

## Chapter 194

### NATURAL AND ARCHAEOLOGICAL RESOURCE PRESERVATION

**[HISTORY: Adopted by the Town Board of the Town of Scott 3-31-2009. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Comprehensive Plan — See Ch. 62.  
Construction site erosion control — See Ch. 73.  
Explosives and blasting — See Ch. 112.  
Nonmetallic mining — See Ch. 182.  
Stormwater management — See Ch. 297.  
Subdivision of land — See Ch. 308.  
Zoning — See Ch. 375.

#### § 194-1. Intent.

The primary purpose of this chapter is to preserve and protect sensitive natural areas, archaeological sites, and the rural community character that would be lost under conventional development. In addition, the intent of this chapter is to implement, complement, and supplement the Town of Scott's Comprehensive Plan, Chapter 308, Subdivision of Land, and Chapter 375, Zoning, of the Code of the Town of Scott. This chapter will accomplish these goals by permitting a reasonable amount of residential development in open space and natural settings, located and designed to reduce the perceived intensity of development by preserving natural features and identifying and preserving archaeological sites. Specific objectives of this chapter are as follows:

- A. To preserve open land, including those areas containing unique and sensitive natural features such as woodlands, wetlands, steep slopes, floodplains, streams, groundwater recharge areas, and escarpment features, by setting them aside from development.
- B. To preserve scenic views and elements unique to the Town's rural character, and to minimize perceived density, by minimizing views of new development from existing roads.
- C. To provide greater design flexibility and efficiency in the siting of services and infrastructure, by reducing the road lengths, utility runs, and the amount of paving required for residential development.
- D. To create compact neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity.
- E. To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep or highly erodible slopes.

- F. To create new woodlands and natural habitats through natural succession, reforestation, replanting and, where appropriate, selective management, and to encourage the preservation and improvement of habitat for various forms of wildlife.
- G. To preserve areas, in an appropriate manner, to ensure archaeological preservation of both known and suspected sites.
- H. To provide for the preservation and maintenance of open land within the Town to achieve the above-mentioned goals and for active or passive recreational purposes.

**§ 194-2. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings described in this section unless the context in which they are used specifically indicates otherwise:

**AGRICULTURAL USE** — Substantially undeveloped land devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, berries, herbs, flowers, seeds, nursery stock, grasses, Christmas trees and lumber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock (including breeding and grazing), poultry and poultry products and other similar uses and activities. Intensive animal husbandry operations in which poultry or livestock are raised for market in large numbers or tightly confined environments (concentrated animal feeding operations) are not included in the definition of "agricultural use."

**APPLICATION** — The documentation and information submitted to the Town by a landowner, developer, and/or its representative on the approved application form, describing the property in question and its future intended use.

**CONSERVATION EASEMENT** — A nonpossessory interest in real property, which is acquired, or donated for the purpose of retaining and enhancing agriculture; preserving natural, scenic or open space values of real property; restricting or preventing the development or improvement of the land for purposes other than agricultural production; or other like or similar purposes.

**DEVELOPMENT** — An activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with agricultural use or open space character.

**DEVELOPMENT RIGHTS** — An interest in and the right to use, divide or subdivide land for any and all residential, office, commercial, research, industrial, or other uses, purposes or activities, including intensive animal husbandry operations, not incident to agricultural use or open space character.

**FULL OWNERSHIP** — Fee simple title.

**GOVERNMENTAL AGENCY** — The United States or any agency thereof, the State of Wisconsin or any agency thereof or any municipal corporation.

**GUIDELINES FOR PUBLIC ARCHAEOLOGY IN WISCONSIN** — The guidelines, as updated in 1997, that explain the process of state and federal compliance archaeology and detail the steps necessary to identify, evaluate, and mitigate archaeological sites. This document also provides guidelines for work on specific sites such as burials and rock art (excerpt from Executive Summary of the Guideline document).

**NEIGHBORHOOD** — The outer perimeter of contiguous lotted areas or abutting roads and may contain lots, roads, and neighborhood open spaces.

**OPEN SPACE CHARACTER or OPEN SPACE USE** — Substantially undeveloped land devoted to the maintenance or enhancement of natural processes (e.g., water quality, plant and wildlife habitat, groundwater recharge) or archaeological preservation.

**OWNER** — The individual or individuals having fee simple title to land.

**PARCEL** — All property under a single ownership that is included in an application.

**PARKLAND** — All property undeveloped and land dedicated for the use of the public as a park.

**PHASE I ARCHAEOLOGICAL SURVEY** — Designed to locate (and in some cases relocate) archaeological sites. Some evaluation of the importance of the site is also possible since Phase I surveys also indicate the size of the site, its setting on the landscape and its disturbance. Some sites may be recommended for Phase II survey based on the findings of the Phase I survey.

**RESOURCE PRESERVATION DISTRICT (RPD)** — Lands within the Town of Scott falling within the following boundaries: west of STH 57, north of Church Road and/or the City of Green Bay City limits, east of the Bay of Green Bay, and south of the Town of Green Bay, Town limits.

**RESOURCE PRESERVATION TEAM (RPT)** — The ad-hoc committee formed pursuant to this chapter to advise the Town Plan Commission on the identification and preservation of important natural and archaeological sites.

**SUBSTANTIALLY UNDEVELOPED LAND** — Land on which there is no more than one residential dwelling unit and related accessory buildings such as a garage or shed for each five acres of land.<sup>1</sup>

### **§ 194-3. Inventory and analysis.**

The initial application for any development, subdivision, certified survey map, or lot split shall include an inventory and analysis of the site. The following site elements shall be mapped (Note: The location of the information necessary for mapping and cataloging the features of a site can be obtained through the initial meeting with staff at the Town Hall.) in sufficient detail to allow evaluation of the plan by the Resource Preservation Team, relative to the intent and direction of this chapter.

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<sup>1</sup>. Editor's Note: The definition of "supervisor," which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- A. Physical resources: identification of resources associated with the natural environment of the tract, including geology, topology, soil hydrology and vegetation. These features shall be mapped at a scale no smaller than one inch equals 100 feet and shall be briefly described. The maps shall include:
  - (1) Topographic contours at two-foot intervals, showing rock outcroppings and slopes of more than 15%.
  - (2) Soil types and locations, including identification of soil characteristics relating to agricultural capabilities, seasonal high water table, depth to bedrock, and suitability for development.
  - (3) Hydrologic characteristics of the site, including surface water bodies, floodplains and hydric soils.
  - (4) Vegetation of the site, defining location and boundaries of woodland areas and vegetation associations in terms of species and size.
- B. Biological resources: identification of threatened, endangered, rare, or unique flora and fauna.
- C. Land use: current land use and land cover (cultivated areas, paved areas, pastures, etc.), all buildings and structures on the land, and all encumbrances, such as easements or covenants.
- D. Visual resources: scenic views onto the tract from surrounding roads and public areas, as well as views of scenic features from within the tract.
- E. Archaeological, cultural and historic resources: a brief description and map of any known archaeological, cultural, or historic resources, buildings, etc., located on the property, if applicable.
- F. Content: general outlines of buildings, land use, and natural features such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph at a scale no smaller than one inch equals 400 feet.

**§ 194-4. Neighborhood design standards.**

The following standards apply to all residential development in the RPD:

- A. All lots shall be designed to follow the Town's conservation subdivision standards found within Chapter 308, Subdivision of Land, of the Town Code.
- B. Neighborhoods shall be located on areas of the tract of land which are free or relatively free of environmentally sensitive areas and/or archaeological sites. At a minimum, neighborhoods shall not encroach upon:
  - (1) Archaeologically significant sites.
  - (2) Floodplains, wetlands, streams, or groundwater recharge areas.
  - (3) Escarpment features and steep slopes.

- C. Disturbance to woodlands, hedgerows, mature trees, or other significant vegetation shall be minimized.
- D. Neighborhoods shall be defined and separated by open land in order to provide direct access to open space and privacy to individual yards. Neighborhoods may be separated by roads if the road right-of-way is designed as a parkway (i.e., single-loaded street) with green space separating the road and next adjacent neighborhood.
- E. Views of neighborhoods from exterior roads shall be minimized by the use of changes in topography, existing vegetation or additional landscaping.
- F. Whenever possible, all lots in a neighborhood shall take access from interior roads, rather than roads exterior to the tract.
- G. All lots in a neighborhood shall either face or be adjacent to neighborhood open space or other open land (directly or across a road) to either the front or the rear of the lot.
- H. Green space may be used for stormwater management; if used for such purpose, its design and location shall be reviewed by the RPT and the Town Engineer.
- I. Open land areas shall be located and designed to:
  - (1) Protect site features identified in the inventory and analysis as having particular value, in compliance with the intent of this chapter and as established in the Escarpment to the Bay environmental and archaeological study.
  - (2) Maximize common boundaries with open land on adjacent tracts.
- J. The following are prohibited in open land areas:
  - (1) Motorized vehicles, except within approved driveways and parking areas. Maintenance, law enforcement, emergency, and farm vehicles are permitted, as needed.
  - (2) Logging or cutting of healthy trees, topsoil removal, or altering, diverting, or modifying watercourses or water bodies, except in compliance with a land management plan for the tract in question, conforming to customary standards of forestry, erosion control and engineering.
- K. Natural features shall generally be maintained in their natural condition, but may be modified to improve their appearance, function, or overall condition, as recommended by experts in the particular area being modified. Permitted modifications may include:
  - (1) Reforestation.
  - (2) Woodland management.
  - (3) Meadow management.
  - (4) Buffer area landscaping.

- (5) Stream bank protection.
- (6) Wetland management.
- (7) Eradication of invasive species.
- (8) Restoration of native plant species.
- (9) Construction of stormwater management areas.

**§ 194-5. Resource Preservation Team.**

- A. The ad-hoc Resource Preservation Team (RPT) shall consist of five members appointed by the Chairperson and approved by the Town Board. In making appointments of members to RPT, the Town Board shall approve at least one person who has expertise or affiliation as follows:
  - (1) One member who is an archaeologist.
  - (2) One member who is a botanist or an expert in plant identification.
  - (3) One member of the staff of the Brown County Planning and Zoning Department.<sup>2</sup>
  - (4) One member involved in an escarpment preservation organization or qualified geologist.
  - (5) One member of the Town of Scott Plan Commission.
- B. The terms of office of the RPT members appointed hereunder shall be fixed by the Town Board so that the terms of four members shall be for two years. The Plan Commission member shall be appointed for a term to be consistent with his or her appointment to the Plan Commission. The Plan Commission member shall cease to be a member of the RPT if he or she ceases to be a member of the Plan Commission. All members of the RPT shall serve without compensation.
- C. No land in which a member of the RPT has an ownership or other financial interest will be considered during the tenure of that member or for a period of one year from the end of the member's tenure.<sup>3</sup>
- D. A member of the RPT may be removed by a majority vote of Town Board for cause.

**§ 194-6. Organization, powers and duties of Resource Preservation Team.**

- A. Organization.

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<sup>2</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

<sup>3</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (1) The Resource Preservation Team (RPT) shall annually elect a Chair and Vice-Chair. The RPT shall meet at a minimum on an annual basis at a date, place, and time to be determined by the RPT.
- (2) A majority of members appointed to the RPT, that is three members, shall constitute a quorum. An affirmative vote of a majority of the members present shall be necessary to authorize any action by the RPT.<sup>4</sup>
- (3) Consistent with this chapter and subject to Town Board approval, the RPT may develop bylaws and standing rules that further define the functional and procedural aspects of the RPT's duties and provide for keeping a record of its proceedings.

B. Powers and duties. The RPT shall have the power and duty to:

- (1) Advise and make recommendations to the Town Plan Commission on all land matters; enhancing public awareness, commitment and active participation in stewardship of open space, natural features, and parkland; and land management and disposition.
- (2) Review applications for the development of land in accordance with the provisions of the Town's Comprehensive Plan and this chapter, and recommend to the Plan Commission a direction based on these ordinances and all appropriate technical resources as necessary.
- (3) Advise the Plan Commission on monitoring and enforcement of the terms and provisions of any rights, restrictions, and/or conservation easements proposed.
- (4) Publish and present an annual report, which shall include a listing of all parcels of land for which development was proposed and reviewed.
- (5) Review and recommend to the Plan Commission alternate sources of funding, such as grants, gifts, endowments, etc., for land and land rights acquisition, preservation, and management.
- (6) Meet with citizens, other elected officials, or members of like-minded organizations in other public and private organizations to address regional and state land and land rights preservation matters.

C. In addition to the powers and functions herein provided, the Town Board may delegate to the RPT other powers and functions permitted by law which would better enable the RPT to accomplish its goals.

**§ 194-7. Archaeological resource protection.**

The following criteria shall be used in reviewing development applications and recommendations to the Town's Plan Commission:

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<sup>4</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- A. Process. Application materials are available from the Town Hall and include a summary of the criteria and guidelines for review and a list of required documentation that must be attached to the application. Applications may be made at any time but need not be considered until the next regular meeting of the RPT. The RPT shall meet monthly as necessary and shall report all findings and recommendations to the Town's Plan Commission.
- B. Resource preservation criteria. Sites being considered for development shall be evaluated using the criteria listed below, together with any other criteria determined by the RPT to be appropriate to accomplishing the purpose of this chapter.
- (1) Archaeological criteria.
- (a) Characteristics of the land: identification of resources associated with the natural environment of the tract, including geology, topology, soil hydrology and vegetation. These features shall be mapped at a scale no smaller than one inch equals 100 feet, and shall be briefly described. These characteristics can be determined with existing data and maps. The maps shall include:
- [1] Topographic contours at two-foot intervals, showing rock outcroppings and slopes of more than 15%.
- [2] Soil types and locations, including identification of soil characteristics relating to agricultural capabilities, seasonal high water table, depth to bedrock, and suitability for development.
- [3] Hydrologic characteristics of the site, including surface water bodies, floodplains and hydric soils.
- [4] General land use and vegetative cover on the site, defining location and boundaries of woodland areas and vegetation.
- (b) Context: adjacent land uses, proximity to protected land, scenic value, historic value, connectivity, and any association with common ownership of adjacent parcels or future phases.
- (2) Methodology for determining archaeological significance.
- (a) Within the RPD, any property proposed for development must submit a request to the Town and the RPT for a Phase I archaeological survey. A Phase I archaeological survey is required if the property has not been surveyed previously. The submittal for this request shall be made prior to initiating the preliminary platting process.<sup>5</sup>
- (b) If the property has been surveyed in an earlier study and an archaeological site has been located, then Phase II testing will be required. Phase II testing will be conducted in order to determine whether the site is eligible for the National Register of Historic Places

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<sup>5</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).



(NRHP). Phase II testing is also conducted in order to determine whether the site has the potential to contribute materially to the Town's understanding of the prehistory and history of the area.

- (c) Phase II testing will only be conducted where findings, either through document research or field work conducted as part of the Phase I survey, would warrant further investigation. For example, a very small site with a few stone flakes in the plow zone would not be considered NRHP eligible. This could be established by shovel testing the area of the site, or a developer may want to avoid the expense of Phase II and preserve the area in question as green space.<sup>6</sup>
  - (d) Methodology used for determining archaeologically significant sites will follow the Guidelines for Public Archaeology in Wisconsin.
- (3) Phase I archaeological survey. Town requirements for conducting a Phase I survey are as follows:
- (a) Developer pays a fee to be paid to the Town to cover the costs incurred by the Town for the Town's archaeologist's site work and document research.
  - (b) Prior to construction, the site must be physically surveyed, which may include discing (at the developer's expense) if the site had previously been farmed. Field surveying will not take place until after such point as at least two significant rains events have occurred after the discing. The site in question will also need at least some drying after the rain events in order to conduct a productive site survey. If there has been no previous disturbance, shovel testing would be the method of survey.
    - [1] When fields require discing, then a pedestrian survey in plowed fields is done by arranging individuals in parallel rows five meters to 10 meters apart and having them walk across the field scanning the ground. Artifacts may be collected or flagged for later collection. Flagging is more informative on the size of the site and its location.
    - [2] Shovel testing involves digging small holes in a grid pattern, screening the soil through window mesh, and refilling the holes.
  - (c) If no significant findings are made during the first two steps, then continue to Step 4 [Subsection (d)]. (If, through document research or field work, a significant archaeological resource is suspected, then archaeological investigation will need to continue through Phase II investigations.)

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<sup>6</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (d) The construction excavation schedule shall be provided to the Town. The schedule will be used by the Town's archaeologist in order to conduct random site inspections during excavation.
- (4) Phase II archaeological survey.
  - (a) Phase II archaeological surveys evaluate a site's eligibility for the National Register. Sites identified in Phase I surveys as potentially eligible will be tested further to determine eligibility.
  - (b) Town requirements for conducting a Phase II survey are as follows:
    - [1] A Phase II survey will only be necessary when significant findings are made during the Phase I survey.<sup>7</sup>
    - [2] Developer pays a fee to the Town to cover the costs incurred by the Town for the Town's archaeologist's site work and document research.
    - [3] A site, which has been identified through pedestrian survey, will often be shovel tested to see if any undisturbed deposits are present. Often, a two-meter-by-two-meter test unit also will be opened to observe the stratigraphy and check for features. Soil is screened through window mesh and soil and flotation samples may be taken.
- (5) Discovery of unknown archaeological resources. In the event that archaeological resources are unearthed or discovered during construction activities, notification shall be made to the RPT, SHPO, and other local and state organizations depending on the archaeological resource discovered. Construction shall be halted, for a period of time not to exceed 30 days, until a determination is made as to the location, quantity, quality and significance of the resource.

**§ 194-8. Natural resource protection.**

The following criteria shall be used in reviewing development applications and recommendations to the Town's Plan Commission:

- A. Process. Following the same process as outlined in the archaeological section (§ 194-7), application materials are available from the Town Hall and include a summary of the criteria and guidelines for review and a list of required documentation that must be attached to the application. Applications may be made at any time, but need not be considered until the next regular meeting of the RPT. The RPT shall meet monthly as necessary, and shall report all findings and recommendations to the Town's Plan Commission.

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<sup>7</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

B. Resource preservation criteria. Sites being considered for development shall be evaluated using the criteria listed below, together with any other criteria determined by the RPT to be appropriate to accomplishing the purpose of this chapter.

(1) Natural resource criteria.

(a) Characteristics of the land: soil quality, parcel size, road frontage, groundwater recharge/protection, woodlands, public water resource frontage and/or proximity to same, woodlands, rare species/habitat, wetlands and/or floodplain (especially headwater areas), natural seeps and springs, slopes.<sup>8</sup>

(b) Context: adjacent zoning, adjacent land use, proximity to protected land, scenic value, historic value, connectivity to other special resources, and relationship to preserved lands on adjacent parcels. Special attention shall be given to properties that lie within the critical natural resource complexes identified in the Town's Escarpment to Bay Resource Study.

(2) Methodology for determining natural resource preservation areas. Within the RPD, any property proposed for development must submit a request to the RPT as outlined above. Upon receiving the request, a qualified member of the RPT, along with staff assistance, will evaluate the material submitted as well as conduct a site visit to the subject property. The result of the material investigation and the site work shall be presented to the RPT at its next meeting. This information shall be used to supplement the material submitted as defined above under Subsection B(1) of this section. This additional information may result in changes to the natural resource preservation areas as submitted by the developer. The developer shall grant access to any member of the RPT, Town staff, and any other professional person representing the Town who is responsible for preparing information for the RPT and the Town of Scott.

#### **§ 194-9. Land acquisition mechanisms.**

Critical natural resource complexes as well as archaeological resources may be protected by such land protection mechanisms as conservation easements, by dedication to the Town, or by a fee-simple dedication to a like-minded preservation organization. Any developer wishing to divide land within the RPD shall be willing to consider any such protection mechanism as a part of the development process.

#### **§ 194-10. Application procedure; approval by Town Board.**

A. In order for an application to be considered, it must meet the following items. This information shall be included in a completed application:

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<sup>8</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (1) Adequate identification of the parcel of land being considered for development. The description should also include a map showing the location of the parcel.
  - (2) A description of the features of the property, such as presence of water bodies, scenic views, streams, wetlands, rare species, or other desirable features.
  - (3) A statement by the owner granting access for the purpose of inspection and appraisal of the parcel by the Town, its employees or contractors and RPT.
  - (4) All other information requested on the application.
- B. If the application is complete and the minimum criteria established are met, the application shall be evaluated. A member of the RPT, authorized contractor, or Town staff assigned to the RPT shall review each application and disseminate to the RPT.
- C. After review and consideration, the RPT shall forward its recommendations to the Town's Plan Commission. The determination shall be made with the goal of preserving land, identifying conservation areas and assuring that any archaeological review will guarantee that important sites will be preserved.

**§ 194-11. Results of findings.**

- A. Archaeological findings.<sup>9</sup>
- (1) Due to the known and suspected archaeologically significant sites within the Town of Scott, the findings of Phase I and Phase II surveys will be used as the basis for developing a preservation strategy.
  - (2) If during a Phase II survey a significantly important site is discovered, the Town will require the area to be preserved. The method of preservation will be determined on a case-by-case basis. Preservation recommendations will be made by the Town's archaeologist.
- B. Natural resource findings.
- (1) Findings from existing reports and field surveys have identified large portions of the Town of Scott to contain rare flora and fauna as well as unique geological and natural environs. With each development proposal a field investigation will be used to enhance the understanding of the site proposed for development. These findings will be used to develop a natural resource preservation strategy.
  - (2) If during document research and/or field investigations significantly important features are discovered, the Town will require the area to be preserved. The method of preservation will be determined on a case-by-case basis. Preservation recommendations will be made by the RPT.

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<sup>9</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

**§ 194-12. Responsibility for costs.**

The costs of appraisal, engineering, surveying, planning, financial, environmental, and legal or other services, lawfully incurred either directly or incidentally to the development of land, and the review of the proposal shall be paid by the developer. The Town shall not be responsible for expenses incurred by the developer incidental to the developer's application.

**§ 194-13. Administration and enforcement.**

- A. Town staff or its designees shall administer and the Town Board shall enforce this chapter and any conservation agreements. The RPT will advise and make recommendations to the Town Board concerning monitoring and investigation of complaints of violation to the Town Board.
- B. The RPT shall at least once annually ascertain whether the development is in compliance with all conditions of the development conditions. Inspection findings shall be in writing and maintained. Any violation identified shall be referred to the Town Board.