



WISCONSIN ASSOCIATION OF LAKES

is a nonprofit group of citizens,
organizations, and businesses working for a clean, safe, healthy lakes for everyone.

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July 14, 2005

To: Russ Rasmussen and Toni Herkert, Wisconsin Department of Natural Resources

From: Wisconsin Association of Lakes

Re: WAL's comments on the summer 2005 public hearing draft of revised NR 115

Dear Ms. Herkert and Mr. Rasmussen,

WAL appreciates the opportunity to comment on the most recent draft of revised NR 115, the subject of this summer's public hearings and comment period. This is the perfect stage in the process to formally check in with the public (including our members – lake groups, individuals, and businesses working for clean, safe, healthy lakes for everyone) regarding the progress being made by the Department and the NR 115 Advisory Committee to revise the shoreland management / protection rules in NR 115. Thank you for your expert handling of this rule revision process.

Although in general WAL supports the direction of the draft revised rule and many of its specific provisions, WAL is concerned that some provisions in the draft rule would prevent the rule from meeting its statutory purposes: *"...to 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 structure and land uses and reserve shore cover and natural beauty."* Attached is a document in which we outline those specific areas with which we are concerned and in some cases suggest ways those parts of the rule could be improved in this regard.

By way of rationale for our general and specific positions, we offer the following: In order to meet the statutory purposes for NR 115 and address the shoreland development-related problems now known to adversely affect our lakes and other navigable waters of the state, a revised NR 115 must fully address the three following factors, which are primarily responsible for lake decline (manifested in diminished water quality/clarity, ecosystem function, and human enjoyment).

- 1. The density of shoreland development,**
- 2. The loss of shoreland habitat for fish and wildlife which is attendant to shoreland development, and**
- 3. Sediment and nutrient pollution by way of runoff from developed and impervious shoreland areas.**

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WAL comments on proposed revised NR 115 (summer 2005)
July 14, 2005

WAL feels our general and specific concerns must be addressed in order to make the minimum standards in NR 115 adequate to meet the statutory purposes for the rules and to protect Wisconsin's lakes and rivers and the public and private rights and values associated with them.

We acknowledge that NR 115 sets minimum standards and that counties are encouraged to enact more protective standards at the local level if so desired. WAL has long supported county efforts to pursue lake classification and the counties' use of that tool to help them tailor local shoreland zoning standards appropriate for each county's context.

We look forward to continuing to work with the Department and the Advisory Committee to create a revised NR 115 that will help protect clean, safe, healthy lakes for everyone.

Thank you again for your consideration of these comments.

A handwritten signature in black ink that reads "Peter T. Murray". The signature is written in a cursive style with a large initial "P" and a distinct "T" in the middle.

Peter Murray, Executive Director

Specific areas of concern for the Wisconsin Association of Lakes in draft 6, revised NR 115:

Note: *The bolded numbers in parentheses following each point below indicate which of the three major factors of shoreland development (listed in our letter above) are addressed by each modified provision we suggest.*

NR 115.03 Definitions:

- **NR 115.03(24):** WAL would like to see the definition of “lot” modified to include the following: “A lot divided by a roadway shall be considered a single lot unless the parcels so divided conform individually to ordinance dimensional requirements.” **(1,3)**
- WAL would like to see the term “native vegetation” defined here. **(2)**

NR 115.09 Land division review:

- **NR 115.09 (4):** WAL would like to see NR 115 require counties to regulate lots in common ownership that do not comply with the minimum lot size and development density standards of NR 115.11 using language along the lines of that proposed in Advisory Committee Draft 3 dated 10-26-2004:

If an undeveloped or developed substandard lot is in common ownership with abutting lands, the contiguous property in common ownership shall be considered a single lot and such a substandard lot may not be developed, sold or otherwise transferred, except as part of the entire parcel or lot in common ownership, unless the substandard lot and abutting lands are re-divided to create lots that conform to the minimum lot size or development density standards in NR 115.11. **(1,2,3)**

NR 115.11 Minimum lot sizes:

- **NR 115.11(3):** For all residential uses (single-family and multi-family) in the shoreland zone, WAL would like to see NR 115 require a minimum per-dwelling-unit lot size of 20,000 square feet and a minimum per-dwelling-unit lot width of 100 feet, regardless of whether the area is served by public sanitary sewer or private onsite septic system(s). **(1,2,3)**
- **NR 115.11(3):** In the same section, WAL encourages incorporation into the rule of a standard establishing a maximum per-dwelling-unit *density* of 20,000 square feet. This would allow greater flexibility than a minimum lot size standard alone.
- **NR 115.11(3) and (9):** WAL strongly disagrees with the density bonuses that would be allowed for multi-family residential developments under the standards proposed in draft NR 115.11(3). WAL would like to see the rule allow density bonuses for multi-family residential use developments **only** if those developments are permitted through planned unit, cluster, or conservation-style development processes, as enabled under the proposed rule in NR 115.11(9). However, we also feel the rule’s standards for “alternative developments” require greater specificity. We feel alternative developments must require greater protection of shoreland habitat, naturally vegetated open space, and scenic beauty as minimum lot sizes and widths are reduced and, possibly, greater density is allowed. WAL would be happy to work with the Department and the Advisory Committee to develop detailed minimum standards on allowable enhanced resource protections, lot size reductions, and density bonuses in NR 115.11(9). **(1,2,3)**

- **NR 115.11(3)(c):** WAL would like to see backlots required to at least meet the same dimensional and density standards as riparian lots. **(1,3)**
- **NR 115.11(4):** WAL strongly supports the Department’s intent to regulate campsites used for residential uses (whether permanently or not) as residential uses, as distinct from campsites used for short-term habitation in shelters such as tents, camping trailers, motor homes, buses, vans, pickup trucks, etc. This is very important given the difference in the level of impact on the waterway generated by each kind of campsite use. Modifications to the pertinent definitions and/or the language in this section may be necessary to achieve this goal.

WAL would also like to see the provision in proposed NR 115.21(5) allowing the replacement of nonconforming accessory structures in campgrounds or mobile home parks deleted so that this kind of structure is treated the same in the campground or mobile home park context as it would be in other contexts. **(1,2,3)**

- **NR 115.11(6):** WAL would like to see a provision in NR 115 directing counties to require that access lots meet minimum lot size requirements, land disturbing activity provisions, vegetation standards, development density standards, and impervious surface standards for residential uses in the situations (a and b) listed in the draft revised rule. WAL would also like to see NR 115 require that counties consider the use of a riparian lot in the shoreland zone as an access lot as a conditional use, requiring a public hearing and the granting of a conditional use permit before such use may legally occur. “Access lot” should also be included in the definitions in NR 115.03. **(1,2,3)**

NR 115.13 Shoreland setbacks:

- **NR 115.13(1)(c) *Location of ordinary high water mark:*** WAL does not support the provision proposed here. In particular, WAL strongly opposes the provisions proposed in 2. and 3. for dealing with situations where DNR and County OHWM delineations vary by more than one foot measured on a horizontal plane. In WAL’s view, the DNR determination of the OHWM must be used, and required setbacks from that line must comply with the other provisions in NR 115. **(1,2,3)**
- **NR 115.13(5):** WAL would like to see the setback reduction processes proposed here allowed only when the lot or parcel of land has a minimum area of at least 10,000 square feet and is a legal lot or parcel of record and the other proposed conditions (1, 3, 4 and 5) are also met. **(1,2,3)**
- **NR 115.13(5):** WAL is opposed to setback averaging as became common practice under existing NR 115. WAL can, however, support the proposed rule’s allowing counties to choose a limited kind of setback averaging as a tool to help deal with setback reduction on certain substandard lots under the conditions specified in our version of NR 115.13(5)(a). **(1,2,3)**

NR 115.17 Impervious surfaces:

- **NR 115.17(3)(a):** WAL strongly supports the concept of NR 115’s requiring counties to require property owners to implement and maintain best management practices to manage stormwater runoff from new impervious surfaces. Thus, we supported the rule order’s “no increase in stormwater discharge...to the maximum extent practicable”

performance standard, which would leave it to the counties to determine how best to encourage property owners to use BMPs for effective stormwater runoff control. We are not satisfied, however, with the public hearing presentation's modified standard simply requiring that runoff from impervious surfaces be directed to pervious surfaces. This is just one of a number of effective stormwater best management practices, and this standard lacks any performance measure by which effectiveness could be gauged. WAL would be happy to work with the Department and the Advisory Committee to refine appropriate minimum standards for the management of stormwater runoff from impervious surfaces in the shoreland zone, as it is one of the most critical issues the rule addresses. (3)

- **NR 115.17(3)(b):** WAL would like to see a cap on total impervious surface area set at 20% of lot area for all lots and parcels in the shoreland zone and, further, WAL would like to see a standard in NR 115 limiting imperviousness for the area within 200 feet of the OHWM on any lot or parcel to no more than 20%. (3)
- **NR 115.17(3)(b):** Also, WAL would like to see the impervious surface area percentage triggering a requirement of shoreland buffer preservation / establishment set at 15% rather than 20%. (3)

NR 115.19 Land disturbing activities:

- **NR 115.19(1)(b) Wetland buffer:** WAL would like to see NR 115 require at least a 10-foot wetland buffer in which no structures or impervious surfaces may be placed and land disturbing activities must be minimized and mitigated. (2,3)
- **NR 115.19(2) PERMIT EXEMPTION:** WAL would like to see NR 115 allow counties to require a county zoning permit for a land disturbing activity for which a permit has been granted by the Department under chapter 30, Stats., or chapter NR 216. The present proposal would bar a county from doing that. A simple language change from "shall" to "may" would address this concern. (2,3)

NR 115.21 Nonconforming uses and structures: (1,2,3)

- **NR 115.21(3)(b):** WAL does not support NR 115's allowing the *structural alteration* of nonconforming *accessory* structures that have any part of the structure in the shoreland setback area.
- **NR 115.21(4)(c):** WAL supports the general idea of NR 115's allowing limited expansion of the footprints of nonconforming *principal* structures set back at least 35 feet from the OHWM. However, WAL would like to see footprint expansion limited to a one-time (per property, not per owner) footprint expansion of up to 200 square feet limited by the maximum total footprint square footage limits proposed in Appendix A and by the impervious surface limits we recommend be added under NR 115.17. Additionally, WAL feels expansion should only be allowed landward of the existing footprint (further away from the OHWM) and within the same width as the current footprint.
- **NR 115.21(4)(d) and (e):** WAL does not support NR 115's allowing the *replacement* of nonconforming *principal* structures with any part located within 75 feet of the OHWM, when a compliant building location is available on the lot or parcel.

- **NR 115.21(5)(b):** WAL does not support NR 115's allowing the *structural alteration* of nonconforming *accessory* structures in campgrounds or mobile home parks.
- **NR 115.21(5)(d):** WAL does not support NR 115's allowing the *replacement* of nonconforming *principal or accessory* structures in campgrounds or mobile home parks.