



Department of Planning & Development
& Office of Lakes and Watersheds

Myths and Facts about the Dane County Waterbody Classification System and
the draft Shoreland and Riparian Management Report.

December 23, 2009

Myth 1: The Lakes and Watershed Commission and County Board are considering immediate action on new ordinances for shoreland areas.

Fact: There is no ordinance amendment or plan requiring board action presently. To complete the DNR grant requirement, the report needs to be completed by staff and submitted to the DNR by December 31st. No action is required by the Lakes & Watershed Commission or the County Board.

The purpose of the project is to develop a better understanding of the unique characteristics of various types of waterbodies, their resilience to shoreland development and to develop strategies to protect those waters. When and if policy measures suggested in the report are crafted into ordinance amendments, there will be further public input and refinement of the policies. Any change in rules is at least 2 years away. No changes will be proposed until local demonstration projects are conducted and evaluated.

Myth 2: These policy options would require 50,000 parcels countywide to meet new water quality, habitat and natural scenic beauty regulations.

Fact: Not all properties in the shoreland would be equally affected.

- Of the 57,530 parcels in Dane County shorelands, 18,867 are in unincorporated areas and are already subject to county shoreland zoning.
- Of the 38,663 incorporated shoreland parcels, 20,606 are estimated to meet simple lot size, buffer or impervious surface area standards and would not require additional practices.
- Another 17,366 parcels are not immediately adjacent to the water, and so would not have to meet recommended habitat or scenic standards.
- This leaves a total of only 691 incorporated area parcels that would have to meet all water quality, habitat and scenic standards. In any given year, approximately 7 (1%) of these properties would be undergoing expansion, addition or reconstruction that would require mitigation under the report.

	Unincorporated	Incorporated	TOTAL
Total shoreland parcels	18,867	38,663	57,530
Parcels qualifying under design standards	-13,381	-20,606	-33,987
<u>Parcels under WQ performance standard only</u>	<u>-4,696</u>	<u>-17,366</u>	<u>-22,062</u>
Parcels under WQ, habitat & scenic performance stds.	790	691	1,481

Myth 3: *These policy options would require unrealistic minimum lot sizes and setbacks that would create thousands of nonconforming lots and promote sprawl.*

Fact: Minimum lot sizes and setbacks are only one of many strategies. As an alternative, landowners and developers could choose to demonstrate that existing or proposed practices meet objective, measurable water quality, habitat and scenic standards. The county would maintain an approved list of practices, but developers would be welcome to propose new ones, as long as they could show that they meet recommended performance standards.

Myth 4: *Practices to meet recommended performance standards would be prohibitively expensive.*

Fact: A variety of inexpensive practices would easily meet suggested performance standards, even on small lots. Based on experience with similar standards applied to county Board of Adjustment variances, minimum practices to meet recommended performance standards are expected to cost between \$100 to \$6,500 per site, including design, installation and maintenance costs. This is typically a very small cost compared to the overall cost of the proposed expansion or development. The type, design and size of practices needed on a particular site would vary depending on the:

- Classification of the nearby waterbody (Urban, Developing or Rural);
- Size and timing of the construction project;
- Amount of permanent impervious surface area installed;
- Existing natural vegetation;
- Slope, size and soil characteristics of the site, and;
- Effectiveness of any existing stormwater, erosion control or habitat practices.

Myth 5: *These policy options would change the status of many artificial stormwater basins around the county, making them “navigable waters” and subject to new regulations.*

Fact: Whether or not a waterway is navigable is determined not by county plan or ordinance, but rather by the Public Trust Doctrine, Wisconsin statute and case law. Very few stormwater facilities would meet any of the legal criteria for public waters. The vast majority of stormwater retention or detention basins are not navigable, and therefore not subject to policy options. There’s little mystery to which stormwater control ponds are navigable. Any developer creating such a facility would know, through DNR permitting or court action, if such a facility would be considered navigable. In fact, most navigable artificial waterways are deliberately designed and intended to be dedicated to the public.

According to the Wisconsin Department of Natural Resources, artificial drainages or ponds can be considered “navigable” and public waters only if certain criteria are met. The most common of these include:

- If a pond is connected to another public water and the connection is navigable, then the pond is considered public (examples include the Tenney Park lagoon in Madison or Farwell Lagoon in McFarland).
- If an existing navigable wetland, pond or stream is modified, ditched or enlarged to serve as a stormwater facility (examples include Tiedeman and Stricker ponds in Middleton or Dunn’s Marsh in Madison).

Under either circumstance, the DNR would have to approve a Navigable Water permit under Chapter 30, Wisconsin Statutes, before such an artificial public waterway could be created. There are also very rare circumstances where an artificial water could be declared to have “developed prescriptive rights” and therefore to be public waters, but this would require a specific ruling by a judge.

Myth 6: *These policy options would result in a permanent, substantial reduction in my property values.*

Fact: One of the primary purposes of zoning and other land regulations is to *protect* property values. Based on studies in Wisconsin and Minnesota, shoreland property values in Dane County would be expected to *increase* with more protective shoreland standards. Some reasons for this include:

1. Suggested policy options would not restrict permitted uses or limit density of development, both of which would continue to be controlled by local zoning.
2. Requirements for mitigation would be proportional to anticipated impacts of shoreland development.
 - Anticipated costs would be relatively minor compared to total construction costs and the expected increase in property value as a result of improvements.
 - Interior remodeling, re-siding, re-roofing and other projects that do not increase impervious surfaces or disturb land would be exempt.
 - Land disturbances of less than 1,000 square feet and 500 square feet of proposed impervious surfaces would qualify for simplified erosion control checklists.
 - Projects on sites with existing practices that already meet recommended performance standards (such as residential subdivisions platted since 2001) would be exempt from permanent performance standards. Erosion control standards would still apply to active construction sites.
 - Properties in Urban Waters would be exempt from habitat and scenic standards and would only have to meet water quality standards if proposed impervious surfaces exceed 65% of the lot, or 4,000 square feet. Approximately 3% of single family residential lots in the City of Madison would require water quality mitigation under these standards.
 - Standards that apply to any particular project vary with the sensitivity of the nearby water, the scale of the project and the soils, slope and other characteristics of the site.
3. Recommended performance standards would be specifically designed to create immediate, tangible, and valuable benefits to shoreland property owners. These benefits or “amenity values” tend to overwhelm any negative impacts to property values. Examples of benefits resulting from better environmental protection include:
 - Cleaner water, better swimming, fishing, boating and recreational opportunities.
 - Less runoff and erosion, both to the water and to or from neighboring properties.
 - Deep-rooted native perennial flowering plants that resist shoreline erosion, reduce yard maintenance costs, and promote attractive shorelines.
 - More fish, butterflies, songbirds and wading birds.
 - Level the playing field for properties in different municipalities on the same water.
4. Performance standard practices would be required only when the landowner is proposing substantial improvements to the property. The increase in value such improvements make to the property typically outweigh the cost of practice design, installation and maintenance.
5. More consistent standards and enforcement would reduce uncertainty about pending development proposals.
 - Consistent countywide standards would be applied across municipal lines.
 - Objective, quantifiable and easily measured standards would increase the predictability of the process.
 - Reduce “problem sites” through more effective enforcement.
 - In many cases, difficult, time-consuming board of adjustment variances would be replaced with relatively straightforward administrative permits.
 - Variances would still be available to prevent unnecessary hardships.

Myth 7: *There is no scientific connection between shoreland development and the health of public waters.*

Fact: Studies from a variety of sources, from Wisconsin and elsewhere, have shown a direct link between poorly designed shoreland development and negative impacts on water quality, fish and wildlife resources. Some findings include:

- Typical development of an undeveloped shoreland lot can increase sediment loading by 900%, phosphorus by 700%, and total runoff by 500%.
- Converting 10% to 20% of a site to impervious surfaces doubles surface runoff. By the time impervious surfaces reach 30-50% of the site, surface runoff triples.
- Active construction sites accounted for only 1% of the land area of the Lake Mendota watershed, but contributed nearly a quarter of the total sediment deposited in Lake Mendota.
- Muskies, bluegills and green frogs have all been shown to decline in direct proportion to shoreland development. Trout populations are eliminated once impervious surfaces areas cover 10% of a watershed. Rare songbird species, such as vireos and warblers, are replaced by common birds, such as grackles and cowbirds, as shoreland development occurs.
- Woody cover, aquatic plants and shore cover, all essential for healthy fish populations, are 30% to 600% lower on developed shoreland lots.
- 94% of all lake life is born, raised, and fed within 30 feet of where the water meets the land.
- 72 endangered or threatened species live in Dane County's waters, shorelands and wetlands. Such species, by their very nature, are unusually sensitive to habitat disturbance and fragmentation.

Myth 8: *There's no evidence that the recommended ordinance would result in any significant environmental benefit.*

Fact: County staff analysis demonstrates the policy options, if adopted, would prevent significant impacts to water quality and habitat. Based on conservative projections, the policy options would, over the next twenty years:

- Prevent 3,500 tons (or roughly 32 railroad cars) of sediment from reaching Dane County's most sensitive and at-risk waters.
- Protect or restore 38 miles of linear shore habitat along Dane County's most important and productive fish and wildlife waters.

Moreover, these protections are focused on the most sensitive and at-risk waters in Dane County, such as Black Earth Creek, Token Creek, the Sugar River and Fish Lake.

Myth 9: *Dane County has not looked at the economic impacts of these policy options.*

Fact: The Dane County Lakes and Watershed Commission took the unprecedented step of convening a panel of experts in economic issues as part of the process of developing these policy options. The panel included: real estate brokers, builders, municipal assessors and academics from the Real Estate and Rural and Applied Economics Departments of the University of Wisconsin. Based on comments at the panel's first meeting, county staff estimated the projected environmental benefits for Urban, Developing and Rural Waters. Based on the relative impacts and benefits from this analysis, the report was modified to:

- Exempt Urban Waters from recommended habitat and scenic standards entirely, and;
- Apply water quality standards in Urban Waters only for projects with unusually large areas of impervious surfaces.

At a subsequent meeting of the Economic Focus group, most members agreed that these changes substantially resolved their original concerns.

***Myth 10:** Disclosing on a real estate form that a property is in a shoreland zone would automatically reduce property values.*

Fact: Chapter 709, Wisconsin Statutes, requires a wide variety of characteristics of a property to be disclosed to potential buyers, so that they have complete information. Not all of these necessarily are associated with reduced property values. For example, state law requires that real estate agents disclose if a property has had recent improvements that would *increase* property values. Disclosures that properties are subject to shoreland zoning must already be made for properties in unincorporated shorelands and shorelands annexed after 1982. There is no evidence that these disclosures have substantially reduced shoreland property values.

***Myth 11:** The county has not met its burden of proof that recommended regulations would be beneficial. The county must do a full economic impact analysis before moving forward.*

Fact: This would be unprecedented, unrealistic, unnecessary and expensive.

- Most peer-reviewed academic research on regulations that affect design, rather than land use, indicate that impacts on property values are at worst mixed, but often tend to increase property values, rather than reduce them.
- A thorough, rigorous economic impact study may not even be possible. To determine impact of recommended regulations on shoreland property values in a scientifically-valid way would require that such policies be applied randomly, over a period of years, among shoreland property owners. This is clearly not practical, not fair, nor good public policy.
- It is very difficult, if not impossible to accurately quantify an impact that doesn't happen or is prevented, particularly when dealing with complex biological systems. Future growth and development requires added protection just to keep the situation from getting worse.
- Federal, state and local governments have spent substantial amounts of public dollars to restore and rehabilitate public waters. Recommended regulations help protect that public investment.
- Dane County has never performed, or been requested to perform, a full-scale economic impact analysis before enacting other, countywide ordinances or regulations, such as the County Stormwater and Erosion Control Ordinance (Chapter 14, Dane County Code), the ordinance banning unnecessary phosphorus from lawn fertilizer (Chapter 80, Dane County Code), or the original adoption of the Shoreland and Wetland Zoning Ordinance (Chapter 11, Dane County Code). There is no evidence that such ordinances resulted in permanent reduction in property values.
- The policy options would require people undertaking development projects in shoreland areas to take reasonable, cost-effective steps to prevent serious damage to public waters. In the unlikely event that recommended measures prove so onerous that they have severe economic impacts, the county could easily modify or repeal them. Environmental damage to Dane County's waters, however, is irreversible. Under such circumstances, the generally accepted legal and economic standard known as "the precautionary principle" states that the county:
 - should not have to bear the burden of proof that recommended measures are necessary, and;
 - need not wait for absolute scientific certainty before taking action to prevent environmental damage.