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## **17.36 Shoreland-Wetland Overlay District**

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### **(1) STATUTORY AUTHORIZATION, FINDING OF FACT AND STATEMENT OF PURPOSE.**

- (a) STATUTORY AUTHORIZATION This chapter is adopted pursuant to the authorization in §§62.23, 87.30 and 281.31, Wis. Stats.
- (b) FINDING OF FACT AND STATEMENT OF PURPOSE. Uncontrolled use of the shoreland-wetlands and the pollution of the navigable waters of the City would adversely affect the public health, safety, convenience and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:
  - (1) Promote the public health, safety, convenience and general welfare.
  - (2) Maintain the storm and floodwater storage capacity of wetlands.
  - (3) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters.
  - (4) Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat.
  - (5) Prohibit certain uses detrimental to the shoreland-wetland area.
  - (6) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities.

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(7) To complement, not replace, the zoning regulations of the underlying Zoning District. Where provisions of this Section contradict provision of the underlying Zoning District, the more restrictive rules shall apply.

**(2) SHORELAND AREA JURISDICTION.**

The provisions of this chapter apply to shore lands which abut navigable waters as "navigable waters" is defined in Wis. Stats. § 281.31(2)(d).

**(3) PROVISIONS OF INTERPRETATION.**

The Zoning Administrator, as provided in § 17.66 of this chapter, shall be responsible for determining questions of navigability and the location of the Ordinary High-Water Mark. In the case of lakes which have significantly fluctuating water levels, the normal high-water elevation shall be determined by the Zoning Administrator at the highest level which occurs with reasonable regularity. The Zoning Administrator may contact the appropriate district office of the Department of Natural Resources for assistance when the determination of navigability or Ordinary High-Water Mark is difficult. Determinations of the Zoning Administrator shall be subject to appeal to the Board of Appeals as provided in § 17.65 of this chapter.

**(4) DEFINITIONS.** In addition to the definitions listed in § 17.08 of this chapter, for the purposes of this section, the following terms shall have the meaning stated below:

**Boathouse.** A permanent structure used for the storage of watercrafts and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts. For purposes of this chapter, the term boathouse does not include shore stations or boathouses which are removed from a waterway on an annual basis.

**Buffer Zone.** A zone of natural vegetation that extends from the Ordinary High-water Mark inland. This buffer can be adjacent to a lake, river, creek or stream. The buffer zone extends the length of the shoreline; normally for a minimum of 35 feet inland.

**Department.** Wisconsin Department of Natural Resources.

**Dock.** A portable pier with no boat storage structure.

**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.

**Environmental Control Facility.** Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

**Mitigation.** Balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

**Impervious Surface Areas.** An area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surface includes, but is not limited to rooftops, sidewalks, structures, decks, walkways, driveways and parking areas, (including graveled areas) unless specifically designed, constructed, and maintained to be pervious. "Impervious surface" excludes frozen soil, streets and Roadways as defined in Wis. Stats. 340.01(54), Wis. Adm. Code.

Note: Gravel -- Typical gravel materials used for roads and parking lots are engineered and compacted to withstand heavy loads. These compacted gravel materials form a seal through which water will not readily infiltrate. Runoff from gravel is similar to paved surfaces with only a slight reduction in runoff. Gravel driveways are therefore considered impervious.

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Navigable Waters.

1. Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters which are navigable under the laws of this State. Under §144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated hereunder, shoreland ordinances required under §§61.351 or 62.221, Wis. Stats., and Ch. NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:
  - a. Such lands are not adjacent to a natural navigable stream or river.
  - b. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching.
  - c. Such lands are maintained in nonstructural agricultural use.
2. Wisconsin's Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [[Muench v. Public Service Commission, 261 Wis. 492 \(1952\)](#) and [DeGaynor and Co., Inc. v. Department of Natural Resources, 70 Wis.2d 936 \(1975\)](#)]. For example, a stream which is navigable by skiff or canoe during normal spring high-water is navigable, in fact, under the laws of this State though it may be dry during other seasons.

Ordinary High-Water Mark ("OHWM"). 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.

Portable Pier. Any structure extending channel-ward or lake-ward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure shall not be permanent and may include a boat storage structure that is removed seasonally.

Semi-impervious Surface. Any surface or material that allows partial infiltration of stormwater into the ground while still limiting the rate or volume of runoff compared to a completely pervious surface. Examples include permeable or porous pavement, pervious concrete, porous asphalt, open-jointed pavers, reinforced turf systems, and similar materials or installations designed to reduce effective impervious area.

Shoreland Setback. The minimum setback applied based on the OHWM of any navigable water body to the nearest part of a building or structure shall apply.

Shorelands. For the purposes of this section, "Shorelands" means the area within the following distances from the OHWM of navigable waters, as defined Wis. Stats. § 281.31(2)(d):

One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

Shoreland Rear Lot Line. For the purposes of this section the rear lot line shall be the OHWM.

Shoreland Rear Yard. For the purposes of this section, the rear yard shall be the yard extending the full width of the lot between the nearest part of the OHWM to the nearest part of the principal building.

Shoreland Stairways. A stairs and landing conveyance from upslope of the bank or shore of a waterway down toward the bank or shore of the waterway. Landings allow conveyance but shall not contain decks larger than 64 square feet.

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Waterfront Storage Structure. Any structure designed solely for the purpose of protecting or storing aquatic equipment such as life jackets, paddles, kayaks, paddle boards, or other similar water equipment, for non-commercial purposes.

Wetland. In this section, “wetland” means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

Wetland Alteration. Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

## **(5) DISTRICT BOUNDARIES.**

- (a) The Shoreland-Wetland Overlay District includes:
  - (1) All wetlands in the City which are one acre or more;
  - (2) All lands within 1,000 feet of the OHWM of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the City shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this chapter.
  - (3) All lands within 300 feet of the OHWM of navigable rivers or streams or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this chapter.
- (b) Determinations of navigability and OHWM location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or OHWM .
- (c) When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary as mapped is in error. If Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsection (5), the Zoning Administrator shall be responsible for initiating a map amendment within a reasonable period.
- (d) Wetlands which are filled prior to March 15, 1989, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland are not subject to this chapter.
- (e) Wetlands located between the original OHWM and a bulkhead line established prior to May 7, 1982, under §30.11, Wis. Stats., are not subject to this chapter.

## **(6) DIMENSIONS OF BUILDING SITES.**

- (1) Lots Not Served by Public Sanitary Sewer.
  - a. *Lot Size.*
    - 1. Minimum lot area. 20,000 square feet.
    - 2. Minimum lot width. The minimum lot width shall be 100 feet. The minimum lot width shall be satisfied at the building line.
  - b. *Yards.*

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1. Front yard setback. Dimensional requirements for the front yard setback shall be the same as those required by the underlying zoning district in which the lot is located.
2. Side yard setback. Dimensional requirements for the side yard setback shall be the same as those required by the underlying zoning district in which the lot is located.
3. Rear yard setback. See subsection (8) and (9).

c. *Lot Served by Public Sanitary Sewer.*

1. Lot Size; Area and Width. Dimensional requirements shall be the same as those required by the underlying zoning district in which the lot is located.
2. Yards.
  - a. Front and side yard setbacks. Dimensional requirements shall be the same as those required by the underlying zoning district in which the lot is located.
  - b. Rear yard setback. See subsection (8) and (9).

**(7) SUBSTANDARD LOTS.**

- (a) Substantial Lots Served by a Public Sanitary Sewer. A substandard lot served by a public sanitary sewer which is at least 7,500 square feet in area and is at least 50 feet in width at the building setback line and at least 50 feet in width at the waterline may be used as a building site upon issuance of a zoning permit by the Zoning Administrator if it meets all of the following requirements:
  1. Such use is permitted in the zoning district.
  2. The lot was on record in the County Register of Deeds office prior to the effective date of this chapter.
  3. The lot was in separate ownership from abutting lands prior to the effective date of this chapter. If abutting lands and the substandard lot were owned by the same owner as of the effective date of this chapter, the substandard lot shall not be sold or used without full compliance with the terms of this chapter, including minimum area and width requirements found in subsection (6).
  4. All the dimensional requirements of this chapter, including side yard and setback requirements, will be complied with insofar as practical.
- (b) Substandard Lots Not Served by Public Sanitary Sewer. A substandard lot not served by public sanitary sewer, which is at least 10,000 square feet in area and at least 65 feet in width at the building setback line and at least 65 feet in width at the water's edge, may be used as a building site upon issuance of a zoning permit by the Zoning Administrator if it meets all of the requirements of par. (a) and if it meets the requirements of 17.60 Private Wells and Onsite Wastewater Treatment Systems, of the Barron County Ordinances Governing Land Use and Development.
- (c) Other Substandard Lots. Except for lots which meet the requirements of pars. (a) and (b) above, a building permit for the improvement of a lot having lesser dimensions than those stated in subsection (6) shall be issued only after granting of a variance by the Board of Appeals. In cases where a variance is granted, the lakeshore shall be preserved to the extent possible in conformance with the requirements of this Municipal Code.

**(8) SETBACKS FROM THE WATER.**

- (a) Septic Tanks, Seepage Pits and Soil Absorption Fields. All septic tanks, seepage pits and soil absorption fields shall be set back a minimum of 75 feet from the OHWM .

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(b) **Buildings and Structures.** All buildings and structures, except docks, portable piers, retaining walls and those structures provided for in Exempt Structures below shall be set back a minimum of 75 feet from the OHWM. The 75 foot setback shall be determined by measuring the closest part of the OHWM to the closest part of the building or structure.

**EXEMPT STRUCTURES.** The following structures are exempt from Setbacks in this subsection:

1. **Waterfront Storage Structures.** Not more than one (1) waterfront storage structure per lot shall be permitted, provided such structure conforms to all of the following conditions:
  - a. The waterfront storage structure shall be set back not less than 10 feet from the OHWM.
  - b. The waterfront storage structure shall not exceed 96 square feet in floor area with no wall less than 6 feet in length. Sidewall height shall not exceed 8 feet. The structure shall have a pitched roof with a minimum of 3/12 pitch. Roof eaves shall not exceed 12 inches. The total height of the structure shall not exceed 9 ½ feet.
  - c. Excavations for waterfront storage structures on slopes exceeding 20 % shall not employ heavy equipment.
  - d. The waterfront storage structure shall be used solely for storage of aquatic equipment, shall be of such color as not to detract from the natural appearance of the shoreline, and shall not be used for human habitation.
2. Open-sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the following requirements:
  - a. The part of the structure that is nearest to the water is located at least 35 feet landward from the OHWM .
  - b. The floor area of all the structures in the shoreland setback area will not exceed 200 square feet and no more than 12 inches above or below natural grade.
  - c. Wall height shall not exceed 8 feet and the roof shall have a minimum pitch of 3/12.
  - d. The structure that is the subject of the request for zoning permission has no sides or has open or screened sides.
  - e. The city must approve a mitigation plan which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70 % of the half of the shoreland setback area that is nearest to the water.
3. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter, and satellite earth station antennas that are 2 meters or less in diameter.
4. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with St of WI Chapter SPS383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
5. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are 60 inches or less in width. One pedestrian access (i.e. stairway, walkway, path) up to 60 inches in width is permitted on each lot, except that one additional pedestrian access, being an incline elevator (i.e. hillside lift, tram system) type structure that is 60 inches

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in width or less, is also permitted. All pedestrian accesses are subject to the following standards:

- a. The pedestrian access, when passing through the vegetative buffer zone as described subsection (11), shall be located within the viewing and access corridor.
- b. The pedestrian access shall be established or constructed in a manner that requires the least amount of land disturbance possible, will not be prone to soil erosion, and observes the purpose and intent of this section as stated in subsection (1)(b).
- c. The pedestrian access shall be located and designed in a manner to provide a reasonably direct route of travel from the principal structure to the primary shoreline access (i.e. main boat dock location). Walkways and boardwalks that are situated parallel to the shoreline, which deviate from the purpose of providing a direct route of pedestrian access to the shoreline, shall be prohibited.
- d. Pedestrian accesses that meander or have switch back designs that do not accomplish a reasonably direct route of travel from the principal structure to the primary shoreline access are prohibited. These types of designs often involve excessive land and vegetation disturbance activities that violate the purpose and intent of this section as stated in subsection (1)(b).

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

**(9) ADJUSTED BUILDING SETBACKS.**

The purpose of this subsection is to normalize structure setbacks or sightlines where existing structures exceed the minimum setback, while protecting the minimum setback standard. A setback greater than that required by subsection (8) shall be required by the Zoning Administrator where there is at least one (1) principal structure on either side of the applicant's lot within 200 feet of the proposed site that is built to greater than the required setback. In such case, the setback shall be the average of the setbacks of the nearest principal structure on each side of the proposed site or if there is an existing principal structure on only one (1) side, the setback shall be the average of the existing structure's setback and the required setback, but no less than 75 feet. Any other setback may be permitted by the Board of Appeals according to § 17.65 of this chapter upon written finding consistent with § 17.65(7) of this chapter. In no case shall any reduction be granted hereunder which would allow placement of structures within a defined floodway.

**(10) SITE DEVELOPMENT PLAN.**

The site development plan shall be submitted as part of the permit application and shall contain the following information drawn to scale:

- a. Dimensions and area of the lot.
- b. Location of any structures with distances measured from the lot lines and centerline of all abutting streets or highways.
- c. Description of any existing or proposed on-site sewage systems or private water supply systems.
- d. Location of the OHWM of any abutting navigable waterway.
- e. Boundaries of all wetlands.
- f. Existing and proposed topographic and drainage features and vegetative cover.

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- g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps.
- h. Location of existing or future access roads.
- i. Specifications and dimensions for areas of proposed wetland alteration.

#### **(11) VEGETATION.**

- (a) **Purpose.** To protect natural scenic beauty, fish and wildlife habitat, as well as control erosion, reduce effluent, sediment and nutrient flow from the shoreland, the removal of trees, shrubbery and vegetation shall be regulated. These provisions shall not apply to the removal of dead, diseased or dying trees or shrubbery at the discretion of the landowner or to silvicultural thinning upon recommendation of a forester.
- (b) **Establishment of a Vegetative Buffer Zone.** A vegetative buffer zone has been designated extending inland 35' from the OHWM, prohibiting the removal of vegetation within the vegetative buffer zone except as follows:
  1. Routine maintenance of vegetation.
- (c) **Viewing Corridor.** Trees and shrubbery within the buffer zone may be cut to create a viewing corridor. The viewing corridor may be 35 feet wide for every 100 feet of shoreline frontage up to a maximum of 200 feet.
  1. Natural shrubbery shall be preserved as far as practicable and where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- (d) **Paths.** Any path, road or passage within the 35 foot strip shall be constructed and surfaced as to effectively control erosion.
- (d) **Cutting Plan.** As an alternative to par. (c) ., a special cutting plan allowing greater cutting may be permitted by the Planning Commission by issuance of a conditional use permit under § 17.70. In applying for such a permit, the Planning Commission shall require the lot owner to submit a sketch of his lot, including the location of parking, gradient of the land, existing vegetation, proposed cutting and proposed replanting. The Planning Commission may grant such a permit only if it finds that such special cutting plans:
  1. Will not cause undue erosion or destruction of scenic beauty.
  2. Will provide substantial shielding from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the Planning Commission may require the submission of a bond which guarantees the performance of the planned tree or shrubbery planting by the lot owner.

#### **(12) FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING.**

- (a) **General Standards.** Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under par. (b) is permitted in the shoreland area, provided that:
  1. It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
  2. A State or Federal permit is obtained in addition to a permit under this chapter if State or Federal laws require the issuance of a permit for the filling, grading, lagooning, dredging, ditching or excavating that is proposed.

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3. Any fill placed in the shoreland area is protected against erosion by the use of ripraping, vegetative cover or a bulkhead.

(b) Permit Required.

1. For any filling or grading of the bed of a navigable body of water.
2. For any filling or grading of any area which is within 300 feet landward of the OHWM of navigable water and which has surface drainage toward the water and on which there is any:
  - a. Filling or grading within 75 feet of the OHWM where more than 100 square feet is exposed or where the cumulative exposed areas exceed 300 square feet.
  - b. Any filling or grading on slopes of 20% or more.
  - c. Filling or grading of more than 1,000 square feet on slopes of 12% to 20%.
  - d. Filling or grading of more than 2,000 square feet on slopes of 12% or less.
3. Before constructing, dredging or commencing work on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet of the OHWM of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

(c) Soil Conservation Practices. Soil conservation practices, such as terraces, runoff diversions and grassed waterways, which are used for sediment retardation and do not alter or impair wetlands or non-navigable streams shall not require a permit under par. (b). All such practices shall conform to the USDA-NRCS-Wisconsin Technical Guide and the Wisconsin Department of Natural Resources Construction Site Best Management Practice Handbook.

(d) Permit Conditions. In granting a permit under par. (b), the City shall attach the following conditions, where appropriate.

1. The smallest amount of bare ground shall be exposed for as short a time as feasible.
2. Temporary ground cover, such as mulch, shall be used and permanent cover, such as sod, shall be planted.
3. Diversion, silting basin, terraces and other methods shall be used to trap sediment.
4. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions.
5. Fill shall be stabilized according to accepted engineering standards.
6. Fill shall not restrict a floodway or destroy the storage capacity of a floodplain.
7. Sides of a channel or artificial watercourse shall be stabilized to prevent slumping.
8. Sides of channels or artificial watercourses shall be constructed with slopes (side) of 2 units horizontal distance to one (1) unit vertical or flatter, unless bulkheads or ripraping are provided.

### **(13) IMPERVIOUS SURFACE STANDARDS**

- (a) Purpose. Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters, impervious surface standards apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any non riparian lot or parcel that is located entirely within the 300 feet of the OHWM of any navigable waterway.
- (b) Calculation of Percentage of Impervious Surface. Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the OHWM by the total surface area of that lot and multiplied by 100.

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Impervious surfaces described in (e) shall be excluded from the calculation of impervious surface on the lot or parcel. If an out lot lies between the OHWM and the developable lot or parcel and both are in common ownership, the lot or parcel and the out lot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

- (c) General Impervious Surface Standard. Up to 15 % impervious surface is allowed on the portion of a lot or parcel that is within 300 feet of the OHWM, except as allowed in (d) through (f).
- (d) Maximum Impervious Surface. A property may contain impervious surface of more than 15% but not more than 30% on the portion of a lot or parcel that is within 300 feet of the OHWM provided the landowner develops a mitigation plan that meets the standards found in subsection 18, along with obtaining the required permits for development.
- (e) Treated Impervious Surfaces. Impervious surfaces that can be documented to show they meet either of the following standards shall be excluded from the impervious surface calculations under section (b).
  - 1. The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems of sufficient size to treat the area being excluded as determined by the City.
  - 2. The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.
- (f) Existing Impervious Surfaces. For existing impervious surfaces which were lawfully placed when constructed but that do not comply with the impervious surface standard in (c) the property owner may do any of the following:
  - 1. Maintain and repair the existing impervious surfaces.
  - 2. Replace existing impervious surfaces with similar surfaces within the existing footprint.
  - 3. Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the shoreland ordinance, and the impervious surface meets the applicable setback requirements.
- (g) Semi-Impervious Surfaces. Semi-impervious surfaces will be calculated at 25% of the area covered. An example would be concrete pathway blocks with an open center to allow grass to grow covering an area of 200 square feet would be credited as having 50 square feet of pervious surface.

#### **(14) NONCONFORMING USES.**

- (a) Applicability. This section applies to a use of a dwelling, building, or parcel of land that existed lawfully before the existing shoreland-wetland zoning ordinance was enacted or amended, but that does not conform to the allowed uses in that current ordinance.
- (b) General Rule.
  - 1. The continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time the shoreland-wetland zoning ordinance takes effect may not be prohibited.
  - 2. The total structural alteration of, or repair in excess of 50% of its assessed value during the life of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such building, premises, structures, or fixtures are located, may not be prohibited.

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3. If the nonconforming use of any existing building, premises, structure or fixture is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the shoreland-wetland zoning ordinance.
4. A manufactured home community licensed under Section 101.935, Wis. Stats, that is a nonconforming use continues to be a nonconforming use notwithstanding the occurrence of any of the following activities within the community:
  - a. Repair or replacement of homes.
  - b. Repair or replacement of infrastructure.
5. Uses that are nuisances shall not be permitted to continue as nonconforming uses.

(c) **Burden of Proof.** A property owner claiming a lawful nonconforming use and exemption from applicable regulations shall prove by a preponderance of the evidence that:

1. The use was legally established;
2. The lawful use predicated shoreland-wetland zoning provisions with which it does not comply;
3. The lawful use was active and actual prior to adoption of such provisions and not merely casual and occasional or incidental to the principal use of the property in which case no vested right to continue the use shall have been acquired.

#### **(15) NONCONFORMING STRUCTURES.**

- (a) **Applicability.** This section applies to an existing structure that was lawfully placed when constructed but that does not comply with the current required OHWM setback of a navigable waterway or other dimensional requirements.
- (b) **Repair, Reconstruction, Renovation, Remodeling or Expansion of Nonconforming Structures.** An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be repaired, reconstructed, renovated or remodeled if the activity does not expand the footprint or height of the nonconforming structure. The expansion of such a nonconforming structure may be allowed if the expansion is necessary to comply with applicable state or federal requirement.
- (c) **Lateral Expansion of Nonconforming Structures Within the Setback.** An existing structure that was lawfully placed when constructed but that does not comply with the current required shoreland setback may be expanded laterally, provided that all of the following requirements are met:
  1. The use of the existing structure has not been discontinued for a period of 12 months or more if a nonconforming use.
  2. The existing structure is a least 35 feet from the OHWM.
  3. Lateral expansions are limited to a cumulative maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the OHWM than the closest point of the existing structure.
  4. Issuance of a permit that requires an approved mitigation plan that shall be implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in subsection 18.
  5. All other provisions of the shoreland ordinance shall be met.

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- (d) Expansion of Nonconforming Structures beyond the Setback. An existing structure that was lawfully placed when constructed but that does not comply with the current required shoreland setback may be expanded horizontally, landward, or vertically provided that the expanded area meets the shoreland setback requirements and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph but may be required pursuant to other sections.
- (e) Relocation of Nonconforming Structures. An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be relocated on the property provided the structure is moved to a lawfully conforming location.
- (f) Boathouses. The maintenance and repair of nonconforming boathouses which are located below the OHWM of any navigable waters shall comply with the requirements of §30.121, Wis. Stats., and NR Chapter 325, Wis. Admin. Code.

#### **(16) RESTORATION OF EXISTING STRUCTURES.**

- (a) Damaged or Destroyed by Violent Wind, Fire, Flood, Vandalism, Ice, Snow, Mold or Infestation. Notwithstanding subsection (15) and as required by Wis. Stats. §§ 62.23 and 62.231, if an existing nonconforming structure has been destroyed or damaged after March 2, 2006, by violent wind, fire, flood, vandalism, ice, snow, mold or infestation, the nonconforming structure may be restored to the size, location and use it had immediately before the damage occurred.

#### **(17) MITIGATION**

Development and human activity around the lakeshore has negatively impacted water quality, near-shore aquatic habitat, upland wildlife habitat, and natural scenic beauty. Mitigation is a way to restore these natural functions of the lakeshore which have been lost through development and human activities. (a) WHEN REQUIRED. When the City receives a Land Use Permit Application for certain shoreland activities which require mitigation, the property owner must also submit a completed Shoreland Mitigation Plan for review and approval by the City. The shoreland activities that require mitigation include:

- (a) Increase of impervious surface as described in subsection (13).
- (b) A shoreland activity that is granted by the Board of Appeals through a variance or a Conditional Use Permit approved by the City Planning Commission. As a condition of approval, the Board or Commission may require mitigation if the activity is occurring within the shoreland setback.

#### **(18) MITIGATION MEASURES**

- (a) Required mitigation. A site plan and implementation schedule describing any required mitigation shall be submitted by the property owner or their authorized agent and approved by the Zoning Administrator prior to issuing the related land use permit(s). Mandatory practices for mitigation shall include:
  1. Evaluation and if needed upgrading of any existing onsite sanitary system on the subject property to meet current Barron County and Department of Safety and Professional Service regulations.
  2. Implementation of standard erosion and storm water runoff control measures described in applicable subsections of this ordinance.
- (b) Additional requirements.
  1. Accumulating at least 2 points from among the following proposed or current practices:
- (c) Maintenance of an existing shoreland buffer area within 35 feet of the OHWM of the Lake or stream (2 points).
- (d) Restoration of the shoreland buffer area within 35 feet of the OHWM of the Lake or stream (2 points).

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- (e) Restoration of native vegetation along both side yards, minimum of 5 feet wide measured perpendicular to the lot line for the entire length of the lot. (½ point).
- (f) Removal of legal pre-existing accessory buildings from within the shoreland setback area (one (1) point per building).
- (g) Use of exterior building materials or treatments that are inconspicuous and blend with the natural setting of the site (½ point).
- (h) Removal of waterward improvements (seawalls, dockage, artificial sand beach etc. and/or restoration of emergent aquatic vegetation (½ point for each distinct removal/restoration effort).
- (i) Any other mitigation that is deemed appropriate by the Zoning Administrator may be used to meet the mitigation requirement.
- (j) A Shoreland Mitigation/Preservation Affidavit shall be signed and recorded with the register of deeds prior to the issuance of a zoning permit for the expansion or improvement of a legal pre-existing principal building which requires mitigation.

**(19) TYPE OF SHORELAND BUFFER.**

The type of shoreland buffer restoration required under subsection (18) will be determined by the Zoning Administrator. The buffers shall comply with the standards set forth in subsection 19 Table 1.

Table 1. Shoreland Buffer Planting Standards				
Layer	Minimum Number of Species	Plants to be Installed Per 100 Square Feet	Credits for Existing Vegetation*	Planting Dates
Tree canopy	3	1	1 existing Tree 0.3 new trees	Apr. 15 to Nov. 15
Shrub understory	4	1.5 to 2	1 existing shrub = 0.5 new Shrubs	Apr. 15 to Nov. 15
Groundcover plant plugs	1	70	N/A	May 15 to Nov. 15
Groundcover seeding, cool season	1	General seed broadcasting	Complete cover of bare soil	May 1 to June 15
Groundcover seeding, warm season	1	General seed broadcasting	Complete cover of bare soil	Thaw to July 15

\* Credit is received for all existing vegetation. For Example, if the soil is covered by Native grasses, you do not have to install plantings in that layer. Likewise, if your buffer has 10 existing trees, they would count as 3 new trees

**(20) TYPE OF VEGETATION RECOVERY.**

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

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## **(21) PLANTING DENSITIES.**

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

## **(22) SHORELAND BUFFER PLAN REQUIREMENTS.**

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

- (a) Shoreland Buffer Restoration Site Plans must include:
  1. Name and Address of property owner.
  2. Property address and legal description.
  3. Extent of the shoreland buffer.
  4. Scale (e.g. 1 inch = 10 feet).
  5. North arrow.
  6. OHWM location.
  7. Location of all structures in the shoreland buffer zone.
  8. Viewing and access corridor.
  9. Boundary of the shoreland buffer zone.
  10. Existing trees, shrubs, and native ground cover.
  11. Areas to be planted with trees, shrubs, and groundcovers.
  12. Implementation schedule.
  13. A plant species list; indicate if you are requesting substitutions from the prepared list.
  14. Erosion control practices (to be installed prior to and during buffer establishment).
  15. Water diversions and channelized flow areas.
  16. Buffer Maintenance (weeding, replanting).
- (b) Implementation schedule. The approved Shoreland Buffer Restoration Site Plan must be started within one (1) year from the issue date of applicable permit. All plantings and any other required activities in the Shoreland Buffer Restoration Site Plan must be completed within 2 years of the permit issue date.

## **(23) AMENDING SHORELAND-WETLAND REGULATIONS.**

The City Council may alter, supplement or change the shoreland-wetland district boundaries and the regulations contained in this Chapter in accordance with the requirements of §62.23(7)(d)2., Wis. Stats., Ch. NR 117, Wis. Adm. Code, and the following:

- (1) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of the submission of the proposed amendment to the City planning agency.
- (2) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the City planning agency and a public hearing shall be held after Class 2 notice as required by §62.23(7)(d)2., Wis. Stats. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

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- (3) In order to insure that this Chapter will remain consistent with the shoreland protection objectives of §281.31, Wis. Stats, the City Council may not rezone a wetland in a Shoreland-Wetland Zoning District or any portion thereof where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
  - (a) Storm and floodwater storage capacity.
  - (b) Maintenance of dry season stream flow or the discharge of groundwater to 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 erosion.
  - (e) Fish spawning, breeding, nursery or feeding grounds.
  - (f) Wildlife habitat.
  - (g) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (4) Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection (3), the Department shall so notify the City of its determination either prior to or during the public hearing held on the proposed amendment.
- (5) The appropriate district office of the Department shall be provided with:
  - (a) A copy of the recommendation and report, if any, of the City planning agency on a proposed text or map amendment within 10 days after the submission of those recommendations to the City Council.
  - (b) Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
- (6) If the Department notifies the City Planning Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection (3), that proposed amendment if approved by the City Council shall not become effective until more than 30 days have elapsed since written notice of the City approval was mailed to the Department as required by par. (5)(b). If within the 30 day period the Department notifies the City that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the City as provided in §62.231(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under §62.231(6), Wis. Stats., is completed or otherwise