

**BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT**

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In the matter of the appeal of

Maier Farms Real Estate, LLC

Regarding the property located at:

Tax Parcel No. 0909-212-8140-0 & 0909-212-8500-7  
Town of Vienna, Dane County, Wisconsin

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**DECLARATION OF CHRISTOPHER T. NELSON**

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I, Christopher T. Nelson, declare as follows:

1. I am an adult resident of and an attorney licensed to practice law in the state of Wisconsin. I represent Maier Farms Real Estate, LLC (“Maier”) in its appeal of the Zoning Administrator’s determination articulated in a letter dated March 20, 2024.

2. Attached to my declaration as Exhibit 1 is a true and accurate copy of the letter dated March 6, 2024, which Dane County Assistant Zoning Administrator Hans Hilbert sent to Maier, alleging that the installation of a replacement drainage system violated Chapter 11 of Dane County’s zoning ordinances.

3. Attached to my declaration as Exhibit 2 is a true and accurate copy of the letter dated March 20, 2024, which Mr. Hilbert sent to Maier, alleging that the installation of a replacement drainage system violated Chapter 11 of Dane County’s zoning ordinance and requiring that Maier rezone its property or remove the drainage system.

4. Attached to my declaration as Exhibit 3 is a true and accurate copy of the deed, dated December 27, 2023, demonstrating Maier owns Parcel Nos. 0909-212-8140-0 and 0909-

212-8500-7 (the “Property”). Exhibit 3 is recorded with the Dane County Register of Deeds as Doc. No. 5940396.

5. Attached to my declaration as Exhibit 4 is a true and accurate copy of the National Resources Conservation Service’s (“NRCS”) “Highly Erodible Land and Wetland Conservation Determination” for the Property, in which the NRCS determines the Property is classified as Prior-Converted Cropland and Non-Wetland.

6. Attached to my declaration as Exhibit 5 is a true and accurate copy of Chapter 11 of Dane County’s zoning ordinance.

7. Attached to my declaration as Exhibit 6 is a true and accurate copy of Code of Federal Regulations, Title 7, Part 12, Section 12.2.

8. Attached to my declaration as Exhibit 7 is a true and accurate copy of Wis. Stat. § 281.36.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Dated this 6<sup>th</sup> day of February, 2025.



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Christopher T. Nelson



# Dane County Planning & Development Zoning Division

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March 6, 2024

MAIER FARM REAL ESTATE LLC  
7085 SCHUMACHER RD  
WAUNAKEE WI 53597

JOE SKALITZKY  
SKALITZKY DRAINAGE, LLC  
W8593 MICHEL LN  
WATERLOO WI 53594

RE: Wetland Zoning Violations occurring near 7119 Schumacher Rd, Section 21, Town of Vienna  
Parcel # 0909-212-8500-7 & 0909-212-8140-0

The Zoning Division of the Dane County Planning and Development Department is bringing attention that you, or persons acting on your behalf, had conducted prohibited activities within mapped wetland on your property in the southwest quadrant of the intersection of County Highway V and Schumacher Road.

A site inspection/meeting was held on February 20, 2024. It was observed that tiling had been installed in a field containing a mapped wetland and wetland indicators and a pump had been installed below ground in a low spot area containing wetland indicators adjacent to the Schumacher Road right-of-way.

Under Dane County Code of Ordinance section 11.09, any use not listed in sections 11.07 and 11.08 is prohibited. In addition, for purposes of wetland zoning, lands containing wetland indicators must be further evaluated prior to development, including the installation of tiling and pumping equipment. The installation of a pump and draining of a wetland is not a permitted use listed in sections 11.07 and 11.08.

This letter serves as notice that your property is in violation of the ordinance for a prohibited use within an inland-wetland.

You are hereby instructed to remove and cease all prohibited land uses on your property, or rezone the wetland or portion of the wetland by amendment of the Dane County Code of Ordinances in accordance with section 11.10. All corrective action shall comply with a Wisconsin Department of Natural Resources approved restoration plan as requested in their Notice of Non-Compliance dated February 12, 2024. Any land disturbing activity within a wetland or within 75 feet of a wetland also requires a shoreland erosion control permit from Dane County Land and Water Resources.

When corrected, please contact the Zoning Department at (608) 266-4266 so that the corrections can be verified.

If steps towards compliance are not pursued, further enforcement actions will commence including citations and a summons and complaint filed in Dane County Circuit Court.

Your cooperation is appreciated in this matter.

Sincerely,

Hans Hilbert

Assistant Zoning Administrator

County of Dane  
608-266-4993  
[hilbert.hans@countyofdane.com](mailto:hilbert.hans@countyofdane.com)

CC:  
Allen Ramminger & Brian Cunningham, Wisconsin Department of Natural Resources  
Jeremy Balousek & Jess Starks, Dane County Land and Water Resources



## Dane County Planning & Development Zoning Division

March 20, 2024

MAIER FARM REAL ESTATE LLC  
7085 SCHUMACHER RD  
WAUNAKEE WI 53597

RE: Wetland Use Violation

Dear Mr. Maier,

This letter serves as a determination by Dane County Zoning that the installation of drain tile and pump within a delineated wetland on your property does not meet the criteria of a permitted wetland use under Dane County Code of Ordinances (DCCO) Section 11.07(2)(c) and is therefore prohibited under 11.09. The use described in 11.07(2)(c) allows the maintenance and repair of existing agricultural drainage systems such as existing ditches and drain tiling. Maintenance and repair within this context is also limited to ditching, tiling, dredging, excavating or filling and does not encompass the installation of a pump or other equipment or structures.

Your justification for the project as maintenance and repair centered on the property's designation as 'prior converted cropland' by the NRCS, implying the existence of a historical agricultural drainage system. However, your arguments raise concerns:

- The assumption of a pre-existing system solely based on the land's classification is insufficient.
- Lack of knowledge about the system due to past ownership does not excuse unauthorized wetland modification.
- No evidence of existing ditches or drain tile was presented.

While increased and more frequent rain events may have impacted historical drainage patterns, installing entirely new tiling and a pump goes beyond mere repair or maintenance of a pre-existing system as defined under 11.07(2)(c). Repair and maintenance are limited to activities that uphold the existing level of drainage for continued agricultural use, not the creation of new systems to maintain historical practices. As a result, your actions constitute a wetland zoning violation for a prohibited use in a wetland under DCCO 11.09.

Your options for compliance with Dane County wetland zoning regulations are:

1. Eliminate the prohibited wetland use by removing the drain tiling and pump from the wetland.
2. Effectively rezone the tiled land out of the wetland zoning district by following the procedure established in [DCCO 11.10](#).

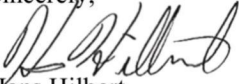
Removal of the drain tile and pump will require an erosion control permit from Dane County Land and Water Resources for any ground disturbing activity within or within 75 feet of the wetland. In addition, all corrective actions will need to be part of a restoration plan approved by the Wisconsin Department of Natural Resources as requested in their Notice of Non-Compliance dated February 12, 2024.

Please let me know if you need any assistance in developing a plan of action leading to compliance or would like more information on the requirements of rezoning land out of wetland.

If steps towards compliance are not pursued, further enforcement actions will commence including citations and a summons and complaint filed in Dane County Circuit Court.

*Any person aggrieved by any decision of the zoning administrator or other administrative officer, may appeal that decision to the Dane County Board of Adjustment by following the procedures in DCCO 10.101(9) within 30 days of the determination date.*

Sincerely,



Hans Hilbert  
Assistant Zoning Administrator  
County of Dane  
608-266-4993  
hilbert.hans@countyofdane.com



## Exhibit "A"

The Northeast 1/4 of the Northeast 1/4 of Section 20; and the Northwest 1/4 of the Northwest 1/4 of Section 21; and that part of the Northeast 1/4 of the Northwest 1/4 of Section 21 lying West of the centerline of Schumacher Road, all of said lands being in Township 9 North, Range 9 East, in the Town of Vienna, Dane County, Wisconsin.

Parcel No. 064/0909-201-8000-5

Parcel No. 064/0909-212-8500-7

Parcel No. 064/0909-212-8140-0





United States Department of Agriculture

Natural Resources Conservation Service

NRCS-CPA-026e  
8/2013

**HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION**

Name	Owner: Koch Family Farm LLC Operator: James Koch 7260 Madigan Rd Deforest, WI 53532	Request Date: 6/27/2019	County: Dane
Agency or Person Requesting Determination:	FSA	Tract No: 12854	FSA Farm No.: 19554

**Section I - Highly Erodible Land**

Is a soil survey now available for making a highly erodible land determination?	
Are there highly erodible soil map units on this farm?	

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

Field(s)	HEL(Y/N)	Sodbust (Y/N)	Acres	Determination Date
1-4	No	No	163.2	7/24/2019

The Highly Erodible Land determination was completed in the office.

**Section II - Wetlands**

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

Field(s)	Wetland Label*	Occurrence Year (CW)	Acres	Determination Date	Certification Date
1, 2, 4, 15	PC/NW		84.5	7/24/2019	8/26/2019

The wetland determination was completed in the office. It was mailed to the person on 7/24/2019

Remarks: This is a partial tract certified wetland determination on FSN 19554, T12854. Wetland determination completed per request. Fields 1-4 are non-highly erodible (NHEL). If you plan on ditching, tiling, or any other manipulation you must fill out another request with the Farm Service Agency.

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature Designated Conservationist	Date
	7/24/19

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.



July 24, 2019

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Owner: Koch Family Farm LLC  
Operator: James Koch  
7260 Madigan Rd  
Deforest, WI 53532

Dear James:

The Natural Resources Conservation Service (NRCS) is issuing a **preliminary certified wetland determination** and **highly erodible land determination** on property you own or operate, further described as Farm 19554, Tract 12854, located in Sections 20, & 21, T9N, R9E in Dane County Wisconsin. This is in response to questions you answered via form **AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification**, initiated with the Farm Service Agency.

**WETLAND DETERMINATION**

This **preliminary technical determination** was conducted by the NRCS on 7/24/2019. Please refer to the attached NRCS-CPA-026e Form, Definitions of Wetland Labels page, and the Certified Wetland determination Map for more details regarding location, wetland designations, or exemptions, allowable uses and authorized maintenance pertaining to each area that is determined to be a wetland.

**This Certified Wetland Determination/Delineation has been conducted for the purpose of implementing the WC provisions of the Food Security Act of 1985, as amended only. This determination/delineation may not be valid for identifying the extent of the U.S. Army Corps of Engineer (USACE) Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the USACE prior to starting the work. Manipulation of any wetland, stream channel, shoreland, or floodplain area may require USACE, WI Department of Natural Resources and/or county zoning permits.**

If an area is identified as a Wetland, it is for the following reasons:

Presence of Hydrophytic Vegetation:

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content (16 U.S.C.§3801(a)(12)).

Presence of Hydric Soils:

Hydric soil means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation (16 U.S.C.§3801(a)(13)).

Presence of Wetland Hydrology:

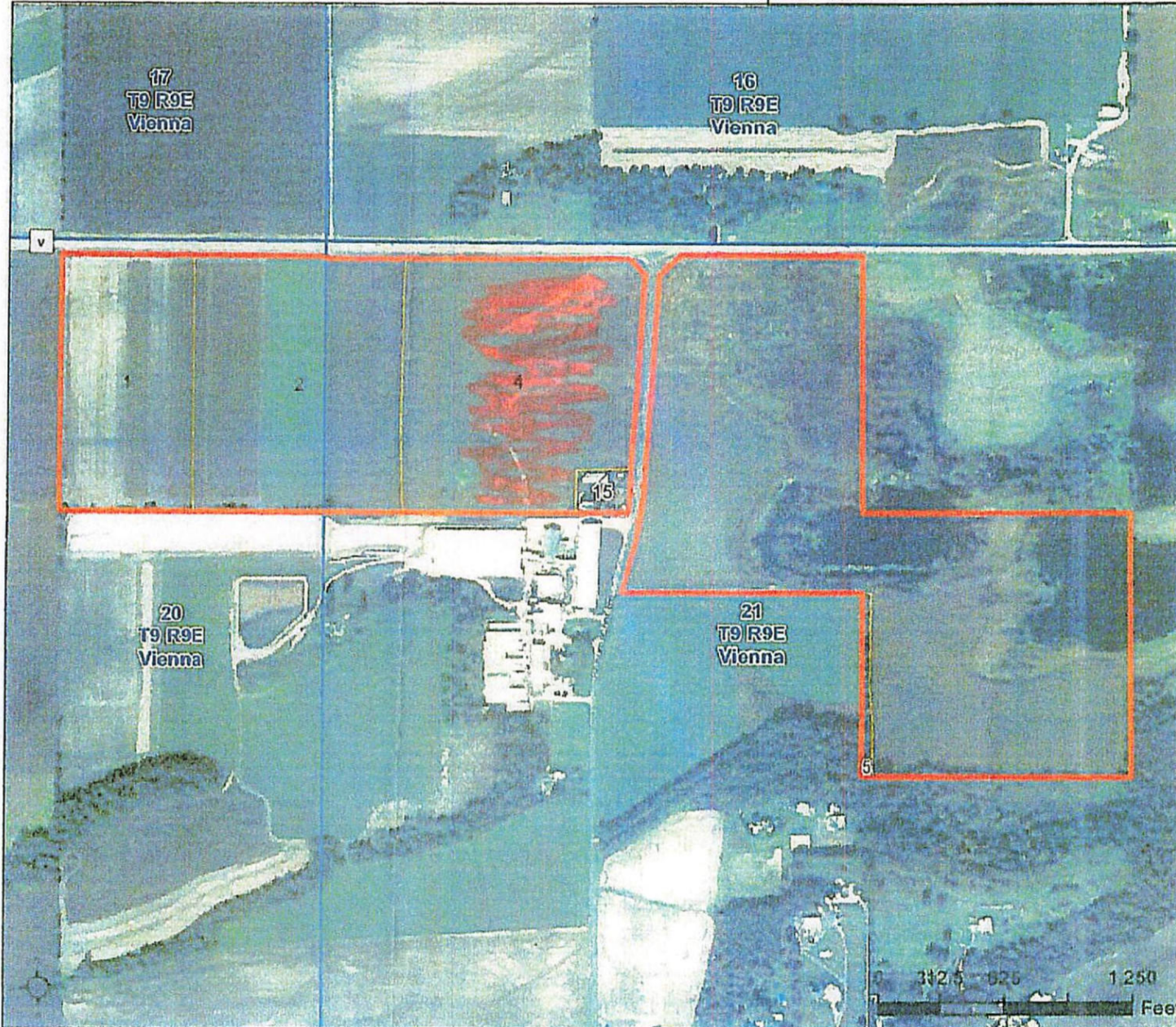


United States  
Department of  
Agriculture

Dane County, Wisconsin

Entire Tract: IR / NI GR / FG unless otherwise labeled  
Name/Shares: \_\_\_\_\_

**Farm 19554**  
**Tract 12854**  
2019 Program Year



CLU	Acres	HEL	Crop
1	19.66	UHEL	
2	31.01	UHEL	
3	80.09	UHEL	
4	32.5	UHEL	
5	0.97	UHEL	NC
15	1.34	UHEL	NC

Page Cropland Total: 163.26 acre

Map Created May 22, 2019

- Common Land Unit**
- Cropland
  - Non-Cropland
  - Tract Boundary
  - PLSS
- NAIP Imagery 2018
- Wetland Determination Identifiers**
- Restricted Use
  - ▼ Limited Restrictions
  - Exempt from Conservation
  - Compliance Provisions

USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the NAIP imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact NRCS.



United States  
Department of  
Agriculture

# Certified Determination Map

Farm: 19554

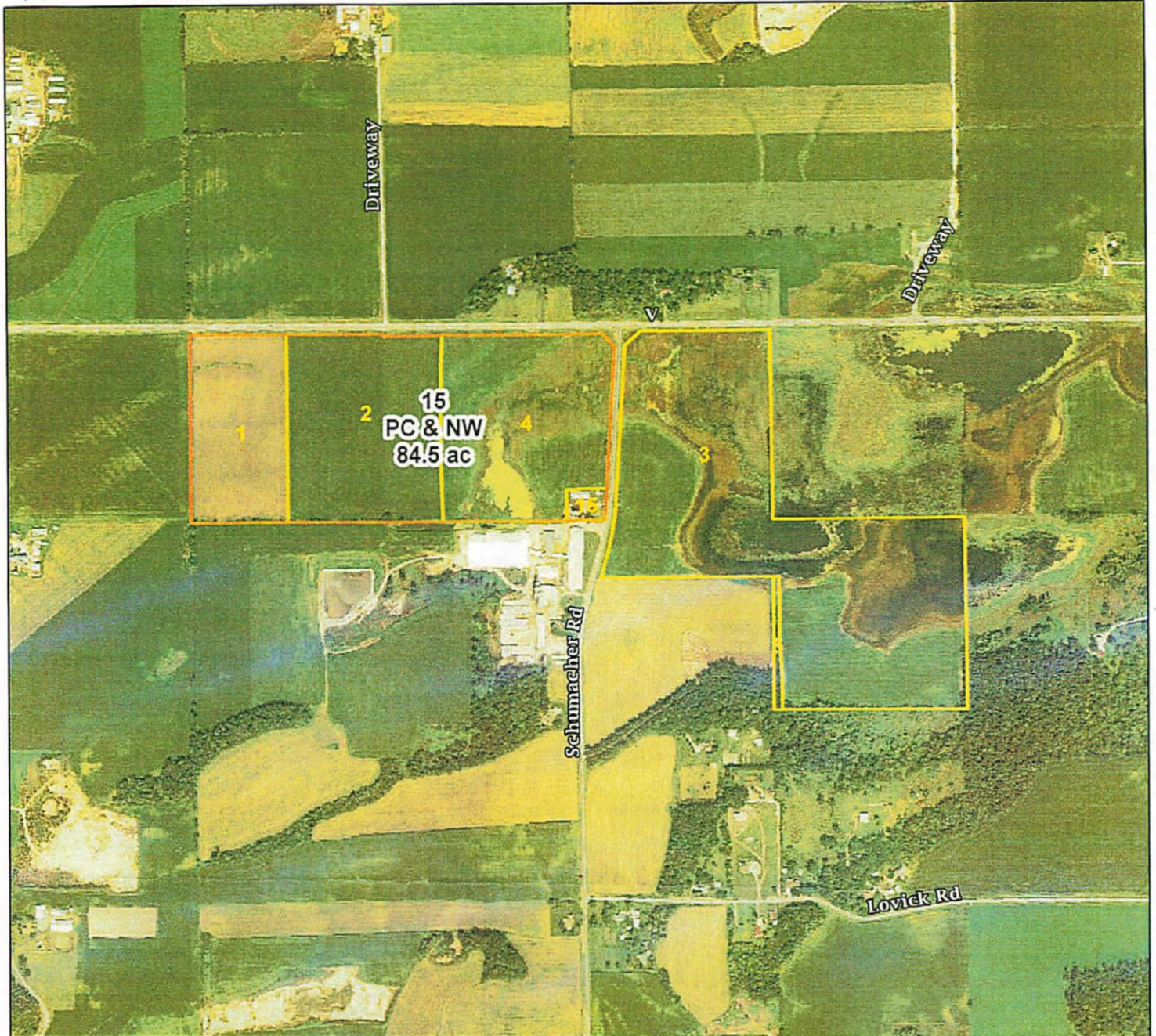
Tract: 12854

Owner: Koch Family Farm LLC

Geographic County: Dane, WI

Operator: James Koch T9N R9E S20,21

FSA Admin County: Dane, WI

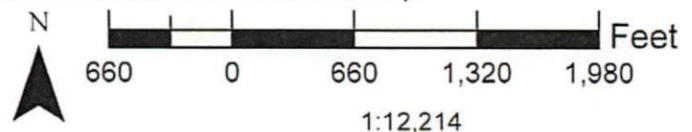


Base Map Image: 2017 NAIP  
Map Prepared By: Carol Miller  
Map Production Date: 7/22/2019

- Preliminary Technical Determination
- Tracts and Fields

This map is the official Determination Map for the current request. It is the responsibility of all program participants to not convert obvious wetlands regardless of map interpretation. Only newly completed request areas are shown on this map with a Food Security Act label.

Note: Acres shown on this map may not match official FSA CLU acres due to differences in rounding or the scale at which the work was completed. Previously certified areas retain their labels and status but are not shown on this map.





United States  
Department of  
Agriculture

# All WC Determinations Map

Farm: 19554

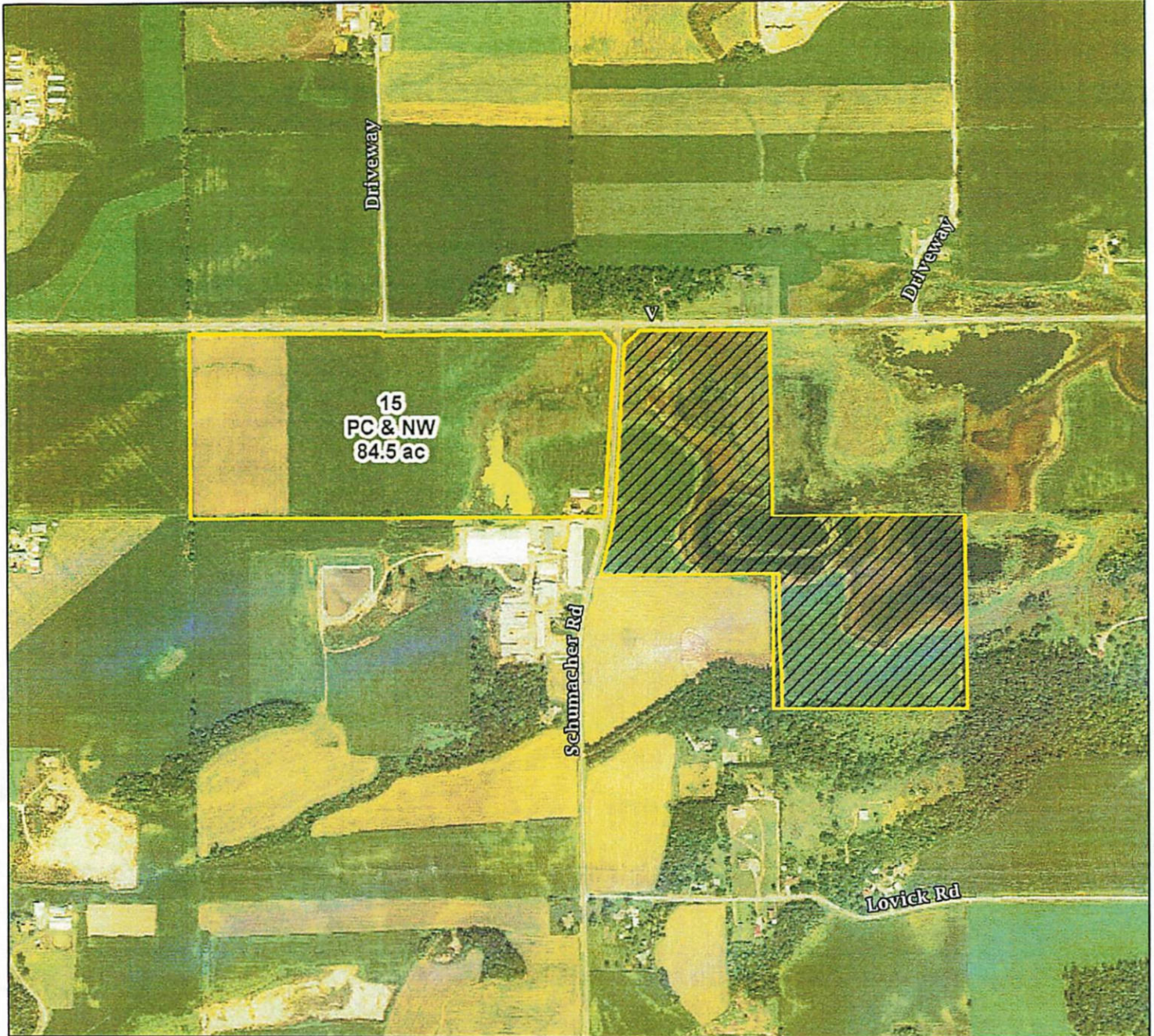
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Operator: James Koch T9N R9E S20,21

FSA Admin County: Dane, WI

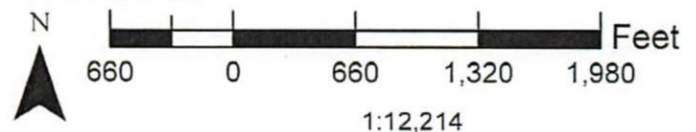


Base Map Image: 2017 NAIP  
Map Prepared By: Carol Miller  
Map Production Date: 7/22/2019

This map shows all completed WC determinations for the site. It is the responsibility of all program participants to not convert obvious wetlands regardless of map interpretation. Newly completed and previously certified areas are shown on this map. Other areas are marked as, "Not Evaluated."

-  Technical Determination Extents
-  Not Evaluated

Note: Acres shown on this map may not match official FSA CLU acres due to differences in rounding or the scale at which the work was completed. Previously certified areas retain their labels and certified status.



## \*DEFINITIONS OF WETLAND LABELS

AW	<u>Artificial Wetland</u> : An area that was formerly a non-wetland area under natural conditions but now exhibits wetland characteristics because of the influence of human activities. These areas are exempt from the Food Security Act of 1985, as amended. This label includes irrigation induced wetlands.
CC	<u>Commenced Conversion</u> : A wetland, farmed wetland, farmed wetland pasture, or converted wetland on which the conversion began but was not completed before December 23, 1985, was approved by FSA to continue, and the conversion was completed by January 1, 1995.
CPD	<u>COE Permit with Mitigation</u> : A converted wetland authorized by a permit issued under Section 404 of the Clean Water Act. Production of agricultural commodities is allowed subject to conditions of the permit.
CMW	<u>Categorical Minimal Effect</u> : A wetland that meets specific categories of conversion activities that have been determined by NRCS to have minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
CW	<u>Converted Wetland</u> : A wetland converted between December 23, 1985, and November 28, 1990. Production of an agricultural commodity or additional manipulation of these areas will yield USDA benefit ineligibility. Also, these areas are wetlands converted after December 23, 1985, by a county, drainage district, or similar entity. For these instances, production of an agricultural commodity or forage for mechanical harvest or additional manipulation will cause ineligibility for USDA program benefits.
CW+year	<u>Converted Wetland + (year the conversion occurred)</u> : A wetland converted after November 28, 1990, where the USDA program participant is ineligible for benefits until the wetland is restored or mitigated unless an exemption applies.
CWNA	<u>Converted Wetland Non-Agricultural Use</u> : A wetland converted after November 28, 1990, to a use other than agricultural commodity production. Label not used for certified wetland determinations completed after 2/2008.
CWTE	<u>Converted Wetland Technical Error</u> : A wetland converted or commenced after December 23, 1985, based on an incorrect NRCS determination. This label does not apply to obvious wetlands as defined in the National Food Security Act Manual.
FW	<u>Farmed Wetland</u> : A wetland that was manipulated and planted before December 23, 1985, but still meets inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
FWP	<u>Farmed Wetland Pasture or Hayland</u> : A wetland that is used for pasture or haying, was manipulated and planted before December 23, 1985, but still meets the inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
MIW	<u>Mitigation Exemption</u> : A converted wetland, farmed wetland or farmed wetland pasture of which the acreage, functions and values lost have been compensated for through an NRCS-approved mitigation plan.
MW	<u>Minimal Effect Exemption</u> : A converted wetland that is exempt from the wetland conservation provisions of the Food Security Act of 1985, as amended, based on an NRCS determination that the conversion has or will have a minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
MWM	<u>Mitigation Site</u> : The site of wetland restoration, enhancement, or creation serving as mitigation for the mitigation exemption (MIW) site.
NI	<u>Not Inventoried</u> : An area where no wetland determination has been conducted. Label not used for certified wetland determinations completed after 2/2008.
NW	<u>Non-Wetland</u> : An area that does not contain a wetland. Also includes wetlands converted before December 23, 1985, but a commodity crop was not produced and the area does not meet wetland criteria (not been abandoned).
PC	<u>Prior-Converted Cropland</u> : A wetland converted to cropland before December 23, 1985, and as of December 23, 1985, was capable of being cropped and did not meet farmed wetland hydrology criteria. These areas are not subject to the wetland conservation provisions of the Food Security Act of 1985, as amended, unless further drainage manipulation affects adjacent wetlands.
PC/NW	<u>Prior Converted Cropland/Non-Wetland</u> : An area that contains both PC and NW.
TP	<u>Third-Party Exemption</u> : A wetland converted after December 23, 1985, by a third party who is not associated with the participant, and the conversion is not a result of a scheme or device. A third party does not include predecessors in interest on the tract, drainage districts, or other local government entities.
W	<u>Wetland</u> : An area meeting wetland criteria that was not converted after December 23, 1985. These areas include farmed wetlands and farmed wetland pasture that have been abandoned.
WX	<u>Manipulated Wetlands</u> : A wetland manipulated after December 23, 1985, but the manipulation was not for the purpose of making production possible and production was not made possible. These areas include wetlands manipulated by drainage maintenance agreements.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

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

- 11.01 Statutory Authorization.
- 11.015 Definitions.
- 11.016 Purpose and Intent.
- 11.02 Shoreland District.
- 11.03 Shoreland Regulations.
- 11.04 Vegetative Buffer Zone.
- 11.05 Shoreland Erosion Control and Shoreland Mitigation Permits.
- 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 Shoreland Zoning Permit.
- 11.09 Prohibited Uses in the Shoreland-Wetland and Inland-Wetland Districts.
- 11.10 Rezoning of Lands In The Shoreland-Wetland and Inland-Wetland Districts.
- 11.11 Existing Structures and Uses.
- 11.12 Shoreland Mitigation Performance Standards.
- 11.13 Technical Standards and Specifications.  
[11.14 - 11.49 reserved.]
- 11.50 Permit Fees.  
[11.51 - 11.98 reserved.]
- 11.99 Administration, Enforcement, and Penalties.

**11.01 STATUTORY AUTHORIZATION.**

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

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

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

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

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

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

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

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

**(a)** The rear lot line;

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

**(c)** The front lot line.

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

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

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

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

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

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

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

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

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

paving, excavation or drilling operations, deposition of materials.

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

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

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

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

**(17) Impervious surface.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

**(29) Navigable waters.**

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

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

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

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

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

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

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

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

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

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

**(37) Shoreland.**

**(a)** All lands within:

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

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

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

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

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

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

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

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

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

**(44) Unnecessary hardship.** That circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing

area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

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

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

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

#### **11.016 PURPOSE AND INTENT.**

**(1) Legislative finding.** The county board finds that the uncontrolled use of the shorelands and pollution of the navigable waters of Dane County adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and, preserve shore cover and natural beauty, and this responsibility is hereby recognized by Dane County.

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

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

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

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

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

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

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

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

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

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

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

#### **11.02 SHORELAND DISTRICT.**

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

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

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

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

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

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

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

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

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

### 11.03 SHORELAND REGULATIONS.

**(1) Building lots:**

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

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

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

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

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

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

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

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

structures placed partly upon an adjacent lot or parcel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a.** The boathouse does not exceed a width of 16 feet, as measured parallel to the ordinary highwater mark;
  - b.** The footprint of the boathouse does not exceed 450 square feet;
  - c.** The height of the structure does not exceed 12 feet, as measured from the ordinary highwater mark;
  - d.** The existing slope of the proposed boathouse site does not exceed 20%;
  - e.** The boathouse has no plumbing or cooking facilities;
  - f.** The boathouse has no more than two windows or skylights, with rough openings for each not to exceed 4 square feet in area;
  - g.** All portions of the boathouse are above the ordinary highwater mark, and;
  - h.** The boathouse complies with all side-yard, rear-yard and other setbacks for residential accessory structures under Chapter 10, Dane County Code, and with all floodplain requirements of Chapter 17, Dane County Code.
- 2. *Reduced setback.*** Where an existing development pattern exists, proposed principal buildings may have a reduced setback as follows:
- a.** Where there is a principal building on each side of the proposed site, the setback for the proposed building shall be the average of the setbacks of the existing buildings.
  - b.** If there is an existing principal building on only one side, the setback for the proposed building shall be the average of the required setback under s. 11.03(2)(a) and the existing building's setback.
  - c.** Notwithstanding a. and b. above, under no circumstances shall any building or structure intrude on the vegetative buffer zone described in s. 11.04.
- 3. *Marina fuel tanks.*** Replacement of an existing marina fuel system tank, provided all of the following conditions are met:
- a.** Due to physical limitations of the property, it is not possible to construct a replacement marina fuel system tank at a compliant setback from an ordinary high-water mark;
  - b.** Fuel tanks and fuel lines are of at least double-wall construction;
  - c.** Monitoring devices are installed and maintained to detect any leaks from fuel system tanks and lines. Leak monitoring method shall be state approved electronic interstitial devices installed and maintained to detect any leaks from fuel system tanks and lines;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 11.04 VEGETATIVE BUFFER ZONE.

### (1) Purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(b)** Removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard.

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

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

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

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

## **11.05 SHORELAND EROSION CONTROL AND SHORELAND MITIGATION PERMITS.**

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

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

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

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

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

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

**(2) Shoreland erosion control exceptions and waivers:**

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

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

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

1. There are no adverse stormwater or erosion impacts to adjacent properties.
2. Soil will be disturbed for less than 30 days.
3. Soil on slopes steeper than 6% will be disturbed for less than 15 days.
4. There is no soil disturbance within 15 feet of the ordinary high water mark.
5. Total area of soil disturbance will not exceed 1,000 square feet.
6. New impervious surfaces will not exceed 500 square feet.
7. There is minimal risk for erosion and 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)** *Shoreland erosion control permit required.* Except as provided in section 11.05(2)(a), a shoreland erosion control permit is required for any of the following:

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

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

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

1. Includes 4,000 square feet or more of disturbed area;
2. Involves the excavation or filling, or a combination of both, in excess of 400 cubic yards of material;
3. Disturbs more than 100 lineal feet of road ditch, grassed waterway or other land area where surface drainage flows in a defined open channel, including the placement, repair or removal of any underground pipe, utility or other facility within the cross-section of the channel;
4. Involves the creation of any new public or private roads or access drives longer than 125 feet;
5. Development that requires a subdivision plat, as defined in chapter 75;
6. Land disturbing activity that disturbs less than 4,000 square feet of land, including the installation of access drives, that the director determines to have a high risk of soil erosion or water pollution, or that may significantly impact a lake, stream or wetland area. Examples of activities with a high risk of soil erosion or water pollution may include, but are not limited to, land disturbance on erodible soil or disturbance adjacent to lakes, rivers, streams or wetlands. All such determinations made by the director shall be in writing, unless waived by the applicant;
7. Constructing, dredging or commencing work on any artificial waterway, canal, ditch, lagoon, pond, lake or similar artificial waterway which is within 300 feet of the ordinary high-

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

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

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

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

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

1. A completed application form;
  - a. The application must be signed by the landowner or include a notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent for purposes of this ordinance.
  - b. If a landowner appoints an agent to submit an application pursuant to sub. (4)(b)1.a., the landowner shall be bound by all of the requirements of this ordinance and the terms of any permit issued to the agent.
2. Fees as required by s. 11.50;
3. A complete site plan and specifications, signed by the person who designed the plan. All plans shall be drawn to an easily legible scale, shall be clearly labeled, and shall include, at a minimum, all of the following information:
  - a. Property lines and lot dimensions;
  - b. All buildings and outdoor uses, existing and proposed, including all dimensions and setbacks;
  - c. All public and private roads, interior roads, driveways and parking lots. Show traffic patterns and type of paving and surfacing material;
  - d. All natural and artificial water features including, but not limited to lakes, ponds, streams (including intermittent streams), and ditches. Show ordinary highwater marks of all navigable waters, 100-year flood elevations and delineated wetland boundaries, if any. If not available, appropriate flood zone determination or wetland delineation, or both, may be required at the applicant's expense;
  - e. Depth to bedrock;
  - f. Depth to seasonal high water table;
  - g. The extent and location of all soil types as described in the Dane County Soil Survey, slopes exceeding 12%, and areas, of existing and proposed natural vegetation;

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

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

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

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

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

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

**a.** pre-existing peak flow rates,

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

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

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

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

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

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

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



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

**(d) Approval process.**

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

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

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

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

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

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

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

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

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

notice advising the applicant and landowner of this requirement.

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

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

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

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

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

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

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

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

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

**13. Disturbance near property lines.**

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

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

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

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

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

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

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

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

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

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

**(e)** *Timeframe and Expiration:*

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

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

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

**b.** three years from the date of application.

**3.** Erosion control permits shall expire:

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

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

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

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

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

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

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

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

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

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

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

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

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

### **11.07 PERMITTED USES IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS.**

The following uses shall be allowed, subject to general shoreland and inland zoning regulations in sections 11.01 through 11.05 of this ordinance, the provisions of chapters 30, 31 and 33 of the Wisconsin Statutes, and the provisions of other state and federal laws, if applicable:

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

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

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

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

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

**(d)** The pasturing of livestock;

**(e)** The cultivation of agricultural crops; and

**(f)** The construction and maintenance of duck blinds.

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

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

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

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

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

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

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

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

### **11.08 USES WHICH ARE ALLOWED IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS SUBJECT TO THE ISSUANCE OF A SHORELAND ZONING PERMIT.**

**(1)** The construction and maintenance of roads which are necessary to conduct silvicultural activities or are necessary for agricultural cultivation, provided that:

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

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

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

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

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

(2) The construction and maintenance of nonresidential buildings used solely in conjunction with raising of waterfowl, minnows or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation, if such building cannot as a practical matter be located outside the wetlands, provided that:

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

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

(3) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that:

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

(b) No filling is to be done; and

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

(4) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, provided that:

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

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

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

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

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

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

**11.09 PROHIBITED USES IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS.**

Any use not listed in sections 11.07 and 11.08 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 11.10 of this ordinance.

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

**11.10 REZONING OF LANDS IN THE SHORELAND-WETLAND AND INLAND-WETLAND DISTRICTS.**

(1) Rezoning of a wetland or portion of a wetland shall be by an amendment to this ordinance and the related wetland maps in accordance with the requirements of section 59.69(5)(e), Wisconsin Statutes, chapter NR 115, Wisconsin Administrative Code and sub. (2) below.

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

(a) Storm and flood water storage capacity;

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

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

(d) Shoreline protection against soil erosion;

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

(f) Wildlife habitat; or

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

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

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

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

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

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

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

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

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

#### 11.11 EXISTING STRUCTURES AND USES.

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

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

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

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

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

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

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

1. maintain and repair of all impervious surfaces;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 11.12 SHORELAND MITIGATION PERFORMANCE STANDARDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Designed to meet all purposes and dimensional requirements of section 11.04 within 3 years;

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

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

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

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

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

1. Restoration must be in the vegetative buffer zone of the same waterbody as the project site.

2. Designed to meet all purposes of section 11.04 within 3 years.

3. Includes an area for permanent restoration equal to, or greater than, twice the following formula.

a. The lot width of the project site, multiplied by

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

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

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

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

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

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

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

#### **11.13 TECHNICAL STANDARDS AND SPECIFICATIONS.**

The design of all best management practices designed to meet the requirements of this chapter shall comply with the following technical standards:

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

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

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

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

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

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

[11.14 - 11.49 reserved.]

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

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

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

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

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

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

(a) For applications submitted under s. 11.05(2)(b) the fee shall be \$150.

(b) For applications submitted under s. 11.05(2)(c) the fee shall be \$250, plus \$.007 per square foot of disturbed area.

(c) For all other shoreland erosion control permits, the fee shall be \$500, plus \$.007 per square foot of disturbed area.

**(6) Shoreland Mitigation Permits.**

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

(b) For all other shoreland mitigations permits, the fee shall be \$500 (five hundred dollars), plus:

1. on sites where shoreland stormwater management is required under s. 11.12(1), an additional \$.016 per square foot of new or redeveloped impervious area.

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

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

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

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

**[History:** cr., OA 39, 2008-09, pub. 06/08/09; (5) am., OA 2, 2010-11, pub. 06/25/10; 11.50 am., OA 4, 2012-13, pub. 07/23/12; (2) and (6) am., OA 41, 2012-13, pub. 03/19/13; (8) am. and (9) cr., OA 5, 2013-14, pub. 07/02/13; (5)(b) and (c) am., 2016 OA-46, pub. 11/25/16; (5) and (6) am., 2022 OA-38, pub. 11/21/22.]

*[11.51 - 11.98 reserved.]*

**11.99 ENFORCEMENT AND PENALTIES.**

**(1) Zoning Administrator.**

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

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

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

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

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

b. Replacement of any structures removed or destroyed;

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

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

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

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

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

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

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

(2) Board of adjustment.

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

(b) *Appeals.*

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

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



**(3) Director of Land and Water Resources.**

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

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

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

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

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

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

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

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

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

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

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

**(4) Land Conservation Committee.**

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

**(5) Penalties.**

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

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

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

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

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

**END OF CHAPTER**

Code of Federal Regulations  
Title 7. Agriculture  
Subtitle A. Office of the Secretary of Agriculture  
Part 12. Highly Erodible Land Conservation and Wetland Conservation (Refs & Annos)  
Subpart A. General Provisions

## 7 C.F.R. § 12.2

## § 12.2 Definitions.

Effective: August 28, 2020

Currentness

(a) General. The following definitions shall be applicable for the purposes of this part:

**Agricultural commodity** means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

**Approved insurance provider** means a private insurance company that has been approved and reinsured by FCIC to provide insurance coverage to persons participating in programs authorized by the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524).

**Best drained condition** means the hydrologic conditions with respect to depth, duration, frequency, and timing of soil saturation or inundation resulting from drainage manipulations that occurred prior to December 23, 1985, and that exist during the wet portion of the growing season during normal climatic conditions.

**CCC** means the Commodity Credit Corporation, a wholly-owned government corporation within USDA organized under the provisions of 15 U.S.C. 714 et seq.

**Conservation District (CD)** means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

**Conservation plan** means the document that—

- (1) Applies to highly erodible cropland;
- (2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and
- (3) Is approved by the local soil conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Natural Resources Conservation Service (NRCS) for purposes of compliance with this part.

**Conservation system** means a combination of one or more conservation measures or management practices that are—

- (1) Based on local resource conditions, available conservation technology, and the standards and guidelines contained in the NRCS field office technical guides (available from NRCS State offices); and

(2) Designed for purposes of this part to achieve, in a cost-effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil conditions that existed before the application of the conservation measures and management practices.

Conservation use or set aside means cropland that is designated as conservation-use acreage, set aside, or other similar designation for the purpose of fulfilling provisions under any acreage-limitation or land-diversion program administered by the Secretary of Agriculture requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

Creation of a wetland means the development of the hydrologic, geochemical, and biological components necessary to support and maintain a wetland where a wetland did not previously exist. Any wetland established on a non-hydric soil will be considered a created wetland.

Department means the United States Department of Agriculture (USDA).

Enhancement of a wetland means the alteration of an existing wetland to increase its specific functions and values. Enhancement actions include new capabilities, management options, structures, or other actions to influence one or several functions and values.

Erodibility index means a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management.

FCIC means the Federal Crop Insurance Corporation, a wholly owned corporation within USDA whose programs are administered by RMA.

FSA means the Farm Service Agency, an agency of USDA which is generally responsible for administering commodity production adjustment and certain conservation programs of USDA.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, or other similar features. At the option of the owner or operator of the farm, croplines may also be used to delineate a field if farming practices make it probable that the croplines are not subject to change. Any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and is not exempt under § 12.5(a), shall be considered part of the field in which the land was included on December 23, 1985, unless, to carry out this title, the owner and FSA agree to modify the boundaries of the field.

Highly erodible land means land that has an erodibility index of 8 or more.

Hydric soils means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Landlord means a person who rents or leases farmland to another person.

Local FSA office means the county office of the Farm Service Agency serving the county or a combination of counties in the area in which a person's land is located for administrative purposes.

NIFA means the National Institute of Food and Agriculture, an agency of USDA which is generally responsible for coordinating the information and educational programs of USDA.

Normal climatic conditions means the normal range of hydrologic inputs on a site as determined by the bounds provided in the Climate Analysis for Wetlands Tables or methods posted in the Field Office Technical Guide.

NRCS means the Natural Resources Conservation Service, an agency within USDA which is generally responsible for providing technical assistance in matters of natural resources conservation and for administering certain conservation programs of USDA.

Operator means the person who is in general control of the farming operations on the farm during the crop year.

Owner means a person who is determined to have legal ownership of farmland and shall include a person who is purchasing farmland under contract.

Person means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof, and such person's affiliates as provided in § 12.8 of this part.

Playa means a usually dry and nearly level lake plain that occupies the lowest parts of closed depressions (basins). Temporary inundation occurs primarily in response to precipitation-runoff events. Playas may or may not be characterized by high water table and saline conditions. They occur primarily in the Southern Great Plains.

Pocosin means a wet area on nearly level interstream divides in the Atlantic Coastal Plain. Soils are generally organic but may include some areas of high organic mineral soils.

Pothole means a closed depression, generally circular, elliptical, or linear in shape, occurring in glacial outwash plains, moraines, till plains, and glacial lake plains.

Reinsurance year means a 1-year period beginning July 1 and ending on June 30 of the following year, identified by reference to the year containing June.

Restoration of a wetland means the re-establishment of wetland conditions, including hydrologic condition or native hydrophytic vegetation, to an area where a wetland had previously existed.

RMA means the Risk Management Agency, an agency within USDA that administers the programs of the FCIC through which Federally reinsured crop insurance is provided to American farmers and ranchers.

Secretary means the Secretary of USDA.

Sharecropper means a person who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for such labor.

Soil map unit means an area of the landscape shown on a soil map which consists of one or more soils.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Tenant means a person usually called a “cash tenant”, “fixed-rent tenant”, or “standing rent tenant” who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or a person (other than a sharecropper) usually called a “share tenant” who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator unless the tenant is determined to be the operator pursuant to this part and 7 CFR part 718.

Wetland, except when such term is a part of the term “converted wetland”, means land that—

- (1) Has predominance of hydric soils;
- (2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) Under normal circumstances does support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

Wetland delineation means outlining the boundaries of a wetland determination on aerial photography, digital imagery, other graphic representation of the area, or on the land.

Wetland determination means a decision regarding whether or not an area is a wetland, including identification of wetland type and size. A wetland determination may include identification of an area as one of the following types of wetland—

(1) Artificial wetland is an area that was formerly non-wetland, but now meets wetland criteria due to human activities, such as:

- (i) An artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water that is used primarily for livestock, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, or rice production, or as a settling pond; or
- (ii) A wetland that is temporarily or incidentally created as a result of adjacent development activity;

(2) Commenced-conversion wetland is a wetland, farmed wetland, farmed-wetland pasture, or a converted wetland on which conversion began, but was not completed, prior to December 23, 1985.

(3) Converted wetland is a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity without further application of the manipulations described herein if:

- (i) Such production would not have been possible but for such action, and
- (ii) Before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland;

(4) Farmed wetland is a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, did not support woody vegetation, and met the following hydrologic criteria:

(i) If not a playa, pocosin, or pothole, experienced inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more), which requisite inundation is determined through:

(A) Observation of wetland hydrology indicators as identified in the local NRCS Field Office Technical Guide;

(B) Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or

(C) The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.

(ii) If a playa, pocosin, or pothole experienced ponding for 7 or more consecutive days during the growing season in most years (50-percent chance or more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through Step 1 of the wetland determination process in § 12.30(c)(7) and application of the procedures described in § 12.31(c) will be determined to meet the requisite criteria.

(5) Farmed-wetland pasture is a wetland that prior to December 23, 1985, was manipulated and managed for pasture or hayland, was not used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, experienced inundation or ponding for 7 or more consecutive days during the growing season in most years (50-percent chance or more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through step 1 of the wetland determination process in § 12.30(c)(7) and application of the procedures described in § 12.31(c) will be determined to meet the requisite criteria.

(6) Not-inventoried land, is an area for which no evaluation of soils, vegetation, or hydrology has been conducted to determine if wetland criteria are met;

(7) Non-wetland is;

(i) Land that under natural conditions does not meet wetland criteria, or

(ii) Is converted wetland the conversion of which occurred prior to December 23, 1985, and on that date, the land did not meet wetland criteria but an agricultural commodity was not produced and the area was not managed for pasture or hay;

(8) Prior-converted cropland is a converted wetland where the conversion occurred prior to December 23, 1985, an agricultural commodity had been produced at least once before December 23, 1985, and as of December 23, 1985, the converted wetland did not support woody vegetation and did not meet the hydrologic criteria for farmed wetland.

(9) Wetland, as defined above in this section.

Wetland hydrology means inundation or saturation by surface or groundwater during a growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.

(b) Terms for FSA operations. In the regulations in this part, and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to FSA operations shall, unless required by the subject matter or the specific provisions of this part, have the meanings assigned to them in the regulations at part 718 of this title that govern reconstitutions of farms, allotments, and bases and any subsequent amendment thereto.

**Credits**

[61 FR 53491, Oct. 11, 1996; 76 FR 4803, Jan. 27, 2011; 80 FR 22879, April 24, 2015; 83 FR 63050, Dec. 7, 2018; 85 FR 53151, Aug. 28, 2020]

SOURCE: 61 FR 47025, Sept. 6, 1996; 76 FR 82076, Dec. 30, 2011; 80 FR 22879, April 24, 2015, unless otherwise noted.

AUTHORITY: 16 U.S.C. 3801, 3811–12, 3812a, 3813–3814, and 3821–3824.

**Notes of Decisions (18)**

Current through October 4, 2024, 89 FR 80796. Some sections may be more current. See credits for details.

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End of Document

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**281.35 WATER AND SEWAGE**

Updated 23-24 Wis. Stats. 52

agement council shall, when conducting federal consistency reviews under **16 USC 1456** (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under **16 USC 1456** (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(d) This subsection does not apply after the compact's effective date.

**(10) RULE MAKING; FEES.** (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).

2. Requirements for reporting volumes and rates of withdrawals.

3. The method for determining what portion of a withdrawal constitutes a consumptive use.

5. A graduated schedule for the fees required under subs. (5) (f) and (6) (g) and a schedule for collecting the fees under sub. (6) (g) periodically.

(b) The department may promulgate any other rule necessary to implement this section.

**(11) COOPERATION WITH OTHER STATES AND PROVINCES.** Before the compact's effective date, the department shall do all of the following:

(a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.

(b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.

(c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.

(d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

(e) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

**(11m) UPPER MISSISSIPPI RIVER BASIN CONSULTATION.** The department shall participate in the development of an upper Mississippi River basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

**(12) MISCELLANEOUS PROVISIONS.** (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the upper Mississippi River basin and, before the compact's effective date, of the Great Lakes basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

**History:** 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56

s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672; 2003 a. 310; 2007 a. 96, 227; 2009 a. 180; 2017 a. 134.

**NOTE: Section 1 of 1985 Wis. Act 60, which created this section, is entitled "Legislative findings; purpose."**

**Cross-reference:** See also ch. NR 142, Wis. adm. code.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. *Lake Beulah Management District v. DNR*, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

There is nothing in either this section or s. 281.34 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. *Lake Beulah Management District v. DNR*, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact-specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. *Lake Beulah Management District v. DNR*, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

**281.36 Permits for discharges into wetlands; mitigation.** (1) **DEFINITIONS.** In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to **33 USC 1344** (f) that becomes effective after January 9, 2001.

2. Any other federal statutory provision that affects the exemptions under **33 USC 1344** (f) and that becomes effective after January 9, 2001.

3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to **33 USC 1344** (f) or that is used to interpret or implement **33 USC 1344** (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.

4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subs. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(ad) "Bank service area" means the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between the department and the U.S. army corps of engineers and referenced in a mitigation banking instrument under sub. (3w).

(ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi River basin.

(am) "Demonstrable economic public benefit" means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

(b) "Existing federal law or interpretation" means any of the following:

1. **33 USC 1344** (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to **33 USC 1344** (f) or that is used to interpret or implement **33 USC 1344**



(f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bd) “Fill material” has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(bf) “HUC 6” means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 6-digit basin scale (the hydrologic unit code 6).

(bg) “HUC 8” means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale (the hydrologic unit code 8).

(bj) “Mitigation” means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(bL) “Mitigation bank” means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.

(bn) “Mitigation project” means mitigation of the type specified in sub. (3r) (a) 3.

(br) “Nonfederal wetland” means a wetland that is not subject to federal jurisdiction under 33 USC 1344.

(cp) “Practicable” means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(ct) “Small business” has the meaning given in s. 227.114 (1).

(d) “Water quality standards” means water quality standards set under rules promulgated by the department under s. 281.15.

**(2m) DELINEATION PROCEDURES.** For purposes of delineating the boundary of a wetland under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department designates that edition as the one to be used under this subsection.

**(3b) PERMIT REQUIRED.** (a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

(b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

**(3g) WETLAND GENERAL PERMITS.** (a) *Required permits.* The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.

2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.

3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.

4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.

5. A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.

6. A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.

7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.

8. A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.

9. A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.

10. A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out under the direction and supervision of a city, village, town, or county.

(b) *Additional required permits.* In addition to the wetland general permits required under par. (a), the department shall issue wetland general permits that are consistent with, and correspond to, any general permits that are issued under 33 USC 1344 (e) and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

(c) *Additional permits.* The department may issue wetland general permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

(d) *Requirements; conditions; restrictions.* In issuing wetland general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects, and a general permit may apply only to a single and complete project. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.

2. Interdunal wetlands.

3. Coastal plain marshes.

4. Emergent marshes containing wild rice.

5m. Sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago.

6. Boreal rich fens.

7. Calcareous fens.

(e) *Period of validity; subsequent actions.* A wetland general permit issued under this subsection is valid for a period of 5 years. Upon compliance with the requirements under pars. (f) to

(g), the department may renew, modify, or revoke a wetland general permit issued under this subsection.

(f) *Public notice.* The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a wetland general permit under this subsection. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.
2. Providing a copy of the notice to any person or group upon request of the person or group.
3. Publication of the notice on the department's Internet website.

(fg) *Date of notice.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(fm) *Written comments.* The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. All written comments submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(fr) *Description in notice.* Every public notice provided by the department under par. (f) shall include a description of the discharges to be authorized under the wetland general permit.

(g) *Public informational hearing.* 1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public informational hearing with respect to the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. The request for the hearing shall be filed with the department within 30 days after the provision of the public notice under par. (f) and shall indicate the interest of the party filing the request and the reasons why the hearing is warranted.

2. The department shall hold a public informational hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(h) *Authorizations for discharges under wetland general permits.* 1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the single and complete project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The applica-

tion shall be accompanied by the fee specified in sub. (12) (a). If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as calculated under sub. (11). The department may make a request for additional information one time during this 30-day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).

2m. If adverse weather conditions prevent the department from conducting an accurate on-site inspection during this 30-day period specified in subd. 1., the department shall give notice to the person wishing to proceed with the discharge that adverse weather conditions will prevent the department from complying with the 30-day deadline and shall complete the inspection as soon as weather conditions permit.

3. If the department requests additional information under subd. 1., the 30-day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized or until the discharge is completed, whichever occurs first.

(i) *Wetland individual permit in lieu of wetland general permit.* For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has inspected the site as provided in par. (h) and has determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

**(3m) WETLAND INDIVIDUAL PERMITS.** (a) *When permit required.* Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a), (4n), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

(b) *Analysis of practicable alternatives.* An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

(c) *Review; no additional information required.* In issuing

wetland individual permits under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of par. (g) 1.

(d) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed.

(f) *Failure to meet time limits.* If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period for purposes of par. (g) 1.

(g) *Notice of application.* 1. Within 15 days after the date of closure, as determined under par. (c) or (d), the department shall provide notice of pending application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) *Request for hearing.* A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) *Decision.* Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30-day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall

inform the applicant of the areas of the application that were incomplete.

(j) *Public comment.* 1. The department shall provide a period for public comment after the department has provided a notice of pending application under par. (g) during which time any person may submit written comments with respect to the application for a wetland individual permit. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in rendering a decision on the application. The period for public comment shall end on the 30th day following the date on which the department provides the notice of pending application except as provided in subd. 2.

2. If a public informational hearing is held, the period for public comment shall end on the 10th day following the date on which the hearing is completed.

**(3n) REVIEW BY DEPARTMENT.** (a) *Review limits.* For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit.

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application is submitted.

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single-family home and attendant features.

b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

(am) *Exception to review limit.* A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

(b) *Factors used in review.* In its review under par. (a), the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed project to wetland functional values.

2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.

3. Potential secondary impacts of the proposed project to wetland functional values.

4. The impact on functional values resulting from the mitigation that is required under sub. (3r).

5. The net positive or negative environmental impact of the proposed project.

(c) *Standards for issuing permits.* The department shall make a finding that a proposed project causing a discharge is in compliance with water quality standards and that a wetland individual permit may be issued if the department determines that all of the following apply:

1. The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.

3. The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

(d) *Mitigation required.* 1. Except as provided in subd. 2., the department shall require mitigation under the program established under sub. (3r) for wetland individual permits it issues under this subsection and for a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This subsection does not entitle an applicant to a wetland individual permit or any other approval in exchange for conducting mitigation.

2. If the department issues a wetland individual permit under sub. (3m) to 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, water, or power to its members only, the department may not require mitigation under the program established under sub. (3r) unless the discharge authorized by the wetland individual permit will result in a permanent fill of more than 10,000 square feet of wetland.

**(3p) NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS.** (a) The department shall establish procedures for providing notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.

2. That the notice be provided to any person or group upon request of the person or group.

3. That the notice be published on the department's Internet website.

(b) The department shall prescribe the form and content of notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). Each notice shall include all of the following information:

1. The name and address of the applicant.

2. A brief description of the discharge that requires the permit and the project that includes the discharge.

3. For a notice of a public informational hearing, the time, date, and location of the hearing.

4. For a notice of pending application and a notice of a public informational hearing, a brief, precise, easily understandable, plain-language description of the discharge and information indicating where the pending application may be viewed on the department's Internet website.

5. For a notice of complete application and a notice of a public informational hearing, a statement of the tentative determination of the department on the permit.

6. For a notice of complete application and a notice of public informational hearing, a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (3m) (j).

(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet website.

(d) 1m. The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

a. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.

2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

**(3q) ADMINISTRATIVE AND JUDICIAL REVIEW.** (a) *Definition.* In this subsection, "applicant" means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) *Request for administrative review.* Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section.

2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) *Content of the petition.* If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the wetland individual permit and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.

2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing under this subsection if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

2. If a stay is requested under subd. 1., the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) *Filings.* The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the

applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) *Action on petition.* 1m. The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30-day period is a denial. The department shall deny the petition if any of the following applies:

a. The petitioner is not the applicant, and the petition does not comply with the requirements of par. (c).

b. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this section may be violated if the activity or project is undertaken.

3. If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

4. If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.

(g) *Administrative hearing.* 1. An administrative hearing under this subsection shall be treated as a contested case under ch. 227.

2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30 days after receipt of the referral under par. (f) 4., determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hearing examiner shall make the determination based on the request under par. (d) 1., any response from the applicant under par. (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

3. An administrative hearing under this subsection shall be completed within 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one-time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

- a. The applicant.
- b. Each petitioner, if other than the applicant.
- c. Any other persons required to receive notice as provided under sub. (3p).

5. In an administrative hearing under this subsection, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(h) *Judicial review.* 1. Any person whose substantial interest is affected by a decision of the department under par. (b) 1. or 2. may commence an action in circuit court to review that decision.

2. Any party aggrieved by a decision of the hearing examiner under par. (g) may commence an action in circuit court to review that decision.

**(3r) MITIGATION; IN LIEU FEE SUBPROGRAM.** (a) The department shall establish a mitigation program that applies only to the issuance of wetland individual permits and, with respect to a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or

under sub. (4n) (c) that affects more than 1.5 acres of wetland, the portion of the affected wetland that exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program, subject to par. (am), the department shall allow mitigation to be accomplished by any of the following methods:

1. a. Except as provided in subd. 1. b. and par. (ag), purchasing credits from a mitigation bank located in the same HUC 8 as the wetland impacted by the discharge.

b. Except as provided in subd. 1. c. and par. (ag), if credits are not available to be purchased as provided under subd. 1. a., credits may be purchased from a mitigation bank within the same bank service area as the wetland impacted by the discharge.

c. Except as provided in par. (ag), if credits are not available to be purchased as provided under subd. 1. b., credits may be purchased from a mitigation bank in the same basin as the wetland impacted by the discharge.

2. Participating in the in lieu fee subprogram under par. (e).

3. Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

(ag) The department may, in consultation with the U.S. army corps of engineers, allow credits to be purchased from a different mitigation bank than the one prescribed under par. (a) 1. or allow mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if the department determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type. The department may also consider economic factors when making this determination only if the HUC 8 has one approved mitigation bank and that bank is charging a price for credits in that watershed that is in excess of 150 percent of the price of a credit in that watershed under the in lieu fee subprogram.

(am) For a discharge that is exempt from permitting requirements under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted by a mitigation bank or under the in lieu fee subprogram, shall be completed within the same compensation search area, as defined by the department by rule, as the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(cm) Before entering into an agreement with a sponsor of a mitigation bank to establish such a bank or before otherwise approving a mitigation bank, the department shall provide written notice that a mitigation bank may be established. The notice shall be given to each city, village, town, and county in which each proposed mitigation bank site will be located. Each city, village, town, and county receiving the notice shall be given an opportunity to submit comments regarding the establishment of the mitigation bank. The notice shall contain all of the following information:

1. The name of the sponsor of the proposed mitigation bank.
2. A brief description of the mitigation bank and all of its bank sites.
3. A date after which the department will not accept comments from the affected cities, villages, towns, or counties.
4. An address to which any comments shall be submitted.

(d) 1. The department shall establish under the mitigation program mitigation ratios that are consistent, to the greatest extent possible, with the federal regulations that apply to mitigation

and mitigation banks but, unless subd. 2. applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

2. For mitigation that occurs within the same watershed in which the discharge is located or within one-half mile of the site of the discharge, the ratio established by the department shall equal 90 percent of the ratio that would apply if the mitigation were to occur outside the watershed or were to occur one-half mile or more from the site of the discharge, but the ratio established under this subdivision may be no less than 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram may be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof. In determining approved mitigation projects that benefit from the subprogram, the department shall, to the extent practicable, ensure that there is no net loss of public access to wetlands. If the wetlands that benefit from the subprogram are open to the public, the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

**(3t) RULES FOR MITIGATION.** The department shall promulgate rules to establish a process for the mitigation program under sub. (3r). The rules shall address all of the following:

(a) Requirements for the analysis of practicable alternatives that is included in an application for a wetland individual permit under sub. (3m) (b).

(b) The conditions under which credits may be purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

(c) Enforcement of requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

(d) Baseline studies of wetlands that will be affected by the discharges and of sites for mitigation projects.

(e) Plan and design requirements for mitigation projects and mitigation bank sites, which shall include requirements for relating the design of a mitigation project or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

(f) Standards for comparing wetlands that will be restored, enhanced, created, or preserved as a mitigation project or at a mitigation bank site to the wetlands that will be adversely affected by discharges, including all of the following:

1. Consideration of the size, location, type and quality of the wetlands.

2. Consideration of the functional values performed by the wetlands.

(g) Financial assurance requirements for the construction of mitigation projects by mitigation banks.

(h) Standards for measuring the short-term and long-term success of mitigation projects and mitigation bank sites and requirements for the short-term and long-term monitoring of mitigation projects and mitigation bank sites.

(i) Remedial actions to be taken by holders of wetland individual permits for mitigation projects that are not successful and

actions to be taken by mitigation banks for mitigation projects performed by the mitigation banks that are not successful.

**(3w) RELEASE OF CREDITS.** (a) In this subsection:

1. “Applicant” means the applicant for a wetland individual permit for which wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland mitigation project required under sub. (3n) (d).

2. “Bank sponsor” means any public or private entity financially responsible for establishing or operating a mitigation bank.

3. “Compensation site plan” means a comprehensive document prepared by an applicant or bank sponsor that provides a thorough description of a proposed wetland mitigation project.

4. “Developing mitigation bank” means a mitigation bank that has not completed its mitigation project and that has not yet been established under an agreement between the bank sponsor and the department or otherwise approved by the department.

5. “Estimated credits” means the total number of credits that a developing mitigation bank estimates it will have once its mitigation project is constructed.

6. “Mitigation banking instrument” means the legal document that governs the establishment, operation, and use of a mitigation bank.

(b) A developing mitigation bank may sell its estimated credits under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t) (g) and, except as provided under par. (c), only in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the mitigation banking instrument.

2. No more than 65 percent of the estimated credits after the department issues a letter of compliance stating that construction and all corrective actions are complete.

3. No more than 85 percent of the estimated credits after the department approves a monitoring report for the mitigation bank or after 2 years have passed after construction of the mitigation project is completed, whichever is later.

4. One hundred percent of the estimated credits after the department approves the final monitoring report for the mitigation bank and determines that all performance standards identified in the compensation site plan are met.

(c) The department may authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule under par. (b) allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

(d) After the department approves and executes a mitigation banking instrument establishing the specifications for a developing mitigation bank, the sponsor of the bank may not change the mitigation banking instrument without the approval of the department. After the sponsor of a developing mitigation bank submits to the department a proposed change to the mitigation banking instrument for review, the mitigation bank may not sell any estimated credits under par. (b) until one of the following occurs:

1. The department approves the change to the mitigation banking instrument, and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.

2. The department rejects the changes submitted by the mitigation bank sponsor, in which case the existing mitigation banking instrument remains effective.

**(4) EXEMPTIONS; CERTAIN ACTIVITIES.** Except as provided in sub. (5), the permitting requirement under sub. (3b) does not apply to any discharge that is the result of any of the following activities:

(a) Normal farming, silviculture, or ranching activities.

(am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, “normal aquaculture activities” includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.

2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.

3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.

4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

(b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.

(c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.

(d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

1. That the flow and circulation patterns and chemical and biological characteristics of the affected wetland are not impaired.

2. That the reach of the affected wetland is not reduced.

3. That any adverse effect on the aquatic environment of the affected wetland is minimized to the degree required by the department.

(f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

**(4m) EXEMPTION AND WAIVER; ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE.** (a) The permitting requirement under sub. (3b) does not apply to any discharge into a wetland located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m) if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone and all adverse impacts to functional values of wetlands are compensated at a ratio of 2 acres per each acre impacted through any of the following methods, consistent with the rules promulgated under this section:

1. Purchasing credits from a mitigation bank located in this state.

2. Participating in the in lieu fee subprogram under sub. (3r), under which the department shall identify and consider mitigation that could be conducted within the same watershed and may locate mitigation outside the watershed only upon agreement of the department and the person exempt from permitting under this subsection.

3. Completing mitigation within this state.

(b) The department shall waive water quality certification under 33 USC 1341 (a) (1) for a discharge under par. (a).

**(4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS.** (a) In this subsection:

1. “Artificial wetland” means a landscape feature where hydrophobic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or

stream history that existed before August 1, 1991, but does not include any of the following:

a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.

b. A wetland created as a result of a mitigation requirement under sub. (3r).

2. “Definitive evidence” means documentary evidence such as any of the following:

a. Maps.

b. Aerial photographs.

c. Surveys that use a scale of not more than 100 feet per inch.

d. Wetland delineations.

3. “Rare and high quality wetland” means a wetland that is directly adjacent or contiguous to a class I or class II trout stream or that consists of 75 percent or more of any of the following wetland types:

a. Alder thicket.

b. Calcareous fen.

c. Coniferous swamp.

d. Coniferous bog.

e. Floodplain forest.

f. Hardwood swamp.

g. Interdunal wetland.

h. Open bog.

i. Ridge and swail complex.

j. Deep marsh.

k. Sedge meadow.

4. “Sewerage system” has the meaning given in s. 281.01 (14).

5. “Urban area” means any of the following:

a. An incorporated area.

b. An area within one-half mile of an incorporated area.

c. An area in a town that is served by a sewerage system.

(b) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

(c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

(d) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into an artificial wetland.

(e) 1. A person who proposes a project that may affect a wetland or landscape feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working days before initiating the project. The notice shall include one of the following to show

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that the wetland or landscape feature is eligible for the relevant exemption:

a. A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion.

b. A wetland delineation prepared by a qualified professional showing the exact location and boundaries of the wetland.

2. Except as provided in subd. 3., if the department receives the notice and information required under subd. 1., the department shall presume that the wetland or landscape feature is eligible for the exemption unless the department, within 15 working days after receiving notification of the proposed project under subd. 1., notifies the person that one of the following conditions applies:

a. The eligibility requirements are not met.

b. The location and boundaries of the wetland identified in a wetland delineation included with the notification under subd. 1. are not accurate.

c. With respect to an exemption under par. (d) only, the department determines that the landscape feature is providing significant functions that either protect adjacent or downstream property or infrastructure from flooding or significantly improve the water quality of an adjacent or downstream water body.

3. If the department receives the notice and information required under subd. 1. but is unable to determine based on that information whether the eligibility requirements are met, the department may, within 15 working days after the notification under subd. 1., notify the person one time to request additional information about the parcel of land. The person shall cooperate with the department's efforts to obtain information about the relevant parcel of land and may proceed with the project only upon notification that the department has determined the landscape feature to be eligible for the exemption based on the definitive evidence.

4. If, within 15 working days after the notification is delivered to the department, the department notifies the person that subd. 2. a., b., or c. applies, the person may not proceed with the project unless authorized by, or otherwise exempted from, a wetland general or individual permit under this section.

**(4r) DRAINAGE DISTRICT ACTIVITY EXEMPTION.** (a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

**(5) INAPPLICABILITY OF EXEMPTIONS.** Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the permitting requirement under sub. (3b) if the discharge is incidental to an activity that has as its purpose bringing a wetland, or part of a wetland, into a use for which it was not previously subject and if the activity may do any of the following:

(a) Impair the flow or circulation of any wetland.

(b) Reduce the reach of any wetland.

**(6) RULES FOR EXEMPTIONS.** (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these rules, the department shall do all of the following:

1. Make the rules consistent with existing federal law or interpretation.

2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is

initially incorporated into the rules, the department may modify the additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

**(8m) SUBSEQUENT PROTECTION FOR WETLANDS.** (a) 1. A person who is the holder of a wetland individual permit that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the wetland individual permit if the holder of the individual permit fails to take these measures.

2. A person who is restoring, enhancing, creating, or preserving a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of the restored, enhanced or created wetland ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

**(9) INSPECTION AUTHORITY.** (a) For purposes of determining whether to issue a wetland individual permit, whether authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a wetland or part of a wetland, for which an application has been submitted under sub. (3g) or (3m).

2. Enter and inspect any property on which is located a wetland to investigate a discharge that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that a holder of a wetland individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(d) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under par. (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

**(10) ADDITIONAL REQUIREMENTS.** The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland.



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This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

**(11) RESTORATION; SURCHARGE FEE.** (a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (9) (bm) for the restoration and creation of wetlands. The department may enter into agreements with other entities for the restoration and creation of such wetlands.

(b) Any wetland that is restored or created using funding from the appropriation under s. 20.370 (9) (bm) shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

**(12) APPLICATION FEES AND TIME LIMITS.** (a) *Fees required.* The department shall charge a fee for reviewing, investigating, and making decisions on applications to proceed under wetland general permits under sub. (3g) and on applications for wetland individual permits under sub. (3m). For an authorization to proceed under a wetland general permit, the application fee shall be \$500. For a wetland individual permit, the application fee shall be \$800.

(b) *Additional fee.* The department may set and charge a fee in the amount necessary to meet the costs incurred by the department in reviewing mitigation that is conducted by mitigation banks.

(c) *Adjustments in fees.* 1. The department shall refund an application fee charged for a wetland individual permit under par. (a) if the applicant requests a refund before the department determines that the application is complete. The department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

2. If the applicant submits an application for authorization to proceed under a wetland general or a wetland individual permit after the discharge is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

3. The department may increase the fee specified in par. (a) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

(d) *Fee for expedited service.* 1. The department, by rule, may charge a supplemental fee that is in addition to a fee charged under this subsection if all of the following apply:

a. The applicant requests in writing that the decision on the application be issued within a time period that is shorter than the time limit promulgated under subd. 2. for the decision.

b. The department verifies that it will be able to comply with the request.

2. If the department promulgates a rule under subd. 1., the rule shall contain a time limit for making decisions on the application.

(e) *Exemptions from fees.* Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

**(12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS.** A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on March 30, 2018, an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

**(13) PARTIES TO A VIOLATION.** (a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation.

(b) A person is concerned in the commission of the violation if the person does any of the following:

1. Directly commits the violation.

2. Aids and abets the commission of the violation.

3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

**(13m) REPORT TO LEGISLATURE.** No later than January 31, 2003, and no later than January 31 of each subsequent odd-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.

**(14) PENALTIES.** (a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

(b) Any person who violates a wetland general permit issued under sub. (3g) shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not less than \$50 nor more than \$500 upon being found in violation of the same offense a 2nd or subsequent time.

(c) A violation of any condition contained in a wetland general permit issued under sub. (3g) is a violation of the statute under which the general permit was issued.

(d) In addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(e) Each day of a continuing violation is a separate offense.

(f) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

**History:** 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112; 2019 a. 59; 2023 a. 111.

**Cross-reference:** See also chs. NR 300, 351, 352, and 353, Wis. adm. code.

Once a violation of sub. (2) (a) [now sub. (3b) (b)] is proven, *Goode*, 219 Wis. 2d 654 (1998), sets forth a rebuttable presumption that the court should grant an injunction. The state is not required to prove particular instances of environmental harm to obtain an injunction. Once a violation is proven, it is the defendant who must establish compelling equitable reasons not to grant injunctive relief. *State v. CGIP Lake Partners, LLP*, 2013 WI App 122, 351 Wis. 2d 100, 839 N.W.2d 136, 12-2346.

Sub. (3n) (b) 5. requires that the Department of Natural Resources (DNR) consider the net positive or negative environmental impact of a proposed project before

deciding to issue a wetland-fill permit. This consideration is necessary for DNR to meet the mandate in sub. (3n) (c) 3. that it may issue a wetland-fill permit only if it determines that the proposed project will not result in significant adverse environmental impacts. In this case, the permit stated that DNR lacked sufficient information to enable it to assess the proposed project's net positive or negative environmental impact. Accordingly, DNR improperly issued the permit without being able to consider the proposed project's net positive or negative environmental impact, contrary to sub. (3n) (b) 5. *Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.*

The legislature has set a tight timeline for the Department of Natural Resources (DNR) to process a wetland-fill permit application, and the legislature has mandated that at the end of that timeline DNR must decide to issue or deny the permit and explain in the case of a denial why the permit does not meet statutory standards or is incomplete. The applicant in this case pointed to no statutory language authorizing DNR to issue a permit if it had not received sufficient information within that timeline. In that situation, the legislature has provided that DNR must deny the permit as incomplete, and the applicant may seek administrative and judicial review of that denial or submit a new application with all necessary information. *Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.*

Sub. (3n) (b) and (c) requires the Department of Natural Resources (DNR) to consider the entirety of a proposed project when addressing a wetland individual permit, not just the wetlands within the proposed project. By its plain meaning, sub. (3n) (c) instructs DNR to determine whether a proposed project will result in significant adverse impacts to wetland functional values and water quality and whether the proposed project will result in other significant adverse environmental consequences. That review necessarily requires DNR to consider impacts beyond the physical footprint of directly impacted wetlands. For example, DNR must consider potential secondary impacts to wetland functional values and the net positive or negative environmental impact of the proposed project. *Kohler Co. v. DNR, 2024 WI App 2, 410 Wis. 2d 433, 3 N.W.3d 172, 21-1187.*

Wisconsin's Wetland Reform Act. Kent & Lamb. Wis. Law. Feb. 2013.

**281.37 Wetland mitigation grant program. (1)** In this subsection:

(a) "Department land" means land owned by or under easement to the state that is under the jurisdiction of the department and used for one of the purposes specified in s. 23.09 (2) (d).

(b) "Mitigation program" means the wetland mitigation grant program established under sub. (2).

(c) "Nonprofit organization" means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) The department shall establish a wetland mitigation grant program under which it awards grants to nonprofit organizations to conduct projects to create, restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e) on department land as provided in this subsection.

(3) No later than 6 months after March 30, 2018, the department shall identify department land that is appropriate to include in the mitigation program. The department shall identify no less than 25 percent of department land for this purpose. The land identified shall include land in every watershed in the state.

(4) (a) No later than 3 months after completion of the land identification stage under sub. (3) or at the beginning of the following fiscal year, whichever is earlier, and no later than July 1 of each subsequent year, the department shall issue a request for proposals from nonprofit organizations for grants to conduct wetland mitigation projects on department land identified under sub. (3). The issuance of each new request for proposal begins a new grant cycle.

(b) The department shall require applications for grants under this section to include all of the following:

1. The scope of the proposed project.
2. A project timeline.
3. If possible, a specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely provides.
4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the proposed project would create, restore, or enhance.
5. All information required to be submitted for approval to

the U.S. army corps of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust program instrument.

(c) After issuing the request for proposals under par. (a), the department shall accept grant applications on a rolling basis over the course of a fiscal year. The department shall select and announce grant recipients under this subsection at the end of each quarter as funds are available.

(5) (a) If an application under sub. (4) is approved, the grantee and the department, in consultation, shall identify all department permits required for the grantee to conduct the project. The department shall waive all permit fees for the grantee in relation to department permits required to conduct the project.

(b) Notwithstanding timelines otherwise established for individual permits, within 60 days of receiving the grantee's application for an individual permit that is required to conduct the project, the department shall render a decision issuing, denying, or modifying the permit, and the department shall adjust all other deadlines relating to the review of the application accordingly.

(7) (a) The department shall pay out a grant under the mitigation program quarterly unless the department determines that more frequent payments are necessary to fulfill the objectives of the grant program. The department shall withhold the final payment until the grantee certifies that the project is complete.

(b) If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the department shall use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project. An organization that fails to certify completion of a project by the date indicated in its application for completion is not eligible for a new grant under the mitigation program for 2 grant cycles.

(c) The department may agree to a modified deadline for the project if unusual or unforeseen circumstances cause a delay. If the department agrees to a modified deadline, the consequences under par. (b) apply only if the grantee fails to certify that a project is complete by the date indicated in that agreement.

(8) Before 6 months have elapsed after the 5th anniversary of the department's first issuance of a request for proposals under sub. (4), the department shall submit to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first 5 years of the mitigation program and making recommendations for changes to the program.

History: 2017 a. 183.

#### SUBCHAPTER IV

#### WATER AND SEWAGE FACILITIES; SEPTAGE DISPOSAL

**281.41 Approval of plans. (1)** (a) Except as provided under sub. (2), every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and any other information concerning maintenance, operation and other details that the department requires, including the information specified under s. 281.35 (5) (a), if applicable. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn, a statement concerning the improvement may be made to the department and the department may, if requested, outline generally what it will require. Upon receipt of the plans for approval, the department or its authorized representative shall notify the owner of the date of receipt.

(b) Within 90 days from the time of receipt of complete plans or within the time specified in s. 281.35 (5) (c), if applicable, the