue area. The third section sets out more specific state policies on the issues. It is important to remember that these policies are based on existing state policies and programs. Therefore, the reader should examine the sections of this document on managed uses and "special coastal areas" (SCAs) in Chapter II that are cross-referenced following each specific policy statement. Specific statutory language, with precise definitions, qualifications and subtleties that may be lacking with these generalized policy statements, are found in Chapter II. The fourth section of the discussion for each of the seven issue areas states, generally in terms of the five program objectives set out in the previous section, what this Program adds to existing state coastal programs.

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

#### a) Issues and problems.

The Great Lakes are an extremely important and valuable natural resource. They contain approximately 20% of the world's fresh water. Lake Superior has the highest water quality of all the Great Lakes. With the exception of some toxic "hot spots", Lake Michigan also has very high water quality. Maintenance of this water quality is of very high concern to Wisconsin residents. Wisconsin's air quality, relative to that of some parts of the country, is very good. Maintenance of this quality and improvement in certain areas is of concern to Wisconsin citizens.

Specific water and air quality issues and problems include:

- 1) The Great Lakes are used for the disposal of industrial, shipping and municipal wastes. There is an increasing industrialization and urbanization of the coastal area. When pollution from non-point sources is added such as agricultural runoff, runoff from construction sites, sedimentation and shore erosion future water quality becomes an even more acute problem.
- 2) More specifically, a serious water quality problem has emerged as toxic substances are increasingly showing up in the Great Lakes; consumption of lake trout is already restricted due to high PCB concentrations. The presence of DDT and heavy metals may also pose serious health hazards.

3) Another water quality problem is caused by inadequate or malfunctioning private waste disposal systems. Heavy residential use of septic systems has caused localized public health problems, leading to a need for careful location of private facilities.

4) A number of coastal communities rely on the Great Lakes for water supply. Poor water quality can make the water unsafe for consumption (as happened in part of the Minnesota area of Lake Superior with the Reserve Mining situation). Increasing urbanization and industrialization threatens municipal water supplies.

5) The Great Lakes are also a significant recreational resource. High water quality, including its aesthetic qualities, must be maintained to allow recreational use of the waters to continue. Increased pollution and, in some areas, erosion and siltation have created problems in this regard.

Note: Also see Issue Area 3, where shore erosion is discussed and Issue Area 4 where shoreland alteration and shoreline recreation activities are discussed.

6) The flows and levels of the Great Lakes and their tributaries are an important determinant of the usefulness and attractiveness of these waters for many coastal functions, including manufacturing processes, wastewater dilution and assimilation, domestic supply, hydropower generation and thermal power cooling, navigation, water-based recreation, and maintenance of fish and wildlife habitat and valuable coastal areas. In the future, Wisconsin will rely even more heavily on the waters for these and perhaps new uses. The level of consumptive uses of Great Lakes waters in the region is expected to increase by between 50% and 100% during the period, 1980-2000. Despite the abundant precipitation that Wisconsin enjoys overall, water shortages in the state have occurred periodically, and certain areas in the Great Lakes basin suffer from dropping groundwater tables. Permanent declines in Great Lakes water levels or tributary flows could seriously harm water-dependent businesses, coastal ecosystems, and quality of life of both residents of and visitors to Wisconsin's coastal zone.

7) Wisconsin's primary air quality problem is interstate summertime ozone concentrations along southern Lake Michigan. As industries and utilities switch from natural gas to petroleum or coal, additional problems with sulfur emissions are anticipated. (Also see Issue Area 5, Economic Development, for discussion of energy policies.)

8) A principal statewide air quality problem is the level of particulates suspended in the air. Localized air quality problems include excessive dust from gravel roads, agricultural or construction areas, and fumes from traffic and some industries.

9) Another issue is the degree of interrelationship between air and water quality. It is estimated that up to 25% of the particles in the air will settle out or be washed by rain into the Great Lakes. Also, the relationship between noise and the natural, cultural and social environment needs to be examined.

#### b) General policy statement.

The state's policy on coastal waters is to manage these waters for the purpose of improving their quality and protecting their levels and flows in order to restore their chemical, physical and biological integrity; to protect public health, safeguard aquatic life and scenic and ecological values; and to enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water. The state policy on coastal air quality is to improve the quality of the air resource through restricting any new air contaminant source and restricting the discharge of hazardous pollutants.

c) Coastal program activities.

1) The Wisconsin Coastal Management Program will provide financial assistance to improve implementation and enforcement of existing water and air quality programs where gaps or weaknesses are identified, with emphasis on:

- (a) on-site waste disposal;
- (b) disposal of hazardous substances;
- (c) disposal of dredge spoils; and
- (d) coordination and of air quality monitoring.

2) The Wisconsin Coastal Management Program will encourage consideration of water, air and noise pollution in the development of plans and proposals for Coastal Program funding.

3) The Wisconsin Coastal Management Program will perform advocacy functions in monitoring and reviewing changes and additions in water quality and quantity and air quality programs and regulations which impact on coastal resources and people, and will advocate compliance with state enforceable policies in the coastal zone.

4) The Wisconsin Coastal Management Program will support public awareness and research of:

- (a) factors affecting Great Lakes water quality and supply, with emphasis on the trans-lake shipment of oil and other energy resources;
- (b) the unique climatic characteristics and limitations of coastal air resources;
- (c) air as a transmitter of pollutants to Great Lakes waters; and
- (d) the impact of noise on the natural, cultural, and social environment.

Note: The state's existing programs under the Federal Clean Water Act, as amended, and the Clean Air Act, as amended, are incorporated into and made a part of this Coastal Management Program. The Program maintains a close liaison with the Department of Natural Resources to ensure full coordination.

*2. Coastal natural areas, wildlife habitat and fisheries.*

a) Issues and problems.

1) Coastal natural areas, which include forests, lakes, streams, swamps, bogs and marshlands, are in an increasingly tenuous position. These areas, which also frequently serve as wildlife habitat, provide important benefits in and of themselves. The problem is particularly acute on Lake Michigan, where residential development and other intensive uses threaten to invade the few extensive natural areas left. While relative to other coastal states, Wisconsin has few coastal wetlands; those that do exist face increasing pressures. The same pressures threaten some of the state's coastal farmlands.

2) Coastal vegetation and estuaries provide wildlife habitats that are increasingly threatened by similar pressures.

3) Great Lakes fisheries are also endangered. The presence of toxic substances such as PCBs in the water has already curtailed sport and commercial fishing. Control of sea lamprey, reintroduction of species, and establishment of a salmon stock are other important needs. Finally, protection of spawning areas for natural reproduction is necessary to assure the health and size of the fisheries.

## b) General policy statement.

The policy of the state is to conserve and enhance the natural land and water resources of the state by:

- 1) Designating and managing special areas of the state, including scientific areas, state parks, state forests, and state wildlife areas, so as to protect and enhance fish and wildlife habitat, forest resources, lakes and streams, recreation resources, and endangered plant and animal species.
- 2) Providing special management attention to the conservation and enhancement of Great Lakes fisheries resources, by conducting fish rearing, fish stocking, and fisheries research programs; by regulating sport and commercial fishing; by designating certain portions of the Great Lakes as fish habitat protection areas. (Also see Issues Area 1, where coastal water quality is discussed and Issue Area 4, where recreation is discussed.)
- 3) Ensuring that the following activities that are engaged in or are subject to regulation by state agencies are conducted so as to minimize the destruction or degradation of coastal wetlands and to preserve the natural and beneficial values of coastal wetlands and the public interest therein. These activities include:
  - 1) the acquisition, management and disposition of state lands and facilities;
  - 2) construction activities assisted by or directly undertaken by state agencies; and
  - 3) regulation of land and water uses in coastal wetland areas.

## c) Coastal program activities.

- 1) The Wisconsin Coastal Management Program will provide financial assistance to improve the implementation and enforcement of existing programs which manage uses with a significant impact on the coastal environment where gaps or weaknesses are identified. Particular attention will be given to Great Lakes fisheries resources, coastal wetlands, and other natural and scientific values.
- 2) The Wisconsin Coastal Management Program will support local and state agency efforts to identify and designate areas of significant natural or scientific value and develop specific management policies for each area.
- 3) The Wisconsin Coastal Management Program will provide financial and technical assistance to state and local agencies to implement the specific management policies for these designated areas.
- 4) The Wisconsin Coastal Management Program will support the accelerated collection of data on soils, geology, hydrology, topography, and others where needed for coastal management decisions.
- 5) The Wisconsin Coastal Management Program will support public awareness and education efforts tied to areas of significant natural and scientific value.

### *3. Coastal erosion and flood hazard areas.*

#### a) Issues and problems.

Shore erosion has been a primary concern of many shoreline residents and governmental bodies owning property on the immediate shoreline, particularly during periods of high lake levels. There are also localized areas subject to serious flooding. Specific issues and problems include:

- 1) Wisconsin faces serious property damages due to shore erosion, particularly along southern Lake Michigan. A number of shore properties have suffered and are facing severe property damage.
- 2) Shore erosion and sedimentation can damage lake aesthetics, may damage fish habitat, and may increase water treatment and maintenance dredging costs.
- 3) Flooding is a serious concern along the west and south shores of Green Bay. In the past, serious flooding has caused localized hazards to safety as well as property damage. Spring ice damage is of concern to shore property owners, particularly in Green Bay, who believe it causes property damage. Others advocate increased ice breaking to extend winter navigation.
- 4) Fluctuating lake levels remains a key concern of many Wisconsin coastal residents. While control of lake levels is beyond the reach of any state program (and can only be addressed in a limited sense by international bodies), increased erosion during the period of high water is one of Wisconsin's most visible coastal problems.

b) General policy statement.

It is the state's policy to mitigate risks to public health and safety and risks of property damage in areas subject to natural hazards by:

- 1) Providing that all development in areas subject to serious flooding will not materially alter the natural capacity of the lake or river so as to intensify the magnitude of floods, expose citizens to hazards, or cause future public expenditures for flood disaster relief.
- 2) Regulating those earth moving, devegetation, and construction activities now reviewed by state agencies so as not to accelerate the rate of shoreline erosion or bluff recession.

c) Coastal program activities.

- 1) The Coastal Management Program will support local and state efforts to identify and designate hazard areas as areas of special management concern and develop specific management policies for each and will provide financial and technical assistance to local and state agencies to implement those policies for designated areas.
- 2) The Coastal Management Program will support research and public education on the dangers associated with these hazards in the form of technical analysis of data, and recommendations for structural and nonstructural alternatives to alleviate erosion impacts, coordinating fully with the University of Wisconsin Sea Grant College Program, the Wisconsin Geologic and Natural History Survey, the Department of Natural Resources, and Soil and Water Conservation Districts, and U.S. Department of Agriculture, Soil Conservation Service.
- 3) The Coastal Management Program will advocate and coordinate Wisconsin concerns about flood and erosion hazards with the Flood Insurance Administration of the Federal Emergency Management Agency and the U.S. Army Corps of Engineers. The Program will also examine and coordinate the study of the winter navigation issue.

#### *4. Community development.*

##### a) Issues and problems.

- 1) Many communities along the Great Lakes are experiencing considerable growth. There is a need for balanced community growth to reduce wasteful sprawl development, assure the adequate provision of community services and protect aesthetic values. The need is particularly strong in rural, largely undeveloped areas.
- 2) Many of the state's historic and cultural resources are located in the coastal area, the site of Native American settlement and much of the early exploration and settlement by Europeans. The increasing economic and physical development of the coastal area is threatening to alter or destroy areas of historic and archeological significance; still other areas face continued decay as a result of neglect.
- 3) In some communities the waterfront suffers from safety hazards and blight due to obsolescent structures or waterfront deterioration. Flooding, storms, surface water pollution, and shoreland structures too costly to maintain contribute to this condition. Rarely are funds available for restoration of such areas.
- 4) Wisconsin's shoreline is increasingly used for recreation at unprecedented levels due to close proximity of population centers and to overcrowding of some inland lakes. The demand for public access to the lakes has outstripped the supply, especially in urban areas. There is a need for expanded and improved recreational facilities and services.
- 5) Community development frequently requires shoreland alteration, including dredging, filling, placement of structures (piers, erosion protection structures, etc.), grading of banks, and constructing canals, lagoons, lakes or the like. If not properly carried out, the activities can disturb water quality, disrupt fish and wildlife habitat, obstruct navigation, increase shore erosion rates, or contribute to increased flooding.

##### b) General policy statement.

The state's policy on coastal community development shall be to ensure the orderly and balanced development of coastal communities, giving full consideration to economic, ecological, human resource, cultural historic, recreational, and aesthetic values, and existing and future needs by:

- 1) Requiring local ordinances that ensure the efficient use, conservation, development and protection of the state's coastal resources in rural areas;
- 2) Ensuring that subdivisions are laid out in an orderly fashion, are properly surveyed, and make adequate provision of public access to coastal waters;
- 3) Ensuring that the state's significant historic, architectural and archeological resources are identified, recognized and protected in all state activities and that efforts are undertaken to ameliorate any potential adverse effects caused by state action;
- 4) Designating and aiding in the restoration of blighted waterfront areas so as to protect and enhance public safety, aesthetics, and economic well-being;
- 5) Acquiring additional recreational lands in heavily populated areas of the state; and

6) Ensuring that shoreland alterations are not detrimental to fish and wildlife habitat, navigation, flood flow capacity or the public interest.

c) Coastal program activities.

1) The Wisconsin Coastal Management Program will provide financial and technical assistance to local governments to improve their coastal management capabilities, with emphasis on staff training, ordinance revision, data collection and analysis, and shoreland zoning.

2) The Wisconsin Coastal Management Program will provide financial assistance to local governments to implement the specific management policies of designated areas.

3) The Wisconsin Coastal Management Program will support local governmental efforts to identify and designate areas of significant natural, recreational, scientific, cultural, or historic value and develop specific management, preservation, or restoration policies for each area, with emphasis on recreation access and blight. This effort will be coordinated with the program referenced in policy 4.4.

4) The Wisconsin Coastal Management Program will support public awareness and involvement in resolving local community coastal problems, with emphasis on the special needs of, or barriers to, low-income elderly, handicapped, and minority groups in coastal plans and proposals.

*5. Economic development.*

a) Issues and problems.

Economic conditions vary widely along Wisconsin's Great Lakes coasts. The Lake Superior area has generally been economically depressed, while economic growth has characterized the state's southern Lake Michigan area. The use of the Great Lakes as a transportation medium and as a recreational resource has a significant impact on the Wisconsin economy. (See Issue Area 4 for a discussion of the recreational access topic; also see Issue Area 2 for a discussion of sport and commercial fishing.) Specific economic development issues and problems include:

1) The counties bordering Lake Superior, characterized by high unemployment, low median incomes, and higher than state average median age population, need balanced and increased economic growth. Presently the region depends on employment in retail trade, governmental services, and resource-based manufacturing. New job opportunities and the provision of local public services are needed to attract businesses, diversify the economy, and revitalize declining communities. Economic development throughout the coastal area must be compatible with the local environment, the labor force, local economic needs, and existing facilities.

2) Competition for shore property can exclude those uses that can only be sited at the water's edge. The relatively few areas which meet the special needs of commercial harbors and marinas have seldom been set aside for these uses. While few shoreland uses are exclusive, many are incompatible with surrounding uses and with the capability of the land, air and water to support them. There is also a need to consider the impact of losing unique agricultural, mining and forestry lands, and conversion of areas especially suited to outdoor recreation to other uses.

3) Ports are important to the economic well-being of Wisconsin, both for the provision of jobs and the provision of a competitive mode of transportation that generally lowers shipping rates. However, a number of the state's ports and harbors have been declining or stagnating. For continued operation, ports

and harbors must be maintained to adequate depths to allow vessels access to shore facilities. There needs to be enough cargo passing through them to maintain favorable rates and profitable operation. There is a need for some modernization and diversification.

4) A more specific transportation problem relates to potential discontinuation of cross-lake ferry service. The loss of this service would increase shipping rates and reduce tourism, both to the economic detriment of the Wisconsin coastal area.

5) The shoreline is attractive for power plant sites because of the easy access to cooling waters and existing transportation facilities. The local impact of power plant locations can be significant, both during construction and thereafter. New demands are placed on community services and some adverse environmental impact is almost inevitable. (Also see Issue Area 1 for discussion of water and air quality topics.)

#### b) General policy statement.

The state's policy on economic development shall be to stimulate desirable economic development that broadens the coastal area economy and to encourage the designation and reservation of areas of significance to activities requiring a coastal location by:

- 1) Providing special planning, management and promotional attention to Great Lakes port and transportation issues;
- 2) Coordinating, stimulating and promoting the orderly and environmentally sound provision of business and tourism facilities; and
- 3) Managing the planning for and siting of electrical generating and transmission facilities so as to ensure protection of water quality, public and riparian rights and orderly land use.

#### c) Coastal Program Activities.

- 1) The Coastal Management Program will seek to improve the implementation and enforcement of existing state regulatory and management programs which influence the economic well-being of citizens along the Great Lakes.
- 2) The Wisconsin Coastal Management Program will provide financial assistance to state and local agencies to implement the specific management policies of designated economic areas and improve the implementation of existing programs to broaden the economic base of communities with desirable diversifications of industry and to manage effectively coastal land and water resources which influence community development.
- 3) The Coastal Management Program will seek to improve the coordination of policies which affect the economies of coastal areas.
- 4) The Wisconsin Coastal Management Program will support state and local government efforts to (a) identify and designate areas especially suited for water-related economic development and power plant sites approved through the power plant siting process of the Public Service Commission and (b) develop specific management policies for each.

- 5) The Wisconsin Coastal Management Program will support local government efforts that consider in their coastal plans and programs the concept that waterfront locations be kept available for activities which need such locations and that unnecessary development not consume coastal resources particularly suited to other uses.
- 6) The Wisconsin Coastal Management Program will support local government efforts to locate new coastal development adjacent to existing areas which can provide adequate public services.
- 7) The Wisconsin Coastal Management Program will advocate the role of the Great Lakes ports both within the state and at the national level.
- 8) The Wisconsin Coastal Management Program will support research and public education about the economic base of coastal areas.

#### *6. Governmental Interrelationships.*

##### a) Issues and problems.

- 1) There are many programs and laws, spread among many agencies and levels of government, that apply to the coastal area. There is a strong need for improved coordination and communication on specific programs and projects. While more difficult, the need for improved coordination is even stronger at the policy level.
- 2) More specifically, there is a strong concern about the paperwork and time consuming procedures that accompany many government programs. A need has been suggested for streamlined procedures and a clearinghouse for information on regulatory programs.
- 3) Given Wisconsin's home-rule status, citizens and local governments are concerned in maintaining a degree of local control in governmental decision making. Even citizens who favor a strong state coastal management program are concerned that actual implementation takes place as close to the local level as possible.
- 4) The Great Lakes remain an under-represented "national coast" at the federal level.

##### b) General Policy Statement.

The state policy on government interrelationships shall be to ensure intergovernmental communication, cooperation and coordination in all aspects of coastal management through:

- 1) Creating and operating an interagency, intergovernmental Coastal Management Council with representation from all directly affected agencies and levels of government and citizens within the state;
- 2) Creating and maintaining technical/citizen committees to ensure coordination of specific projects and programs;
- 3) Maintaining a workable system of interagency reviews and comments on coastal program activities; and

4) Requiring state and federal agencies to, through the clearinghouse process or other appropriate mechanisms, consult with and obtain the comments of other agencies with respect to any significant environmental impact involved in their major actions.

c) Program Activities.

1) The Coastal Management Program will use existing review processes to ensure coordination of federal, state, and local policies and programs.

2) The Coastal Management Program will improve coordination with adjacent Great Lakes states and federal agencies with continuing programs affecting Lakes Michigan and Superior.

3) The Coastal Management Program will improve information flow and coordination of policies related to key coastal areas and uses and with emphasis on streamlining procedures and eliminating duplication or conflicting efforts.

4) The Coastal Management Program will support tribal governments in their efforts in coastal management.

5) The Coastal Management Program will perform advocacy functions in seeking increased policy recognition of the Great Lakes in policy by all levels of government, with emphasis on the federal level.

*7. Public Involvement.*

a) Issues and Problems.

1) There is a need for increased public awareness and understanding of coastal issues. There is also a need for provision of adequate information on the scope of coastal issues and options for addressing those issues.

2) There is a need for increasing and improving the opportunities of citizens and public interest groups to effectively participate in governmental decision making on coastal issues.

b) General Policy Statement.

The state's policy on public involvement shall be to provide citizens with full opportunities for early and continuous involvement in coastal management through effective communication and participation.

c) Coastal Program Activities.

1) The Coastal Management Program should create coastal task forces to facilitate full participation in the Program on a continuing basis by interested local parties (see Section II.C. Organization for further discussion).

2) The Coastal Management Program shall support public education and awareness of coastal issues and broadly disseminate program materials.

3) The Coastal Management Program shall provide appropriate forums to involve and educate citizens on projects and programs which have a significant or controversial impact on coastal resources; subject those projects and programs to public scrutiny and discussion; and make recommendations concerning such projects and programs to appropriate governmental agencies.

4) The Coastal Management Program shall encourage Program participants to hold public informational meetings and involve citizens and technical members in issue study, problem identification, proposal development and decision-making.

## II. IMPLEMENTING THE COASTAL MANAGEMENT PROGRAM IN WISCONSIN

### A. OVERVIEW

#### *1. Underlying concerns and assumptions.*

This Program is based on the premises that Wisconsin's coastal resource is valuable and worth saving for future generations; that there is a strong public concern about the wise use of this delicate and increasingly threatened resource; and that existing management of the Wisconsin coastal resource should be improved.

There are coastal areas that, because of their unique or vulnerable nature, need special management attention. Likewise, there are certain uses of coastal lands and waters that, because of the significant impact these uses have on the coastal environment, need special management attention. The state should assure that these key areas and uses are properly managed.

To meet these concerns, it must be recognized that both state and local governments play important roles in determining the future of the coastal area. State government has a number of basic responsibilities, such as stewardship of the public's interests in the waters of the state. Local governments also have important responsibilities for the detailed management of their coastal areas. This suggests the need for a strengthened state-local partnership for coastal management. The state, through the Coastal Management Program, improves its ability to address state-level interests in the management of key geographic areas and key land and water uses. The ability of local governments to address local coastal concerns is also enhanced.

Another basic assumption is that strong public participation is essential to effective coastal management. A program that does not fully consider citizen concerns is unlikely to be successful. Furthermore, beyond the question of program success, this Program is based on the belief that the public has a right to participate in the making of governmental decisions that affect their lives.

A final assumption of this Program is that the emphasis should be upon making existing management tools work better, not upon creating a new set of rules, regulations, and bureaucracies. Until government does an adequate job of meeting its existing responsibilities, it should not seek new ones. The pressing needs are for improved coordination, better enforcement, and a strong advocacy of the wise and balanced use of the coastal environment.

#### *2. Focus state attention on key coastal areas and uses.*

The Coastal Council determined that state government should focus its attention on the management of key coastal areas and uses.

Areas of significant natural, recreational, scientific or historical value, areas especially suited for water related economic development, areas that are hazardous for development, and approved power plant sites should be carefully managed. To assist this management, key areas are identified as being of special concern to the state, either for general management or as suitable for preservation or restoration.

State-level management concern is also focused on those land and water uses that have a direct and significant impact upon the coastal environment. The purpose of identifying these key uses is to ensure

that those activities which have the greatest influence on the future condition of Wisconsin's coastal are thoughtfully located and managed.

The coastal management program area is the state's water areas of Lake Michigan, Lake Superior, Green Bay and the land area of the fifteen adjacent counties.

### *3. Wisconsin Coastal Management Council.*

The Coastal Management Council is established to direct this Program.

This Coastal Management Council takes over no existing agency programs, issues no permits, and owns no land. It provides coordination, assistance to state agencies to improve their implementing responsibilities, and assistance to localities to help improve their local management capabilities. Perhaps most importantly, it provides a strong voice that considers the coastal resource in its entirety and advocates its wise and balanced use.

The Coastal Management Council is comprised of state government, local government, and publicly oriented members. In addition, to promote full cooperation and coordination, a representative of Wisconsin's coastal Indian Tribal governments participates as a full Council member.

### *4. Roles of existing governmental agencies.*

Under this Program, existing state agencies continue to carry out their individual coastal management responsibilities. However, in so doing, they must act in a consistent and coordinated fashion.

Local governments continue their role of local coastal planning and management. There is no state take-over of local concerns. The Program makes technical and financial assistance available to those communities desiring such assistance.

### *5. Public involvement.*

Strong public participation is an essential element of this Coastal Management Program.

To facilitate this involvement, statewide or regional citizen advisory committees may be established on key issues to facilitate full participation in Program decisions by interested local parties.

## ATTACHMENT B: MANAGING COASTAL RESOURCES AND DEVELOPMENT

### B. MANAGING COASTAL RESOURCES AND DEVELOPMENT

#### *1. Special coastal areas (SCAs).*

##### a) Overview.

As noted above, a primary emphasis for coastal management in Wisconsin is to focus attention on certain key geographic areas. Because of their unique, scarce, fragile, or vulnerable character, the Program singles them out for special attention.

This Program has formally designated special coastal areas. A broad public nomination process was established to identify these areas. Also a number of inventories were conducted and analyzed to determine what types of areas should be designated. The Coastal Management Program works with the state agencies and localities that manage the designated special coastal areas to improve management by providing technical or financial assistance.

##### b) Designated areas.

The following describes the six basic categories of coastal zone areas designated. As noted, many of the areas are singled out for special protection under various state statutes. The categories reflect the full range of coastal concerns – economic, cultural and recreational, as well as environmental. Also, the categories are intended to reflect local government as well as state agency concerns. So that it can be determined with reasonable certainty if a site is or is not designated, the following describes the areas included in each category, by reference to state statutes if applicable. Also, guidelines regarding priorities of use in the designated areas are explained, so that the nature of the interests to be promoted as a result of the designations is understood.

These are the six categories of areas designated:

#### **1) Areas of significant natural, recreational, scientific, or historic value.**

This category covers all environmental areas, including habitat areas (Sec. 23.092, Wis. Stats.), scientific areas (Sec. 23.092), wetlands of five or more acres in size (Sec. 23.32), and other environmentally sensitive areas identified in area-wide water quality management plans (Sec. 283.83). This category also covers historic sites (ch. 44, sub. II) and recreational areas, including forests (Secs. 28.03 and 28.10), parks (Secs. 27.01, 27.02, 27.08 and 27.13), fish and game refuges (Sec. 23.09), and wildlife refuges (Sec. 29.621).

In environmental areas, uses of the highest priority are nonstructural, non-intensive uses that are water dependent. Uses of the lowest priority are those non-water dependent, non-water enhanced activities which would result in an irretrievable commitment of coastal resources. In recreational and historic areas, uses of the highest priority are those water dependent uses consistent with those values. Specific allowable uses within the SCAs under this category are governed by the statutes and administrative codes applicable to state and local parks, forests, etc. In state recreation areas use zones may be established to regulate the type and intensity of activities within each zone.

## **2) Areas especially suited for water-related economic development**

This category covers all areas within and adjacent to commercial and recreational harbors (Secs. 30.92 and 85.095, Wis. Stats.) and their navigation and access channels, which are used or intended to be used for watercraft transit, dockage, shipbuilding, water intake and dredged material confinement.

Uses of the highest priority are water dependent economic activities. The lowest priority is placed on those activities that are non-water related and result in irretrievable commitments of coastal resources.

## **3) Hazard areas, which are those areas prone to severe erosion and/or flooding, that may impose danger to public use or immediate or future substantial public costs.**

This category covers all floodplains (Sec. 87.30, Wis. Stats.) and high, unstable bluffs and low, erodible sandplains.

The highest use priority in these areas are those activities that do not impose immediate or future substantial costs due to geologic, soil, or flood conditions. Any development should be so constructed as to avoid creating new hazards or increasing existing hazards. Uses of the lowest priority are those activities that are non-water dependent or non-water enhanced, create new or increase existing hazards and result in irretrievable losses of coastal resources.

## **4) Specific coastal areas identified in strategic energy assessments by the Public Service Commission. (Sec. 196.491, Wis. Stats.)**

It should be noted that power plants are also one of the Program's managed uses (see managed use #16). If applicable PSC certificates and DNR permits have been secured, this SCA designation will not be used to delay approved utility activities.

Uses receiving the highest priority would be bulk electric generating facilities. Once the area has been approved as a power plant site all other incompatible uses would be precluded from locating on that site.

## **5) Those natural, scientific, historic, and cultural areas whose unique value warrants preservation, are termed Areas for Preservation.**

The criteria of the Natural Areas Preservation Council (Sec. 23.27, Wis. Stats.) are used as a guide for some areas, and areas of historic or cultural value are assessed by the state historic society (Sec. 44.34, Wis. Stats.). In Areas for Preservation, protection of the integrity of those elements that make the area significant is paramount. Although preservation strategies are developed on a case by case basis, in many cases protection requires purchase of these areas by the state and local government. The Program is sensitive to the potential adverse impacts on local tax bases and revenue raising capabilities that might be created by public acquisitions of land. These impacts will be further studied, and, where appropriate, measures considered to compensate localities.

In these natural and scientific areas, uses of the highest priority are nonstructural, non-intensive uses that are water dependent and maintain natural functions. Uses of the lowest priority are those non-water dependent, non-water enhanced activities which result in an irretrievable commitment of coastal resources. In historic and cultural areas, uses of the highest priority shall be those uses that preserve historic/cultural values.

## **6) Those areas that should be restored to an earlier or improved condition.**

This category of Areas for Restoration includes all deteriorated or underused waterfronts, which are relatively built up areas adjacent to harbors and their connecting waterways.

Uses of the highest priority are those uses that are water dependent. Uses of the lowest priority are those non-water dependent, non-water enhanced activities which result in an irretrievable commitment of coastal resources.

### c) Implications of designation.

The implications of designating the six areas need to be made clear. The basic concept of this Coastal Management Program is that existing statutory authority is adequate to manage these key coastal areas. The purpose of designating the areas is to improve existing management. The principal mechanism for doing this is financial and technical assistance from the Program. Actual management of the areas continues to be undertaken by the existing responsible agencies.

To receive assistance, the managing bodies are required, as part of their applications for assistance, to 1) define the geographic boundary of the area, 2) define a clear management policy for the area, consistent with the priorities explained above, 3) demonstrate the capability to carry out the policy, and 4) agree to carry out the policy.

Financial assistance may be used to improve policies or programs governing a category of areas (e.g., developing statewide guidelines for high-risk erosion areas); address management issues involving several sites within a category (e.g., resolving use conflicts concerning development encroaching on natural areas within a county); and improve management of an individual site (e.g., developing a plan for a local park).

### d) Priority for assistance.

During Program development, the Council sponsored a series of public meetings and distributed a questionnaire to find out what the public thought a Wisconsin coastal management program should be doing. The citizens responding indicated their priority concerns were:

- improvement of water quality\*
- abatement of damage from shore erosion
- management of natural areas
- public recreation and access (historic, cultural)
- port management
- urban shore uses
- other issues

\* Water quality was the principal concern; however, due to the major public commitment to water quality, Program funds should be used only after all other sources have been exhausted.

This list and the following will be used by the Coastal Management Council in considering whether to provide financial assistance to improve the management of special coastal areas:

- urgency of immediacy of need
- geographic distribution of the proposals
- presence of matching funds
- ability and willingness of applicant to maintain the area
- designation as such in local coastal plans
- transferability of findings of the project
- vulnerability of the area to change
- size of the area
- cost of the project and availability of complimentary funds from other state or federal sources
- existence of alternative means for preserving/restoring the area

2. *Land and water uses of management concern.*

a) Overview.

In addition to the key areas discussed above, state-level management concern is also focused on those land and water uses that have a "direct and significant" impact upon the coastal environment. The purpose of identifying these key uses is to ensure that those activities which have the greatest influence on the future condition of Wisconsin's coasts are thoughtfully located and managed. Therefore, the Coastal Program terms these uses "managed uses".

The basic concept of management for the Coastal Program in Wisconsin is that existing statutory authorities are adequate to manage these uses. As with special coastal areas, "management" is defined broadly and will be undertaken by the existing responsible agencies. Management will be accomplished through:

- State enforcement of existing state regulatory responsibilities;
- Direct management in areas owned by the state;
- Coordination of existing state, federal and local authorities;
- Local shoreland and floodplain regulation under state guidelines;
- Provision of technical assistance and analysis to localities;
- Provision of financial assistance to localities; and
- Education.

When a use is determined to have a "direct and significant impact" on the coastal environment, it will come within the purview of the Program. This means that Program funds will be available to assist in improving the management of that activity. It does not mean that new rules, regulations or permits would necessarily be created to further manage that use.

It should be emphasized that the attention of the Program is on proposed new "direct and significant" uses. Existing uses (except where subject to existing continuing regulation) are not subject to attention of the Program unless continuing operation poses a threat to the integrity of the coastal environment or to the public health, safety, or general welfare.

It should further be emphasized that with existing programs no land or water uses are automatically totally excluded from locating in the coastal area. Rather, standards for use acceptability are generally based on the impact the proposed use would have on the coastal environment.

b) Process for identifying "managed uses".

The key for being able to identify "managed uses" is to define what a "direct and significant impact" on the coastal environment is.

Rather than produce an elaborate scientific definition that is both incomprehensible to most Wisconsin citizens and creates a false sense of "scientific" objectivity and precision, the following definition of "direct and significant" impacts is being used.

A use or activity has a "significant" impact when it has any of the following characteristics:

- 1) It alters the quality of or affects the access to a public resource for which the state is trustee (here meant to include navigable waters and state owned lands such as parks); or
- 2) It is located in a designated special coastal area; or
- 3) There has been an expression of state-level concern for its management by the Legislature.

A use or activity has a "direct" impact when it creates a direct outflow into or otherwise directly affects the waters of the Great Lakes or a designated special coastal area. This includes those activities that discharge into one of the Lakes or special coastal areas. In this respect it should be noted the coastal management program would be coordinated with and supportive of water quality control programs.

c) Identification of proposed initial "managed uses".

The following list of activities, if they take place within the coastal management area, are uses that are deemed to have "direct and significant" impacts on the coastal environment. Therefore, these are the Coastal Program's "managed uses" which the state assures are properly located and operated.

The list of uses is divided into two parts. The first includes activities taking place primarily on or within coastal waters, or on the beds of coastal waters. The second includes activities taking place primarily on the land portion of the coastal management area.

**Water based "managed uses":**

- 1) Removing materials from the bed of a Great Lakes or other navigable coastal water
- 2) Mining of metallic minerals
- 3) Enlarging the course of a Great Lake or other navigable coastal water
- 4) Constructing an artificial waterway within 500 ft. of a Great Lake or other navigable coastal water
- 5) Connecting an artificial waterway to a Great Lake or other navigable coastal water
- 6) Depositing any materials in the Great Lakes of other navigable coastal water
- 7) Placing any structures upon the bed of the Great Lakes or other navigable coastal water
- 8) Discharging of effluents into coastal water
- 9) Placing refuse in coastal waters
- 10) Obtaining drinking water
- 11) Harvesting fish for commerce or sport
- 12) Boating in coastal waters
- 13) Withdrawing water from coastal waters for any purpose

**Land Based "managed uses":**

- 14) Grading or removing topsoil which disturbs 10,000 sq. ft. or more of the banks of the Great Lakes or other navigable coastal water
- 15) Placing structures in flood prone areas
- 16) Siting electrical generating and high voltage transmission facilities
- 17) Constructing sewer and water utility facilities
- 18) Using private waste treatment and disposal systems (including locating and installing these systems)
- 19) Developing state owned facilities
- 20) Developing county and municipal facilities funded by nonformula state aids
- 21) Laying out, altering, or discontinuing highways
- 22) Disturbing bridges
- 23) Abandoning any rail line or service
- 24) Constructing or establishing a new airport
- 25) Platting subdivisions that create five or more lots of 1-1/2 acres or less within a five-year period
- 26) Using rural shorelands (defined as any unincorporated area within 1,000 feet of a navigable lake or within 300 feet of navigable river or stream)
- 27) Using wetlands
- 28) Emitting air pollutants from point sources
- 29) Obtaining drinking water
- 30) Using pesticides
- 31) Using outdoor advertising
- 32) Mining of metallic minerals
- 33) Depositing substances in groundwater

d) Summary of techniques for managing the uses.

All of the activities listed above are controlled by the state, either through regulations or by direct state action. In some instances the regulations take the form of standards, some involve permits or contracts, and others involve state review and approval.

A summary of how each use is managed is set out below. The general format used in these summaries is to note who manages the activity, what management technique is used, the basic decision-making standard, and the basis for including the activity in the Coastal Management Program.

**Water based:**

- 1) Removing materials from the bed of the Great Lakes or other coastal waters

This activity is regulated by the DNR. If a navigable lake is involved, DNR must issue a contract before the activity commences (a permit is required for streams and non-navigable lakes). The decision-making standard is whether the contract or permit would be consistent with "public rights" or the "public interest," respectively. Removing materials is managed because the activity could potentially damage fish and game habitat and alter the quality of coastal waters.

- 2) Mining of metallic minerals

This activity is primarily regulated by the DNR. Mine operators must secure prospecting permits and mining permits, submit operator's bonds and certificates of insurance, and secure DNR approval of their environmental impact records and mining and reclamation plans. The DNR has detailed standards for these requirements based on protecting air, land, water, fish, plant and wildlife resources. The Department

of Commerce is also involved through regulating blasting and mine safety. Mining of metallic minerals is subject to the Program because of its potentially harmful environmental effects on fish, aquatic plant life, and the quality of coastal air and water resources.

3) Enlarging the course of a Great Lake or other navigable coastal water

Engaging in this activity requires a permit from the DNR. The permits are issued if the DNR finds the project will not injure public rights or interest, cause environmental pollution, or materially injure riparian rights. Enlarging a navigable waterway is included in the Program because of its potential to destroy fish and game habitat, affect navigation, and alter the quality of a resource for which the state is a trustee.

4) Constructing an artificial waterway within 500 feet of a Great Lake or other navigable coastal water

This activity also requires a DNR permit, with the same decision-making standard as item (c) above. This activity is included in the Program for the same reasons as item (c) above.

5) Connecting an artificial waterway to a Great Lake or other navigable coastal water

This activity also requires a DNR permit, with the same decision-making standard as item (c) above. This activity is subject to the Management Program for the same reasons as item (c) above.

6) Depositing any materials in the Great Lakes or other navigable coastal waters

This activity requires a DNR permit unless the material is deposited behind a lawfully established bulkhead line. Bulkhead lines are established by municipal ordinance and must be "in the public interest" and be approved by the DNR. Depositing materials in navigable coastal waters is included in the Program because of the potential obstruction of navigation, reduction of effective flood flow capacity in streams, harmful effect on fish and game habitat, and pollution of a resource held in trust by the state.

7) Placing any structures upon the bed of the Great Lakes or other navigable coastal waters

This activity also requires a DNR permit, unless the structure is behind a lawfully established bulkhead line. Permits are granted if the DNR finds the structure "does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest." This activity is subject to state-level management because of the possibility for obstruction of navigation, reduction of effective flood flow capacity, and potential impacts on shore erosion. (Note: This does not apply to federal aids to navigation.)

8) Discharging of effluents into coastal waters

This activity is regulated by the DNR. Some discharges are totally prohibited and all other pollutant discharges require DNR permits. The DNR has detailed water quality, performance, and effluent standards for these permits. Discharge of effluents is regulated under the state Management Program because of detrimental effects on fish and game habitat, effect on the suitability of a public resource for recreational purposes, and alteration of the quality of a resource held in trust by the state.

9) Placing refuse in coastal waters

State law makes it unlawful to place any refuse or solid wastes in the waters of the state. Also, any substance deleterious to fish or aquatic life can only be deposited in accordance with plans approved by

the DNR. This activity is subject to the state Management Program for the same reasons as item (h) above.

10) Obtaining drinking water

This activity is regulated by the DNR and the PSC. DNR permits are required for the construction, installation, or operation of high capacity wells and DNR approvals are required for water plants and systems and extensions thereof. There are detailed standards for these requirements, which are designed to protect the public health and provide an adequate water supply. Water utilities are also subject to the supervision and regulation by the PSC relative to rates and adequacy of service. Obtaining drinking water is included in the state Management Program because there has been an expression of state-level concern by the Legislature for the management of this resource in the interest of public health.

11) Harvesting fish for commerce or sport

This activity is subject to detailed regulation by the DNR. Licenses are required for sport fishing, use of nets or set lines, and commercial fishing. Commercial fishing may be limited or prohibited in areas where necessary to protect the fishery resource. This activity is included in the Program in order to protect the fishery resource while maintaining the economic viability of the activity.

12) Boating in coastal waters

All boats over must be registered with the DNR except for sailboats 12 feet and under without a motor, manually propelled boats not equipped with a motor or sail, sailboards or a boat licensed in another state. There are also numerous boating safety requirements enforced by the DNR. Boating is regulated by the state to protect public safety, control access to a public resource in a safe manner, and to maintain water quality.

13) Withdrawals from coastal water resources

All withdrawals of water from the waters of the Great Lakes basin averaging more than 100,000 gallons per day in any 30-day period must be registered with the DNR. This requirement allows the state to monitor current demands on coastal waters in relation to available supply and in-stream or in-lake needs and to make projections of future water needs. This capability is necessary for the state to discharge its responsibilities as trustee of state waters.

In addition, major withdrawals involving inter-basin diversions or consumptive uses that exceed 2,000,000 gallons per day in any 30-day period must receive an individual permit from the DNR. These withdrawals, which result in a potentially significant loss of water from the Great Lakes basin, are regulated in order to preserve adequate supplies and levels of coastal waters for public and private use and enjoyment and to promote water conservation.

**Land Based:**

14) Grading or removing topsoil which disturbs 10,000 square feet or more of the banks of the Great Lakes or other navigable coastal water

This activity requires a permit from the DNR. Permits are issued if the project does not injure public rights or interests, cause environmental pollution, or materially injure public rights. Removing topsoil or grading is included in the Management Program because of the potential detrimental impact of this activity on fish and game habitat, access to a public resource, and quality of coastal waters.

#### 15) Placing structures in flood prone areas

State statutes require localities to adopt floodplain zoning ordinances, meeting state standards, for those parts of their jurisdictions where serious flood damage may occur. If localities do not adopt reasonable and effective ordinances, the DNR is required to adopt an ordinance for the jurisdiction. Also, the availability of federal flood insurance is tied to the existence of adequate local floodplain regulation.

Development in coastal floodplains along Lake Superior and Lake Michigan which will be adversely affected by wave run-up is prohibited. The placement or maintenance of any structure, fill, or development in violation of a floodplain zoning ordinance is declared to be a public nuisance and may be enjoined or abated at suit of any municipality, the state, or any citizen of the state.

This activity is subject to the Management Program because of its potential for reduction of effective flood flow capacity that could cause increased damage to coastal resources during a flood.

#### 16) Siting electrical generating and high voltage transmission facilities

This activity is primarily regulated by the PSC. Construction cannot be commenced without first obtaining a certificate of public convenience and necessity from the PSC. Such certificates are issued upon a finding that the facility is necessary, its design and location are in the public interest, it will not have undue adverse impacts on environmental values, and it will not interfere with orderly land use and development plans. There is also a mandatory advance planning requirement for this activity, including requirements for identification of general plant sites ten years in advance of when construction is expected to commence and alternative specific sites three years in advance of construction.

There is also a consolidated permitting process whereby related DNR permits can be obtained in a single proceeding.

This activity is included in the Management Program because of the effects of power plant location on water quality (thermal discharges), public rights in navigable waters, and the effective flood flow capacity of streams and on an adequate supply of energy and community development patterns.

#### 17) Constructing water and sewer utility facilities

DNR approval must be obtained for this activity and the department has detailed standards on planning, constructing and operating these facilities. These activities are included in the Program because of their potential impacts on coastal water quality and on the nature and rate of urban development in the coastal management area, which will have spillover impacts on coastal air and water resources.

#### 18) Using private waste treatment and disposal systems

This activity is primarily regulated by the Department of Commerce. The Department of Commerce licenses and regulates persons servicing private onsite wastewater treatment systems. These activities are included because of their potential impacts on coastal water quality and their effects on the location of development within the coastal area.

#### 19) Developing state-owned facilities

The State Building Commission is generally in charge of the state's building program. The DOA's Division of State Facilities supervises the state building program and building policies and priorities. This

activity is included in the Management Program because of the potential impact of the location of major state facilities on other uses and development patterns in the coastal area.

20) Developing county and municipal facilities funded by nonformula state aids

When the state makes nonformula grants to localities, conditions may be placed on the grants such as requiring sewer systems to be constructed in a manner to facilitate future interconnections. This activity is included in the Program for the same reasons as item 2(d) above.

21) Laying out, altering, or discontinuing highways

The state DOT has charge of all matters pertaining to expenditure of state and federal highway funds. The DOT prepares the state highway plan. The DNR receives notice of the layout, alteration, and discontinuance of county and town highways by county boards; further, town or county discontinuance of access by road to a navigable lake or stream is not effective unless approved by the DNR and the access required to be dedicated for shoreline plats may not be vacated without circuit court approval. These activities are included in the Management Program because of their potential impact on access to public resources (such as navigable waters, beaches, or state-owned parks) and their impact on community development patterns.

22) Disturbing bridges

This activity requires a permit from the highway authority maintaining the bridge.

Bridges over navigable waters are also subject to regulation by the DNR to prevent obstruction to navigation, protect human life and health, and minimize property damage and economic loss.

Disturbing highway bridges is included in the Management Program because of the potential impact on navigable coastal waters, including obstruction to navigation, effects on flood control, and community development patterns.

23) Abandoning any rail line or service

This activity generally requires the approval of the federal Surface Transportation Board. The state Public Service Commission plays an active role in these decisions, appearing and testifying before the STB. The state Department of Transportation may also become involved. This activity is included in the Program because of potential significant impacts of rail abandonment on economic development in the coastal management area, with particular reference to the economic well being of the state's ports and the cross-lake ferries. The potential recreational use of abandoned rail lines is also an important consideration.

24) Constructing or establishing an airport

DOT approval is required for this activity. DOT's certificate of approval may be issued if the proposed airport is compatible with existing and planned transportation facilities. DOT also prepares the state airport plan. This activity is included because of significant impacts on economic development in the coastal management area and potential impacts on coastal natural resources (such as vulnerable habitats) and on community development patterns.

25) Platting subdivisions that create five or more lots of 1-1/2 acres or less within a five-year period

These subdivisions must be approved by several state agencies, as well as by localities with subdivision ordinances. The DOA reviews, and must approve, plats for compliance with surveying, layout (including mandatory public access requirements for plats abutting navigable waters), and engineering requirements. The DOT reviews, and must approve, plats abutting state highways for compliance with safety requirements. The DNR reviews plats within 500 feet of navigable waters for prevention of pollution to waters. It should be noted that subdivisions creating fewer or smaller lots are frequently subject to local review and approval. This activity is included within the Coastal Management Program because of the potential environmental impact of subdivision construction, increased generation of sewage on coastal waters, the potential increased demand for public access to coastal recreational resources, and a concern for orderly development.

## 26) Using rural shorelands

Each county is required by state law to regulate the use of shorelands in unincorporated areas. DNR minimum standards require the ordinances to protect human health, aquatic life, and natural beauty and control land uses. If county ordinances are found to be inadequate, the DNR can adopt an ordinance for the county. (Note: All relevant coastal counties have DNR approved shoreland zoning ordinances.) Shoreland use is subject to management control because of potential impacts of various activities in these largely undeveloped areas on coastal water quality, fish spawning areas, fish and aquatic life and the natural beauty of the land and water resources.

Because of the strong concern about this managed use, a much more detailed description of the Shoreland Management Program follows.

The Wisconsin Water Resources Development Act (Chapter 614, Laws of Wisconsin 1965) created section 59.692, Wis. Stats., which required the adoption of zoning regulations in unincorporated shorelands within 1,000 feet from the ordinary high water mark of lakes (including the Great Lakes), ponds and flowages and 300 feet from the ordinary high water mark of navigable streams, or to the landward side of the floodplain, whichever distance is greater.

Section 59.692(1m), Wis. Stats., follows traditional lines and enables counties to zone their unincorporated areas for the purpose of "...promoting the public health, safety and general welfare." Shoreland regulations are drawn to meet these general purposes as well and are supplemented by the following specific environmental purposes: "...to further the maintenance of safe and healthful conditions; prevent and control water pollution, protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and reserve shore cover and natural beauty." (Sec. 281.31(1), Wis. Stats.)

To achieve these goals, a broader interpretation of the term "zoning" than is generally applied was necessary. Accordingly, regulation of land divisions and private on-site waste disposal systems has been required by the Department of Natural Resources. In many cases, these regulations have been integral parts of a shoreland protection ordinance including zoning, sanitary, and land-subdivision regulations.

The law designates the Department of Natural Resources to play an "active" role in county shoreland regulations in two areas.

Initially, the department was to prepare standards and criteria which the county ordinances were required to meet to comply with the act. To develop the standards, the department coordinated a joint-agency, multidisciplinary effort. Staff of the Department of Natural Resources and representatives from the USDA Soil Conservation Service, State Conservation Department, Department of Health, and most important, the University of Wisconsin – Extension, cooperated not only in drafting standards as contained in a

model ordinance and manual but also in many meetings conducted throughout the state to explain the proposed standards, gauge reaction, and obtain local support for the regulatory effort. While gathering together the many specialists involved in the project was unwieldy and often time consuming, the products and thus the conduct of the program benefited from this broad based effort.

The standards were first adopted in a policy statement by the Natural Resources Board and then subsequently made part of the Wisconsin Administrative Code as Chapter NR 115.

The second area of involvement was directed by section 59.692(6), Wisconsin Statutes. This section provides that if a county did not adopt a shoreland zoning ordinance by January 1, 1968, or if, after notice and hearing, the department "determines that a county has adopted an ordinance which fails to meet reasonable minimum standards, the department shall adopt such an ordinance."

The threat of state intervention in many cases and an admitted need for action in others has resulted in the adoption of shoreland ordinances by all counties. Although the January 1, 1968, deadline was not met, there was no state adoption of an ordinance. While direct state intervention in drafting and adopting ordinances may have initially expedited the actual enactment of ordinances, the Department of Natural Resources felt that a longer-term goal of better enforcement would result if the counties were allowed to draft and enact their own ordinances. Accordingly, to assure that progress was being made, the department maintained close scrutiny through frequent county meetings and contracts with regional planning agencies charged with drafting ordinances for their constituent bodies. By this means, the responsibility for enacting shoreland regulation was kept before the counties. In some counties the "low profile" regulatory approach was not effective. The Department of Natural Resources was not satisfied with the progress being made in 20 counties (of 71). In the fall of 1970, after notice, pre-enforcement conferences and public hearings, orders with stringent time constraints for the adoption of ordinances were issued to these counties. Adoption of regulations then followed within a reasonable time period established by order with one exception. This required a further hearing which prompted county action and eventual compliance.

As the appropriate ordinances were adopted, the counties submitted them to the department for final review. The adequacy of the county regulations was determined by comparing them with the state minimum standards as contained in sec. NR 115. These standards involve establishment of zoning districts, land division controls, sanitary regulations, and administrative and enforcement provisions. As noted above, failure to meet these minimum standards could result in state intervention. When the final review indicated all requirements had been met and the appropriate administrative mechanisms established within the county, the department issued a certificate of compliance to the county. All 15 coastal counties have received certificates of compliance.

The department's participation and review did not end with the approval of the ordinances. The certificate of compliance not only acknowledged the adoption of the regulations but also the requirement stating that the department shall receive copies of applications and timely notice of hearings on amendments, variances and special exceptions (conditional uses). The purpose of this requirement was to allow the department to monitor the activities of the counties in subject areas where changes in the ordinance are likely to occur.

The matter of prime concern in this review process is the amendment of ordinances to provide lesser standards than required in NR 115 or to change the zoning designation of lands to allow a use which may not be appropriate for that area. The department feels early review and close contact with the counties has precluded this from happening. An item that has assisted this process has been the firm department position that use variances are actually amendments and must follow the zoning amendment procedures of the Wisconsin Statutes. This position has prevented possible abuses of the ordinance.

DNR staff also reviews appeals for special exceptions (conditional uses) mainly to assure that appropriate conditions are required and enforced.

In addition to and in conjunction with this review of amendments, special exceptions and variances, the department may continue to review and reevaluate the county ordinances in order to ascertain their effectiveness in maintaining the quality of Wisconsin water (NR 115.06(2)(b)). Ordinances which fail in this respect shall be deemed non-complying and must be modified to meet the minimum standards within a time limit established by the department (NR 115.03(a)).

Further assistance is rendered by the department staff upon request of the county. Help in revising zoning provisions, delineating the ordinary high watermark and assessing potential impacts of a project is provided by both region and central office staff. In addition, department staff conduct training sessions for zoning personnel, boards of adjustment and appeal, and planning and zoning committees.

The assurance of continued effective enforcement is also of strong concern. This potential problem is handled by the close scrutiny of appeals as previously mentioned, continued contact with the counties (both individually and through their statewide association), and with the assistance of the network of department field personnel.

Sec. NR 115.05(6) provides that an acceptable ordinance must contain administrative and enforcement provisions, including regular inspection of permitted work in progress and the prosecution of all violations of the ordinance. Actions against violators of an ordinance can also be brought pursuant to sec. 59.69(11). Sec. 59.692(2)(a) states that all provisions of sec. 59.69 (which concerns county zoning in general) shall apply to shoreland zoning ordinances, except as otherwise specified. Sec. 59.69(11) provides that county zoning ordinances shall be enforced by appropriate fines and penalties. It also provides that ordinances may be enforced by injunctive order, not only at the suit of the county, but also at the suit of the owner or owners of real estate within the district affected by the ordinance.

An example of county enforcement of a shoreland zoning ordinance is presented by the well known case, *Just v. Marinette County*, 56 Wis. 2d 7, 201 N.W. 2d 761 (1972). In this case Marinette County sought an injunction to restrain the Justs from placing fill material in a wetland on their property without first obtaining a conditional use permit as required by the shoreland ordinance. The county also sought to impose a fine for the violation. The Justs sought a ruling that the ordinance was unconstitutional, particularly insofar as it prohibited the filling of wetlands. The Wisconsin Supreme Court affirmed the ruling of the trial court that the ordinance was valid and that the Justs were subject to a forfeiture of \$100. The court concluded that the requirement in the Navigable Waters Protection Act for counties to pass shoreland zoning ordinances was a valid exercise of the "active public trust duty of the State of Wisconsin in respect to navigable waters". (Wis. 2d 18)

In view of the court's reasoning in the *Just* case that the regulation of shoreland and wetlands is part of the state's "public trust duty", the Attorney General or a citizen of the state would have standing under the public trust doctrine to ensure that the department is carrying out its public trust responsibilities under sec. 59.692 and Chapter NR 115.

## 27) Using wetlands

Each county, city and village is required to regulate activities in shoreland wetlands or portions of shoreland wetlands 5 or more acres in size. DNR minimum standards define permissible uses and require the ordinances to protect the natural functions of wetlands. If local ordinances are found to be inadequate, the DNR shall adopt an ordinance for the locality. Wetland use is subject to management control because

of potential impacts of various activities on coastal water quality, flood capacity, fish spawning and natural beauty.

28) Emitting air pollutants from point sources

This activity is regulated at the state level by the DNR. Plans for construction of air contaminant sources are submitted to the DNR, which thereafter issues an order approving or prohibiting the project. Discharge of air pollutants is subject to the management program because of the adverse effects on air quality in the coastal area, which can be injurious to plant, animal, and human life and can make the coastal area less desirable for recreational, residential, or commercial use. In addition, air pollution can have an adverse impact on the quality of coastal waters, as air pollutants are transmitted to Great Lakes waters.

29) Obtaining drinking water

See l(j) above.

30) Using pesticides

The use of pesticides is regulated by the DNR and the Department of Agriculture Trade and Consumer Protection.

The DNR has a regulatory program for pesticides that pose a serious threat to wild animals. DATCP regulates pesticide use practices.

Pesticide use is subject to state regulation because of its potential for extremely serious effects on human health and fish and wildlife resources and on the quality of coastal waters.

31) Using outdoor advertising

This activity is regulated at the state level by the DOT. In non-business areas, no advertising signs may be erected that are visible from interstate or federal-aid primary highways (excepting limited on-premise advertising). Persons engaging in the outdoor advertising business must be licensed by the highway commission. Outdoor advertising is included in the state management program because of the potential adverse aesthetic impacts on scenic coastal resources.

32) Mining of metallic minerals

See l(b) above.

33) Depositing substances in groundwater

The DNR establishes groundwater protection standards for substances detected in, or with the potential to enter, the groundwater resources of the state. The standards are established on a two-tiered basis: both a preventative action limit and an enforcement limit are determined for each substance. State agencies are responsible for ensuring compliance with these limits by the activities, practices and facilities which they regulate. This use is included in the Program because of state level concern about the potential of coastal activities, practices and facilities to cause pollution of coastal groundwater resources.

#### e) Activities of regional benefit.

1) Definitions. The Program has a method for assuring that local regulations do not unreasonably or arbitrarily restrict or exclude land and water uses of regional benefit.

A use or activity is of regional benefit when it both:

- is a "direct and significant" coastal use, and
- has a multi-county environmental, economic, social, or cultural impact (exclusive of boundary situations).

Local restriction or exclusion of an activity of regional benefit is "unreasonable" when it is arbitrary or capricious and is of detriment to the region. This implies a situation where the local decision to exclude the activity is made without a rational basis that is, not based upon legitimate legal factors.

2) Dealing with unreasonable local exclusions. There are several methods that are used to deal with unreasonable local exclusion of activities with regional benefit. In some cases the regional and statewide potential benefit is such that a direct state action or an override of the local decision is called for. In other cases state standards and local decision-making, with a potential appeal to the state, is more appropriate. In still other cases the most appropriate state role is participation in local hearings, thereby assuring that a greater-than-local perspective is presented to local decision-makers, but leaving the final decision in local hands. Finally, there is recourse to the courts to challenge arbitrary or capricious local exclusions. While specific administrative remedies are set out below for several key activities of regional benefit, this judicial remedy can be used to address any arbitrary local action.

When occurring within the coastal management area, the following are deemed to be uses or activities of regional benefit, with the state roles as indicated to assure that unreasonable local exclusion does not take place. They are "direct and significant" coastal uses and have multi-county environmental, economic, social, or cultural impacts. However, this listing is not final or exclusive. Other "managed uses" may be included in the future if their inclusion is warranted as necessary.

#### Power plants and transmission lines

Under sec. 196.491(2), Wisconsin Statutes, the PSC is required to prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. The report must, among other requirements, identify and describe large electric generating facilities on which an electric utility plans to commence construction within 3 years. Copies of the draft plan shall be filed for review and comment with the Departments of Administration, Commerce, Health and Family Services, Justice, Development, Natural Resources, and Transportation, the regional planning commission, and county and municipal clerks in those areas that will be affected by the assessment, and other affected parties. A public hearing on the advance plan shall be held. With consideration of the comments, the PSC shall prepare a final strategic energy assessment.

Sec. 196.491(3)(a) requires that no person may commence the construction of a facility unless such person has applied for (6 months prior to construction) and received a certificate of public convenience and necessity from the PSC. Copies of the application shall be sent to the clerk of each municipality and town in which the proposed facility is to be located. The PSC will hold a public hearing on the application in the affected areas. Under sec. 196.491(3)(d), the PSC will approve an application for a certificate of public approval if the PSC determines that the proposed facility is: a) satisfies the reasonable needs of the

public for an adequate supply of electric energy; b) the design and location or route is in the public interest; d) will not have undue adverse impact on other environmental values; e) complies with the criteria under sec. 196.49(4) if the application is by a public utility as defined in sec. 196.01; f) will not unreasonably interfere with the orderly land use and development plans for the area involved; g) will not have a material adverse impact on competition in the relevant wholesale electric service market; and h) for a large electric generating facility, brownfields are used to the extent practicable.

Section 30.025(3) requires that DNR shall grant the necessary permits if it finds that the application has shown the proposal; a) complies with environmental standards administered by the department and federal environmental standards; and b) does not unduly affect public rights and interests in navigable waterways, the effective flood flow capacity of a stream, the rights of riparian owners, or water quality.

Finally, sec. 196.491(3)(i) states that if installation or use 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. That is, once the above described process has been completed, development of generating facilities and major transmission lines may not be precluded by local regulation. (For a discussion in greater detail, see managed use #16 in Appendix H of the draft environmental impact statement.)

#### Use and development of rural shorelands

Sec.281.31, Wisconsin Statutes, declares the purpose of regulations relating to land abutting or under navigable waters to be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses, and reserve shore cover and natural beauty.” In addition to the above purposes, the purpose of shorelands zoning is to “promote the public health, safety and general welfare” under sec. 59.692(2)(a).

Counties are required to adopt zoning ordinances applying to all their shorelands in their unincorporated areas. Sec. 59.692(1)(b) defines shorelands as 1,000 feet from the ordinary high water mark of navigable lakes (including the Great Lakes), ponds or flowage, and 300 feet from the ordinary high water mark of navigable rivers or streams or to the landward side of the floodplain, whichever distance is greater. County ordinances must meet Department of Natural Resources’ standards and criteria. These standards are part of the Wisconsin Administrative Code as Chapter NR 115.

NR 115.04(2)(a) states that “compliance with the requirements of sec. 59.971 will be determined by comparing the county shoreland regulations with the state minimum standards for shoreland protection as contained in NR 115.03.” Included in the criteria the DNR employs is an examination of the overall appropriateness of the uses permitted under the county program and their relationship to the need for uses and the capability of the land to support such uses.

Counties that have enacted regulations that meet the minimum standards are considered to be in compliance with sec. 59.692. All coastal counties have shoreland programs that have been certified by DNR as meeting state standards.

Counties are required to keep their programs current, effective and workable to retain their compliance. Therefore, DNR receives copies of all applications and timely notice of hearings on amendments, variances and special exceptions to assure that appropriate conditions are required and enforced. The state can participate in local hearings on amendments, variances and special exceptions as an affected party, may appeal decisions to the judiciary, and, if a pattern of noncompliance with state standards emerges, may revoke its certification of the county program.

If the DNR determines, after notice and hearing, that a county has failed to adopt an ordinance meeting DNR standards and criteria, or if the county has failed to keep an ordinance current, effective and workable, section 59.692(6) provides that the DNR shall adopt such an ordinance. Also, given both its role as mandated by these statutes and its role under the public trust doctrine, the DNR would certainly be an “affected party” and could challenge a local decision judicially. (See managed use #26 and Appendix H of the draft environmental impact statement for more details.)

#### Recreational sites of state level significance

Sec. 27.01(1), Wisconsin Statutes, declares the purpose of state parks is “to provide areas for public recreation and for public education in conservation and nature study.” The Department of Natural Resources has the responsibility for the selection of a balanced system of state parks, and for the acquisition, development and administration of state parks. Sec. 27.01(2)(a) allows DNR to “acquire by purchase, lease or agreement, lands and waters suitable for state park purposes and may acquire such lands and waters by condemnation after obtaining approval of the senate and assembly committees on natural resources.” Inherent in this clause is the authorization that local regulations may not preclude acquisition or development of designated state parks. Sec. 27.01(2)(L) sanctions DNR to make investigations of sites that have potential value as state parks. Sec. 27.01(2)(b) allows DNR to “classify state park areas as to their most logical employment and greatest usefulness.” Sec. 27.01(2)(j) authorizes DNR to make such rules and regulations as may be necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of the facilities. These rules and regulations are contained in Chapters NR 45 and NR 1, Wisconsin Administrative Code.

### *3. Program boundaries.*

The boundaries of the coastal zone subject to the Management Program extend inland to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters.

Based on inventories and considering the decision to use existing programs for implementation, the formal Program boundary is as follows: on the waterward side -- the state boundary; on the landward side -- the inland boundary of the 15 counties with frontage on Lake Superior, Lake Michigan, or Green Bay. Within this area, the state manages those uses listed in the preceding section that directly and significantly impact on the coastal environment; similarly, designated special coastal areas receive special management attention. All land owned, leased or whose use is otherwise by law subject to the discretion of the federal government, as well as lands held in trust by the federal government, is excluded from Wisconsin’s coastal zone. (See Chapter III.A)

Wisconsin consulted with neighboring states during program development in an effort to ensure compatible boundaries.

## C. ORGANIZATION FOR IMPLEMENTATION OF THE MANAGEMENT PROGRAM

### *1. Overview.*

After extensive examination of coastal issues, problems and programs in Wisconsin, it was concluded that coastal management in the state can be improved through use of a new organizational structure.

The central drawback to effective coastal management in the state was not a lack of rules, regulations, and statutory authority to control development in the coastal area, but the failure of government to assign a high enough priority to its coastal resource. This failure was reflected in the lack of coordination of the many governmental programs affecting the coastal environment, the lack of consistent and adequate enforcement of the many laws regulating activity in the coastal area, and the lack of a single strong voice to advocate a sound and sensible future for this valuable resource that belongs to all of the people of Wisconsin.

For that reason this Program does not create a comprehensive set of new regulations or a new governmental superagency to regulate the coastal area. But it has an interagency, intergovernmental Coastal Management Council to direct an overall coastal management program. Rather than taking over and administering existing state and local programs or establishing new permitting requirements, this Council's purpose is to make those management techniques and institutions we already have work better. This is accomplished by the Coastal Management Council's provision of coordination, provision of assistance to agencies to improve their implementing responsibilities, provision of assistance to localities to help improve their local management capabilities, and perhaps most importantly, provision of a strong voice that looks at the coastal resource in its entirety -- its environmental, economic, social and cultural attributes -- and advocates its wise and balanced use.

The Coastal Management Program relies on existing state programs for implementation. The focus is on improving and coordinating the existing management system while studying the need for longer-term reforms.

State government, using existing management techniques, addresses those coastal issues of state-level concern: the management of the key geographic areas and key land and water uses discussed above. In order to improve local capabilities to address coastal issues, this Coastal Management Council also assists coastal localities.

In sum, the following conclusions are made relative to the organizational issue:

- At the outset, Program implementation relies on existing statutory authority;
- The Program focuses on improvement of state-level management through better use of existing state programs; that improvement is accomplished by: (a) better coordination, (b) better implementation, (c) provision of incentives, (d) development of new policy direction, and (e) coastal advocacy.
- Provision of additional financial and technical assistance to help local governments address coastal concerns is both desirable and necessary.

### *2. Functions addressed at the state level.*

The Wisconsin Coastal Management Program relies on existing legislation and programs for implementation-- no new body is created to administer regulations, issue permits, or purchase lands. All

specific implementing responsibilities continue to be handled by the existing agencies that currently handle them.

There are a number of specific functions that are assigned to the Coastal Management Council. These functions include:

a) Oversight of state agency implementation and compliance.

The first function is oversight of state agency compliance with the adopted state coastal policies. All state agencies have (by executive order, supplemented by interagency agreements) been directed to cooperate with and, insofar as their statutory responsibilities allow, to act consistently with the adopted state coastal policies. Should any current legislation or administrative rules preclude full agency compliance, that agency is requested to notify the Coastal Management Council. To aid this function, the Coastal Management Council will review and comment (under E.O. 12372, NEPA and WEPA) on state and federal activities located in the coastal area in terms of their consistency with the adopted state coastal policies.

b) Policy development.

A second function is the collection and ratification of a set of overall state coastal goals. These goals cover topics such as areas of management concern, managed uses, intergovernmental coordination, and public participation. The state coastal policies are set out in Chapter I of this document. Certain goals may conflict and will require resolution through compromise. This balancing of interests will be a responsibility of the Coastal Management Council (see the discussion of conflict resolution later in the chapter).

c) Designation of key areas and uses.

A third function relates to the identification of both key geographic areas and key land and water uses. Standards for special coastal areas and a specific process for designation of specific areas are set out in the previous section of this chapter. Designation of land and water uses having ‘direct and significant’ impacts on the coastal environment is also made in the previous section. Finally, a mechanism for preventing potential unreasonable local exclusion of activities of regional benefit is also set out above. The details are set out in Chapter II. B. of this document.

d) Consideration of the national interest.

The Council uses its review and comment powers to assure that state agencies consider the national interests (see Chapter III. B., in the coastal area).

e) Serve as an interagency conflict resolution forum.

See section C.5 of this chapter.

f) Oversight of provision of financial assistance.

A fifth function is the establishment and operation of a program of financial assistance to coastal localities for use in local coastal management efforts consistent with adopted coastal goals. The Coastal Management Council also oversees a program of financial assistance to state agencies and tribal governments to improve coastal management implementation.

g) Oversight of a program of demonstration grants.

h) Oversight of provision of technical assistance to state agencies, localities, and Tribal governments.

i) Coastal advocacy.

Another function is continuing coastal advocacy and public awareness/education role. The Coastal Management Council evaluates and asserts coastal interests before the public, government officials, and local, federal and state agencies, including seeking any legislative or administrative rule changes necessary for effective coastal management.

Any proposals to modify existing state authorities with regard to coastal management will receive adequate notice. Opportunity for extensive review and comment through existing mechanisms, supplemented by additional efforts of the Coastal Management Council, are provided to affected local governments, citizens, and regional and state agencies.

j) Coordination of all of the above functions.

k) Adoption of program budget.

l) Adoption and periodic updating of the state Coastal Management Program.

This is done as part of the Council's regular reevaluation of its roles and responsibilities. Program changes will be submitted for federal approval. In both cases affected state, federal and local agencies and the public will be given appropriate opportunities for review and comment. Program changes are basic program changes, such as new legislation and amendments to administrative rules.

m) State and local bodies may request that the Coastal Management Council review, comment on, and/or endorse their coastal management plans and projects.

n) Such other responsibilities and functions as may be assigned by the Governor.

*3. Wisconsin Coastal Management Council.*

In order to adequately perform these functions, it is necessary to have a broad Coastal Management Council with some members having a state government oriented perspective, some having a local government oriented perspective, and some a publicly oriented perspective. Further, full consideration is given to inclusion of women and minorities on this Council. As tribal governments control a significant portion of the Wisconsin Lake Superior shoreline, tribal governments participate in this Program.

The Wisconsin Coastal Management Council has 14 members. While all of the appointments are formally made by the Governor, 10 of the 14 appointments are non-discretionary and selected as shown in Table 2. Appointments are for two-year terms (or the nominee's term in office), with the possibility of reappointment. The terms are staggered.

**Table 2-- Council Makeup and Method of Selection**

<u>Body</u>	<u>Number</u>	<u>Method of Selection</u>
<u>State government oriented members</u>	(5)	
Department of Natural Resources	1	(Secretary or designee)
Department of Transportation	1	(Secretary or designee)
Department of Administration	1	(Secretary or designee)
Assembly	1	(by leadership)
Senate	1	(by leadership)
<u>Local government oriented members</u>	(4)	
Northwest area	1	(see note)
Bay Lake area	1	(see note)
Southeast area	1	(see note)
City of Milwaukee	1	(by mayor)

**Note on locally oriented member selection:** Each coastal regional planning commission may submit three names to the Governor for the Council members from their area. The names are to be selected by the Commission's executive committees. The nominations have to come from the following four categories, with no more than one from any single category: (1) regional planning commission members; (2) county officials; (3) city officials; and (4) village and town officials. At least two of the three nominees of each area must be elected officials. Also, each nominee must be from a different county and the nominees should reside in coastal counties.

<u>Body</u>	<u>Number</u>	<u>Method of Selection</u>
<u>Publicly oriented members</u>	(4)	
U. W. (Sea Grant)	1	(By President)
Coastal citizens (Superior and Michigan)	3	(By Governor)

**Note:** The Governor's selection of these three citizens would be based on the recommendations of Program staff (who would consult fully with interests with regional and statewide contacts and perspectives).

<u>Body</u>	<u>Number</u>	<u>Method of Selection</u>
<u>Tribal governments</u>	(1)	(see note)

**Note:** Wisconsin's two Lake Superior tribes with coastal lands promote full cooperation and coordination of the Wisconsin Coastal Management Program and tribal coastal management efforts.

#### a) Staff for the Coastal Management Council.

The Department of Administration, through its Coastal Management Section, serves as staff to the Council. It is the lead agency for overall Coastal Management Program implementation. In this capacity, it accepts and administers federal grant funds for the Coastal Management Program. It also has a central, overall policy coordination responsibility in state government and strong working relationships with other state agencies.

A number of other state agencies are actively involved in the Coastal Program. For example, as a major implementor of coastal programs, the Department of Natural Resources might likely receive grants to improve its coastal management abilities and acquire additional lands (or interests in lands) of statewide recreational or natural importance; the Public Service Commission might receive grants to better deal with the issues of siting energy facilities in coastal areas; the Department of Transportation might receive grants to provide technical assistance in port development; the Department of Development might receive grants to provide technical assistance to localities undertaking coastal management efforts; and so on.

It is also anticipated that the coastal regional planning commissions will provide staff support for the program in a variety of ways, including, for example: staffing regional task forces; providing technical assistance to localities; coordinating the provision of technical and financial assistance in their areas; undertaking technical studies to supply information for the Program; technical review of Program reports and proposals; assisting in public information and education programs; assisting in public participation programs; etc.

#### b) Establishment of the Wisconsin Coastal Management Council.

The Coastal Management Council is established by gubernatorial executive order. The Governor is authorized under section 14.019, Wis. Stats., to appoint special committees with such membership as the Governor desires, to advise the Governor in such matters as he directs. These committees are temporary, but may be continued by Executive Order when a new gubernatorial term of office begins. By statute, their role is to study specific matters and recommend to the Governor policy direction with respect to those matters.

The Coastal Management Council is a special committee created under section 14.019, Wis. Stats., to advise the Governor on Great Lakes issues and provide policy direction with respect to Wisconsin's coastal management efforts. While the Governor may, from time to time, direct the Council to study and make recommendations on specific Great Lakes issues, the Governor has given the Council broad responsibility, on an ongoing basis, to find opportunities to improve coastal management and advise the Governor, Legislature and state agencies of these opportunities, and recommend the appropriate course of action to take with respect to them.

#### *4. Roles of existing governmental agencies.*

As has been noted several times in this document, existing state agencies continue to carry out their individual coastal management activities. The Department of Natural Resources continues to purchase and operate state parks, carry out its fish and wildlife management functions, carry out its water and air quality duties, and regulate shore alteration activities. The Public Service Commission continues to regulate power plant and transmission line planning and siting decisions. The Department of Transportation continues its highway and port assistance activities, transportation planning, and its scenic

easement purchases. The Department of Development continues to provide assistance to localities and continues its tourism and business promotion activities.

The Wisconsin Coastal Management Council takes over none of these specific coastal management activities. It issues no permits and purchases no land. It makes funds available to the above state agencies to improve their management capabilities. It coordinates the activities of these agencies so that a consistent coastal management effort is carried out in the state.

With this Program, local governments continue their role of local coastal planning and management. There is no state takeover of local concerns- local planning and regulation continue to be handled at the local level. Where the state currently oversees these matters, as with standards for shoreland, wetlands, and floodplain zoning, the Coastal Program looks to improving both the state standards and the local capabilities to fully meet those standards. Otherwise, the purpose of the Program is, where requested by localities, to provide technical and financial assistance for the resolution of coastal problems.

Interagency agreements are used to detail specific interagency relationships. These agreements are reprinted in Attachment B.

To assure full consultation and coordination with local governments, major Program decisions are submitted to localities for review as stated below. These decisions include the annual work program/budget, and any changes in management policies or practices set forth in agency administrative rules. The annual budget undergoes a standard E.O. 12372 review, and changes in administrative rules are published in the state's official register of the administrative code at least one month prior to their effective date.

There are a number of other governmental programs underway whose activities can affect the coastal area. They include the three Regional Planning Commissions, the Council of Great Lakes Governors, the Great Lakes Commission, and the International Joint Commission. The Wisconsin Coastal Management Program fully coordinates with these and other programs at the regional, federal and international levels, jointly developing and funding products and policies, where appropriate.

##### *5. Conflict resolution.*

The ability to resolve conflicts among competing uses is important for ensuring a consistent coastal management effort on the part of local governments, state government, and federal agencies. The Wisconsin Program recognizes the Governor's role in the coordination and management of the executive branch as central to any conflict resolution process. The Governor has the authority to assure that a consistent and coordinated coastal program is executed through executive orders. The Governor's principal responsibility is ensuring compliance and promoting consistency among established policies.

Interagency agreements are used as a means of formalizing compliance by state agencies in executing Program goals and policies.

There are a number of mechanisms currently used to help resolve potential conflicts. These include:

##### a) Office of the Governor.

In Wisconsin, the Governor plays a central role in conflict resolution. As the chief executive officer of the state, the Governor has the responsibility and authority to see that the state's coastal policies are faithfully executed in a coordinated and consistent fashion. In addition to broad constitutional powers, including power to approve, veto, or veto in part all legislation, the Governor has specific statutory responsibilities that are central to the conflict resolution process.

b) Department of Administration.

DOA is the lead agency for overall Program implementation. Because DOA is the Governor's chief policy advisor for all state government matters and has the statutory responsibility to interrelate and coordinate the planning activities of other state agencies, it has a central role in rationalizing state policy and thereby resolving conflicts. DOA also serves as the E.O. 12372 state clearinghouse.

c) Wisconsin Environmental Policy Act (WEPA).

(Sec. 1.11, Wis. Stats.) WEPA requires the preparation of environmental and economic impact statements on all proposals and recommendations for legislation and other major state actions significantly affecting the quality of the human environment. The Council and DOA use WEPA as a means of monitoring and participating in the review of state agency actions in or affecting the coastal zone.

d) The Budget Process.

The state budget process is an increasingly important interagency conflict resolution mechanism, involving state agencies, the Governor, and the Legislature. The budget process is managed by DOA. It resolves conflicts through the establishment of funding priorities among the various state programs. The coastal management staff in DOA participates in reviewing budget proposals and in recommending policy options to the Governor.

e) Administrative Review Process.

Conflicts are frequently resolved in Wisconsin by a state agency decision to approve or disapprove a proposed action, such as a permit, often in consultation with the Governor and the DOA. By applying the coastal management policies and regulatory standards, the agency thereby resolves a conflict between the proposed use and other actual or potential competing uses in the area.

f) Interagency Committees.

Interagency committees, like the Environmental Liaison Committee between the Department of Transportation and the Department of Natural Resources, facilitate voluntary resolution of conflicts through exchange of information and early discussion of potential conflicts.

g) State Review of Federal Actions.

The program uses Executive Order 12372 and NEPA review processes to monitor proposed federal actions affecting the coastal zone.

h) Judicial Review.

Under the Wisconsin law, any private party or public agency whose substantial interests are adversely affected may seek judicial resolution of a decision involving state agency action or inaction (Ch. 227, Wis. Stats.).

The Wisconsin Coastal Management Program introduces into this present system of conflict resolution the Coastal Management Council (CMC), the establishment of specific management policies for designated special coastal areas, and the requirement of federal consistency with the policies of the Coastal Management Program. All of these elements are discussed in more detail elsewhere in this document.

Being composed of members representing diverse interests, the CMC attempts to resolve those conflicts before they would normally advance to the Governor's office. The Council uses existing vehicles to improve coordination and assure a consistent management program. Coastal management concerns would be inserted into such reviews by the CMC, taking into consideration the Program objectives and state policies. The CMC would become part of the administrative review process, could become involved in judicial appeals, and has decision-making authority for those issues involving program operation.

With the SCA funding process, specific policies for specific areas are proposed by the managing agency. These proposals are reviewed by local, state, and federal agencies, and the public. With the federal consistency provisions, specific procedures are set forth for improving the coordination of state and federal management programs.

#### *6. Public participation in implementation of the Program.*

The development of the Coastal Management Program in Wisconsin has been undertaken with a strong, aggressive program of public participation. The importance of continued active public participation in the Program is recognized and is reflected in the Program activities listed in Chapter I.

One formal mechanism to assist the Program in meeting its public participation responsibilities is the use of ad hoc citizen advisory committees. The basic purpose of the committees is to facilitate full participation in the Program. The committees are established by the Coastal Management Council on a regional or statewide basis as needed to deal with specific coastal issues which necessitate local citizen input into Program decisions and activities. The committees may also develop, recommend and sponsor public information, education and participation programs.

## D. PROGRAM FUNDING

### *1. Overview.*

#### a) Introduction.

Federal and state funding assistance for coastal management offers the opportunity to make state and local coastal resource management programs work better, to address Great Lakes issues, and to develop an awareness and advocacy of the importance of the Great Lakes to the environmental, social, and economic well-being of Wisconsin.

Federal funds are currently authorized for a fixed period of time (until 1990), although the duration of the federal funding authorization could be extended at some future date. Also, the federal funds are more limited now than in the past and an increasing proportion must be devoted to making significant improvements in coastal resource management, by expanding the scope of the Program or strengthening policies and authorities.

While the Program does not have the financial resources to deal with all Great Lakes coastal management needs, the federal funds can make a difference in strengthening coastal resource management. This suggests the need to focus the funds so they can have the greatest impact.

#### b) Program coverage.

Financial and technical resources available through this Program are limited to the fifteen coastal counties, less the area managed by the federal government. The Program funds are used to achieve the Program objectives identified earlier:

- advocacy of the wise and balanced use of the coastal environment;
- increased public awareness and opportunities of citizen participation in decision making;
- coordination of existing policies and activities;
- improvement of implementation and enforcement of existing policies and programs affecting designated key coastal uses and areas and
- strengthening of local government capabilities to start or continue effective coastal management.

#### c) Accountability.

The Coastal Management Council, among other things, is charged with the functions of:

- oversight of financial assistance to local governments and state agencies;
- oversight of a Program of demonstration grants; and
- approval of the Program budget.

The Council is composed of members from local governments, the state legislature, state agencies and citizens. This composition provides a balance amongst governmental functions. It further provides for members who are readily accountable to the public.

The Coastal Management Program as a whole is accountable to the Governor, the legislature, the general public, the federal coastal office, and the Council membership itself.

## *2. Funding sources for the Coastal Management Program.*

### a) Federal Funds.

Federal funding is available for a variety of activities, from program administration to low-cost construction. The following is a synopsis of the types of assistance available:

Management Program Implementation- Implementation entails the operation and administration of Wisconsin's Coastal Management Program. Funds may be available for staffing, training, studies, conferences and preparation and implementation of management programs and ordinances.

Coastal Resource Improvements- Land acquisition and low-cost construction funds are available for preserving or restoring specific natural or recreational areas of management concern; redeveloping deteriorated or under-used urban waterfronts and ports; and providing public access to and along coastal waters. This assistance can be used to carry out management plans for designated special coastal areas.

Interstate Coordination- Support is available for several states to cooperatively study, plan and carry out multi-state coastal resource management policies.

Estuarine Research Reserves- Funds also are available to acquire, develop and operate natural field laboratories in relatively pristine areas.

As the lead agency for coastal management, the Department of Administration is the recipient of the above sources of funds. However, the funds may be passed through to local governments and other state agencies to accomplish objectives of the Coastal Management Program. In all cases, the state must make application for these funds by submitting relatively specific proposals.

### b) State Match.

The state is required to match the federal funds at a rate of 30% in 1987, increasing to 50% by 1989. This match can be dollars or in-kind services or activities. A limited amount of state general program revenues are available as match for coastal management. Since the Wisconsin Program is based on existing programs, most of the required match is in-kind services. As a general rule, each individual state or local agency contractor must provide a match.

## *3. Eligible funded activities and recipients.*

The following outlines the basic activities which are eligible to be funded in Wisconsin's Program. Coastal Management Council members may not vote on funding decisions directly affecting their constituency or agency. This section parallels the Program objectives identified in Chapter I.B. of this document.

a) To improve the implementation and enforcement of existing regulatory and management policies and programs affecting key coastal uses and areas.

Assistance is available for improved state management of those key uses which have a direct impact on the Great Lakes. Financial and technical assistance (planning, low-cost construction and land acquisition) are also available for special coastal areas designated as being of management concern.\*

Eligible recipients are general purpose governments (state and local); University of Wisconsin; Tribal governments.

b) To improve the coordination of existing policies and activities of governmental units and planning agencies on matters affecting key coastal uses and areas.

Eligible activities include the fiscal and managerial administration of projects funded through the Program and the logistical and staff support of a state-level Council to direct the Program.

The recipient is the lead agency for the Program. Coordination of technical assistance to local units of government will be conducted through the respective regional planning commissions. Adherence to this procedure will aid in minimizing confusion and duplication of effort.

Financial assistance is also available for study and resolution of coastal management problems reaching across state boundaries.

Eligible recipients are general purpose governments, state and local, having jurisdiction and sharing a boundary with neighboring state, and regional planning commissions.

c) To strengthen local government capabilities to initiate or continue effective coastal management.

The Wisconsin Coastal Management Program encourages through demonstration grants new approaches to improve management of the limited Great Lakes shoreline. In order to assist local governments with management within their jurisdictions, the Coastal Program provides funds for innovative approaches to coastal problems.

Eligible activities for demonstration project funding are those which encourage unique and innovative projects. The range of eligible projects is broad. To ensure the greatest possible flexibility in evaluating projects, any project which meets the following guidelines is eligible for consideration. The guidelines for project eligibility include:

- Projects should deal with an issue or problem of substantial interest to others in the coastal area, and results should be applicable to other coastal locations in Wisconsin (or the nation).
- Projects should not duplicate other projects in Wisconsin which are in process or which have already been completed. However, projects which result from or build upon previous projects would be acceptable.
- Projects must be consistent with the adopted plans of local units of government and area wide agencies.

Eligible applicants are only coastal towns, villages, cities or counties. Other local units or agencies of government or private bodies interested in potential demonstration projects are required to obtain the sponsorship of the local unit of government and the clearance of the unit in which the project is located.

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- Projects must be an outgrowth of the specific policies to manage key uses (Chapter II.B.2.) and key areas. (Chapter II.B.1.)

The local governmental unit could act as sponsor for projects; could contract with others to complete projects; or could undertake projects on its own.

Technical assistance is also available. The intent of this is to aid local units of government in developing a capability to manage their shoreline.

One of the primary purposes of a continuing coastal management effort in Wisconsin is to provide both funding and technical skills to those units and agencies of government having jurisdiction on the water and shoreland areas in the study of and planning for resolution of problems in the coastal management area. Several agencies of government have the technical staff capability to assist the state and local coastal units and agencies of government in the preparation of special studies or plans related to the coastal management area as well as the preparation of coastal management implementation measures. It is incumbent upon those agencies of government having technical expertise to make it available to units of government which wish to carry out the established objectives of the Coastal Management Program.

Eligible activities include those issues which are regional or statewide in nature and where technical assistance is either nonexistent or insufficient. There are several types of technical assistance that could be provided:

- Improved communication and coordination between units of government. Financial assistance within this element is for: 1) assisting regional clearinghouses to facilitate coordination and avoid duplication; 2) providing administrative support to local governments in seeking financial or technical support through this Program; and 3) providing readily available technical support to local governments in addressing coastal problems; 4) providing technical assistance coordination; 5) staffing citizens advisory committees.
- Direct Assistance. This covers 1) organization of a coastal area study, management, or planning program; 2) selection of other technical data or assistance providers; 3) coordination of work efforts; 4) data collection and analysis; 5) preparation and review of alternative and final plans; 6) preparation and review of technical studies and reports; 7) preparation of specific ordinances or regulatory devices; and 8) provision of staff training programs and courses.
- Indirect Assistance. This includes 1) preparation and dissemination of planning guides related to coastal management projects; 2) preparation and dissemination of specific work handbooks or manuals; 3) preparation of model codes, ordinances, and other implementation devices; 4) provision of training courses and seminars related to coastal management programs, projects and implementation; and 5) specific management activities.

Assistance for the implementation of a management program would be obtained through participation in the designated area/use program discussed above. This assistance can include land acquisition and low-cost construction activities.

Eligible recipients are federal agencies; state agencies; city, village and town agencies; county agencies; regional planning commissions; universities, colleges, and public technical schools; and tribal governments.

d) To provide a strong voice to advocate the wise and balanced use of the coastal environment and promote the recognition in federal, state and local policies of the uniqueness of the coastal environment. This objective is primarily achieved through the Coastal Management Council and the Program staff. Other activities could also aid in achieving this objective and proposals would be considered.

Eligible recipients are principally the lead agency, and general purpose units of government.

e) To increase public awareness and opportunities of citizen participation in decisions affecting the Great Lakes resources.

Eligible activities can be grouped into two areas- public awareness and citizen participation. Public awareness activities will take full advantage of existing services provided through the Sea Grant College Program, University of Wisconsin-Extension, and others. Activities could include preparation and distribution of informational materials on coastal issues, such as hazards of oil spills, shore erosion, the unique climatic effects along the lakes, air transport of hazardous substances, etc.

Citizen participation activities could consist of: the development of innovative approaches to enhance public participation in decision-making ombudsman to investigate citizen concerns over coastal management; or support of citizen advisory committees.

Eligible recipients are state agencies; city, village and town agencies; county agencies; regional planning commissions; and universities, colleges, public technical schools, and public schools.

*4. Considerations in project funding.*

Overall, grant funds are used to focus on major issues of statewide significance. While focusing the grant program on issues of statewide significance, the Council provides direct grants and technical assistance to local governments, in order to improve local as well as state management capacity related to priority coastal issues. Funds are used to achieve broad, long-term resource management improvements versus solving specific short-term or locally unique coastal problems.

During Program development, the Council sponsored a series of public meetings and distributed a questionnaire to find out what the public thought a Wisconsin coastal management program should be doing. The citizens responding indicated their priority concerns were:

- improvement of water quality\*
- abatement of damage from shore erosion
- management of natural areas
- public recreation and access (historic, cultural)
- port management
- urban shore uses
- other issues

This issue list and the following criteria will be used by the Coastal Management Council in evaluating proposals for funding:

- Urgency or immediacy of need
- Geographic distribution of the proposals
- Presence of matching funds
- Ability and willingness of applicant to carry out the activity
- Consistency with local coastal plans
- Transferability of findings of the project
- Cost of the project and availability of complimentary funds from other state or federal sources
- Existence of alternative means for carrying out the project

*5. Application process.*

Each year, the Coastal Management Council adopts a work program which lays out the top priorities for the year and the general work tasks and budget needed to carry out the priorities. The annual work

program provides general guidance. State agencies, local governments, regional planning commissioners, consultants, etc., are asked to submit proposals recommending specific projects to carry out the tasks. Formal requests for proposals or letters of invitation will be issued. The proposals will be reviewed by the Council's staff, assisted by independent technical experts from other agencies, for eligibility, technical soundness, and the extent to which they meet the priorities. The Council makes the final funding decisions. The selected proposals will be included as part of the state's application for federal coastal management funds.

#### *6. Reporting and evaluation.*

Each recipient will be informed that periodic reports will be required for all funded projects. In addition to the regular progress report, each recipient will be required to prepare a final report on the project as well as an evaluation of the project. It is recommended that staff advise the Council on progress and quality of projects.

\*Water quality was the principal concern; however, due to the major public commitment to water quality, Program funds should be used only after all other sources have been exhausted.

### **III. FEDERAL GOVERNMENT ACTIVITIES IN THE COASTAL AREA**

#### **A. OVERVIEW**

One of the basic underlying concepts in Wisconsin's Program is to make government work better through a strengthened relationship between state and local government. The Coastal Zone Management Act of 1972 requires that the state-federal relationship also be strengthened by requiring federal agency activities to be "consistent with the state program, to the maximum extent practicable."

Wisconsin requested federal agencies to identify their interest in the Wisconsin coast and has provided full opportunity for formal review of all program documents. Additionally several specific coastal issues have been addressed with excellent support from federal agencies, specifically shore erosion and the analysis of lake level regulation.

All land owned, leased or whose use is otherwise by law subject solely to the discretion of the federal government, as well as lands held in trust by the federal government, are excluded from the Wisconsin coastal area. Federal activities including development projects undertaken on excluded federal lands which directly affect the coastal area, and federal license, permit and assistance activities on such lands which affect the coastal area must generally be in conformance with the Wisconsin Coastal Management Program. By excluding federal lands from its coastal area, Wisconsin does not relinquish or in any way impair its rights or authority over federal lands that exist outside of the context of the Coastal Management Program. Indian lands, including the Bad River, Red Cliff and Oneida Reservations, are eligible for program assistance as defined in Chapter II. A list of federally excluded lands was reprinted in Appendix I of the draft environmental impact statement.

Continued coordination with federal agencies will ensure that national interests are adequately considered in the management of the program. Coordination has and must continue to occur not only formally but on a working level as well.

The listing of those coastal related federal activities in which Wisconsin has an expressed interest was printed in Appendix I of the draft environmental impact statement.

The following sections set out in more detail the questions of:

1. the national interest in the Wisconsin coastal area and its relation to the Program; and
2. the question of consistency of federal actions with the Wisconsin Program.

## B. THE NATIONAL INTEREST IN THE WISCONSIN COASTAL AREA

This Program recognizes that the Great Lakes are an important national, as well as state and local, resource. The natural, recreational, commercial shipping, and other benefits of Lake Superior and Michigan extend beyond the boundaries of Wisconsin. The Coastal Zone Management Act of 1972 requires that a “management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state’s coastal zone) which are necessary to meet requirements which are other than local in nature.” This section describes how Wisconsin has fulfilled the spirit and intent of this requirement, and describes the process that the Program employs to consider the national interest in the siting of such facilities during program implementation.

### *1. The national interest in the Wisconsin coastal area.*

#### a) Commercial Navigation.

There is a national interest in maintaining and enhancing the level of commercial navigation on the Great Lakes. The five Great Lakes and their connecting waterways and canals form a water highway 2,342 miles long from the heart of the North American continent to the Atlantic Ocean via the St. Lawrence River. The area served by Great Lakes ports contains 35 percent of the nation’s population, and provides 44 percent of the gross national product. The dispersion of mineral resources, population, and industry, and the region’s lack of large sources of energy contribute to the great need for a complete and efficient transportation system. Continued regional growth and development is dependent on such a system.

The Great Lakes-St. Lawrence River commercial navigation system is a low-cost transportation facility that is essential to the economic vitality of the Great Lakes region, and an important contributor to the national economy. Waterborne transportation requires less energy per ton-mile than any other form of transportation and creates little noise and air pollution. It also provides efficient means of transporting energy sources such as coal.

This navigation system is presently underused. There is a national interest in improving the efficiency of the present Great Lakes navigation system, including the facilities which are necessary to accommodate Great Lakes commerce.

A number of Wisconsin’s ports and harbors have been declining or stagnating. For continued efficient operation, ports and harbors should be maintained to adequate depths both to allow ocean going and lake vessels access to shore facilities and to allow efficient shipping capacities. In order to maintain a high volume of traffic passing through Wisconsin’s Great Lakes ports and harbors, the transportation system and facilities must be highly efficient and economical. There is a need for some modernization to keep pace with cargo handling technologies. Other considerations include seaway tolls, competition from railroads, and the level of attention given Great Lakes concerns by the Maritime Administration.

The Duluth-Superior harbor is one of the most important in the Great Lakes and in the nation, shipping substantial amounts of iron ore, grain, and also scrap iron, coal, limestone, slat, steel products, and other products in both domestic and international trade. Federal expenditures at Duluth-Superior, particularly for maintenance dredging, have been high. The Wisconsin and Minnesota coastal programs sponsored funding of an assessment of how to manage the twin ports in a comprehensive manner. Priorities for this

area include extension of the navigation season, accommodation of supercarrier traffic, and disposal of dredge spoils in an environmentally safe manner.

Other major harbors in Wisconsin include Milwaukee, Green Bay, Kewaunee, and Manitowoc. Needs in these harbors include continuation of cross-lake car ferries, attraction of sufficient or additional traffic, and dredging to maintain adequate depths in an environmentally sound manner.

#### b) Energy.

There is a national interest in the siting of certain energy facilities that are necessary to meet requirements that are other than local in nature in Wisconsin. The state's standard for review of power plant siting is set out in the statutes at S. 196.491. One of the standards used is whether the facility "satisfies the reasonable needs of the public for an adequate supply of electric energy". Energy needs in the Great Lakes are related to the improvement of commercial navigation facilities, discussed above. Wisconsin has no known or projected production or reserves of oil, natural gas or coal. Coal is the major fuel for the generation of electricity in Wisconsin, as it is for the entire Great Lakes basin, and virtually all of the coal used in Wisconsin must be imported by rail or water. Recent federal legislation and the President's Energy Plan have expressed a national policy supporting the increased use of coal for energy production. The improvement and expansion of facilities in Wisconsin to carry out this policy are in the national interest.

Low sulphur western coal is presently increasing its share of the coal movement on the Great Lakes. Although shipments of eastern coal from the major coal ports of Lake Erie have declined within the last decade, electric utility demands for western coal spurred the completion in 1976 of a major coal transshipment facility in Superior. Reported to be the largest bulk handling facility in terms of cargo handled per unit time, the Superior facility is designed for an eventual transshipment capacity of 20 million tons per year. This facility could double the coal traffic moved on the Great Lakes. However, the extent to which western coal traffic will increase depends upon the degree of conversion of existing facilities to western coal and the construction of new facilities for use of western coal.

Wisconsin has a limited refinery capacity (a small refinery in Superior) and no expansion is anticipated. One factor which might influence refinery development in the Midwest would be the piping of excess Alaskan crude oil to the region. There is a rather limited possibility that these pipelines could eventually bring between 700,000 to 1,000,000 bbl. of oil daily into Minnesota. While such a development might necessitate the building of new refineries, it is more likely that the crude oil would either be piped to existing refineries operating below capacity or existing refineries would be expanded. Neither possibility is likely to have major implications for the Wisconsin coastal area in the foreseeable future.

Although natural gas is not produced within the state and there are no known efforts of siting natural gas facilities within the Wisconsin coastal area, in the long term the coastal area could be a desirable location for natural gas facilities. These include underground natural gas storage facilities, liquid natural gas peak-sharing plants and synthetic natural gas plants. In addition, with the increased shipment of coal through Great Lakes ports, the Wisconsin coastal area could possibly become a desirable site for coal gasification facilities.

#### c) Defense Facilities.

There are no major defense facilities located in the Wisconsin coastal area (see list of federally excluded lands in Appendix 1 of the draft environmental impact statement); in fact Wisconsin currently has the

lowest per capita level of defense spending in the U.S. Any new defense facility would be evaluated in terms of its national and state importance.

d) Other Facilities.

Although commercial navigation, energy and defense facilities are considered to be the most important categories of facilities in which there may be a national interest in Wisconsin, there may be a national interest in the siting of certain recreational facilities or regional sewage treatment plants in the future. The only federal recreation area in the state's coastal area is the Apostle Island National Lakeshore. There are currently no sewage treatment plants serving multi-county areas; however, recent court decisions indicate that treatment levels for the Milwaukee metropolitan area may have to be more stringent than nearly all other cities in the Lake Michigan watershed. There may, in the future, also be some level of national interest in the siting of U.S. Coast Guard search and rescue facilities.

e) National Interest in Coastal Resource Conservation and Protection.

The requirements to consider adequately the national interest in the planning for and siting of facilities which are necessary to meet other than local requirements are within the context of balancing a national interest in these facilities with other national interests related to coastal resource conservation and protection. In the Great Lakes, water quality is of paramount national and regional concern. The Great Lakes contain approximately 20% of the world's fresh water. Both Lakes Michigan and Superior have very high water quality, with the exception of heavy pollution in the near shore area of the southern end of Lake Michigan. Great Lakes water quality problems have received national attention under provisions of the Clean Water Act, and the recent amendments strengthen the Federal effort to ensure protection and enhancement of Great Lakes water quality. The national interest in planning and siting of energy facilities, facilities to improve commercial navigation, and other facilities in Wisconsin must be balanced against the national interest in preserving and enhancing the Great Lakes as national resources important for fish and wildlife habitat, recreation, commercial fishing and water supply.

*2. Consideration of the national interest during Program development.*

The Wisconsin coastal policies reflect the Program's consideration of the national interest in the siting of facilities that are other than local in nature. Coastal policies on community development and economic development support orderly and balanced coastal development that is in the national interest by guiding the regulatory decision-making on the siting of such facilities and by promoting balanced development through a variety of incentives, programs and technical assistance efforts. Commercial navigation, port development and improvement, and power plant or transmission line siting are among the key concerns of these policies. The Wisconsin Coastal Management Program also ensures that resources that are in the national interest are adequately protected in these planning and siting decisions, and this concern is reflected in coastal policies on Coastal Water & Air Quality; Coastal Natural Areas; Wildlife Habitat and Fisheries; and Coastal Erosion and Flood Hazard Areas.

Although the Wisconsin Coastal Management Program is not a physical siting program, the national interest has also been accommodated in that none of the facilities other than local in nature and possessing characteristics in which there may be a clear national interest are unreasonably or arbitrarily restricted from locating or continuing present operations in the coastal area. The Program has already identified power production and transmission lines, rural shoreland development, and major recreational sites as being activities of particular state concern and of regional benefit. Various methods are employed by the

Program to assure that these uses of regional benefit will not be arbitrarily or unreasonably restricted from locating in the Wisconsin coastal management area. (See discussion of activities of regional benefit in Chapter II.B.2.)

With specific reference to planning for the siting of energy facilities, Wisconsin's planning and siting decision-making process for new generating plants and transmission lines is set out in some detail in Appendix H in the draft environmental impact statement (managed use number #16). One of the standards the Public Service Commission uses in determining the approvability of a facility is whether the facility " satisfies the reasonable needs of the public for an adequate supply of electric energy " (s. 196.491(3)(d)(2)).

Meeting national and regional needs requires a commitment to acknowledging national values and needs in the coastal area. Federal agencies will have review and comment opportunities to express their agency concerns in the designation of special coastal areas. Among the areas which are eligible are those suited for water related economic development, future power plant sites, and areas of significant recreational value. The Wisconsin program will consider the national interest in designating these areas for special management attention and in providing financial and technical assistance to these designated areas. Other areas eligible for designation reflect the Wisconsin program's consideration of the national interest in resource conservation and protection, such as areas of significant natural, scientific or historic value, hazard areas, areas for preservation, and areas for restoration. This approach enables Wisconsin to achieve a balance consideration of the national interest in facility siting and in resource protection and conservation.

### *3. Process for continuing consideration of the national interest during Program implementation.*

The Wisconsin Program consults with all relevant federal agencies and regional bodies and considers the national interest in making program decisions. In addition to this ongoing consultation process, the Wisconsin Program looks to the following sources of information on federal policy that is taken into account in implementing Program responsibilities:

- Policy statements from the President, as for example the National Energy Plan; the National Environmental Message and associated executive orders on wetlands and floodplains; the National Outdoor Recreation Plan;
- Federal laws and legislation;
- Statements from Federal agencies regarding national interests, including such statements as may be provided by NOAA;
- Plans, reports and studies from Federal, State, interstate agencies or from interstate groups.
- Testimony from public hearings or other public input.

The Coastal Management Council plays a key role in establishing and maintaining a continuing consideration of the national interest in the planning and siting of facilities that are other than local in nature.

Under the terms of the interagency agreements between the Council and the Wisconsin Department of Natural Resources, Public Service Commission, and Department of Transportation, these agencies provide the Council an opportunity to review and comment upon certain major state agency decisions. As their statutory responsibilities permit the agencies will fully consider the national interest in the siting of

facilities that are other than local in nature; the Council will review and comment, in a timely fashion, on proposed projects and programs likely to have an impact on the coastal environment, including proposed facilities in which there may be a national interest. These agencies have agreed to fully consider the comments and/or recommendations of the Council. The Program Executive Order provides authority for the Council to exercise these functions. Copies of the Executive Order and the interagency agreements are in Attachment I and II. Council functions are discussed in detail in Chapter II C.3.(c). If agencies fail to give adequate consideration to the comments and/or recommendations of the Council, the Council may raise the issue to the Governor for resolution. See pages 430-457 of the draft environmental impact statement for further information on the enforceability of interagency agreements and the conflict resolution process.

The Council has the ability to recommend coastal policies on issues which involve the national interest. Through the provision of financial and technical assistance to state agencies and local governments, the Council supports projects or activities that meet both state criteria and address issues of national concern. As noted previously SCA categories have been established which reflect national interests in both facility siting and in resource conservation and protection. Council financial assistance to these SCAs will carry out both state and federal objectives. The Council also serves as a forum for informal resolution of conflicts among state agencies, or between one or more federal and state agencies. In its review of coastal plans and projects, the Council evaluates these activities for compliance with the Management Program, including the requirement for adequate consideration of the national interest.

The Program also uses several other existing processes to consider the national interest during Program implementation. One very important process is based on the Wisconsin Environmental Policy Act (WEPA), which requires the preparation of environmental and economic impact statements before a decision is made to conduct any major state action with a significant environmental or economic impact. WEPA requires that the beneficial aspect of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal, must be considered in the impact statement. The national interest in the benefits to be derived from the proposed project as well as in the economic implications of the project form a part of this WEPA requirement. The WEPA process provides to the state, and to the Council in discharging its duties under the Wisconsin Coastal Management Program, the capacity and clear procedure to consider the national interest for those activities discussed in the foregoing sections such as commercial navigation, energy and defense facilities. As part of the WEPA process, state agencies are required to consult with and obtain the comments of any agency, including Federal agencies, with special expertise with respect to the impacts involved. A public hearing must be held to solicit further views of impact statements prepared pursuant to WEPA.

Other processes which provide for the continued consideration of national interest are the Department of Administration working with the DNR to review and comment on Federal EIS's developed pursuant to the National Environmental Policy Act and state review and comment of other Federal actions as required under the E.O. 12372 process and the Fish and Wildlife Coordination Act (see Appendix H of the draft environmental impact statement). Federal consistency review during the Wisconsin Coastal Management Program implementation provides another important opportunity for consideration of the national interest in the planning and siting of facilities.

The Wisconsin Coastal Program uses a number of specific types of mechanisms for assuring continued coordination with federal agencies. These mechanisms include, but are not limited to:

- Provision of grant applications for review and comment;
- Provision of periodic progress reports for information on Program activities;
- Provision of bibliographies of Program materials;
- Coordination with federal agency field offices on specific program activities;

- Use of the Council of Great Lakes Governors and Great Lakes Commission to coordinate basin wide issues and activities.

## 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.

## G. TRIBAL GOVERNMENTS

There are two reservations in Wisconsin with shorelands located on the Great Lakes. The lands of the Bad River and Red Cliff Tribes make up 27% of the Lake Superior shoreline. Additionally, the Oneida reservation is partially located in Brown County, a coastal county. While not located directly on the Coastal shoreline, it is centered around a tributary of Green Bay (Duck Creek). These Tribal governments play an important role in the management of the state's coastal areas.

Providing for Tribal governments' full participation in the Coastal Management Program follows a national trend toward full involvement and self-determination for Indians in all federal programs. In 1975, Congress passed the Indian Self Determination and Education Assistance Act, which provided for transition from federal domination of programs for, and services to, Indians to the effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services.

Tribal lands held in-trust by the federal government are considered "excluded federal lands" but are eligible to receive funds for tribal program development efforts and/or for specific management projects.

The objective of the Wisconsin Coastal Management Program is to improve coastal management, coordination, and capabilities. Therefore, the Wisconsin Coastal Management Program encourages full participation of Tribal governments in three areas: coordination, technical assistance, and implementation of Tribal management policies. More specifically:

- Coordination among state agencies and with local and Tribal governments will be achieved through the Coastal Management Council. The two Wisconsin Indian tribes with reservations on Lake Superior send a representative to the Coastal Management Council.
- Technical assistance is provided to the Tribal governments in the same manner it is provided to other governments.

Funds for implementation of the management policies on the reservations will depend on designation of lands within the reservation boundaries as SCAs. The Tribal Council will follow the same procedures for funding SCAs as any other agency of government. Just as other applicants, the Tribal Council must define a clear management policy for the area that is consistent with adopted coastal program goals, show that it has the ability or authority to carry out those management policies, and agree to carry out the policies.

## H. PUBLIC PARTICIPATION

This Wisconsin Coastal Management Program shall use the procedures listed below for public notices regarding federal consistency reviews in compliance with section 306(d)(14) of the Coastal Zone Management Act, as amended in 1990 by Pub. L. 101-508.

Every project being reviewed for federal consistency shall undergo public notice, including federal license and permit activities, federal agency activities, and federally funded activities. Upon request of concerned citizens, the WCMP shall hold a public hearing relating to any federal activity undergoing federal consistency review.

The public notice will be published in a minimum of two Wisconsin newspapers. One newspaper shall be the Wisconsin State Journal, which is the official state newspaper, and the other shall be a local newspaper with distribution in the vicinity of the proposed activity. The notice will also be published over the Internet by the Wisconsin State Journal and the State of Wisconsin.

For federal consistency review of permits issued by the Army Corps of Engineers under the Rivers and Harbors Act and the Clean Water Act, an alternative public notice method is used. An agreement has been developed between the WCMP and the Corps so that WCMP public notice language is included in the Corps' public notice. The Corps' notice is sent to a variety of officials from the Department of Natural Resources, US Fish and Wildlife Service, and local officials in both Wisconsin and Minnesota. This combination of public notices reduces redundancy. This notice contains the information stated in the paragraph below.

All public notices will describe the subject matter of the certification review and its location, state that the proposed activity is subject to review for consistency under the policies of the Wisconsin Coastal Management Program, request public comment, and specify a contact source for additional information and submission of comments. The length of time for public comment will also be stated. The WCMP will allow at least a 21-day public comment period prior to the response of consistency concurrence, certification, or objection for federal agency activities. If any comments are received after the 21-day comment period but before a consistency decision has been formalized, those comments may still be considered.

## IV. CONCLUSIONS

This Program reflects a broad consensus as to the best approach for Wisconsin in improving coastal management.

In general, existing state laws are adequate to manage the Great Lakes resource. The real needs are to make these laws work better; to coordinate the separate actions of federal and state agencies; to assist developing local capabilities to improve coastal management; and to develop a public awareness and strong advocacy for Great Lakes concerns.

To achieve these ends the state has a state-level Council to guide these efforts, composed of state agencies; representatives, state legislators, a strong voice from local governments, a number of publicly oriented members and a representative of Tribal governments. This Council uses the financial assistance available through the federal act to improve coastal management.

Coastal management is not only the responsibility of state government but local governments as well. The Program recognizes the need for a strengthened partnership between state and local governments, identifying as a state responsibility the need to assist local government in developing capabilities to improve coastal management.

What has been described in this document is a program that is best for Wisconsin. Like the Great Lakes, the citizens of Wisconsin are unique as well. They are very concerned about the natural resources of the state, and they are concerned about "big government". During program development the Council continually heard statements against "another super agency" and in favor of "resolving coastal problems" and "advocating coastal concerns". This Program responds to these concerns and has worked well in Wisconsin in strengthening existing coastal management policies and programs.

Once taken for granted, the Great Lakes are now clearly recognized as a unique asset that, if properly cared for, will continue to play a key role in Wisconsin's future quality of life. This recognition has caused a new emphasis on cooperative action in both the U.S. and Canada to manage the Great Lakes as a system. With the support of federal and state funding, continued implementation of this Program will improve Wisconsin's coastal management, a step that will benefit residents of Wisconsin and the nation.

## Attachment A: Executive Order

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WHEREAS, the Great Lakes are vitally important to the historic, economic and environmental health and well-being of the State of Wisconsin; and

WHEREAS, Great Lakes' coastal resources provide commerce and recreation, food and water to forty-three percent of Wisconsin's population, a bounty shared with all state residents and our visitors; and

WHEREAS, the future growth and prosperity of Wisconsin is becoming even more dependent upon the state's coastal resources; and

WHEREAS, the increasing attraction to the Great Lakes coast poses serious problems in regard to the allocation and protection of coastal resources; and

WHEREAS, both state and local units of government share responsibility for the overall management of our state's coastal resources--the preservation, protection, development, and enhancement of Wisconsin coastal areas; and

WHEREAS, with the full participation of and cooperation among state agencies, local governments, the university, legislators, and the general public, the State of Wisconsin has developed and adopted a coastal management program effectively improving the management of coastal areas through coordination, simplification and greater implementation of existing authority supporting other measures that strengthen the state and local capacity for effective management of coastal resources; and

WHEREAS, the people of the State of Wisconsin reiterate their commitment to the wise use and protection of the Great Lakes and their shorelines, for our generation and the generation to come;

NOW, THEREFORE, I, ANTHONY S. EARL, Governor of the State of Wisconsin, pursuant to the authority vested in me by the Constitution and laws of this state, do hereby:

1. Reaffirm the policies, principles and functions of the Wisconsin Coastal Management Program as adopted by the state and endorsed under the Federal Coastal Zone Management Act of 1972.
2. Order, pursuant to the provisions of Section 14.019, Wisconsin Statutes, the creation of the Wisconsin Coastal Management Council, to advise the Governor on issues pertaining to the Great Lakes coast and provide policy direction for Wisconsin's coastal management efforts, with specific responsibility to:
  - a. examine the authority and responsibility for coastal management now vested in state agencies in terms of its adequacy and the potential for improvement;
  - b. develop and recommend state coastal policies that emphasize a balanced use of coastal resources;
  - c. coordinate and stimulate the coastal management activities of state agencies, regional planning commissions, local governments and other public and private organizations and the activities of the federal government affecting Wisconsin's coastal areas;

- d. designate key areas of significant natural, recreational, scientific, or historic value, and those areas especially suited for water dependent economic development, providing special attention to their management and identify hazard areas;
  - e. advocate the wise and balanced use of our coastal environment and the improvement of coastal management efforts before state, local and federal agencies and the general public;
  - f. adopt and periodically update a state coastal management program;
  - g. make public Council reports as an educational tool in informing the general public on those concerns and issues relating to our coastal areas;
  - h. review state policies and programs for consistency with the adopted state coastal management policies; and
  - i. perform other duties that may be designated to accomplish the goals and purposes of the Council.
3. The Council shall consist of representatives of the Legislature, state agencies, local governments, the university, citizens, and tribal governments, the chairperson to be designated by the Governor.
  4. Order that citizens shall be provided opportunities for full participation in Wisconsin's Coastal Management Program and to further this end, the Coastal Management Council should establish citizens' advisory committees on key issues, to advise the Council on decisions affecting the Great Lakes' coast.
  5. Designate the Department of Administration, Bureau of Coastal Management, as the agency responsible for receiving and administering federal program grants and for overall program implementation.
  6. Direct the Council that federal actions which fail to meet existing state statutes and regulations shall be considered inconsistent with the Wisconsin Coastal Management Program as adopted by the State of Wisconsin and endorsed under the Federal Coastal Management Zone Act of 1972; the Council shall notify the appropriate federal agency of such findings.
  7. Direct the Coastal Management Council to report periodically to the Governor, the Legislature, state and local governmental units, and the general public on the progress of the Coastal Management Program, and when necessary, offer recommendations for improving management of Wisconsin Great Lakes' coast.
  8. Instruct state agencies, to the fullest extent possible, consistent with their statutory responsibilities, to cooperate with the Coastal Management Council and act consistently with the adopted state coastal management policies.
  9. Instruct the Secretary of the Department of Administration to provide the Council with such sums of money that are necessary for legitimate functions as provided by the Joint Finance Committee under Section 20.404(5)(a), Wisconsin Statutes.
  10. Reaffirm that the following are the adopted state coastal management policies:
    - a. The state policy on coastal water quality is to improve the quality and management of the waters of the coastal area; to restore the chemical, physical and biological integrity of its waters; to protect public health, safeguard aquatic life and scenic and ecological values; and to enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water. The state policy on coastal air quality is to improve the quality of the air resource through restricting any new air contaminant point sources and restricting the discharge of hazardous pollutants.

b. The state policy on natural land and water resources is to conserve and enhance these resources by:

- 1) Designating and managing special areas of the state, including scientific areas, state parks, state forests, and state wildlife areas, so as to protect and enhance fish and wildlife habitat, forest resources, lakes and streams, recreation resources, and endangered plant and animal species;
- 2) Providing special management attention to the conservation and enhancement of Great Lakes fisheries resources by conducting fish rearing, fish stocking and fisheries research programs, by regulating sport and commercial fishing, and by designating certain portions of the Great Lakes as fish habitat protection areas; and
- 3) Ensuring that the following activities that are engaged in or are subject to regulation by state agencies are conducted so as to minimize the destruction or degradation of coastal wetlands and the public interest therein. These activities include: (a) the acquisition, management and disposition of state lands and facilities; (b) construction activities assisted by or directly undertaken by state agencies; and (c) regulation of land and water uses in coastal wetland areas.

c. The state policy on natural hazard areas is to mitigate risks to public health and safety and risks of property damage by:

- 1) Providing that all development in areas subject to serious flooding will not materially alter the natural capacity of the lake or river so as to intensify the magnitude of floods, expose citizens to hazards, or cause future public expenditures for flood disaster relief; and
- 2) Regulating those earth moving, devegetation and construction activities now reviewed by state agencies so as not to accelerate the rate of shoreline erosion or bluff recession.

d. The state policy on coastal community development is to ensure the orderly and balanced development of coastal communities, giving full consideration to economic, ecological, human resource, cultural, historic, recreational and aesthetic values, and existing and future needs by:

- 1) Requiring local ordinances that ensure the efficient use conservation, development and protection of the state's coastal resources in rural areas;
- 2) Ensuring that subdivisions are laid out in an orderly fashion, are properly surveyed, and make adequate provision of public access to coastal waters;
- 3) Ensuring that the state's significant historic, architectural and archaeological resources are identified, recognized and protected in all state activities and that efforts are undertaken to ameliorate any potential adverse effects caused by state action;
- 4) Designating and aiding in the restoration of blighted waterfront areas so as to protect and enhance public safety, aesthetics and economic well being;
- 5) Acquiring additional recreational lands in heavily populated areas of the state; and
- 6) Ensuring that shoreland alterations are not detrimental to fish and wildlife habitat, navigation, flood flow capacity or the public interest.

e. The state policy on economic development is to stimulate desirable economic development that broadens the coastal area economy and to encourage the designation and reservation of areas of significance to activities requiring a coastal location by:

- 1) Providing special planning, management and promotional attention to Great Lakes port and transportation issues;
- 2) Coordinating, stimulating and promoting the orderly and environmentally sound provision of business and tourism facilities; and
- 3) Managing the planning for and siting of electrical generating and transmission facilities so as to ensure protection of water quality, public and riparian rights and orderly land use.

f. The state policy on government interrelationships is to ensure intergovernmental communication, cooperation and coordination in all aspects of coastal management through:

- 1) Creating and operating an interagency, intergovernmental Coastal Management Council with representation from all directly affected agencies and levels of government and citizens within the state;
- 2) Creating and maintaining technical/citizen committees to ensure coordination of specific projects and programs;
- 3) Maintaining a workable system of interagency reviews and comments on coastal program activities; and
- 4) Requiring state and federal agencies to consult with and obtain the comments of other agencies with respect to any significant environmental impact involved in their major actions.

g. The state policy on public involvement is to provide citizens with full opportunities for early and continuous involvement in coastal management through effective communication and participation.

Nothing contained herein shall diminish the rights and responsibilities of the Council or supersede state or federal policies, programs, or legislation pertaining to the intent and purpose of the establishment of the Wisconsin Coastal Management Council.

To the extent any provision of this executive order is inconsistent with any previous executive order the provision of this order shall govern.

IN TESTIMONY WHEREOF, I have hereunto set by hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this eighteenth day of June in the year of Our Lord, one thousand nine hundred eighty-six.

ANTHONY S. EARL

By the Governor:

DOUGLAS LA FOLLETTE  
Secretary of State

## **Attachment B: Interagency Agreements on Coastal Management**

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The following agreements were established with the Department of Natural Resources, Department of Transportation and Public Service Commission that have major program responsibilities relative to coastal management. The agreements, which are between the agency, the Coastal Management Council, and the Department of Administration (the lead agency for overall program implementation), clarify and formalize agency-Council relations. They are not intended to operate as enforceable authority for establishing binding coastal management policies because the enforceability of the policies is derived from the state laws on which they are based.

### Updates to the Interagency Agreements

April, 1998: Department of Natural Resources MOU updated

## **Memorandum of Understanding Between the Wisconsin Coastal Management Program and the Department of Natural Resources**

This agreement was first made and entered into as of the 3rd day of February 1978, and is between (1) Wisconsin Coastal Management Council (hereinafter referred to as the Council) and the lead agency for implementation of the state coastal management program, the Wisconsin Department of Administration, and (2) the Wisconsin Department of Natural Resources (hereinafter referred to as the Department).

The parties recognize and acknowledge the need to preserve, protect, develop, and where possible, restore or enhance the resources of Wisconsin's coastal areas for this and succeeding generations; the parties further recognize the need for full governmental coordination and public involvement in the state's coastal management program and the need to give due consideration to the significance of coastal resources to inland areas.

The Department recognizes that pollution of the state's air, rivers, streams, lakes and aquifers, alteration of waterways, and operation and management of state parks, forests, wildlife and fish management areas, and scientific areas may have a direct and significant impact on the state's coastal environment.

Therefore, in accordance with these considerations and to promote and carry out Executive Order No. 102, issued on June 18, 1986, the parties do hereby agree as follows:

- A. The Department, as its statutory responsibilities permit, agrees to:
1. Act consistently with the state coastal policies set forth in Executive Order No. 102 and the state's Coastal Management Program.
  2. Recognize and formally designate the Wisconsin Coastal Management Council as an advisory body to the Department concerning regulation and management of the coastal area.
  3. In its regulatory and management activities in coastal areas:
    - a. give due consideration to the Council's adopted positions and policy statements;
    - b. give due consideration to the national interest in the siting of facilities that are other than local in nature; and
    - c. considering its legislatively and judicially defined responsibilities and the public interest, act appropriately upon these considerations.
  4. Give due consideration to the compatibility of its plans and programs with the policies of the Council and notify the Council of any incompatibility.
  5. Provide periodic summaries of pertinent Department activities to the Council for review and comment. Pertinent Department activities include, but are not limited to, the following programs insofar as they affect the coastal area: Regulatory and management programs under sections 23.09, 23.27, 27.01, 28.04, 29.085, 29.09, 29.288, 29.29, 29.30, 29.33, 30.025, 30.12, 30.13, 30.15, 30.16, 30.17, 30.18, 30.19, 30.195, 30.20, 30.205, 30.21, 30.50-80, 31.04, 31.13, 31.185, 59.971 (renumbered 59.692), 87.30, 144.025 (renumbered 281.11, 281.12, 281.13, 281.15, 281.17, 281.19, 281.20, and 281.91), 144.04 (renumbered 281.41), 144.26 (renumbered 281.31), 144.39 (renumbered 285.60), 144.46 (renumbered 289.35),

144.80-94 (144.80 repealed; remainder renumbered 293.01 - 293.95), 147.02 (renumbered 283.31), and 236.13.

6. Keep the Council advised of the initiation and status of projects or programs likely to have a direct and significant impact on the coastal environment, including but not limited to those listed in sub. 5 above. The Department will give due consideration to comments and/or recommendations of the Council in accordance with the policy outlined in previous paragraphs. In addition and more specifically, the Department will provide the Council with an opportunity to review and comment upon, prior to final Departmental action, major Department decisions relative to the following activities of regional benefit when taking place within the coastal area:
  - a. Permits for energy facilities granted under s. 30.025;
  - b. Amendments to administrative rules or compliance actions relative to the shoreland zoning program under s. 59.692 and s. 281.31;
  - c. Establishment or alteration of project areas or acquisitions of land for state parks or changes in Departmental policies relative to acquisition;
  - d. Actions significantly affecting the national interest in coastal water quality, water-based interstate transportation, and coastal energy facilities serving interstate needs.
  
7. Regarding federal consistency, the guidance material contained in a - d below will be incorporated into the DNR Waterway and Wetland Protection Guidebook. This guidance shall be sent to DNR staff dealing with coastal waterway protection issues, and shall be followed by DNR staff to the best of their ability.
  - a. There is a need to work more closely with the Department of Administration's Coastal Management Program for ensuring that federal projects are consistent with state regulations in the coastal zone. Wisconsin's coastal zone consists of the fifteen counties with frontage on Lake Superior, Lake Michigan or Green Bay: Kenosha, Racine, Milwaukee, Ozaukee, Sheboygan, Manitowoc, Kewanee, Door, Brown, Oconto, Marinette, Iron, Ashland, Bayfield, and Douglas. A review of the regulatory process suggests that better collaboration between DOA and the DNR is needed for reviewing projects under joint jurisdiction. Please cooperate in implementing the following joint review procedures.
  
  - b. Contact the Wisconsin Coastal Management Program federal consistency staff (608-266-0288) for projects in Wisconsin's coastal zone if they are federally licensed, authorized or permitted; federally funded; or are proposed by a federal agency; and if the project meets any of the following criteria:
    - i. Areas in which DNR may have limited jurisdiction, e.g., projects a federal agency exerts federal primacy over state regulations or projects on Tribal reservations.
    - ii. Projects causing wetland impacts greater than ten acres or substantially impacting coastal resources.
    - iii. Projects impacting unique or outstanding coastal resources, such as fresh water estuaries, lakeplain prairies, dunes and interdunal wetlands, coastal marshes or alkaline rocky shores.
    - iv. Projects impacting shoreline bluffs with high erosion potential.
    - v. Projects impacting state and federal endangered and threatened species, including indirect impacts, such as through non-point source pollution.

- c. On notice under (b), the federal consistency coordinator will contact the DNR to arrange a joint review. The federal consistency coordinator should also be apprised of scheduled meetings with applicants and site visits.
    - d. The DNR will provide the WCMP federal consistency coordinator with a copy of public notices for projects meeting (b) above. The coastal program staff should be copied on the permit approval document and a copy should be shared accordingly.
  - 8. Facilitate clear and easy access to the Department and information gathered by the Department to allow the Council to have the best information available for its decision-making process. Information gathered by the Department includes data in Geographic Information System (GIS) format. This access will be provided by, but not limited to, the following formal mechanisms: quarterly meetings between the Section Chief of the Wisconsin Coastal Management Program and the appropriate Department staff liaison; semi-annual meetings between the Administrator of the Division of Energy and Intergovernmental Relations and the Council representative for the Department; including specific interaction, collaboration, and coordination (liaison) responsibilities in the position descriptions of mutually agreed upon Department staff.
  - 9. When so requested by the Council, consider Council recommendations to the Department as petitions for rules under s. 227.015.
  - 10. Review and comment on all policies, plans and other actions of the Council that apply to the Department.
- B. The Secretary of the Department, or the Secretary's designee, shall serve as a member of the Council.
- C. The Council shall:
- 1. Solicit comments of the Department for due consideration in the formulation, adoption and implementation of policies and programs affecting the policies, programs and statutory responsibilities of the Department.
  - 2. Consider Department policies and guidelines in the review of projects affecting the coast, coordinate such reviews with the Department, and inform the Department of the outcome of such reviews.
  - 3. Review and comment in a timely manner on proposed projects and programs (including reports, summaries, and like information submitted by the Department) likely to have an impact on the coastal environment, including proposed facilities in which there may be a national interest.
  - 4. Coordinate activities of federal, state and local agencies whose activities affect the coastal environment.
  - 5. Provide a forum to initiate the resolution of conflicts between the Department and federal, state or local agencies whose activities affect the coastal environment.

6. Provide an open and constant link between the Council and the Department to allow the Department to have the best information available for its regulatory processes. This link between the Council and the Department will be provided by the following formal mechanisms: quarterly meetings between the Section Chief of the Wisconsin Coastal Management Program and the appropriate Department section chiefs; semi-annual meetings between the Administrator of the Division of Energy and Intergovernmental Relations and the Council representative for the Department; including specific interaction, collaboration, and coordination (liaison) responsibilities in the position descriptions of mutually agreed upon Council staff; invitations to the Department Secretary to address the first Council meeting of each calendar year with Departmental concerns; consideration of financial support for the Department staff to attend meetings of mutual interest to the Department and the Council.
7. Provide such financial assistance as is at its disposal and is appropriate to the Department to assist in the implementation of Department programs and policies and management of state lands and waters in the coastal area.

## Memorandum of Understanding With Department of Transportation

This memorandum of understanding is made and entered into as of the 3rd day of February 1978, and is between (1) the Wisconsin Coastal Management Council (hereinafter referred to as the Council), and the lead agency for implementation of the state coastal management program, the Wisconsin Department of Administration, and (2) the Wisconsin Department of Transportation (hereinafter referred to as the Department).

The parties recognize and acknowledge the need to preserve, protect, develop, and, where possible, restore or enhance the resources of Wisconsin's coastal area for this and succeeding generations; the parties further recognize the need for full governmental coordination and public involvement in the state's coastal management program and the need to give due consideration to the significance of coastal resources to inland areas.

The Department recognizes that its programs and activities relative to the planning, acquisition, construction or regulation of highways, bridges, airports; the acquisition and regulation of outdoor advertising and scenic easements; and the planning of railways and waterports may have impacts on the state's coastal environment.

Therefore, in accordance with these considerations and to promote and carry out Executive Order No. 49, issued on October 7, 1977, the parties express their mutual understanding that:

- A. The Department, as its statutory responsibilities permit, will:
1. Act consistently with the state coastal policies set forth in Executive Order No. 49.
  2. In its regulatory, management, acquisition, construction and planning activities in coastal areas: (a) fully consider the Council's adopted positions and policy statements; and, (b) as consistent with current policy, fully consider the national interest in the siting of facilities that are other than local in nature, through intergovernmental coordination; and (c) considering its legislatively and judicially defined responsibilities and the public interest, act appropriately upon these considerations.
  3. Fully consider the compatibility of its plans and programs with the policies of the Council and notify the Council of any incompatibility.
  4. Keep the Council advised of the initiation of projects or programs likely to have an impact on the coastal environment and provide periodic summaries of pertinent Department activities of the Council for review and comment. "Pertinent Department activities include, but are not limited to: the Department's planning, acquisition, construction, and regulatory programs under Chapters 84, 85, and 86 and sections 114.01, 114.134, 114.135, 114.31, 114.33, and 236.13 of the Wisconsin Statutes. The Department will fully consider comments and recommendations of the Council in accordance with the policy outlined in the above paragraphs.
  5. Provide clear and easy access to Department staff and information gathered by the Department to allow the Council to have the best information available for its decision-making process.
  6. When so requested by the Council, consider Council requests for the adoption of administrative rules as petitions for rules under Chapter 227, Wisconsin Statutes.

7. Review and comment on all policies, plans, and other actions of the Council that apply to the Department.

B. The Secretary of the Department, or the Secretary's designee, shall serve as a member of the Council.

C. The Council shall:

1. Solicit comments of the Department for due consideration in the formulation, adoption, and implementation of policies and programs affecting the policies, programs, and statutory responsibilities of the Department.
2. As it deems appropriate, or when so requested by the Department, review and comment, in a timely manner, on proposed projects and programs (including reports, summaries, and like information submitted by the Department of the Council) likely to have an impact on the coastal environment, including proposed facilities in which there may be a national interest.
3. Encourage and facilitate the coordination of activities of federal, state, and local agencies whose activities affect the coastal environment.
4. Provide a forum to initiate the resolution of conflicts between the Department and federal, state, or local agencies whose activities affect the coastal environment.

Provide such financial assistance as is at its disposal and is appropriate to the Department to assist in the implementation of Department programs and policies.

## Memorandum of Understanding With Public Service Commission

This memorandum of understanding is made and entered into as of the 16th day of February 1978, and is between (1) the Wisconsin Coastal Management Council (hereinafter referred to as the Council), and the lead agency for implementation of the state coastal management program, the Wisconsin Department of Administration, and (2) the Wisconsin Public Service Commission (hereinafter referred to as the Commission).

The parties recognize and acknowledge the need to preserve, protect, develop, and, where possible, restore or enhance the resources of Wisconsin's coastal area for this and succeeding generations; the parties further recognize the need for full governmental coordination and public involvement in the state's coastal management program and the need to give due consideration to the significance of coastal resources to inland areas.

The Commission recognizes that its programs and activities, particularly its regulation of the planning for and siting of electric generating facilities and high-voltage transmission lines, may have impacts on the state's coastal environment.

Therefore, in accordance with these considerations and to promote and carry out Executive Order No. 49, issued on October 7, 1977, the parties express their mutual understanding that:

- A. The Commission, as its statutory responsibilities permit, will:
  1. Take official notice of official state coastal policies as set forth in the statutes and in Executive Order No. 49 in its proceedings which affect state coastal areas, and consider such policies in its decision-making in those proceedings to the extent permitted by law.
  2. Provide copies of, and notices of hearings on, advance plans and environmental assessments prepared under s. 196.491(2), Wisconsin Statutes, for Council comment.
  3. Provide the Council with notice of hearings held under s. 196.491(3) for all proposed facilities located within the coastal area.
  4. In its above referenced deliberations, fully consider the Council's adopted positions and policy statements when said positions and statements are submitted for the record, consider the national interest in the siting of facilities when statements concerning said interest are submitted for the record and, considering the Commission's legislatively and judicially defined responsibilities and the public interest, act appropriately upon these considerations.
  5. Keep the Council advised of the initiation and status of projects or programs likely to have a direct and significant impact on the coastal environment and provide periodic summaries of pertinent Commission activities to the Council. "Pertinent Commission activities" include, but are not limited to, the Commission's planning and regulatory programs under sections 196.02 and 196.491 of the Wisconsin Statutes. The Commission will notify the Council if it becomes aware of any incompatibility between its plans and programs and the policies of the Council.
  6. Provide easy access to information gathered by the Commission to the Council.

7. Consider Council requests for adoption of administrative rules as petitions for rules under s. 227.015, Wisconsin Statutes.
  8. Comment on all policies, plans and other actions of the Council that relate to activities of the Commission.
- B. The Chairman of the Commission or the Chairman's designee shall serve as a member of the Council.
- C. The Council shall:
1. Solicit comments of the Commission for due consideration in the formulation, adoption and implementation of policies and programs relating to the policies, programs and statutory responsibilities of the Commission.
  2. As it deems appropriate or when so requested by the Commission, comment in a timely manner on proposed projects and programs (including reports, summaries and like information submitted by the Commission to the Council) likely to have an impact on the coastal environment, including proposed facilities in which there may be a national interest.
  3. Encourage and facilitate coordinated activities by federal, state and local agencies whose activities affect the coastal environment.
  4. Provide a forum, if appropriate, for the resolution of conflicts between the Commission and federal, state or local agencies whose activities affect the coastal environment when no such forum exists under law, including commission statutes and rules.
  5. Provide such financial assistance as is at its disposal and is appropriate to the Commission to assist in the implementation of Commission programs and policies.

## **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 of 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)

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