

## Clearinghouse Rule 13-051

Report to  
Legislative Council Rules Clearinghouse  
Ch. NR 115, Wis. Adm. Code  
Natural Resources Board Order WT-06-12

### Wisconsin Statutory Authority

Sections ss.59.692, 227.11, and 281.31, Wis. Stats.

### Federal Authority

Not applicable.

### Court Decisions Directly Relevant

None.

### Analysis of the Rule and Reason for the Rule

The State's shoreland management program under Chapter NR 115 provides that shoreland zoning regulations shall: "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." NR 115, Wis. Adm. Code, contains the statewide minimum standards for shoreland zoning in unincorporated areas. Although the rule was recently revised in 2009 and went into effect on February 1, 2010, some counties have expressed concerns about implementation and enforcement of the minimum standards regulating impervious surfaces and nonconforming structures. The proposed revisions would address concerns associated with administering and implementing the impervious surface standards and the nonconforming structure standards in the rule. Further, minor changes to the vegetative management and administrative reporting standards will clarify the requirements under the rule and ease reporting requirements.

#### **Impervious Surface standards**

Current standards under ch. NR 115.05(1)(e), Wis. Adm. Code, specify that the impervious surface standards be applied to land within 300 feet of the ordinary high water mark. Shoreland mitigation is required if a property expands the impervious surfaces on the property above 15% and limits the amount of impervious surfaces on a property to a maximum of 30%. The proposed rule revisions would ease the application of the impervious surface standards by limiting application of the impervious surface standards to only riparian lots or non-riparian lots that are entirely within 300 feet of the ordinary high water mark and allowing properties to exceed the maximum impervious surface standards if the property owner can show that the runoff from the impervious surfaces is not draining towards a lake or river or is being treated by an engineered system.

The proposed rule language will also allow counties to adopt an ordinance that allows a higher percentage of impervious surfaces for areas of already highly developed shorelines. A highly developed shoreline area, in the proposed rule language, is an area that was identified as an urbanized area or urban cluster in the 2010 US Census, an area that has a commercial, industrial or business land use classification, or any additional area that meets the specifications in the proposed rule. Property owners in areas of highly developed shorelines would be allowed to expand the impervious surfaces on their lots, up to 30% for residential and 40% for commercial, industrial or business land uses, without a shoreland zoning permit.

To expand the impervious surfaces above this limit, the property owner will have to receive a shoreland zoning permit and provide shoreland mitigation. Finally, to expand the impervious surfaces on the property above 40% for residential and 60% for commercial, industrial or business land uses, the property owner would either have to obtain a variance or show that the additional impervious surface does not drain directly to the waterbody, or that the additional impervious surface is treated by an engineered system.

### **Nonconforming Structure standards**

The nonconforming structure standards in ch. NR 115.05(1)(g), Wis. Adm. Code, allows property owners, whose principal structures are greater than 35 feet from the waterbody, to expand vertically within the required setback and relocate or replace the principal structure if the property owner completes a shoreland mitigation project and property owners may expand principal structures vertically or horizontally beyond the required setback. All property owners are allowed unlimited maintenance and repair of their nonconforming structures, and the scope of these repairs is defined by the county ordinance.

The proposed rule language on shoreland standards would allow a one-time horizontal expansion of 200 square feet, within the setback, with shoreland mitigation. In addition, the proposed standards would eliminate the requirement that property owners must remove all other nonconforming accessory structures to relocate or replace their nonconforming principal structure. Finally, two other minor changes will clarify the statutory language and requirements associated discontinuance of nonconforming uses and wet boathouses.

### **Vegetative Management Standards**

The proposed rule revision would clarify that the county is not required to issue a permit for the removal of vegetation within the buffer zone if they are managing for exotic, invasive, damaged or diseased vegetation or vegetation that poses an imminent safety hazard if the area and the area is replanted.

### **Reporting Standards**

Under NR 115.05(4), Wis. Adm. Code, counties are required to adopt an ordinance that contains a number of administrative and reporting requirements. The proposed rule would eliminate a requirement that a county submit copies of any permit issued for a nonconforming structure, if requested by the department.

### **Rule Effect**

The primary impacts from the proposed rule language will result from the changes to the impervious surface limits, particularly the proposed increase in impervious surface limits for highly developed shorelines, and the proposed change that would allow lateral expansion of nonconforming structures within the setback. These proposed changes to the current rule will allow more development within the shoreland zone than what is currently allowed under NR 115, Wis. Adm. Code. The proposed rule language affects existing policy by reducing administrative costs and creating greater flexibility for counties in administering a shoreland zoning ordinance. Additionally shoreland property owners will benefit from the increased flexibility and decreased permit requirements when the property owner seeks to expand the impervious surfaces or a nonconforming principal structure.

Groups likely to be impacted or interested in the proposed rule include local governments, businesses located along the waterfront, builders, contractors, landscapers, building centers, nurseries, and garden centers and particular property owners within the shoreland zone. While shoreland property owners will benefit from the increased flexibility and decreased permit requirements, when the property owner seeks to expand the impervious surfaces or a nonconforming principal structure, recreational users of lakes and

rivers may experience some negative impacts from the proposed rule if there is a decline in water quality, fish and wildlife habitat or natural scenic beauty, due to increased impervious surface limits for highly developed shorelines and lateral expansion of nonconforming structures

Local county governments will be the primary party affected by the proposed changes in this rule. The level of that impact will vary county by county, and it will also vary over time. Initial fiscal impacts will result from ordinance adoption or revision and the costs will depend upon whether or not a county merely adopts the minimum standards, if the county adopts an ordinance that is more restrictive than the minimum standards, or if a county chooses to adopt an ordinance that allows higher impervious surface standards for highly developed shorelines.

Some businesses including builders, contractors, building centers, landscapers, nurseries and garden centers may experience some positive economic impacts as a result of the increased flexibility the proposed rule will offer for shoreland property owners who seek to expand their nonconforming structures or impervious surfaces and must complete a shoreland mitigation project.

Agency Procedures for Promulgation

Public hearing, Natural Resources Board final adoption, Governor's Office of Regulatory Compliance final approval, followed by legislative review

Description of any Forms

None

Name and Telephone Number of Agency Contacts

Russ Rasmussen, Bureau of Watershed Management – (608) 267-7651

Edwina Kavanaugh, Bureau of Legal Services – (608) 264-8991

Linda Haddix, Bureau of Legal Services – (608) 266-1959

Submitted on \_\_\_\_\_