

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request approval of the Statement of Scope for Board Order WT-06-12, related to ch. NR 115, which establishes Wisconsin's statewide minimum standards for shoreland zoning

FOR: MARCH 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Russ Rasmussen, Deputy Division Administrator- Water

SUMMARY:

Pursuant to ss. 59.692 and 281.31 Wis. Stats, ch. 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 contains the statewide minimum standards for the shoreland zoning in unincorporated areas.

Since the legislature approved the modifications to NR 115 in 2009, counties have identified certain provisions in the revised rule that are unclear, difficult to implement or administratively burdensome. The current proposal is to clarify and modify certain sections of the rule to address these concerns, so that counties can implement the state minimum shoreland standards efficiently and effectively.

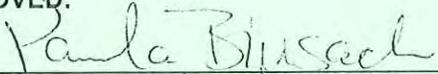
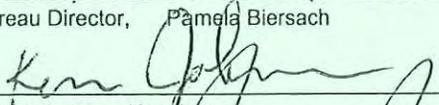
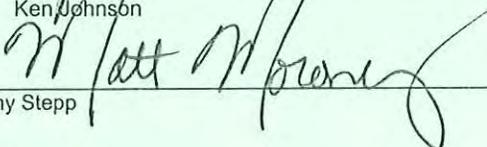
The purpose of the proposed rule revision is to reduce the administrative burden and concerns expressed by the counties.

RECOMMENDATION: Approve the commencement of rulemaking to amend NR 115.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes | <input type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

	<u>2-16-12</u>
Bureau Director, Pamela Biersach	Date
	<u>2/16/12</u>
Administrator, Ken Johnson	Date
	<u>3/7/12</u>
Secretary, Cathy Stepp	Date

- cc: NRB Liaison
DNR Rules Coordinator
- Russ Rasmussen - WD/3
Liesa Lehmann - WT/3
Heidi Kennedy - WT/3

DATE: February 16, 2012

TO: Natural Resources Board

FROM: Secretary Cathy Stepp

SUBJECT: Background Memo on Proposed Revision to Ch. NR 115, Wisconsin's Shoreland Management Program

1. Description of the Objective of 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 contains the statewide minimum standards for the shoreland zoning in unincorporated areas. Although the rule was recently revised in 2009, some of the provisions relating to the impervious surface limits, nonconforming structure provisions, vegetation standards and administrative procedures would be difficult for counties to implement and enforce. The proposed revisions would reduce the difficulties associated with implementing the rule.

2. Description of Existing Policies Relevant To the Rule and of New Policies Proposed to Be Included In the Rule and an Analysis of Policy Alternatives:

Current policy under ch. NR 115.05(1)(e), Wis. Adm. Code, specifies that the impervious surface standards be applied to land within 300 feet of the ordinary high water mark and limits the amount of impervious surfaces on a property to a maximum of 30%. The new policy would simplify the application of impervious surfaces to only riparian lots or those lots that lie entirely within 300 feet of the ordinary high water mark. Further, the policy would provide additional options for properties that currently exceed 30% impervious surfaces on their lot or wish to exceed 30% in the future, or for properties in urbanizing areas.

Second, the nonconforming structure standards under Ch. NR 115.05(1)(g), Wis. Adm. Code, limit the ability for structures to be laterally expanded within 75 feet of the ordinary high water mark, require the removal of nonconforming accessory structures when relocating or reconstructing a principal structure and specify that maintenance and repair of nonconforming structures may be allowed. The new policy would allow for some lateral expansion of structures within 75 feet, but more than 35 feet from the ordinary high water mark. The new policy would also remove the requirement that nonconforming accessory structures be removed when relocating or reconstructing a nonconforming principal structure and would clarify the department's intent in allowing maintenance and repair of legal nonconforming structures.

Third, the current policy under Ch. NR 115.05(4) requires the submittal of variances, special exceptions or conditional use permits, or appeals for map or text interpretation, and decisions to amend a map or text of an ordinance. While the policy will remain the same, current NR 115 contains two substantially similar requirements that are confusing because the language is conflicting. The new policy would be to remove one these statements to clarify the intent of the department.

Finally, the vegetative management standards under NR 115.05(1)(c)(d), specifies that counties may allow the removal of exotic or invasive species, damaged or diseased vegetation or vegetation that creates an imminent safety hazard, as long as the property owner agrees to replace or replant vegetation as soon as practicable. The new policy would continue to allow the removal of these species, but would clarify the department's intent that counties do not have to require a permit for the removal of these species or the replanting of new vegetation.

3. Statutory Authority for the Rule:
ss. 59.692 and 281.31 Wis. Stats.

4. Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule:
The department estimates that approximately 800 hours of existing staff time will be needed to develop modifications to the rule. This time includes meeting with the stakeholders, taking the rule to statewide public hearing and collecting public input at those hearings, drafting the rule, completing an economic impact statement, preparation for meetings with the Natural Resources Board, legislative review, and rule adoption.

5. Description of All Entities that May be Affected by the Rule:
Groups likely to be impacted by these issues include a) property owners: b) zoning administrators and county officials: c) realtors: d) contractors, and others who provide land alteration services: and e) members of the public who recreate on or near navigable waters.

6. Summary and Preliminary Comparison With Any Existing Or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule:
There are no existing or proposed federal regulations that are intended to address the issue of Shoreland zoning.

7. Description of the type of Environmental Impact Statement and Economic Impact Analysis to be completed during the rulemaking process.
Under NR 150, Wis. Adm. Code, changing the standards in NR 115, would be considered a Type II action, which requires the completion of an Environmental Analysis. Further, the department will complete a Type 3 Economic Impact Analysis, because the program has already completed at Type 1 Economic Impact Analysis on the current rule, and the proposed changes would be considered relatively minor, which would have less of an economic impact.

Agency Contact Person

Russ Rasmussen,
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(608) 267-7651

Statement of Scope

Department of Natural Resources

Rule No: Chapter NR 115, Wis. Adm. Code WT-06-12

Relating to: Wisconsin's Shoreland Management Program

1. Description of the objective of the rule:

Modify the rule relating to the impervious surface limits, nonconforming structure provisions, vegetation standards and administrative procedures to reduce the administrative burden on counties.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Wisconsin's minimum shoreland zoning standards were originally codified as NR 115, Wis. Adm. Code, in the 1960's, and had been revised very little until 2009. Rule revisions in 2009 addressed the changes in land use and development patterns from small, older family cottages to year-round homes and multi-unit complexes with sizes proportionate to the high value of the shoreline property. Since the 1960's, most counties have elected to create shoreland zoning ordinances that go beyond the minimum standards, but were looking for up-to-date statewide minimums to make these protective measures more consistent. Scientific research has shown that easily-implementable up-to-date minimum standards are a critical tool for protecting Wisconsin lakes and streams.

Since the legislature approved the modifications to NR 115 in 2009, counties have identified certain provisions in the revised rule that are unclear, difficult to implement or administratively burdensome. The current proposal is to clarify and modify certain sections of the code to address these concerns, so that counties can implement the state minimum shoreland standards efficiently and effectively.

Current policy under ch. NR 115.05(1)(e) specifies that the impervious surface standards be applied to land within 300 feet of the ordinary high water mark and limits the amount of impervious surfaces on a property to a maximum of 30%. The new policies will simplify the application of impervious surfaces to only riparian lots or those lots that lie entirely within 300 feet of the ordinary high water mark. Further, the policy will provide additional options for properties that currently exceed 30% impervious surfaces on their lot or wish to exceed 30% in the future.

Second, the nonconforming structure standards under NR 115.05(1)(g) limit the ability for structures to be laterally expanded within 75 feet of the ordinary high water mark, require the removal of nonconforming accessory structures when relocating or reconstructing a principal structure and specify that maintenance and repair of nonconforming structures may be allowed. The new policy would allow for some lateral expansion of structures within 75 feet, but more

than 35 feet from the ordinary high water mark. The new policy will also remove the requirement that nonconforming accessory structures be removed when relocating or reconstructing a nonconforming principal structure, and will clarify the department's intent in allowing maintenance and repair of legal nonconforming structures.

Third, the current policy under NR 115.05(4) requires the submittal of variances, special exceptions or conditional use permits, or appeals for map or text interpretation, and decisions to amend a map or text of an ordinance. While the policy will remain the same, current NR 115 contains two substantially similar requirements but is confusing because the language is conflicting. The new policy will be to remove one these statements to clarify the intent of the department.

Finally, the vegetative management standards under NR 115.05(1)(c)(d), specifies that counties may allow the removal of exotic or invasive species, damaged or diseased vegetation or vegetation that creates an imminent safety hazard, as long as the property owner agrees to replace or replant vegetation as soon as practicable. The new policy will continue to allow the removal of these species, but will clarify that counties do not have to require a permit for the removal of these species or the replanting of new vegetation.

3. Statutory authority for the rule (including the statutory citation and language):

Section 59.692(1m), Stats. requires counties to adopt zoning and subdivision regulations for the protection of shoreland areas to effect the purposes of section 281.31 and to promote public health, safety, and general welfare.

Section 281.31(6), Stats. requires the department prepare and adopt general recommended standards and criteria for municipalities to protect navigable waters giving "particular attention to safe and healthful conditions for the enjoyment of aquatic recreation...the capability of the water resources...building setbacks from the water; preservation of shore growth and cover; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

4. Estimate the Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule:

The department estimates that approximately 820 hours of existing staff time will be needed to complete the rule revision process. This time includes meeting with stakeholders, drafting rule language, completing an economic impact analysis, conducting statewide public hearings, collecting public input at those hearings, and providing information for the Natural Resources Board, and legislature. Little to no economic impact is expected from the proposed rule revisions; a Level 3 Economic Impact Analysis will be prepared.

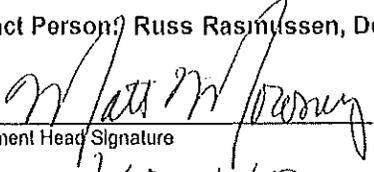
5. Description of All Entities that may be Affected By the Rule:

Groups likely to be impacted by these issues include a) property owners; b) zoning administrators and county officials; c) realtors; d) contractors, and others who provide land alteration services; and e) members of the public who recreate on or near navigable waters.

6. Summary and Preliminary Comparison With Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule:

There are no existing or proposed federal regulations that address the issue of shoreland zoning.

Contact Person: Russ Rasmussen, Deputy Water Division Administrator (608) 267-7651



Department Head Signature

1/23/12

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

February 15, 2012

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Emergency Rule WT-06-12

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on January 23, 2012, pursuant to Wisconsin Statutes § 227.135. You may send the scope statement to LRB for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker", written over a horizontal line.

Scott Walker
Governor