

Key Findings from Coastal County Inventory



Zoning Ordinances

Only 3 coastal counties (Door, Kenosha, and Racine) mention wetland protection in the purpose statement(s) of their zoning ordinances. Each of these counties listed wetland protection as a goal under the general zoning ordinance.

The zoning ordinances for all 15 coastal counties include goals that can be advanced through the protection and restoration of wetlands; however, counties rarely identify wetland protection and restoration as a means to achieve these goals.

Commonly cited goals include flood abatement, water quality improvement, erosion control, surface and groundwater protection, and protection of fish and aquatic habitats (see table 2 & Figure 1). Wetland protection is identified as a recommended measure to protect fish and aquatic habitats in 7 counties; however, no mention is made of the benefit of protecting and restoring wetlands to advance any of these other goals.

All coastal counties strictly rely on Wisconsin Wetland Inventory (WWI) maps to determine which wetlands are protected under county shoreland-wetland zoning laws. While state law regulates the discharge of dredge and fill material into all wetlands, regardless of whether the wetland appears on the WWI, most counties limit protections to wetlands that appear on the WWI maps. WWI maps for all 15 coastal counties have a minimum mapping unit of 2 acres; however, many counties ordinances still state that protections apply to wetlands 5 acres or larger (the minimum mapping unit on older maps). Some counties appear to have the adopted revised maps but have not changed the protected acreage from 5 to 2. Because maps are based on interpretation of aerial photographs, smaller wetlands, ephemeral wetlands, and wooded wetlands may all be underrepresented.

1. **8 of 15 coastal counties exceed state minimum requirements for shoreland wetland zoning in some way.** There is great variability in how counties exceed state standards. Examples include protecting all wetlands in the shoreland zone regardless of presence on a map, or adopting restrictive permit approval criteria. State minimum requirements for shoreland-wetland zoning are described in Section VII.
2. **Bayfield + Oconto have strong programs to deter wetland fill.** Bayfield County requires special use permits to fill wetlands and the ordinance clearly

states that permits from the Wisconsin Department of Natural Resources are also required. Oconto County requires excavation, fill, grading and pond construction activities to comply with NR 103 (state wetland law), and acknowledges the need to protect wetland functions.

3. **Only 4 coastal counties have wetland specific zoning districts designed to protect inland wetlands, but two-thirds of all counties have implemented special conservation districts or overlay zones (e.g., Natural Areas, Conservancy Lands, Resource Conservation Districts).** Depending upon how the boundaries of these districts are drawn and what land development restrictions apply, these special districts may afford additional protections to shoreland and inland wetlands.
4. **Only 2 coastal counties require buildings to be set back a minimum distance from the wetland boundary and no counties require maintenance of vegetated buffers between buildings and wetlands.** One innovative approach worth highlighting is Brown County's Agricultural Shoreland Protection Overlay District which requires a 35' wide vegetated buffer strip along every stream in the county's unincorporated regions. This may benefit some riparian wetlands and also helps reduce the flow of sediment and pollutants to downstream areas, including wetlands.

Subdivision Ordinances

1. **Six of 15 coastal counties include wetland protection in the purpose statement of the county subdivision ordinance.** These same six counties are the only ones to identify goals for the ordinance that can be advanced through the protection and restoration of wetlands (e.g., flood abatement, water quality improvement). We found no examples where language in the ordinance draws a clear connection between wetland protection and restoration and these other conservation goals (e.g., promoting wetland protection for the purpose of flood abatement).
2. **Most coastal counties reserve the right to deem wetlands or lands with wetland characteristics as “unsuitable for development;” however, determinations of suitability are often made by committee(s) on a case-by-case basis.** Most subdivision ordinances describe a list of landscape characteristics than an approving authority may use to deem the land unsuitable for development. Four counties explicitly mention wetlands in the list of unsuitable lands. Eight additional counties describe wetland features (e.g., standing water, poorly drained or muck soils), without using the word wetlands. In many cases, the ordinances leave the final determinations up to the discretion of governing committees (see County reports Section IX). In these cases, the extent to which the language leads to the avoidance of wetland impacts depends largely on how it is interpreted and/or enforced by the members of the committees.

- 3. Kenosha & Racine Counties have standout measures in their subdivision ordinances.** Kenosha restrict subdivisions in areas to be served by soil absorption waste disposal systems if the groundwater table is within 7 feet of the natural surface of the land or if the lands have been filled, drained, ditched or tiled in the last ten years. This innovative approach recognizes that there are public health risks associated with placement of on-site sewage systems in drained wetlands and lands with high groundwater tables. Though not stated, this practice also reduces homeowner's exposure to flood risks and damages.

Racine County requires subdividers to provide proof that the land is suitable for development if the lands have been altered or filled in the last 10 years.

- 4. 10 of 15 coastal counties require the identification of wetlands at some point in the land division approval process; however only 5 require developers to avoid and minimize wetland impacts in their subdivision design.** Only one county ordinance (Door) requires a formal wetland delineation. Other counties may require such information during the application phase, but if they do the requirement is not included in the code.
- 5. Not quite half of all coastal counties (7 of 15) encourage the avoidance and preservation of wetlands through the dedication of open space or parks and/or the design of conservation subdivisions.**
- 6. Only three counties define wetlands in the subdivision ordinance.** Two (Iron & Ozaukee) use the same wetland definition that the state uses for regulatory purposes. Kenosha County uses a narrative rather than regulatory definition.

Additional general observations:

1. Where wetlands are defined, most counties use the state definition of wetlands in their zoning and subdivision ordinances. Racine County uses the following expanded definition that may help the public understand what wetlands look like and why they matter: "those areas in which the water table is at, near or above the existing land surface and are characterized by hydric soils such as peats, mucks, other organic and mineral soils and by the growth of hydrophytes such as sedges, cattails, red osier dogwood and tamarack. Wetlands function as nutrient and sediment traps contributing to the maintenance of good water quality and reducing the threat of flooding. Wetlands protect shoreland areas from erosion by absorbing storm impact and diminishing the scouring action of currents. Wetlands also provide essential breeding, nesting, resting, feeding grounds and predator escape cover for many species of fish and wildlife."
2. *Counties may be using the term "marsh" interchangeably with wetlands.* In cases where the word "marsh" is used, it is not clear if the intent is to protect this

one wetland type or if the word is used as a surrogate to mean wetland. The term marsh appears more frequently in subdivision ordinances than in zoning ordinances.

3. **It is unclear how extensively wetland identification and the avoidance and minimization of wetland impacts is emphasized.** Ozaukee County's zoning ordinance requires (codifies) identification of all wetlands within 25' of a building site. Door County requires a wetland delineation as part of the subdivision approval process. 6 other counties require wetland identification during the land division approval process. Assessment is needed to determine whether other counties require/recommend wetland identification and avoidance/minimization of impacts. Codification of these requirements is a good way to ensure enforcement.
4. **Ordinances state that applicants are obligated to comply with state and federal laws but don't require any actions to help applicants determine when additional approvals may be needed.** Compliance clauses in ordinances recognize the limits of county authority by stating that applicants are responsible for complying with state and federal laws. However, unless applicants read the ordinance these clauses may be of little utility.
5. *Douglas County's lake classification may benefit a large number of riparian wetlands.* While several other counties use a lake classification system, they appear to only encourage large lot sizes for development adjacent to navigable waters. Douglas County's lake classification system requires substantial setbacks from the ordinary high water mark.

Though three counties mentioned Section 404 of the Clean Water Act in their compliance clause, no ordinances required specific communications with applicants about state and federal wetland regulatory requirements. Only one county (Oconto) states that excavation, fill, grading, and pond construction activities are subject to the State water quality standards for wetlands (NR 103). We interpret this to mean that county staff are applying these standards to their decision-making but will need to confirm this in the assessment phase.