



# LAND USE AND WETLANDS: Zoning Opportunities to Improve Wetland Protection



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### *Acknowledgments*

This publication was developed by Wisconsin Wetlands Association with the review and input of many partners, including but not limited to members of the Wisconsin County Code Administrators (WCCA) and Wisconsin Association of Land Conservation Employees, and staff with the University of Wisconsin Cooperative Extension Center for Land Use Education, Wisconsin Land and Water Conservation Association and the Wisconsin Department of Natural Resources.

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Cover Photos (from top, left to right):

Gerald H. Emmerich, Jr.: Crooked Creek / Lulu Lake Wetland Gem in Walworth County

David Schwaegler: Red Columbine – *Aquilegia canadensis*

Gary Shackelford: Redhead – *Aythya americana*

Gary Shackelford: Northern Leopard Frog – *Rana pipiens*

#### ***About the Land Use and Wetlands Publication Series:***

Wisconsin Wetlands Association's Land Use and Wetlands Publication Series was created to educate local decision makers about the public benefits of wetlands and to provide tools and resources that help local decision-makers address challenges associated with administering land use and wetland protection regulations. The long-term goal is to improve wetland conservation at the local level.

#### ***About the Wisconsin Wetlands Association***

Wisconsin Wetlands Association (WWA) is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.

**Wisconsin Wetlands Association**  
**222 S. Hamilton Street, Suite 1**  
**Madison, WI 53703**  
**[www.wisconsinwetlands.org](http://www.wisconsinwetlands.org)**

**For more information contact:**  
Kyle Magyera, Policy Specialist  
608-250-9971  
[kyle.magyera@wisconsinwetlands.org](mailto:kyle.magyera@wisconsinwetlands.org)

## *Preface*

Three years ago, Wisconsin Wetlands Association (WWA) launched a series of projects to educate local decision-makers about the public benefits of wetlands, and to help local governments better protect local wetlands. Through this work, we have significantly improved our own understanding of the challenges local governments face when administering wetland protection land use policies, and have come to recognize that local governments need better tools and resources, and much more support, for their wetland protection efforts. To begin to address this need, WWA has developed detailed recommendations for how local governments can amend land use ordinances to improve the efficiency and effectiveness of existing wetland land use policies and programs.

In this publication, we address an array of topics ranging from how to use purpose statements to clarify your community's intent to protect wetlands, to opportunities to make better use of existing technologies to improve the reliability of information gleaned from wetland maps. As you would expect from an organization with a wetland protection focused mission, several of our recommendations describe ways that local governments can exceed state minimum standards for wetland protection. In other recommendations we aim to help local governments clarify what is already protected and improve the integration of local land use decision-making with project reviews conducted under state and federal wetland laws. Also included are ideas to help local governments improve public understanding of the value of wetlands and reduce unauthorized wetland fill.

Many of our recommendations are based on findings from recent WWA research *An Inventory of Wisconsin Coastal Counties' Zoning and Land Division Ordinances*, where we reviewed the zoning and subdivision ordinances of Wisconsin's 15 Coastal Counties and evaluated how these counties use land use policies to facilitate wetland protection. This research provided insights into the current variability between county programs and helped us identify gaps in current protections. It also enabled us to identify examples of programs where Wisconsin counties exceed state minimum standards for wetland protection or have enacted special provisions to improve consistency between state and local programs. We describe and cite those examples throughout this publication.

Though our research was limited to coastal counties, the findings and recommendations derived from it have applications for counties, cities, villages and towns across the state. It is our hope that you will consider implementing some or all of these recommendations as part of your or community's effort to append your Shoreland and/or General Zoning ordinance(s) between now and February 2012. The recommendations can also be used to help guide communities' ongoing zoning, planning, and conservation efforts.

It is also our interest to work with you to help you to determine which recommendations may be viable in your community, and to help build community and leadership support for

new or revised land use and wetland policies. Additional information on how Wisconsin Wetlands Association can assist your community in these efforts is provided on page 40 of this publication.

Please consider us a resource and a partner in these efforts and please do not hesitate to share any questions, concerns, or feedback you have that would help us improve our local government outreach efforts.

Erin O'Brien  
Policy Director

Kyle Magyera  
Policy Specialist

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## **I. Why Adopt and Implement Local Wetland Protections?**

Many people think that federal and state wetland laws adequately protect wetlands and that local governments have no authority to enact policies that meet or exceed state and federal wetland laws. Some view local wetland policies as unnecessary or redundant. And leaders in many communities still view wetlands as impediments to development and economic growth. If you or members of your community share some or all of these perspectives, please consider the following:

**1) Home rule provides local governments with the authority and opportunity to improve wetland protection.** In Wisconsin, local governments control land use. This provides them with the clear authority to enact shoreland or inland wetland protection policies that conform to or exceed state and federal standards. Counties, cities and villages, and towns each follow a different process for enacting zoning ordinances, and the extent to which these communities have exercised their authority varies across the state (e.g. adoption of general vs. special purpose zoning). Despite this, as long as locally adopted wetland protections are not weaker than what is required by federal and state laws, home rule offers all local governments the *opportunity* to choose how they would like to protect wetlands.

**2) Local ordinances can clarify and stabilize what wetlands are protected and how.** Over the last decade, United States Supreme Court decisions and new state laws have changed which wetlands are protected and the extent of those protections. State and federal wetland laws also only regulate direct impacts (e.g. filling). With limited federal or state authority over activities occurring in, adjacent to, or upstream from wetlands (e.g. excavation, vegetation removal, stormwater runoff), many activities with wetland impacts proceed without review or approval. Local governments can enact ordinances to ensure that wetlands are protected from a wider range of land use activities.

**3) Protecting local wetlands helps communities reduce costs on water-related services.** Wetlands naturally provide stormwater management, flood control, drinking and surface water protection, shoreland stabilization, and other functions. As wetland losses increase, so too do communities' expenses to construct and maintain the engineered infrastructure needed to replace wetland functions.

**4) Local governments are better positioned to consider and respond to wetland concerns at a watershed scale.** Federal and state wetland permitting decisions are made on case-by-case basis with little consideration of how wetland loss and degradation has or will affect the watershed or surrounding landscape. Through a combination of regulatory (e.g. ordinances) and non-regulatory (e.g. planning, mapping, restoration) approaches, local governments can move away from this case-by-case approach and ensure that decisions about development in or near wetlands are consistent with the community's plans and priorities.

## **II. Points to Consider About These Recommendations**

- 1) The recently revised Shoreland Zoning Rule (NR 115) and WDNR's accompanying Minimum Shoreland Wetland Zoning Model Ordinance (Model Ordinance) did not address many of the long-standing challenges county and municipal governments face in implementing shoreland wetland zoning programs. The enclosed recommendations were written to help communities address some of these gaps.
  
- 2) NR 115.04(3) includes the following note: "*Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated.*" However, the WDNR Model Ordinance does not provide detailed guidance to help counties adopt standards that are consistent with the standards permit applicants must comply with under other sections of state law (e.g., stormwater and polluted runoff rules). This publication includes suggestions for how local governments can achieve this integration.
  
- 3) NR 115 requires counties to adopt the most recent version of the Wisconsin Wetland Inventory Maps and provides local governments with the discretion to make use of additional mapping tools. This publication describes how recently developed wetland mapping tools can be used to improve landowners' and staff's ability to determine whether a parcel contains wetlands.
  
- 4) The most effective way to significantly advance wetland protection is through enactment of policies that clearly articulate how wetlands within and outside of the designated shoreland zone are to be managed. This package contains detailed recommendations to help local governments clarify the extent and limits of local wetland protection policies.
  
- 5) Recommendations A and B are included in the Wisconsin County Code Administrator's (WCCA) *Wisconsin Shoreland Zoning Revision NR 115 Guidebook*. WCCA formed a wetlands subcommittee that may provide further technical expertise on the full package of recommendations and other local wetland issues.
  
- 6) Though outside the scope of this project, recommendations to help local governments improve wetland protection through stormwater and land division ordinances will be developed in 2011.

### III. Zoning Recommendations



Photo: Eric Epstein – Bark Bay Slough Wetland Gem in Bayfield County

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***Recommendation A: Modify the Purpose and Intent section of the ordinance to identify wetland protection as a distinct goal and to recognize how wetland protection and restoration advances other zoning objectives.***

The Purpose and Intent section of an ordinance articulates the goals and objectives of an ordinance, and sometimes includes a description of the means by which these goals will be met. These statements reflect local governments' land use priorities, provide the basis for decision-making, and help educate the public on the range of concerns the ordinance aims to address. Conversely, omissions from these statements may imply a lack of commitment to certain goals.

Including wetland protection as a distinct goal in the Purpose and Intent statement of a shoreland or general zoning ordinance confirms your jurisdiction's commitment to implement and enforce its wetland zoning requirements.

Local governments can also bolster public understanding of wetlands and support for wetland preservation by adding ordinance language that outlines how protecting and restoring wetlands can help the community meet other traditional zoning objectives.

For example, zoning ordinances often include standard objectives such as "reduce water pollution," "protect public safety," and "preserve fish and wildlife habitat. Many people, including policy makers, may not know that wetlands provide a suite of related public benefits (i.e., wetland functions). These include water quality improvement, flood attenuation, fish and wildlife habitat, groundwater recharge, shoreland erosion control, and preservation of natural scenic beauty.<sup>1</sup>

**What options are available to implement this recommendation?**

These recommendations correspond to Sections 1.3-1.34 (Purpose and Intent) of the WDNR Minimum Shoreland Wetland Model Ordinance and/or similar section of a typical General Zoning Ordinance.

1. Add the following bullet to Section 1.31 (*Further the Maintenance of Safe and Healthful Conditions and Prevent and Control Water Pollution Through*):
  - (5) Preserving wetlands to minimize runoff and soil erosion.
  
2. Add the following bullets to Section 1.34 (*Preserve and Restore Shoreland Vegetation and Natural Scenic Beauty Through*):
  - (5) Preventing the destruction and degradation of wetlands.
  - (6) Preserving native wetland plant/tree communities.
  
3. Add Section 1.35 (*Protect and Preserve Wetlands Through*)
  - (1) Restricting the placement of fill material in wetlands.
  - (2) Encouraging avoidance and minimization of wetland impacts.
  - (3) Preserving native wetland plant/tree communities.

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<sup>1</sup> <http://dnr.wi.gov/wetlands/function.html>.

(4) Add Section 1.36 (*Prevent Flood Damages Through*):

- 1) Restricting filling, grading, and the placement of buildings and structures in floodplains and wetlands.
- 2) Preserving the ecological integrity of floodplains and wetlands.
- 3) Restoring floodplains and wetlands to increase floodwater storage.

**Are these recommendations mandatory per recent State law revisions?**

No. However, the recommendation to include wetland protection as a distinct goal is consistent with the intent of the minimum state standards, which require establishment of shoreland wetland zoning districts to reduce development in shoreland wetlands.<sup>2</sup>

The WDNR Model Ordinance does recommend including wetland preservation as a means to protect spawning grounds, fish, and aquatic life.<sup>3</sup>

The model ordinance fails to include wetland preservation as a means to prevent water pollution or protect scenic beauty and fails to recognize the reduction of floods and flood damages as a distinct goal. Protecting people and property from floods is yet another common zoning objective that can be advanced through wetland protection and restoration.

**Have other local governments already adopted a similar recommendation?**<sup>4</sup>

**Door County** includes “to preserve wetlands” as a distinct goal in the purpose statement of its general zoning ordinance.<sup>5</sup>

**Kenosha and Racine Counties’** purpose statements both read: “*to obtain the wise use, conservation, development and protection of the county's water, soil, wetlands, woodlands, wildlife and other natural resources and attain a balance between land uses and the ability of the natural resource space to support and sustain such uses.*”<sup>6</sup>

**Ashland, Brown, Douglas, Iron, Kewaunee, Marinette, and Ozaukee Counties**<sup>7</sup> list “wetland preservation” as a means to protect spawning grounds, fish, and aquatic life (as recommended in the WDNR model ordinance).

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<sup>2</sup> NR 115.04

<sup>3</sup> Wisconsin Department of Natural Resources (DNR) “Minimum Shoreland Wetland Zoning Model Ordinance (June 3, 2010), page 5.

<sup>4</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI’s 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

<sup>5</sup> Chapter 1.04(9) of the Door County Zoning Ordinance.

<sup>6</sup> Section 12.01-3 (26) of the Kenosha County Zoning Ordinance and Section 20-4(b)(3) of the Racine County Zoning Ordinance.

<sup>7</sup> Section 1.3 of Ashland County Shoreland Amendatory Ordinance; Chapter 22.03 of Brown County Shoreland Wetland Zoning Ordinance; Section 1.3, Chapter 8.4 of Douglas County Shoreland Zoning Ordinance; Section 1.3 of Iron County Land Use Ordinance; Section 1.32(1) of Kewaunee County Shoreland Zoning Ordinance; Chapter 21.01(3) of Marinette County Shoreland / Wetland Zoning Ordinance; and Chapter 7.0104 of Ozaukee County Floodplain and Zoning Ordinance.

Beyond these examples, the purpose statements we reviewed do not recognize that wetland protection and restoration provide other benefits including: water quality improvement, flood damage prevention, wildlife habitat, and scenic beauty.

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input checked="" type="checkbox"/> Advance goals already identified in most zoning ordinances
<input type="checkbox"/> Address wetland mapping deficiencies	<input checked="" type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations <sup>+</sup>	<input type="checkbox"/> Make use of best available technology and/or external expertise
<input checked="" type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

**Additional comments:**

<sup>+</sup> Wisconsin's Water Quality Standards for Wetlands<sup>8</sup> recognize and protect the following water quality related functional values or uses of wetlands: Storm and flood water storage and retention; groundwater discharge and recharge; filtration or storage of sediments, nutrients or toxic substances; shoreline protection against erosion; habitat for aquatic organisms and resident and transient wildlife species; and recreational, cultural, educational, scientific and natural scenic beauty values and uses.

As with zoning ordinances, many other local policies and plans include a purpose and intent section with clearly stated goals and objectives (e.g., subdivision regulations, stormwater ordinances, local comprehensive plans, and land and water resource management plans). Incorporating wetland protection and restoration goals and objectives into these types of policy and planning documents can improve wetland protection and improve consistency of conservation objectives across projects and programs.

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<sup>8</sup> NR 103.03

***Recommendation B: Protect all wetlands in the shoreland zone.***

*(Establish a wetland district based on wetland definitions and field conditions; Use best available technology and information generated in state and federal wetland permit reviews to implement).*

State law defines *wetlands* as “those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.”<sup>9</sup> The State of Wisconsin regulates (requires review and approval of) construction activities in all wetlands, regardless of wetland size or location. Though local governments have the authority to exceed state minimum shoreland zoning standards, the minimum standards only require local protection of wetlands that fall within the shoreland zone and appear on the Wisconsin Wetland Inventory (WWI).<sup>10,11</sup> Because the minimum mapping unit is 2 or 5 acres depending on the county, impacts to wetlands less than 2 (or 5) acres are subject to no local land use review in many counties. As time passes between ordinance updates, the most recent version of the WWI maps (i.e., the most accurate) may also not be referenced in the code.

Regulating shoreland wetlands based solely on adoption of a particular version of the WWI map(s) can be confusing to the public and poses inherent challenges for the implementation of both state and local wetland protection laws. These challenges include but are not limited to:

1. A public perception that “if it’s not on a map it’s not a wetland”;
2. A public perception that wetlands less than 2 (or 5) acres are not regulated under any laws;
3. Confusion over where a wetland starts and stops due to discrepancies between map boundaries and field conditions;
4. A need to update the ordinance if/when new WWI maps are released;
5. An unnecessary restriction of the county’s authority to discourage development in small wetlands (< 2-5 acres), ephemeral ponds, forested wetlands, and other wetlands that tend to be underrepresented on the WWI due to the limitations of using remotely sensed information as the primary data source.<sup>12</sup>
6. The need for a dispute-resolution process in counties that wish to regulate based on field conditions but rely on WWI maps as the baseline for their jurisdiction.

These challenges can be easily addressed by designating the shoreland-wetland district to include all wetlands, regardless of depiction on WWI maps, and adopting some or all of the

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<sup>9</sup> NR 115.03(13)

<sup>10</sup> NR 115.01 states “Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.”

<sup>11</sup> NR 115.04(2)(b)

<sup>12</sup> In the Wisconsin Wetland Inventory Disclaimer, the Wisconsin Department of Natural Resources states “there is no attempt, in either the design or products of this inventory, to define the limits of jurisdiction of any Federal, State, or local government or to establish the geographical scope of the regulatory programs of government agencies.”

implementation recommendations below. These changes can help counties enhance wetland protection and reduce regulatory confusion and conflicts. We note that many of the recommendations can be implemented at little to no additional expense to the county and may improve the efficiency of county's implementation of the shoreland-wetland zoning program.

**What options are available to implement this recommendation?**

These recommendations correspond to Sections 2.2 (Shoreland-Wetland Maps); 2.3 (Compliance); 2.52 (Abrogation and Greater Restrictions); 3.1 (Designation); 3.11 (Locating Shoreland-Wetland Boundaries); 8.13 (General Standards); and 8.4 (Permit Conditions) of the WDNR Minimum Shoreland Wetland Zoning Model Ordinance and/or the similar sections of a typical General Zoning Ordinance.

1. Modify Section 3.1 *Designation* to clearly indicate that all wetlands are protected in the intended jurisdiction. Include language to establish that maps are used to help identify wetlands but that the regulations apply to lands where field conditions meet the definition of wetlands. This section could be written as follows:

*Wetlands are defined as those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.<sup>13</sup> The Shoreland-Wetland District shall include all wetlands located within shorelands and the jurisdiction of this ordinance. The maps adopted as part of this ordinance show the general location of wetlands and are intended to alert landowners if there is a high likelihood of the presence of a wetland. Maps do not represent the definitive presence and boundaries of wetlands and cannot serve as a substitute for a delineation of wetland boundaries by a certified wetland delineator or verification by the Wisconsin Department of Natural Resources (WDNR) or the United States Army Corps of Engineers (USACE).*

2. Modify Section 2.2 *Shoreland Wetland Maps* to allow the use of best available information to identify known and potential wetlands in the Shoreland Wetland District, including but not limited to:

- (1) Any current *and revised* WWI maps (i.e., avoid the need to formally adopt new maps by codifying that the most recent version of the WWI maps *shall* be considered part of the zoning ordinance);
- (2) WDNR's Wetland Indicator Maps, which include hydric soils and are available for free, on-line, through WDNR's Surface Water Data Viewer;<sup>14</sup>
- (3) Other maps and images that can be readily used to help zoning staff and landowners evaluate the presence or absence and likely extent of wetlands on the property.

The shoreland-wetland maps section should also include the following caveat: *Due to inherent inaccuracies in wetland mapping tools, maps are to be used for planning purposes only.*

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<sup>13</sup> NR 115.03(13)

<sup>14</sup> <http://dnr.wi.gov/wetlands/mapping.html>.

3. Amend Section 3.11 *Locating Shoreland Wetland Boundaries* to outline a dispute resolution process for verifying the presence and boundaries of wetlands when discrepancies exist between wetlands identified through a map review and actual field conditions.
4. Given the inherent inaccuracies of wetland mapping tools, if relying on maps to determine the need for a permit, we suggest requiring permit review for any project proposed within a specified distance (e.g. 100 feet) of a wetland. The following statement can also be added:  
*Landowners shall consult the Wisconsin Wetland Inventory maps, WDNR Wetland Indicator maps, and other pertinent resources to determine if a wetland may be impacted by their proposed project.*

The resources and expertise of state and federal regulatory staff can be leveraged by deferring to their jurisdictional determinations to establish when an area meets the criteria for inclusion in the Shoreland Wetland District. This could be accomplished by establishing a blanket permit condition requiring that zoning approvals of projects with wetland impacts are not valid until federal and/or state wetland permits are received. Such a provision could be inserted in Section 8.13 or 8.4 of the WDNR's model ordinance. See Recommendation D for more details.

**Is this recommendation mandatory per recent State law revisions?**

No; however, some of alternatives outlined above are recommended in the WDNR Minimum Shoreland Wetland Zoning Model Ordinance.

For example, Section 3.11 *Locating Shoreland-Wetland Boundaries* of the new DNR model ordinance, reads:

*Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions, the county shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.*

Through use of this statement, local governments can reserve the right to regulate based on actual field conditions.

The recommended definition of “Shoreland-Wetland District” in Section 16.2(24) of the model ordinance provides local governments with the flexibility to define for themselves which maps or mapping tools shall be adopted for use in the implementation of this ordinance as follows:

*Shoreland-wetland district means the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made a part of this ordinance.*

**Have other local governments already adopted a similar recommendation?**<sup>15</sup>

**Kenosha County** allows the use of “best available data” for determining which areas are to be located in the C-1 Lowland Resource Conservancy District, as follows:

*The Kenosha County Office of Planning and Zoning Administration shall develop district maps reflecting the best data available. The district delineation process shall make use of the Wisconsin Wetland Inventory Maps for Kenosha County, dated June 20, 1985, and stamped "FINAL"; and other maps used by the Southeastern Wisconsin Regional Planning Commission in delineating primary environmental corridors.*<sup>16</sup>

**Kenosha County** also outlines a dispute resolution process for reconciling discrepancies between district maps and actual field conditions. Steps include a request to WDNR to stake the boundaries of the district and an opportunity for the landowner to pursue a final wetland determination on the property.<sup>17</sup>

**Marinette County** created a Conservancy District to protect shoreland wetlands that are two acres or smaller.<sup>18</sup>

**Sauk County** clarifies that shoreland areas meeting the wetland definition, as defined by state law, are also included in the shoreland-wetland district.<sup>19</sup>

**Door, Marinette, and Sheboygan Counties** have adopted dispute resolution language similar to the recommendation contained in Section 3.11 *Locating Shoreland Wetland Boundaries* in the WDNR Model Ordinance.<sup>20</sup>

*Continued on next page . . .*

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<sup>15</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI's 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

<sup>16</sup> Section 12.25-1(b) of Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance.

<sup>17</sup> 12.25-1(c) of Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance.

<sup>18</sup> Chapter 21.09(5) of Marinette County Shoreland / Wetland Zoning Ordinance.

<sup>19</sup> Chapter 8.10(1) of Sauk County – Shoreland Protection Ordinance

<sup>20</sup> Chapter 2.02(2)(h) of Door County Zoning Ordinance, Chapter 21.09(4)(a)(1) of the Marinette County Shoreland-Wetland Zoning Ordinance, and Chapter 72.08 of Sheboygan County Shoreland Zoning Ordinance.

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
<input checked="" type="checkbox"/> Address wetland mapping deficiencies	<input checked="" type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input checked="" type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input checked="" type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations	<input checked="" type="checkbox"/> Make use of best available technology and/or external expertise
<input type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

**Additional comments:**

Implementing aspects of these recommendations will likely increase workload temporarily but the expected reductions in regulatory conflicts and unauthorized fill may result in greater efficiencies in the implementation of the program over the long term.

Re: the use of wetland definitions and descriptions - In a review of the zoning and land division ordinances of Wisconsin’s 15 coastal counties we found some inconsistencies in how local governments define wetlands. We also identified cases where counties use the term “marsh” as a substitute for the word wetland. Because marshes are just one of 12 wetland community types found on Wisconsin’s landscape we recommend using the more inclusive term wetland. When defining wetlands, we recommend using the definition used under various sections of state law and code which reads:

*Wetlands are defined as those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.<sup>21</sup>*

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<sup>21</sup> NR 115.03(13)

### ***Recommendation C: Extend jurisdiction to protect inland wetlands.***

The State of Wisconsin regulates (requires review and approval of) construction activities in all wetlands, regardless of wetland size or location. Though local governments have the authority to exceed state minimum shoreland zoning standards,<sup>22</sup> the minimum standards only require local protection of wetlands that fall within the shoreland zone and appear on the Wisconsin Wetland Inventory (WWI).<sup>23</sup>

Inland wetlands, often referred to as isolated wetlands, are those wetlands not directly adjacent to navigable lakes, rivers and streams. Approximately 20% of Wisconsin's 5.3 million acres of wetlands are considered inland, or isolated, for regulatory purposes. Many isolated wetlands are ephemeral ponds, seasonally wet depressional areas that, due to the absence of predatory fish, provide critical habitat for amphibians including many endangered species. Isolated wetlands also provide important stopover and foraging habitat for waterfowl, migratory song birds and shorebirds, and wildlife; reduce floods by storing and slowly releasing rain and snowmelt; and protect community drinking water supplies.

Inland wetlands can be grassy/herbaceous, shrubby, or wooded, and may be the least likely wetlands to appear on wetland inventory maps. They are also among the more difficult wetland types for private landowners to recognize. As a result, isolated wetlands are severely threatened and frequently damaged by unauthorized fill.

Counties and towns with general zoning authority can protect these sensitive wetland areas by extending jurisdiction to protect inland wetlands.<sup>24</sup> Many of the same provisions identified in Recommendation B (*Protect all wetlands in the shoreland zone*) can be applied to inland wetlands. As with Recommendation B, several provisions can be adopted with little to no extra investment or program requirements other than the initial effort required to make more extensive use of state tools, resources, and expertise to support local decision making.

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<sup>22</sup> NR 115.01 states "Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats."

Article XI(1) of the Wisconsin State Constitution grants cities and villages home rule, by stating "cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. Section 59.03, Wis.Stats, establishes administrative home rule for counties, stating that "every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county. Section 60.01(c), Wis. Stats, allows towns to enter into contracts to exercise similar corporate (home rule) powers as cities and villages. Section 60.61, Wis. Stats, also grants general zoning authority to towns.

<sup>23</sup> NR 115.04(2)(b)

<sup>24</sup> State and federal courts have strongly upheld the authority to control land use activities in or around wetlands. Wetland conservation is a legitimate tool to facilitate the protection of the public safety, health, and welfare of communities.

**What options are available to implement this recommendation?**

These recommendations correspond to Sections 2.2 (Shoreland-Wetland Maps); 2.3 (Compliance); 2.52 (Abrogation and Greater Restrictions); 3.1 (Designation); 3.11 (Locating Shoreland-Wetland Boundaries); 8.13 (General Standards); and 8.4 (Permit Conditions) of the WDNR Minimum Shoreland Wetland Zoning Model Ordinance and/or the similar sections of a typical General Zoning Ordinance.

1. Create a Wetland District that includes all wetlands located within the County, City, Village or Town.

State minimum standards can be incorporated into this Wetland District but applied to both inland and shoreland wetlands. As proposed in Recommendation B, the ordinance would need to clearly indicate that:

- a. All wetlands, not just those depicted on maps, are protected;
- b. Inclusion in the district is based upon field conditions;
- c. Multiple mapping tools are available to help landowners identify wetlands and potential wetlands, but maps cannot provide a definitive determination of the presence or absence of wetlands;
- d. A dispute resolution process will be established to resolve discrepancies between mapped wetland boundaries and actual field conditions.

In addition, we recommend specifying that all wetlands partially located in the shoreland zone are protected and included in the shoreland jurisdiction.

2. Establish a blanket permit condition requiring that zoning approvals for projects with wetland impacts are not valid until federal and/or state wetland permits are received. Such a provision could be inserted in Section 8.13 or 8.4 of the WDNR's model ordinance. See Recommendation D for more details.
3. If establishment of a Wetland District that encompasses all shoreland and inland wetlands is not politically feasible in your jurisdiction, conservancy or natural area districts can be created or expanded to protect select inland wetlands. Wetlands associated with Areas of Special Natural Resource Interest (ASNRI), as defined by NR 103.04, can help provide a basis for which wetlands to include in conservancy or natural area districts. ASNRI's include:
  - Cold water communities, including all trout streams and their tributaries and trout lakes;
  - Lakes Michigan and Superior and the Mississippi river;
  - State and federal designated wild and scenic rivers, designated state riverways, and state designated scenic urban waterways;
  - Calcareous fens;
  - Habitat used by state or federally designated threatened or endangered species,
  - Wild rice waters; and
  - Any other surface waters identified as outstanding or exceptional resource waters in ch. NR 102.

Other sensitive wetland types that warrant special protection are bogs and coastal ridge and swale complexes.

**Is this recommendation mandatory per recent State law revisions?**

No; however, page 4 of the DNR Minimum Shoreland Wetland Zoning Model Ordinance encourages counties to promote wetland protection in wetlands outside of the shoreland jurisdictional area. See Recommendation B for other examples of how these recommendations are consistent with the WDNR Model Ordinance.

**Have other local governments already adopted a similar recommendation?**<sup>25</sup>

**Bayfield County** requires a 25 foot setback from all wetlands 2 acres or larger identified on the Wisconsin Wetlands Inventory maps. The ordinance also requires a Class B special use permit for the filling of any wetland. Requests for Class B permits cannot be approved until the WDNR issues a wetland fill permit.<sup>26</sup>

**Door County** has a “Wetland” (W) district that protects all mapped shoreland and inland wetlands. Lot sizes of at least 10 acres are required for new lots.<sup>27</sup> Special protections also exist for ridge and swale complexes.<sup>28</sup>

**Kenosha County** has established a “Lowland Resource Conservancy” (C-1) district that protects shoreland wetlands, and allows inland wetlands to be protected. The district identifies conditional use and lot size requirements, prohibits the placement of sanitary sewage systems, holding tanks, and private wells, and requires that every effort be made when platting subdivisions to contain lands zoned Lowland Resource Conservancy in outlots to be owned and controlled by a community association.<sup>29</sup>

**Oconto County** has established a “Conservancy” district to protect all mapped shoreland and inland wetlands. The ordinance specifies that this district is seldom suitable as a building site, and if a portion of a wetland extends across the shoreland limits it is included in the shoreland jurisdiction where the wetland as a whole is 2 acres or larger.<sup>30</sup>

**Waupaca County** has a “Shoreland-Wetland Overlay” district that protects mapped wetlands of 2 acres or greater, and which specifies that wetlands partially located in the shoreland area are regulated as if they were entirely within shoreland area.<sup>31</sup>

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<sup>25</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI’s 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

<sup>26</sup> Section 13-1-24(c) of the Bayfield County Zoning Code.

<sup>27</sup> Chapter 2.03(1) and Chapter 5.08 of Door County Zoning Ordinance.

<sup>28</sup> Ridge and swale complexes are a type of community associated with Great Lakes coastlines characterized by a series of narrow sandy ridges alternate with low swales, parallel to the lakeshore.

<sup>29</sup> Section 12.25-1 of the Kenosha County Zoning Ordinance and D. Treloar, personal communication, June 2009.

<sup>30</sup> Chapter 14.2100 of the Oconto County General Zoning Ordinance.

<sup>31</sup> Section 2.13 and 7.1 of the Waupaca County Shoreland Zoning Ordinance

**Douglas, Iron, Manitowoc, and Racine** use “conservancy,” “natural area,” or some equivalent district to selectively protect inland wetlands. Each of these districts identifies a series of low-impact permitted and conditional uses.<sup>32</sup>

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
<input type="checkbox"/> Address wetland mapping deficiencies	<input checked="" type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input checked="" type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input checked="" type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations	<input checked="" type="checkbox"/> Make use of best available technology and/or external expertise
<input type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

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<sup>32</sup> Section 3.10, Chapter 8.0 of the Douglas County General Zoning Ordinance, Section 9-1-207 of Iron County Land Use Ordinance, Chapter 9.02(4) of Manitowoc Shoreland / Floodplain Zoning Ordinance, and Section 20-496 of Racine County Zoning Ordinance.

***Recommendation D: Notify permit applicants about state and federal permit requirements and withhold final approval of projects with wetland impacts until landowner has confirmed receipt of federal and/or state wetland permits.***

Federal and state wetland laws require that landowners design projects to avoid and minimize wetland impacts to the maximum extent practicable. Under both state and federal law, permits may only be granted for *unavoidable* wetland impacts that will not cause significant adverse impacts to wetland functions.<sup>33</sup>

Regulatory tensions and intergovernmental conflicts flare when local authorities approve projects that are later deemed ineligible for state or federal wetland permits (or vice versa). Also, unauthorized wetland fill frequently occurs when landowners secure all necessary local approvals, but fail to realize additional state and federal approvals are also required.

Local governments can improve wetland protection, reduce regulatory tensions, and achieve efficiencies in the implementation of local zoning ordinances by notifying zoning applicants about state and federal permit requirements and making local zoning approvals conditional upon receipt of state and federal wetland permits.

Even greater efficiencies can be obtained if local officials establish protocols to make use of the information and analyses generated during the state and federal wetland review process (e.g., wetland delineation reports and alternative analyses) to inform the review and approval of zoning applications for projects with wetland impacts. (*See Additional Comments for more detail*).

**What options are available to implement this recommendation?**

These recommendations correspond with Sections 2.3 (Compliance); 2.5 (Abrogation and Greater Restrictions); 8.0 (Filling, Grading, etc.); and 13.2 (Permits) of the WDNR Minimum Shoreland Wetland Model Ordinance and similar sections of a typical General Zoning Ordinance.

1. At the time of permit approval for construction activity involving any land disturbance (including removing protective ground cover or vegetation, or excavating, filling, covering, or grading), present landowners and developers with the following notice and require a signature to confirm receipt:

*You are responsible for complying with state and federal laws concerning construction near or on wetlands, lake, and streams. Wetlands that are not associated with open water can be difficult to identify. Failure to comply may result in removal or modification of construction that violates the law or other penalties or costs. For more information, visit the Department of Natural Resources Wetland Identification Web Page (<http://dnr.wi.gov/wetlands/locating.html>) or contact a Department of Natural Resources Service Center.*

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<sup>33</sup> NR 103.08(3), Wis. Adm. Code and Section 404(b)(1) of the federal Clean Water Act

To ensure full compliance, we recommend codifying the details for when and how the notice will be used in zoning, land division, stormwater, and other ordinances.

2. Establish a permit condition in Section 8.0 to indicate that all zoning approvals in areas with wetlands are conditional upon receipt of a federal Section 404 permit and/or state wetland water quality certification.

Additional opportunities to leverage the expertise of state and federal regulatory staff and the information generated in state and federal wetland review process include:

- a. Deferring to federal and/or state jurisdictional determinations to establish whether/when an area meets the criteria for inclusion in the designated Wetland District.
- b. Modifying Section 13.22 *Application* to require submission of the original, *and any revised*, wetland delineation and functional assessment reports as part of the review process for projects with wetland impacts.

### **Are these recommendations mandatory per recent State law revisions?**

Sometimes as follows:

**Notification:** Effective January 1<sup>st</sup> 2011, all Wisconsin counties, cities, villages and towns are required to notify permit applicants about state and federal wetland laws and about tools recently developed by WDNR to help landowners determine whether their property contains wetlands.<sup>34</sup> This new statute requires local governments to present this notice and to secure a signature from permit applicants to verify that it has been received.

**Conditional approvals for projects with wetland impacts:** The recommendation to make local zoning approvals for projects with wetland impacts conditional upon receipt of state and federal wetland permits is not required. WDNR's Minimum Shoreland Wetland Zoning Model Ordinance recommends including language to clarify that filling, grading, lagooning, dredging, ditching or excavating which does not require a permit may be permitted in the shoreland area, *provided that all applicable federal, state and local authority is obtained in addition to a shoreland zoning permit* (see Section 8.13 in Appendix A – Policy Options).

By requiring projects to comply with federal and state wetland laws, local governments have a clear and strong legal basis to approve and deny projects with avoidable wetland fill and disturbance. Further consistency with wetland regulatory programs is also established.

### **Have other local governments already adopted a similar recommendation?**<sup>35</sup>

Yes, as follows:

#### **Notification:**

**Walworth County** was among the first Wisconsin Counties to implement the wetland notification requirements enacted under 2009 WI Act 373. They superimposed the notification

<sup>34</sup> 2009 WI Act 373 - <http://www.legis.state.wi.us/2009/data/acts/09Act373.pdf>.

<sup>35</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI's 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

statement with a signature line onto the front of WDNR's *Waking Up to Wetlands* brochure which is designed to help landowners determine whether their property contains wetlands.<sup>36,37</sup>

**Conditional approvals for projects with wetland impacts:**

**Bayfield County** requires a Class B special use permit for the filling of any wetland. Requests for Class B permits cannot be approved until the WDNR issues a wetland fill permit.<sup>38</sup>

**Oconto County** requires a grading permit for specified projects that involve excavating, filling, recontouring, and construction of ponds. Their ordinance also states: "*all activity under these provisions shall be subject to Ch. NR 102 Water Quality Standards for Wisconsin Surface Waters and Ch. NR 103 Water Quality Standards for Wetlands.*"<sup>39</sup> It is unclear if approvals are withheld pending verification of compliance.

**Require permit within a certain distance of wetlands:**

**Brown County** requires a permit for land disturbing activities of more than 500 square feet within 100 feet of any shoreland wetland.<sup>40</sup>

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
<input checked="" type="checkbox"/> Address wetland mapping deficiencies	<input type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input checked="" type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input checked="" type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations	<input checked="" type="checkbox"/> Make use of best available technology and/or external expertise
<input checked="" type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

**Additional comments:**

Local governments can rely on the information generated through state and federal wetland permit reviews to verify which areas on a project site should be subject to restrictions associated

<sup>36</sup> [http://dnr.wi.gov/wetlands/documents/D8\\_Wetland.pdf](http://dnr.wi.gov/wetlands/documents/D8_Wetland.pdf)

<sup>37</sup> <http://www.co.walworth.wi.us/Government%20Center/Land%20Use%20and%20Resource%20Management/pdfs/Wetlands%20Informational%20Brochure.pdf>

<sup>38</sup> Section 13-2-21 of Chapter 3 of the Bayfield County Shoreland and Wetland Zoning

<sup>39</sup> Chapter 14.413(d) Oconto County Zoning Ordinance.

<sup>40</sup> Chapter 22.29(1)(b) of the Brown County Shorelands and Wetlands Zoning Ordinance.

with Wetland Zoning Districts. Doing so enables local governments to restrict development in wetlands without requiring the specialized expertise required to verify wetland boundaries.

State and Federal permit staff rely on the following information in their review of applications for permits to fill regulated wetlands:

1. A wetland delineation report to confirm the presence and boundaries of wetlands and a functional assessment to describe and rate the wetland quality and functions. To be accepted, these reports must be completed by a qualified wetland consultant using procedures specified in state and federal guidelines.
2. An alternatives analysis describing how the developer designed the project to first avoid, and then minimize, wetland impacts. Alternate sites, smaller projects, and reconfigured site designs are all considered viable alternatives, even if the changes reduce profits.

Agencies evaluate this information and issue permits only for the least environmentally damaging practicable alternative that meets the basic project purpose (e.g., residential housing, retail center, business park).

Conditioning local zoning approvals upon receipt of state and federal wetland permits will also provide communities with additional leverage to deny approval of projects with *avoidable* wetland impacts.

***Recommendation E: Adopt structural wetland setbacks and require vegetated wetland buffers.***

Wetlands sit at low spots on the landscape and exist under fluctuating hydrologic regimes (e.g., water levels change seasonally and in response to precipitation events). Siting buildings and other infrastructure away from the wetland edge helps to protect property from flood damages and maintains the important natural functions of wetlands including flood abatement, water quality improvement, erosion control, and more.

This is particularly true when the land adjacent to the wetland area is maintained as a vegetated buffer. Vegetated buffers improve the health, and thus functions, of wetlands by:

- Enhancing the water quality improvement (i.e., filtration) capacity of the wetland and preventing the deposition of sediments, nutrients, and other pollutants to the wetland or adjacent lakes, rivers, and streams;
- Providing food, shelter, and breeding areas for wildlife species;
- Establishing and increasing wildlife corridors between the wetland and other wetlands, terrestrial lands, or aquatic resources;
- Preventing invasion by noxious plant species (e.g. reed canary grass).

Wetland buffers can also enhance the quality of life in a community, especially for nearby residents. For example, they can increase property values, improve aesthetics, and provide areas for passive recreation such as bird watching, hiking, and photography.

Finally, wetland setback and/or buffer requirements may help reduce wetland regulatory disputes. For example, protecting the area in *and around* wetlands will reduce the importance of verifying the exact wetland boundary and will result in fewer requests to develop right up to the wetland edge.

**What options are available to implement this recommendation?**

Minimum setbacks and buffer standards can be established in a stand-alone ordinance or incorporated into other ordinances and plans such as shoreland or general zoning, stormwater management, land division, and areawide water quality management plans. Setback and buffer standards may be most commonly inserted into stormwater ordinances; however, we have not yet conducted the research to verify this.

Regardless of where the setback and buffer standards are placed, we recommend that:

- a. Local standards be established to help permit applicants comply with already existing state standards (see next section).
- b. Any standards developed should be applied consistently across programs (e.g., zoning permits, land division approvals, stormwater permits, etc.)

If regulatory buffer standards are not desired, wetland buffers standards can be used in the planning process. For example, the local comprehensive plan could establish a buffer around

every wetland or certain wetlands to steer future land use and development away from both the wetland and adjacent upland area.

Opportunities for local governments to exceed state standards include:

- a. Apply the same setback and buffer standards to wetlands as NR 115 requires for lakes, rivers, and streams (i.e., a 75 foot structural setback from lakes, rivers, and streams, including a 35' vegetated buffer adjacent to the waters edge).<sup>41</sup>
- b. Require *Protective Areas*, for land disturbing activities less than 1-acre in size or for smaller projects adjacent to sensitive resources.

We recommend the Environmental Law Institute's (ELI) *Planner's Guide to Wetland Buffers for Local Governments*<sup>42</sup> as a reference for communities considering enactment of wetland setback or buffer standards. ELI identifies the range of current practices local governments have implemented for the protection of wetland buffers and presents detailed information to help local governments think through important issues such as the purpose of a buffers program, which wetlands to protect, approaches to setting buffer distances, and more.

The ELI Guide also presents a review and summary of scientific literature related to water quality buffers and wetland habitat buffers (*see Additional Comments below*).

### **Is this recommendation mandatory per recent State law revisions?**

No. There is nothing in state law that requires local governments to establish setback or buffer standards for wetlands; however, private landowners and developers are subject to state setback and buffer requirements under the following circumstances:

1. Wisconsin's Runoff Management rules require *Protective Areas* around lakes, rivers, streams, *and* wetlands for projects disturbing one acre or more of land.<sup>43</sup> Measured from the delineated boundary of the wetland to the edge of the allowable impervious surface, the following wetland Protective Area criteria apply:

- 75 feet for wetlands in Areas of Special Natural Resource Interest as specified in s. NR 103.04.
- 50 feet for "highly susceptible wetlands." These include fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins.
- 10 to 30 feet (10% of average wetland width) for "less susceptible wetlands," which include degraded wetlands dominated by invasive species such as reed canary grass.

The rule requires that impervious surfaces shall be kept out of the protective area to the maximum extent practicable and "*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*" in all established protective areas.

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<sup>41</sup> NR 115.05(b)

<sup>42</sup> Environmental Law Institute. (2008). Available for free download at: <http://www.eli.org>

<sup>43</sup> NR 151.12(5)(d)

2. Wisconsin's Stormwater Management rules require permit applicants to develop and submit erosion control plans for regulated activities. The erosion control plans must assure compliance with the runoff management standards cited above.

Local governments can improve resource protections and reduce regulatory confusion and tensions by adopting setback and buffer standards that are consistent with the standards that permit applicants must already comply with under state laws.

Permit applicants may also have to comply with shoreland mitigation requirements to offset the impacts of shoreland development. Wetland setbacks and buffers can be encouraged and/or required for landowners that must prepare a shoreland mitigation plan. See Recommendation K for more details.

### **Have other local governments already adopted a similar recommendation?<sup>44</sup>**

#### **Structural Setbacks:**

**Bayfield County** prohibits buildings and structure placement within 25 feet of any mapped wetland 2 acres or larger.<sup>45</sup>

**Dane County** requires a 75 foot setback from mapped shoreland and inland wetlands.<sup>46</sup>

**Door County** requires a 35 foot setback, except it is reduced to 10 feet in certain residential districts. Door County also has a "Natural Area" zoning district that is intended to protect lands adjacent to wetlands. Low intensity uses and large lot sizes are permitted in this quasi-form of a wetland buffer.<sup>47</sup>

**Kenosha County** requires cluster groups (buildings and structures) to be set back at least 35 feet from wetlands and floodplains in the Rural Cluster Development District.<sup>48</sup>

**Polk County** requires that all buildings and structures associated with non-permitted shoreland-wetland uses be set back at least 25 feet from the boundary of mapped shoreland wetlands.<sup>49</sup>

**Waupaca County** requires that all buildings and structures associated with non-permitted shoreland-wetland uses be set back at least 25 feet from the boundary of mapped shoreland wetlands.<sup>50</sup>

#### **Vegetated Buffers**

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<sup>44</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI's 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

<sup>45</sup> Section 13-1-22 of Bayfield County General Zoning Code.

<sup>46</sup> Chapter 11.06(5) of the Dane County Shoreland, Shoreland-Wetland, and Inland-Wetland Regulations.

<sup>47</sup> Chapter 5.10 for wetland setbacks and Chapter 2.03(2) for Natural Area zoning district in Door County Zoning Ordinance.

<sup>48</sup> Section 12-26(a) and 12-26(h) of the Kenosha County Zoning Ordinance.

<sup>49</sup> Article 11(E)(8) of the Polk County Shoreland Protection Zoning Ordinance.

<sup>50</sup> Section 5.3 of the Waupaca County Shoreland Zoning Ordinance.

**Brown County** has a special shoreland–agricultural provision that requires a 35 foot vegetated buffer to be maintained, free of row crops and seeded to grass, alfalfa, or other related vegetation, between the edge of navigable streams and the farmed areas.<sup>51</sup>

**Kenosha County** requires appropriate erosion control and stormwater management measures to be utilized in all new development permitted under the zoning ordinance. The stormwater ordinance grants discretion to the county to require a stormwater permit, and thus protective areas, any time an adverse impact is expected to wetlands.<sup>52</sup>

**Ozaukee County** codified the protective area requirements of Chapter NR 151 of the Wisconsin Administrative Code in their zoning ordinance. Protective areas are only required when 1 acre or more is disturbed.<sup>53</sup>

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
<input checked="" type="checkbox"/> Address wetland mapping deficiencies	<input type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input checked="" type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input checked="" type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations	<input checked="" type="checkbox"/> Make use of best available technology and/or external expertise
<input type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

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**Additional comments:**

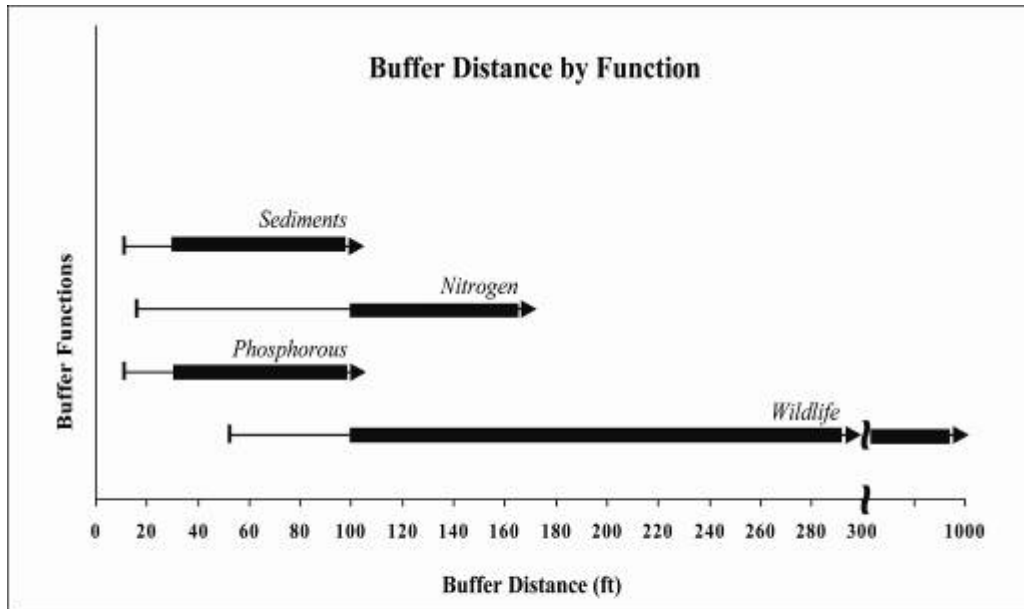
In a synthesis of scientific research on wetland buffers, the Environmental Law Institute found that effective buffer distances vary depending on whether the purpose is sediment, nitrogen, or phosphorous abatement; or wildlife protection. As shown in the graph below, the science

<sup>51</sup> Chapter 22.21(1)(a) of Brown County Shorelands and Wetlands Zoning Ordinance.

<sup>52</sup> Section 12.08-2(a)(9) of the Kenosha County Zoning Ordinance and Chapter 17.06-1 of the Kenosha County Stormwater Management, Erosion Control, and Illicit Discharge Ordinance.

<sup>53</sup> Section 7.0307 of the Ozaukee County Shoreland and Floodplain Zoning Ordinance

suggests that a 100 foot buffer provides both effective water quality improvement and wildlife habitat.<sup>54</sup>



*Effective buffer distance for water quality and wildlife protection functions. The thin arrow represents the range of potentially effective buffer distances for each function as suggested in the science literature. The thick bar represents the buffer distances that may **most** effectively accomplish each function (30 - > 100 feet for sediment and phosphorous removal; 100 - > 160 feet for nitrogen removal; and 100 - > 300 feet for wildlife protection. Depending on the species and the habitat characteristics, effective buffer distances for wildlife protection may be either small or large.*

<sup>54</sup> Printed with permission from Environmental Law Institute. Graph and associated content first appeared in *Planner's Guide to Wetland Buffers for Local Governments*, Environmental Law Institute. (2008). Available for free download at: [www.eli.org](http://www.eli.org).

***Recommendation F: Define buildable areas and designate wetlands as unsuitable for development.***

State and federal regulations generally consider wetlands unsuitable for development. The standards require avoidance and minimization of wetland impacts when a project is not wetland-dependent. There is a presumption that most construction projects do not meet the wetland-dependent criteria.

In the most general terms, buildable area standards in land use ordinances are used to describe areas deemed suitable, or unsuitable, for construction. Definitions and standards for buildable areas are most commonly used in ordinances related to the subdivision of land. In these cases, minimum buildable areas must be met for approval of newly platted lots, and the calculation of buildable area is based on the lot acreage minus certain features such as road rights-of-way, setbacks, and sensitive landscape features (e.g., wetlands). However, buildable area standards can also be incorporated into zoning ordinances.

Identifying wetlands as unsuitable for development is another effective step that local governments can take to discourage development proposals with wetland impacts. Buildable areas standards can also be used to provide local decision makers with the discretion to deny permits for projects with wetland impacts.

**What options are available to implement this recommendation?**

This recommendation corresponds with Sections 5.0 (Minimum Lot Size) and 16.0 (Definitions) of the WDNR Minimum Shoreland Wetland Zoning Model Ordinance and similar sections of a typical General Zoning Ordinance.

1. Include a definition of buildable areas, developable building site, or some equivalent term in the Definitions section of the ordinance.
2. Incorporate buildable area standards into minimum lot size requirements to ensure that lots have adequate buildable area *after* the avoidance of sensitive resources such as wetlands.
3. Include a statement in the shoreland-wetland or wetland district that the district is seldom suitable for building sites.
4. Adopt buildable area definitions and standards in the zoning ordinance that are consistent with those enacted in local land division laws.

**Is this recommendation mandatory per recent State law revisions?**

No.

**Have other local governments already adopted a similar recommendation?**<sup>55</sup>

**Ashland County** defines a developable building site as “*an area suitable for construction,*” and excludes floodplain and wetland areas.<sup>56</sup>

**Marinette County** requires that each lot have a minimum buildable area of at least 12,500 square feet of contiguous upland. Buildable area is defined as “*that portion of the lot which is suitable for construction of a structure(s). Buildable area does not include the shoreland setback, sideyard setback and road setback areas, easements, wetlands and floodways.*”<sup>57</sup>

**Oneida County** designates that except for public and private parks, 80-90% of the minimum lot area “*shall not contain any shoreland-wetlands, that the lot must be above the regional flood elevation, and that the lot is at least at least 2 feet above the highest known water elevation of any body of water whose regional flood is undefined.*”<sup>58</sup>

**Oconto and Sheboygan Counties** state that their Conservancy District and Shoreland-Wetland Districts, respectively, are “*seldom suitable as building sites.*”<sup>59</sup>

*Outside Wisconsin:*

**Cass County, Minnesota** requires a specified buildable area for each shoreland lot, ranging from 12,000 to 80,000 square feet. Buildable area is defined as: *the minimum required area remaining on a newly created parcel of land or platted lot after all public road rights-of-way, setbacks, bluffs, and wetlands are subtracted.*<sup>60</sup>

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<sup>55</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI’s 15 Coastal Counties (*Wisconsin Coastal Management Program Grant # ADO89091 -009.38*).

<sup>57</sup> Chapters 21.02(9) and 21.05 of the Marinette County Shoreland-Wetland Zoning Ordinance.

<sup>58</sup> Section 9.93D of the Oneida County Zoning and Shoreland Protection Ordinance.

<sup>59</sup> Section 14.2101(2) of Oconto County Zoning Ordinance and Section 72.09(1)(a) of the Sheboygan County Shoreland Ordinance.

<sup>60</sup> Sections 400 and 1401 of the Cass County Land Use Ordinance

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
<input type="checkbox"/> Address wetland mapping deficiencies	<input checked="" type="checkbox"/> Have more flexibility to condition zoning approvals to protect sensitive resources
<input checked="" type="checkbox"/> Reduce wetland regulatory disputes, unauthorized wetland impacts, and/or confusion over which wetlands are protected	<input checked="" type="checkbox"/> Improve integration/collaboration between zoning offices and state and federal wetland regulatory authorities
<input checked="" type="checkbox"/> Improve consistency between local zoning laws and state and federal wetland regulations	<input type="checkbox"/> Make use of best available technology and/or external expertise
<input type="checkbox"/> Educate applicants about the benefits of wetlands and/or wetland laws	

**Additional comments:**

In a review of the land division ordinances of Wisconsin's 15 Great Lakes Coastal Counties, WWA also learned that 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. Ashland, Door, Marinette, and Sheboygan County explicitly mention wetlands in the list of unsuitable lands. Brown, Douglas, Iron, Kenosha, Manitowoc, Oconto, Ozaukee, and Racine County describe wetland features (e.g., standing water, poorly drained or muck soils) as indicators that a site may be unsuitable for development.

### ***Recommendation G: Adopt avoid and minimize standards for indirect wetland impacts.***

Wetland quality and functions are vulnerable to a variety of impacts from activities in or near the wetland boundary. These indirect impacts are generally the result of alterations to hydrology, topography, and vegetative cover. Examples include:

- Changes to wetland hydrology including ponding, drawdown, and altered hydroperiod (i.e., days/months when the site is wet)
- Increased deposition of sediment, nutrients, and pollutants
- Changes in plant diversity due to the invasion by non-native or noxious plants

Indirect impacts can adversely impair natural wetland functions, such as water quality improvement, flood attenuation, and fish and wildlife habitat.

Though state and federal wetland laws discourage development in wetlands, they offer little protection for wetlands from impacts associated with development adjacent to or upstream from the wetland boundary.

Because local governments have the authority to implement and enforce regulations that exceed state minimum standards,<sup>61</sup> they have more flexibility to discourage indirect wetland impacts. Recall that a local permit denial would supersede any state and federal permit decision that authorizes project approval.

Discouraging indirect impacts to protect wetland quality and functions enables local governments to preserve the important public benefits that wetlands provide.

#### **What options are available to implement this recommendation?**

This recommendation corresponds with Section 8.0 (Filling, Grading, etc) of the WDNR Minimum Shoreland Wetland Zoning Model Ordinance and similar sections of a typical General Zoning Ordinance.

1. Adopt or modify permit evaluation criteria that require applicants to design projects to avoid and minimize indirect wetland impacts. The implementing standard could read:

*Land development and land use activities near wetlands shall not adversely impair wetland hydrologic functions, fish and wildlife habitat, and water quality and quantity.*

2. Require vegetated buffers (*see Recommendation E*) and/or adopt protections against wetland vegetation removal. This may be particularly important in cases where

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<sup>61</sup> Article XI(1) of the Wisconsin State Constitution grants cities and villages home rule; § 59.03, Wis.Stats, establishes administrative home rule for counties; § 60.61, Wis. Stats, grants general zoning authority to towns.

vegetation removal would result in a conversion of wetland type (e.g., clearing wetland trees to create an open water marsh).

3. Adopt stormwater performance standards to maintain pre-development wetland hydrology and to prevent untreated stormwater from entering wetlands.
4. Use wetland quality and condition assessment tools to evaluate wetland functions and susceptibility to indirect impacts (e.g., MnRAM).<sup>62</sup>
5. Wetland vegetation helps maintain hydrologic and soil conditions, and if altered, many wetlands will convert to different wetland types (e.g. sedge meadow to marsh) or eventually be destroyed.

### **Is this recommendation mandatory per recent State law revisions?**

No. There is nothing in state law that requires local governments to discourage indirect impacts to wetlands. Doing so, however, would be consistent with state policy which requires the protection of eight different water quality related functional values or uses of wetlands.<sup>63</sup>

Emulating the Protective Area standards required under NR 151.12(5)(d) offers another opportunity for local governments to reduce indirect wetland impacts (*See recommendation E for more details about how vegetated buffers reduce indirect wetland impacts*).

### **Have other local governments already adopted a similar recommendation?**

**Brown County** requires a permit for land disturbing activities of more than 500 square feet within 100 feet of any shoreland wetland.<sup>64</sup>

**Oconto County** requires a grading permit for specified projects that involve excavating, filling, recontouring, and construction of ponds. The ordinance states that all activities under these provisions *shall* be subject to Ch. NR 103 Water Quality Standards for Wetlands.<sup>65</sup> It is unclear if approvals are withheld pending verification of compliance by state officials.

**Sheboygan County** requires evaluation of the indirect impacts of projects that require conditional use permit, including “*the degree of site disturbance and its impact upon adjoining natural areas (e.g. wetlands, archaeological features, preserves, wildlife habitat).*”<sup>66</sup>

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<sup>62</sup> Minnesota Routine Assessment Methodology for Evaluating Wetland Functions. See <http://www.bwsr.state.mn.us/wetlands/mnram/index.html>.

<sup>63</sup> NR 103.03

<sup>64</sup> Chapter 22.29(1)(b) of the Brown County Shorelands and Wetlands Zoning Ordinance.

<sup>65</sup> Chapter 14.413(d) Oconto County Zoning Ordinance.

<sup>66</sup> Section 72.12(2)(h) of the Sheboygan County Shorelands and Wetlands Zoning Ordinance.

**Adoption of this recommendation(s) will enable local governments to:**

<input checked="" type="checkbox"/> Improve implementation/effectiveness of shoreland and/or general zoning ordinances	<input type="checkbox"/> Advance goals already identified in most zoning ordinances
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**Additional comments:**

The Center for Watershed Protection's *A Local Ordinance to Protect Wetland Functions* offers additional recommendations on wetland protection criteria that can help avoid and minimize indirect wetland impacts (see pages 21 to 27).<sup>67</sup>

<sup>67</sup> Center for Watershed Protection. (2007). Article 4: A Local Ordinance to Protect Wetland Functions. [http://www.cwp.org/documents/cat\\_view/73-wetlands-and-watersheds-article-series.html](http://www.cwp.org/documents/cat_view/73-wetlands-and-watersheds-article-series.html).

### ***Recommendation H: Adopt Planned Unit Development and/or Conservation Subdivision provisions.***

Conservation subdivisions are housing developments in rural settings that are characterized by compact lots and common open space, where the natural features of land are maintained to the greatest extent possible.<sup>68</sup> Planned unit developments (PUD) are a type of development permitted to meet overall community density and land use goals without being bound by existing zoning requirements.<sup>69</sup> Both types of provisions are commonly used by local governments and provide opportunities to protect and restore wetlands,

#### **What options are available to implement this recommendation?**

These recommendations correspond with Section 4.2 (Planned Residential Unit Development) of the WDNR Minimum Shoreland Wetland Zoning Model Ordinance, and the Conservation Subdivision, Planned Unit Development, or Planned Residential Development sections of a typical General Zoning Ordinance.

1. Adopt conservation subdivision provisions that specify applicable districts, maximum lot sizes, and minimum open space and natural preservation requirements. We recommend explicitly stating that all wetlands shall be included in areas designated as open space, and establishing open space design standards specifying how wetlands and other natural features will be preserved, restored, and managed. To encourage wetland preservation, other requirements can be relaxed if a landowner or developer voluntarily protects wetlands. Expedited permitting processes and density bonuses may be attractive options to leverage development of conservation subdivisions.

The University of Wisconsin – Extension publication, *An Ordinance for a Conservation Subdivision*, is a helpful resource that can be referenced when developing conservation subdivision provisions in a zoning ordinance. The publication can be found at: [http://www.doa.state.wi.us/dir/documents/conserv\\_subdiv\\_Model\\_ordinance\\_Feb2001.pdf](http://www.doa.state.wi.us/dir/documents/conserv_subdiv_Model_ordinance_Feb2001.pdf)

2. Modify existing planned unit development, planned residential development, or other pertinent provisions to specify that conservation-oriented development is allowed and encouraged. Again, we recommend explicitly stating that wetlands shall be included in areas designated as open space.

#### **Is this recommendation mandatory per recent State law revisions?**

No.

#### **Have other local governments already adopted a similar recommendation?**

**Bayfield County** has adopted zoning provisions specifying applicable districts, minimum lot sizes, shoreline access, preserved open space, and other provisions to be consistent

<sup>68</sup> [http://www.doa.state.wi.us/dir/documents/conserv\\_subdiv\\_Model\\_ordinance\\_Feb2001.pdf](http://www.doa.state.wi.us/dir/documents/conserv_subdiv_Model_ordinance_Feb2001.pdf).

<sup>69</sup> Center for Land Use Education. (2005) Planned Unit Development. Retrieved from <ftp://ftp.wi.gov/DOA/public/comprehensiveplans/ImplementationToolkit/Documents/PUD.pdf>.

with the conservation subdivision standards adopted as part of the county land division ordinance.<sup>70</sup>

**Door County** has a Planned Residential Development chapter that gives landowners greater flexibility in developing tracts of land on a project basis by relaxing the various lot area, lot width, setback, yard, and other regulations. The chapter includes minimum requirements for open space preservation, and states that wetlands “*shall not be included in determining the maximum residential density.*”<sup>71</sup>

**Kenosha County** has a Rural Cluster Development overlay zoning district that is intended to “*preserve rural landscape character, sensitive natural areas, farmland and other large areas of open land, while permitting residential development at low, rural densities, in an open space setting, located and designed to reduce the perceived intensity of development and provide privacy for dwellings.*” Cluster groups (buildings and structures) are required to be setback at least 35 feet from wetlands and floodplains in the RCD district. Detailed open space standards are also included that, for example, require all wetlands to be included in common open space and that all open space areas form part of a larger contiguous and integrated open space system.<sup>72</sup>

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<sup>70</sup> Section 13-1-29A of the Bayfield County Zoning Ordinance and Section 14-1-21(a) of the Bayfield County Land Division Ordinance.

<sup>71</sup> Chapter 6.02(7) of the Door County Zoning Ordinance.

<sup>72</sup> Section 12-26(a) and 12-26(h) of the Kenosha County Zoning Ordinance.

***Recommendation I: Allow flexibility in provisions that function at cross-purposes to wetland protection.***

In some cases, provisions within a zoning ordinance may impede wetland protection. While federal and state laws require avoidance and minimization of wetland impacts to the maximum extent practicable, what's practicable may be inadvertently limited by local design standards.

Minimum parking space requirements, driveway and road widths, and building size requirements are a few examples where strict adherence to minimum standards may limit a developer's ability to design a project to avoid and minimize wetland impacts. In some circumstances, design standards are governed by public safety concerns (e.g., ingress/egress requirements), but not always.

In cases where public safety is not an issue, local governments can improve wetland protection by allowing flexibility in design standards for projects with wetland impacts. Doing so may also reduce regulatory tensions among local and state officials and landowners.

**What options are available to implement this recommendation?**

Design standards that work at cross purposes to wetland protection may appear in numerous places throughout local ordinances. Though we have not completed the research to provide cited examples of when this occurs, we have received anecdotal feedback citing parking lot standards (i.e., minimum spaces and stall size) and driveway standards (i.e., minimum widths) as two instances where local standards limit the practicable alternatives analysis for projects with wetland impacts.

Local governments can reduce the potential that local standards inadvertently encourage or force wetland destruction by:

1. Reviewing local ordinances and meeting with state and federal wetland regulatory staff to identify which standards have the potential to limit avoidance and minimization of wetland impacts.
2. Adopting a basic standard that allows flexibility if wetlands exist on or near a project site. For example:

*Minimum design standards may be reduced at the discretion of the Zoning Administrator (or Zoning Commission) if wetlands exist on or near the project site and meeting the standard will increase the area of wetland impact.*

3. Identifying opportunities to incorporate principles of "better site design" to reduce total paved area, distribute and diffuse stormwater, and conserve natural habitats.<sup>73</sup>

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<sup>73</sup> Center for Watershed Protection. (1998). Better Site Design: A Handbook for Changing Development Rules in Your Community. Retrieved from [http://www.cwp.org/documents/cat\\_view/77-better-site-design-publications.html](http://www.cwp.org/documents/cat_view/77-better-site-design-publications.html).

**Is this recommendation mandatory per recent State law revisions?**

No.

**Have other local governments already adopted a similar recommendation?**<sup>74</sup>

Unknown. An analysis of design standards was outside the scope of this research.

**Adoption of this recommendation(s) will enable local governments to:**

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<sup>74</sup> Results based on a Wisconsin Wetlands Association inventory of ordinances in WI's 15 Coastal Counties (Wisconsin Coastal Management Program Grant # ADO89091 -009.38).

***Recommendation J: Adopt provisions that encourage wetland restoration and expedite restoration permit approvals.***

Wetland restoration is the act of returning a degraded or former wetland to a close approximation of its condition prior to disturbance. The benefits of wetland restoration are so widely acknowledged that state and federal agencies and private non-profit organizations invest millions of dollars restoring wetlands on Wisconsin's public and private lands every year.

Promoting wetland restoration on public and private lands can help your community restore the public benefits of wetlands including flood abatement, water quality improvement, increased hunting and fishing opportunities (and associated expenditures), and more.<sup>75</sup>

Despite the public benefits of wetland restoration and an abundance of private landowners who wish to restore wetlands on their property, securing the necessary federal, state, and local approvals can be difficult, expensive, and time consuming. Such barriers reduce the number of projects that get built each year.

Local governments can promote wetland restoration and maximize public and private conservation investments in their communities by removing barriers in zoning ordinances that prevent or delay federal and state-sponsored wetland restoration projects.

**What options are available to implement this recommendation?**

1. Create permit exemptions (exemption criteria) or an expedited approval process for federal and state sponsored wetland restoration projects. Criteria could outline the types of projects that are most likely to be authorized under general, shoreland, and floodplain zoning ordinances. Another option would be to offer automatic approval for restoration projects that have already been approved under state and federal laws.
2. Waive permit fees for federal and state sponsored wetland restoration projects.
3. Waive public notice and hearing requirements for federal and state sponsored wetland restoration projects. The window for constructing wetland restoration projects is small due to seasonal constraints and project sponsors are often under strict timelines for obligating funds. Requiring public notices and hearings can significantly delay wetland restoration projects and sometimes results in the loss of project funding.

Adoption of permit exemptions and waiving permit fees and public notice requirements would all encourage federal and state agencies to sponsor more wetland and floodplain restoration projects in your county or community.

**Is this recommendation mandatory per recent State law revisions?**

No. However, this recommendation is consistent with steps the state of Wisconsin has taken to encourage a greater federal investment for wetland restoration in Wisconsin. The Wisconsin

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<sup>75</sup> More information on the public benefits of wetlands can be found in *Land Use and Wetlands: A Local Decision Makers' Guide to Wetland Conservation*. Available on-line at: [www.wisconsinwetlands.org/localgovs.htm](http://www.wisconsinwetlands.org/localgovs.htm).

legislature recently passed 2009 Wisconsin Act 391 requiring the Wisconsin Department of Natural Resources to implement an expedited permitting process for federally sponsored wetland restoration projects. The bill received unanimous support in both houses of the legislature and was signed into law by Governor Doyle on May 18<sup>th</sup>, 2010. Eligible projects include those sponsored by the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, and their designated project partners (often Ducks Unlimited and the Wisconsin Waterfowl Association).

**Have other local governments already adopted a similar recommendation?**

A comprehensive review of local ordinances related to wetland restoration permit review was outside the scope of our recent research; however, we are aware of the following examples:

**Dane County** established exemptions and waivers for federal, state, and county wetland restoration projects. Shoreland erosion control permits are not required for wetland protection and restoration practices such as installation of water control structures, dikes, and ditch plugs, or breaking drainage tiles, when construction is overseen by and implemented according to plans and designs approved by the Natural Resources Conservation Service or U.S. Fish & Wildlife Service of the U.S. Department of the Interior, the Wisconsin Department of Natural Resources or the Dane County Land and Water Resources Department.<sup>76</sup>

**Jefferson County** waives permit fees for federal wetland restoration projects.<sup>77</sup>

**Adoption of this recommendation(s) will enable local governments to:**

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<sup>76</sup> Chapter 11.05(2)(a) of the Shoreland, Shoreland-Wetland, and Inland-Wetland Regulations

<sup>77</sup> A. Kitchen, U.S. Fish and Wildlife Service, personal communication, October 2010

### ***Recommendation K: Encourage Wetland Conservation as a Shoreland Mitigation Measure***

The new shoreland zoning rules require landowners to develop and implement a county-approved mitigation plan to offset new impacts to natural shoreland functions and values. The rules call for measures to help improve water quality, fish and wildlife habitat, and natural scenic beauty, but do not specify the types of mitigation measures required. This gives local governments the discretion to determine which types of mitigation practices they will require or allow.

Because wetlands naturally provide water quality, fish and wildlife habitat, natural scenic beauty, and other functions, local governments can help landowners meet shoreland mitigation objectives by including wetland protection, restoration, and enhancement measures in the list of approved shoreland mitigation practices.

Most counties will employ one of two systems for helping landowners comply with shoreland mitigation requirements:

1. A point system where each mitigation measure is assigned a point value and the landowner must accumulate a specified number of points through the installation of one or more approved practices.
2. A menu system where the ordinance presents a suite of practices landowners may choose from to satisfy shoreland mitigation requirements. Menu systems may be entirely optional (e.g., *choose any 2 of the following 5 measures*), or may call for a combination of required and optional measures.

Under either system, we recommend identifying a set of pre-approved wetland measures that can be incorporated into shoreland mitigation plans. Approved practices can be codified as part of the zoning ordinance, or simply presented as allowable options for landowners to consider in the development of a mitigation plan.

In addition to helping landowners meet shoreland mitigation requirements, encouraging shoreland mitigation projects that protect, restore or enhance wetlands provides local governments with an effective new tool to increase wetland acreage *and* improve wetland functions in the shoreland zone. It also offers an innovative opportunity to simultaneously allow shoreland development while advancing wetland conservation objectives.

#### **What options are available to implement this recommendation?**

Whether through a point system, or a list of approved practices, some or all of the following activities can be encouraged or required in shoreland mitigation plans:

1. Establishing wetland structural setbacks or vegetated buffers. See Recommendation E for more details. Consider rewarding more mitigation points for science-based buffers (i.e. at least 100 feet).
2. Restoring or enhancing the functions of a former or degraded wetland (e.g break tiles, fill or plug ditches, control invasive species, plant native vegetation);

3. Recording a conservation easement on a wetland. Placement of a conservation easement ensures that a wetland will remain preserved in perpetuity. Management restrictions or requirements can be used to protect or enhance the functions and values of the protected wetland.

Consider allowing these wetland conservation measures on a shoreland property or nearby non-shoreland property (i.e. within the watershed) other than that of the proposed construction, where the wetland will improve water quality, wildlife habitat, and/or natural scenic beauty for the affected lake, river, or stream. The ordinance could specify that on-site mitigation is preferred, but if infeasible, the landowner may consider off-site mitigation in the development of a shoreland mitigation plan.

**Is this recommendation mandatory per recent State law revisions?**

No. Including wetland conservation in shoreland mitigation plans is not required, but shoreland mitigation is required in certain situations (e.g. new construction with greater than 15% impervious cover on a shoreland lot). Including wetland measures in the suite of allowable shoreland mitigation practices provides landowners with more options and communities with an opportunity to advance wetland conservation goals.

**Have other local governments already adopted a similar recommendation?**

Unknown. An analysis of existing shoreland mitigation standards was outside the scope of this research.

**Adoption of this recommendation(s) will enable local governments to:**

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#### **IV. Opportunities for Further Assistance from Wisconsin Wetlands Association**

If you or other local officials would like more information on the benefits of wetlands or these recommendations, Wisconsin Wetlands Association can help in the following ways:

**1) Provide copies of the *Land Use and Wetlands: A Local Decision Makers' Guide to Wetland Conservation* for distribution in your community.** This 8-page brochure provides basic information about the benefits of wetlands and requirements under wetland laws. It can be used to educate elected officials and/or to help facilitate discussions about wetlands and wetland priorities.



**2) Provide one-on-one consultation with staff.** We are available by phone or e-mail to discuss any questions or concerns about local wetland protection.

**3) Present at, or participate in, relevant board or committee meetings or hearings.** We welcome the opportunity to provide information or input at meetings pertaining to the adoption or implementation of these wetland zoning recommendations. Every effort will be made to accommodate requests for in person assistance (as funding and capacity allows).

**4) Review and provide feedback on proposed ordinance language.**

*Requests for assistance from local governments should be directed to Policy Specialist Kyle Magyera. 608-250-9971 / [kyle.magyera@wisconsinwetlands.org](mailto:kyle.magyera@wisconsinwetlands.org)*

*Additional information, including links to all of Wisconsin Wetlands Association's Land Use and Wetlands publications can be found at [www.wisconsinwetlands.org/localgovs.htm](http://www.wisconsinwetlands.org/localgovs.htm).*

## V. Recommended Reading

1) Association of State Wetland Program (ASWM) Local Wetland Program Publications:

<http://aswm.org/lwp/index.htm#pubs>

2) Center for Watershed Protection (CWP) Wetlands and Watersheds Article Series:

[http://www.cwp.org/documents/cat\\_view/73-wetlands-and-watersheds-article-series.html](http://www.cwp.org/documents/cat_view/73-wetlands-and-watersheds-article-series.html)

3) Center for Watershed Protection. (1998). Better Site Design: A Handbook for Changing Development Rules in Your Community. [http://www.cwp.org/documents/cat\\_view/77-better-site-design-publications.html](http://www.cwp.org/documents/cat_view/77-better-site-design-publications.html).

4) Environmental Law Institute. (2008). Planner's Guide to Wetland Buffers for Local Governments. [http://www.elistore.org/reports\\_detail.asp?ID=11272](http://www.elistore.org/reports_detail.asp?ID=11272)

5) Southeastern Wisconsin Regional Planning Commission (2010). Managing the Water's Edge – Making Natural Connections.

<http://www.sewrpc.org/SEWRPCFiles/Environment/RecentPublications/ManagingtheWatersEdge-brochure.pdf>

6) University of Wisconsin – Extension Center for Land Use Education (CLUE) Fact Sheet Series: <http://www.uwsp.edu/cnr/landcenter/pubs-factsheets.html>.

7) University of Wisconsin – Extension. (2001). An Ordinance for a Conservation Subdivision. [http://www.doa.state.wi.us/dir/documents/conserv\\_subdiv\\_Model\\_ordinance\\_Feb2001.pdf](http://www.doa.state.wi.us/dir/documents/conserv_subdiv_Model_ordinance_Feb2001.pdf)

*Wisconsin Wetlands Association (WWA) is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.*



**Wisconsin Wetlands Association**  
222 S. Hamilton Street, Suite 1  
Madison, WI 53703  
[www.wisconsinwetlands.org](http://www.wisconsinwetlands.org)  
608-250-9971