



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of After-the-Fact Wetland Individual
Permit, IP-WC-2019-6-03129

Case No. DNR-20-0001

**NOTICE OF CONTESTED CASE HEARING &
ORDER FOR PUBLICATION**

On January 22, 2020, the Department of Natural Resources (DNR) denied an after-the-fact wetland permit, IP-WC-2019-6-03129, to Andrew Herold and Kim Reedy (“Petitioners”). Petitioners sought the permit for construction on their property located in the NE1/4 of the NE1/4 of Section 31, Township 20 North, Range 10 West, Town of Cross, Buffalo County. The project consisted of constructing a driveway to access a building site for a principal residence. Petitioners discharged dredged or fill material into a wetland to construct the driveway. DNR determined that the proposed project did not meet the standards required pursuant to Wis. Stat. § 281.36(3n) and the wetland individual permit was denied.

On February 21, 2020, Petitioners filed a Petition for a Contested Case Hearing with the DNR to review the decision to deny after-the-fact wetland permit application, pursuant to Wis. Stat. §§ 227.42 and 281.36(3q)(b).

By letter dated March 23, 2020, the DNR granted the request for a contested case hearing and limited the hearing to the following issues:

1. Whether the proposed project meets the following wetland permitting standards under Wis. Stat. § 281.36(3n)(c):
 - a. Whether the proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts, pursuant to Wis. Stat. § 281.36(3n)(c)1.
 - b. Whether the proposed project would result in significant adverse impacts to wetland functional values through impacts to wildlife habitat and flood stormwater storage, pursuant to Wis. Stat. § 281.36(3n)(c)3.

On April 6, 2020, the Division of Hearings and Appeals received, for filing, an original request for hearing from the DNR. The parties have conferred and agreed to a date for a contested case hearing.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a contested case hearing on the above-captioned matter pursuant to Wis. Stat. § 227.44, Wis. Stat. § 281.36(3q)(g), Wis. Admin. Code § NR 2.13 and Wis. Admin. Code § HA 1.12(8) via BlueJeans videoconferencing software October 19 through October 21, 2020, commencing at 8:30 a.m. and concluding no later than 4:30 each day. Members of the public desiring to participate in this hearing pursuant to Wis. Admin. Code § NR 2.08 will be allowed the opportunity to do so at the end of the presentation of evidence. Such interested persons should enter an appearance either prior to or at the commencement of the contested case hearing. Information about connecting to the BlueJeans hearing will be found at the DNR Website (<https://dnr.wi.gov/Calendar/Hearings/>) and can also be requested from Susan Burns at (608)266-7667. Additional options may be provided for remote connectivity as they develop due to the evolving nature of the pandemic. Please monitor the DNR website for updates.

The hearing is a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a), and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. The current pandemic will also impact the availability of in-person inspection of records. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets. Interested persons should contact the DNR to inquire about access to documents during the pandemic before attempting to access them in person.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-7709 with specific information on your request prior to the date of the scheduled prehearing or hearing.

ORDER FOR PUBLICATION

THE DIVISION, THEREFORE, ORDERS:

Pursuant to Wis. Admin. Code § NR 2.08(5), the DNR shall cause a copy of the foregoing Notice to be published once 30 days before the date of hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the impacted area. Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **October 12, 2020**.

Dated at Milwaukee, Wisconsin on August 25, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
819 N 6th Street, Room 92
Milwaukee, Wisconsin 53203-1685
Telephone: (414) 227-1867
FAX: (414) 227-3818

By: 

Kristine M. Kerig
Administrative Law Judge