



## Wisconsin DNR Shoreland Management Program

### Revisions to NR 115 Effective October 1, 2014

**DNR Shoreland Management Program:** Our shoreland team aids in the fulfillment of the State's role as trustee of its navigable waters, protecting habitat, natural scenic beauty and increasing water quality while balancing competing needs of different users. In addition to our legislative mandates, the Department has a responsibility to provide training and education to local boards, elected officials, committees, lake organizations, realtors, developers, contractors, consultants and individual property owners. Shoreland Specialists are the Department's zoning experts that handle shoreland, wetland and floodplain zoning, and also projects above the ordinary high water mark of navigable waters but subject to Chapter 30 Permitting.

**Contact Information for Waushara County:** **WDNR:** Dale Režabek, DNR Regional Shoreland Specialist, Oshkosh Service Center, 920-303-5440, [dale.rezabek@wisconsin.gov](mailto:dale.rezabek@wisconsin.gov); Kay Lutze, DNR Shoreland Policy Coordinator, Green Bay Service Center, 920-662-5159, [kay.lutze@wisconsin.gov](mailto:kay.lutze@wisconsin.gov).  
**County:** Terri Dopp-Paukstat, Director, Waushara County Land Conservation and Zoning, 920-787-0453

**Revisions to NR 115:** Effective October 1, 2014, there were changes made to the NR 115 rules for the Wisconsin Shoreland Protection Program in the following areas: Vegetation, Impervious Surfaces, Nonconforming Structures, and Reporting/ Notices. These changes were made after the latest revisions done in 2009. Counties deadline to update their shoreland ordinance is October 1, 2016.

**Vegetation:** Establishes a vegetative buffer zone inland a minimum of 35 feet from the ordinary high water mark. Additional vegetation management activities may be authorized by County permit. No permit needed for vegetation routine maintenance, to create an access/viewing corridor, on parcel > 10 acres (use sound forestry practices), and a county may allow the removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

**Impervious Surfaces:** An impervious surface (IS) is an area that releases all or a majority of precipitation that falls on it (as runoff, with little to no infiltration). This applies to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

- a. A riparian lot or parcel.
- b. A non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.

The standards are:

1) Keep the IS that you have, and you can repair it and maintain it; however, if you are replacing the IS with a similar surface, or relocating it, you have to meet all other ordinance provisions (i.e. replacement has to be in a location that is compliant, it cannot in that same footprint if noncompliant with ordinance). For riparian lots or non-riparian lots that are entirely within 300 feet of the OHWM, no permit is needed



## Wisconsin DNR Shoreland Management Program

### Revisions to NR 115 Effective October 1, 2014

for up to 15% IS on lot; and between 15% and 30% is allowed with a permit and mitigation (as defined by each county). IS percentage is calculated by dividing the surface area of existing and proposed IS on a lot by the total surface area of the lot (x 100). Outlots between OHWM and the developable lot in common ownership are considered one lot for purpose of calculation (this is new).

2) Highly Developed Shorelines (HDS, existing and can be created by counties) standards: No mitigation permit needed for Residential land use with less than 30% IS; Commercial, Industrial, or Business land use with less than 40% IS, and a permit is required for expansion > 40%. Maximum IS standard for Residential is 40%, and maximum is 60% IS for Commercial, Industrial, or Business land use.

3) Treated IS can be excluded from the calculation. "Treated" means runoff from the IS that is treated by devices such as approved storm water ponds, constructed wetlands, infiltration basins, rain gardens, bioswales, or other engineered systems, or runoff that discharges to internally drained pervious area that retains the runoff on the lot to allow infiltration into the soil.

4) The Rule NR 115 has two notes in the IS section. Note 1 states that a variance can be obtained if the IS exceed maximums, and cannot treat, and Note 2 states that this section does not supersede the setback requirements. What these Notes mean is that if an existing structure is removed, the new structure (replacement or relocation) needs permits and must all meet ordinance provisions (i.e. must be compliant including all setbacks) or may seek a variance.

In summary: for non-HDS, an IS standard of 15% and up to 30% with permit and mitigation; for HDS, an IS standard of 30% residential or 40% for Commercial, Industrial, or Business land uses and up to .

HDS: Urbanized areas or urbanized clusters in 2010 US Census or Commercial, Industrial, or Business land use as of 1/31/13. Can be created by a county if at least 500 feet of shoreline as of 2/1/2010, and majority of lots exceed 30% IS or lots are on a lake that is sewer.

#### **Nonconforming Structures:**

##### Nonconforming Principal Structures

- In 2010, NR 115 provided increased flexibility for nonconforming (NC) principal structures in exchange for mitigation.
- Prior to 2012, counties could be more restrictive.

##### 2011 ACT 170

- For NC structures and substandard lots, counties, cities or villages may NOT be more restrictive than state standards.
- This is the first time that state shoreland zoning standards became a cap or upper limit, instead of a lower limit for protection, which they had been since 1966.



## Wisconsin DNR Shoreland Management Program

### Revisions to NR 115 Effective October 1, 2014

#### The New Changes to Nonconforming Structures:

- Clarified that maintenance and repair includes exterior remodeling, replacement or enhancement of plumbing, electrical, windows etc...
- Lateral expansion within setback is now allowed (one-time)
  - 200 sq. ft. expansion over the life of the structure, no closer to the OHWM.
  - Could still do vertical expansion.
- Clarified discontinuance language
  - Only structures with a nonconforming use.
- Eliminated:
  - Requirement to remove NC accessory structures for replacement/relocation of NC principal structure.
  - Provision about wet boathouses to clarify that counties may regulate dry boathouses.
- Expansion of a NC principal structure beyond setback:
  - An existing NC principal structure may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in (b)1., and that all other provisions of the shoreland ordinance are met.
  - No mitigation is required for this expansion.
  - Does not require the existing principal structure to be more than 35 feet from the OHWM.
  - Also could be an averaged setback or even larger setbacks for counties with a lake classification system.

**Reporting and Notices Clarifications:** Counties no longer need to provide the Department copies of permits for nonconforming structures. The remaining reporting requirements stay the same, reflecting what was required from counties since 1968.

Notices by counties to State are required:

ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, copies of any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.



# Proposed Changes to Wisconsin's Shoreland Zoning Standards- NR 115



## Summary of the Rule Proposal

Wisconsin's minimum shoreland zoning standards, originally codified as NR 115, Wis. Adm. Code, were revised and officially promulgated in 2010. Since the 2010 rule revisions, counties have identified some provisions that are unclear or challenging to implement. The proposed rule revisions would simplify the impervious surfaces standards, allow more flexibility for nonconforming principal structures and clarify the reporting and vegetative management requirements for local governments.

## What are the proposed changes?

The department is proposing some modifications to each of these four sections of NR 115: the vegetative management standards, the impervious surfaces standards, the nonconforming structure standards and the reporting standards.

### Vegetative Management Standards

Within the vegetative buffer – 35 ft. wide from the OHWM- the department is clarifying that no permit is necessary for the removal of exotics, invasive, diseased or hazardous species as long as the area is re-vegetated.

### Reporting Standards

Eliminates the requirement that counties provide copies of permits for nonconforming structures. The remaining reporting requirements reflect what has been required from counties since 1968.

### Impervious Surface Standards

Application: standards only apply to riparian lots, or non-riparian lots entirely within 300 ft. of OHWM

Areas that do not directly drain to a waterway or drain to a treatment system do not need to be counted toward a property's impervious surface limits.

Counties may develop an ordinance, providing higher impervious surface standards, for highly developed shorelines

- Properties may have up to 30% impervious for residential land uses or 40% impervious for industrial, commercial, & business land use without a permit
- A permit with mitigation required for properties that expand and have between 30-40% impervious for residential land uses or 40-60% impervious for industrial, commercial & business zoning
- Highly developed shorelines are defined as
  - Land located within an Urbanized Area or Urbanized Cluster in 2010 US Census
  - Commercial, Industrial or Business land uses
  - Any additional areas the counties want to add if all of the following were met prior to Feb. 1, 2010
    - The shoreline is at least 500 feet in length and
    - Is sewerded or smaller than minimum lot sizes in NR 115
    - And over 75% of the lots exceed 30% impervious surface

### Nonconforming Structure Standards

Clarify that discontinuance language only applies to structures associated with a nonconforming use and that counties may regulate dry boathouses.

Additional flexibility for principal structures, at least 35 feet from OHWM but within the 75 foot setback, allowing a

- One time horizontal expansion of 200 sq. ft. within setback, no closer to OHWM with mitigation
- Eliminate requirement to remove non-conforming accessory structures when relocating/replacing a principal structure

## What is the department not proposing to change?

The department is not proposing to change the current shoreland zoning standards establishing minimum lot sizes, building setbacks, filling and grading standards, shoreland-wetland zoning standards and height limitations within the setback.

### Lot Size

- Unsewered lots– 20,000 ft<sup>2</sup> with an average width of 100 ft
- Sewered lots – 10,000 ft<sup>2</sup> with an average width of 65 feet
- Standards allow development on substandard lots and development of conservation subdivisions

### Setbacks

- 75 feet from the ordinary high water mark with setback averaging allowed
- Exemptions for certain structures such as dry boathouses and walkways

### Filling and Grading

- Allowed if it complies with shoreland-wetland provisions & minimizes erosion.

### Height

- No structures within 75 feet of the ordinary high water mark may be taller than 35 feet

### Vegetation Management

- Vegetative buffer- 35 ft. wide from the OHWM
- Vegetation removal requires a permit and must be replaced unless for the following purposes:
  - Routine maintenance- keep what you have
  - Access/Viewing corridor-30 % of the frontage may be clear cut but no more than 200 ft. total.
  - Forestry activities
  - Removal of exotics, invasive, diseased or hazardous species – subject to the revisions.

### Impervious Surface Standards

- Existing impervious surfaces: Property owners can still maintain, repair, replace with a similar surface, or modify existing impervious surfaces without a permit or mitigation; this standard will not change from the previous rule.
- For properties, other than those located along the proposed highly developed shorelines:
  - Properties may have up to 15% impervious without a permit
  - A permit with mitigation required for properties that expand and have between 15-30% impervious

### Non-conforming Structure Standards

- What is allowed?
  - A principal structure 0-35 ft. from OHWM
    - Unlimited maintenance & repair as defined by the county, within the building envelope
    - Relocation/reconstruction beyond setback
  - At least 35 feet from the OHWM but within the setback it would be allowed
    - Unlimited maintenance & repair as defined by the county, within the building envelope
    - Vertical expansion within setback with mitigation
    - Relocation/Reconstruction with mitigation
  - If structure extends to the setback
    - Unlimited maintenance & repair as defined by the county, within the building envelope
    - Lateral or vertical expansion within the setback as described above
    - Lateral or vertical expansion beyond the setback in compliance, without mitigation, but in compliance with other county ordinance requirements.

Counties must submit notices 10 days before the hearing and within 10 days after a decision for

- Variances
- Special exceptions or conditional use permits
- Administrative Appeals
- Map or text amendments
- Proposed land divisions in the shoreland zone

# ***Common questions about the 2014 revisions to the state shoreland zoning standards***

November 2014

*This fact sheet is designed to help waterfront property owners and other people who enjoy Wisconsin lakes and streams understand the proposed revisions to the state shoreland zoning standards (NR 115). The fact sheet is divided into four sections that address general background, hard surfaces, nonconforming structures and shoreland vegetation.*

## **General background**

### ***What are shorelands and why are they important?***

Shorelands are lands that are within 1000 feet of a lake, pond or flowage, and land within 300 feet of the floodplain of a river or stream. Development and land disturbing activities in shorelands directly affect the quality of our lakes and streams.

### ***Why revise the current state shoreland zoning standards?***

In 2009, Wisconsin revised the shoreland zoning standards in NR 115 to provide more flexibility for property owners and to help protect the water quality in our lakes and rivers, preserve shoreland vegetation, provide habitat for fish and wildlife, and preserve the natural scenic beauty along our waterways.

Since that time, some counties have expressed concerns that the proposed revisions would be administratively difficult to implement and enforce. As a result, the department is proposing to revise NR 115 to address the concerns raised by some of the counties. The proposed revisions would address county concerns and create more flexibility for property owners.

Counties, cities, villages and towns may generally adopt shoreland zoning standards that are more protective than the state standards.

## **Shoreland vegetation**

*Natural shoreland vegetation (trees, shrubs and ground cover) allows water to soak into the ground, decreasing and filtering stormwater runoff carrying fertilizers, pesticides and other pollutants to lakes and streams and reducing erosion and sedimentation. Food and shelter for fish, birds and wildlife are provided by the same natural shoreland vegetation that offers beautiful shorelines.*

### ***How does this affect our lawn? Will we have to replace our lawn with a natural buffer?***

The current vegetation standards will generally remain the same and current lawns and landscaping can stay as they are unless you make one



of the following changes:

- building additional hard surfaces like rooftops or driveways above the impervious surface standard for the property.
- expanding a house that is close to the water.

***We want to remove vegetation that is invasive, diseased, damaged or vegetation that is toxic from our shoreline, can we do that?***

The proposed rule would clarify that the county does not have to issue you a permit for you to remove these species as long as you replant the area.

### **Hard surfaces**

*Driveways, rooftops, patios and other hard surfaces are known as impervious surfaces. An increase in the amount of impervious surface prevents water from soaking into the ground and increases the amount of stormwater runoff. More runoff causes: erosion and degraded streams, increased soil and pollutants entering water, increased algae growth, and fewer fish and insect species.*



***We would like to expand our home, outbuildings or driveway. How will the changes affect us?***

- Impervious surface regulations will affect only riparian lots or non-riparian lots that are entirely within 300 feet of the ordinary high water mark.
- Maintains current impervious surface limits for most of the state.
  - No permit needed if the property has less than 15% of the land in impervious surfaces.
  - If the property proposed to expand impervious surfaces above 15%, permit is needed and shoreland mitigation is required.
  - Properties that wish to expand above 30 % impervious would need to obtain a variance.
- Creates a higher impervious surface standard for already highly developed areas.
  - Establishes a definition of highly developed shoreline.
    - Located within an Urbanized Area or Urbanized Cluster in 2010 US Census
    - Commercial, Industrial or Business land use
    - Allows counties to add additional areas if all of the following standards are met
      - There is at least 500 feet of shoreline and as of February 1, 2010, have....
        - a majority of its lots developed with more than 30% impervious surface area as calculated under subd. 1m.
    - OR**
    - be located on a lake and served by a sewerage system as defined in s. NR 110.03 (30).
  - Impervious surface standard:
    - No permit needed for
      - residential land use with less than 30% impervious
      - commercial, industrial or business land use with 40% or less impervious
    - Permit with mitigation for properties over impervious surface standard
  - Maximum impervious surface standard: Would need a variance if
    - Residential land use expanding above 40% impervious
    - Commercial, industrial or business land use expanding above 60% impervious
- Impervious surfaces that do not drain directly to a lake or river or are treated with an engineered system may not have to be counted towards the impervious surface limits



## Nonconforming structures

*Structures that are located in the shoreland setback have the greatest potential impact on the water quality of a lake or river. Runoff from these structures quickly carries nutrients and sediments into the water body, with very little shoreland buffer area to help filter contaminants out.*



### ***If our home burns down, will we be able to rebuild it?***

You can rebuild any home damaged or destroyed by violent wind, vandalism, fire or flood just as it was prior to the event.

### ***We need to remodel our house, not expand it, just remodel the interior. Before we couldn't do what we wanted because it would go over the "50% rule." Can we remodel now?***

Yes. All homes can be maintained and repaired. You should talk to your county to determine what maintenance and repair activities are allowed under the local ordinance.

### ***We would like to expand our home. How will the changes affect us?***

Homes set back further from the water will be allowed greater expansion than homes closer to the water.

- If your home is located beyond the shoreland setback, you can expand it any direction, however, you cannot encroach into the 75 foot setback.
- If your home is located between 35 and the shoreland setback from the water
  - The proposed revisions to the code would continue to allow vertical expansion of these structures but would also now allow a one-time 200 sq. foot lateral expansion as long as the expanded portion of the house is no closer to the ordinary high water mark. .
- If you choose to expand your home and it is less than the shoreland setback from the water, you will need to develop and implement a shoreland mitigation plan to offset the impacts of the project on water quality and wildlife habitat in exchange for the expansion.

*Counties have until October 1<sup>st</sup>, 2016 to adopt an ordinance in compliance with the standards in NR 115.*