

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

- 11.01 Dane County Shoreland, Shoreland-Wetland and Inland-Wetland.
- 11.015 Definitions.
- 11.02 Shoreland District.
- 11.03 Shoreland Regulations.
- 11.04 Shore Cover.
- 11.05 Shoreland Erosion Control.
- 11.06 Shoreland-Wetland and Inland-Wetland Districts.
- 11.07 Permitted Uses In The Shoreland-Wetland and Inland-Wetland Districts.
- 11.08 Uses Which Are Allowed In The Shoreland-Wetland and Inland-Wetland Districts Subject To The Issuance Of A Zoning (Land Use) Permit.
- 11.09 Prohibited Uses.
- 11.10 Rezoning of Lands In The Shoreland-Wetland and Inland-Wetland Districts.
- 11.11 Appeals.
[11.12 - 11.49 reserved.]
- 11.50 Permit Fees.
[11.51 - 11.98 reserved.]
- 11.99 Enforcement and Penalties.

11.01 DANE COUNTY SHORELAND, SHORELAND-WETLAND AND INLAND-WETLAND.

The county is specifically empowered to regulate these management districts under sections 59.692 and 33.455, 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.]

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) *Board of adjustment.* The body established under section 59.694, Wisconsin Statutes, for counties and designated *board of adjustment.*
- (2) *Boathouse.* A permanent structure used for the 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. Human habitation of a boathouse is not permitted.
- (2m) *Building* has the meaning set forth in s. 10.01(7).

- (3) *Channel.* A channel is a natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.
- (4) *County zoning agency.* The Zoning and Natural Resources Committee of the Dane County Board of Supervisors.
- (4m) *Department.* The Dane County Land and Water Resources Department.
- (5) *Department of natural resources.* The Department of Natural Resources of the State of Wisconsin.
- (6) *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.
- (6m) *Director.* The Director of the Dane County Land and Water Resources Department or his or her designee.
- (7) *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.
- (8) *Floodplain.* The General Floodplain District as defined in section 17.05.
- (8m) *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.
- (9) *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.
- (10) *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).

(10m) 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.

(11) Navigable waters. As used in this chapter, *navigable waters* has the meaning set forth in s. 30.10, Wis. Stats.

(12) 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.

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

(14) 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.

(14m) Preliminary review. A preliminary review letter as described in s. 14.48.

(15) Inland-wetlands. These wetlands include all wetlands located throughout unincorporated Dane County that are not within the county shoreland district, i.e., not located within 1,000 feet from the ordinary high-water mark of navigable lakes, ponds or flowages, and also not located within 300 feet of the ordinary high-water mark or landward side of the flood plain of the navigable reaches of rivers and streams.

(16) Shoreland means the land area within the shoreland district as defined by s. 11.02(5) of this ordinance.

(16m) Site. The bounded area described in an erosion control plan, stormwater management plan, or shoreland management plan.

(16n) 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.

(16r) 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.

(17) Structure. Any human-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed.

(17m) 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.

(18) 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.]

11.02 SHORELAND DISTRICT. (1) Authority.

This shoreland protection section is adopted pursuant to the authorization found in sections 59.70(1), 59.69, 59.692, 87.30 and 144.26, Wis. Stats.

(2) Legislative finding. The county board does find 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 had 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.

(3) Statement of purpose. For the purpose of promoting and protecting the public health, safety, convenience and general welfare to: prevent and control water pollution; protect fish spawning grounds, fish and aquatic life, control building sites, placement of structures, preserve shore cover and natural beauty.

(4) Compliance. Unless specifically exempted by law, all cities, villages, towns and counties 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 30.12(4)(a), Wisconsin Statutes, applies.

(5) County jurisdiction. **(a)** Shoreland areas shall include all lands in the unincorporated areas of Dane County which are within 1,000 feet from the ordinary high-water mark of navigable lakes, ponds or flowages listed in the "Surface Water Resources of Dane County" published by the Wisconsin Department of Natural Resources, or so designated on the United States Geological Survey Quadrangle Maps, or included on other county zoning base maps, and all lands which are within 300 feet of the ordinary high-water mark or landward side of the flood plain of the navigable reaches of rivers and streams. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on U.S.G.S. Quadrangle Maps or other zoning base maps which have been incorporated by reference and made a part of the ordinance in section 10.03 of this ordinance.

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

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

(d) When the navigability or ordinary high-water mark is questionable 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.]

11.03 SHORELAND REGULATIONS. (1)

Building lots: Lots located in shoreland areas shall meet all area, width, density and lot coverage standards required in section 10.05(4) and (5), R-1 residence district, section 10.16(3), general provisions and exceptions of chapter 10 of the Dane County Code of Ordinances.

(2) Setback from ordinary high-water mark.

(a) Except as provided in sections 11.03(2)(b) and 11.03(4), the setbacks for all buildings and structures, except piers, boat hoists and boathouses, shall not be less than seventy-five (75) feet, measured horizontally, from an ordinary high-water mark, unless otherwise specified by the county flood plain zoning ordinance provisions.

(b) Reduced setback. Proposed primary buildings which will be located within 200 feet of existing primary building(s), which have a setback of less than 75 feet, may have a reduced setback as follows:

1. Where there is a primary 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.

2. If there is an existing primary building on only one side, the setback for the proposed building shall be the average of the required (75') setback and the existing building's setback.

3. Other setbacks may be permitted by the board of adjustment as per section 10.26(6)(c).

(3) Boathouses. **(a)** Boathouses shall not be constructed below the ordinary high-water mark.

(b) Boathouses shall not be utilized for human habitation.

(c) Height of a boathouse shall be measured vertically from the ordinary high-water mark. Railings may be placed on top of the boathouse provided the railing is not solid in appearance and not greater than 3.5 feet in height.

(d) The maintenance and repair of non-conforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of section 30.121 of the Wisconsin Statutes.

(4) An existing marina fuel system tank may be replaced within 75 feet of the high-water mark if a conditional use permit is approved by the Zoning and Natural Resources Committee. Prior to issuance of a conditional use permit, the Zoning and Natural Resources Committee must find that 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 shall be of at least double-wall construction;

(c) Monitoring devices shall be 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 shall be 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 shall have automatic nozzles with non-drip provisions;

(f) Replacement marina fuel system tanks shall not be located less than thirty five (35) feet, measured horizontally, from an ordinary high-water mark;

(g) Vegetative screening, using species native to South Central Wisconsin, shall be placed so as to shield tanks and containment structures from view from the adjacent water body. Seeding and/or planting must be complete within six (6) months of the effective date of the conditional use permit. To the extent practicable, such screening shall be designed to meet the purposes and intent of section 11.04 of this ordinance within five (5) years;

(h) Where applicable, the project must fully comply with approved filling and grading permits under section 11.05 of this ordinance or approved erosion and stormwater control permits under chapter 14 of the Dane County Code; and

(i) At the time of application for a conditional use permit, the landowner shall provide 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.

(5) Minor structures. Notwithstanding the provisions of sub. (2), minor structures shall be permitted within the shoreland setback area provided all of the following conditions are met:

(a) The proposed minor structure has no sides or has open or screened sides and meets all other dimensional and setback requirements of this ordinance and Chapter 10.

(b) The part of the structure that is nearest the water is located at least 35 feet landward from the ordinary high-water mark of any navigable water.

(c) 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.

(d) The applicant has obtained all other necessary approvals required for construction of the minor structure including, but not limited to:

1. filling and grading permits under section 11.05;
2. wetland rezoning petitions under section 11.06;
3. erosion control and stormwater control permits under chapter 14;
4. wetland fill permits required by the U.S. Army Corps of Engineers or the Department of Natural Resources;
5. Chapter 30 permits from the Department of Natural Resources; and
6. town building permits.

(e) The zoning administrator approves a plan to preserve, restore or establish a permanent buffer of vegetation for the site which:

1. meets all purposes and dimensional requirements of section 11.04 within 2 years;
2. includes only species of vegetation native to South Central Wisconsin and ecologically adapted to the conditions of the site which are on a list approved by the Dane County Land and Water Resources Department.

(f) The zoning administrator shall not issue certificates of compliance for projects permitted under this section until an inspection determines that all elements of the approved vegetative buffer plan have been implemented.

[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.]

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 SHORE COVER. (1) Purpose. To maintain trees and shrubbery in the shoreland areas for protection of scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. These provisions shall not apply to the removal of dead, diseased or dying trees or shrubbery or to silvicultural thinning upon recommendation of a forester.

(2) Shoreline cutting. Tree and shrubbery cutting in a strip paralleling the shoreline and extending 37.5 feet inland from all points along the ordinary high-water mark of the shoreline shall be limited in accordance with the following provisions:

(a) No more than 30 feet in any 100 feet, as measured along the ordinary high-water mark,

may be clear cut to the depth of the 37.5 foot strip.

(b) Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

(3) *Alternate cutting.* A special cutting plan allowing greater cutting may be permitted by the board of adjustment by issuance of a special exception permit under section 10.26(6)(b). In applying for such a permit, the board shall require the lot owner to submit a sketch of his or her lot, including the following information: location of parking, gradient of the land, existing vegetation, proposed cutting and proposed replanting. The board may grant such a permit only if it finds that such special cutting plans will not cause undue erosion or destruction of scenic beauty and will provide substantial shielding, from the water, of swellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the board may require the submission of a bond which guarantees the performance of the planned tree or shrubbery planting by the lot owner.

(4) *Paths.* Any path, road or passage within the 37.5 foot strip shall be constructed and surfaced as to effectively control erosion.

(5) *Cutting more than 37.5 feet inland.* From the inland edge of the 37.5 foot strip 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.]

11.05 SHORELAND EROSION CONTROL.

(1) *General standards.* 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) Exemptions 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 storm-water 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) 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. Occurs on a slope of greater than 12 percent;
3. Involves the excavation or filling, or a combination of both, in excess of 400 cubic yards of material;
4. 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;
5. Involves the creation of any new public or private roads or access drives longer than 125 feet;
6. Development that requires a subdivision plat, as defined in chapter 75;
7. 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;
8. 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 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(2) shall occur or a zoning permit is issued.

(b) Application materials. The applicant must provide the following materials when applying for a permit:

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 chapter 12;
3. 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. All erosion control plans and simplified checklists shall include provisions for a stable outlet as described in s. 14.51(2)(d);
 - a.** 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.
4. Copies of permits, permit applications or approvals required by any other unit of government;
5. A proposed timetable and schedule for completion and installation of all elements of approved erosion control plans and a detailed schedule for completion of construction;
6. An estimate of the cost of completion and installation of all elements of the approved erosion control plan; and
7. 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.

(c) 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. 14.50 – 14.51.
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.

(d) 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.

(e) 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 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 plants, and maintenance of safe and healthful conditions.

(a) In granting a shoreland erosion control 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. 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 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. 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. One permit revision is allowed at no charge. The second and subsequent revisions, to a maximum of five revisions, cost \$50 each.

(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).

[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.]

11.06 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 of two acres or more in area 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 two acres or more in area and 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 if the total contiguous wetland area is two acres or more in area.

(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 built after June 23, 2005, except buildings and structures specifically listed in section 11.07 and section 11.08, Dane County Code of Ordinances, is seventy-five (75) feet, measured horizontally, from a shoreland-wetland district or inland-wetland district.

(b) Nothing contained herein shall prevent the alteration, restoration, repair, or replacement, structural or otherwise, of any existing legal nonconforming building; however, alterations, restorations or repairs must be completed within

the existing building footprint, and are further subject to the following:

1. An existing legal nonconforming building shall be considered abandoned and nonexistent if a zoning permit for its replacement is not obtained within sixty (60) days of the date of its removal or destruction;
2. An existing legal nonconforming building shall be considered abandoned and nonexistent if construction has not commenced within one (1) year of its removal or destruction;
3. The property owner shall bear the burden of proof as to the size and location of the existing legal nonconforming building immediately preceding its removal or destruction; and
4. The property owner shall bear the burden of proof as to when an existing legal nonconforming building was removed or destroyed.

(c) Additions to existing legal nonconforming buildings are permitted subject to the following limitations:

1. The footprint of the building as constructed may not exceed 150% of the footprint of the original building;
2. No part of the expansion may be closer to the wetland than the existing building; and
3. The property owner shall bear the burden of proof as to the size and location of the existing legal nonconforming building.

[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.]

11.07 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 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 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.]

11.08 USES WHICH ARE ALLOWED IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS SUBJECT TO THE ISSUANCE OF A ZONING (LAND USE) 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.]

11.09 PROHIBITED USES. 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.

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 APPEALS. Any person aggrieved by a decision of the zoning administrator or director may appeal that decision to the board of adjustment pursuant to section 10.26(3).

[History: 11.11 rep., Sub. 1 to OA 47, 1993-94, pub. 03/22/95; 11.11 recr., OA 24, 2006-07, pub. 12/29/06, eff. 01/01/07.]

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

[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.]

[11.12 - 11.49 reserved.]

11.50 PERMIT FEES. (1) For applications submitted under s. 11.05(2)(b) the fee shall be \$100.

(2) For applications submitted under s. 11.05(2)(c) the fee shall be \$200, plus \$.005 per square foot of disturbed area.

(3) The fee for all other applications under this chapter shall be \$400, plus \$.005 per square foot of disturbed area.

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

(5) 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.]

[11.51 - 11.98 reserved.]

11.99 ENFORCEMENT AND PENALTIES. Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the corporation counsel for prosecution. A violator shall, upon conviction, forfeit a penalty of not less than \$200 and not more than \$1,000, together with the costs of such action. Each day of violation shall constitute a separate offense. Any violation of this ordinance may be enforced by injunctive order at the suit of the county.

[History: cr., OA 12, 1996-97, pub. 08/23/96; am., OA 39, 2008-09, pub. 06/08/09.]

END OF CHAPTER