

# **The Role of The Public Trust Doctrine and Ordinary High Water Mark in Shoreland Zoning A Short Summary**

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# Outline

1. Public Trust Doctrine/Navigable Waters/Public Rights
2. Ordinary High Water Mark
3. Shoreland Zone
4. Shoreland Zoning Overview

# The Public Trust Doctrine

- Article IX, Section 1 of the Wisconsin Constitution
  - Came from the governing of the Northwest Territory well before Statehood
  - Establishes “navigable waters” – defined in Chapter 30, Wisconsin Statute
- Further defined by case law and statute.
- Citizens have pursued legal and legislative action to clarify or change how it is interpreted and implemented

# The Public Trust Doctrine

- Assures public rights in waters
  - Wisconsin lakes and rivers (navigable waters) are public resources
  - Wisconsin's navigable waters are owned in common by all Wisconsin citizens
  - Wisconsin's navigable waters are “common highways and forever free”, and are held in trust by the Department of Natural Resources – i.e. the State shall intervene to protect these public rights

# The Public Trust Doctrine

- Assures public rights in waters – the public can:
  - Use navigable waters (boat, fish, hunt, ice skate, swim, etc)
  - Enjoy the natural scenic beauty of navigable waters
  - Expect/Demand the quality and quantity of water that supports the above

# The Public Trust Doctrine

- Riparian owners hold rights in the water adjacent to their property
  - Use of the shoreline
  - Reasonable use of the water
  - Right to access the water
- WI State Supreme Court has ruled that when conflicts between riparian rights and public rights exist, the public's rights are primary, and riparian rights are secondary

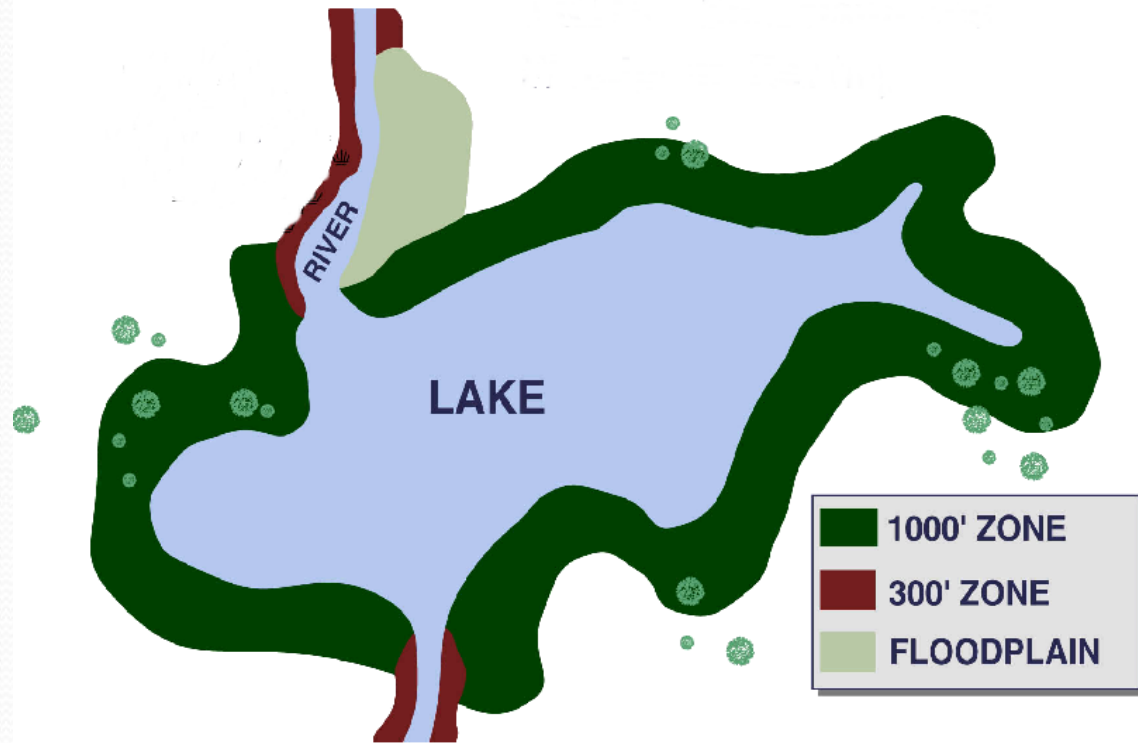
## Ordinary High Water Mark (OHWM)

- “... the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark ...”
- The line separating a navigable water from the shoreland zone

# Shoreland Zone

What is it?

Where is It?



- Land within 1000 feet of the OHWM of navigable lakes, ponds, and flowages
- Land within 300 feet of the OHWM of navigable rivers and streams OR the landward side of the floodplain (whichever distance is greater)
- The area that shoreland zoning applies to



# Shoreland Zoning Overview

- 3 Distinct State Shoreland Zoning Rules:
  - **NR 115** - Applies statewide to all unincorporated areas
  - **NR 117** – Applies to Cities and Villages OR areas annexed after May 7, 1982 or incorporated after April 30, 1994
  - **NR 118** – Applies to the Lower St. Croix National Scenic Riverway
- Shoreland zoning established under S. 281.31, s. 59.692, 62.231, 61.351, 30.27 Wisconsin Statute

# Shoreland Zoning Overview

- Grounded in the “Public Trust Doctrine”
- Goal of shoreland zoning is to limit direct and cumulative impacts of shoreland development on:
  - Water quality
  - Near-shore aquatic, wetland, and upland wildlife habitat
  - Natural scenic beauty

**All Supporting Public Rights Under The Public Trust Doctrine**

# Comments, Questions??

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