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CHAPTER 14
STORMWATER MANAGEMENT

STORMWATER UTILITY

14.01 FINDINGS AND DETERMINATION

It is found, determined and declared as follows:

- (1) The management of stormwater quality and other surface water discharges within the Village is a matter that affects the health, safety and welfare of the Village, its citizens and businesses.
- (2) Failure to effectively manage stormwater quality may create among other things, erosion of lands, damage to homes and businesses create sedimentation and environmental damages to waterways within the Village.
- (3) A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within the Village of Sussex and surrounding areas.
- (4) Failure to effectively manage stormwater contributes to the further degradation of the water quality in area waterbodies which may result higher levels of treatment requirements imposed on the Village of Sussex's wastewater treatment facilities.
- (5) The federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. §1251 *et seq.*) (the "Act"), and rules promulgated by the United States Environmental Protection Agency pursuant to the Act imposed by regulatory obligations of its National Pollutant Discharge Elimination System (NPDES) permit which is administered and enforced by the Wisconsin Department of Natural Resources through administrative rule NR 216 and its Wisconsin Pollutant Discharge Elimination System (WPDES) require the Village of Sussex to reduce pollution in its stormwater discharge and increase water quality to the maximum extent practicable
- (6) The WPDES Wisconsin group permit #WI-S050105as amended from time to time requires expenditures by the Village of Sussex much greater than is currently being spent on stormwater management.
- (7) In order to protect the health, safety and welfare of the public and to comply with the regulatory obligations of its WPDES stormwater permit the Village Board establishes a Stormwater Utility and authorizes the establishment of a fee in connection therewith.
- (8) The Village is acting under the authority contained in Chapters 61 and 66 of the Wisconsin Statutes and, in particular, sections 66.0621, 66.0809, 66.0821, and 66.0627.
- (9) The Village of Sussex fully incorporates by reference into these findings the Stormwater Utility Report dated September 2005, the Stormwater Management Plan Report dated 1997, the 2011 Stormwater Management Master Plan and subsequent Stormwater Management Plans that may be adopted from time to time by the Village Board said documents are available through request of the Village Clerk. Those elements of the Stormwater Utility which provide for the management of stormwater and the improvement of stormwater quality are of benefit to all real property within the Village including property not presently served by said Stormwater Utility.
- (10) The costs of operating and maintaining the Stormwater Utility and financing land acquisition, necessary repairs, replacement, improvements and extension thereof should, to the maximum extent practicable, be allocated in direct relationship to the contributions to the demand for stormwater management services.
- (11) The fees established herein bear a reasonable relationship to the service provided by the Village's Stormwater Utility.
- (12) The area of impervious surfaces on each property is the most important factor influencing the cost of the stormwater management services, systems and facilities provided by the Village of Sussex or to be provided by Village of Sussex in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater utility fee.
- (13) The existence of privately owned and maintained on-site or off-site systems, facilities, activities or

assets which significantly reduce or otherwise mitigate the impact of a particular property on the Village of Sussex's Stormwater Utility's cost of providing stormwater management services and/or stormwater management systems and facilities should be taken into account to reduce the stormwater utility fee on that property either in the form of a direct reduction or credit, and that such reduction or credit should be conditional upon continuing provision of such services, systems, facilities, activities or assets in a manner complying with the standards and codes as determined by the Village Board and as set forth herein

14.02 CREATION

The Village Board of the Village of Sussex pursuant to the provisions of Sections 66.0621, 66.0627, 66.0809, and 66.0821 of the Wisconsin Statutes does hereby declare that the Stormwater Management Program of the Village of Sussex consisting of all facilities and services designed for the proper collection, conveyance, storage, treatment and disposal of stormwater shall be designated the Stormwater Utility. This public utility is not a public service subject to regulation by the Wisconsin Public Service Commission for the purposes defined above except as required by State Law.

14.03 MANAGEMENT

- (1) The operation, management and control of the Stormwater Utility is vested in the Village Board of the Village of Sussex acting as the Public Works Committee under the provision of Section 66.0621(1) of the Wisconsin Statutes and is hereinafter referred to as the "Approving Authority". All records of the Stormwater Utility shall be kept by the Village Clerk in the Village Hall or other officially designated place.
- (2) The rules, regulations and rates hereinafter set forth shall be considered part of the regulations applicable to every property in the Village. Said rules, regulations and rates may be changed from time to time as determined by the Village Board and the right is reserved to make special rates and contracts in all proper cases.
- (3) The Village Board shall place within the Sussex Stormwater Utility the responsibility for operation, maintenance and regulation of the existing stormwater management services, systems and facilities previously performed, owned and operated or maintained by the Village of Sussex, and other related assets, including, but not limited to, properties, other than road rights-of-way, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management. This responsibility shall be placed with the Sussex Stormwater Utility as the Village Board has determined that the Sussex Stormwater Utility has been sufficiently organized, staffed and funded adequately to carry out such responsibilities.
- (4) The Village Administrator or designee, hereinafter described as "Administrator", shall prepare an annual budget, which is to include all operation, education, capital improvements and maintenance costs, debt service and other costs related to the operation of the Stormwater Utility, divided into two categories: (1) Operation and Education: (2) Capital Improvements. The budget is subject to approval by the Village Board.
- (5) The costs shall be spread over the customer classifications as determined by the Village Board.
- (6) The Village Board shall cause an annual audit of the books of the Stormwater Utility to be made and shall make the books and records relating to the Stormwater Utility available for inspection during regular business hours.

14.04 APPLICATION

The application of this Chapter, its rules, regulations and rates shall apply to all property owners within the corporate limits of the Village of Sussex and any property, by attachment to the Stormwater Utility or otherwise by contract or agreement coming within the Village of Sussex municipal boundaries subsequent to the effective date hereof.

14.05 DEFINITIONS, refer to 14.800

14.06 ESTABLISHMENT

- (1) There is established a Village of Sussex Stormwater Utility.
- (2) The Village, through the Stormwater Utility may, without limitation because of enumeration acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, repair, conduct, manage and finance such facilities as are deemed by the Village to be proper and reasonably necessary for a proper management, treatment and disposal of stormwater. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, watercourses, retaining walls, retention ponds, detention ponds, and such other facilities and appurtenances as will support a stormwater system.

14.07 STORMWATER UTILITY FEE

- (1) Basis for Stormwater Utility fees: All elements of the Stormwater Utility annual budget for operation, maintenance, public education, public participation, replacement and capital costs shall be allocated to the impervious area of each property.
- (2) Fee established. Subject to the provisions of this article, each and every property, within the corporate limits of the Village of Sussex, and the owners and non-owner users thereof, have imposed upon them a stormwater user fee. In the event the owner and non-owner users of a particular property are not the same, the liability for each the owner and non-owner user for the fee attributable to that property shall be joint and several. The stormwater user fee shall be determined by the provisions of this article and the ERU rate and frequency of charge which shall be established and changed from time to time by resolution of the Village Board.
- (3) Stormwater fee payment. Stormwater Utility fees may be billed in a similar fashion to other Village Utility bills and shall be payable at the Village Treasurer's office or at any other officially designated location. Statements for such charges and assessments levied and assessed in accordance with this Ordinance shall become due and payable within 20 days from and after the date of the statement. In the event that any such statement or statements are not paid within 20 days of issuance, a charge of 1% will be added to the current monthly billing charge. This charge is applicable to all customers.
- (4) Billing: The property owner and the non-owner users are held responsible for all stormwater utility bills on properties that they own or use, jointly and severally. All stormwater bills and notices of any nature, relative to the Stormwater Utility, will be addressed to the owner and/or the non-owner user and delivered to the addressee by mail.
- (5) Delinquent Accounts: Pursuant to the authority granted under Sections 66.0627 and 66.0809 of the Wisconsin State Statutes, the following procedure shall apply to the collection of delinquent accounts for stormwater service.
 - (a) *Notice of Payment Due.* On October 15 of each year, notice shall be given to the owner of all lots or parcels of real estate within the Village to which stormwater service has been furnished prior to October 1, by the Stormwater Utility and payment for which is owing and in arrears at the time of giving such notice. The Village Treasurer shall furnish the Clerk with a list of all such lots or parcels of real estate, and a notice shall be given by the Clerk. Such notice shall be in writing and shall state the amount of such arrears, including any penalty assessed pursuant to the rules of the Stormwater Utility; that unless the same is paid by November 1 thereafter a penalty of 10% of the amount of such arrears will be added thereto; unless such arrears, with any such added penalty, shall be paid by November 15 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which service was furnished and for which payment is delinquent. Such notice may be served by delivery to either such owner or occupant personally, or by letter addressed to such owner or occupant at the post office addresses of such lot or parcel of real estate.

- (b) *Failure to Pay.* On November 16 the Treasurer shall certify and file with the Clerk a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notice of arrears and payment were given as above specified and which arrears still remain unpaid, and stating the amount of such arrears together with the added penalty thereon as herein provided. Each delinquent amount, including such penalty shall thereupon become a lien upon the lot or parcel of real estate to which the stormwater management service was furnished and payment for which is delinquent, and the Clerk shall insert the same as a tax against such lot or parcel of real estate. All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes shall apply to such tax if the same is not paid within the time required by law for payment of taxes upon real estate
- (c) *Request for Hearing.* The owner may within 10 days of the date such notice is sent, request a hearing on any charge disputed. Such a request for hearing shall be in writing and shall be filed with the Village Clerk. No such charge shall be placed upon the tax roll if a properly filed request for hearing is pending. All hearings shall be held by the Village Public Works Committee within 30 days.

14.08 STORMWATER FEE DETERMINATION

There is established the following schedule of rates and customer classes for the services and use of facilities of the Stormwater utility:

- (1) Annually before the first Village Board meeting in October, the Administrator shall prepare a budget for the Stormwater Utility for the following fiscal year which shall be separated into sections, the first for operation, maintenance and public education and the second for capital improvements.
- (2) The Village Board shall, by resolution, establish reasonable rates to recover the actual costs of the Stormwater utility. The Village Board hereby authorizes the imposition of a stormwater fee on all developed property in the Village of Sussex.
- (3) Customer Classes. For purposes of the imposition of the stormwater fee, all customers shall be classified into one of five user classes. Equivalent Runoff Units (ERUs) shall be calculated for each customer class as follows:
 - (a) Single-family residence shall be billed at a flat fee established by the Village Board for one Equivalent Runoff Unit (ERU).
 - (b) Each mobile home shall be billed at a flat fee established by the Village Board for one Equivalent Runoff Unit (ERU).
 - (c) Each duplex property shall be billed at a flat rate established by the Village Board for 0.505 Equivalent Runoff Units (ERUs) per dwelling unit.
 - (d) For any developed property not covered by subsections (a) - (c) of this section, the rate shall be computed based on the total impervious area of the property divided by the impervious area of an Equivalent Runoff Unit (ERU) times the rate established for an Equivalent Runoff Unit (ERU).
 - (e) For any undeveloped land the number of Equivalent Runoff Units (ERU) to be assigned shall be zero.

14.09 FEE ADJUSTMENTS AND CREDITS

- (1) Requests for adjustment. Requests for adjustments shall be limited to the fees for nonresidential developed properties. Adjustments are for errors, omissions, and recalculation requests. All such requests shall be in writing and submitted to the Administrator along with a review fee. The Village Board may establish by resolution the amount of the review-fee.
 - (a) The Administrator will investigate and make recommendations to the Public Works Committee as to whether an adjustment is merited based upon the guidelines set forth

herein. It shall be the burden of the applicant to demonstrate by a preponderance of the evidence that a fee adjustment is warranted. Failure to file a request for adjustment within thirty (30) days of payment waives all rights to any refund of fees as a result of any adjustment's determination.

- (b) A customer may be eligible for an adjustment under the following conditions:
 - (1) The allocated ERU's may be adjusted if the square footage calculation of impervious area for the property is incorrect.
 - (2) The impervious area of the property has changed either by removal, or addition to the measured impervious area.

(2) Requests for Credit. In certain situations, the amount of services used by a property and the costs of providing service to a property may be lessened due to unique characteristics of the property served. This section provides a procedure to seek a credit to the fee charged. Credits are given for private improvements that are maintained and meet engineered design criteria of the Village's stormwater management efforts and thus reduce the cost to the public. In developing this process, the Village recognizes that capital improvement portion of the Village of Sussex's Stormwater utility are incurred primarily to meet the pollutant reduction requirements placed on the Village by NR 151 and NR 216. The operation and maintenance and the public education portion of the budget for the Stormwater utility are incurred to ensure the proper management, operation and implementation of the day-to-day operation of the Stormwater utility and these costs are not reduced by private improvements and therefore these costs are not eligible for credit.

(a) All such requests shall be in writing and submitted to the Administrator along with a review-fee. The Village Board may establish by resolution the amount of the review-fee.

- (b) A customer may be eligible for a credit under the following conditions:
 - (1) Properties with private on-site stormwater treatment facilities may be eligible for a credit to their stormwater user fee provided that the facilities are designed, privately constructed, and privately maintained to properly manage the stormwater runoff quality from impervious surface areas in accordance with the design criteria described by the Village's stormwater management ordinances and as may be further clarified by the Administrator.
 - (2) The Administrator shall prepare a Village Credit Policy to document the criteria under which customers may be eligible for a credit to reduce stormwater fees. The Credit Policy shall be approved by the Village Board, copies of which shall be available through the Engineering Department.
 - (3) In considering such a request for credit, the Public Works Committee shall consider whether and to what extent the Village's cost of providing service or making service available to a property has been lessened by the private on-site stormwater management and treatment facilities. If the Village's cost of providing service or making service available to a property has not been lessened by the on-site stormwater management and treatment facilities, the request for the adjustment may be denied. If the Village's cost of providing service or making service available to a property has been lessened by the on-site stormwater management and treatment facilities, the fee may be reduced as set forth by the Village Board by resolution.

14.10 APPROVAL AND APPEALS

- (1) The Administrator shall submit a written recommendation to the Public Works Committee as to whether the request for adjustments or credits should be granted, denied, granted in part, or denied in part. The written recommendation shall also set forth the reason or reasons for such recommendation.
- (2) In considering a request for an adjustment, the Administrator and/or the committee may, in their discretion, separately examine multiple drainage areas on one piece of property and may recommend allowing an adjustment or credit for a portion of the property if the characteristics of one or more drainage areas meets the criteria set forth in section above.
- (3) Committee review of the request for adjustment or credit shall be completed within sixty (60) days of the date the written request for adjustment and required fee are submitted to the Administrator. The committee shall review the request and Administrator's recommendation and shall either grant or deny, or grant in part, or grant subject to reasonable conditions, the requested adjustment or credit. The Committee may act with or without a hearing, at its option, and will inform the applicant in writing of its decision.
- (4) The applicant has thirty (30) days from the decision of the committee to file a written appeal to the Village Board.
- (5) If the Committee determines that a refund is due the applicant, or if the Committee's decision is appealed and the Village Board determines that a refund is due the applicant, the refund will be applied as a credit on the customer's ensuing stormwater billing, or will be refunded separately at the discretion of the Village Finance Director.

14.11 BUDGET EXCESS REVENUES

The Stormwater Utility finances shall be accounted for in a separate stormwater enterprise fund by the Village Board. Any excess of Stormwater Utility revenues over expenditures in a year will be retained by the stormwater enterprise fund for subsequent years' needs of the Stormwater Utility.

CONSTRUCTION SITE EROSION

FOREWORD

The intent of this ordinance is to require use of best management practices to reduce the amount of sediment and other pollutants resulting from land disturbing construction activities including sites that do not include the construction of a building and are otherwise regulated by the State of Wisconsin in s. SPS 321.125 or SPS 360.115, Wis. Adm. Code. Use of this ordinance will foster consistent, statewide application of the construction site performance standards for new development and redevelopment contained in subchapters III and IV of ch. NR 151, Wis. Adm. Code.

The Village Board of the Village of Sussex does hereby ordain that Chapter 14.30 of the Municipal Code of the Village of Sussex is created to read as follows:

14.31 AUTHORITY

- (1) This ordinance is adopted under the authority granted by s. 61.354, Wis. Stats. This ordinance supersedes all provisions of any ordinance previously enacted under s. 61.35, Wis. Stats., that conflict with this ordinance in relation to construction site erosion control at sites where the construction activities do not include the construction of a building. Except as otherwise specified in s. 61.354 Wis Stats., s 61.35 Wis Stats. applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Village Board hereby designates the Administrator to administer and enforce the provisions of this ordinance, hereinafter described as "Administrator".
- (4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under § 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.
 - (c) Waukesha County Storm Water Management and Erosion Control Ordinance

14.32 FINDINGS OF FACT

The Village Board finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the Village of Sussex.

14.33 PURPOSE AND INTENT

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the Village of Sussex.

14.34 APPLICABILITY AND JURISDICTION

- (1) **APPLICABILITY.**
 - (a) This ordinance applies to the following land disturbing construction activities except as provided under sub. (b):
 1. An area of 10,000 square feet or greater will be disturbed by excavation, grading, filling, or other earth-moving activities, resulting in a loss or removal of protective ground cover, vegetation; or
 2. Excavation, fill, or any combination thereof, will exceed 400 cubic yards; or

3. Any public (federal, state or local) street, road or highway is to be constructed, enlarged, relocated or substantially reconstructed; or
4. Any water course or drainage pattern is to be changed, enlarged, or materials are removed from a swale, stream or lake bed; or
5. Any utility work in which underground conduits, piping, wiring, water lines, sanitary sewers, storm sewers, or similar structures will be laid, repaired, replaced or enlarged, if such work involves more than 300 linear feet of earth disturbance.
6. Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Safety and Professional Services under s. SPS 321.125 or SPS 360.115, Wis. Adm. Code.

(b) This ordinance does not apply to the following:

1. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
2. Nonpoint discharges from agricultural facilities and practices.
3. Nonpoint discharges from silviculture activities.
4. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
5. Nonmetallic mining activities that are covered under a nonmetallic mining reclamation permit under NR 135, Wisconsin Administrative Code.

(c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to construction sites of any size that, in the opinion of the Administrator, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) **JURISDICTION.**

This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the Village of Sussex.

(3) **EXCLUSIONS.**

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

14.35 DEFINITIONS, refer to 14.800

14.36 TECHNICAL STANDARDS

(1) **DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS.** All BMPs required to comply with this ordinance shall meet the more restrictive design criteria, standards and specifications based on any of the following:

- (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (b) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

- (2) OTHER STANDARDS. Other technical standards not identified or developed in sub. (1), may be used provided that the methods have been approved by the Administrator.

14.37 PERFORMANCE STANDARDS

- (1) RESPONSIBLE PARTY. The responsible party shall implement an erosion and sediment control plan, developed in accordance with 14.39, that incorporates the requirements of this section.
- (2) PLAN. A written plan shall be developed in accordance with 14.39 and implemented for each construction site.
- (3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS. The plan required under sub. (2) shall include the following:
- (a) BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
 - (b) Notwithstanding par. (a), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
 - (c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
 - 1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces. Materials tracked onto roads or other impervious surfaces shall be removed daily.
 - 2. Prevent the discharge of sediment as part of site de-watering.
 - 3. Prevent the discharge of sediment into onsite storm water inlets.
 - 4. Prevent the discharge of sediment to drainage ways that flow off site.
 - 5. Prevent the discharge of sediment to waters of the State.
 - 6. Protect the separate storm drain inlet structure from receiving sediment.
 - (d) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.
- (4) LOCATION. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.
- (5) ALTERNATE REQUIREMENTS. The Administrator may establish storm water management requirements more stringent than those set forth in this section if the Administrator determines that an added level of protection is needed for sensitive resources. The erosion and sediment plan shall not adversely impact adjacent properties.

14.38 PERMITTING REQUIREMENTS, PROCEDURES AND FEES

- (1) PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Administrator.
- (2) PERMIT APPLICATION AND FEES. At least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit

and an erosion and sediment control plan that meets the requirements of 14.39 and shall pay an application fee as approved by the Village Board. By submitting an application, the applicant is authorizing the Administrator to enter the site to obtain information required for the review of the erosion and sediment control plan.

- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Administrator shall review any permit application that is submitted with erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
- (a) Within thirty (30) business days of the receipt of a complete permit application, as required by sub. (2), and after approval of any other plans required by Village Ordinance, the Administrator shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
 - (b) If the permit application and plan are approved, the Administrator shall issue the permit.
 - (c) If the permit application or plan is disapproved, the Administrator shall state in writing the reasons for disapproval.
 - (d) The Administrator may request additional information from the applicant. If additional information is submitted, the Administrator shall have thirty (30) business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
 - (e) Failure by the Administrator to inform the permit applicant of a decision within thirty (30) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **SURETY BOND.** As a condition of approval and issuance of the permit, the Administrator may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- (5) **PERMIT REQUIREMENTS.** All permits shall require the responsible party to:
- (a) Notify the Administrator within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the Administrator of completion of any BMPs within 14 days after their installation.
 - (c) Obtain permission in writing from the Administrator prior to any modification pursuant to 14.93(3) of the erosion and sediment control plan.
 - (d) Install all BMPs as identified in the approved erosion and sediment control plan prior to starting any land disturbing activities.
 - (e) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.
 - (g) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (h) Allow the Administrator to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.
 - (i) Maintain erosion control practices through rough grading and until grading contractor begins final site grading. Restoration shall be completed within 7 days from completion of the final grading. Removal of any erosion control practices necessary to meet the requirements of this ordinance, shall not occur until the site has reached final stabilization.

- (6) PERMIT CONDITIONS. Permits issued under this section may include conditions established by Administrator in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in 14.37.
- (7) PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days from the date of issuance. The Administrator may extend the period one or more times for up to an additional 180 days. The Administrator may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.
- (8) MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

14.39 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS

(1) EROSION AND SEDIMENT CONTROL PLAN.

- (a) An erosion and sediment control plan shall be prepared and submitted to the Administrator.
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in 14.37 and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - 2. Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map or other similar topographic map approved by the Administrator.
 - 3. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - 4. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
 - 5. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.
 - 6. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
 - 7. Existing data describing the surface soil as well as subsoils.
 - 8. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available, or site specific soil borings.
 - 9. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps or other source.
- (d) The erosion and sediment control plan shall include a site map; or plat of survey for a single one or two-family residential construction site. The site map and plat of survey shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed two feet.
 - 1. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.

2. Boundaries of the construction site.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.
 4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the plan.
 6. Location of areas where stabilization practices will be employed.
 7. Areas which will be vegetated following construction.
 8. Area extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.
 9. Locations of all surface waters and wetlands within one mile of the construction site.
- (e) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:
1. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
 2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Administrator, structural measures shall be installed on upland soils.
 3. Management of overland flow at all sites, unless otherwise controlled by outfall controls.
 4. Trapping of sediment in channelized flow.
 5. Staging construction to limit bare areas subject to erosion.
 6. Protection of downslope drainage inlets where they occur.
 7. Minimization of tracking at all sites.
 8. Clean up of off-site sediment deposits.
 9. Proper disposal of building and waste materials at all sites.
 10. Stabilization of drainage ways.
 11. Control of soil erosion from dirt stockpiles.
 12. Installation of permanent stabilization practices within 7 days after final grading.
 13. Minimization of dust to the maximum extent practicable.
- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (2) **EROSION AND SEDIMENT CONTROL PLAN STATEMENT.** For each construction site identified under 14.34(1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Administrator. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.
- (3) **AMENDMENTS.** The applicant shall amend the plan if any of the following occur:
- (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.
 - (b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
 - (c) The Administrator notifies the applicant of changes needed in the plan.

14.40 FEE SCHEDULE

The fees referred to in other sections of this ordinance shall be established by the Administrator and approved by the Village Board and may from time to time be modified by resolution of the Village Board. A schedule of the fees established by the Village Board shall be available for review in the Sussex Village Hall.

14.41 INSPECTION

If land disturbing construction activities are being carried out without a permit required by this ordinance, the Administrator may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats.

14.42 ENFORCEMENT. Refer to Section 14.850

14.43 APPEALS

ZONING BOARD OF APPEALS. The Zoning Board of Appeals created pursuant to Section 17.1200 of the Village Zoning Code ordinance pursuant to s. 61.354(4)(b), Wis. Stats. shall hear and decide appeals as described in Section 17.1200 and may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.

POST-CONSTRUCTION STORM WATER MANAGEMENT

FOREWORD

The intent of this ordinance is to reduce the amount of post-construction storm water and associated pollutants reaching waters of the state. Use of this ordinance by municipalities will foster the consistent statewide application of post-construction performance standards for new development and redevelopment contained in subchapters III and IV of chapter NR 151, Wis. Adm. Code.

The Village Board of the Village of Sussex does hereby ordain that Chapter 14 of the Municipal Code of the Village Board is repealed and recreated to read as follows:

14.51 AUTHORITY

- (1) This ordinance is adopted by the Village of Sussex under the authority granted by s. 61.354, Wis. Stats. This ordinance supersedes all provisions of any ordinance previously enacted under s. 61.35, Wis. Stats., that conflict with this ordinance in relation to Storm Water Management Regulations, except that Section 17.1100 of the Municipal Code is not superseded. Except as otherwise specified in s. 61.354, Wis. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Village Board hereby designates the Village Administrator or their designee to administer and enforce the provisions of this ordinance, hereinafter described as "Administrator".
- (4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.
 - (c) Waukesha County Storm Water Management and Erosion Control Ordinance.

14.52 FINDINGS OF FACT

The Village Board finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

14.53 PURPOSE AND INTENT

- (1) **PURPOSE.** The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
- (a) Further the maintenance of safe and healthful conditions.
 - (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
- (2) **INTENT.** It is the intent of the Village Board that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Village Board recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the Village Board, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

14.54 APPLICABILITY AND JURISDICTION

- (1) **APPLICABILITY.**
- (a) Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this paragraph, unless the site is otherwise exempt under paragraph (b).
 - 1. A post construction site that results in the addition of 0.5 acres or more of impervious surface.
 - 2. A post-development construction site that had one or more acres of land disturbing construction activity.
 - (b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.
 - 1. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
 - 2. Nonpoint discharges from agricultural facilities and practices.
 - 3. Nonpoint discharges from silviculture activities.
 - 4. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
 - 5. Routine maintenance for transportation facilities that have less than 1 acre of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - 6. Routine maintenance if performed for storm water conveyance system cleaning for sites that consist of less than 5 acres of land disturbance.
 - 7. Reconditioning or resurfacing of a highway.

- 8. Minor reconstruction of a highway. Notwithstanding the exemption under this paragraph, the protective areas requirements in sub. (3)(d) apply to minor reconstruction of a highway.
 - (c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to post-construction sites of any size that, in the opinion of the Administrator, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
 - (d) Any restrictions or goals regarding stormwater management agreed to by the Village under previous stormwater ordinances will remain in effect until revisions are required per Ordinance.
- (2) **JURISDICTION.**
This ordinance applies to post construction sites within the boundaries and jurisdiction of the Village of Sussex, as well as all lands located within the extraterritorial plat approval jurisdiction of the Village of Sussex, even if plat approval is not involved.
 - (3) **EXCLUSIONS.**
This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

14.55 DEFINITIONS, refer to 14.800

14.56 TECHNICAL STANDARDS

The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Administrator.
- (3) In this ordinance, the following year(s) and location(s) have been selected as average annual rainfall(s): Milwaukee, 1969 (Mar. 28-Dec. 6).

14.57 PERFORMANCE STANDARDS

- (1) **RESPONSIBLE PARTY.** The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.
- (2) **PLAN.** A written storm water management plan in accordance with 14.59 shall be developed and implemented for each post-construction site.
- (3) **REQUIREMENTS.** The plan required under sub. (2) shall include the following:
 - (a) **TOTAL SUSPENDED SOLIDS.** BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
 - 1. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.

2. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40% from parking areas and roads, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.
3. Notwithstanding subds. 1. to 2., if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(b) PEAK DISCHARGE.

1. (i.) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions for the 1 and 2 year – 24 hour design storm applicable to the post-construction site. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Soil Hydrologic Group:	A	B	C	D
NRCS Curve Number for Woodland:	30	55	70	77
NRCS Curve Number for Grass Land:	39	61	71	78
NRCS Curve Number for Cropland: *	55	69	78	83

1. (ii.) Exemptions. The following are not required to meet the requirements of this paragraph:
 - a.. In-Fill development less than 5 acres.
 - b. Except as provided under s. NR 151.121 (5) Wis Admin Code, a redevelopment post construction site.
 - c. Highway Reconstructions.
2. (i.) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions for the 10 and 100 year – 24 hour design storm applicable to the post construction site. The runoff curve number shall be as determined in TR-55.
 - (ii.) Exemptions. The following are not required to meet the requirements of this paragraph unless the post construction site will overtax the receiving storm sewers, drainage ways, and other minor drainage facilities, or increase major flood peaks and volumes, as determined by the Administrator.
 - (a.) In-Fill development less than 5 acres.
 - (b.) Except as provided under s. NR 151.121(5) Wis Admin Code, a redevelopment post construction site.

(c) INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subds. 6. through 9.

1. For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development:
 - a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

2. For developments with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development:
 - a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

3. For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

4. Pre-development condition shall be the same as in par. 1. (i.).

5. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd.9. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

6. Prohibitions and Location of Practices. The runoff from the following areas is prohibited from meeting the requirements of this paragraph and the location of the infiltration practices must be selected based on the requirements of this paragraph:
 - a. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking shall not be infiltrated.
 - b. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b), Wis. Adm. Code shall not be infiltrated.
 - c. Infiltration practices shall not be located in areas where contaminants of concern as defined in NR 720.03(2), Wis. Admin. Code, are present in the soil thru which infiltration will occur.
 - d. Fueling and vehicle maintenance areas shall not be infiltrated. However, rooftops of fueling and vehicle maintenance areas may be infiltrated with concurrence of the Administrator.
 - e. Highway runoff shall not be infiltrated.
 - f. Infiltration practices shall not be located in areas within 1000 feet upgradient or within 100 feet downgradient of karst features and direct conduits to groundwater.
 - g. Infiltration practices shall not be located in areas with less than 3 feet separation distance from the finished grade of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subd. 5.g. does not prohibit infiltration of roof runoff.
 - h. Infiltration practices shall not be located in areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the finished grade of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

- i. Infiltration practices shall not be located in areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within separation distances listed in NR 812.08 Wisc. Admin Code for any private or non-community well as specified in s. NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, multi-family residential, industrial and institutional land uses or regional devices for residential development.
- j. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of the seasonal high groundwater or top of bedrock are in accordance with the following table:

Separation Distances and Soil Characteristics		
Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Course Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All other Impervious Source Areas	3 feet or more	Filtering Layer

- 7. Exemptions. The following are not required to meet the requirements of this paragraph:
 - a. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
 - b. Parking areas and access roads less than 5,000 square feet for commercial development.
 - c. Parking areas and access roads less than 5,000 square feet for industrial developments not subject to prohibitions under subd. 6.
 - d. In-fill development areas less than 5 acres.
 - e. Infiltration areas during periods when the soil on the site is frozen.
 - f. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
- 8. Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph.
- 9.
 - a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding subd. par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) PROTECTIVE AREAS.

- 1. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the

top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

- a. For outstanding resource waters and exceptional resource waters, 75 feet.
 - b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, a county soil survey map or by the Wisconsin Department of Natural Resources, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to subd. e. or f., 50 feet.
 - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass, cultivated hydric soils; and any gravel pits, or dredged material or fill material deposit sites that take on attributes of a wetland.
 - g. In subd. 1. d. thru f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.
 - h. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legal authorized wetland fill, the protective area standard need not be met in that location.
 - i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
2. This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
 3. The following requirements shall be met:
 - a. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
 - b. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.
 - c. Best management practices such as filter strips, swales, or wet detention basins, which are designed to control pollutants from non-point sources may be located in the protective area.

4. This paragraph does not apply to:
 - a. Except as provided under NR 151.121 (5) Wisc. Admin Code, redevelopment post-construction sites.
 - b. In-fill development areas less than 5 acres.
 - c. Structures that cross or access surface waters such as boat landings, bridges and culverts.
 - d. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.
 - e. Post-construction sites from which runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of ss. NR 151.122 to 151.123 Wisc. Admin. Code except to the extent that vegetative ground cover is necessary to maintain bank stability.

- (a) **FUELING AND VEHICLE MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

- (f) **SWALE TREATMENT FOR TRANSPORTATION FACILITIES.**
 1. **Applicability.** Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:
 - a. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
 - b. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

 2. **Exemptions.** The Administrator may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 and where the initial surface water of the state that the runoff directly enters is any of the following:
 - a. An outstanding resource water.
 - b. An exceptional resource water.
 - c. Waters listed in s. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
 - d. Waters where targeted performance standards are developed under s. NR 151.004, Wis. Adm. Code, to meet water quality standards.

- (4) **GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORM WATER MANAGEMENT MEASURES.** The following considerations shall be observed in managing runoff:
 - (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
 - (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
 - (c) Any structure with a basement shall be setback at least 50 feet from any storm water BMP that may temporarily or permanently store water at a depth greater than one (1)

foot. Setback distance shall be measured from the closest edge of water at the elevation produced by the 100-year, 24 hour design storm.

- (5) LOCATION AND REGIONAL TREATMENT OPTION.
- (a) The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.
 - (b) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in non-navigable surface waters.
 - (c) Except as allowed under par. (d), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
 - (d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this ordinance if:
 - 1. The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Wis. Stats., permit; and
 - 2. The BMP is designed to provide runoff treatment from future upland development.
 - (e) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
 - 1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
 - 2. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as ch. NR 103, Wis. Adm. Code and ch. 30, Wis. Stats.
 - (b) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.
 - (g) The Administrator may approve off-site management measures provided that all of the following conditions are met:
 - 1. The Administrator determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Village of Sussex and that contains management requirements consistent with the purpose and intent of this ordinance.
 - 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.
 - b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
 - (h) Where a regional treatment option exists such that the Administrator exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Administrator. In determining the fee for post-construction runoff, the Administrator shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (6) ALTERNATE REQUIREMENTS. The Administrator may establish storm water management requirements more stringent than those set forth in this section if the Administrator determines that an added level of protection is needed to protect sensitive resources.

14.58 PERMITTING REQUIREMENTS AND PROCEDURES

- (1) **PERMIT REQUIRED.** Commencing land disturbing construction activity without receiving a required post-construction runoff permit from the Administrator is prohibited.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Administrator a permit application made on a form provided by the Administrator for that purpose.
 - (a) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.
 - (b) The storm water management plan shall be prepared to meet the requirements of 14.57 and 59, the maintenance agreement shall be prepared to meet the requirements of 14.60, the financial guarantee shall meet the requirements of 14.62, and fees shall be those established by the Village Board as set forth in 14.63.
- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Administrator shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
 - (a) Within thirty (30) business days of the receipt of a complete permit application, including all items as required by sub. (2), the Administrator shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
 - (b) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the Administrator shall issue the permit.
 - (c) If the storm water permit application, plan or maintenance agreement is disapproved, the Administrator shall detail in writing the reasons for disapproval.
 - (d) The Administrator may request additional information from the applicant. If additional information is submitted, the Administrator shall have thirty (30) business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
 - (e) Failure by the Administrator to inform the permit applicant of a decision within thirty (30) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Administrator may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Administrator to suspend or revoke this permit may be appealed in accordance with 14.65.
 - (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
 - (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
 - (c) The responsible party shall notify the Administrator at least three (3) business days before commencing any work in conjunction with the storm water management plan, and within three (3) business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the Administrator so that practice installations can be inspected during construction.
 - (d) Practice installations required as part of this ordinance shall be verified to the Administrator, in the same manner as Section 14-333(d) of the Waukesha County Stormwater and Erosion Control Ordinance, by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the Administrator or its designee to determine if they are in accordance with the approved

storm water management plan and ordinance. The Administrator or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

- (e) The responsible party shall notify the Administrator of any significant modifications it intends to make to an approved storm water management plan. The Administrator may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
 - (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the Village Board, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (g) The responsible party authorizes the Administrator to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under Section 66.0627 or subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under 14.62.
 - (h) If so directed by the Administrator, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.
 - (i) The responsible party shall permit property access to the Administrator or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.
 - (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Administrator may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (k) The responsible party is subject to the enforcement actions and penalties detailed in 14.64, if the responsible party fails to comply with the terms of this permit.
 - (l) An inspection log shall be conducted and maintained in the same manner as Section 14-333(a) 7 of the Waukesha County Stormwater and Erosion Control Ordinance.
- (5) PERMIT CONDITIONS. Permits issued under this subsection may include conditions established by Administrator in addition to the requirements needed to meet the performance standards in 14.57 or a financial guarantee as provided for in 14.62.
- (6) PERMIT DURATION. Permits issued under this section shall be valid from the date of issuance through the date the Administrator notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d) and any deed restrictions required by the Administrator have been recorded with Waukesha County Register of Deeds.

14.59 STORM WATER MANAGEMENT PLAN

- (1) **PLAN REQUIREMENTS.** The storm water management plan required under 14.58 (2) shall contain at a minimum the following information:
- (a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
 - (c) Pre-development site conditions, including:
 - 1. One or more site maps at a scale of not less than 1 inch equals 100 feet. The site maps shall show the following: site location and legal property description;

- predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Adm. Code.
2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (d) Post-development site conditions, including:
1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
 2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
 3. One or more site maps at a scale of not less than 1 inch equals 100 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
 4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.
- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in 14.57.
- (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
- (g) Cost estimates for the construction, operation, and maintenance of each storm water management practice.
- (h) Other information requested in writing by the Administrator to determine compliance of the proposed storm water management measures with the provisions of this ordinance.
- (i) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this ordinance.

- (j) Practices recommended for implementation in Stormwater Management Plans previously adopted by the Village Board shall be included in all stormwater management plans.
- (2) ALTERNATE REQUIREMENTS. The Administrator may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under 14.57(5).

14.60 MAINTENANCE AGREEMENT

- (1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under 14.58(2) for storm water management practices shall be an agreement between the Village and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.
- (2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by 14.59(1)(f):
 - (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.
 - (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under 14.58(2).
 - (c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under 14.58(2).
 - (d) Requirement that the responsible party(s), organization, or city, county, town or village shall inspect and maintain storm water management practices in accordance with the schedule included in par. (b) and submit reports to the Administrator on an annual basis.
 - (e) Authorization for the Administrator to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (f) A requirement on the Administrator to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.
 - (g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the Administrator of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Administrator.
 - (h) Authorization of the Administrator to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The Administrator shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Section 66.0627, Wis. Stats.

14.61 ILLCIT DISCHARGES AND CONNECTIONS

- (1) DEFINITIONS. The following definitions shall be applicable in this Section.
 - (a) "Illicit Connection" means any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been allowed, permitted, or approved by any government agency, prior to the adoption of this ordinance.
 - (b) "Person" means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

- (c) "Storm Drain System" means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- (2) **DISCHARGES PROHIBITED.** No person shall discharge, spill or dump substances or materials which are not entirely composed storm water into receiving bodies of water or onto driveways, sidewalks, parking lots or other areas that drain into the storm drainage system.
- (3) **CONNECTIONS PROHIBITED.** The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to the adoption of this ordinance, regardless of whether the connection was permissible under law or practice applicable or prevailing at the time of connection.
- (4) **EXEMPTIONS.** The following activities are exempt from the provisions of this section unless found to have an adverse impact on the storm water:
 - (a) Discharges authorized by a permit issued by the Wisconsin Department of Natural Resources.
 - (b) Discharges resulting from firefighting activities.
 - (c) Discharges from uncontaminated ground water, potable water source, roof drains, foundation drain and sump pump, air conditioning condensation, springs, lawn watering, individual residential car washing, water main and hydrant flushing and swimming pools if the water has been dechlorinated.
- (5) **ENFORCEMENT.** Whenever the Village of Sussex finds a person has violated a prohibition or failed to meet a requirement of this section, the Village of Sussex may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (a) The elimination of illicit connections or discharges;
 - (b) That violating discharges, practices, or operations shall cease and desist.
 - (c) The abatement or remediation of storm water pollution or contaminated hazards and the restoration of any affected property;
 - (d) In the event the person fails to eliminate the illicit connects or discharge, fails to cease and desist in discharge, practices or operations in violation of this Section or fails to abate or remediate the storm water pollution or contamination hazards, that person may be subject to a forfeiture of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

14.62 FINANCIAL GUARANTEE

- (1) **ESTABLISHMENT OF THE GUARANTEE.** The Administrator may require the submittal of a financial guarantee, the form and type of which shall be subject to the approval of the Administrator. The financial guarantee shall be in an amount determined by the Administrator to be the estimated cost of construction. The financial guarantee shall give the Administrator the authorization: to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan. The Administrator shall be entitled to draw on the letter of credit upon written notice to the financial institution holding the financial guarantee by the Administrator that the requirements of this ordinance have not been met.
- (2) **CONDITIONS FOR RELEASE.** Conditions for the release of the financial guarantee are as follows:
 - (a) The Administrator may release up to 50% of the portion of the financial guarantee established under this section to assure proper construction of storm water practices, less any costs incurred by the Village to complete installation of practices, upon

submission of "as built plans" by a licensed professional engineer which are approved by the Administrator and document full compliance. The Administrator may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

- (b) The Administrator shall release the remaining portion of the financial guarantee established under this section, less any costs incurred by the Village, after the two (2) year warranty for the construction of the storm water management practices expires. .

14.63 FEE SCHEDULE

The fees referred to in other sections of this ordinance shall be established by the Administrator and approved by the Village Board and may from time to time be modified by resolution of the Village Board. A schedule of the fees established by the Administrator shall be available for review in Sussex Village Hall.

14.64 ENFORCEMENT. Refer to Section 14.850

14.65 APPEALS

ZONING BOARD OF APPEALS. The Zoning Board of Appeals, created pursuant to Section 17.1200 of the Village of Sussex ordinances pursuant to s. 61.354(4)(b), Wis. Stats, shall hear and decide appeals as described in Section 17.1200.

Upon appeal, the ZBA may authorize variances from the provisions of this ordinance which are not contrary to public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.

14.66 SEVERABILITY

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

14.67 EFFECTIVE DATE

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the Village Board of the Village of Sussex on the 26th day of April, 2005.

14.800 DEFINITIONS

The following words, terms and phrases, when used in the STORMWATER UTILITY, CONSTRUCTION SITE EROSION and POST CONSTRUCTION STORMWATER MANAGEMENT Sections of Chapter 14, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“ACT” shall mean the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub.L. 92 500) and Pub.L. 93 243, or as modified by Chapter 147, Statutes of the State of Wisconsin or appropriate sections of the Wisconsin Administrative Code adopted pursuant to Chapter 147.

“AGRICULTURAL FACILITIES AND PRACTICES ” has the meaning in s. 281.16(1), Wis. Stats.

“APPROVING AUTHORITY” shall mean the Village Board of the Village of Sussex or its duly authorized deputy, agent or representative.

“AVERAGE ANNUAL RAINFALL” means a calendar year of precipitation, excluding snow, which is considered typical.

"BEST MANAGEMENT PRACTICE" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

"BUSINESS DAY" means a day the office that Village Hall is routinely and customarily open for business.

"CEASE AND DESIST ORDER" means a court-issued order to halt land disturbing construction activity that is being conducted..

"COMBINED SEWER SYSTEM" means a system for conveying both sanitary sewage and storm water runoff.

"CONNECTED IMPERVIOUSNESS" means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

"CONSTRUCTION SITE" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

"CUSTOMER" See definition for User.

"DESIGN STORM" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

"DEVELOPMENT" means residential, commercial, industrial or institutional land uses and associated roads.

"DEVELOPED PROPERTY" means property that is developed by the addition of impervious area including, but not limited to, a building, structure, paved surface, gravel surface, but excluding publicly-owned rights of way. A new improvement shall be considered complete, upon issuance of a Certificate of Occupancy, or if no such certificate is issued, upon completion of construction or final inspection. A new improvement shall also be considered complete if the construction project is at least 50 percent complete, and then is halted for a period of three (3) months or more.

"DUPLEX" means a residential property with two dwelling units.

"DWELLING UNIT" means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

"EFFECTIVE INFILTRATION AREA" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

"EQUIVALENT RUN-OFF UNIT" (ERU) means 5,059 sq. ft., which is approximately the statistical average impervious area of one single family residential housing unit in the Village of Sussex as of 2016.

"EROSION" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

"EROSION AND SEDIMENT CONTROL PLAN" means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

"EXCEPTIONAL RESOURCE WATERS" means waters listed in s. NR 102.11, Wis. Adm. Code.

"EXTENSION AND REPLACEMENT" means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the

system, or land acquisition for the system and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

“EXTRATERRITORIAL” means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

“FINAL STABILIZATION” means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

“FINANCIAL GUARANTEE” means an irrevocable letter of credit, or similar guarantee in a form approved by the Village Attorney submitted to the Village Administrator or their designee by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.

“FISCAL YEAR” means a twelve-month period commencing on the first day of January of any year.

“GOVERNING BODY” means town board of supervisors, county board of supervisors, city council, and village board of trustees or village council.

“IMPERVIOUS AREA” or “IMPERVIOUS SURFACE” means a horizontal surface, which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater and releases as runoff all or a large portion of the precipitation that falls on it. It includes, but is not limited to, semi-impervious surfaces such as compacted clay or gravel, as well as streets, roofs, sidewalks, parking lots, buildings, and other similar surfaces. It excludes frozen soil.

“IN-FILL AREA” means an undeveloped area of land located within existing development and contains 5 acres or less in area.

“INFILTRATION” means the entry of precipitation or runoff into or through the soil.

“INFILTRATION SYSTEM” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration. It does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels, designed for conveyance and pollutant removal only.

“KARST FEATURE” means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

“LAND DISTURBING CONSTRUCTION ACTIVITY” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

“MAINTENANCE AGREEMENT” means a legal document that provides for long-term maintenance of storm water management practices.

“MEP” or “maximum extent practicable” means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility

in the way to meet the performance standards and may vary based on the performance standard and site conditions.

“MOBILE HOME” means a single residential unit (mobile home) within a mobile home park.

“NEW DEVELOPMENT” means development resulting from the conversion of previously undeveloped land or agricultural land uses.

“NONRESIDENTIAL PROPERTY” means any developed property not defined as "residential property", including, but not limited to, transient rentals (such as hotels and motels), multifamily apartment buildings of three or more dwelling unit, condominiums, commercial, industrial, institutional, governmental property, and parking lots.

“OFF-SITE” means located outside the property boundary described in the permit application.

“ON-SITE” means located within the property boundary described in the permit application.

“OPERATING BUDGET” means estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service of the system for each fiscal year.

“OPERATION AND MAINTENANCE” means the current expenses, paid or accrued, for operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of regulatory compliance, the cost of materials and supplies used for current operations and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

"ORDINARY HIGH-WATER MARK" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.

“OUTSTANDING RESOURCE WATERS” means waters listed in s. NR 102.10, Wis. Adm. Code.

“PERCENT FINES” means the percentage of a given sample of soil, which passes through a # 200 sieve.

“PERFORMANCE STANDARD” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

“PERMIT” means a written authorization made by the Village Administrator or their designee to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

“PERVIOUS SURFACE” means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

“POLLUTANT” has the meaning given in s. 283.01 (13), Wis. Stats.

“POLLUTION” has the meaning given in s. 281.01 (10), Wis. Stats.

“POST-CONSTRUCTION SITE" means a construction site following the completion of land disturbing construction activity and final site stabilization.

“PRE-DEVELOPMENT CONDITION” means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that meadows or woodland existed prior to development activity and said uses are managed in an environmentally sound manner.

“PREVENTIVE ACTION LIMIT” has the meaning given in s. NR 140.05(17), Wis. Adm. Code.

“PRIVATE STORMWATER QUALITY AND TREATMENT FACILITIES” means the stormwater systems outside of Village ownership and responsibility including, but not limited to retention ponds, ditches, drainage ways, streams, wetlands, and all improvements thereto, which by this article are constituted as the responsibility of the property owner, to be operated as a private facility, and all activities undertaken to control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, treat, use or reuse water to prevent or reduce environmental degradation and water pollution or, otherwise, affect the quality of discharge from such system.

“RATE” means the user fee charged on each ERU. The rate is determined by the Village Board for each fiscal year.

“REDEVELOPMENT” means areas where development is replacing older development.

“RESPONSIBLE PARTY” means any entity or person holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs.

“RESIDENTIAL PROPERTY” means any developed property developed exclusively for residential purposes with two or fewer residential housing units.

“REVENUES” means all rates, fees, assessments, rentals, fines or other charges or other income received by the Village, in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account, as herein required, and any amounts contributed by the Village, all as calculated in accordance with sound accounting practices.

“RUNOFF” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

“SEDIMENT” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

“SEPARATE STORM SEWER” means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

- (a) Is designed or used for collecting water or conveying runoff.
- (b) Is not part of a combined sewer system.
- (c) Is not draining to a storm water treatment device or system.
- (d) Discharges directly or indirectly to waters of the state.

“SINGLE-FAMILY HOME” means a residential property with exactly one dwelling unit.

“SITE” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

“STOP WORK ORDER” means an order issued by the Village Administrator or their designee which requires that all construction activity on the site be stopped.

“STORMWATER MANAGEMENT PROGRAM”, “STORMWATER SYSTEM”, or “SYSTEM” means the stormwater collection, NR 216 permit requirements, treatment and disposal systems for stormwater by the Village including, but not limited to catch basins, retention ponds, detention ponds, ditches, drainage ways, streams, wetlands, and all improvements thereto, which by this article are constituted as the responsibility of the Village, to be operated as an enterprise fund, and all activities undertaken to conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, store,

absorb, inhibit, treat, use or reuse water to prevent environmental degradation and water pollution or, otherwise, affect the quality of discharge from such system.

"TECHNICAL STANDARD" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

"TOP OF THE CHANNEL" means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

"TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

"TYPE II DISTRIBUTION" means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973". The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

"UNDEVELOPED LAND" means any real property with no impervious area.

"USER" means any property within the Village of Sussex discharging stormwater into any ditch, sewer, stream, pond or other natural or manmade waterbody or facility owned or managed by the Village of Sussex

"USER FEE" means the charge established by the Village Board on developed property in the Village to pay operations and maintenance, extension and replacement and debt service for the Stormwater Utility.

"VILLAGE BOARD" means the Village Board of the Village of Sussex.

"WATERS OF THE STATE" has the meaning given in s. 281.01 (18), Wis. Stats.

14.850 ENFORCEMENT

The following section applies to the CONSTRUCTION SITE EROSION and POST CONSTRUCTION STORMWATER MANAGEMENT Sections of Chapter 14.

- (1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (2) Construction Site Erosion: The Administrator shall take the following initial steps in the event of a violation of the Erosion Control Permit or the Construction Site Erosion section of Chapter 14.
 - (a) The Administrator may post a stop-work order if any of the following occurs:
 1. Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
 2. The erosion and sediment control plan is not being implemented in a good faith manner.
 3. The conditions of the permit are not being met.

- (b) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Administrator may revoke the permit.
- (3) Post Construction Stormwater Management: The Administrator shall take the following initial steps in the event of a violation of the Stormwater Management / Post Construction Runoff Permit or the Post Construction Stormwater Management section of Chapter 14.
- (a) The Administrator shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, the remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken; however, the notice of enforcement action shall not limit or prevent the Village from pursuing different or alternative means of enforcement than as described in the notice.
- Upon receipt of written notification from the Administrator, the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Administrator in the notice.
- (b) The Administrator is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance.
- (4) The Administrator may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- (5) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Administrator, or if a responsible party violates a stop-work order, the Administrator may request the Village Attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The Administrator is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the municipal attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (7) Compliance with the provisions of this ordinance may also be enforced by injunction with any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (8) If the violations to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, or the responsible party has failed to comply with the written notification from the Administrator, the plans, permit conditions, or this ordinance, the Administrator may enter the land and take emergency actions necessary to prevent such damage or to bring the condition of said lands into conformance. The Administrator shall keep a detailed accounting of the costs and expenses of performing this work. These costs plus interest (at the rate authorized by the Village Board) and legal costs shall be deducted from any financial security posted pursuant to 14.62 of this ordinance, or where such security does not exist or is insufficient to cover these costs, the costs and expenses shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special charge against the property pursuant to Section 66.0627, Wis. Stats.

- (9) Any person, firm, association, or corporation violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1000.00) and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (10) Any building, utility or road construction inspections required by Village Ordinance will be suspended until all erosion control measures are in full compliance with this Ordinance. These inspections may be suspended until all Post Construction Stormwater Management measures are in full compliance with this ordinance.
- (11) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Administrator, by the Zoning Board of Appeals, or by a court with jurisdiction.

Floodplain Management

14.900 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS

14.901 STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in ss. 61.35 and 62.23, for villages and cities; 59.69, 59.692, and 59.694 for counties; and the requirements in s. 87.30, Stats.

14.902 FINDING OF FACT

Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

14.903 STATEMENT OF PURPOSE

This ordinance is intended to regulate floodplain development to:

- (1) Protect life, health and property;
- (2) Minimize expenditures of public funds for flood control projects;
- (3) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- (4) Minimize business interruptions and other economic disruptions;
- (5) Minimize damage to public facilities in the floodplain;
- (6) Minimize the occurrence of future flood blight areas in the floodplain;
- (7) Discourage the victimization of unwary land and homebuyers;
- (8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

14.904 TITLE

This ordinance shall be known as the Floodplain Zoning Ordinance for the Village of Sussex, WI.

14.905 GENERAL PROVISIONS

(1) AREAS TO BE REGULATED

This ordinance regulates all areas that would be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO zones. Regional Flood Elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most restrictive information shall apply.

(2) OFFICIAL MAPS & REVISIONS

The boundaries of all floodplain districts are designated as floodplains or A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below and the revisions in the Village of Sussex Floodplain Appendix. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the Letter of Map Change process (see s.14.970) before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Village Engineer, Village of Sussex. If more than one map or revision is referenced, the most restrictive information shall apply.

OFFICIAL MAPS :

(a) Based on the FIS: Flood Insurance Rate Map (FIRM): panel numbers 55133C0069H, 55133C0086H, 55133C0087H, 55133C0088G, 55133C0089G, 55133C0182G, 55133C0201G, 55133C0202G, 55133C0206G, dated November 5, 2014; with corresponding profiles that are based on the Flood Insurance Study (FIS) 55133CV001C, 55133CV002C, 55133CV003C, dated November 5,, 2014;

Approved by: The DNR and FEMA

(b) Based on other studies; Village of Sussex Flood Storage District Panels 3 of 12 and 5 of 12 dated November 5, 2014. Prepared and approved by DNR.

(3) ESTABLISHMENT OF DISTRICTS

The regional floodplain areas are divided into three districts as follows:

- (a) The Floodway District (FW also known as F-1 in Chapter 17) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.
- (b) The Floodfringe District (FF also known as FFO in Chapter 17) is that portion of the floodplain between the regional flood limits and the floodway and displayed as AE Zones on the FIRM.
- (c) The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood and does not have a BFE or floodway boundary determined, including A, AH and AO zones on the FIRM.
- (a) The Flood Storage District (FSD also known as F-2 Floodplain Conservancy District in Chapter 17) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

(4) LOCATING FLOODPLAIN BOUNDARIES

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in paragraphs (a) or (b) below. If a significant difference exists, the map shall be amended according to s. 14.970. The Village Administrator or their designee can rely on a boundary derived from a profile elevation to grant or deny a Conditional Use Permit, whether or not a map amendment is required. The Village Administrator or their designee shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map

amendments required under this section. Disputes between the Village Administrator or their designee and an applicant over the district boundary line shall be settled according to s. 14.963(3) and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must also approve any map amendment or revision pursuant to s. 14.970.

- (a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (b) Where flood profiles do not exist, the location of the boundary shall be determined by the map scale.

(5) REMOVAL OF LANDS FROM FLOODPLAIN

Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 14.970.

Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a Letter of Map Change (LOMC).

(6) COMPLIANCE

Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

(7) 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 if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies.

(8) ABROGATION AND GREATER RESTRICTIONS

- (a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under ss. 59.69, 59.692 or 59.694 for counties; s. 62.23 for cities; or s. 61.35 for villages; or s. 87.30, Stats., which relate to floodplains. If another ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and scientific research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY

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

(12) ANNEXED AREAS FOR CITIES AND VILLAGES

The Waukesha County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and the 44 CFR 59-72, National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal Administrator . All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

(13) GENERAL DEVELOPMENT STANDARDS

The Municipality shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in s 14.961(2). Adequate drainage shall be provided to reduce exposure to flood hazards and all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages..

14.910 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

14.911 HYDRAULIC AND HYDROLOGIC ANALYSES

(1) Except as allowed in par. (3) below, no floodplain development shall:

- (a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, increasing regional flood height; or
- (b) Increase the regional flood height due to floodplain storage area lost.

(2) The Plan Commission shall deny Conditional Use Permits if it is determined the proposed development will obstruct flow or increase regional flood heights, based on the officially adopted FIRM or other adopted map, unless the provisions of sub. (3) are met.

(3) Obstructions or increases equal to the regional flood height may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 14.970.

Note: This section refers to obstructions or increases in base flood elevations as shown on the officially adopted FIRM or other adopted map. Any such alterations must be reviewed and approved by FEMA and the DNR.

14.912 WATERCOURSE ALTERATIONS

No Conditional Use Permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The standards of s. 14.911 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation, and pursuant to S 14.970, the Administrator shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

14.913 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT

Development which requires a permit from the Department, under chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to s. 14.970.

14.914 PUBLIC OR PRIVATE CAMPGROUNDS

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (1) The campground is approved by the Department of Health and Family Services.
- (2) A Conditional Use Permit for the campground is issued by the Administrator.
- (3) The character of the river system and the elevation of the campground is such that a 72-hour warning of an impending flood can be given to all campground occupants.
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation.
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state Department of Health and Family Services and all other applicable regulations.
- (6) Only camping units that are fully licensed, if required, and ready for highway use are allowed.
- (7) The camping units may not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours.
- (8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section.
- (9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section.
- (10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either s. 14.920 or s. 14.930 for the floodplain district in which the structure is located.
- (11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and

- the procedures for evacuation when a flood warning is issued.
- (12) All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

14.920 FLOODWAY DISTRICT (FW / F-1)

14.921 APPLICABILITY

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 14.941(4).

14.922 PERMITTED AND CONDITIONAL USES

- (1) The following open space uses are allowed in the floodway district and the floodway areas of the general floodplain district, if
- they are not prohibited by any other ordinance;
 - they meet the standards in s. 14.923 and s. 14.924; and
 - all Conditional Use Permits or certificates have been issued according to s. 14.961:
- (a) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
- (b) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
- (c) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 14.923(4).
- (d) Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 14.923 and 14.924.
- (e) Extraction of sand, gravel or other materials that comply with s. 14.923(4).
- (f) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30, 31, Stats.
- (g) Public utilities, streets and bridges that comply with s. 14.923(3).
- (2) The following open space uses may be allowed in the floodway district and the floodway areas of the general floodplain district under a Conditional Use Permit, if
- They are not prohibited by any other ordinance;
 - They meet the standards in s. 14.923 and s. 14.924;
 - All Conditional Use Permits or certificates have been issued according to s. 14.961; and
 - They will not obstruct flow or increase regional flood heights, or amendments are made and approved per s. 14.971.
- (a) Uses listed as Permitted Uses in s. 14.922 (1) that have the potential to obstruct the flow or increase the regional flood height
- (b) Fill or grading in mapped floodplain.
- (c) Watercourse alterations
- (d) Any development or project that requires a permit from DNR under chs 30 and 31 Wis. Stats.
- (e) Public or Private Campgrounds complying with s. 14.914.

14.923 STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS

(1) GENERAL

- (a) Any development in floodway areas shall comply with s. 14.910 and have a low flood damage potential.
- (b) Applicants shall provide the following data to determine the effects of the proposal according to s. 14.911 and 14.961(2)(c):
 - 1. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
 - 2. An analysis calculating the effects of this proposal on regional flood height.
- (c) The Plan Commission shall deny the permit application if the project will increase flood elevations upstream or downstream, based on the data submitted for par. (b) above unless amendments are made and approved per s. 14.970.

(2) STRUCTURES

Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by Conditional Use Permit if the structures comply with the following criteria:

- (a) The structure is not designed for human habitation, does not have a high flood damage potential, and is constructed to minimize flood damage;
- (b) It has a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
- (c) It must be anchored to resist flotation, collapse and lateral movement;
- (d) Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation; and(e)it must not obstruct the flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

(3) PUBLIC UTILITIES, STREETS AND BRIDGES

Public utilities, streets and bridges may be allowed by Conditional Use Permit, if:

- (a) Adequate flood proofing measures are provided to the flood protection elevation; and
- (b) Construction meets the development standards of s. 14.911.

(4) FILLS OR DEPOSITION OF MATERIALS

Fills or deposition of materials may be allowed by Conditional Use Permit, if:

- (a) The requirements of s. 14.911 are met;
- (b) No material is deposited in the navigable channel unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and the other requirements of this section are met;
- (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
- (d) The fill is not classified as a solid or hazardous material.

14.924 PROHIBITED USES

All uses not listed as permitted uses in s. 14.922 are prohibited, including the following uses:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;

- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code.
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code;
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

14.930 FLOODFRINGE DISTRICT (FF / FFO)

14.931 APPLICABILITY

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 14.941(4).

14.932 PERMITTED USES

Any structure, land use, or development is allowed in the floodfringe district if the standards in s. 14.933 are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in s. 14.961 have been issued.

14.933 STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS

S. 14.911 shall apply in addition to the following requirements according to the use requested.

(1) RESIDENTIAL USES

Any habitable structure, including a manufactured home, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area, shall meet or exceed the requirements of 14.950 and the following standards;

- (a) The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of 14.933(1)(b) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.
- (b) The basement or crawlway floor may be placed at the regional flood elevation if it is floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in par. (d).
- (d) In developments where existing street or sewer line elevations make compliance with par. (c) impractical, the municipality may allow, by Conditional Use Permit, new development and substantial improvements where access roads are at or below the regional flood elevation, if:
 1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or

2. The municipality has a natural disaster plan / emergency evacuation plan approved by the Department.

(2) ACCESSORY STRUCTURES OR USES

Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(3) COMMERCIAL USES

Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of s. 14.933(1). Subject to the requirements of s. 14.933(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(4) MANUFACTURING AND INDUSTRIAL USES

Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in s. 14.965. Subject to the requirements of s. 14.933(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with s. 14.965. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

- (a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction of and substantial improvements to such facilities shall only be permitted if they are designed and floodproofed in compliance with s. 14.965;
- (b) Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) SEWAGE SYSTEMS

All on-site sewage disposal systems shall be designed and floodproofed, pursuant to s. 14.965, to the flood protection elevation and shall meet the provisions of all local ordinances and ch. SPS 383, Wis. Adm. Code.

(8) WELLS

All wells shall be designed and floodproofed, pursuant to s. 14.965, to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(9) SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

- (11) **MANUFACTURED HOMES**
- (a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
 - (b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - 1. have the lowest floor elevated to the flood protection elevation; and
 - 2. be anchored so they do not float, collapse or move laterally during a flood.
 - (c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s. 14.933(1).
- (12) **MOBILE RECREATIONAL VEHICLES**
- All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in s. 14.933 (11) (b) and (c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

14.940 OTHER FLOODPLAIN DISTRICTS

Other floodplain districts may be established under the ordinance and reflected on the floodplain zoning map. These districts may include general floodplain districts and flood storage districts.

14.941 GENERAL FLOODPLAIN DISTRICT (GFP)

- (1) **APPLICABILITY**
- The provisions for this district shall apply to all floodplains mapped as A, AO, or AH zones.
- (2) **PERMITTED USES**
- Pursuant to s. 14.941(4), it shall be determined whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodway (s. 14.922) and floodfringe areas (s. 14.932) are allowed within the general floodplain district, according to the standards of s. 14.941 (3), provided that all permits or certificates required under s. 14.961 have been issued.
- (3) **STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT**
- S. 14.920 applies to floodway areas, s. 14.930 applies to floodfringe areas. The rest of this ordinance applies to either district.
- (a) In AO/AH Zones the structure's lowest floor must meet one of the conditions listed below whichever is higher:
 - 1. at or above the flood protection elevation; or
 - 2. two (2) feet above the highest adjacent grade around the structure; or
 - 3. the depth as shown on the FIRM.
 - (b) IN AO/AH Zones, provide plans showing adequate drainage paths to guide floodwaters around structure.
- (4) **DETERMINING FLOODWAY AND FLOODFRINGE LIMITS**
- Upon receiving an application for development within the general floodplain district, the Administrator shall:
- (a) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the

property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.

- (b) Require the applicant to furnish two copies of any of the following information deemed necessary by the Department or Municipality to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:

1. A Hydrologic and Hydraulic Study as specified in s.14.961 (2) (c).
2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
3. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

14.942 FLOOD STORAGE DISTRICT (FSD / F-2)

The flood storage district delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

(1) APPLICABILITY

The provisions of this section apply to all areas within the Flood Storage District (FSD / F-2)), as shown on the official floodplain zoning maps.

(2) PERMITTED USES

Any use or development which occurs in a flood storage district must meet the applicable requirements in s. 14.930.

(3) STANDARDS FOR DEVELOPMENT IN FLOOD STORAGE DISTRICTS

- (a) Development in a flood storage district shall not cause an increase equal or greater than 0.00 of a foot in the height of the regional flood.
- (b) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the pre-development ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost, (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.
- (c) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as flood storage district – on this waterway – is rezoned to the floodfringe district. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without flood plain storage, as per s. 14.970 of this ordinance.
- (d) No area may be removed from the flood storage district unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.

14.950 NONCONFORMING USES

14.951 GENERAL

(1) APPLICABILITY

If these standards conform with s. 59.69(10), Stats., for counties or s. 62.23(7)(h), Stats., for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:
- (a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance repairs are not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.
The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.
 - (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
 - (c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
 - (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 14.933(1). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
 - (e) No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changes to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 14.933 (1).
 - (f) If on a per event basis the total value of the work being done under (d) and (e) equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Continuous dry land access must be provided for residential and commercial uses in compliance with s. 14.933 (1).
 - (g) Except as provided in subd. (h), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
 - (h) For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.

1. Residential Structures
 - a. Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet requirements of s. 14.965 (2).
 - b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
 - c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - d. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
 - e. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 14.941 (3).
 - f. In AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
2. Nonresidential Structures.
 - a. Shall meet the requirements of s. 14.951 (2)(h) 1. a-b and e-f.
 - b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in s. 14.965 (1) or (2).
 - c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 14.941 (3).

(3) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with s. 14.923 (1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 14.965 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 14.951 (2) (h) 1. if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

14.952 FLOODWAY AREAS (FW / F-1)

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:
- (a) Has been granted a Conditional Use Permit or variance which meets all ordinance requirements;
 - (b) Meets the requirements of s. 14.951;
 - (c) Shall not increase the obstruction to flood flows or regional flood height;
 - (d) Any addition to the existing structure shall be floodproofed, pursuant to s. 14.965, by means other than the use of fill, to the flood protection elevation; and
 - (e) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
 2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
 3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
 4. The use must be limited to parking, building access or limited storage.

- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, s. 14.965 (3) and ch. SPS 383, Wis. Adm. Code.
- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances, s. 14.965 (3) and chs. NR 811 and NR 812, Wis. Adm. Code.

14.953 FLOODFRINGE AREAS (FF / FFO)

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a Conditional Use Permit or variance by the municipality, and the modification or addition shall be placed on fill or floodproofed to the flood protection elevation in compliance with the standards for that particular use in ss. 14.933 and 14.965, except where s. 14.953(2) is applicable.
- (2) Where compliance with the provisions of par. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Zoning Board of Appeals, using the procedures established in s. 14.963, may grant a variance from those provisions of par. (1) for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
 - (b) Human lives are not endangered;
 - (c) Public facilities, such as water or sewer, will not be installed;
 - (d) Flood depths will not exceed two feet;
 - (e) Flood velocities will not exceed two feet per second; and
 - (f) The structure will not be used for storage of materials as described in s. 14.933(6).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all municipal ordinances, s. 14.965 (3) and ch. SPS 383, Wis. Adm. Code.
- (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance, s. 14.965 (3) and ch. NR 811 and NR 812, Wis. Adm. Code.

14.954 FLOOD STORAGE AREAS (FSD / F-2)

No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards outlined in 14.942(3) are met.

14.960 ADMINISTRATION

Where an Administrator, village engineer, Plan Commission or a Zoning Board of Appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this ordinance.

14.961 ADMINISTRATOR POWERS AND DUTIES AND CONDITIONAL USE PERMIT REQUIREMENTS

- (1) The Administrator or their designee is authorized to administer this ordinance and shall have the following duties and powers:
- (a) Advise applicants of the ordinance provisions, assist in preparing Conditional Use Permit application forms and appeals, and assure that the regional flood elevation for the proposed development is shown on all Conditional Use Permit applications.
 - (b) Coordinate the review and possible approval of Conditional Use Permit Applications, by the Plan Commission, and if approved, issue permits and inspect properties for compliance with provisions of this ordinance; and issue certificates of compliance where appropriate.
 - (c) Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
 - (d) Keep records of all official actions such as:
 - 1. All Conditional Use Permits issued, inspections made, and work approved;
 - 2. Documentation of certified lowest floor and regional flood elevations for floodplain development;
 - 3. Floodproofing certificates;
 - 4. Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - 5. All substantial damage assessment reports for floodplain structures.
 - 6. List of nonconforming structures and uses.
 - (e) Submit copies of the following items to the Department Regional office:
 - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 - 2. Copies of any case-by-case analyses, and any other required information including an annual summary of the number and types of floodplain zoning actions taken.
 - 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
 - (f) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
 - (g) Submit copies of text and map amendments and biennial reports to the FEMA Regional office.

(2) **CONDITIONAL USE PERMIT**

A Conditional Use Permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated on any property regulated under this ordinance where work will take place within or adjacent to the boundaries of any floodplain district as depicted on the Official Floodplain Zoning Map unless the use is permitted under s. 14.920, s. 14.930, or s. 14.940; and the use will not have the potential to obstruct flow or increase the regional flood height.. Application to the Zoning Administrator shall include:

- (a) **GENERAL INFORMATION**
 - 1. Name and address of the applicant, property owner and contractor;
 - 2. Legal description, proposed use, and whether it is new construction or a modification;
- (b) **SITE DEVELOPMENT PLAN**

A site plan drawn to scale shall be submitted with the Conditional Use Permit application form and shall contain:

 - 1. Location, dimensions, area and elevation of the lot;
 - 2. Location of the ordinary highwater mark of any abutting navigable waterways;

3. Location of any structures with distances measured from the lot lines and street center lines;
 4. Location of any existing or proposed on-site sewage systems or private water supply systems;
 5. Location and elevation of existing or future access roads;
 6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
 7. The elevation of the lowest floor of proposed buildings and any fill using vertical datum from the adopted study - either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
 8. Topographic and other data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 14.920 or 14.930 are met; and
 9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 14.911. This may include any of the information noted in s. 14.923(1).
- (c) **HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT**
 All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.
1. Zone A floodplains:
 - a. Hydrology
 - i. The appropriate method shall be based on the standards in ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
 - b. Hydraulic modeling. The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
 - i. determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
 - ii. channel sections must be surveyed.
 - iii. minimum four foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
 - iv. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
 - v. the most current version of HEC_RAS shall be used.
 - vi. a survey of bridge and culvert openings and the top of road is required at each structure.
 - vii. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
 - viii. standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction

coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.

- ix. the model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

c. Mapping

A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.

- i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- ii. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

2. Zone AE Floodplains

a. Hydrology

If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.

b. Hydraulic model

The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

i. Duplicate Effective Model

The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

ii. Corrected Effective Model.

The Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for Department review.

- iii. Existing (Pre-Project Conditions) Model.
The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
 - iv. Revised (Post-Project Conditions) Model.
The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.
 - v. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
 - vi. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and top widths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.
- c. Mapping
- Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:
- i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
 - ii. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
 - iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
 - iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
 - v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
 - vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.

- vii. Both the current and proposed floodways shall be shown on the map.
- viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

(d) **EXPIRATION**

All Conditional Use Permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The Conditional Use Permit may be extended for a maximum of 180 days for good and sufficient cause.

(3) **CERTIFICATE OF COMPLIANCE**

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the Administrator, except where no Conditional Use Permit is required, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b) Application for such certificate shall be concurrent with the application for a Conditional Use Permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer, registered architect or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the Conditional Use Permit issued. Floodproofing measures also require certification by a registered professional engineer or registered architect that floodproofing measures meet the requirements of s. 14.965.

(4) **OTHER PERMITS**

The applicant must secure all necessary permits from federal, state, and local agencies, including, but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

14.962 ZONING AGENCY

(1) The Plan Commission shall:

- (a) oversee the functions of the office of the Administrator or their designee;
- (b) review and either approve or deny Conditional Use Permits required under this ordinance; and
- (c) review and advise the Governing body on all proposed amendments to this ordinance, maps and text.

(2) The Plan Commission shall not:

- (a) grant variances to the terms of the ordinance in place of action by the Zoning Board of Appeals; or
- (b) amend the text or zoning maps in place of official action by the Governing body.

14.963 ZONING BOARD OF APPEALS

The Zoning Board of Appeals (Board), created under s. 59.694, Stats., for counties or s. 62.23(7)(e), Stats., for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The Administrator or their designee may not be the secretary of the Board.

(1) **POWERS AND DUTIES**

The Zoning Board of Appeals shall:

- (a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
- (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.
- (c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

(2) APPEALS TO THE BOARD

- (a) Appeals to the Board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the Administrator or their designee, or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the Board, by filing with the Administrator or designee, and with the Board, a notice of appeal specifying the reasons for the appeal. The Administrator or designee shall transmit to the Board all records regarding the matter appealed.
- (b) **NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES**
 - 1. Notice - The Board shall:
 - a. Fix a reasonable time for the hearing;
 - b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing;
 - c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.
 - 2. Hearing - Any party may appear in person or by agent. The Board shall:
 - a. Resolve boundary disputes according to s. 14.963(3).
 - b. Decide variance applications according to s. 14.963(4).
 - c. Decide appeals of Conditional Use Permit denials according to s. 14.964.
- (c) **DECISION:** The final decision regarding the appeal or variance application shall:
 - 1. Be made within a reasonable time;
 - 2. Be sent to the Department Regional office within 10 days of the decision;
 - 3. Be a written determination signed by the chairman or secretary of the Board;
 - 4. State the specific facts which are the basis for the Board's decision;
 - 5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application;
 - 6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) BOUNDARY DISPUTES

The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

- (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
- (b) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.
- (c) If the boundary is incorrectly mapped, the Board should inform the Plan Commission or the person contesting the boundary location to petition the governing body for a map amendment according to s. 14.970.

(4) VARIANCE

- (a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
 - 1. Literal enforcement of the ordinance provisions will cause unnecessary hardship;

2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
 3. The variance is not contrary to the public interest; and
 4. The variance is consistent with the purpose of this ordinance in s. 14.903.
- (b) In addition to the criteria in par. (a), to qualify for a variance under FEMA regulations, the following criteria must be met:
1. The variance may not cause any increase in the regional flood elevation;
 2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE;
 3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
- (c) A variance shall not:
1. Grant, extend or increase any use prohibited in the zoning district.
 2. Be granted for a hardship based solely on an economic gain or loss.
 3. Be granted for a hardship which is self-created.
 4. Damage the rights or property values of other persons in the area.
 5. Allow actions without the amendments to this ordinance or map(s) required in s. 14.971.
 6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.
- (d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase. A copy shall be maintained with the variance record.

14.964 TO REVIEW APPEALS OF CONDITIONAL USE PERMIT DENIALS

- (1) The Plan Commission (s. 14.962) or Zoning Board of Appeals (Board) shall review all data related to the appeal. This may include:
- (a) Conditional Use Permit application data listed in s. 14.961(2).
 - (b) Floodway/floodfringe determination data in s. 14.941(4).
 - (c) Data listed in s. 14.923(1)(b) where the applicant has not submitted this information to the Administrator.
 - (d) Other data submitted with the application, or submitted to the Board with the appeal.
- (2) For appeals of all denied Conditional Use Permits the Board shall:
- (a) Follow the procedures of s. 14.963;
 - (b) Consider Plan Commission recommendations; and
 - (c) Either uphold the denial or grant the appeal.
- (3) For appeals concerning increases in regional flood elevation the Board shall:
- (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of s. 14.971; and
 - (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

14.965 FLOODPROOFING STANDARDS FOR NONCONFORMING STRUCTURES OR USES

- (1) No Conditional Use Permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA Floodproofing Certificate.

- (2) For a structure designed to allow the entry of floodwaters, no Conditional Use Permit or variance shall be issued until the applicant submits a plan either:
 - (a) certified by a registered professional engineer or architect; or
 - (b) meets or exceeds the following standards:
 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 2. the bottom of all openings shall be no higher than one foot above grade; and
 3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) Floodproofing measures shall be designed to:
 - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b) Protect structures to the flood protection elevation;
 - (c) Anchor structures to foundations to resist flotation and lateral movement; and
 - (d) Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry during flooding without human intervention.
 - (e) Minimize or eliminate infiltration of flood waters; and
 - (f) Minimize or eliminate discharges into flood waters.

14.966 PUBLIC INFORMATION

- (1) Place marks on structures to show the depth of inundation during the regional flood.
- (2) All maps, engineering data and regulations shall be available and widely distributed.
- (3) All real estate transfers should show what floodplain zoning district any real property is in.

14.970 AMENDMENTS

Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 14.971.

- (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 14.971. Any such alterations must be reviewed and approved by FEMA and the DNR.
- (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with s. 14.971.

14.971 GENERAL

The Governing Body may change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in s. 14.972. Actions which require an amendment to the ordinance and/or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

- (1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
- (2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
- (3) Any changes to any other officially adopted floodplain maps listed in s. 14.905(2));

- (4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
- (5) Correction of discrepancies between the water surface profiles and floodplain maps;
- (6) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality; and
- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

Note: Consult the FEMA web site - www.fema.gov - for the map change fee schedule.
<http://www.fema.gov/forms-documents-and-software/flood-map-related-fees#2>

14.972 PROCEDURES

Ordinance amendments may be made upon petition of any interested party according to the provisions of s. 62.23, Stats., for cities and villages, or 59.69, Stats., for counties. Such petitions shall include all necessary data required by ss. 14.941(4) and 14.961(2). The Conditional Use Permit may be Conditionally Approved but will not be effective until a Letter of Map Revision is issued by FEMA for the proposed changes.

- (1)
 - a. The proposed amendment shall be referred to the Plan Commission for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats. for cities and villages or s. 59.69, Stats., for counties.
 - b. If DNR deems that the amendment is an administrative change to the local codes, such as updated FIS and FIRM numbers, that does not require a public hearing then the proposed amendment shall be referred to the Plan Commission without a public hearing. The Plan Commission shall review the amendment and make a recommendation to the governing body.
- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow causing an increase in the regional flood shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.
- (4) For amendments in areas with no water surface profiles, the Plan Commission or Zoning Board of Appeals shall consider data submitted by the Department, the Zoning Administrator's visual on-site inspections and other available information. (See s. 14.905(4)).

14.980 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not more than \$ 50.00. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

14.990 DEFINITIONS

The following words, terms and phrases, when used in the Floodplain Management section of Chapter 14, shall have the meanings ascribed to them in this section. Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and is not discretionary.

"A ZONES" Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

"AH ZONE" See "AREA OF SHALLOW FLOODING".

"AO ZONE" See "AREA OF SHALLOW FLOODING".

"ACCESSORY STRUCTURE OR USE" A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.

"ALTERATION" An enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

"AREA OF SHALLOW FLOODING" A designated AO, AH, AR/AO, AR/AH, or VO zone on a Municipality's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

"BASE FLOOD" Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.

"BASE FLOOD ELEVATION" or "BFE" Means the elevation of the Base Flood as published by FEMA as part of a FIS and as depicted on a FIRM.

"BASEMENT" Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.

"BUILDING" See STRUCTURE.

"BULKHEAD LINE" A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

"CAMPGROUND" Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.

"CAMPING UNIT" Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle that is fully licensed, if required, and ready for highway use.

"CERTIFICATE OF COMPLIANCE" A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

"CHANNEL" A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

"CRAWLWAYS" OR "CRAWL SPACE" An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

"DECK" An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

"DEPARTMENT" or "DNR" The Wisconsin Department of Natural Resources.

"DEVELOPMENT" Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

"DRYLAND ACCESS" A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

"ENCROACHMENT" Any fill, structure, equipment, building, use or development in the floodway.

"FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)" The federal agency that administers the National Flood Insurance Program.

"FLOOD INSURANCE RATE MAP (FIRM)" A map of a Municipality on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the Municipality. This map can only be amended by the Federal Emergency Management Agency.

"FLOOD" or "FLOODING" A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

- The overflow or rise of inland waters,
- The rapid accumulation or runoff of surface waters from any source,
- The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior, or
- The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

"FLOOD FREQUENCY" The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.

"FLOODFRINGE" That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

"FLOOD HAZARD BOUNDARY MAP" A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood

elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

"FLOOD INSURANCE STUDY (FIS)" A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

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

"FLOODPLAIN ISLAND" A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

"FLOODPLAIN MANAGEMENT" Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

"FLOOD PROFILE" A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

"FLOODPROOFING" Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

"FLOOD PROTECTION ELEVATION (FPE)" An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)

"FLOOD STORAGE" Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

"FLOODWAY" The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

"FREEBOARD" A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

"HABITABLE STRUCTURE" Any structure or portion thereof used or designed for human habitation.

"HEARING NOTICE" Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.

"HIGH FLOOD DAMAGE POTENTIAL" Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

"HIGHEST ADJACENT GRADE" The highest natural elevation of the ground surface prior to construction

next to the proposed walls of a structure.

"HISTORIC STRUCTURE" Any structure that is either:

- Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
- Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
- Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
- Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

"INCREASE IN REGIONAL FLOOD HEIGHT" A calculated upward rise in the regional flood elevation, equal to or greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

"LAND USE" Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)

"LOWEST ADJACENT GRADE" Elevation of the lowest ground surface that touches any of the exterior walls of a building.

"LOWEST FLOOR" The lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

"MAINTENANCE" The act or process of restoring to original soundness, including redecorating, refinishing, non-structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

"MANUFACTURED HOME" A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."

"MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION" A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.

"MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING" A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

"MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING" The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

"MOBILE RECREATIONAL VEHICLE" A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

"MODEL, CORRECTED EFFECTIVE" A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the corrected effective model.

"MODEL, DUPLICATE EFFECTIVE" A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

"MODEL, EFFECTIVE" The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

"MODEL, EXISTING (PRE-PROJECT)" A modification of the Duplicate Effective Model or Corrected effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

"MODEL, REVISED (POST-PROJECT)" A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model, or Corrected Effective Model to reflect revised or post-project conditions.

"MUNICIPALITY" or "MUNICIPAL" The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

"NAVD" or "NORTH AMERICAN VERTICAL DATUM" Elevations referenced to mean sea level datum, 1988 adjustment.

"NGVD" or "NATIONAL GEODETIC VERTICAL DATUM" Elevations referenced to mean sea level datum, 1929 adjustment.

"NEW CONSTRUCTION" For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this Municipality and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

"NONCONFORMING STRUCTURE" An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

"NONCONFORMING USE" An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such

as a residence in the floodway.)

"OBSTRUCTION TO FLOW" Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

"OFFICIAL FLOODPLAIN ZONING MAP" That map, adopted and made part of this ordinance, as described in s. 14.905 (2), which has been approved by the Department and FEMA.

"OPEN SPACE USE" Those uses having a relatively low flood damage potential and not involving structures.

"ORDINARY HIGHWATER MARK" The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

"PERSON" - An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

"PRIVATE SEWAGE SYSTEM" A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

"PUBLIC UTILITIES" Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

"REASONABLY SAFE FROM FLOODING" Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"REGIONAL FLOOD" - A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.

"REGIONAL FLOOD ELEVATION" OR "RFE" A flood elevation determined to be representative of large flood elevations known to have occurred in Wisconsin. A Regional Flood Elevation is a flood elevation with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.

"START OF CONSTRUCTION" The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"STRUCTURE" Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

"SUBDIVISION" Has the meaning given in s. 236.02(12), Wis. Stats.

"SUBSTANTIAL DAMAGE" Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.

"SUBSTANTIAL IMPROVEMENT" Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

"UNNECESSARY HARDSHIP" Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

"VARIANCE" An authorization by the Zoning Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

"VIOLATION" The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

"WATERSHED" The entire region contributing runoff or surface water to a watercourse or body of water.

"WATER SURFACE PROFILE" A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

"WELL" Means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.