

ARTICLE VII. - ANIMAL WASTE STORAGE AND NUTRIENT MANAGEMENT

Footnotes:

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Editor's note— Res. No. 14-35, §§ I—VIII, adopted Dec. 16, 2014, repealed Art. VII in its entirety and enacted new provisions as herein set out. Former Art. VII, §§ 8-160—8-167, 8-188—8-194, 8-212—8-219, pertained to animal waste storage facilities, and derived from the 1987 Code, §§ 11.04.1, 11.04.3—11.04.8; Res. No. 86-38, adopted Aug. 19, 1986; and Res. No. 89-57, adopted June 27, 1989.

DIVISION 1. - GENERALLY

Sec. 8-160. - Authority.

This article is adopted under authority granted by Wis. Stats. § 92.16.

(Res. No. 14-35, § I(A), 12-16-2014)

Sec. 8-161. - Title.

This article shall be known as, referred to, and may be cited as the "Rusk County Animal Waste Storage and Nutrient Management Ordinance" and is hereinafter referred to as the article.

(Res. No. 14-35, § I(B), 12-16-2014)

Sec. 8-162. - Findings and declaration of policy.

- (a) The Rusk County Board of Supervisors finds that storage of animal waste in storage facilities not meeting technical design and construction standards may cause pollution of the surface and ground waters of Rusk County, and may result in actual or potential harm to the health of county residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of Rusk County.
- (b) The Rusk County Board of Supervisors also find that improper management of animal waste storage facilities, and nutrient management, including land application, of stored animal waste, may cause pollution of the ground and surface waters of Rusk County.
- (c) The Rusk County Board of Supervisors further finds that the technical standards developed by the U.S.D.A. Natural Resource Conservation Service provide effective, practical, and environmentally safe methods of the storage and the nutrient management of animal waste.

(Res. No. 14-35, § I(C), 12-16-2014)

Sec. 8-163. - Purpose.

The purpose of this article is to regulate the location, design, construction, installation, alteration and use of animal waste storage facilities, and the application of wastes from these facilities in order to prevent water pollution and thereby protect the health of Rusk County residents and transients; prevent the spread of disease; and promote the prosperity and general welfare of the citizens of Rusk County. It is also intended to provide for the administration and enforcement of the article and to provide penalties for its violation.

(Res. No. 14-35, § I(D), 12-16-2014)

Sec. 8-164. - Interpretation.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

(Res. No. 14-35, § I(E), 12-16-2014)

Sec. 8-165. - Applicability.

This article applies to the unincorporated areas of Rusk County and to all animal waste storage facilities constructed therein.

(Res. No. 14-35, § I(H) 12-16-2014)

Secs. 8-166—8-175. - Reserved.

DIVISION 2. - DEFINITIONS

Sec. 8-176. - Definitions generally.

Animal waste means excreta from livestock, poultry and other materials, such as bedding, rain or other water, soil, hair, feathers, and other debris normally included in animal waste handling operations.

Animal waste storage facility means a concrete, steel, or otherwise fabricated structure, or an earthen facility of constructed earth dikes, excavated pits or ponds, or a combination of these, used for storage of animal waste facility, that stores an animal waste volume of more than 5,000 cubic feet.

Applicant means any person who applies for a permit under this article.

Bedrock means the solid or consolidated rock formation typically underlying loose surficial material such as soil, alluvium or glacial drift. Bedrock includes but is not limited to limestone, dolomite, sandstone, shale and igneous and metamorphic rock.

Idle animal waste storage facility means an animal waste storage facility which is no longer being used for its intended purpose and/or no longer having any additional animal waste placed into it for a period of 24 months.

Manure stack means an uncontained deposit of animal waste placed on an earthen, concrete or other surface for limited periods necessary to facilitate daily or periodic land spreading.

Nutrient management plan means a written plan detailing amount, form, placement, and timing of the application of plant nutrients. This includes nutrients from the animal waste storage facilities, commercial fertilizers, legume crops and crop residues.

Permit means the signed, written statement issued by the Rusk County Land and Water Conservation Department ("LWCD") and the Rusk County Conservationist under this article authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter an animal waste storage facility and to use or dispose of waste from the facility.

Permittee means any person to whom a permit is issued under this article.

Person means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the federal government, or any combination thereof.

Subsurface saturation means the following criteria apply:

- (1) Free water or wet soil identified by glistening, due to the slow release of water.
- (2) Gleyed soil, that may extend uninterrupted from an observed free water surface.
- (3) The presence of distinct gray redoximorphic features with a chroma of two or less based on Munsell color charts.

Technical guide means the United States Department of Agriculture (U.S.D.A.) Natural Resource Conservation Service Technical Guide as adopted by the Rusk County Land and Water Conservation Committee and the land conservation department.

Temporary storage means an animal waste storage facility of less than 5,000 cubic feet.

Water pollution means contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

Secs. 8-177—8-185. - Reserved.

DIVISION 3. - ACTIVITIES SUBJECT TO REGULATION

Sec. 8-186. - General requirement.

Any person, who designs, constructs, installs, reconstructs, enlarges, or alters an animal waste storage facility; or who employs another person to do the same, on land subject to this article, shall be subject to the provisions of this article.

(Res. No. 14-35, § III(A), 12-16-2014)

Sec. 8-187. - Compliance with permit requirements.

- (a) A person is in compliance with this article if he or she follows the procedures of this article, receives a permit from the county conservationist before beginning activities subject to regulation under this article, and complies with the requirements of the permit.
- (b) Facilities which are designed, constructed, installed, reconstructed, enlarged, altered, or abandoned under this article shall be considered in compliance until such time that conditions of the facility no longer meet standards which were in place at the time the permit was issued.
- (c) Modification to existing facilities installed under this article may be allowed, based upon standards which were in place at the time the permit was issued, following review and approval by land and water conservation division staff.

(Res. No. 14-35, § III(B), 12-16-2014; Res. No. 9-22, 5-24-2022)

Sec. 8-188. - Manure stacking.

The article shall not apply to manure stacks as defined herein, where daily or periodic direct removal to fields is implemented.

(Res. No. 14-35, § III(C), 12-16-2014)

Sec. 8-189. - Temporary storage.

A person is not subject to permit when complying with either [Technical Guides] 313-10, Table 2, or, 634-7, Table 1.

(Res. No. 14-35, § III(D), 12-16-2014)

Sec. 8-190. - Idle animal waste storage facility.

Any person who owns an animal waste storage facility that has been determined to be idle must lower the level of the animal waste in the facility to an elevation of one foot above the floor of the facility within a period of six months from the date the facility was determined to be idle. The idle waste storage facility shall be subject to Standard 360, Closure of Waste Impoundments. The animal waste shall be uniformly spread on cropland or pasture according to an approved nutrient management plan.

(Res. No. 14-35, § III(E), 12-16-2014; Res. No. 9-22, 5-24-2022)

Secs. 8-191—8-200. - Reserved.

DIVISION 4. - STANDARDS

Sec. 8-201. - Standards for animal waste storage facilities.

(a) The construction, reconstruction, enlargement, alteration, closure and operation of any and all animal waste storage facilities covered under this article in Rusk County shall comply with all of the provisions of the following technical guides issued by the USDA, NRCS and in effect at the time of permit issuance:

- (1) Technical Guide 313 (Waste Storage Facility);
- (2) Technical Guide 634 (Manure Transfer);
- (3) Technical Guide 590 (Nutrient Management);
- (4) Technical Guide 360 (Closure of Waste Impoundments).

(Res. No. 14-35, § IV(A), 12-16-2014; Res. No. 9-22, 5-24-2022)

Sec. 8-202. - Standard for nutrient management.

Nutrient management of all animal waste from permitted storage facilities shall be handled and comply with all of the provisions of the Wisconsin Field Office Technical Guide 590, issued by the USDA, NRCS, ATCP 50.04 including submittal of annual checklists to the Rusk County Land and Water Conservation Division.

(Res. No. 14-35, § IV(B), 12-16-2014; Res. No. 9-22, 5-24-2022)

Secs. 8-203—8-215. - Reserved.

DIVISION 5. - APPLICATION FOR AND ISSUANCE OF PERMITS

Sec. 8-216. - Permit required.

No person may undertake an activity subject to this article without obtaining a permit from the county conservationist prior to beginning the proposed activity.

(Res. No. 14-35, § V(A), 12-16-2014)

Sec. 8-217. - Exception to permit requirement.

Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of stoppages may be performed without a permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the county conservationist within two work days of the emergency for a determination by the county conservationist on whether a permit will be required for any additional alteration or repair to the facility. The county conservationist shall consult with the land and water conservation committee prior to rendering a determination.

(Res. No. 14-35, § V(B), 12-16-2014)

Sec. 8-218. - Onsite investigation required.

Each application for a permit under this section shall require an onsite inspection prior to issuance and include a summary report on site conditions. The site inspection shall be conducted by the county conservationist and/or the land and water conservation division staff.

(Res. No. 14-35, § V(C), 12-16-2014; Res. No. 9-22, 5-24-2022)

Sec. 8-219. - Fees.

A non-refundable application fee and manure storage construction permit fee under this article shall be calculated utilizing the fee schedule adopted by the land and water conservation committee. The fee schedule may be amended as the land and water conservation committee deems necessary. A double fee will be charged for all after-the-fact applications and/or permits.

(Res. No. 14-35, § V(D), 12-16-2014)

Sec. 8-220. - Animal waste storage facility and manure transfer system plans and specifications.

Each application for a permit under this section shall include plans and specifications prepared and approved by an agricultural or civil engineer registered with the State of Wisconsin or a DATCP or NRCS engineering practitioner, in accordance with the criteria of the appropriate standard and shall describe the requirements for applying the practice to achieve its intended use. The plans, specifications, and documentation for construction shall include:

- (1) Management assessment.

- (2) Site assessment.
- (3) Safety design.
- (4) Operation and maintenance plan.
- (5) Nutrient management plan.
- (6) Construction plan, schedules, and staging.
- (7) Construction inspection plan.
- (8) Final construction plan showing any plan changes and certifying that the facility meets all applicable NRCS standards.

(Res. No. 14-35, § V(E), 12-16-2014)

Sec. 8-221. - Review of application.

- (a) The county conservationist shall receive all permit applications and conduct a preliminary review to ensure completeness. Within 60 working days, the county conservationist and land and water conservation committee shall review permit applications and determine if the proposed facility meets required standards set forth in standards of this article. This review shall be conducted at the next publicly noticed, regularly scheduled committee meeting. Within seven working days after this review, the county conservationist shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the county conservationist shall notify the permit applicant and the county conversationist and land and water conservation committee shall have 30 working days from the receipt of the additional information in which to approve or disapprove the application. No construction may commence without the final approval by the county conservationist and land and water conservation committee.
- (b) Storage facility design may be provided through the land conservation department, cooperating members or county, state, or federal government agencies, private consultants, prequalified or preapproved plans. Private consultants shall be registered professional engineers, licensed in the State of Wisconsin. Preapproved or prequalified plans must be approved by a registered professional engineer, licensed in the State of Wisconsin meeting the requirements of this article.

(Res. No. 14-35, § V(F), 12-16-2014; Res. No. 9-22, 5-24-2022)

Sec. 8-222. - Permit conditions.

All permits issued under this article shall be issued subject to the following conditions and requirements.

- (1) Animal waste storage facility design and construction, management, and utilization activities shall be carried out in accordance with the animal waste facility plans and applicable standards specified in standards and application for and issuance of permits sections of this

article.

- (2) The permittee shall give at least five workdays' notice to the county conservationist before starting any construction activity authorized by the permit.
- (3) Approval in writing must be obtained from the county conservationist prior to any modifications to the approved animal waste facility plan.
- (4) The permittee and, if applicable, the contractor, or the consulting engineer, shall certify in writing to the land and water conservation division within 30 days of project completion, that the facility was installed as planned.
- (5) The county conservationist and/or staff may conduct onsite inspections before, during and after construction.
- (6) Activities authorized by permit must be completed within two years from the date of issuance after which such permit shall be void.
- (7) Any other conditions deemed necessary by the county conservationist or land and water conservation committee to ensure the safe construction, operation, and maintenance of the storage structure and animal waste handling.

(Res. No. 14-35, § V(G), 12-16-2014; Res. No. 9-22, 5-24-2022)

Sec. 8-223. - Permit revocation.

The county conservationist may revoke any permit issued under this article if the holder of the permit has misrepresented any material in the permit application or animal waste facility plan, nutrient management plan, or if the holder of the permit violates any of the conditions of the permit.

(Res. No. 14-35, § V(H), 12-16-2014)

Secs. 8-224—8-235. - Reserved.

DIVISION 6. - ADMINISTRATION

Sec. 8-236. - Delegation of authority.

Rusk County hereby designates the county conservationist to administer and enforce this article. The county conservationist shall seek out the advice of the land conservation committee in the administration and enforcement of this article.

(Res. No. 14-35, § VI(A), 12-16-2014)

Sec. 8-237. - Administrative duties.

In the administration of this article, the county conservationist with assistance from the land and water conservation committee shall:

- (1) Keep an accurate record of all permit applications, animal waste facility plans, permits issued, inspections made, and other official actions.
- (2) Review permit applications and issue permit in accordance with the application for and issuance of permits section of this article.
- (3) Inspect animal waste facility construction to insure the facility is being constructed according to plan specifications.
- (4) Investigate complaints relating to compliance with the ordinance.
- (5) Perform other duties as specified in this article.

(Res. No. 14-35, § VI(B), 12-16-2014)

Sec. 8-238. - Inspection authority.

Pursuant to authority granted by Wis. Stats. § 92.07(14), the county conservationist, or representative is authorized to enter upon any lands affected by this article to inspect the land prior to or after permit issuance to determine compliance with this article. If permission cannot be received from the applicant or permittee, the permit may be denied or entry by county conservationist and staff shall be according to Wis. Stats. §§ 66.122 and 66.123. Refusal to grant permission to enter lands affected by this article for the purposes of inspection may be grounds for denial of the permit.

(Res. No. 14-35, § VI(C), 12-16-2014)

Sec. 8-239. - Enforcement authority.

- (a) The county conservationist and land and water conservation committee are authorized to post an order stopping work upon land which has had a permit revoked, or on land in violation of this article. Notice is given by both posting upon the land where the violation occurs, one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this article. The order shall specify that the activity must cease immediately and be brought into compliance within five working days.
- (b) Any permit revocation or order stopping work shall remain in effect until the activity is brought into compliance with the article and the order is retracted by the land and water conservation committee, the county conservationist, or by a court of general jurisdiction.
- (c) The county conservationist is authorized to refer any violation of this article to the corporation counsel for commencement of further legal proceedings seeking penalties and other appropriate relief in enforcement of the article.

(Res. No. 14-35, § VI(D), 12-16-2014; Res. No. 9-22, 5-24-2022)

Secs. 8-240—8-250. - Reserved.

DIVISION 7. - VIOLATIONS

Sec. 8-251. - Penalties.

Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this article shall be subject to a forfeiture of up to \$200.00 plus costs of prosecution for each violation. An unlawful violation includes failure to comply with any standard of this article or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense.

(Res. No. 14-35, § VII(A), 12-16-2014)

Sec. 8-252. - Enforcement of injunction.

As a substitute for or as an addition to forfeiture actions, Rusk County may seek enforcement of any part of this article by court actions seeking injunctions or restraining orders.

(Res. No. 14-35, § VII(B), 12-16-2014)

Secs. 8-253—8-265. - Reserved.

DIVISION 8. - APPEALS FROM ADMINISTRATIVE DECISIONS

Sec. 8-266. - Authority.

The Rusk County Land and Water Conservation Committee shall hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination by the county conservationist in administering this article.

(Res. No. 14-35, § VIII(A), 12-16-2014)

Sec. 8-267. - Procedure.

- (a) Any appeal shall be made by written request, mailed or delivered to the County Conservationist, 311 Miner Ave E, STE 121, Ladysmith WI 54848.
- (b) The request shall state the ground or grounds upon which it is contended that the decision should be modified or reversed.

- (c) The committee shall, as soon as reasonable, but no later than its next regular meeting, review the determination under appeal.

(Res. No. 14-35, § VIII(B), 12-16-2014)

Sec. 8-268. - Statutory administrative review and certiorari.

- (a) The decision of the county conservationist shall be subject to further administrative review by the land and water conservation committee if a written appeal seeking such review is filed within 30 days after the decision of the county conservationist.
- (b) The decision of the land and water conservation committee shall be subject to judicial review if, within 30 days after the decision of the land and water conservation committee an action seeking the remedy available by certiorari is commenced, as authorized by the Rusk County Code of Ordinances and Wis. Stats. § 59.99.

(Res. No. 14-35, § VIII(C), 12-16-2014)

Sec. 8-269. - Appeals committee.

The land and water conservation committee shall act as the appeals committee.

(Res. No. 14-35, § VIII(D), 12-16-2014)

Sec. 8-270. - Who may appeal.

Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision, or determination for which review is sought. Said appeal must be commenced within 30 days of the written determination by county conservationist.

(Res. No. 14-35, § VIII(E), 12-16-2014; Res. No. 9-22, 5-24-2022)

ARTICLE VII. - SW-1 SHORELAND/WETLAND DISTRICT (OVERLAY DISTRICT)

Sec. 50-175. - Statutory authorization.

This article is adopted pursuant to the authorization in Wis. Stats. §§ 59.692 to implement 59.692 and 281.31.

(Res. No. 16-21, 8-30-2016)

Sec. 50-176. - Finding of fact.

Uncontrolled use of the shorelands and pollution of the navigable waters of the county would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of the state 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. This responsibility is hereby recognized by the county.

(Code 1987, § 17.57(1.2); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009)

Sec. 50-177. - Purpose.

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

- (1) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
 - a. Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
 - b. Establishing minimum lot sizes to provide adequate area for private sewage disposal facilities and wells.
 - c. Controlling filling and grading and to prevent soil erosion.
 - d. Limiting impervious surfaces to control runoff which carries pollutants.
- (2) Protect spawning grounds, fish and aquatic life through:
 - a. Preserving wetlands and other fish and aquatic habitat.
 - b. Regulating pollution sources.
 - c. Controlling shoreline alterations, dredging and lagooning.
- (3) Control building site, placement of structures and land uses through:

- a. Separating conflicting land uses.
 - b. Prohibiting certain uses detrimental to the shoreland area.
 - c. Setting minimum lot sizes and widths.
 - d. Regulating side yards and building setbacks from waterways.
 - e. Setting the maximum height of near shore structures.
- (4) Preserve shoreland vegetation and natural beauty through:
- a. Restricting the removal of natural shoreland cover.
 - b. Preventing shoreline encroachment by structures.
 - c. Controlling shoreland excavation and other earthmoving activities.
 - d. Regulating the use and placement of boathouse, piers and other structures.

(Code 1987, § 17.57(1.3); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-178. - Title.

This article shall be known as the "Shoreland and Shoreland/Wetland Zoning Ordinance for Rusk County, Wisconsin."

(Code 1987, § 17.57(1.4); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009)

Sec. 50-179. - Application of the county zoning ordinance.

The provisions of the county zoning ordinance are hereby incorporated by reference. These provisions shall only apply to the shoreland area where they impose greater restrictions than this article otherwise imposes.

(Code 1987, § 17.57(1.5); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009)

Sec. 50-180. - Areas to be regulated.

Areas regulated by this article shall include all the land (referred to herein as shorelands and shorelands/wetlands) in the unincorporated areas of the county which are:

- (1) Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages.
Lakes, ponds or flowages in the county shall be presumed to be navigable if they are listed in the state department of natural resources publication Wisconsin Lakes Book or as shown on the United States Geological Survey quadrangle maps or other zoning base maps.
- (2) Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in the county shall be presumed to be navigable if they are designated as continuous waterways or

intermittent waterways on the United States Geological Survey quadrangle maps. County soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.

- (3) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when Wis. Stats. § 13.48(13), applies, state agencies are required to comply with, and obtain all necessary permits under local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if Wis. Stats. § 30.2022 applies (NR115.02). Shoreland zoning requirements in annexed or incorporated areas are provided in Wis. Stats. §§ 61.353 and 62.233.
- (4) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate district office of the department for a final determination of navigability or ordinary high-water mark. The county will work with surveyors with regard to Wis. Stats. § 59.692(1h).
- (5) Under Wis. Stats. § 281.31(2m), notwithstanding any other provision of law or administrative rule promulgated thereunder, this article does not apply to lands adjacent to farm drainage ditches if:
 - a. Lands adjacent to farm drainage ditches if:
 1. Such lands are not adjacent to a natural navigable stream, river, lake or pond;
 2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
 - b. Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

(Code 1987, § 17.57(2.1); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016; Res. No. 16-21A, 1-22-2019)

Sec. 50-181. - Shoreland zoning maps.

The most current, latest print maps designated in this section are hereby adopted and made part of this article. They are on file in the office of the zoning administrator for the county.

- (1) United States Geological Survey quadrangle maps for the county.
- (2) Most current available state wetland inventory maps stamped "FINAL."
- (3) Floodplain zoning maps identified as FEMA.
- (4)

The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer [at this link](https://dnrm.wisconsin.gov/H5/?Viewer=SWDV&runWorkflow=Wetland): url="https://dnrm.wisconsin.gov/H5/?Viewer=SWDV&runWorkflow=Wetland".

(Code 1987, § 17.57(2.2); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016; Res. No. 16-21A, 1-22-2019)

Sec. 50-182. - Compliance.

The use of any land or water; the size, shape and placement of lots; the use, size, type and locations of structures on lots; the installation and maintenance of water supply and waste disposal facilities; the filling, grading, lagooning, dredging of any lands; the cutting of shoreland vegetation; and the subdivision of lots shall be in full compliance with the terms of this article and other applicable local, state or federal regulations. (However, section 50-192 provides for standards applicable to nonconforming uses and structures.) Buildings, signs and other structures shall require a permit unless otherwise expressly excluded by a provision of this article. Property owners, builders and contractors are responsible for compliance with the terms of this article.

(Code 1987, § 17.57(2.3); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009)

Sec. 50-183. - Municipalities and state agencies regulated.

Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when Wis. Stats. § 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Wis. Stats. § 30.2022 applies.

(Res. No. 16-21, 8-30-2016)

Editor's note— Res. No. 16-21, adopted Aug. 30, 2016, amended § 50-183 in its entirety to read as herein set out. Former § 50-183, pertained to annexed and newly incorporated areas, and derived from Code 1987, § 17.57(2.4); Res. No. 07-07, adopted March 27, 2007; Res. No. 07-07D, adopted March 31, 2009; Res. No. 07-07E, adopted Dec. 15, 2009.

Sec. 50-184. - Abrogation and greater restrictions.

- (a) The provisions of this article supersede any provisions in a county zoning ordinance that solely relate to shorelands. In other words, if a zoning standard applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this article supersedes those provisions. However, when an ordinance adopted under a statute other than Wis. Stats. § 59.692,

does not solely related to shorelands and is more restrictive than this article, for example, a floodplain ordinance, that this article shall continue in full force and effect to the extent of the greater restriction. (Wis. Stats. § 59.692(5).)

- (b) This article shall not require approval or be subject to disapproval by any town board.
- (c) If an existing town ordinance relating to shoreland/wetland is more restrictive than this article or any amendments thereto, the town ordinance continues in all respects to the extent of greater restrictions but not otherwise.
- (d) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this article imposes greater restrictions, the provisions of this article shall prevail.
- (e) The following provisions of this article are hereby incorporated by reference; these provisions shall only apply to the shoreland area where they impose greater restrictions than this article otherwise imposes.
- (f) This article may establish standards to regulate matters that are not regulated in NR115, but that further the purposes of shoreland zoning as described in section 50-177 of this article. (Wis. Stats. § 59.692(1d)(b).)
- (g) Counties may not establish shoreland zoning standards in a shoreland zoning ordinance that requires any of the following:
 - (1) Approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirements to install or maintain outdoor lighting in shorelands or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.
 - (2) Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made. (Wis. Stats. § 59.692(1k(a)1.)
- (h) The construction and maintenance of a facility is considered to satisfy the requirements of a shoreland zoning ordinance if:
 - (1) The department has issued all required permits or approvals authorizing the construction or maintenance under Wis. Stats. ch. 30, 31, 281 or 283. Note: A facility means any property or equipment of a public utility, as defined in Wis. Stats. § 196.01(5) or a cooperative association organized under Wis. Stats. ch. 185 for the purpose of producing or furnishing heat, light or power to its members only, that is used for the transmission, delivery or furnishing of natural gas, heat, light or power.

(Code 1987, § 17.57(2.6); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Where a provision of this article is required by a statute and standard in Wis. Admin. Code ch. NR 115 and where the article provision is unclear, the provision shall be interpreted in light of the statute and Wis. Admin. Code ch. NR 115 standards in effect on the date of the adoption of the ordinance from which this article is derived or in effect on the date of the most recent text amendment to this article.

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

(Code 1987, § 17.57(2.7); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-186. - Land division review and sanitary regulations.

- (a) The county shall review, pursuant to Wis. Stats. § 236.45, all land divisions in shoreland areas which create three or more parcels or building sites of five acres each or less within a five-year period.
- (b) Any division of lands in the shoreland and shoreland/wetland district shall meet the requirements of Wis. Stats. ch. 236 and the county subdivision code, chapter 42. In such review, the following factors shall be considered:
 - (1) Hazards to the health, safety or welfare of future residents.
 - (2) Proper relationship to adjoining areas.
 - (3) Public access to navigable waters, as required by law.
 - (4) Adequate storm drainage facilities.
 - (5) Conformity to state law and administrative code provisions.
- (c) Sanitary regulations. The county has adopted sanitary regulations for the protection of health and the preservation and enhancement of water quality. Where a public sewer collection and treatment system is not available, design and construction of private sewage disposal systems shall be governed by a private sewage system ordinance adopted by the county under Wis. Stats. § 59.70(5).
- (d) All structures or premises in the county that are permanently or intermittently intended for human habitation or occupancy, where plumbing fixtures exist and water service is provided and which are not serviced by a public sewer, shall have a system for holding or treatment and dispersal of sewage and wastewater which complies with the provisions of chapter 24, article III, Rusk County Code of Ordinances.
- (e) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Admin. Code.
- (f)

Requirements for developed properties. Property owners expanding, rebuilding or altering a structure connected to an existing POWTS shall verify or prove that the POWTS system is compliant with Wis. Admin. Code ch. SPS 383 standards.

Note— Existing private sewage systems installed in or after 1982 that have soil profile descriptions, system evaluations and inspection reports filed in the county zoning office meet this requirement.

(Code 1987, § 17.57(3.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-187. - Dimensions of building sites.

Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. Notwithstanding the provisions of the county comprehensive zoning code or any other county ordinances, the following shall apply to all areas within the Shoreland and Shoreland/Wetland District (Overlay District) of the county. The following dimensional requirements are not meant to be an all-inclusive list or to exclude those requirements not specifically addressed and, in the case of a conflict, are to be considered minimum standards:

- (1) *Sewered lots.* The minimum lot area shall be 10,000 square feet and the minimum average lot width shall be 65 feet. The 65-foot width shall be measured at the ordinary high water mark and building site.
- (2) *Unsewered lots.* The minimum lot area shall be 20,000 square feet and the minimum average lot width shall be 100 feet. The 100-foot width shall measure at the ordinary high water mark and the building site.
- (3) *Substandard lots.* A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:
 - a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
 - b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - c. The substandard lot or parcel is developed to comply with all other ordinance requirements.
- (4) *Other substandard lots.* Except for lots which meet the requirements of subsection 50-187(3) a building permit for the improvement of a lot having lesser dimensions than those stated in subsections 50-187(1) and (2) shall be issued only if a variance is granted by the board of

adjustment.

Riparian access. All private riparian accesses; riparian access easements; outlots that are not deeded with a single lot; or other development offering riparian rights; deeded or contractual accesses for the purpose of riparian access shall meet the following requirements:

- a. The access to a navigable waterway for backlot, off-water or condominium type development shall have at least 100 feet of frontage at the ordinary high watermark with at least 20,000 square feet of area. The lot width shall be measured at right angles at all points along its side lot lines and the minimum required lot area shall exclude any wetlands. No cutting of vegetation and trees shall occur within 25 feet of each side lot line running the full depth of the lot.
- b. The number of single family lots, building sites, single family units or single family condominium units utilizing said riparian access shall be limited to three and must be within 1,000 feet of the riparian access. Commercial campgrounds, resorts or similar activity located on a backlot are prohibited from utilizing said access.
- c. No structures are permitted on the access. Overnight vehicle parking and the use of camping tents, motor homes and trailers shall not be permitted within the boundaries of the riparian access.
- d. The creation or use of land for a riparian access shall be by conditional use only. The zoning committee shall consider the size, shape, depth, present and potential use of the waterway, and the effect of the private access on public rights in navigable waters.
- e. Such access may be limited by Wis. Stats. § 30.133.

(Code 1987, § 17.57(4.0); Ord. No. 98-07, 2-24-1998; Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 07-07F, 2-28-2012; Res. No. 16-21, 8-30-2016)

Sec. 50-188. - Shoreline setback area.

A shoreline setback area shall be maintained in order to protect water quality, natural scenic beauty, fish and wildlife habitat and for the purposes enumerated in section 50-176.

(1) *Lots that abut on navigable waters.*

- a. All buildings and structures, except exempt structures or structures with a reduced setback under subsections 50-188(6)–(10), shall be set back at least 75 feet from the ordinary high water mark of navigable waters. Shoreline setbacks shall be measured horizontally from the most waterward projection of a structure to the ordinary high-water mark.

(2) *Accessory uses and structures.*

- a.

Any permanent, roofed structure serving as an accessory, if attached to the principal building, shall maintain all setbacks for principal structures.

(3) *Setback requirements on highways and roads.*

- a. All state and U.S. numbered highways are hereby designated Class A highways. The setback line for Class A highways and for any other roads designated as major roads on official maps in the county shall be 110 feet from the centerline of the highway or 50 feet from the right-of-way line, whichever is greater.
- b. All county trunk highways not otherwise designated as Class A highways are hereby designated Class B highways. The setback for Class B highways and for roads designated as arterial roads on official maps in effect in the county shall be 75 feet from the centerline of such highway or 42 feet from the right-of-way line, whichever is greater.
- c. All town roads not otherwise designated Class A or Class B highways are hereby designated Class C highways. The setback for Class C highways and for streets other than major and arterial roads designated as such on official maps in effect in the county shall be 30 feet from the right-of-way line.
- d. A setback equal to the average setback of existing principal buildings located within 500 feet of a proposed building site and on the same side of the street, shall be permitted where five of these buildings do not conform with the appropriate setback line.

(4) *Reduced principal structure setbacks.* A setback less than the 75 feet required setback from the ordinary high water mark shall be permitted for a proposed principal structure and shall be determined as follows:

- a. Where there are existing principal structure in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
 1. Both of the existing principal structures are located on a lot adjacent to the proposed principal structure.
 2. Both of the existing principal structures are located within 250 feet of the proposed principal structure and are the closest structure.
 3. Both of the existing principal structures are located less than 75 feet from the ordinary high water mark.
 4. The average setback shall not be reduced to less than 35 feet from the ordinary high water mark of any navigable water.
- b. Setback reductions may also be permitted by the board of adjustment via granting a variance pursuant to subsection 50-193(e) of this article.

(5)

Side yards. There shall be a side yard for each principle structure. The minimum width of each side yard shall be ten feet. There shall be a side yard of five feet for accessory structures excluding fences.

- (6) *Stairways; walkways; piers.* Stairways, elevated walkways, and that portion of piers landward of the ordinary high-water mark are exempt from the shoreline setback requirement, provided:
- a. The structure is necessary to access or protect the shoreline because of steep slopes or wet, unstable soils.
 - b. The structure shall be located so as to minimize earth disturbing activities and shoreline vegetation removal during construction and be visually inconspicuous as viewed from the adjacent waterway. Lattice work shall not be allowed.
 - c. Railings are permitted where required by safety concerns, state statutes or state regulations.
 - d. Stairways shall be supported on piles or footings rather than being excavated from erodible soils, steep slopes or a bluff face.
 - e. Canopies and roofs on such structure are prohibited.
 - f. The combined area of landings for a stairway and the landward side of a pier may not exceed 128 square feet for each buildable lot. Each single stairway landing may not exceed 36 square feet in area. Landings shall not be adjacent to each other and they must be separated by at least a ten-foot vertical distance, width shall be 60 inches or less.
 - g. Standards for removal of shoreline vegetation in section 50-189 shall be complied with.
- (7) Boathouses are exempt from the shoreline setback provided that:
- a. Boathouses shall be designed, constructed, and used solely for the storage of boats and related equipment and shall not be used for human habitation or occupancy. Boathouses shall not be equipped with a potable water supply, fireplaces, patio doors, furniture or any features inconsistent with the use of the structure exclusively as a boathouse. Boathouses shall have a gable roof with 4/12 pitch or greater.
 - b. Boathouses shall not be placed waterward beyond the ordinary high-water mark.
 - c. Only one boathouse is permitted for each buildable lot.
 - d. Reserved.
 - e. Boathouses shall be set back a minimum of four feet from and one foot above the ordinary high-water mark and shall be constructed in conformity with local floodplain zoning standards.
 - f. Wall height shall not exceed ten feet. The floor area shall not be less than 200 square feet and shall not exceed 400 square feet. The width of the boathouse cannot exceed two-thirds the length.

- g. Reserved.
 - h. Standards for removal of shoreline vegetation in section 50-189 shall be complied with and the boathouse shall be located within the view corridor.
 - i. Legal pre-existing boathouses located entirely above the ordinary high water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation may use the roof as a deck provided that:
 - 1. The boathouse has an existing flat roof.
 - 2. The roof has not side walls or screens.
 - 3. The roof may have railing that meets DSPS standards.
- (8) Open sided or screened structures are exempt from the shoreline setback provided that:
- a. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high water mark.
 - b. The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
 - c. The structure that is the subject of the request for special zoning permission is single story and has no sides or has open or screened sides.
 - d. The foundation or base of the structure shall not exceed 18 inches above existing natural grade and the wall height shall not exceed ten feet.
 - e. The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70 percent of the half of the shoreland setback area that is nearest to the water. A copy of this plan shall be recorded on the deed to the property.
- (9) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter, and satellite earth station antennas that are two meters or less in diameter are exempt from shoreland setback standards.
- (10) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Wis. Admin. Code SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure are exempt from shoreland setback standards.
- (11) Devices or systems used to treat runoff from impervious surfaces are exempt from shoreland setback standards.
- (12)

Legal pre-existing exempt structures may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

- (13) Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

(Code 1987, § 17.57(5.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07C, 3-25-2008; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 07-07G, 10-9-2012; Res. No. 16-21, 8-30-2016)

Sec. 50-189. - Vegetation standards.

To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows.

- (1) The county may allow routine maintenance of vegetation.
- (2) The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors. The viewing corridor may be at least 35 feet wide for every 100 feet of shoreline frontage. The viewing corridor may run contiguously for the entire maximum width or shoreline frontage owned.
- (3) The county may allow 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, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.
- (4) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.
- (5) The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with ten or more acres of forested land consistent with "generally accepted forestry management practices" as defined in § NR 1.25 (2) (b), Wis. Adm. Code, and described in department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

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

(Code 1987, § 17.57(6.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-190. - Land-disturbing activities landward of the vegetation protection area.

- (a) *General standards.* Filling, grading, lagooning, dredging, ditching or excavating may be permitted in the shoreland area provided that:
 - (1) It is done in a manner designed to minimize erosion, sedimentation or impairment of fish and wildlife habitat.
 - (2) Filling, grading, lagooning, dredging, ditching or excavating in the shoreland-wetland district meets the requirements of section 50-191(c)(2) and (3).
 - (3) All applicable federal, state and local authority is obtained in addition to a permit under this article.
 - (4) Any fill placed in the shoreland area is continually protected during construction against erosion by the use of riprap, jute netting, plastic cover, filter fabric fencing, etc.
 - (5) It is not done within the vegetative buffer zone unless necessary for establishing or expanding the vegetative buffer.
 - (6) Reserved.
 - (7) Where a DNR permit has been issued which meets the substantial concerns of this article, no county permit will be required unless this article is more restrictive.
- (b) *Landward of the vegetation protection area.* A zoning permit is required for land-disturbing activities landward of the vegetation protection area, which are within 300 feet of the OHWM of navigable water and which has surface drainage toward the water and on which there is any of the following:
 - (1) Any filling or grading on slopes of more than 20 percent.
 - (2) Filling or grading of more than 1,000 square feet on slopes of 12 percent to 20 percent.
 - (3) Filling or grading of more than 2,000 square feet on slopes of zero percent to 12 percent.
 - (4) Slopes in excess of 45 percent. On slopes in excess of 45 percent land-disturbing activities are prohibited on shoreland that drain to surface waters.
- (c) In granting a zoning permit under section 50-190, the county zoning administrator 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 or jute netting) shall be used and permanent vegetative cover shall be established.
- (3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (4) Lagoons shall be constructed to avoid fish trap conditions.
- (5) Fill shall be stabilized according to accepted engineering standards.
- (6) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (7) Channels or artificial watercourses shall be constructed with side slopes of two units horizontal distance to one unit vertical or flatter which shall be promptly vegetated, unless bulkheads or rip-rap are provided.

(d) *Soil conservation practices and agricultural drainage maintenance.*

- (1) Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit under subsection (c) of this section when designed and constructed to Natural Resource Conservation Service technical standards.
- (2) The maintenance of existing agricultural drainage systems shall be permitted when designed and constructed to Natural Resource Conservation Service technical standards.

(e) *Impervious surface standards.*

- (1) *Purpose.* Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any non-riparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.
- (2) *Calculations 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 ordinary high water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in subsection 50-190(5) shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.
- (3) *General impervious surface standard.* Up to 15 percent impervious surface is allowed on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark.

(4) *Maximum impervious surface.* A property may exceed the impervious surface standard under subsection 50-190(3) provided the following standards are met:

- a. For properties where the general impervious surface standard applies under subsection 50-190(3) a property owner may have more than 15 percent impervious surface but not more than 30 percent impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high water mark.
- b. For properties that exceed the standard under subsection 50-190(3) but do not exceed the maximum standard under subsection 50-190(4)(a), a permit can be issued for development with a mitigation plan that meets the standards found in subsection 50-196. Three points of mitigation relating to the treatment of runoff and stormwater shall be chosen by the property owner.
 1. For meeting this requirement, a property owner must submit, along with a mitigation agreement, a site plan completed by a professional land surveyor or professional engineer showing property lines, total square footage of lot, impervious surface areas and total square footage of impervious surface areas.

(5) *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 subsection 50-190(2):

- a. The impervious surface is treated by appropriately sized devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- b. 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.
- c. To qualify for this exemption, property owners shall submit a complete permit application that is reviewed and approved by the county. The application shall be completed by a professional engineer and include the following:
 1. A site plan showing property lines, total square footage of lot, impervious surface areas and size and dimensions of treated areas.
 2. Calculations showing how much runoff is coming from the impervious surface area.
 3. Documentation that the runoff from the impervious surface is being treated by an adequately proposed treatment system, treatment device or internally drained area.
 4. An implementation schedule and enforceable obligation on the property owner to establish and maintain the treatment system, treatment devices or internally drained area. This obligation shall be evidenced by an instrument recorded in the office of the register of deeds prior to the issuance of the permit. Failure of the property owner to properly maintain the treatment device voids this exemption.

(6) *Existing impervious surfaces.* For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in subsection 50-190(3) or the maximum pervious surface standard in subsection 50-190(4), the property owner may do any of the following:

- a. Maintain and repair the existing impervious surfaces.
- b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.
- c. Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in § Wis. Admin. Code NR 115.05(1)(b).

(Code 1987, § 17.57(7.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 07-07G, 10-9-2012; Res. No. 16-21, 8-30-2016)

Sec. 50-191. - Shoreland-wetland district.

(a) *Designation.*

- (1) This district shall include all shorelands within the jurisdiction of this article which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.
- (2) Locating shoreland-wetland boundaries. Where an apparent discrepancy exists between the shoreland/wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions 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. The zoning administrator shall initiate a map amendment to correct the discrepancy.

(b) *Purpose.* This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

- (1) Wetlands are seldom suitable as building sites for the following reasons:
 - a. Septic tank systems will not function because of high groundwater.

- b. Water supplies are often polluted by septic tank wastes that have not been adequately absorbed by the soil.
 - c. Foundations and roads crack due to poor support capabilities and frost action.
 - d. Flooding is common in spring and other times of high water.
- (2) Wetlands provide fish spawning grounds and wildlife habitat, and the natural plant and animal communities found in wetlands provide ecological balance to a watercourse. Wetlands help to prevent water pollution and flooding problems.
- (c) *Permitted uses.* The following uses shall be allowed, subject to general shoreland and shoreland/wetland zoning regulations contained in this article, the provisions of Wis. Stats. chs. 30 and 31 and 281.36 and the provisions of other applicable local, state and federal laws:
 - (1) Activities and uses which do not require the issuance of a land use permit, but which must be carried out without any 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 pasturing of livestock and the cultivation of agricultural crops without disturbing the ecological balance;
 - d. The practice of silviculture, including the planting, thinning and harvesting of timber; and
 - e. The construction or maintenance of duck blinds.
 - (2) Uses which do not require the issuance of a land use permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided as follows:
 - a. Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
 - b. The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries;
 - c. The maintenance and repair of existing agricultural draining systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoil banks where possible;
 - d. The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
 - e.

The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and

- f. The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(3) Uses which require the issuance of a land use permit under section 50-193(b) and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided as follows:

- a. The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
 - 1. The road cannot as a practical matter be located outside the wetland;
 - 2. The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in subsections (b) and (e)(2) of this section;
 - 3. The road is designed and constructed with the minimum cross sectional area practical to serve the intended use;
 - 4. Road construction activities are carried out in the immediate area of the roadbed only.
- b. The construction or maintenance of nonresidential buildings, provided that:
 - 1. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals, or some other use permitted in the shoreland-wetland district;
 - 2. The building cannot, as a practical matter, be located outside the wetland;
 - 3. Such building is not designed for human habitation and does not exceed 500 square feet in floor area; and
 - 4. Only limited filling or excavating necessary to provide structural support for the building is authorized.
- c. The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:
 - 1. Any private development is used exclusively for the permitted use and the applicant has received a permit or license under Wis. Stats. ch. 29 where applicable;
 - 2. Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in subsection (c)(3)a.1 through 4 of this section; and

3. Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.
- d. The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities, cooperative associations or a governmental body organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines, provided that:
 1. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland; and
 2. Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in subsection (e)(2) of this section.
- (d) *Prohibited uses.* Any use not listed in subsection (c) of this section is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this article in accordance with subsection (e) of this section, Wis. Stats. § 59.69(5)(e) and Wis. Admin. Code ch. NR 115.
- (e) *Rezoning of lands in the shoreland-wetland district.*
 - (1) For all proposed text and map amendments to the shoreland-wetland provisions of this article, the appropriate district office of the department shall be provided with the following:
 - a. A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this article, within five days of the filing of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this article describing any proposed rezoning of a shoreland-wetland;
 - b. Written notice of the public hearing to be held on a proposed amendment at least ten days prior to such hearing;
 - c. A copy of the county zoning department's findings and recommendations on each proposed amendment within ten 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 ten days after it is issued.
 - (2) A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
 - a. Stormwater and floodwater storage capacity or flow;

- b. Maintenance of dry season streamflow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Fish spawning, breeding, nursery or feeding grounds;
- f. Wildlife habitat; or
- g. Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04 which can be accessed at the following web site: https://docs.legis.wisconsin.gov/code/admin_code/nr/100/103.

- (3) If the department notifies the county zoning agency that a proposed text or map amendment to the shoreland/wetland provisions of this article may have a significant adverse impact upon any of the criteria listed in subsection (e)(2) of this section, that amendment, if approved by the county board, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this amendment is mailed to the Department of Natural Resources. During that 30-day period, the Department of Natural Resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under Wis. Stats. § 59.692(6). If the department does so notify the county board, the effect of this amendment shall be stayed until the Wis. Stats. § 59.69, adoption procedure is completed or otherwise terminated."

(Code 1987, § 17.57(8.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-192. - Nonconforming uses and structures.

- (a) *General provisions.* The lawful use of a building, structure or property which existed at the time this article (or an applicable amendment to this article) took effect and which is not in conformity with the provisions of this article, including the routine maintenance of such building or structure, may be continued, subject to the conditions of this section.
- (b) *Nonconforming uses.*
 - (1) A property owner claiming a nonconforming use and exemption from applicable regulations shall prove by a preponderance of the evidence that:
 - a. The use was legally established;
 - b. The use predated zoning provisions with which it does not comply;

- c. The use was active and actual prior to adoption of such provisions and not merely casual and occasional or incidental to the principal use of the property in which case no vested right to continue the use shall have been acquired.
 - (2) A nonconforming use of a structure or premises shall not be expanded or enlarged. No such use shall be expanded within a structure which, on the date the use became nonconforming, was only partially devoted to such use.
 - (3) Discontinuance. If a nonconforming use is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this article.
 - (4) Temporary structures. If the nonconforming use of a temporary structure is discontinued, such nonconforming use may not be recommenced.
 - (5) Nuisances. Uses which are nuisances shall not be permitted to continue as nonconforming uses.
- (c) *Nonconforming structures.*
- (1) Reserved.
 - (2) Nonconforming accessory structures. Shoreland nonconforming accessory structures are subject to subsection 50-192(c)(3)b. All other nonconforming accessory structures are limited to ordinary maintenance and repairs and shall not be expanded.
 - (3) Nonconforming principal structures.
 - a. Nonconforming principal structures that meet the OHWM setback are permitted ordinary maintenance and repair. Such structures may be altered or expanded provided that:
 - 1. Modification or replacement of no more than 50 percent of the structural members of the existing external wall perimeter is permitted;
 - 2. The lifetime total of all expansions is limited to the impervious surface standards of subsection 50-190(e);
 - 3. Limitations on construction of impervious surfaces and land-disturbing activities in section 50-190 are observed; and
 - 4. No expansion or addition shall increase the nonconformity of the original structure.
 - b. An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

1. Modification or replacement of no more than 50 percent of the structural members of the existing external wall perimeter is involved;
 2. Roof replacement is limited to a maximum structure height of 18 feet or current height if greater;
 3. Internal improvement is confined to the building envelope (i.e., no additional stories, lateral expansion or accessory construction outside of the perimeter of existing enclosed dwelling space);
 4. The mitigation requirements of section 50-192(d) are implemented;
 5. Decks and porches may be replaced in the same footprint and location as the existing deck or porch, provided one point of mitigation, as described in section 50-192(d) is chosen and implemented; and
- c. Lateral expansion of nonconforming principal structure within the setback. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per subsection 50-188(1) may be expanded laterally, provided that all of the following requirements are met:
1. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
 2. The existing principal structure is at least 35 feet from the ordinary high water mark.
 3. Lateral expansion is limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high water mark than the closest point of the existing principal structure.
 4. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 50-196.
 5. All other provisions of the shoreland ordinance shall be met.
- d. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under subsection 50-188(1), may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per subsection 50-188(1) and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per subsection 50-190(e).
- e. An existing principal structure that was lawfully placed when constructed but that does not comply with the required water setback per subsection 50-188(1) may be relocated on the property provided all of the following requirements are met:
- 1.

The use of the structure has not been discontinued for a period of 12 months or more.

2. No portion of the relocated structure is located any closer to the ordinary high water mark than the closest point of the existing principal structure and will be at least 35 feet from the water.
 3. The relocated structure is limited to a comparable size, or smaller, unless expansions are done in accordance with the provisions of subsection 50-192(3)(c).
 4. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for relocation that will result in compliance with the required water setback.
 5. The mitigation requirements of section 50-196 are implemented.
- (4) Reserved.
- (5) A structure that is nonconforming as to structural, dimensional or setback standards may not be expanded or enlarged so as to increase its nonconformity.
- (6) Nonconforming structures which are located in more than one setback zone shall comply with the standards of the more restrictive zone.

(Code 1987, § 17.57(10.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 07-07G, 10-9-2012; Res. No. 16-21, 8-30-2016)

Sec. 50-193. - Administrative provisions.

(a) *Zoning administrator.*

- (1) The zoning administrator shall have the following duties and powers:
- a. Develop and maintain a system of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the office of the county zoning administrator.
 - b. Advise applicants as to the provisions of this article and assist them in preparing permit applications and appeal forms.
 - c. Develop and maintain a variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.
 - d. Develop and maintain a special exception (conditional use) procedure.
 - e. Issue permits and certificates of compliance and inspect properties for compliance with this article.
 - f.

Keep records of all permits issued, inspections made, work approved and other official actions.

- g. Provide copies of variances, special use permits and decisions on appeals for map or text interpretations and map or text amendments within ten days after they are granted or denied to the appropriate office of the department.
- h. Investigate and report violations of this article to the appropriate county zoning committee and the district attorney or corporation counsel.
- i. Develop and maintain an official map of all mapped zoning district boundaries, amendments, and recordings.

(2) The zoning administrator and his appointed designees shall have powers and authority set forth in section 50-300(c).

(b) *Land use permits.*

(1) *Permitted uses in shoreland.* Used permitted in the shoreland are as follows:

- a. One- and two-family individual dwellings.
- b. Private garages, carports, accessory building and other land uses clearly incidental to the customary principal use.
- c. Additions to dwellings and accessory buildings.
- d. Reserved.
- e. A single travel trailer or RV which meets section 50-83.
- f. Steps, landings, decks, patios, and walkways.
- g. Grading and land disturbing activities subject to the provisions of section 50-190.
- h. All access roads, driveways and entrances may require approval from the township or county highway department and may be subject to the provisions of the county subdivision ordinance.

(2) *When required.* Except where another section of this article or Wis. Stats. § 59.692(1k), specifically exempts certain types of development from this requirement, a land use permit shall be obtained from the zoning administrator before any new development. This also includes a land use change or any change in the use of an existing building or structure.

(3) *Application.* An application for a land use permit shall be made to the zoning administrator upon forms furnished by the county and shall include, for the purpose of proper enforcement of these regulations, the following data:

- a. Name and address of the applicant and property owner;
- b. Legal description of the property and type of proposed use;
- c.

A sketch of the dimensions of the lot and location of buildings relative to the lot lines, centerline of abutting highways and the ordinary high-water mark of any abutting watercourses, and water level on a date specified and location of any wetlands;

- d. Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
- e. Plans for appropriate mitigation when required.
- f. Payment of the appropriate fee.
- g. Additional information required by the zoning administrator.

(4) *Expiration of permit; removal.* Land use permits shall expire 12 months from the date issued if no substantial work has commenced. Permitted work must be completed within 24 months from the date of issuance. Renewal of permits may be approved at no charge.

(c) *Compliance inspections.*

- (1) Prior to, during or after construction of a structure permitted through the zoning office, the zoning administrator or other authorized persons will inspect the property to verify information given on the permit application and verify that the structure conforms to the provisions of this article.
- (2) Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises, verifying, after inspection, whether or not such building or use conforms to the provisions of this article.

(d) *Conditional use permits.*

(1) *Conditional uses in shoreland.* Uses deemed conditional are as follows:

- a. Multifamily (three or more) dwelling units.
- b. Roominghouses and boardinghouses (bed and breakfasts).
- c. Mobile homes as defined in this section.
- d. Mobile/manufactured home parks and travel trailer/RV campgrounds, subject to the provisions of state law and administrative rules.
- e. Public and semi-public uses, including, but not limited to, public and private schools, churches, public parks and recreational areas, hospitals, rest homes and homes for the aged, fire and police stations, and historic sites.
- f. Airports.
- g. Quarrying, mining, and processing of products from these activities.
- h. Recreational service-oriented uses, such as resorts and motels, tourist rooming houses, restaurants and cocktail lounges, marinas, sport shops and bait sales and other recreational services which in the opinion of the county zoning committee are of the same

general character or clearly incidental to a permitted use or use authorized by a conditional permit.

- i. Commercial telephone, telegraph, and power transmission and communication towers, substations, relay, and repeater stations and accompanying towers, equipment housing and other necessary appurtenant equipment and structures.
- j. Dams, plants for production of electric power and flowage areas.
- k. Home based-business.
- l. Private garages, carports, and accessory building where no principal structure exists on the property and the owner does not live within five miles of the property.

(2) *Application for a conditional use permit.* Only a use listed as a conditional use in this article and not specifically prohibited in the shoreland and shoreland/wetland district shall be permitted only after an application has been submitted to the zoning administrator and a conditional use permit has been granted by the county zoning committee.

(3) *Standards applicable to all conditional uses.* In passing upon a conditional use permit, the county zoning committee shall evaluate the effect of the proposed use upon:

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

(4) *Conditions attached to conditional use permits.* Upon consideration of the factors listed in subsection (d)(3)i of this section, the county zoning committee shall attach such conditions, in addition to those required elsewhere in this article, as are necessary to further the purposes

of this article. Violations of any of these conditions shall be deemed a violation of this article. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. To secure information upon which to base its determination, the county zoning committee shall require the applicant to furnish, in addition to the information required for a zoning permit, the following written information:

- a. A plan of the area showing surface contours, soil types, ordinary high-water marks, groundwater conditions, subsurface geology and vegetative cover;
 - b. Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping;
 - c. Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations;
 - d. Specifications for areas of proposed filling, grading, lagooning or dredging;
 - e. Other pertinent information necessary to determine if the proposed use meets the requirements of this article; and
 - f. The written plan and information signed by the applicant.
- (5) *Notice, public hearing and decision.* Before passing upon a conditional use permit, the county zoning committee shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the committee, shall be given as a Class 2 notice under Wis. Stats. ch. 985. Also a copy of the notice shall be posted in the vicinity of the conditional use, where practical, and notice of the public hearing shall be mailed to the owners of all lands within 500 feet of any part of the land included in such proposed conditional use, and the town board of the township in which the affected land is located, at least ten days before such public hearing. The lake management district or association shall also be notified at least ten days before the hearing. The lake management district or association shall notify the county zoning office of a contact person. The failure of such notice to reach any property owner shall not invalidate any conditional use. Such notice shall be provided to the appropriate district office of the department at least ten days prior to the hearing. The committee shall state in writing the grounds for granting or refusing the conditional use permit. The failure of such notice shall be provided to the appropriate office of the department at least ten days prior to the hearing.
- (6) *Recording.* When a conditional use permit is approved, an appropriate record shall be made of the land use and structures permitted and such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a conditional use permit

shall be provided to the appropriate office of the department within ten days after it is granted or denied.

- (7) *Revocation.* Where the conditions of a conditional use permit are violated, the conditional use permit shall be revoked by the county zoning committee.
- (8) *Appeal of conditional use permit denial.* When a conditional use permit is denied by the county zoning committee, the applicant may appeal that decision to the county board of adjustment as outlined in subsection (f) of this section.
- (9) *Uses not listed in subsection (b) or (d).* Any use not listed in subsection (b) or this subsection (d) of this section is prohibited in this district.

(e) *Variances.*

- (1) The board of adjustment may grant upon application a variance from the dimensional standards of this article where an applicant convincingly demonstrates that:
 - a. Literal enforcement of the provisions of the article will result in unnecessary hardship on the applicant;
 - b. The hardship is due to special conditions unique to the property;
 - c. Such variance is not contrary to the public interest.
 - d. The request represents the minimum relief necessary to relieve unnecessary burdens.
- (2) No use variance. A variance shall not grant or increase any use of property which is prohibited in the zoning district.
- (3) Relaxation of standards for persons with disabilities. The zoning department may issue a building permit to relax dimensional standards of this article in order to provide reasonable accommodation of persons with disabilities as required by provisions federal and state law. Such relaxation shall be consistent with federal guidelines for accommodation of persons with disabilities and shall, where applicable, be terminated when the facility is no longer in use by a disabled person. A person applying for a permit for construction under this section shall establish the nature and extent of the disability and that the relaxation requested is the minimum necessary to provide reasonable use of the facility.
- (4) Notice, hearing and decision. Before passing on an application for a variance, the board of adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern shall be given a Class 2 notice under Wis. Stats. ch. 985. Such notice shall be provided to the appropriate office of the department at least ten days prior to the hearing. In addition, a copy of the notice shall be posted in the vicinity of the proposed variance, where practical, and notice of the public hearing shall be mailed to the owners of all lands within 500 feet of any part of the land included in such proposed variance, and the town board of the township in which the affected land is located, at least ten days before such public hearing. The lake management district or association shall also be notified at least ten days before the hearing. The lake management district or association shall notify the county

zoning office of a contact person. The failure of such notice to reach any property owner shall not invalidate any variance. The board shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate department office within ten days of the decision.

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

(f) *Board of adjustment.*

- (1) *Board powers.* With regard to this article, the county board of adjustment shall have the powers set forth in section 50-303 and Wis. Stats. § 59.694, except as specifically limited in this subsection (f).
- (2) *Conditions and limitations.* In granting a conditional use permit on appeal, the board shall not impose conditions which are more restrictive than any of the specific standards in this article. Where this article is silent as to the extent of restrictions, the board may impose any reasonable permit to effect the purpose of this article.

(g) *Fees.* The county board may, by resolution, adopt fees for the following:

- (1) Land use permits.
- (2) Building permits.
- (3) Certificates of compliance.
- (4) Variances.
- (5) Public hearings.
- (6) Legal notice publications.
- (7) Conditional use permits.
- (8) Appeals.

(Code 1987, § 17.57(11.0); Ord. No. 97-79, 12-16-1997; Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-194. - Changes and amendments.

- (a) The county board may from time to time, alter, supplement or change the boundaries of use districts and regulations contained in this article in accordance with the requirements of Wis. Stats. § 59.69(5)(e), Wis. Admin. Code ch. NR 115 and this article where applicable.
- (b)

Amendments to this article may be made on petition of any interested party as provided in Wis. Stats. § 59.69(5)(e).

- (c) Every petition for a text or map amendment filed with the county clerk shall be referred to the county zoning agency. A copy of each petition shall be mailed to the appropriate office of the department within five days of the filing of the petition with the county clerk. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate office of the department at least ten days prior to the hearing.
- (d) A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate office of the department within ten days after the decision is issued.

(Code 1987, § 17.57(12.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-195. - Enforcement and penalties.

- (1) *Penalty.* Any person, firm or corporation, including those doing work for others, who violates any of the provisions of this section shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00 for each violation plus the cost of prosecution. Each day a violation exists shall constitute a distinct and separate violation of this section and as such, forfeitures shall apply accordingly. The zoning administrator shall refer violations to the corporation counsel who shall prosecute violations.
- (2) *Injunction.* Any use or action which violates the provisions of this section shall be subject to a court injunction prohibiting such violation.
- (3) *Responsibility for compliance.* It shall be the responsibility of the applicants as well as their agent or other persons acting on their behalf to comply with the provisions of this section. Any person, firm or corporation, causing a violation or refusing to comply with any provision of this section will be notified in writing of such violation by the county zoning administrator or his designated zoning deputy. Each day a violation exists shall constitute a distinct and separate violation of this ordinance and, as such, forfeitures shall apply accordingly. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to Wis. Stats. § 59.69(11).
- (4) *Suspension of permit.* Whenever the zoning administrator, assistant zoning administrator or deputy zoning administrator, determines there are reasonable grounds for believing there is a violation of any provision of this section, the zoning administrator, assistant zoning administrator or deputy zoning administrator shall give notice to the owner of record as hereinafter provided. Such notice shall be in writing and shall include a statement of the reason for the suspension of the permit. It shall allow 30 days for the performance of any act it requires. If work cannot be completed in the 30 day period, an extension may be granted if reason of hardship prevail and can be verified. Such notice or order shall be deemed to have been properly served upon such

owner or agent when a copy thereof has been sent by registered mail to owner's last known address or when the owner has been served by such notice by any method authorized by the laws of Wisconsin. The owner of record has the right to appeal any decision by the zoning administrator, assistant zoning administrator or deputy zoning administrator or apply to the Vilas County Board of Adjustment for a variance from the strict rule of the Ordinance within 30 days of receipt of a notice or order.

(5) *Emergency conditions.* Whenever the zoning administrator finds that an emergency exists such as sudden, unexpected occurrences or combinations thereof, unforeseen conditions or circumstances at the time beyond one's control, adverse weather conditions, meeting a timetable which requires immediate action to protect the public health, safety and welfare, the administrator may, without notice or hearing, issue an order citing the existence of such emergency and may require that such action be taken as may be deemed necessary to meet the emergency. The administrator shall notify the chairperson of the zoning committee within 24 hours of such situations. Notwithstanding any other provisions of this section such order shall become effective immediately. Any person to whom such order is directed shall comply therewith immediately. Appeals or challenges to emergency orders may be brought after emergency conditions have ceased, to the board of adjustment.

(Code 1987, § 17.57(13.0); Res. No. 07-07, 3-27-2007; Res. No. 07-07D, 3-31-2009; Res. No. 07-07E, 12-15-2009; Res. No. 16-21, 8-30-2016)

Sec. 50-196. - Mitigation.

When a permit is issued requiring mitigation under Sections 50-190(e)(4), 50-192(c)(3)c. or 50-192(c)(3)e. the property owner must submit a complete permit application that is reviewed and approved by the county. The application shall include a plan that outlines the proposed mitigation measures and meets the following criteria:

(1) Mitigation schedule:

Mitigation points are required for developing property under the following conditions:	Opportunities to earn mitigation points include:
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<p>Impervious surface coverage</p> <p>is greater than 15%</p> <p>but less than 20%—2 points</p>	<p>Removal of a structure within the shoreland setback—Up to 3 points</p>
<p>Impervious surface coverage</p> <p>is from 20% to 30%—3 points</p>	<p>Installation of a Rain Garden—Up to 3 points</p>
<p>Lateral Expansion of Nonconforming principal structure within the shoreland setback,</p> <p><u>Section 50-192(c)(3)c.</u>—3 points</p>	<p>Installation of a Stormwater Infiltration System—3 points</p>
<p>Relocation of Nonconforming principal structure within the shoreland setback, <u>Section 50-192(c)(3)e.</u>—1 point</p>	<p>Existing compliant shoreland buffer—3 points</p>
	<p>Active Restoration (Accelerated Recovery) of a compliant shoreland buffer—3 points</p>
	<p>Passive Restoration (Natural Recovery) of a compliant shoreland buffer—1 point</p>
	<p>Increasing depth of an existing compliant shoreland buffer 2 points for every 15 feet of depth</p>

	Reducing width of allowable view and access corridor(s)—1 point for every 15-foot reduction
	If lot size is larger than prescribed minimum —1 point for every 10,000 sq. ft. increment of lot area which may not be subdivided from remaining parcel.
	Sea Wall Removal and Bank Stabilization—3 points
	Increasing Shoreland Setback—1 point for every 15-foot increase beyond required. (Maximum of 3 points)
	Removal of an existing artificial sand beach at least 200 sq. ft. in size within 35 feet of the OHWM with active restoration (accelerated recovery) of area—1 point

- (2) All mitigation shall be designed and installed as specified in the most current Rusk County Shoreland Mitigation Guidebook as approved by the zoning committee which is intended to restore natural functions lost through development and human activities.
- (3) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.
- (4) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
 - a. The enforceable obligations shall be evidenced by an affidavit recorded in the office of the register of deeds.
 - b. All shoreland mitigation activities must begin within one year of the recording date of the mitigation affidavit or in accordance with a timeline that is written into the mitigation plan and must be completed in accordance with said timeline or within two years of the recording date if a timeline has not been established.

(Res. No. 16-21, 8-30-2016)

Secs. 50-197—50-213. - Reserved.

ARTICLE II. - NONMETALLIC MINING

Footnotes:

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State Law reference— *Mining and metal recovery, Wis. Stats. § 107.001 et seq.; nonmetallic mining reclamation rules, Wis. Stats. § 295.12 et seq.; mandatory enactment and administration of nonmetallic mining reclamation ordinances by counties, Wis. Stats. § 295.13; mining permits, Wis. Stats. § 293.37 et seq.*

DIVISION 1. - GENERALLY

Sec. 20-19. - Purpose.

The purpose of this article is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the county after the effective date of the ordinance from which this article is derived, in compliance with Wis. Admin. Code ch. NR 135 and Wis. Stats. ch. 295, subchapter I.

(Code 1987, § 2.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-20. - Statutory authority.

This article is adopted under authority of Wis. Stats. §§ 59.51 and 295.13(1) and Wis. Admin. Code § NR 135.32.

(Code 1987, § 3.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-21. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative requirement means an alternative to the reclamation standards of this article provided through a written authorization granted by the county, pursuant to section 20-107.

Applicable reclamation ordinance.

- (1) The term "applicable reclamation ordinance" means a nonmetallic mining reclamation ordinance, including this article, that applies to a particular nonmetallic mining site and complies with the requirements of this article, Wis. Admin. Code ch. NR 135, and Wis. Stats. ch. 295, subchapter I, unless the state department of natural resources is the regulatory authority.

- (2)

If the state department of natural resources is the regulatory authority, the term "applicable reclamation ordinance" means the relevant and applicable provisions of Wis. Admin. Code ch. NR 135.

Borrow site means an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.

Contemporaneous reclamation means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.

Department means the state department of natural resources.

Environmental pollution has the meaning in Wis. Stats. § 295.11(2).

Financial assurance means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in section 20-102 and is sufficient to pay for reclamation activities required by this article.

Highwall means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds 3:1.

Landowner means the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.

Licensed professional geologist means a person who is licensed as a professional geologist pursuant to Wis. Stats. ch. 470.

Municipality means any city, town or village.

Nonmetallic mineral means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

Nonmetallic mining or mining means all of the following:

- (1) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

- (2) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

Nonmetallic mining reclamation or reclamation means the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this article, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.

Nonmetallic mining refuse means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable byproducts resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.

Nonmetallic mining site or site means all contiguous areas of present or proposed mining described in subsection (1) of this definition, subject to the qualifications in subsection (2) of this definition.

- (1) The term "nonmetallic mining site" means the following:
- a. The location where nonmetallic mining is proposed or conducted.
 - b. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
 - c. Areas where nonmetallic mining refuse is deposited.
 - d. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
 - e. Areas where grading or regrading is necessary.
 - f. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.
- (2) The term "nonmetallic mine site" does not include any of the following areas:
- a. Those portions of sites listed in subsection (1) of this definition not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.
 - b. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001, and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.

- c. Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

Operator means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

Person means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

Registered geologist. See *Licensed professional geologist*.

Registered professional engineer means a person who is registered as a professional engineer pursuant to Wis. Stats. § 443.04.

Regulatory authority means one of the following:

- (1) The county in which the nonmetallic mining site is located that has an applicable reclamation ordinance under Wis. Stats. § 295.13, except where a municipality has adopted an applicable reclamation ordinance pursuant to subsection (2) of this definition.
- (2) The municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under Wis. Stats. § 295.14.
- (3) The department, in cases where a county mining reclamation program is no longer in effect under Wis. Stats. § 295.14 but only if there is no applicable reclamation ordinance enacted by the municipality in which the nonmetallic mining site is located.

Replacement of topsoil means the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this article.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Wis. Stats. ch. 283 or source material, special nuclear material or byproduct material, as defined in Wis. Stats. § 254.31(1).

Topsoil means the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

Topsoil substitute material means soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.

Unreclaimed acres.

- (1) The term "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under section 20-143(c). However, the term does not include any areas described in subsection (2) of this definition.
- (2) The term "unreclaimed acres" does not include:
 - a. Those areas where reclamation has been completed and certified as reclaimed under section 20-143(c).
 - b. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 - c. Those portions of nonmetallic mining sites which are included in an nonmetallic mining reclamation plan approved pursuant to this article but are not yet affected by nonmetallic mining.
 - d. Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
 - e. For purposes of fees under section 20-141, those areas within a nonmetallic mining site which the county has determined to have been successfully reclaimed on an interim basis in accordance with section 20-143(c).

(Code 1987, § 10.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-22. - Restrictions adopted under other authority.

The purpose of this article is to adopt and implement the uniform statewide standards for nonmetallic mining required by Wis. Stats. § 295.12(1)(a) and contained in Wis. Admin. Code ch. NR 135. It is not intended that this article repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

(Code 1987, § 4.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-23. - Interpretation.

In their interpretation and application, the provisions of this article shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Wis. Stats. ch. 295, subchapter I, and Wis. Admin. Code ch. NR 135. Where any terms or requirements of this article may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this article is required by Wisconsin Statutes, or by a standard in Wis. Admin. Code ch. NR 135, and where the provision is unclear, the provision shall be interpreted to be consistent with the state statutes and the provisions of Wis. Admin. Code ch. NR 135.

(Code 1987, § 5.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-24. - Overall applicability.

The requirements of this article apply to all operators of nonmetallic mining sites within the county except as exempted in section 20-25 and for nonmetallic mining sites located in a city, village or town within the county that has adopted an ordinance pursuant to Wis. Stats. § 295.14 and Wis. Admin. Code § NR 135.32(2). This article does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This article applies to nonmetallic mining conducted by or on behalf of a county, municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in section 20-102(c).

(Code 1987, § 7.10; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-25. - Exemptions.

This article does not apply to the following activities:

- (1) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the state department of natural resources under Wis. Stats. § 30.19, 30.195 or 30.20 and complies with Wis. Admin. Code ch. NR 340.
- (2) Excavations subject to the permit and reclamation requirements of Wis. Stats. § 30.30 or 30.31.
- (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (4) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- (5) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

- (6) Excavations for building construction purposes conducted on the building site.
- (7) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under Wis. Stats. ch. 293.
- (9) Any activities required to prepare, operate or close a solid waste disposal facility under Wis. Stats. ch. 289 or a hazardous waste disposal facility under Wis. Stats. ch. 291 that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this article apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (10)
 - a. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the state department of transportation concerning the restoration of the nonmetallic mining site.
 - b. This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the state department of transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the state department of transportation contract for construction of a specific transportation project.
 - c. If a nonmetallic mining site covered under subsections (10)a and b of this section is used to concurrently supply materials for projects unrelated to the state department of transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under state department of transportation contract and supervision.
- (11) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.
- (12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under Wis. Stats. § 30.21.

(Code 1987, § 7.20; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

The provisions of this article shall be administered by the county land and water conservation department.

(Code 1987, § 8.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007; Res. No. 16-21A, 1-22-2019)

Secs. 20-27—20-55. - Reserved.

DIVISION 2. - STANDARDS AND SPECIFICATIONS

Sec. 20-56. - Compliance required.

All nonmetallic mining sites subject to this article shall be reclaimed in conformance with the standards contained below.

(Code 1987, § 11.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-57. - General standards.

- (a) *Refuse and other solid wastes.* Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the state department of natural resources adopted pursuant to Wis. Stats. chs. 289 and 291.
- (b) *Area disturbed and contemporaneous reclamation.* Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.
- (c) *Public health, safety and welfare.* All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.
- (d) *Habitat restoration.* When the land use required by the reclamation plan approved pursuant to this article requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.
- (e) *Compliance with environmental regulations.* Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control.

(Code 1987, § 11.10; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-58. - Surface water and wetlands protection.

Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the state department of natural resources' water quality standards for surface waters and wetlands contained in Wis. Admin. Code ch. NR 102 to NR 105. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this article. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(Code 1987, § 11.20; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-59. - Groundwater protection.

- (a) *Groundwater quantity.* A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
- (b) *Groundwater quality.* Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Wis. Admin. Code ch. NR 140 to be exceeded at a point of standards application defined in that chapter.

(Code 1987, § 11.30; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-60. - Topsoil management.

- (a) *Removal.* Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this article in order to achieve reclamation to the approved post-mining land use. Removal of on-site topsoil and topsoil substitute material removal, when specified in the reclamation plan, shall be performed, prior to any mining activity associated with any specific phase of the mining operation.
- (b) *Volume.* The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this article.
- (c) *Storage.* Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this article, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

(Code 1987, § 11.40; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-61. - Final grading and slopes.

- (a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to sections 20-94 through 20-101 to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either: a site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.
- (b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under section 20-107; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.
- (c) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

(Code 1987, § 11.50; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-62. - Topsoil redistribution for reclamation.

Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this article in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

(Code 1987, § 11.60; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-63. - Revegetation and site stabilization.

Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this article, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

(Code 1987, § 11.70; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-64. - Assessing completion of successful reclamation.

- (a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this article. Criteria to evaluate reclamation success shall be quantifiable.
- (b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - (1) On-site inspections by the county or its agent;
 - (2) Reports presenting results obtained during reclamation evaluations including summarized data on revegetation, photo-documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
 - (3) A combination of inspections and reports.
- (c) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
- (d) Revegetation success may be determined by:
 - (1) Comparison to an appropriate reference area;
 - (2) Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - (3) Comparison to an approved alternate technical standard.
- (e) Revegetation using a variety of plants indigenous to the area is favored.

(Code 1987, § 11.80; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-65. - Intermittent mining.

Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to section 20-102 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

(Code 1987, § 11.90; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-66. - Maintenance.

During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this division, or to meet the goals specified in the reclamation plan approved pursuant to this article.

(Code 1987, § 11.10; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Secs. 20-67—20-90. - Reserved.

DIVISION 3. - PERMITTING

Sec. 20-91. - Nonmetallic mining reclamation permit application required.

No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in section 20-24 or 20-25.

Sec. 20-92. - Required submittal.

All operators of nonmetallic mining sites shall apply for a reclamation permit from the county. All applications for reclamation permits under this section shall be accompanied by the following information:

- (1) A brief description of the general location and nature of the nonmetallic mine.
- (2) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
- (3) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
- (4) The name, address and telephone number of the person or organization who is the operator.
- (5)

A certification by the operator of his intent to comply with the statewide nonmetallic mining reclamation standards established by division 2 of this article.

Sec. 20-93. - Reclamation permit application contents.

The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to the county land and water conservation department prior to beginning operations.

- (1) The information required by section 20-92.
- (2) The plan review and annual fees required by sections 20-140 and 20-141.
- (3) A reclamation plan conforming to sections 20-94 through 20-101.
- (4) A certification that the operator will provide, as a condition of the reclamation permit, provide financial assurance as required by section 20-102 upon granting of the reclamation permit and before mining begins.
- (5) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this article.

(Code 1987, § 12.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007; Res. No. 16-21A, 1-22-2019)

Sec. 20-94. - Reclamation plan required.

All operators of nonmetallic mining sites who conduct or plan to conduct nonmetallic mining shall submit to the county a reclamation plan that meets all of the following requirements and complies with the reclamation standards of division 2 of this article. The county land and water conservation department is able to assist operators in preparing the reclamation plan as required by this section. Fees may be imposed for this service.

Sec. 20-95. - Site information.

- (a) The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:
 - (1) Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage patterns, the approximate elevation of ground water, as determined by existing hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.
 - (2)

Topsoil or topsoil substitute material, if required to support revegetation needed for reclaiming the site to approved post-mining land use, can be identified using county soil surveys or other available information. including that obtained from a soil scientist or the University of Wisconsin soil science extension agent or other available information resources.

- (3) Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine sites.
 - (4) Existing topography as shown on contour maps of the site at five-foot contour intervals.
 - (5) Location of manmade features on or near the site.
 - (6) For proposed nonmetallic mining sites that include previously mined areas, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.
- (b) Some of or all of the information required above may be shown on the same submittal, i.e., the site map required by subsection (a)(1) of this section may also show topography required by subsection (a)(4) of this section.

Sec. 20-96. - Post-mining land use.

- (a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.
- (b) A proposed post-mining land use is necessary to determine the type and degree of reclamation needed to correspond with that land use. The post mining land use will be key in determining the reclamation plan. Final slopes, drainage patterns, site hydrology, seed mixes and the degree of removal of mining-related structures, drainage structures, and sediment control structures will be dictated by the approved post-mining land use.
- (c) Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to Wis. Stats. § 91.30 et seq. shall be restored to agricultural use.

Sec. 20-97. - Reclamation measures.

- (a) The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:
 - (1)

A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures and if necessary a site-specific engineering analysis performed by a registered professional engineer as provided by section 20-61(a) or (b).

- (2) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.
- (3) A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.
- (4) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.
- (5) The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.
- (6) A revegetation plan which shall include timing and methods of seed bed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.
- (7) Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.
- (8) A plan and, if necessary, a narrative showing erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface water and groundwater.
- (9) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for a waiver of fees and a release of financial assurance and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in division 2 of this article and timing of interim and final reclamation.
- (10) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses. Safety measures include visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

(b)

Some of the information required by this section may be combined to avoid duplication, e.g., a single map may show anticipated post-mining topography required by (a)(3) of this section as well as structures and roads as required by subsection (a)(4) of this section.

Sec. 20-98. - Criteria for successful reclamation.

The reclamation plan shall contain criteria for assuring successful reclamation in accordance section 20-64.

Sec. 20-99. - Certification of reclamation plan.

The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. If the operator does not own the land, the landowner or lessor, if different from the operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation.

Sec. 20-100. - Existing plans and approvals.

To avoid duplication of effort, the reclamation plan required by this section may, by reference, incorporate existing plans or materials that meet the requirements of this article.

Sec. 20-101. - Approval of reclamation plan.

The county shall approve, conditionally approve or deny the reclamation plan submitted under this division in writing in accordance with section 20-105(b) for mines that apply for a reclamation permit in conformance with section 20-93. Conditional approvals of reclamation plans shall be made according to section 20-105(e) and denials of reclamation plans shall be made pursuant to section 20-106. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

(Code 1987, § 13.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-102. - Financial assurance.

- (a) *Financial assurance requirements.* All operators of nonmetallic mining sites in the county shall prepare and submit a proof of financial assurance that meets the following requirements:
- (1) *Notification.* The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under subsection (a)(3) of this section.
 - (2) *Filing.* Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with in the county. The financial assurance shall provide that the operator shall faithfully perform all requirements in this

article, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the county. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the county only if it currently has primary regulatory responsibility.

- (3) *Amount and duration of financial assurance.* The amount of financial assurance shall equal as closely as possible the cost to the county of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the county to assure it equals outstanding reclamation costs. Any financial assurance filed with the county shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The county may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.
- (4) *Form and management.* Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the county and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the county, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.
- (5) *Multiple projects.* Any operator who obtains a permit from the county for two or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of

separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the county.

(6) *Multiple jurisdictions.* In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

(7) *Certification of completion and release.*

- a. The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he determines that reclamation of any portion of the mining site or the entire site is complete. The county shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. The county may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete the county shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.
- b. The county shall make a determination of whether or not the certification in subsection (a)(7)a of this section can be made within 60 days that the request is received.
- c. The county may make a determination under this subsection that:
 1. Reclamation is not yet complete;
 2. It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;
 3. Reclamation is complete in a part of the mine; or
 4. Reclamation is fully complete.

(8) *Forfeiture.* Financial assurance shall be forfeited if any of the following occur:

- a. A permit is revoked and the appeals process has been completed.
- b. An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

(9) *Cancellation.* Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90-day notice to the county in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice

of cancellation, the operator shall deliver to the county a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

- (10) *Changing methods of financial assurance.* The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to subsection (a)(12) of this section. The operator shall give the county at least 60 days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the county.
- (11) *Bankruptcy notification.* The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding under Bankruptcy Code, 11 USC et seq., naming the operator as debtor, within ten days of commencement of the proceeding.
- (12) *Adjustment of financial assurance.* Financial assurance may be adjusted when required by the county. The county may notify the operator in writing that adjustment is necessary and the reasons for it. The county may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.
- (13) *Net worth test.*
 - a. Only an operator that meets the definition of "company" in Wis. Stats. § 289.41(1)(b) may use the net worth method of providing financial assurance.
 - b. The operator shall submit information to the regulatory authority in satisfaction of the net worth test requirements of Wis. Stats. § 289.41(4). The criteria in Wis. Stats. § 289.41(6)(b), (d)—(i) shall apply.
 - c. An operator using the net worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with Wis. Stats. § 289.41(6).
 - d. Determinations under the net worth test shall be done in accordance with Wis. Stats. § 289.41(5).
 - e. In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this article.
- (b) *Private nonmetallic mines.* The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with section 20-93 shall submit the proof of financial assurance required by subsection (a) of this section, as specified in the reclamation permit issued to it under this article.
- (c)

Public nonmetallic mining. The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the state, a state agency, board, commission or department, or a municipality.

(Code 1987, § 14.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-103. - Reclamation plan hearing.

The county shall provide public notice and the opportunity for a public informational hearing as set forth below:

(1) *Public notice.*

- a. When the county receives an application to issue a reclamation permit it shall publish a public notice of the application no later than 30 days after receipt of a complete application that satisfies section 20-92.
- b. The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a Class 1 notice pursuant to Wis. Stats. § 985.07(1) in the official newspaper of the county. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.
- c. Copies of the notice shall be forwarded by the county to the county or applicable municipal zoning board, the county and applicable local planning organization, the county land conservation officer, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

(2) *Hearing.* The county shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows:

- a. If it conducts a zoning-related hearing on the nonmetallic mine site, the county shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The county shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this article.
- b. 1. If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in subsection (2)a of this section, opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The county shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under subsection (1) of this section. This public informational hearing shall be held no

sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.

2. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

(3) *Informational hearings limitations.* Informational hearings are limited to reclamation of the nonmetallic mining site. Regulatory authority staff conducting the hearings should make it clear that the hearings may not cover nonreclamation matters because they are beyond the scope of Wis. Admin. Code ch. NR 135, Reclamation. Nonreclamation matters are those related to zoning or subject to other local authority. These matters may include, but are not limited to, traffic, setbacks, blasting, dewatering, hours of operation, noise or dust control or the question of whether to use the land for mining.

Sec. 20-104. - Local transportation-related mines.

No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to section 20-105(c).

(Code 1987, § 15.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-105. - Issuance of a nonmetallic mining reclamation permit.

(a) *Permit required.* No person may engage in nonmetallic mining or nonmetallic mining reclamation in the county without first obtaining a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this article under section 20-24, 20-25 or subsection (2) of the definition of "nonmetallic mining site" in section 20-21.

(b) *Permit issuance.* Applications for reclamation permits for nonmetallic mining that satisfy sections 20-91 through 20-93 shall be issued a reclamation permit or otherwise acted on as provided below:

- (1) Unless denied pursuant to 20-106, the county shall approve in writing a request that satisfies the requirements of sections 20-91 through 20-93 to issue a nonmetallic mining reclamation permit for the proposed nonmetallic mine.
- (2) The county may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of sections 20-94 through 20-101. The regulatory authority may issue a reclamation permit subject to conditions in subsection (e) of this section, if appropriate. The permit decision shall be made no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application that meets the requirements in sections 20-91 through 20-93 and reclamation plan that meets the requirements in sections 20-94 through 20-101, unless a public hearing is held pursuant to

section 20-103. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to subsection (e) of this section, if appropriate, or shall deny the permit as provided in section 20-106, no later than 60 days after completing the public hearing.

- (3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of sections 20-94 through 20-101 and provision by the applicant of financial assurance required under section 20-102 and payable to the county prior to beginning mining.

(c) *Automatic permit for local transportation-related mines.*

- (1) The county shall automatically issue an expedited permit under this subsection to any borrow site that:
 - a. Will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
 - b. Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the municipality;
 - c. Is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the state department of transportation concerning the restoration of nonmetallic mining sites;
 - d. Is not a commercial source;
 - e. Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and
 - f. Is not otherwise exempt from the requirements of section 20-25(10).
- (2) In this subsection, the term "municipality" has the meaning defined in Wis. Stats. § 299.01(8).
- (3) Automatic permits shall be issued under this subsection in accordance with the following provisions:
 - a. The applicant shall notify the county of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.
 - b. The applicant shall provide evidence to the county to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.
 - c. The county shall accept the contractual provisions incorporating requirements of the state department of transportation in lieu of a reclamation plan under sections 20-94 through 20-101.
 - d. The county shall accept the contractual provisions in lieu of the financial assurance requirements in section 20-102.
 - e.

The public notice and hearing provisions of section 20-103 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection. Local public notice and hearing requirements, if any, regarding zoning decisions still apply.

- f. Mines permitted under this subsection shall pay an annual fee to the county as provided in section 20-141, but shall not be subject to the plan review fee provided in section 20-140. The total annual fee, including the share of the department of natural resources, shall not exceed the amount in the county fee schedule. Fees may not be assessed for local transportation-related mines permitted under section 20-141 that is greater than allowed by Wis. Admin. Code ch. NR 135.23(1)(g). See section 20-141(c) for details of this fee limitation.
 - g. The county shall issue the automatic permit within seven days of the receipt of a complete application.
 - h. If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with the state department of transportation requirements.
 - i. Notwithstanding section 20-139, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.
- (4) A reclamation permit is not required under this article for nonmetallic mining sites that are operated to provide materials for construction, maintenance and repair of transportation facilities that are subject to the state department of transportation concerning restoration of the nonmetallic mining site, as provided by Wis. Stats. § 295.16(1)(c).
- (d) *Expedited review.* Any operator of a nonmetallic mining site may request expedited review of a reclamation permit application under subsection (d)(1) or (2) of this section, as follows:
 - (1) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in section 20-140(b). This request shall state the need for such expedited review and the date by which such expedited review is requested.
 - (2) The operator may submit a request for expedited review under this subsection if the applicant requires a reclamation permit to perform services under contract with a municipality. This request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.
 - (3) Following receipt of a request under this subsection, the county shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under subsection (d)(1) of this section shall

be returned.

- (4) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to section 20-103. This subsection does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection by a specific date.

(e) *Permit conditions.* Any decision under this section may include conditions as provided below:

- (1) The county may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this article. The approvals may not include conditions that are not related to reclamation.
- (2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to section 20-102 prior to beginning mining.

(Code 1987, § 16.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-106. - Permit denial.

An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

- (1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in 20-105, if the county finds any of the following:
 - a. The applicant has, after being given an opportunity to make corrections, failed to provide to the county an adequate permit application, reclamation plan, financial assurance or any other submittal required by Wis. Admin. Code ch. NR 135 or this article.
 - b. The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained this article, Wis. Admin. Code ch. NR 135 or Wis. Stats. ch. 295, subch. I.
 - c. 1. The applicant, or its agent, principal or predecessor, has, during the course of nonmetallic mining in the state within ten years of the permit application or modification request being considered shown a pattern of serious violations of this article or of federal, state or local environmental laws related to nonmetallic mining reclamation.
 2. The following may be considered in making this determination of a pattern of serious violations:
 - (i) Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.
 - (ii) Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this article, other reclamation ordinances or Wis. Admin. Code ch. NR 135.

(iii) Forfeitures of financial assurance.

d. A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under section 20-111.

(Code 1987, § 17.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-107. - Alternative requirements.

(a) *Scope of alternative requirements approvable.* An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in section 20-56. The county may approve an alternative requirement to the reclamation standards established in this article if the operator demonstrates and the county finds that all of the following criteria are met:

- (1) The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.
- (2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.
- (3) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.

(b) *Procedures.*

- (1) The operator of a nonmetallic mining site requesting an alternate requirement in subsection (a) of this section shall demonstrate all the criteria in subsection (a) of this section. This shall be submitted in writing to the county. Applications are available at the county land and water office.
- (2) The county land and water conservation committee shall hold a public hearing concerning the request for alternate requirements within 60 days of the receipt of the application. The hearing shall be posted as a Class 2 notice pursuant to Wis. Stats. § 985.07(2), in the official newspaper of the county. The applicant may appear on his behalf to offer testimony. The county zoning and land conservation offices shall provide testimony. Opportunity for comments for and against the request will be provided for. The vote of the majority of the quorum shall be necessary to decide any request. Decisions will be made within 90 days of the public hearing. An on-site inspection of the site may be necessary for the committee to make a decision.
- (3) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.

(c)

Transmittal of decision on request for alternative requirement. The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

- (d) *Notice to state department of natural resources.* The county shall provide notice to the state department of natural resources as set forth in this subsection. Written notice shall be given to the state department of natural resources at least ten days prior to any public hearing held under subsection (b) of this section on a request for an alternate requirement under this section. A copy of any written decision on alternative requirements shall be submitted to the state department of natural resources within ten days of issuance.

(Code 1987, § 18.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007; Res. No. 16-21A, 1-22-2019)

Sec. 20-108. - Permit duration.

- (a) A nonmetallic mining reclamation permit issued under this article shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked.
- (b) If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to section 20-109.

(Code 1987, § 19.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-109. - Permit transfer.

A nonmetallic mining reclamation permit issued under this article shall be transferred to a new owner or operator upon satisfaction of the following conditions:

- (1) A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the county of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with.
- (2) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the county and the county makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.

(Code 1987, § 20.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-110. - Previously permitted sites.

For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Wis. Admin. Code ch. NR 135 that becomes subject to reclamation permitting authority of the county the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by the county pursuant to section 20-136(a).

(Code 1987, § 21.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-111. - Review.

Any permitting decision or action made by the county under this article may be reviewed as set forth in this section. Notwithstanding Wis. Stats. §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), any person who meets the requirements of Wis. Stats. § 227.42(1) may obtain a contested case hearing under Wis. Stats. § 68.11, on the county's decision to issue, deny or modify a nonmetallic mining reclamation permit.

(Code 1987, § 22.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Secs. 20-112—20-135. - Reserved.

DIVISION 4. - ADMINISTRATION

Sec. 20-136. - Permit modification.

- (a) *By county.* A nonmetallic mining reclamation permit issued under this article may be modified by the county if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Wis. Admin. Code ch. NR 135 or this article. Such modification shall be by an order modifying the permit in accordance with section 20-173. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Wis. Admin. Code ch. NR 135 or this article.
- (b) *At the operator's option.* If operator of any nonmetallic mine that holds a reclamation permit issued under this article desires to modify such permit or reclamation plan approved under this article, it may request such modification by submitting a written application for such modification to the county office. The application for permit or plan modification shall be acted on using the standards and procedures of this article.
- (c) *Required by the operator.* The operator of any nonmetallic mine that holds a reclamation permit issued under this article shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the

reclamation plan approved pursuant to this article. Such application for permit modification shall be acted on using the standards and procedures of this article. Modification of the permit must be requested by the operator in such circumstances under Wis. Admin. Code § NR 135.27.

(Code 1987, § 23.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-137. - Review.

All actions by the county on permit modifications requested or initiated under this section are subject to review under section 20-111.

(Code 1987, § 23.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-138. - Permit suspension and revocation.

(a) *Grounds.* The county may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this article if it finds the operator has done any of the following:

- (1) Failed to submit a satisfactory reclamation plan within the time frames specified in this article.
- (2) Failed to submit or maintain financial assurance as required by this article.
- (3) Failed on a repetitive and significant basis to follow the approved reclamation plan.

(b) *Procedures.* If the county finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in subsection (a) of this section, it may issue a special order suspending or revoking such permit as set forth in section 20-173(b).

(c) *Consequences.*

- (1) If the county makes any of the findings in subsection (a) of this section, it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to section 20-173.
- (2) If the county makes any of the findings in subsection (a) of this section, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this article to the county. The county may use forfeited financial assurance to reclaim the site to the extent needed to comply with this article and the applicable reclamation ordinance.

(Code 1987, § 24.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-139. - Annual operator reporting.

- (a) *Contents and deadline.* Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites.
- (1) *Contents.* The annual report required by this section shall include all of the following:
- a. The name and mailing address of the operator.
 - b. The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number if available.
 - c. The identification number of the applicable nonmetallic mining permit, if assigned by the county.
 - d. The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
 - e. The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
 - f. A plan, map or diagram accurately showing the acreage described in subsection (a)(1)d and e of this section.
 - g. The following certification, signed by the operator: "I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Wis. Admin. Code ch. NR 135."
- (2) *Deadline.* The annual report shall cover on unreclaimed acreage for the previous calendar year and be submitted by January 31.
- (3) *When reporting may end.* Annual reports shall be submitted by an operator for all active and intermittent mining sites to the county for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to section 20-143(c) or at the time of release of financial assurance pursuant to section 20-102(a)(7).
- (b) *Inspection in lieu of report.* The county may, at its discretion, obtain the information required in subsection (a) of this section for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the county obtains and documents the required information, the annual report need not be submitted by the operator. If the county determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the county shall require the operator to submit the certification required in subsection (a)(1)g of this section.
- (c) *Retention of annual reports.* Annual reports submitted under subsection (a) of this section or inspection records that replace them under subsection (b) of this section shall be retained by the county at the county land and water conservation office for at least ten years after the calendar year to which they apply.

(Code 1987, § 25.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007; Res. No. 16-21A, 1-22-2019)

Sec. 20-140. - Plan review fees.

- (a) *Amount and applicability.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under sections 20-91 through 20-93 shall submit a nonrefundable plan review fee of \$250.00. No plan review fee may be assessed under this section for any local transportation-related mining receiving an automatic permit under section 20-105(c). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to section 20-136. The prohibition on plan review fees for local transportation-related mines is required under Wis. Admin. Code § NR 135.23(1)(g).
- (b) *Expedited plan review fee.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under sections 20-91 through 20-93 may obtain expedited reclamation plan review by paying a fee of \$350.00. Such fee shall be in addition to that required in subsection (a) of this section.
- (c) *Relation to annual fee.* Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under section 20-141. Plan review fees collected under this section are required under Wis. Stats. § 295.12(3)(e) to equal as closely as possible the cost of examination and approval of such plans. Wis. Stats. § 295.15 requires the regulatory authority to use its fees only for the administration of its reclamation ordinance. Wis. Admin. Code § NR 135.39(4)(b)1 requires that fees collected by the regulatory authority be used only for reasonable expenses associated with administration of its reclamation program.

(Code 1987, § 26.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007; Res. No. 16-21A, 1-22-2019)

Sec. 20-141. - Annual fees.

- (a) *Areas subject to fees, procedures, deadline and amount.*
 - (1) Operators of all nonmetallic mining sites subject to reclamation permits issued under this article shall pay annual fees to the county.
 - (2) Fees paid under this section shall be calculated based on the unreclaimed acres of a nonmetallic mining site, as defined below:
 - a. The term "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under section 20-102(a)(7). However, the term does not include any areas described in subsection (a)(2)b of this section.
 - b. The term "unreclaimed acres" does not include:

1. Those areas where reclamation has been completed and certified as reclaimed under section 20-102(a)(7).
 2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 3. Those portions of nonmetallic mining sites which are included in an approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining.
 4. Areas previously mined but used after August 1, 2001, for a nonmining activity, including stockpiling of materials, provided the stockpiles are associated with on-site industrial processes, used for an industrial activity unrelated to nonmetallic mining such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
 5. Those areas within a nonmetallic mining site which the county have been determined to have been successfully reclaimed on an interim basis in accordance with section 20-143(b) and (c).
- c. Fees shall be assessed on active acres only and shall not be assessed on acreage where nonmetallic mining is proposed and approved but where no nonmetallic mining has yet taken place.
- (3) Fees assessed pursuant to this section shall be based on unreclaimed acres at the end of the year. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under 20-143. Fees shall be paid no later than January 31 for the previous year.
- (4) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the county pending certification of completed reclamation pursuant to section 20-143(c) and section 20-102(a)(7). Upon such certification the county shall refund that portion of the annual fee that applies to the reclaimed areas. If the county fails to make a determination under section 20-143(c) and section 20-102(a)(7) within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.
- (5) The amount collected shall equal the state department of natural resource's share as described in subsection (b) of this section, the share of the county described in subsection (c) of this section, and, if applicable, the reclamation plan review fee described in section 20-140.
- (b) *State department of natural resources share of fee.*
- (1) Fees paid under this section shall, except where provided in subsection (b)(2) of this section, include a share for the state department of natural resources equal to the amount specified in the county fee schedule.
- (2)

For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the share for the state department of natural resources shall be as stated in the county fee schedule.

- (3) The county shall forward fees collected under this subsection to the state department of natural resources by March 31.

(c) *County's share of fee.*

- (1) Fees paid under this section shall also include an annual fee due to the county which shall be the fees set forth in the county fee schedule.
- (2) The annual fee collected by the county under this subsection for local transportation-related mines issued permits under section 20-105(c) may not exceed the amounts set forth in the county fee schedule. The amount listed below shall be the total fee assessed on such nonmetallic mines, and shall include both a share for the state department of natural resources and the county.

- (d) *Reduced fee for inactive mines.* Any site on which no nonmetallic mining activity has taken place in a calendar year shall be assessed a fee specified in the county fee schedule.

(Code 1987, § 27.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-142. - Regulatory reporting and documentation.

- (a) *Reporting.* The county shall send an annual report to the state department of natural resources by March 31 for the previous calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program:
 - (1) The total number of nonmetallic mining reclamation permits in effect.
 - (2) The number of new permits issued within the jurisdiction of the county.
 - (3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.
 - (4) The number of acres being mined or unreclaimed acres.
 - (5) The number of acres that have been reclaimed and have had financial assurance released pursuant to section 20-102(a)(7).
 - (6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this division pursuant to section 20-143(a) and (b).
 - (7) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.
- (b) *Documentation.* The county shall, to the best of its ability, maintain the information set forth below, and make it available to the state department of natural resources for that agency's audit of the county's reclamation program pursuant to Wis. Admin. Code ch. NR 135:

- (1) Documentation of compliance with Wis. Admin. Code ch. NR 135 and this article.
- (2) The procedures employed by the county regarding reclamation plan review, and the issuance and modification of permits.
- (3) The methods for review of annual reports received from operators.
- (4) The method and effectiveness of fee collection.
- (5) Procedures to accurately forward the state department of natural resources' portion of collected fees in a timely fashion.
- (6) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.
- (7) Responses to citizen complaints.
- (8) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.
- (9) The maintenance and availability of records.
- (10) The number and type of approvals for alternative requirements issued pursuant to section 20-107.
- (11) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to section 20-102(a)(7).
- (12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the county to implement its nonmetallic mining reclamation program under this article.
- (13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.
- (14) Any other performance criterion necessary to ascertain compliance with Wis. Admin. Code ch. NR 135.

(Code 1987, § 28.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-143. - Completed reclamation; reporting, certification and effect.

- (a) *Reporting.* The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this article and Wis. Admin. Code ch. NR 135.
- (b) *Reporting of interim reclamation.* The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this article and Wis. Admin. Code ch. NR 135. Reporting of interim reclamation shall done according to the procedures in subsection (a) of this section.

- (c) *Certification of completed reclamation.* The county shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with section 20-102(a)(7)c. If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with sections 20-91 through 20-101, the county shall issue the mine operator a written certificate of completion.
- (d) *Effect of completed reclamation.* If reclamation is certified by the county as complete under subsection (c) of this section for part or all of a nonmetallic mining site, then:
- (1) No fee shall be assessed for the area so certified.
 - (2) The financial assurance required by section 20-102 shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.
 - (3) For sites which are reported as interim reclaimed under subsection (b) of this section and so certified under subsection (c) of this section, financial assurance for reclaiming the certified area shall be.
- (e) *Effect of inaction following report of completed reclamation.* If no written response as required by subsection (c) of this section for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the county for it shall be refunded.

(Code 1987, § 29.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-144. - Permit termination.

When all final reclamation required by a reclamation plan conforming to sections 20-94 through 20-101 and required by this article is certified as complete pursuant to section 20-102(a)(7) and section 20-143(c), the county shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

(Code 1987, § 30.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Secs. 20-145—20-171. - Reserved.

DIVISION 5. - ENFORCEMENT

Sec. 20-172. - Right of entry and inspection.

For the purpose of ascertaining compliance with the provisions of Wis. Stats. ch. 295, subchapter I, Wis. Admin. Code ch. NR 135 or this article, any authorized officer, agent, employee or representative of the county may inspect any nonmetallic mining site subject to this article as provided below:

- (1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of the county or the state department of natural resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this article, Wis. Stats. ch. 295, subch. I, and Wis. Admin. Code ch. NR 135.
- (2) Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

(Code 1987, § 31.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-173. - Orders and citations.

- (a) *Enforcement orders.* The county may issue orders as set forth in Wis. Stats. § 295.19(1)(a) to enforce Wis. Stats. ch. 295, subch. I, Wis. Admin. Code ch. NR 135, this article, a permit issued pursuant to this article or a reclamation plan required by sections 20-94 through 20-101 and a permit issued under this article. A violation of this article, an order or permit issued pursuant to this article or a reclamation plan required by sections 20-94 through 20-101 and a permit issued under this article shall be considered a violation of Wis. Stats. ch. 295, subch. I, or Wis. Admin. Code ch. NR 135.
- (b) *Special orders.* The county may issue a special order as set forth in Wis. Stats. § 295.19(1)(b) and
- (c) suspending or revoking a nonmetallic mining reclamation permit pursuant to section 20-128, or directing an operator to immediately cease an activity regulated under Wis. Stats. ch. 295, subch. I, Wis. Admin. Code ch. NR 135 or this article until the necessary plan approval is obtained.
- (c) *Review of orders.* A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing Wis. Stats. § 68.11 notwithstanding the provisions of Wis. Stats. §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b).
- (d) *Citations.* The county may issue a citation under Wis. Stats. § 66.0113 and chapter 28 of this Code to collect forfeitures to enforce Wis. Stats. ch. 295, subch. I, Wis. Admin. Code ch. NR 135, a permit issued pursuant to this article or a reclamation plan required by sections 20-94 through 20-101 and a permit issued under this article. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.
- (e) *Enforcement.* The county may submit any order issued under this section to abate violations of this article to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.

(Code 1987, § 32.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Sec. 20-174. - Penalties.

Any violation of Wis. Stats. ch. 295, Subchapter I, Wis. Admin. Code ch. NR 135, this article, a permit issued pursuant to this article or a reclamation plan required by sections 20-94 through 20-101 and a permit issued under this article may result in forfeitures as provided in Wis. Stats. § 295.19(3) as follows:

- (1) Any person who violates Wis. Admin. Code ch. 135 or an order issued under section 20-173 may be required to forfeit an amount as provided in the county fine and forfeiture schedule for each violation. Each day of continued violation is a separate offense. While an order issued under section 20-173 is suspended, stayed or enjoined, this penalty does not accrue.
- (2) Except for the violations referred to in subsection (1) of this section, any person who violates Wis. Stats. ch. 295, subch. I, or Wis. Admin. Code ch. NR 135, any reclamation plan approved pursuant to this article or an order issued pursuant to section 20-173 shall forfeit an amount as provided in the county fine and forfeiture schedule for each violation. Each day of violation is a separate offense. While an order issued under section 20-173 is suspended, stayed or enjoined, this penalty does not accrue.
- (3) Any citation issued for a violation of this article shall include a deposit of an amount as provided in the county fine and forfeiture schedule with additional costs for penalty assessment, court costs and JIF/CSF, as determined by the county clerk of courts.

(Code 1987, § 33.00; Ord. No. 01-13, 4-24-2001; Ord. No. 01-13, 5-29-2007)

Secs. 20-175—20-201. - Reserved.

Rusk County Agricultural Performance Standards and Prohibitions Verification Checklist

Property Description(s): _____

Attach an Air Photo, Plat map or other drawing to clearly delineate the area investigated with this checklist on this visit.

Landowner(s): _____

Date Evaluated: _____ Acreage (Nutrient Management): _____

LWCD Staff Member: _____

Use with the *Agricultural Performance Standards and Prohibitions Procedures* to complete information for all criteria inventoried. The Agricultural Performance Standards and Prohibitions are established in *NR 151 and ATP 500, Wisconsin Administrative Code*.

Agricultural Performance Standard or Prohibitions	Complaint (Yes or No)		Note
	Y	N	
Sheet, rill and wind erosion			
1. Cropland soil erosion must meet tolerable rate (T) calculated by RUSLE 2.			
Manure Storage Facilities			
2. A new manure storage facility must be constructed according to NRCS Standards.			
3. An existing storage facility that has been substantially altered must be altered according to NRCS Standards.			
4. An operation has ceased where a manure storage facility is located. The manure storage facility must be abandoned according to NRCS Standards. If not abandoned to NRCS Standards, The facility must meet NRCS Standards. The facility must be designed to store manure for longer than 24 months. The retention of the facility must be warranted based on anticipated future use.			
5. Manure has not been added or removed from a facility for a period of 24 months. The manure storage facility must be abandoned according to NRCS Standards. If not abandoned to NRCS Standards, The facility must meet NRCS Standards. The facility must be designed to store manure for longer than 24 months. The retention of the facility must be warranted based on anticipated future use.			
6. A manure storage facility poses an imminent threat to public health or fish and aquatic life or is causing a violation of groundwater standards. The manure storage facility must be upgraded, replaced or closed according to NRCS Standards.			
Clean Water Diversions			
7. Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within a Water Quality Management Area (WQMA).			
Nutrient Management			
The application of manure, commercial fertilizer and other nutrients shall conform with a nutrient management plan according to the following phasing: <ul style="list-style-type: none"> a. All new cropland as of October 1, 2003 b. All existing cropland as of January 1, 2005 that is located within watersheds containing waters, exceptional waters, or source water protections areas. c. All other existing cropland as of January 1, 2008. 			
Manure Prohibitions			
9. No overflow of manure storage facilities.			
10. No unconfined manure pile in a Water Quality Management Area (WQMA).			
11. No direct runoff from a feedlot or stored manure into the waters of the state.			
12. No unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover.			

Tillage Setback	Y	N	
13. Tillage operations are not conducted within 5 feet of the top of the channel of surface waters.			
14. Tillage operations do not negatively impact streambank integrity or deposit soil directly into surface waters.			
15. Tillage setback area maintained in adequate sod or self-sustaining vegetative cover that provides a minimum 70% coverage.			
Phosphorus Index			
16. Croplands, pastures, and winter grazing areas shall have a phosphorus index value of 6 or less over the 8 year accounting period.			
17. Cropland, pastures, and winter grazing areas shall not exceed a phosphorus index value of 12 in any individual year.			
18. Manure or other nutrients are not being mechanically applied to surface waters.			
Process Wastewater Handling			
19. Process wastewaters (i.e, milkhouse wastewater and/or feed leachate) are not significantly discharged to waters of the state.			

Rusk County
Land & Water Conservation Department

**Bidding, Installation, and Payment Procedures for Land and Water Resource
Management Program**

The following procedures have been developed by the Rusk County LWCD for project bidding, installation, and payment of practices installed under Rusk County's Land and Water Resource Management Program. These procedures will apply to all conservation practices approved by the LWCD that are estimated by Department staff to cost \$15,000.00 or more. These procedures are the policy of the LWCC and will be adhered to when conducting landowner reimbursement activities for the Land and Water Resource Management Program. However, if deemed appropriate the Department may require conservation practices that cost between \$5,000.00 and \$15,000.00 to follow these procedures.

Bidding

1. If deemed appropriate, the LWCD will conduct a site showing of the project(s) with prospective bidders. In cases where a site showing has not been scheduled by the LWCD, bidders are responsible for viewing the construction site on their own with permission from the landowner.
2. Design plans and bid schedules will be available at the LWCD and from the landowner of the proposed project(s).
3. Contractors must submit all bids on forms provided by the LWCD. The landowner and the contractors will be notified of the deadline date for accepting bids. All bids must be sealed and returned to the LWCD by the deadline date. After the deadline date, a letter listing the contractors and their bids will be sent to the landowner and to the contractors that bid.
4. The lowest bid price will be the official cost when the project is constructed according to plans. Authorized changes from the plan will result in the adjustment of the bid price. Revision of the plan will be cost shared on the basis of the additional cost as agreed upon by the landowner, contractor, and LWCD. This amount will be recorded on a Contract Change Order Form. Additional work will not be cost shared without a signed change order.
5. It is the right of the landowner to specify their involvement in the installation of any practice. The landowner may do any part of the practice but must specify this on the bid schedule form or submit their own complete bid as a prime contractor.
6. All bid invitations will include the following:
 - a. Completed set of plans and specifications for each job
 - b. Specified date for contractor site review
 - c. Specified date for return of all bids
 - d. Bid form, which will include a breakdown of items and quantities included within a practice, which will require a unit and total price bid.
7. The Prime Contractor will be responsible for bidding and completing all items noted on the bid form, and specified in this plan.
8. A bid form will be completed for each practice, sealed and mailed to the LWCD. The LWCC will review the bids. Upon acceptance of a bid, the landowner and contractor will agree upon a starting and completion date for the practice. A contract to complete construction will be signed by both parties. If construction is not completed according to the specified dates in the contract the landowner will have the option to have an alternate contractor complete the construction, unless uncontrollable circumstances are encountered.
9. It is the policy of the LWCC to cost-share on the basis of the lowest submitted bid or

combination of bids. If the landowner selects a contractor(s) other than the low bidder(s), it is the responsibility of the landowner to pay the difference of the bid(s) at their own expense. Only contractors who have submitted a bid are eligible for consideration.

10. All bids received from a contractor must be within 15% of the total estimated costs prepared by the Department for the bid to be eligible for consideration. The LWCC reserved the right to accept or reject any or all bids.
11. All contractors who submit bids must retain Liability and Worker's Compensation Insurance. A minimum of \$100,000.00 liability insurance coverage is required before any project will be awarded to a contractor. No construction will begin until certificates of insurance have been filed with the LWCD

Installation

1. All cost shared practices will be surveyed, designed, constructed, and certified complete in accordance with the NRCS - FOTG Standards and Specifications.
2. The LWCD staff and NRCS staff will inspect construction of all cost shared practices. The job inspector will reject any materials and supplies that do not meet the standards or specifications as stated in the FOTG.
3. It is the responsibility of the contractor to verify that materials and supplies used for installation of a cost shared practice meets Technical Guide standards and specifications. The contractor must provide sales slips, batch slips, invoices, specification tags, etc., that clearly show that the materials and supplies meet the Field Office Technical Guide standards and specifications.
4. Initial practice layout and staking of elevations will be done by the LWCD prior to the start of construction. Any further checking of practice layout or elevations will be the responsibility of the contractor during construction. However, if the contractor is not capable of checking practice layout or elevations the Department will assist. The accuracy of final grades prior to pouring concrete, setting pipe, etc., is the responsibility of the contractor.
5. Notification, location, and protection of public utilities such as buried phone lines and gas lines are the responsibility of the landowner. The landowner shall clearly mark the location of such utilities prior to the start of construction. The landowner shall contact Diggers Hotline or affected utilities prior to the start of construction. The contractor is responsible for knowing the location of any utilities marked by the landowner and should take precautions when working near them.
6. All required permits must be received by the landowner before any construction begins.
7. Project will not be considered complete until all seeding, fertilizing, and mulching is done.

PAYMENT

1. Payments cannot be processed on the project until itemized receipts for all expenditures are turned into the Land Conservation Department Office. The Department will verify that the landowner has paid their portion of project expenses prior to county disbursement of funds. Cost sharing checks will be issued to the landowner and/or contractor depending upon project payment by the landowner. Names of the landowner and contractor will be jointly registered on the payment check unless the landowner has properly documented that they have paid 100% of project costs, in which only the landowners name will be registered on the payment check. A cancelled check, or bills marked "paid" and signed and dated by the contractor shall serve as verification of payment.
2. The Department will review landowner payments, approves cost based on the approved low bid and any subsequent change orders, Final costs will be determined by multiplying the bid unit price of the approved low bid by the actual number of units installed.
3. All required seeding, fertilizing, and mulching must be completed before the project can be

certified for payment. Payments will not be made to the landowner until the protective fences are installed according to current NRCS Standards and Specifications around the barnyard, filter strip, diversion, dam, and other practices if the project design and/or contract require protective fencing.

4. All bills for cost-shared practices must be delivered to the Land Conservation Department Office by the last workday of each month in order to receive payment within 30 days.

SPECIAL CONSIDERATIONS OF NOTE

- Cattle must be removed from the construction site during stake out and construction.
- The landowner shall remove all fences before construction begins.
- The landowner shall remove manure piles from the work area before construction begins.
- The landowner shall provide areas to obtain material for fill and top-dressing.

**RUSK COUNTY LAND & WATER RESOURCE MANAGEMENT
(LWRM) ADVISORY COMMITTEE**

DATE: March 20th, 2025

TIME: 3:00 P.M.

PLACE: 1st Floor Conf. Room - Rusk County Government Center, 311 Miner Ave. E., Ladysmith, WI 54848

MEETING WILL BE ACCESSIBLE BY VIDEO CONFERENCE

To link with your computer video and/or audio: [Join the meeting now](#)

3:00pm Overview of Draft Plan

3:15pm Discussion: Additions/Corrections/Suggestions

4:30pm Adjourn

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting; no action will be taken except by those Committee Members for the stated Committee meeting and only on noticed items.

NOTICE OF PUBLIC HEARING

RUSK COUNTY LAND & WATER RESOURCE MANAGEMENT PLAN

Notice is hereby given that on April 24, 2025 at 6:00pm, in the LEC room of the Rusk County Courthouse, 311 Miner Ave E, Ladysmith, WI, the Land Conservation Committee will hold a public hearing at which time and place all interested persons may appear and will be given an opportunity to be heard in support of or in opposition to the proposed revision to the Rusk County Land and Water Resource Management Plan, which outlines the goals and implementation strategies of the Land Conservation Committee for the next 10 years.

Request may be examined by any interested person during regular business hours at the Rusk County Land Conservation & Development Department office. A DRAFT will also be available online at ruskcounty.org.

All interested persons are invited to attend said hearing and be heard. Written comments will be accepted by the Land & Water Conservation Division until 5:00pm on May 1st, 2025.

Land & Water Resource Management Plan Revision

The Rusk County Land & Water Conservation Division is currently in the process of revising the Counties Land and Water Resource Management Plan (LWRMP) the will be in effect for the next ten years.

The LWRMP outlines goals, objectives, and actions for natural resource conservation in Rusk County. The complete DRAFT plan, which was last revised in 2015, can be found on the Land & Water Conservation Division webpage at www.ruskcounty.org or by calling (715) 532-2162.

If you are interested in providing input, please review the plan and provide comments. Feel free to submit comments by mail, email, or telephone at (715) 532-2162.