

8.4 SHORELAND ZONING ORDINANCE

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF DOUGLAS DOES ORDAIN AS FOLLOWS:

SECTION I. STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, AND TITLE

1.1 Statutory Authorization

This ordinance is adopted pursuant to the authorization in Sections 59.69, 59.692, and 59.693, 59.694, 87.30, 236.45 and 281.31 Wis. Stats.

1.2. Finding of Fact

Uncontrolled use of the shorelands and pollution of the navigable waters of Douglas County would 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 to preserve shore cover and natural beauty. This responsibility is hereby recognized by Douglas County, Wisconsin.

1.3 Purpose and Intent

For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters, this ordinance has been established to:

1.31 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 areas 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.

1.32 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.

1.33 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.

1.34 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.

1.4 Title Shoreland Zoning Ordinance for Douglas County, Wisconsin.

SECTION II. GENERAL PROVISIONS

2.1 Areas to be Regulated

Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of Douglas County which are:

- 2.11 Within one thousand (1,000) feet of the ordinary high water mark of navigable lakes, ponds or flowages. If the navigable water is a glacial pothole lake, this distance shall be measured from the high water mark of the lake. Lakes, ponds or flowage in Douglas County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication FH-800, 2009 "Wisconsin Lakes" book available at the following website: <http://dnr.wi.gov/org/water/fhp/lakes/lakemap> or are shown on United States Geological Survey quadrangle maps or other zoning base maps.

- 2.12 Within three hundred (300) feet of the ordinary high water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in Douglas County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps (1:24,000). Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
- 2.13 The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48(13), Stats., applies, state agencies are required to comply with and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022(1), Stats., applies. (NR 115.02) Shoreland zoning requirements in annexed or incorporated areas are provided in s. 61.353 and s. 62.233, Stats.
- 2.14 Determinations of navigability and ordinary high water mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate office of the Department for a final determination of navigability or ordinary high water mark. The county may work with surveyors with regard to s. 59.692(1h).
- 2.15 Under Section 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning 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 not navigable streams before ditching; and
 - (3) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

2.2 Shoreland-Wetland Maps

The maps designated below are hereby adopted and made part of this ordinance. They are on file in the office of the Zoning Administrator for Douglas County.

- (1) The most recent version of the Wisconsin Wetland Inventory, as depicted on the Department of Natural Resources Water Data Viewer is made part of this ordinance. The maps can be viewed at: <http://dnr.wi.gov/SL/viewer.html>.
- (2) The most recent version of the Flood Insurance Rate Maps created by the Federal Emergency Management Agency (FEMA) including the appendix listed in Ordinance 8.3
- (3) Douglas County Official Zoning Map dated December 10, 1970 and amendments.

2.3 Compliance

The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. Buildings, signs and other structures shall require a permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this ordinance.

2.4 Municipalities and State Agencies Regulated

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), Wis. Stats., 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), Wis Stats., applies.

2.5 Abrogation and Greater Restrictions

The provisions of this ordinance supersede any provisions in a county zoning ordinance which solely relate to shorelands. In other words, if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supercedes those provisions. However, where an ordinance adopted under a statute other than Section 59.692 Wis. Stats., does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

- 2.51 This ordinance shall not require approval or be subject to disapproval by any town or town board.

- 2.52 If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of greater restrictions, but not otherwise.
- 2.53 This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
- 2.54 The more restrictive provisions of the Douglas County General Zoning Ordinance are hereby incorporated and made part of this ordinance and shall have the same force and effect as if fully numerated herein.
- 2.55 This ordinance may establish standards to regulate matters that are not regulated in NR 115, but that further the purposes of shoreland zoning as described in Section 1.3 of this ordinance. (s.59.692(1d)(b), Wis Stats.)
- 2.56 The provisions of Douglas County Zoning Ordinance 8.0 Section IV, Subsection 4.4 apply to the shoreland zone and are referenced herein. (s. 59.692(1d)(b), Wis Stats.)
- 2.57 Douglas County does not establish or regulate any of the following in the shoreland district (s. 59.692(1k)(a)1., Wis. Stats.):
- (1) Approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.
 - (2) Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.
- 2.58 The construction and maintenance of a facility is considered to satisfy the requirements of a shoreland zoning ordinance if the department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281 or 283. (s.59.692(7), Stats)

2.6 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the county and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this ordinance is required by Statute and a standard in Wis. Adm. Code NR 115, and where the ordinance provision is unclear, the provision shall be interpreted in light of the Statute and

NR 115 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

2.7 Severability

If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION III. LAND DIVISION REVIEW AND SANITARY REGULATIONS

3.1 Land Division Review

The county shall review, pursuant to Section 236.45, Wis. Stats. and Douglas County Subdivision Ord 8.1, all land divisions in shoreland areas which create one or more parcels or building sites of less than 10 acres each within a 5-year period. In such review the following factors shall be considered:

- (1) Hazards to the health, safety or welfare of future residents;
- (2) Proper relationship to adjoining areas;
- (3) Public access to navigable waters, as required by law;
- (4) Adequate stormwater drainage facilities; and
- (5) Conformity to state law and administrative code provisions.

3.2 Limited Rezoning to Achieve Reduced Lot Sizes and Setbacks

3.21 Purpose

In some instances where an individual lot or small tract of land has unique characteristics, such as unique terrain, which would result in unnecessary hardship as defined in Section 13.2, if the owner were required to comply with one or more of the requirements for minimum lot sizes, width and setback, the Zoning Committee may grant a variance. In other instances where larger areas are involved, the appropriate method for seeking a relaxation of the same minimum standards is by rezoning to establish a Planned Residential Unit Development overlay. The Planned Residential Unit Development is intended to permit smaller lots and setbacks where the physical layout of the lots is so arranged (often by setting them back farther from navigable water) as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Residential Unit Development at the

time of its approval. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably on the shoreland, in perpetuity.

3.22 Requirements for Planned Residential Unit Development

The County Board may at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development, either by approving first an overlay district and then a plat or by approving only a plat for the specific planned residential project upon finding, after a public hearing, that all of the following facts exist:

- (1) Area. The area proposed for the Planned Residential Unit Development is at least 40 acres in size.
- (2) Pollution Control. The location and nature of the septic systems which will serve the home sites individually or collectively will assure that effluent from the septic systems will not reach the ground or surface waters in a condition which would contribute to health hazards, taste, odor, turbidity, fertility or impair the aesthetic character of navigable waters.
- (3) Preservation of Ground Cover. The location of home sites and the dedication of part of the land for the use by the public or residents of the Planned Residential Unit Development will preserve the ground cover of the shoreland and scenic beauty of the navigable water, prevent erosion, and other pertinent factors. Land not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the county, town or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to owners of lots in the development, a homeowner's association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement or any other manner which was required by a public body or which names a public body as grantee, promisee or beneficiary, shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.
- (4) Density. The number of platted home sites shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes, setbacks and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total area of the

subdivision, excluding streets, by the minimum lot size required by Section 4.0 of this ordinance.

- (5) Lot Sizes, Widths, Setbacks, and Tree-cutting. The lot sizes, widths, and setbacks shall not be less than those provided for in current statutes, Wis. Adm. Codes or ordinances, and shall not be so small as to cause pollution or erosion along streets or other public ways and waterways or so small as to substantially depreciate the property values in the immediate neighborhood.

3.23 Procedure for Establishing a Planned Residential Unit Development District

The procedure for establishing limited rezoning in the form of a Planned Residential Unit Development district shall be as follows:

- (1) Petition. A petition setting forth all of the facts required in Section 3.22 shall be submitted to the County Clerk with sufficient copies to provide for distribution by the Clerk as required by Section 3.23(2).
- (2) Review and Hearing. The petition shall be submitted to the county zoning agency established as required by Sections 59.69 and 59.692, Wis. Stats., which shall hold a public hearing and report to the County Board as required by law. Copies of the petition and notice of the hearing shall also be sent to the appropriate office of the Department as described in Section 11.2 of this ordinance. The county zoning agency's report to the County Board shall reflect the recommendations of any federal, state or local agency with which the county zoning agency consults. If a petition seeks approval of a Planned Residential Unit Development plat without first seeking the granting of an overlay district, a hearing shall be held on such plat as in any regular amendment to the zoning ordinance. If, however, a hearing is first held on the overlay for a Planned Residential Unit Development district, a second public hearing need not be held in connection with the approval of a subsequent plat or plats which comply with the overlay district as approved.
- (3) Findings and Conditions of Approval. The County Board shall make written findings as to the compliance or noncompliance of the proposed overlay district with each of the applicable requirements set forth in Section 3.22. If the petition is granted in whole or part, the County Board shall attach such written conditions to the approval as are required by and consistent with Section 3.22. The conditions of approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, width, setbacks and the location of septic systems and the preservation of ground cover and open space.

- (4) Planning Studies. A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provisions of Section 3.22 or may be required to contribute funds to the county to defray all or part of the contribute funds to the county to defray all or part of the cost of such studies being undertaken by the county or any agency or person with whom the county contracts for such work.

3.3 Sanitary Regulations

The county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

- (1) Where public water supply systems are not available, private well construction shall be required to conform to Wis. Adm. Code NR Ch. 812.
- (2) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall be governed by a private sewage system ordinance adopted by the county under Section 59.70(5), Wis. Stats. and required to comply with Wis. Admin. Code SPS 383.

SECTION IV. DIMENSIONS OF BUILDING SITES

4.1 Purpose: Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare and protection against pollution of the adjacent body of water.

4.2 Lot Sizes

Shoreland Zoning Schedule – Dimensional Requirements

	Sewered	Unsewered
Minimum lot width	65 feet	100 feet
Minimum lot area	10,000 sq. ft.	20,000 sq. ft.

Note: Zone District minimum lot dimensions also apply to the shoreland zone, whichever is more restrictive.

4.3 Substandard Lots

4.31 After adoption of this ordinance, no lot areas shall be so reduced that the dimensional and yard requirements required by this ordinance cannot be met. Lots existing and of record prior to adoption of this ordinance, but of substandard size, may be devoted to uses permitted in the district in which located if such use can be accomplished in compliance with the lot and building dimensional schedule of this ordinance.

- 4.32 A legally created lot or parcel that met minimum area and minimum average 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 substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
 - (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.
- 4.33 Lots created after adoption of this ordinance and which are not served by public sewer systems shall meet the minimum area requirements of the Douglas County Sanitary Code and the Douglas County Zoning Ordinance.
- 4.34 Other substandard lots. Except for lots which meet the requirements of Sections 4.31, 4.32, or 4.33, a building permit for the improvement of a lot having lesser dimensions than those stated in Sections 4.1 and 4.2 shall be issued only after granting of a variance by the Board of Adjustment.

4.4 Lots in Cluster Subdivisions

Lots in cluster subdivisions not served by public sanitary sewers may be reduced to the minimum allowed by the county private sewage system ordinance pursuant to the procedures set forth in Section 3.2 of this ordinance.

SECTION V. SETBACKS FROM THE WATER

5.1 Lots in Shoreland Zone (NR 115.05(1)(b))

Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. All buildings and structures, except exempt structures, shall be set back at least 75 feet from the ordinary high water mark of navigable waters.

5.2 Structures Exempt from the Minimum Setback in 5.1 in accordance with Wisconsin Statutes 59.692(1v) and WI Administrative Code NR 115.05(1)(b)(1m)

5.21 Boathouses.

- (1) Boathouses shall be designed and constructed solely for the storage of boats and related equipment and shall not be used for human habitation and may not be plumbed.

- (2) Boathouses shall be set back a minimum of 2 feet and no greater than 20 feet from the ordinary high water mark and shall be constructed in conformity with local floodplain zoning standards. Boathouses shall be located within the viewing and access corridor.
- (3) One boathouse is permitted on a lot as an accessory building.
- (4) Boathouses shall not exceed one story and 250 square feet in floor area.
- (5) Existing exempt structures that were legally constructed may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure.
- (6) The roof of a boathouse may be used as a deck provided that:
 - (a) the boathouse has a flat roof
 - (b) the roof has no side walls or screens
 - (c) the roof may have a railing that meets the Department of Safety and Professional Services standards.

5.22 Open-sided or screened structures referred to as minor structures within shoreland setback area (gazebo law).

- (1) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high water mark.
- (2) The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
- (3) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
- (4) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

5.23 Stairways, walkways and lifts that are necessary to provide pedestrian access to the shoreline and are a maximum of 60 inches in width.

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

5.25 Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Wis. Admin. Code SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

5.26 Devices or systems used to treat runoff from impervious surfaces.

5.3 Reduced Principal Structure Setbacks

5.31 A setback less than the 75' required setback from the ordinary high water mark shall be permitted for a proposed principal structure and shall be determined as follows:

- (1) Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
 - (a) Both of the existing principal structures are located on adjacent lot to the proposed principal structure.
 - (b) Both of the existing principal structures are located within 250' of the proposed principal structure.
 - (c) Both of the existing principal structures are located less than 75' from the ordinary high water mark.
 - (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.
- (2) Where there is an existing principal structure in only one direction, the setback shall equal the average of the distance the existing principal structure is set back from the ordinary high water mark and the required setback of 75' from the ordinary high water mark provided all of the following are met:
 - (a) The existing principal structure is located on adjacent lot to the proposed principal structure.
 - (b) The existing principal structure is located within 250' of the proposed principal structure.
 - (c) The existing principal structure is located less than 75' from the ordinary high water mark.

- (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

5.32 Setback reductions may also be permitted by the Board of Adjustment pursuant to Section 10.5 of this ordinance.

5.4 Increased Principal Structure Setbacks A setback greater than the required 75' from the ordinary high water mark shall be required for a proposed principal structure and determined as follows:

- (1) Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
 - (a) Both of the existing principal structures are located on adjacent lot to the proposed principal structure.
 - (b) Both of the existing principal structures are located within 200' of the proposed principal structure.
 - (c) Both of the existing principal structures are located greater than 75' from the ordinary high water mark.
 - (d) Both of the existing principal structures were required to be located at a setback greater than 75' from the ordinary high water mark.
 - (e) The increased setback does not apply if the resulting setback limits the placement to an area on which the structure cannot be built.

5.5 Floodplain Structures

Buildings or structures to be constructed or placed in a floodplain shall be required to comply with Douglas County Floodplain Ordinance 8.3. Legal pre-existing structures within the floodplain may not be replaced, modified or additions constructed that do not comply with Section 87.30 WI Stats and WI Admin Code NR 116.

SECTION VI. REMOVAL OF SHORE COVER

6.1 Shoreline Cutting

(NR 115.05(1)(c)1.) To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following: The county shall establish ordinance

standards that 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.

Tree and shrubbery cutting in an area parallel to the ordinary high water mark, and extending 35 feet inland from all points along the ordinary high water mark, shall be limited in accordance with the following provisions:

6.11 Removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors is allowed. Per s. 59.692(1f)(b), Stats., the viewing corridor may be at least 35 feet wide for every 100 feet of shoreline frontage. The viewing corridors may run contiguously for the entire maximum width of the shoreline frontage owned.

6.12 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.

6.2 Paths

Any path, road or passage within the access and viewing corridor shall be constructed and surfaced so as to effectively control erosion.

6.3 Cutting Plan

As an alternative to Section 6.11, a special cutting plan allowing greater cutting may be permitted by the County Zoning Committee by issuance of a conditional-use permit, pursuant to Section 10.3. An application for such a permit shall include a sketch of the lot providing the following information: location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The Committee may grant such a permit only if it finds that such special cutting plans:

6.31 Will not cause undue erosion or destruction of scenic beauty, and

6.32 Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement planting, the Committee may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.

6.4 Cutting More Than 35 Feet Inland

From the inland edge of the 35-foot area to the outer limits of the shoreland, the cutting of trees and shrubbery shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

SECTION VII. FILLING, GRADING, LAGOONING, DREDGING, DITCHING, AND EXCAVATING

7.1 General Standards

Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under Section 7.2 may be permitted in the shoreland area provided that:

- 7.11 It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- 7.12 Filling, grading, lagooning, dredging or excavating in a shoreland-wetland district meets the requirements of Section 8.13 of this ordinance.
- 7.13 All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.
- 7.14 Any fill placed in the shoreland area is protected against erosion by the use of rip-rap, vegetative cover or a bulkhead.

7.2 Permit Required

Except as provided in Section 7.3 a zoning permit is required:

- 7.21 For any filling or grading of any area which is within 300 feet landward of the ordinary high water mark of navigable water and which has surface drainage toward the water and on which there is either:
 - (1) Any filling or grading on slopes of more than 20%;
 - (2) Filling or grading of more than 2,500 sq. ft. in addition to the minimum necessary for the construction of the principal building and the installation of on-site waste treatment systems on slopes of 12%-20%; or
 - (3) Filling or grading of more than 5,000 sq. ft. in addition to the minimum necessary for the construction of the principal building and the installation of on-site waste treatment systems on slopes of 0%-12%.
- 7.22 For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary high water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

7.3 Soil Conservation Practices

Soil conservation practices such as terraces, runoff diversions and grassed

waterways which are used for erosion control shall not require a permit under Section 7.2 when designed and constructed to Natural Resources Conservation Service technical standards.

7.4 Permit Conditions

In granting a zoning permit under Section 7.2, the County Zoning Administrator shall attach the following conditions, where appropriate:

- 7.41 The smallest amount of bare ground shall be exposed for as short a time as feasible.
- 7.42 Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
- 7.43 Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- 7.44 Lagoons shall be constructed to avoid fish trap conditions.
- 7.45 Fill shall be stabilized according to accepted engineering standards.
- 7.46 Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- 7.47 Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated, unless bulkheads or rip-rap are provided.

7.5 Impervious Surface Standards

- 7.51 Purpose Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high water mark of any navigable waterway.
- 7.52 Calculations of Percentage of Impervious Surface (Wis. Adm. Code NR 115.05(1)(e)) Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in 7.55 shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall

be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

- 7.53 General Impervious Surface Standard (NR 115.05(1)(e)2.) Up to 15% impervious surface is allowed on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark.
- 7.54 Maximum Impervious Surface (NR 115.05(1)(e)3.) A property may exceed the impervious surface standard under 7.53 provided the following standards are met:
- (1) For properties where the general impervious surface standard applies under Section 7.53 a property owner may have more than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark.
 - (2) For properties that exceed the standard under 7.53 but do not exceed the maximum standard under 7.54(1), a permit can be issued for development with a mitigation plan that meets the standards found in Section 9.4
- 7.55 Excluded Impervious Surfaces (NR 115.05(1)(e) and s. 59.692(1k)(a)1.e.) Impervious surfaces that can be documented to show they meet either of the following standards shall be excluded from the impervious surface calculations under 7.52:
- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
 - (2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.
- 7.56 Existing Impervious Surfaces (NR 115.05(1)(e)4.) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in Section 7.53 or the maximum impervious surface standard in Section 7.54, the property owner may do any of the following:
- (1) Maintain and repair the existing impervious surfaces.
 - (2) Replace existing impervious surfaces with similar surfaces within the existing building envelope.
 - (3) Relocate or modify an existing impervious surface with similar or

different impervious surface, 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 the impervious surface meets the applicable setback requirements in s. Wis Admin. Code NR 115.05(1)(b).

SECTION VIII. SHORELAND-WETLAND OVERLAY DISTRICTS

8.1 **Designation** This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

8.11 **Locating Shoreland-Wetland Boundaries**

Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions, the Zoning Administrator shall contact the Department to determine if the map is in error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland or meets the wetland definition but was not shown as wetland on the map, the Zoning Administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

8.12 **Purpose**

This district is created 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 and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

8.13 **Permitted Uses**

The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of Chs. 30 and 31 and 281.36, Wis. Stats. and the provisions of other applicable local, state and federal laws:

- (1) Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, dredging, ditching, tiling or excavating as allowed under Section 8.13(2) or 8.13(3):

- (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 pasturing of livestock;
 - (d) The cultivation of agricultural crops;
 - (e) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
 - (f) The construction or maintenance of duck blinds.
- (2) Uses which do not require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:
- (a) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
 - (b) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growth and harvesting of cranberries;
 - (c) The maintenance and repair of existing agriculture drainage systems where permissible by Section 30.20, Wis. Stats., including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agriculture use. 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;
 - (d) The construction or maintenance of fences for the pasturing of livestock, including excavating and filling necessary for such construction or maintenance;
 - (e) The construction or maintenance of piers, docks, or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
 - (f) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (3) Uses which require the issuance of a zoning permit under Section 10.2 and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating, but only to the extent specifically provided below:

- (a) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agriculture cultivation provided that:
 - (i) The road cannot as a practical matter be located outside wetland;
 - (ii) The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 8.152;
 - (iii) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use; and
 - (iv) Road construction activities are carried out in the immediate area of the roadbed only.
- (b) The construction or maintenance of nonresidential buildings provided that:
 - (i) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;
 - (ii) The building cannot, as a practical matter, be located outside the wetland;
 - (iii) Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
 - (iv) Only limited filling or excavating necessary to provide structural support for the building is authorized.
- (c) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries and public boat launching ramps and attendant access roads, provided that:
 - (i) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under Ch. 29, Wis. Stats., where applicable;
 - (ii) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets criteria in Section 8.13(3)(a); and
 - (iii) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal

farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.

- (d) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power, or water to their members and the construction or maintenance of railroad lines provided that:
 - (i) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland; and
 - (ii) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in Section 8.15(2).

8.14 Prohibited Uses

Any use not listed in Sections 8.13(1), 8.13(2), or 8.13(3) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with Section 8.15 of this ordinance and Section 59.69(5)(e), Wis. Stats.

8.15 Rezoning of Lands in the Shoreland-Wetland District

- (1) For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate office of the Department shall be provided with the following:
 - (a) A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within 5 days of the filing of such petition with the County Clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland;
 - (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 findings 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.

- (2) A wetland, or portion thereof, in the shoreland-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) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04 which can be accessed at the following web site: <http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf>.
- (3) If the Department notifies the County Zoning Committee that proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in Section 8.15(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 after written notice of the County Board's approval of this amendment is mailed to the Department of Natural Resources. During that 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), Wis. Stats. If the Department does so notify the County Board, the effect of this amendment shall be stayed until the Section 59.692(6), Wis. Stats., adoption procedure is completed or otherwise terminated."

SECTION IX. NONCONFORMING USES AND LEGAL PRE-EXISTING STRUCTURES

9.1 The lawful use of a building, structure or property which existed at the time this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of this ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the conditions of this ordinance.

9.2 Shoreland Nonconforming Uses

9.21 Compliance with legal pre-existing principal building provisions. Any shoreland building, structure, premises or fixture that constitutes a nonconforming use and is also a legal pre-existing principal building must adhere to the provisions set forth in subsection for nonconforming shoreland structures.

9.22 Prohibited Expansion. The alteration of, or addition to, or repair in excess of fifty percent (50%) of the assessed value of any existing building, premises, structure or fixture for the purpose of carrying on a nonconforming use is prohibited. (see Wis. Stats. 59.69 (10) (am))

9.23 Exceptions to Prohibited Expansion. If the alteration, addition or repair of a legal pre-existing building or structure in the shoreland district with a nonconforming use is prohibited because it is for the purpose of carrying on a nonconforming use and is in excess of fifty percent (50%) of the assessed value of the existing building, premises, structure or fixture, the property owner may still make the proposed alteration, addition or repair if the property owner meets all provisions set forth in subsection 9.3 for legal pre-existing structures and:

- (1) The alteration, addition or repair is not for the purpose of carrying on a nonconforming use.
- (2) A nonconforming use is permanently changed to a conforming use.
- (3) The property owner appeals the determination of the Zoning Administrator and County Board of Adjustment or the Circuit Court finds in favor of the property owner under Secs. 59.694(4) or 59.597(10), Wis. Stats.
- (4) The property owner successfully petitions to have the property rezoned by amendment of this Chapter and Sec. 59.69(5)(e), Wis. Stats.

- 9.24 Discontinuance. If a shoreland nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this Chapter.
- 9.25 Temporary Structures. If the shoreland nonconforming use of a temporary structure is discontinued, such nonconforming use may not be recommenced.
- 9.26 Nuisances. Uses that are nuisances shall not be permitted to continue as nonconforming uses.
- 9.27 Burden of Proof: A property owner claiming a nonconforming use and exemption from applicable regulations shall prove by a preponderance of the evidence that:
- (1) The use was legally established;
 - (2) The use predated zoning provisions with which it does not comply;
 - (3) The use was active and actual prior to adoption of such provisions and not merely casual and occasional or incidental to the principal use of the property in which case no vested right to continue the use shall have been acquired.

9.3 Legal Pre-Existing Principal Structures and Buildings

- 9.31 Shoreland Setback. The minimum setback to the ordinary high water mark of any navigable water body to the nearest part of a building or structure shall apply.
- 9.32 Maintenance, Repair, Replacement or Vertical Expansion of Nonconforming Structures (s 59.692(1k)(a)1.b. and d.)

An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback:

- (1) May be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure.
- (2) May be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level.
- (3) Special review and consideration will be given to situations where expansion of the structure beyond the existing footprint is necessary to comply with applicable state or federal requirements.

9.33 Legal Pre-existing Principal Structure Located Thirty-five (35) Feet or More but Less than Seventy-five (75) Feet from the Ordinary High Water Mark.

A legal pre-existing principal structure located thirty-five (35) or more feet, but less than seventy-five (75) feet, from the ordinary high water mark may be expanded laterally, provided that:

- (1) The resulting structure shall not exceed thirty-five (35) feet in height, as defined in ch. NR 115.05(1)(f), Wis. Adm Code.
- (2) Lateral expansion is limited to 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure. The property owner obtains a land use permit and fulfills the mitigation requirements of Subsection 9.4 by the date specified in the permit.
- (3) All other provisions of the Douglas County Shoreland Zoning Ordinance shall be met.
- (4) If use of the principal structure has been discontinued for a period of twelve (12) months or more, any further use of the structure shall conform to this chapter.

9.34 Expansion of a Nonconforming Principal Structure Beyond Setback (NR 115.05(1)(g)5m.).

An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under Section 5.1, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per Section 5.1 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per Section 7.5.

9.35 Relocation of Nonconforming Principal Structure (NR 115.05(1)(g)6.)

An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per Sections 5.1 and 5.3 may be relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of twelve months or more if a nonconforming use.

- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county determines that no other location is available on the property to build a principal structure with the same square-footage footprint to the structure proposed for relocation that will result in compliance with the shoreland setback requirement per Section 5.1.
- (5) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in Section 9.4 to include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the Douglas County Register of Deeds.
- (6) All other provisions of the shoreland ordinance shall be met.

9.36 Maintenance, Repair, Replacement or Vertical Expansion of Structures that were Authorized by Variance (s.59.692(1k)(a)2. and (a)4.).

A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements. Shoreland mitigation measures are not required.

9.37 Compliance with Most Restrictive Zone Standards.

Legal pre-existing principal structures, and buildings which are located in more than one minimum setback zone, shall comply with the standards of the more restrictive zone.

9.38 Maintenance, Repair, Replacement of Illegal Structures (s.59.962(1k)(a)2,, Stats)

A structure that was illegally constructed, which is older than ten years and may not be enforced under the shoreland ordinance (s59.692 (1t)Stats) may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the structure. (No vertical or lateral expansion allowed for structures in violation.)

9.4 Mitigation Measures

9.41 Actions that trigger mitigation

- (1) Exceeding the maximum impervious surface area allowed (s. 7.54(2))
- (2) Lateral expansion of a nonconforming principal structure (s. 9.33(2))
- (3) Relocation of a nonconforming principal structure (9.35(5))
- (4) Vegetative buffer required as mitigation under open-sided structure provision (s. 5.22(4))

9.42 Required mitigation

A site plan and implementation schedule describing any required mitigation shall be submitted by the property owner or their authorized agent and approved by the Zoning Department prior to issuing the related land use permit(s). Mandatory practices for mitigation shall include:

- (1) Evaluation and if needed upgrading of any existing sanitary system on the subject property to meet current Douglas County and DSPS regulations.
- (2) Implementation of standard erosion and storm water runoff control measures described in applicable sections of this ordinance.

9.43 Additional requirements: Shall accumulate at least two (2) points from among the following proposed or current practices:

- (1) Maintenance of an existing shoreland buffer area within 35 feet of the ordinary high water mark of Lakes and Rivers/Streams (2 points).

- (2) Restoration of the shoreland buffer area within 35 feet of the ordinary high water mark of Lakes and Rivers/Streams (2 points).
- (3) Restoration of native vegetation along both sideyards, minimum of 5 feet wide measured perpendicular to the lot line for the entire length of the lot (1/2 point).
- (4) Removal of legal pre-existing accessory buildings from within the shoreland setback area (1 point per building).
- (5) Use of exterior building materials or treatments that are inconspicuous and blend with the natural setting of the site (1/2 point).
- (6) Removal of waterward improvements (seawalls, dockage, artificial sand beach etc. and / or restoration of emergent aquatic vegetation (1 point for each distinct removal / restoration effort).
- (7) Any other mitigation that is deemed appropriate by the Zoning Administrator may be used to meet the mitigation requirement of Section 9.4.

9.44 A Shoreland Mitigation/Preservation Affidavit shall be signed and recorded with the Register of Deeds prior to the issuance of a zoning permit.

9.45 Type of Shoreland Buffer

The type of shoreland buffer restoration chosen under Section 9.42 or required under Section 5.22(4) will be determined by the Zoning Department and/or the Land Conservation Department. The buffer type shall be either woodland, prairie, or wetland. The woodland and prairie buffers shall comply with the standards set forth in Section 9.45 Table 1. Wetland buffers will also be permitted where deemed appropriate by the Zoning Department and/or the Land Conservation Department.

9.46 Table 1. Shoreland Buffer Planting Standards

Layer	Woodland Buffer		Prairie Buffer		Area Credits
	Minimum number of species	Density per 100 square feet	Minimum number of species	Density per 100 square feet	
Tree Canopy	3	1	2	0.2	Existing tree canopy edge viewing corridor
Shrub Understory	4	1.5	2	0.5	Existing shrub understory wet edge viewing corridor
Groundcover Plant Plugs	1	70	5	70	Existing well vegetated native ground cover
Groundcover seeding	1	Varies	5	Varies	Existing well vegetated native ground cover
<p>WI Biology Technical Note 1: Shoreland Habitat; Interim Standard # 643A Shoreland Habitat provides specific criteria for Shoreland Habitat establishment and for determining the dimensions of the practice (Section V). It identifies the necessary components of a Shoreland Habitat establishment plan (Section VII), and lists criteria for operation and maintenance of the practice (Section VIII).</p>					

9.47 Type of Vegetation Recovery

- (1) Natural Recovery: Shoreland buffer areas that are suited for natural recovery will be allowed only after Zoning and /or County Land Conservation approval.
- (2) Accelerated (Planted) Recovery: Areas not suited to natural recovery will require plantings to establish native vegetation and must be planted. Areas such as lawns or eroded sites with no seed source will require plantings. Dense turf grass growths that have been maintained for several years will need to be removed and native plantings installed. Planted buffers must meet the required plant densities based on square footage of buffer area and the type of buffer (Table 1). Planting credits will be allowed for the viewing corridor, areas of existing native vegetation, and areas suited for natural recovery.

9.48 Douglas County Native Plant List

Species of plants must be selected from the Douglas County Native Plant List and approved for shoreline buffers by the Land Conservationist. Substitutions must be approved by the Land Conservationist. Substitutions to the list will be allowed in the event of lack of plant stock or seed availability on a case-by-case basis. All plants may be transplanted from areas outside of the buffer zone.

9.49 Planting Densities

Planting densities are based on the total area of the required buffer. Area credits calculated are subtracted from the total required density on an equal square footage of coverage basis. Trees must be at least 2 years old and greater than 1 foot tall to qualify as a credit or planting.

9.50 Shoreland Buffer Plan Requirements

A shoreland restoration plan shall be completed for all required shoreland mitigation or preservations. Plans must be approved by the Land Conservationist and the Zoning Administrator.

(1) Shoreland Buffer Restoration Site Plans must include:

- (a) Name and address of property owner
- (b) Property address and legal description
- (c) Extent of the shoreland buffer
- (d) Scale (e.g. 1 inch = 10 feet)
- (e) North arrow
- (f) Ordinary high water mark (OHWM) location
- (g) Location of all structures in the shoreland buffer zone
- (h) Viewing and access corridor
- (i) Boundary of the shoreland buffer zone
- (j) Existing trees, shrubs, and native ground cover
- (k) Areas to be planted with trees, shrubs, and groundcovers
- (l) Implementation schedule
- (m) A plant species list; indicate if you are requesting substitutions from the prepared list
- (n) Erosion control practices (to be installed prior to and during buffer establishment)
- (o) Water diversions and channelized flow areas
- (p) Buffer Maintenance (weeding, replanting)

(2) Implementation Schedule: The approved Shoreland Buffer Restoration Site Plan must be started within one year from the issue date of applicable permit. All plantings and any other required activities in the Shoreland Buffer Restoration Site Plan must be completed within two years of the permit issue date.

SECTION X. ADMINISTRATIVE PROVISIONS

10.1 Zoning Administrator

The Zoning Administrator shall have the following duties and powers:

10.11 Develop and administer a system of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A permit application shall be required to be submitted to the Zoning Office.

10.12 Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

10.13 A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.

10.14 A special exception (conditional use) procedure under Section 10.3 herein.

10.15 The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

10.16 Written notice to the appropriate office of the Department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under Ordinance 8.2.

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

10.18 Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

10.19 The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in WI Stats. 59.69 (11).

10.20 The prosecution of violations of the shoreland ordinance.

10.2 Zoning Permits

10.21 When Required: Except where another section of this ordinance specifically exempts certain types of development from this requirement a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in Section 13.2, or any change in the use of an existing building or structure, is initiated.

10.22 Application: An application for a zoning permit shall be made to the Zoning Administrator upon forms furnished by the county and shall include for the purpose of proper enforcement of these regulations, the following information:

- (1) Name and address of applicant and property owner;
- (2) Legal description of the property and type of proposed use;
- (3) A to-scale sketch of the dimensions of the lot and location of all existing and proposed structures and impervious surface calculations relative to the lot lines, center line of abutting highways and the ordinary high water mark of any abutting waterways;
- (4) Location and description of any existing private water supply or sewage system or notification of plans for any such installation;
- (5) Plans for appropriate mitigation (when required);
- (6) Payment of the appropriate fee;
- (7) Additional information required by the Zoning Administrator.

10.23 Expiration of Permit: Zoning permits shall expire 12 months from date issued if no substantial work has commenced.

10.3 Conditional-Use Permits

10.31 Application for a Conditional-Use Permit: Any use listed as a conditional-use in this ordinance shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional-use permit has been granted by the County Zoning Committee.

10.32 Standards Applicable to All Conditional-Uses: In passing upon a conditional-use permit, the County Zoning Committee shall evaluate the effect of the proposed use upon:

- (1) The maintenance of safe and healthful conditions;

- (2) The prevention and control of water pollution including sedimentation;
- (3) Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage;
- (4) The erosion potential of the site based upon degree and direction of slope, soil type, and vegetative cover;
- (5) The location of the site with respect to existing or future access roads;
- (6) The need of the proposed use for a shoreland location;
- (7) Its compatibility with uses on adjacent land;
- (8) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems; and
- (9) Location factors under which:
 - (a) Domestic uses shall be generally preferred;
 - (b) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source; and
 - (c) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

10.33 Use Conditions: Upon consideration of the factors listed above, the County Zoning Committee shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance. Violations of any of these conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. To secure information upon which to base its determination, the County Zoning Committee may require the applicant to furnish the following information:

- (1) A plan of the area showing surface contours, soil types, ordinary high water marks, ground water conditions, subsurface geology and vegetative cover.

- (2) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
- (3) Plans of building, sewage disposal facilities, water supply systems and arrangement operations.
- (4) Specifications for areas of proposed filling, grading, lagooning or dredging.
- (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
- (6) Rationale for why the proposed conditional use meets all of the conditional use criteria listed in the ordinance.

10.34 Notice, Public Hearing and Decision: Before deciding upon an application for a conditional-use permit, the County Zoning Committee shall hold a public hearing. Notice of such public hearing, specifying time, place and matters to come before the Committee, shall be given a Class 2 notice under Ch. 985, Wis. Stats. Such notice shall be mailed to the appropriate office of the Department at least 10 days prior to the hearing. The Zoning Committee shall state in writing the grounds for granting or refusing a conditional-use permit.

10.35 Recording: When a conditional-use permit is approved, an appropriate record shall be made of the land use and structures permitted and such permit shall be applicable solely to the structures, use and property so described. A copy of any decisions on a conditional-use permit shall be mailed to the appropriate office of the Department within 10 days after it is granted or denied.

10.36 Revocation: Where the conditions of a conditional-use permit are violated, the conditional-use permit shall be revoked by the County Zoning Committee.

10.4 Variances

The Board of Adjustment may grant upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that literal enforcement of the provisions of the ordinance will:

- (1) Result in unnecessary hardship on the applicant,
- (2) Due to special conditions unique to the property, and
- (3) That such variance is not contrary to the public interest.

10.41 Notice, Hearing and Decision: Before passing on an application for a variance, the Board of Adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under Ch. 985, Wis. Stats. Such notice shall be mailed to the appropriate district office of the Department at least 10 days prior to the hearing. The Board shall state in writing the reasons for granting or refusing a variance and shall mail a copy of such decision to the appropriate Department office within 10 days of the decision.

10.5 Board of Adjustment

The Chairman of the County Board shall appoint a Board of Adjustment consisting of 5 voting and 2 alternate members under Section 59.694, Wis. Stats. The County Board shall adopt such rules for the conduct of the business of the Board of Adjustment as required by Section 59.694, Wis. Stats.

10.51 Powers and Duties

- (1) The Board of Adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by Section 59.694, Wis. Stats.
- (2) It shall hear and decide appeals where it is alleged there is error in any order, requirements, decisions or determination made by an administrative official in the enforcement or administration of this ordinance.
- (3) It may grant a variance from the dimensional standards of this ordinance pursuant to Section 10.4.
- (4) In granting a variance, the Board may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the Board may impose any reasonable permit conditions to affect the purpose of this ordinance.

10.52 Appeals to the Board: Appeals to the Board of Adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the Zoning Administrator or other administrative officer. Such appeal shall be made within 30 days, as provided by the rules of the Board, by filing with the officer whose decision is in question, and with the Board of Adjustment, a notice of appeal specifying the reasons for the appeal. The Zoning Administrator or other officer whose decision is in question shall promptly transmit to the Board all the papers constituting the record concerning the matter appealed.

10.53 Hearing Appeals and Applications for Variances

- (1) The Board of Adjustment shall fix a reasonable time for hearing on the appeal or application. The Board shall give public notice thereof by publishing a Class 2 notice under Ch. 985, Wis. Stats., specifying the date, time and place of the hearing and the matters to come before the Board. Notice shall be given to the appropriate office of the Department at least 10 days prior to hearings on proposed shoreland variances and appeals for map or text interpretations.
- (2) A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances and appeals for map or text interpretations shall be submitted to the appropriate office of the Department within 10 days after they are granted or denied.
- (3) The final disposition of an appeal or application to the Board of Adjustment shall be in the form of written resolution or order signed by the chairman and secretary of the Board. Such resolution shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.
- (4) At the public hearing, any party may appear in person or by agent or by attorney.

10.6 Fees

General: The County Board may, by resolution, adopt fees including, but not limited to, the following:

- (1) Land use permits;
- (2) Conditional-use permits;
- (3) Planned Residential Unit Development reviews;
- (4) Public hearings;
- (5) Legal notice publications; and
- (6) Variances and administrative appeals

SECTION XI CHANGES AND AMENDMENTS

The County may, from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this ordinance in accordance with the requirements of Section 59.69 and 59.692, Wis. Stats., and Wis. Adm. Code Ch NR 115, where applicable.

- 11.1 Amendments to this ordinance may be made on petition of any interested party as provided in Section 59.69(5), Wis. Stats.
- 11.2 Every petition for a text or map amendment filed with the County Clerk shall be referred to the County Zoning Committee. A copy of each petition shall be mailed to the appropriate district office of the Department within 5 days of the filing of the petition with the County Clerk. Written notice of the public hearing to be held on a proposed amendment shall be mailed to the appropriate office of the Department at least 10 days prior to the hearing.
- 11.3 A copy of the County Board's decision on each proposed amendment shall be forwarded to the appropriate office of the Department within 10 days after the decision is issued.

SECTION XII. ENFORCEMENT AND PENALTIES

Any development, any building or structure constructed, moved or structurally altered, or any use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator or the county zoning agency shall refer violations to the District Attorney or Corporation Counsel who shall expeditiously prosecute violations. Any person, firm, association, or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of not less than Fifty (\$50.00) dollars nor more than Two Hundred (\$200.00) dollars per offense, together with the taxable costs of action. Each day which the violation exists shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to Sections 59.69, 59.69(11) and 66.0113, Wis. Stats.

SECTION XIII. DEFINITIONS

- 13.1 For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- 13.2 The following terms used in this ordinance mean:

Access & Viewing Corridor

a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone (NR 115.03(1d))

Accessory Construction

construction, replacement, placement, or modification of, but not limited to, decks, porches (open or screened), and walkways

Accessory Structure or Use

a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use. Accessory structures include, but are not limited to: detached garages, barns, gazebos, patios, decks, swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

Boathouse

any permanent structure designed solely for the purpose of protecting or storing boats and related equipment for noncommercial purposes

Building Envelope

is the three-dimensional space within which a structure is built (NR 115.03(1p))

Conditional Use

a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Planning and Zoning Committee

County Zoning Agency

that committee or commission created or designated by the County Board under Section 59.69(2), Wis. Stats., to act in all matters pertaining to county planning and zoning

Department

the Wisconsin Department of Natural Resources

Development

any man-made change to improve real estate, including but not limited to the construction of buildings, structures or accessory structures; the construction or additions or substantial alterations to buildings, structures or accessory structures, the placement of mobile homes, ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition or extraction of earthen materials

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

Existing Development Pattern

when principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline (NR 115.03(3m))

Expansion

any structural modification, which increases the existing structure envelope or footprint

Exterior Improvement

upgrades in aesthetics, function, or worth of the outside surface(s) or components of a structure. Such improvements may include, but are not limited to: structural alteration for the expansion or addition of doors, windows, replacement of basement/foundation walls and footings

Facility

any property or equipment of a public utility, as defined in s. 196.01(5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light or power

Floodplain

the land which has been or may be hereafter covered by floodwater during a regional flood occurrence. The floodplain includes the floodway and flood fringe as those terms are defined in Wis. Adm. Code NR116.03(16)

Footprint

the land area covered by a structure at ground level measured on a horizontal plane. The footprint of a dwelling or building includes the horizontal plane bounded by the furthest exterior wall and eave (if present), projected to natural grade. For structures without walls (decks, stairways, patios, carports, etc) a single horizontal plane bounded by the furthest portion of the structure projected to natural grade. For the purposes of replacing or reconstructing a nonconforming building with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves or deck projected to natural grade. This would constitute lateral expansion under NR 115 and would need to follow NR 115.05(1)(g)5

Generally Accepted Forestry Management Practices

forestry management practices that promote sound management of a forest (NR 1.25(2)(b)) as outlined in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226

Impervious Surface (NR 115.03(4g))

an area that releases as runoff all or a majority of the precipitation that falls on it. Excludes (among other things): frozen soil and decks that have at least a ¼ inch space between deck boards with a pervious surface below.

Includes (among other things): rooftops, sidewalks, driveways, parking lots, shingles, concrete, asphalt and streets (unless specifically designed, constructed, and maintained to be pervious). Roadways as defined in s. 340.01(54) or sidewalks as defined in s. 340.01(58) are not considered impervious surfaces.

Interior Improvement

upgrades in aesthetics, function, or worth of the interior surface(s) or components of a structure. Such improvements may include, but are not limited to: replacement or the addition of interior doors, cabinets, drywall, insulation, or plumbing, heating, and electrical system components. No land use permit is required for these activities.

Legal Pre-Existing Structure

a dwelling or other building, structure or accessory building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance

Lot

a continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance

Lot Area

the area of a horizontal plane bounded by the front, side and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters

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 (NR 115.03(4r))

Navigable Waters

Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state (NR 115.03(5)). Under s. 281.31(2)(d), Wis Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis Stats, and ch. NR 115, Wis Adm Code, do not apply to lands adjacent to:

(a) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before

ditching; and

(b) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

Nonconforming Use

a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance

Ordinary High Water Mark

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 (NR 115.03(6))

Ordinary Maintenance and Repair

ordinary and routine actions necessary to continue or restore the safe and healthy use of a structure which has been damaged or has deteriorated through natural aging and wear and which does not result in a substantial structure improvement or a significant increase in value. Such actions may include, but are not limited to: painting and staining, and the repair of the following; exterior windows, skylights, doors, vents, siding, insulation, shutters, gutters, flooring, shingles, roofing materials, walls or the foundation, and internal improvements within the structural envelope without doing a structural alteration

Principal Building or Principal Structure

a structure that is designed for independent human habitation and includes sanitary and/or food preparation facilities whether such structure is attached to another structure(s) or stands alone

Regional Flood

a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years

Renovation and Remodeling

See "Ordinary Maintenance and Repair"

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 earth disturbance (NR 115.03(7m))

Shoreland Setback (Area)

an area in a shoreland that is within a certain distance of the ordinary high water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under section Wis Stats 59.692

Shoreland-Wetland District

the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made part of this ordinance

Shorelands

lands within the following distances from the ordinary high water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain whichever distance is greater

Structural Alteration

any activity not considered ordinary maintenance and repair that results in a change to the integral framework, or the exterior silhouette or footprint of a structure

Structure

a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway, patio, deck, retaining wall, porch or firepit (s.59.692(1)(e) Wis Stats)

Substandard Lot

a legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements for a new lot

Unnecessary Hardship

those circumstances where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance

Variance

an authorization granted by the Board of Adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional and use standards of this ordinance

Wetlands

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

SECTION XIV. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage and publication.

Dated this 18th day of August, 2016.

Amendments: September 20, 2018