

NR 115



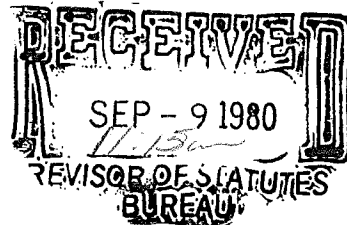
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES)



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WR-22-80 was duly approved and adopted by this Department on July 24, 1980. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 9th day of September, 1980.

Rest. copy date 11/1/80

Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
 RENUMBERING, AMENDING, REPEALING & RECREATING AND CREATING RULES

.....
 IN THE MATTER of renumbering sections .
 NR 115.03(2) thru (12); amending sections .
 NR 115.03(11) & (13), NR 115.05(2)(a)6., & .
 (2)(c) intro., 3., 5., 7., 9., 10., & .
 (3)(d)., & (3)(e)1., and NR 115.06(3)(b); .
 repealing and recreating section . WR-22-80
 NR 115.03(7) & NR 115.05(2)(a)3.; and .
 creating sections NR 115.03(2) and .
 NR 115.05(2)(c)11. of the Wisconsin .
 Administrative Code pertaining to .
 Wisconsin's shoreland management program. .

Analysis Prepared By The Department of Natural Resources

On May 20, 1980, two legislative standing committees, the Assembly Committee on Environmental Resources and the Senate Committee on Natural Resources and Tourism, held a joint public hearing on the recent repeal and recreation of Chapter NR 115, Wis. Adm. Code. The modifications to NR 115 contained herein were proposed in response to the testimony received at the legislative hearing and comments received from the Legislative Council Rules Clearinghouse staff.

At the request of the Department of Transportation, the applicability section is amended to reference s. 30.12(4)(a), Stats., which provides that under certain circumstances, the construction and maintenance of state highways and bridges are not subject to local shoreland zoning ordinances.

Several changes to the definitions section of NR 115 are proposed. The definition of "wetlands" is amended so that it conforms to the recently amended statutory definition of "wetland" found in s. 23.32, Wis. Stats. A definition of "county zoning agency" is added and the definitions of "regional flood" and "unnecessary hardship" are clarified.

Under these proposed modifications to NR 115, counties will be required to: (1) hold public hearings to solicit public comment on preliminary Wisconsin wetland inventory maps, that are being prepared by the Department of Natural Resources pursuant to s. 23.32, Wis. Stats.; (2) permit all the uses listed in section NR 115.05(2)(c) in shoreland - wetland districts, and (3) modify their existing shoreland ordinances to meet new minimum standards within 6 months after they receive the final

Wisconsin wetland inventory maps for their county. Under the provisions of the recreated NR 115, counties were permitted, but not required, to allow the uses listed in NR 115.05(2)(c) and public hearings on the preliminary wetland maps were suggested, but not required.

The proposed modifications require the Department of Natural Resources to consult available soil survey maps and conduct on-site inspections, if appropriate, at Department expense in order to evaluate apparent map inaccuracies pointed out by county zoning agencies.

Several changes to the list of permitted uses in shoreland - wetland zoning districts are proposed. An amendment to the provision dealing with the practice of forestry, section NR 115.05(2)(c)3., would require counties to allow temporary water level stabilization measures to alleviate abnormally wet or dry conditions.

The paragraph on the cultivation of agricultural crops, section NR 115.05(2)(c)5., is to be changed to require counties to allow flooding, dike and dam construction, and ditching for the purpose of growing and harvesting cranberries, to require counties to permit the maintenance of existing drainage systems, and to require counties to permit roads that are necessary for agricultural cultivation, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

The nonresidential building provision, section NR 115.05(2)(c)7., is expanded to include buildings used for purposes other than the raising of waterfowl, minnows, or other wetland or aquatic animals, if such buildings cannot as a practical matter be located outside the wetland.

The paragraph dealing with parks and recreation areas, section NR 115.05(2)(c)9., is amended to require counties to allow both public and private parks, recreation areas and wildlife habitat areas. To prevent the misuse of this provision through the development of a shoreland - wetland area for a prohibited use which also allegedly improves wildlife habitat or otherwise enhances wetland values, the owner or operator of a new private recreation or wildlife area to be located in a shoreland - wetland zoning district is required to notify the county zoning agency before beginning construction, and is required to use the recreation or wildlife habitat area exclusively for that purpose.

The provision allowing electric, gas, telephone, water and sewer lines through shoreland - wetland areas, section NR 115.05(2)(c)10., is amended to specifically require counties to allow cooperatives, as well as public utilities, to construct and maintain such lines, and another permitted use, section NR 115.05(2)(c)11., is added to require counties to allow railroad lines through shoreland - wetland districts under the same conditions that electric, gas, telephone, water and sewer lines are permitted.

A paragraph dealing with the maintenance and replacement of existing town and country highways and bridges, section NR 115.05(2)(c)12., is added to the list of permitted uses in shoreland - wetland zoning districts.

The proposed modifications would also change the provision on filling, grading, lagooning, dredging, ditching and excavating in the shoreland area generally (including areas outside shoreland - wetland areas), section NR 115.05(3)(d), to provide that such work must be done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat. This section formerly provided that such work could only be permitted "if protection against erosion, sedimentation and impairment of fish and wildlife habitat has been assured." Many people expressed concern that this provision would, in effect, prohibit all filling, grading, lagooning, dredging, ditching and excavating in shoreland areas since no one could ever prove that no erosion, no sedimentation and no impairment of fish and wildlife habitat would result from the work proposed.

Finally, under the proposed modifications, the portion of NR 115 that deals with nonconforming uses, NR 115.05(3)(e)1., is amended to reference the statute from which the provision is taken, s. 59.97(10), Wis. Stats., and to reference the statutory review procedures that a property owner has recourse to, if denied a permit to alter or repair a nonconforming structure.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 59.971, 144.26, and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby renumbers, amends, repeals and recreates, and creates rules interpreting sections 59.971 and 144.26, Wisconsin Statutes, as follows:

SECTION 1 - Section NR 115.02 is amended to read:

NR 115.02 Applicability. The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48(13), Stats., applies, state agencies are required to comply with, and obtain all

necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance and repair of state highways and bridges, carried out under the direction and supervision of the Wisconsin Department of Transportation, are not subject to local shoreland zoning ordinances, if s. 30.12(4)(a), Stats., applies.

SECTION 2 - Sections NR 115.03(2) thru (12) inclusive are renumbered to be sections NR 115.03(3) thru (13) inclusive.

SECTION 3 - Section NR 115.03(2) is created to read:

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.97(2)(a), Stats., to act in all matters pertaining to county planning and zoning.

SECTION 4 - Section NR 115.03(7) is repealed and recreated to read:

(7) "Regional flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for the watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years.

In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

SECTION 5 - Section NR 115.03(11) is amended to read:

(11) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

SECTION 6 - Section NR 115.03(13) is amended to read:

(13) "Wetlands" means ~~those lands which are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department;~~ generally those areas where water is at, near or above the land surface long enough to ~~support or~~ be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

SECTION 7 - Section NR 115.05(2)(a)3. is repealed and recreated to read:

3. The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

SECTION 8 - Section NR 115.05(2)(a)6. is amended to read:

6. After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, evaluate the county recommendations, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

SECTION 9 - Section NR 115.05(2)(c) intro., is amended to read:

(c) Permitted uses in shoreland - wetland zoning districts. Within shoreland - wetland zoning districts, counties ~~may~~ shall permit the following uses subject to the general requirements of sub. (3), the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

SECTION 10 - Section NR 115.05(2)(c)3. is amended to read:

3. The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silvicultural activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse

impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

SECTION 11 - Section NR 115.05(2)(c)5. is amended to read:

5. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavation except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting crabberries. ~~Such use may include the~~ The maintenance and repair of existing drainage ditches systems (such as ditching and tiling) shall be permitted. ~~if protection against erosion, sedimentation and impairment of fish and wildlife habitat has been assured, and the~~ The construction and maintenance of roads which shall be permitted if the roads are necessary for agricultural cultivation, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

SECTION 12 - Section NR 115.05(2)(c)7. is amended to read:

7. The construction and maintenance of nonresidential buildings used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose

which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

SECTION 13 - Section NR 115.05(2)(c)9. is amended to read:

9. The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, and game preserves, and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland - wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction may shall be allowed in park wildlife refuges, or-refuge game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

SECTION 14- Section NR 115.05(2)(c)10. is amended to read:

10. The construction and maintenance of ~~public-utility-facilities and-transmission-lines-(such-as-electric,-gas-and-telephone-lines and-water-and-sewer-lines)~~ electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, by public

utilities, and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to its members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

SECTION 15 - Section NR 115.05(2)(c)11. is created to read:

11. The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

SECTION 16 - Section NR 115.05(2)(c)12. is created to read:

12. The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

SECTION 17 - Section NR 115.05(3)(d) is amended to read:

(d) Filling, grading, lagooning, dredging, ditching and excavating. Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if protection-against done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat has-been-assured.

SECTION 18 - Section NR 115.05(3)(e)1. is amended to read:

1. Under s. 59.97(10), Stats., the The continuation of the lawful use of a building, structure or property, existing at the time an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment, including routine maintenance of such a building or structure, shall not be prohibited, but the alteration of, addition to, or repair, over the life of the building or structure, in excess of 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited. If a county prohibits alteration, addition or repair in excess of 50% of the equalized assessed value of an existing nonconforming building or structure, the property owner may either appeal the decision to the county board of adjustment and seek court review if the board's determination is unfavorable, under ss. 59.99(4) and 59.99(10), Stats., or petition to have the property rezoned under section NR 115.05(2)(e) and s. 59.97(5)(e), Stats.

SECTION 19 - Section NR 115.06(3)(b) is amended to read:

(b) Counties which have shoreland zoning and land division ordinances that do not meet the minimum standards contained in section NR 115.05, Wis. Adm. Code, shall be deemed to be in noncompliance with the requirements of s. 59.971, Stats., and this chapter. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final Wisconsin wetland inventory maps for that county, the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.971(6), Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on July 24, 1980.

The rules contained herein shall take effect upon publication as provided in section 227.026(1) intro., Wisconsin Statutes.

Dated at Madison, Wisconsin September 9, 1980

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

September 10, 1980

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: 1020


Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-22-80. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Natural Resources and Tourism pursuant to s. 227.018, Stats. No comments were made on the rules.

You will note that this order takes effect upon publication. Kindly publish it in the Administrative Code for an effective date of November 1, 1980.

Sincerely,


Anthony S. Earl
Secretary

Enc.