

CHAPTER 11 SHORELAND, SHORELAND-WETLAND AND INLAND-WETLAND REGULATIONS

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11.01 STATUTORY AUTHORIZATION.

This ordinance is adopted pursuant to the authorization found in sections 33.455, 59.69, 59.692, 59.70, 87.30, 236.45, and 281.31, Wis. Stats.

[History: am., Sub. 2 to OA 21, 1993-94, pub. 09/30/94; am., Sub. 1 to OA 47, 1993-94, pub. 03/22/95; am., OA 42, 1996-97, pub. 06/17/97; am., OA 4, 2012-13, pub. 07/23/12.]

11.015 DEFINITIONS. As used in this chapter, the following words and phrases have the meanings indicated. Words or phrases not specifically defined in this section shall have the meanings set forth in section 10.01.

(1) Access and viewing corridor means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(2) Accessory building or accessory structure. A subordinate or supplemental building or structure, the use of which is incidental to that of

the main building or structure on the same lot or the use of the premises on which it is located.

(3) Accessory use. A use customarily incidental and accessory to the principal use of a lot or parcel, or building or structure on the same lot or parcel as the principal use.

(4) Average lot width. The arithmetic average of the distance from one side lot line to the opposite side of the lot, measured perpendicular to the side lot lines, at the following locations:

(a) The rear lot line;

(b) The building setback line from the ordinary highwater mark described in s. 11.03(2), and;

(c) The front lot line.

(5) Board of adjustment. The body established under section 59.694, Wisconsin Statutes, for counties and designated *board of adjustment*.

(6) Boathouse. A permanent accessory structure used solely for the personal storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(7) Building. Any structure having a roof supported by posts, columns or walls and its appendages including, but not limited to balconies, porches, decks, stoops, fireplaces and chimneys. Also included for permit and locational purposes are swimming pools, both above and below ground, and towers, except communication towers. Not included within the definition, for permit purposes or otherwise, are poles, towers and posts for lines carrying telephone messages or electricity and recreational structures of open construction and without walls, such as swing sets, slides, yard gyms, climbers, sand boxes and teeter totters.

(7a) Building volume. The three dimensional space within which a structure is built.

(8) Channel. A channel is a natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.

(9) County zoning agency. The Zoning and Land Regulations Committee of the Dane County Board of Supervisors.

(10) Department. The Dane County Land and Water Resources Department.

(11) Department of Natural Resources. The Department of Natural Resources of the State of Wisconsin.

(12) Development. Any human-made change to improved or unimproved real estate including, but not limited to, construction of or additions or substantial improvements to buildings, other structures, or accessory uses, the placement of mobile homes, mining, dredging, filling, grading,

paving, excavation or drilling operations, deposition of materials.

(13) Director. The director of the Dane County Land and Water Resources Department or his or her designee.

(14) Drainage system. One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

(15) Existing development pattern. Principal structures, with setbacks less than the minimum required under s. 11.03(2)1, exist within 200 feet of a proposed principal structure in both directions along the shoreline.

(16) Floodplain. Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.

(17) Impervious surface.

(a) Any land cover that prevents rain or melting snow from soaking into the ground, such as roofs (including overhangs), roads, sidewalks, patios, driveways and parking lots.

(b) For purposes of this chapter, all road, driveway, or parking surfaces including gravel surfaces, shall be considered impervious.

(c) Pervious paving practices shall not be considered an impervious surface, provided all of the following criteria are met:

1. Practices are specifically designed to encourage infiltration;
2. Practices meet all technical specifications and standards of s. 11.13, and;
3. Practices are designed, installed and maintained under an approved shoreland mitigation permit under s. 11.05.

(18) Inland-wetlands. All wetlands located throughout unincorporated Dane County that are not within a shoreland.

(19) Land disturbing activity. Any alteration or disturbance that may result in soil erosion, sedimentation, or change in runoff including, but not limited to, removal of ground cover, grading, excavating, or filling of land. Tillage of existing agricultural fields is not considered a land disturbing activity, provided it is done in conformance with a site-specific farm conservation plan approved by the Director.

(20) Land use. Any artificial change to improved or unimproved real estate including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of buildings or

structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials, and the installation or construction of public or private sewage disposal systems or water supply facilities.

(21) Lot line, front. The lot line adjoining, and parallel to, the right-of-way that provides primary vehicular access to the lot.

(22) Lot line, rear. The rear lot line shall mean that lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular or gore shaped lot, a line ten (10) feet in length entirely within the lot, parallel to and most distant from the front lot line shall be considered to be the rear lot line for the purpose of determining depth of rear yard. In cases where none of these definitions is applicable, the zoning administrator shall designate the rear lot line.

(23) Lot line, side. Any lot line other than a front or rear lot line.

(24) Marina fuel system tank. A permanent above-ground structure, not to exceed 8,000 gallon capacity, designed to contain Class I or II liquids for dispensation into the tanks of self-propelled marine craft and marina equipment used in the ordinary course of business of that marina and located on a lot occupied by a legally permitted marina as defined in section 10.01(36h).

(25) Maintenance and repair. Includes such activities as interior remodeling, painting, decorating, paneling, plumbing, insulation, and replacement of windows, doors, wiring, siding, roofing and other nonstructural components; and the repair of cracks in foundations, sidewalks, walkways and the application of waterproof coatings to foundations.

(26) Maximum extent practicable (MEP). A level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

(27) Minor structure. A structure with a footprint 200 square feet or smaller and with open or screened sides.

(28) Mitigation means balancing measures that are designed, implemented and function to

restore natural functions and values that are otherwise lost through development and human activities.

(29) Navigable waters.

(a) All natural inland lakes within Dane County and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this county, including the Dane County portion of boundary waters, which are navigable under s. 30.10, Wis. Stats.

(b) The following waters are presumed to be navigable:

1. All waters listed in the "Surface Water Resources of Dane County" published by the Wisconsin Department of Natural Resources.
2. All waters shown as lakes, ponds, flowages or natural perennial or intermittent streams on United States Geological Survey 1:24,000 scale quadrangle maps.
3. All waters shown on floodplain maps adopted by the Dane County Board of Supervisors under s. 17.05(2), Dane County Code.
4. All waters, except those shown as constructed drainages, on the hydrography layer of the Dane County Geographic Information System, as maintained by the Dane County Land Information Office.

(30) Non-conforming structure. An existing lawful structure or building which is not in conformity with the provisions of the applicable zoning ordinance for the area which it occupies.

(31) Non-conforming use. A lawful use that existed prior to adoption of a zoning ordinance which restricts or prohibits said use.

(32) Ordinary high-water mark means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

(33) Preliminary review. A preliminary review letter as described in s. 14.48.

(34) Principal building or principal structure. A building or structure associated with a principal use.

(35) Principal use. The main use of land or buildings as distinguished from a subordinate or accessory use.

(36) Routine maintenance of vegetation. Normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require land disturbing activity.

(37) Shoreland.

(a) All lands within:

1. 1,000 feet of the ordinary highwater mark of any navigable lake, pond or flowage, or;
2. 300 feet of the ordinary highwater mark of any navigable river or stream, or the landward side of the floodplain, whichever distance is greater.

(b) Under s. 281.31(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this ordinance does not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river;
2. Those parts of such drainage ditches adjacent to such lands were non-navigable streams before ditching or had no previous stream history; and
3. Such lands are maintained in nonstructural agricultural use.

(38) Shoreland-wetlands. All wetlands located throughout unincorporated Dane County that are entirely or partially within a shoreland.

(39) Site. The bounded area described in an erosion control plan, stormwater management plan, or shoreland management plan.

(40) Slope. The net vertical rise over horizontal run, expressed as a percentage, which represents a relatively homogeneous surface incline or decline over the area disturbed.

(41) Stormwater runoff. The waters derived from rains falling or snowmelt or ice melt occurring within the drainage area, flowing over the surface of the ground and collected in channels, watercourses or conduits.

(42) Structure. Anything constructed or erected, the use of which requires permanent or temporary location on the ground, or attached to something having a permanent or temporary location on the ground, including but not limited to any building, dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences, retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto.

(43) Topography. The configuration of the ground surface and relations among human-made and natural features that may determine ground slope and the direction of runoff flow.

(44) Unnecessary hardship. 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 this ordinance.

(45) Vegetative buffer zone. A strip paralleling the shoreline and extending 35 feet inland from all points along the ordinary high-water mark of any navigable water.

(46) Wetlands means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

[History: 11.015 cr., Sub. 1 to OA 47, 1993-94, pub. 03/22/95; (1) and (7) am., OA 42, 1996-97, pub. 06/17/97; (1) am., OA 19, 1998-99, pub. 02/17/99; (7m) cr., Sub. 1 to OA 1, 2001-02, pub. 01/22/02; 11.015 am., OA 7, 2003-04, pub. 12/03/03; (2m) cr., Sub. 1 to OA 15, 2004-05, pub. 06/23/05; (8m), (10m), (14m), (16m), (16n), (16r) and (17m) cr., OA 12, 2005-06, pub. 11/11/05; (4m) and (6m) cr., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07; 11.01 am. and renumbered, OA 4, 2012-13, pub. 07/23/12; (4)(b) am., OA 41, 2012-13, pub. 03/19/13.]

11.016 PURPOSE AND INTENT.

(1) Legislative finding. The county board finds that the uncontrolled use of the shorelands and pollution of the navigable waters of Dane County adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties 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 structures and land uses; and, preserve shore cover and natural beauty, and this responsibility is hereby recognized by Dane County.

(2) Statement of purpose. For the purpose of promoting and protecting the public health, safety, convenience and general welfare and protecting the public trust in navigable waters, this ordinance has been established to:

(a) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:

1. Limiting structures to those areas where soil and geological conditions will provide a safe foundation;
2. Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems;
3. Controlling filling and grading to prevent soil erosion problems, and;
4. Limiting impervious surfaces to control runoff which carries pollutants.

(b) Protect spawning grounds, fish and aquatic life through:

1. Preserving wetlands and other fish and aquatic habitat;
2. Regulating pollution sources, and;
3. Controlling shoreline alterations, dredging and lagooning.

(c) Control building sites, placement of structures and land uses through:

1. Prohibiting certain uses detrimental to the shoreland-wetlands;
2. Setting minimum lot sizes and widths;
3. Setting minimum building setbacks from waterways, and;
4. Setting the maximum height of near shore structures.

(d) Preserve and restore shoreland vegetation and natural scenic beauty through:

1. Restricting the removal of natural shoreland cover;
2. Preventing shoreline encroachment by structures;
3. Controlling shoreland excavation and other earth moving activities, and;
4. Regulating the use and placement of boathouses and other structures.

(3) Compliance. Unless specifically exempted by law, all city, village, town and county governments are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when section 13.48(13), Wisconsin Statutes, applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when section 30.2022(1), Wisconsin Statutes, applies.

[History: 11.016 cr., OA 4, 2012-13, pub. 07/23/12.]

11.02 SHORELAND DISTRICT.

(1) Applicability. **(a)** The provisions of this chapter apply to regulation of the use and development of unincorporated shorelands.

(b) As provided in s. 59.692(7), Wis. Stats., provisions of this ordinance that applied to any shoreland area subsequently incorporated or annexed by a city or village shall continue in effect and shall be enforced after annexation by the annexing city or village unless either of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance, for the annexed or incorporated area, that is at least as restrictive as the standards in this ordinance, or;
2. After annexation or incorporation, the city common council or village board of trustees requests, and the county board agrees, that the county shoreland zoning ordinance, as it applies

to the annexed or incorporated area, continues to be in effect and enforced by the county. The county board shall identify, as specific amendments to this ordinance, any incorporated areas remaining under county shoreland zoning authority under this provision.

(2) Determination of navigable waters and ordinary highwater marks.

(a) The county zoning administrator shall make the initial determination of whether or not a lake, pond flowage, river or stream is navigable.

(b) The county zoning administrator shall make the initial determination of the location or elevation of the ordinary high-water mark.

(c) When the navigability or ordinary high-water mark is in question, the zoning administrator shall contact the appropriate department of natural resources office for assistance in making the determination.

[History: (1) am., OA 42, 1996-97, pub. 06/17/97; am., OA 4, 2012-13, pub. 07/23/12.]

11.03 SHORELAND REGULATIONS.

(1) Building lots:

(a) New lots. Lots created after September 1, 2012 and located in shoreland areas shall meet the following dimensional standards.

1. Sewered lots. Unless excepted under paragraph (c) below, lots served by a public sanitary sewer shall have minimum lot sizes as follows:

a. Riparian lots. Lots, any portion of which fall within the vegetative buffer zone, shall have a minimum average lot width of 100 feet and a minimum area of 15,000 square feet.

b. Non-riparian shoreland lots. Lots completely outside the vegetative buffer zone shall have a minimum average lot width of 65 feet and a minimum area of 10,000 square feet.

2. Unsewered lots. Unless excepted under paragraph (c) below, lots not served by public sanitary sewer shall have a minimum average lot width of 100 feet and a minimum area of 20,000 square feet.

(b) Existing lots. A legally created lot or parcel that met minimum area and minimum width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

1. The lot or parcel has, since May 21, 1970, not been reconfigured or combined with another lot or parcel by plat, survey, consolidation or restrictive covenant into one lot, property tax parcel or zoning parcel.

2. The lot or parcel has, since May 21, 1970, not be developed with one or more of its

structures placed partly upon an adjacent lot or parcel.

3. The lot or parcel is developed to comply with all other requirements of this ordinance and Chapters 10, 17, and 75, Dane County Code.

(c) Exceptions with shoreland mitigation permit. Where the director has approved a shoreland mitigation permit under s. 11.05(4), a non-riparian lot may be created which does not meet the requirements of paragraph (a), provided the following criteria are met:

1. The county board has approved and recorded a plat or certified survey map including that lot within the planned unit development zoning district, under s. 10.153, Dane County Code.

2. The planned unit development contains at least 2 acres or 200 feet of shore frontage.

(2) Setbacks. **(a)** Except as provided in sections 11.03(2)(b) and 11.03(2)(c), the setbacks for all buildings and structures, shall not be less than:

1. Seventy-five (75) feet, measured horizontally, from an ordinary high-water mark;

2. Seventy-five (75) feet, measured horizontally, from the boundary of wetlands two acres or larger in area, or;

3. As specified by the county flood plain zoning ordinance, Chapter 17, Dane County Code.

(b) Exceptions with shoreland zoning permit. Subject to the approval of a shoreland zoning permit by the zoning administrator, the following structures may be located within the setback from an ordinary highwater mark described in s. 11.03(2)(a)1.

1. Broadcast signal receivers, including satellite dishes or antennas that are one (1) meter or less in diameter and satellite earth station antennas that are two (2) meters or less in diameter.

2. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of sixty (60) inches in width, provided they are located within the access and viewing corridor described in s. 11.04(4).

(c) Exceptions with shoreland mitigation permit. Where the director has approved a shoreland mitigation permit under s. 11.05(4), the following may be located within the setback from an ordinary highwater mark described in s. 11.03(2)(a)1.

1. Boathouses. One boathouse per lot is permitted as an accessory building within the access and viewing corridor described in s.

11.04(5)(a), provided all of the following conditions are met:

- a. The boathouse does not exceed a width of 16 feet, as measured parallel to the ordinary highwater mark;
- b. The footprint of the boathouse does not exceed 450 square feet;
- c. The height of the structure does not exceed 12 feet, as measured from the ordinary highwater mark;
- d. The existing slope of the proposed boathouse site does not exceed 20%;
- e. The boathouse has no plumbing or cooking facilities;
- f. The boathouse has no more than two windows or skylights, with rough openings for each not to exceed 4 square feet in area;
- g. All portions of the boathouse are above the ordinary highwater mark, and;
- h. The boathouse complies with all side-yard, rear-yard and other setbacks for residential accessory structures under Chapter 10, Dane County Code, and with all floodplain requirements of Chapter 17, Dane County Code.

2. Reduced setback. Where an existing development pattern exists, proposed principal buildings may have a reduced setback as follows:

- a. Where there is a principal building on each side of the proposed site, the setback for the proposed building shall be the average of the setbacks of the existing buildings.
- b. If there is an existing principal building on only one side, the setback for the proposed building shall be the average of the required setback under s. 11.03(2)(a) and the existing building's setback.
- c. Notwithstanding a. and b. above, under no circumstances shall any building or structure intrude on the vegetative buffer zone described in s. 11.04.

3. Marina fuel tanks. Replacement of an existing marina fuel system tank, provided all of the following conditions are met:

- a. Due to physical limitations of the property, it is not possible to construct a replacement marina fuel system tank at a compliant setback from an ordinary high-water mark;
- b. Fuel tanks and fuel lines are of at least double-wall construction;
- c. Monitoring devices are installed and maintained to detect any leaks from fuel system tanks and lines. Leak monitoring method shall be state approved electronic interstitial devices installed and maintained to detect any leaks from fuel system tanks and lines;

d. The dispensing of motor fuel into watercraft is conducted in conformance with the provisions of Wisconsin Administrative Code Chapter COMM 10. Retail sale of Class I or II liquids shall be limited to self-propelled marine craft;

e. Fuel dispensing systems for watercraft have automatic nozzles with non-drip provisions;

f. At the time of application for a shoreland zoning permit, the landowner provides evidence of compliance with all necessary local, state or federal permits, regulations, plan design review or other approvals related to fuel system design, construction and maintenance.

4. Minor structures, provided all of the following conditions are met:

(a) The proposed minor structure meets all other dimensional and setback requirements of this ordinance, Chapter 10 and Chapter 17.

(b) The total floor area of all structures on the property, including the proposed minor structure, within the shoreland setback area does not exceed 200 square feet. In calculating this square footage, legally permitted boathouses shall be excluded.

5. Utilities. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm. 83, Wisconsin Administrative Code, and other utility structures that have no feasible alternative location outside of the minimum setback.

(3) Impervious Surface Limits. Within three hundred (300) feet of the ordinary highwater mark of any navigable waterway, construction, reconstruction, expansion, replacement or relocation of any impervious surface shall comply with all of the following standards:

(a) *Calculation of percentage of impervious surface.* Percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on the portion of a lot or parcel that is within three hundred (300) feet of the ordinary highwater mark by the total surface area of that portion of the lot or parcel that is within three hundred (300) feet of the ordinary highwater mark, and multiply the result by one hundred (100).

(b) *Impervious surface percentage limits.* Unless excepted under paragraph (c) below, no more than fifteen percent (15%) of the portion of a lot or parcel that is within three hundred (300) feet of the ordinary highwater mark may be covered with an impervious surface.

(c) *Exception with shoreland mitigation permit.* If the director has approved a shoreland mitigation permit under s. 11.05(4), no more than thirty percent (30%) of the portion of a lot or parcel that is within three hundred (300) feet of the ordinary highwater mark may be covered with an impervious surface.

(4) *Accommodations for disabled persons.*

Where strict interpretation of this chapter would effectively deny disabled persons equal housing opportunity, and where the property does not meet the criteria for a variance under ss. 11.99(2)(a) and 10.26, the Zoning Administrator may grant a waiver to the dimensional standards or impervious surface limits of this chapter in order to provide reasonable accommodations as required by the Federal Americans with Disabilities Act, the Federal Housing Act and the Wisconsin Fair Housing Act. The permit shall be subject to the following conditions:

(a) Only the minimum relaxation of dimensional or impervious surface area standards needed to provide reasonable accommodation shall be approved.

(b) No use, structure or other relaxation of standards shall be approved that would violate or undermine the stated purpose of this chapter.

(c) Where practicable, the improvement authorized by this provision shall be removed when the premises are no longer occupied or frequented by a disabled person.

[History: (2)(a) am. and (4) cr., Sub. 1 to OA 1, 2001-02, pub. 01/22/02; (1) am. and (5) cr., OA 7, 2003-04, pub. 12/03/03; (2)(b)3. and (5)(e) am., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07; 11.03 am., OA 4, 2012-13, 07/23/12; (2)(b), (2)(c), and (2)(c)2.b. am., OA 41, 2012-13, pub. 03/19/13.]

NOTE: When it adopted the amendment to sub. (2)(a) and created sub. (4) above, the county board made the following findings which are not part of the Code:

1. Marinas are a water-dependent use, and as is the case with piers, boat hoists, and boat-houses, should be allowed in close proximity to the shoreline and on the water;

2. Boat fueling systems, which are an integral part and function of a marina and provide necessary service to their clientele, also need to be located in close proximity to the boat docks; and

3. That fuel lines from the tanks to the dispensing location should be kept as short as possible for safety and environmental protections and that shorter lines are less vulnerable to damage than longer lines used by tanks located further from the shore.

[History: cr., Sub. 1 to OA 1, 2001-02, pub. 01/22/02.]

11.04 VEGETATIVE BUFFER ZONE.

(1) *Purposes.*

(a) To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation.

(b) To consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

(2) *Removal of vegetation.* Unless excepted in sections (3), (4) or (5) below, removal of vegetation is prohibited within the vegetative buffer zone.

(3) *Exceptions without permit.* Removal of vegetation within the vegetative buffer zone is allowed, without a permit, for the following:

(a) *Maintenance.* Routine maintenance of vegetation.

(b) *Agriculture.* Non-structural agricultural practices, provided all agricultural practices comply with a site-specific farm conservation plan approved by the director. Such plans must specifically address erosion control and improvement of the native shoreland plant community.

(c) Soil conservation, stream and adjacent wetland protection and ecological restoration practices when construction is overseen by, and implemented according to site-specific plans and designs approved by, the Natural Resources Conservation Service, U.S. Fish & Wildlife Service, Wisconsin Department of Natural Resources or the Dane County Land and Water Resources Department.

(4) *Exceptions with shoreland zoning permit.* Removal of vegetation within the vegetative buffer zone is permitted, subject to the approval of a shoreland zoning permit by the zoning administrator, for the following.

(a) *Access and viewing corridor.* Removal of trees and shrubs to create one access and viewing corridor to the water per lot, provided the following conditions are met:

1. On lots that are 20 feet or wider at the shoreline, the width of such corridor does not exceed 30% of the lot width, or 30 feet, whichever is less.

2. On lots that are less than 20 feet wide at the shoreline, the width of such corridor does not exceed 6 feet.

(b) *Forestry management.* On a parcel with 10 or more acres of forested land, removal of trees and shrubs consistent with "generally accepted forestry management practices" as defined in s.

NR 1.25(2)(b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226).

(5) Exceptions with shoreland mitigation permit. Where the director has approved a shoreland mitigation permit under s. 11.05(4), other vegetative management activities are permitted within the vegetative buffer zone, including but not limited to:

(a) Soil conservation, shoreland, wetland and ecological restoration practices intended to restore native shoreland vegetation, other than those exempted under s. 11.04(3)(c).

(b) 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.

(c) Removal of vegetation to create alternate access and viewing corridor configurations, or multiple access and viewing corridors, provided all of the following criteria are met:

1. No access and viewing corridor exceeds the width described in s. 11.04(4)(a);
2. Each access and viewing corridor must be separated by at least 100 feet of natural vegetation, on the same lot, and;
3. The total number of access and viewing corridors shall not exceed 3 per lot.

(6) Cutting outside the vegetative buffer zone. From the inland edge of the vegetative buffer zone to the outer limits of the shoreland, the cutting of trees and shrubbery shall be allowed when accomplished using accepted forest management practices and sound soil conservation practices which protect water quality.

[History: 11.04 am., OA 7, 2003-04, pub. 12/03/03; 11.04 am., OA 4, 2012-13, pub. 07/23/12; (3)(c) cr. and (5)(a) am., OA 41, 2012-13, pub. 03/19/13.]

11.05 SHORELAND EROSION CONTROL AND SHORELAND MITIGATION PERMITS.

(1) General standards for erosion control. Land disturbing activity which does not require a permit under sub. (2)(a) is permitted in the shoreland area provided that:

(a) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

(b) Any fill placed in a shoreland area is protected against erosion by use of rip-rap, bulkhead or vegetative covering.

(c) Any land disturbing activity in a shoreland or inland-wetland district shall comply with

sections 11.07, 11.08, 11.09 and 11.10 of this ordinance.

(d) Any land disturbing activity in the general floodplain district must comply with chapter 17.

(2) Shoreland erosion control exceptions and waivers:

(a) Shoreland erosion control permits are not required for:

1. soil conservation, stream and adjacent wetland protection and restoration practices such as terraces, run-off diversions, grassed waterways, cattle and equipment crossings, cattle watering access, water control structures, dikes, ditch plugs, tile breaks and sediment removal catchments, when construction is overseen by and implemented according to plans and designs approved by the Natural Resources Conservation Service or U.S. Fish & Wildlife Service of the U.S. Department of the Interior, Wisconsin Department of Natural Resources or the Dane County Land and Water Resources Department, provided that any such project involving land disturbing activity equal to or greater than one acre shall also comply with the performance standards in s. 14.50(3); and

2. tillage directly related to planting, growing and harvesting of agricultural or horticultural crops, including crop fields and gardens.

(b) The director may waive requirements for an engineer's stamp and allow for the use of a simplified erosion control checklist if the project meets all of the following criteria:

1. There are no adverse stormwater or erosion impacts to adjacent properties.

2. Soil will be disturbed for less than 30 days.

3. Soil on slopes steeper than 6% will be disturbed for less than 15 days.

4. There is no soil disturbance within 15 feet of the ordinary high water mark.

5. Total area of soil disturbance will not exceed 1,000 square feet.

6. New impervious surfaces will not exceed 500 square feet.

7. There is minimal risk for erosion and stormwater impact to receiving waters.

(c) The director may waive requirements for an engineer's stamp if the following criteria are met:

1. Soil disturbance will not exceed 60 days.

2. Soil disturbance on slopes steeper than 12% will not exceed 30 days.

3. Soil disturbance within 15 feet of the ordinary high water mark will not exceed 200 square feet.

4. Soil disturbance will not exceed 2,000 square feet.

5. New impervious surfaces will not exceed 1,000 square feet.

(d) The director may waive requirements for an engineer's stamp and allow for the use of a simplified erosion control checklist for agricultural waterway, ditch, and tile maintenance projects if soil disturbance lasts less than 30 days.

(3) *Shoreland erosion control permit required.* Except as provided in section 11.05(2)(a), a shoreland erosion control permit is required for any of the following:

(a) Any land disturbing activity, of any size, any portion of which occurs in any of the following areas:

1. Within 300 feet of the ordinary high-water mark of any navigable water;
2. Within the 100 year floodplain; or
3. Within 75 feet of the shoreland or inland-wetland district.

(b) Land disturbing activity, any portion of which occurs between 300 feet and 1,000 feet from an ordinary highwater mark of a lake or pond, that meets the following criteria:

1. Includes 4,000 square feet or more of disturbed area;
2. Involves the excavation or filling, or a combination of both, in excess of 400 cubic yards of material;
3. Disturbs more than 100 lineal feet of road ditch, grassed waterway or other land area where surface drainage flows in a defined open channel, including the placement, repair or removal of any underground pipe, utility or other facility within the cross-section of the channel;
4. Involves the creation of any new public or private roads or access drives longer than 125 feet;

5. Development that requires a subdivision plat, as defined in chapter 75;

6. Land disturbing activity that disturbs less than 4,000 square feet of land, including the installation of access drives, that the director determines to have a high risk of soil erosion or water pollution, or that may significantly impact a lake, stream or wetland area. Examples of activities with a high risk of soil erosion or water pollution may include, but are not limited to, land disturbance on erodible soil or disturbance adjacent to lakes, rivers, streams or wetlands. All such determinations made by the director shall be in writing, unless waived by the applicant;

7. Constructing, dredging or commencing work on any artificial waterway, canal, ditch, lagoon, pond, lake or similar artificial waterway which is within 300 feet of the ordinary high-

water mark of a navigable body of water or where the purpose is connection with a navigable body of water.

(4) *Shoreland erosion control and shoreland mitigation permits and administration.*

(a) A shoreland erosion control permit must be issued by the director before any activity meeting the criteria in s. 11.05(3) shall occur or a shoreland zoning permit is issued for such activity.

(b) A shoreland mitigation permit must be issued by the director before any activity under ss. 11.03(1)(d), 11.03(2)(c), 11.03(3)(c), 11.04(6) or 11.11(2) shall occur or a shoreland zoning permit is issued for such activity.

(c) *Application materials.* The applicant must provide the following materials when applying for any permits issued under this section:

1. A completed application form;

a. The application must be signed by the landowner or include a notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent for purposes of this ordinance.

b. If a landowner appoints an agent to submit an application pursuant to sub. (4)(b)1.a., the landowner shall be bound by all of the requirements of this ordinance and the terms of any permit issued to the agent.

2. Fees as required by s. 11.50;

3. A complete site plan and specifications, signed by the person who designed the plan. All plans shall be drawn to an easily legible scale, shall be clearly labeled, and shall include, at a minimum, all of the following information:

a. Property lines and lot dimensions;

b. All buildings and outdoor uses, existing and proposed, including all dimensions and setbacks;

c. All public and private roads, interior roads, driveways and parking lots. Show traffic patterns and type of paving and surfacing material;

d. All natural and artificial water features including, but not limited to lakes, ponds, streams (including intermittent streams), and ditches. Show ordinary highwater marks of all navigable waters, 100-year flood elevations and delineated wetland boundaries, if any. If not available, appropriate flood zone determination or wetland delineation, or both, may be required at the applicant's expense;

e. Depth to bedrock;

f. Depth to seasonal high water table;

g. The extent and location of all soil types as described in the Dane County Soil Survey, slopes exceeding 12%, and areas, of existing and proposed natural vegetation;

- h.** Existing and proposed elevations (referenced to the North American Vertical Datum of 1988, where available) and existing and proposed contours in the area requiring a grading and filling permit;
- i.** Elevations, sections, profiles, and details as needed to describe all natural and artificial features of the project;
- j.** Soil erosion control and overland runoff control measures, including runoff calculations as appropriate;
- k.** Location of all stormwater management practices;
- L.** All existing and proposed drainage features;
- m.** The location, area and percentage of the lot area for all existing and proposed impervious surfaces; and
- n.** The limits and area of the disturbed area, and;
- o.** Any other information necessary to reasonably determine the location, nature and condition of any physical or environmental features of the site.
- 4.** A map showing drainage areas for each watershed area;
- 5.** A narrative describing the proposed project;
- 6.** Copies of permits, permit applications or approvals required by any other unit of government;
- 7.** A proposed timetable and schedule for completion and installation of all elements of approved erosion control, stormwater management or vegetative buffer plans and a detailed schedule for completion of construction;
- 8.** An estimate of the cost of completion and installation of all elements of the approved erosion control, stormwater management or vegetative buffer plan;
- 9.** Evidence of financial responsibility to complete the work proposed in the plan. The director may require a financial security instrument sufficient to guarantee completion of the project.
- 10.** Identification of the entity responsible for long-term maintenance of any permanent stormwater or vegetative buffer practices.
- 11.** A maintenance plan and schedule for any permanent stormwater management and vegetative buffer practices;
- 12.** Engineered designs for all structural management practices;
- 13.** Where permanent stormwater or vegetative buffer practices will be privately-owned, an affidavit which describes the property by legal

description, notifying future prospective purchasers of the existence of a shoreland mitigation permit issued under this ordinance and applicable plan, timetables and potential liability imposed by sec. 11.99 for failure to bring the property into compliance with this ordinance after notification, shall be recorded with the Dane County Register of Deeds prior to issuance of a shoreland mitigation permit. The foregoing information shall also be noted on every plat and certified survey map.

14. Erosion control plan materials. If required by s. 11.05(4)(a), an erosion control plan, stamped by a qualified professional engineer registered in the State of Wisconsin, that meets all of the requirements of s. 14.50, or if waived by the director under sub. (2)(b), a simplified checklist on a standard form approved by the department.

a. All erosion control plans and simplified checklists shall include provisions for a stable outlet as described in s. 14.51(2)(d).

b. The requirement for a professional engineer's stamp shall not apply to permits for areas that are more than 300 feet from the ordinary high water mark of any lake or pond.

15. Stormwater management plan materials. If required under ss. 11.05(4)(a) and 11.12(1)(a), a stormwater management plan, stamped by a qualified professional engineer registered in the State of Wisconsin, that meets all of the requirements of s. 11.12(1). Stormwater plans shall include a summary of runoff peak flow rate calculations, by watershed area, including:

a. pre-existing peak flow rates,

b. post-construction peak flow rates with no detention,

c. post-construction peak flow rates with detention, and

d. assumed runoff curve numbers (RCNs); and time of concentration (Tc) used in calculations.

16. Vegetative buffer plan materials. If required under ss. 11.05(4)(b) and 11.12(2)(a), a vegetative buffer plan that meets all of the requirements of s. 11.12(2). Vegetative buffer plans shall include:

a. Documentation of the plant species, approximate stem density and current condition of the vegetative buffer zone, prior to restoration;

b. A description of how the current condition of the vegetative buffer zone compares with the performance standards described in 11.12(2);

c. A list of plant species to be used or preserved in any proposed vegetative buffer restoration;

- d.** A description of proposed planting or seeding methods and planned stem density, and;
- e.** A description of, and schedule for, proposed practices for evaluation, maintenance and invasive species control.

(d) Approval process.

1. The director shall verify that the permit application is complete and review the plan for compliance with the standards identified in ss. 11.05 and 11.12

2. Within 15 working days, the director shall either approve the submitted plan and issue the permit or notify the applicant, in writing, of any deficiency in the proposed plan. The applicant shall be given a reasonable opportunity to correct any deficiency.

(e) The director shall send written notification of all shoreland erosion control permit applications to the appropriate local office of the state department of natural resources within three (3) working days of the date a complete application is received.

(f) The director shall send copies of approved or denied shoreland erosion control permits to the appropriate local office of the state department of natural resources within ten (10) working days of approval or denial.

(5) Permit conditions. In considering a shoreland erosion control permit or shoreland mitigation permit, the director shall evaluate the effect of the proposal as to possible water pollution including erosion and sedimentation, harmful changes to fish life and aquatic and shoreland plants, and maintenance of safe and healthful conditions.

(a) In granting a shoreland erosion control permit or shoreland mitigation permit, the director shall attach the following conditions where appropriate:

1. The erosion control plan shall be implemented prior to the start of any land disturbing activity and shall be maintained over the duration of the project.

2. The permittee is responsible for successful completion of the erosion control plan, shoreland stormwater management plan or vegetative buffer plan. The permittee shall be liable for all costs incurred, including environmental restoration costs, resulting from noncompliance with an approved plan.

3. Application for a permit shall constitute express permission by the permittee and landowner for the director to enter the property for purposes of inspection or curative action. The application form shall contain a prominent

notice advising the applicant and landowner of this requirement.

4. All incidental mud-tracking off-site onto adjacent public thoroughfares shall be cleaned up and removed by the end of each working day using proper disposal methods.

5. Installed practices must comply with all standards described in the Dane County Erosion Control and Stormwater Management Manual, or must be individually approved by the Dane County Land and Water Resources Department.

6. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions.

7. Fill shall not be deposited in a general floodplain district, except in accordance with Chapters 17, Dane County Code and 30 of the Wisconsin Statutes.

8. Fill shall not be deposited in a shoreland or inland-wetland district, except in accordance with sections 11.07, 11.08, 11.09 and 11.10 of this ordinance.

9. Stockpiling or temporary deposition of excavated materials shall not be permitted within the building setback area described in section 11.03(2) of this ordinance.

10. Sides of a channel or artificial watercourse shall be stabilized to prevent erosion.

11. Sides of channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter, unless vegetative cover, bulkheads or rip-rapping are provided.

12. For land disturbances of greater than one (1) acre within the shoreland zone, impervious surface area within the setback described in s. 11.03 must be limited to the maximum extent practicable.

13. Disturbance near property lines.

a. Except as authorized in this section, the topography within five (5) feet of any property line at the commencement of any development shall remain unchanged.

i. When land disturbing activities associated with development occur within five (5) feet of any property line, finished grades in that area shall be restored to the topography in existence before the land disturbing activity began. A positive slope of one-half (1/2) inch vertical per one (1) foot horizontal within five (5) feet of the property line is allowed to provide proper drainage away from a one or two family residence.

ii. The established grade of the adjoining property shall determine the finished grade at the property line for any development. The owner of

the property under development bears the burden of proof as to the established grade at the property line and the topography within five (5) feet of the property line. The director of the Department of Land and Water Resources may require detailed site grading plans of existing and proposed conditions to be submitted before commencement of land disturbing activities.

b. Existing drainage ways and drainage easements along property lines shall be maintained including, but not limited to, natural watercourses and stormwater management areas shown on subdivision plats and certified survey maps.

c. Development in Floodplain Districts requiring fill to comply with chapter 17 is exempt from this subsection.

d. Upon written application, the director of the Department of Land and Water Resources may authorize exceptions resulting in changes to the existing topography at and within five (5) feet of any property line that would promote the purposes stated in this ordinance. An exception authorized under this subsection may not direct additional stormwater runoff toward adjacent properties. Proposed exceptions may include, but are not limited to, retaining walls, berms and other structures, and other changes to existing grade at and within five (5) feet of a property line. The director of the Department of Land and Water Resources may require the submittal of detailed site grading plans of existing and proposed conditions including, but not limited to, detailed topographical information of the subject and adjoining properties, before land disturbing activities commence.

(b) In addition, where in the opinion of the director additional protections are needed, the director may require creation of no-disturbance zones where land disturbing activity is prohibited in order to protect sensitive or highly erodible areas.

(c) *Plan or permit amendments.* Any proposed modifications to approved plans, construction schedules or alterations to accepted sequencing of land disturbing site activities shall be approved by the director prior to implementation. A maximum of five permit revisions may be allowed.

(d) *Permit transfers.* Transfers of interest in real estate subject to a shoreland erosion control permit shall comply with the requirements of s. 14.49(6).

(e) *Timeframe and Expiration:*

1. Erosion control plan timetables and construction schedules must begin within one year of the date the permit application is filed.

2. All permit applications shall expire upon the earlier of:

a. one year from the date the applicant is notified of an application deficiency, if the applicant has not submitted additional information to adequately address the deficiency within the year, or

b. three years from the date of application.

3. Erosion control permits shall expire:

a. upon the stabilization date included in the approved plan and included in the analysis provided to meet the requirements of 14.50(3)(a)2.

b. a maximum of three years after the permit is issued.

[History: (2)(c) am., OA 32, 1996-97, pub. 03/20/97; s. 11.05 am., OA 19, 1998-99, pub. 02/17/99; 11.05 am., OA 12, 2005-06, pub. 11/11/05; am., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07; (2) and (4)(b)3. am., OA 39, 2008-09, pub. 06/08/09; (5)(a)13. cr., OA 17, 2009-10, pub. 11/19/09; 11.05 am., OA 4, 2012-13, pub. 07/23/12; (3)(b) and (5)(c) am., (5)(e) cr., OA 5, 2013-14, pub. 07/02/13.]

11.06 SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS. (1) Purpose.

This ordinance is adopted to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty, to conserve inland-wetland areas occurring throughout the unincorporated areas of Dane County, and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner consistent with state and federal law that minimizes adverse impacts upon the wetland.

(2) Designation. (a) The shoreland-wetland district shall include all shorelands which are designated as wetlands on the most current Wisconsin Wetland Inventory Maps applicable to Dane County.

(b) The inland-wetland district shall include all non-shoreland wetlands, as shown on the Wisconsin Wetland Inventory Maps, which are located in the unincorporated territory of Dane County.

(c) The Wisconsin Wetland Inventory Maps are incorporated herein by reference and are on file in the office of the Dane County Zoning Administrator. Wetlands that extend across the corporate limits of an adjacent municipality or across the shoreland boundary shall be included in the appropriate wetland district.

(3) *Discrepancies.* When an apparent discrepancy exists between the shoreland or inland-wetland district shown on the official wetlands inventory maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate field office of the department of natural resources to determine if the shoreland-wetland district as mapped is in error. If the department of natural resources staff concur with the zoning administrator that a particular area was incorrectly mapped either as a wetland or a non-wetland, the zoning administrator shall have the authority to immediately grant or deny a land use permit in accordance with the regulations applicable to the correct zoning district.

(4) In order to correct wetland mapping errors shown on the official zoning map, the zoning administrator shall initiate a shoreland-wetland or inland-wetland map amendment within a reasonable period of time.

(5) *Setback from wetlands.* (a) The minimum setback for all buildings and structures from shoreland- or inland-wetlands two acres or larger in area shall be as described in s. 11.03(2)(a)2. Exceptions under ss. 11.03(2)(b) and (c) do not apply to setbacks from non-navigable wetlands in the shoreland and inland wetland districts.

(b) Setbacks are not required for shoreland- or inland-wetlands smaller than two acres in area.

[History: (2) am., (3) renum. as (4), and (5) and (3) recreated, OA 16, 1991-92, pub. 02/18/92; (1) - (5) am., Sub. 2 to OA 21, 1993-94, pub. 09/30/94; (3) rep., Sub. 1 to OA 47, 1993-94, pub. 03/22/95; 11.06 am., OA 7, 2003-04, pub. 12/03/03; (4) and (5) renum. as (3) and (4), respectively, and a new (5) cr., Sub. 1 to OA 15, 2004-05, pub. 06/23/05; (3) am., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07; 11.06 am., OA 4, 2012-13, pub. 07/23/12.]

11.07 PERMITTED USES IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS. The following uses shall be allowed, subject to general shoreland and inland zoning regulations in sections 11.01 through 11.05 of this ordinance, the provisions of chapters 30, 31 and 33 of the Wisconsin Statutes, and the provisions of other state and federal laws, if applicable:

(1) Activities and uses which do not require the issuance of a shoreland zoning permit, said uses must be carried out without filling, flooding, draining, dredging, ditching, tiling or excavating:

(a) Hiking, fishing, trapping, hunting, swimming and boating;

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and

tree seeds, in a manner that is not injurious to the natural reproduction of such crops;

(c) The practice of silviculture, including the planting, thinning and harvesting of timber;

(d) The pasturing of livestock;

(e) The cultivation of agricultural crops; and

(f) The construction and maintenance of duck blinds.

(2) Uses which do not require the issuance of a shoreland zoning permit and which may involve filling, flooding, draining, dredging, ditching, tiling or excavating to the extent specifically provided below:

(a) Temporary water level stabilization measures, in the practice of silviculture, which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;

(b) Flooding, dike and dam construction and ditching for the purpose of growing and harvesting cranberries;

(c) Ditching, tiling, dredging, excavating or filling done to maintain or repair existing agricultural drainage systems only to the extent necessary to maintain the level of drainage required to continue the existing agricultural use and only where permissible under section 30.20, Wisconsin Statutes. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system, provided that the dredged spoil is placed on existing spoil banks where possible and such filling is permissible under chapter 30, Wisconsin Statutes;

(d) Limited excavating and filling necessary for the construction and maintenance of fences for the pasturing of livestock;

(e) Limited excavating and filling necessary for the construction and maintenance of piers, docks and walkways built on pilings; and

(f) Limited excavating and filling necessary for the maintenance, repair, replacement or reconstruction of existing town and county highways and bridges.

[History: intro. par. am., Sub. 2 to OA 21, 1993-94, pub. 09/30/94; (1) and (2) am., OA 4, 2012-13, pub. 07/23/12.]

11.08 USES WHICH ARE ALLOWED IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS SUBJECT TO THE ISSUANCE OF A SHORELAND ZONING PERMIT. (1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or are necessary for agricultural cultivation, provided that:

(a) The road cannot as a practical matter be located outside the wetland; and

(b) The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetlands and meets the following standards:

1. The road shall be designed and constructed as a single lane roadway with only such depth and width necessary to accommodate the machinery required to conduct agricultural and silvicultural activities;

2. Road construction activities are to be carried out in the immediate area of the roadbed only; and

3. Any filling, flooding, draining, dredging, ditching, tiling or excavating that is to be done must be necessary for the construction or maintenance of the road.

(2) The construction and maintenance of nonresidential buildings used solely in conjunction with 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 wetlands, provided that:

(a) Any such building does not exceed 500 square feet in floor area; and

(b) No filling, flooding, draining, dredging, ditching, tiling or excavating is to be done.

(3) 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, game preserves and private wildlife habitat areas, provided that:

(a) Any private recreation or wildlife habitat area must be used exclusively for that purpose;

(b) No filling is to be done; and

(c) Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game preserves and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or otherwise enhancing wetland values.

(4) The construction and maintenance of 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 their members, provided that:

(a) The transmission and distribution lines and related facilities cannot as a practical matter be located outside the wetland; and

(b) Any filling, excavating, ditching or draining that is to be done must be necessary for such construction or maintenance and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetlands.

(5) The construction and maintenance of railroad lines, provided that:

(a) The railroad lines cannot as a practical matter be located outside the wetland; and

(b) Any filling, excavating, ditching or draining that is to be done must be necessary for such construction or maintenance and must be done in a manner designed to minimize flooding and other adverse impacts upon natural functions of the wetland.

[History: caption am., Sub. 2 to OA 21, 1993-94, pub. 09/30/94; (1)(b)1. am., OA 19, 1998-99, pub. 02/17/99; 11.08 title am., OA 4, 2012-13, pub. 07/23/12.]

11.09 PROHIBITED USES IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS. Any use not listed in sections 11.07 and 11.08 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 11.10 of this ordinance.

[History: 11.09 title am., OA 4, 2012-13, pub. 07/23/12.]

11.10 REZONING OF LANDS IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS. (1) Rezoning of a wetland or portion of a wetland shall be by an amendment to this ordinance and the related wetland maps in accordance with the requirements of section 59.69(5)(e), Wisconsin Statutes, chapter NR 115, Wisconsin Administrative Code and sub. (2) below.

(2) A wetland, or a portion thereof, in the shoreland-wetland or inland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

(a) Storm and flood water storage capacity;

(b) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;

(c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

(d) Shoreline protection against soil erosion;

(e) Fish spawning, breeding, nursery or feeding grounds;

(f) Wildlife habitat; or

(g) Areas of special recreational, scenic or scientific interest, including scarce wetland types.

(3) For all proposed text and map amendments to the shoreland-wetland district, involving an area of five acres or more in size, the appropriate district office of the department of natural resources shall be provided with the following:

(a) A copy of every petition for a text or map amendment to the shoreland-wetland district, within 5 days of the filing of such petition with the county clerk;

(b) Written notice of the public hearing to be held on a proposed amendment, at least 10 days prior to such hearing;

(c) A copy of the county zoning agency's finding and recommendations on each proposed amendment, within 10 days after the submission of those findings and recommendations to the county board; and

(d) Written notice of the county board's decision on the proposed amendment, within 10 days after it is issued.

(4) This ordinance shall not be construed or administered to limit or prohibit federally approved wetlands mitigation projects implemented pursuant to applicable federal and state requirements.

(5) If the department of natural resources has notified the county zoning agency that a proposed amendment to the shoreland-wetland district affecting a designated wetland area of five acres or more in size may have a significant adverse impact upon any of the criteria listed in section 11.10(2) of this ordinance, that amendment, if approved by the county board, shall contain the following provision: "This amendment shall not take effect until more than 30 days have elapsed since written notice of the county board's approval of this amendment was mailed to the department of natural resources. During the 30-day period the department of natural resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under section 59.692(6) of the Wisconsin Statutes. If the department does so notify the county board, the effect of this amendment shall be stayed until the section 59.692(6) adoption procedure is completed or otherwise terminated."

[History: caption, (1), (2), (3) and (4) am., and (5) cr., Sub. 2 to OA 21, 1993-94, pub. 09/30/94; (1) and (5) am., OA 42, 1996-97, pub. 06/17/97; (5) am., OA 19, 1998-99, pub. 02/17/99.]

11.11 EXISTING STRUCTURES AND USES.

Nothing in this ordinance shall be construed to prohibit the continuation of the lawful use of a

building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

(1) *Abandonment of existing structures.* Existing structures that remain unused for a period of twelve (12) months or more shall be considered abandoned. Any construction, replacement or repair associated with abandoned existing structures must comply with all provisions of this ordinance.

(2) *Construction on nonconforming structures with shoreland zoning permit.* The following activities are allowed on nonconforming structures, subject to approval of a shoreland zoning permit. Shoreland mitigation permits are not required, unless impervious surface limits in s. 11.03(3) are exceeded.

(a) *Maintenance and repair.* A nonconforming principal structure may be maintained and repaired within its existing building volume. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roofing.

(b) *Expansion of nonconforming principal structure beyond setback.* A nonconforming principal structure may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in s. 11.03(2), and that all other provisions of the shoreland ordinance are met.

(c) *Existing impervious surfaces.* For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in s. 11.03(3), the property owner may do any of the following:

1. maintain and repair of all impervious surfaces;

2. replace existing impervious surfaces with similar surfaces within the existing impervious surface area footprint;

3. relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and meets the applicable setback requirements in 11.03(2).

(3) *Construction on nonconforming structures with shoreland mitigation permit.* Where the director has approved a shoreland mitigation permit under s. 11.05(4), the following activities are permitted between the vegetative buffer zone described in s. 11.04(2) and the setback area

described in s. 11.03(2). Under no circumstances shall an expanded, replaced or reconstructed nonconforming structure approved under this section intrude on the vegetative buffer zone described in s. 11.04.

(a) Vertical expansion of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 11.03(2) may be expanded vertically. Vertical expansion is limited to a total of 35 feet from the ground, as measured from the waterward side of the structure.

(b) Replacement or relocation of nonconforming principal structure. A nonconforming principal structure may be replaced or relocated on the property provided all of the following requirements are met:

1. No portion of the replaced or relocated structure is located any closer to the ordinary highwater mark than the closest point of the existing principal structure.

2. The zoning administrator determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in s. 11.03(2).

3. The shoreland mitigation permit shall require that all other nonconforming structures on the lot or parcel, except those excepted under ss. 11.03(2)(b) and (c), be removed by the date specified in the permit.

4. All other provisions of the shoreland ordinance, including height restrictions and impervious surface limits, shall be met.

(4) Nonconforming boathouses. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary highwater mark of any navigable water shall comply with s. 30.121, Wis. Stats.

(5) Burden of proof. Landowners bear the burden of proof to demonstrate when a structure was constructed, whether it was legally constructed at the time, and the structure's location and existing building volume at the time it became nonconforming.

[History: 11.11 rep., Sub. 1 to OA 47, 1993-94, pub. 03/22/95; 11.11 rec., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07; 11.11 re: Appeals renum. and am. to 11.99(2)(b), OA 4, 2012-13, pub. 07/23/12; 11.11 re: Existing Structures and Uses cr., OA 4, 2012-13, pub. 07/23/12; (2) and (2)(c) am., OA 41, 2012-13, pub. 03/19/13.]

[History: 11.12 - 11.15 rep., Sub. 1 to OA 47, 1993-94, pub. 03/22/95.]

11.12 SHORELAND MITIGATION PERFORMANCE STANDARDS.

(1) Shoreland Stormwater Management Plan Requirements. If required under s. 11.05(4), landowners must submit a stormwater management plan that meets all of the following criteria.

(a) Exceptions. The following are exempt from shoreland stormwater management plan requirements. Exempted projects meeting the criteria under s. 14.46, Dane County Code must meet the stormwater plan requirements of Chapter 14, Dane County Code.

1. Development occurring more than 300 feet from an ordinary highwater mark.

2. Development with an approved stormwater management permit under s. 14.49, Dane County Code.

3. Development with exceptions or approved waivers from shoreland erosion control plan requirements under s. 11.05(2).

(b) Shoreland Stormwater Management Performance Standards. Unless excepted by (a) above, proposed design, suggested location and phased implementation of effective, practicable stormwater management measures for plans shall be designed, engineered and implemented to achieve the following results:

1. Design practices to retain soil particles greater than 20 microns on the entire site (40% reduction) resulting from a one-year 24-hour storm event, according to approved procedures, and assuming no sediment resuspension. Under no circumstances shall the site's existing sediment control level or trapping efficiency be reduced as a result of the development.

2. Design practices to infiltrate sufficient runoff volume so that post-development infiltration volume shall be at least 75% of the pre-development infiltration volume, based upon average annual rainfall. If when designing appropriate infiltration systems, more than one percent (1%) of the site is required to be used as effective infiltration area, the applicant may alternately design infiltration systems and pervious surfaces to meet or exceed the estimated average annual recharge rate (7.6 inches per year). If this alternative design approach is taken, at least one percent (1%) of the site must be used for infiltration.

3. Installed practices must comply with all standards and specifications described in s. 11.13.

(c) Offsite Shoreland Stormwater Mitigation. Offsite stormwater mitigation to meet the standards of this section must be in the

watershed of the same waterbody as the project site, and must meet all requirements of s. 14.52, Dane County Code.

(2) Shoreland Vegetative Buffer Plan Requirements. If required under s. 11.05(4), landowners must submit a plan to preserve, restore or establish and permanently maintain a buffer of vegetation for the site which meets the following criteria:

(a) Exceptions. Parcels or lots that are entirely outside the vegetative buffer zone described in s. 11.04 are exempt from vegetative buffer plan requirements under this ordinance.

(b) Shoreland Vegetative Buffer Performance Standards. Unless excepted by (a) above, proposed design, suggested location and phased implementation of effective, practicable vegetative buffer restoration and management measures for plans shall be designed, landscaped and implemented to achieve the following results:

1. Designed to meet all purposes and dimensional requirements of section 11.04 within 3 years;
2. Includes only species of vegetation native to South Central Wisconsin, ecologically adapted to the conditions of the site and which are on a list approved by the Dane County Land Conservation Division;
3. Meets or exceeds all stem density, planting schedule and other standards described in NRCS Conservation Practice 643a "Shoreland Restoration," and Wisconsin Biology Technical Note 1, or their successors;
4. Includes practical, cost-effective management steps to maintain, in perpetuity, the vegetative buffer's ability to meet performance standards under this section, and;
5. Installed practices must comply with all standards and specifications described in s. 11.13.

(c) Offsite Shoreland Vegetative Buffer Performance Standards. Offsite shoreland vegetative buffer restoration to meet the standards of this section must meet all of the following criteria:

1. Restoration must be in the vegetative buffer zone of the same waterbody as the project site.
2. Designed to meet all purposes of section 11.04 within 3 years.
3. Includes an area for permanent restoration equal to, or greater than, twice the following formula.
 - a. The lot width of the project site, multiplied by

b. The depth of the vegetative buffer zone described in section 11.04(2), minus

c. The area of the access and viewing corridor permitted on the project site under section 11.04(4)(b).

4. Includes only species of vegetation native to South Central Wisconsin, ecologically adapted to the conditions of the site and which are on a list approved by the Dane County Land Conservation Division.

5. Meets or exceeds all stem density, planting schedule and other standards described in NRCS Conservation Practice 643a "Shoreland Restoration," with Wisconsin Biology Technical Note 1.

6. Includes practical, cost-effective management steps to maintain, in perpetuity, the vegetative buffer's ability to meet performance standards under this section.

7. Installed practices must comply with all standards and specifications described in s. 11.13.

[History: 11.12 cr., OA 4, 2012-13, pub. 07/23/12.]

11.13 TECHNICAL STANDARDS AND SPECIFICATIONS. The design of all best management practices designed to meet the requirements of this chapter shall comply with the following technical standards:

(1) Natural Resources Conservation Service's "Wisconsin Field Office Technical Guide for Dane County, Wisconsin" or its successor, and including all Technical Notes applicable to Dane County;

(2) Applicable construction or erosion control standards by the Wisconsin Department of Natural Resources, and;

(3) Any other technical methodology approved by the Dane County conservationist.

[History: 11.13 cr., OA 4, 2012-13, pub. 07/23/12.]

[History: 11.16 cr., zoning OA #3613, 1986-87, adopted 05/01/86; renum. as 17.81, Sub. 1 to OA 47, 1993-94, pub. 03/22/95.]

[History: 11.17 - 11.21 rep., Sub. 1 to OA 47, 1993-94, pub. 03/22/95.]

[11.14 - 11.49 reserved.]

11.50 PERMIT FEES. All fees are in addition to any fees required under Chapter 12, Dane County Code.

(1) For a shoreland zoning permit, the fee shall be \$150.

(2) For determination of a navigable water under s. 11.02(2), the fee shall be \$150.

(3) For determination of a wetland boundary under s. 11.06(3), the fee shall be \$150.

(4) For rezones out of the shoreland-wetland or inland-wetland zoning district, the fee shall be \$500.

(5) For shoreland erosion control permits, fees shall be as follows:

(a) For applications submitted under s. 11.05(2)(b) the fee shall be \$100.

(b) For applications submitted under s. 11.05(2)(c) the fee shall be \$200, plus \$.006 per square foot of disturbed area.

(c) For all other shoreland erosion control permits, the fee shall be \$400, plus \$.006 per square foot of disturbed area.

(6) *Shoreland Mitigation Permits.*

(a) For shoreland mitigation permits for vegetative buffer restoration or other conservation activities under s. 11.04(5), and where there is no expansion of impervious surfaces, or placement or expansion of structures, the fee shall be \$100 (one hundred dollars).

(b) For all other shoreland mitigations permits, the fee shall be \$400 (four hundred dollars), plus:

1. on sites where shoreland stormwater management is required under s. 11.12(1), an additional \$.010 (one cent) per square foot of impervious area, and \$.005 (one-half cent) per square foot of redeveloped impervious area.

2. on sites where shoreland vegetative buffer restoration is required under s. 11.12(2), an additional \$500 (five hundred dollars).

(7) *Late filing fee:* Where work has begun before a permit has been obtained or appropriate approvals obtained the fee shall be doubled.

(8) *Expired permit fee:* When an applicant or landowner fails to stabilize the site according to the approved permit conditions, an after-the-fact permit is required, and applicable fees shall be doubled.

(9) Municipal street and road maintenance projects are exempt from fees required in this section.

[History: cr., OA 39, 2008-09, pub. 06/08/09; (5) am., OA 2, 2010-11, pub. 06/25/10; 11.50 am., OA 4, 2012-13, pub. 07/23/12; (2) and (6) am., OA 41, 2012-13, pub. 03/19/13; (8) am. and (9) cr., OA 5, 2013-14, pub. 07/02/13; (5)(b) and (c) am., 2016 OA-46, pub. 11/25/16.]

[11.51 - 11.98 reserved.]

11.99 ENFORCEMENT AND PENALTIES.

(1) *Zoning Administrator.*

(a) *Authority.* The zoning administrator, or his or her designee, shall enforce and administer the standards described in ss. 11.02, 11.03, 11.04,

11.06, 11.07, 11.08, 11.09, 11.10 and 11.11 of this ordinance.

(b) *Powers and duties.* In administering and enforcing this ordinance, the zoning administrator has all powers, duties and authority described in s. 10.25, Dane County Code. In addition, the zoning administrator shall also have the following powers and duties:

1. *Shoreland Zoning Permits.* Within the shoreland, shoreland-wetland and inland-wetland districts, the zoning administrator shall require approved shoreland zoning permits before any of the following activities occur:

a. Any new construction or placement of permanent or temporary structures;

b. Replacement of any structures removed or destroyed;

c. Any vertical or horizontal expansion of any existing structure;

d. Any repair, replacement or expansion of an existing impervious surface within 300 feet of the ordinary highwater mark;

e. Any change of use of an existing structure or parcel of land;

f. Unless specifically exempted under s. 11.04(3), any removal of vegetation within the vegetative buffer zone described in s. 11.04, and;

g. Any of the uses in a shoreland-wetland or inland-wetland district identified in s. 11.08.

2. *Navigable waters.* Determination of navigable waters and ordinary highwater marks under s. 11.02(2).

3. *Wetlands.* Determination of wetland boundaries under s. 11.06(3).

(2) *Board of adjustment.*

(a) *Variances.* The board of adjustment shall hear variances from ss. 11.02, 11.03, 11.04, 11.06, 11.07, 11.08, 11.09, 11.10 and 11.11 of this ordinance, in accordance with the standards and procedures described in s. 10.26, Dane County Code.

(b) *Appeals.*

1. *Appeal of zoning administrator decisions.* The board of adjustment shall hear and decide appeals of decisions made by the zoning administrator in accordance with the standards and procedures of s. 10.26, Dane County Code.

2. *Appeal of land conservation committee decisions.* A person aggrieved by a decision of the land conservation committee regarding a variance under s. 11.99(4) may appeal that decision to the board of adjustment pursuant to s. 10.26, Dane County Code.

(3) Director of Land and Water Resources.

(a) Authority. The director, or his or her designee, shall administer and enforce ss. 11.05, 11.12 and 11.13 of this ordinance.

(b) Powers and duties. In administering and enforcing this ordinance, the director shall have all powers, duties and authority described in ss. 14.44, 14.48, 14.49 and 14.73, Dane County Code. In addition, the director shall also have the following powers and duties:

1. Shoreland Erosion Control Permits. Within the shoreland district, the director shall require approved shoreland erosion control permits before any of the activities described in s. 11.05(3) occur.

2. Shoreland Mitigation Permits. Within the shoreland district, the director shall require approved shoreland mitigation permits before any of the following activities occur. The zoning administrator shall not approve a shoreland zoning permit for any of the following activities unless the director has approved a shoreland mitigation permit.

a. Creation of lots with reduced width or area as part of a planned unit development under s. 11.03(1)(c);

b. Placement of structures within the setback area under s. 11.03(2)(c);

c. Expansion of impervious surfaces above 15% of the lot under s. 11.03(3)(c);

d. Vegetation management activities within 35 feet of the ordinary highwater mark under s. 11.04(5);

e. Construction, replacement or expansion of a nonconforming structure under s. 11.11(3).

3. Farm Conservation Plans. Review and approval of farm conservation plans under s. 11.04(3)(b).

(c) Variances. The director and the county conservationist shall hear variances from ss. 11.05 and 11.12 of this ordinance in accordance with the standards and procedures of s. 14.72, Dane County Code.

(4) Land Conservation Committee.

(a) Appeal of director decisions. The land conservation committee shall hear and decide appeals of decisions made by the director in accordance with the standards and procedures described in s. 14.71, Dane County Code.

(5) Penalties.

(a) Any person, firm, company or corporation who violates disobeys, omits, neglects or refuses to comply with or resists the enforcement of the provisions of this ordinance shall be subject to a forfeiture of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) and the costs of prosecution. Each day that a violation exists shall constitute a separate offense.

(b) Any person who has the ability to pay any forfeiture entered against him or her under this ordinance, but refuses to do so, may be confined in the county jail until such forfeiture is paid, but in no event to exceed thirty (30) days. In determining whether an individual has the ability to pay a forfeiture, all items of income and all assets may be considered regardless of whether or not such income or assets are subject to garnishment, lien, or attachment by creditors.

(c) The corporation counsel is authorized to seek enforcement of any part of this ordinance by court action seeking injunctive relief. It shall not be necessary for the county to seek other remedies before seeking injunctive relief.

[History: cr., OA 12, 1996-97, pub. 08/23/96; am., OA 39, 2008-09, pub. 06/08/09; 11.99 am., OA 4, 2012-13, pub. 07/23/12; (1) and (3) am., OA 41, 2012-13, pub. 03/19/13.]

[Non-Code Provision: The provisions in this ordinance from OA 4, 2012-13, shall have an effective date of September 1, 2012; OA 41, 2012-13, shall have an effective date of March 20, 2013.]

END OF CHAPTER