

Dane County Waterbody Classification Project

Phase II: Shoreland and Riparian Management Plan

Revised 11/6/2009

Frequently Asked Questions

1. Q: What areas would be affected?

A: As with current county shoreland zoning, ordinances would apply within 300 feet of the ordinary highwater mark ([OHWM](#)) of navigable rivers and streams and within 1,000 feet of the OHWM of navigable lakes and ponds. Under its authority in Chapter 34 of the Wisconsin Statutes, the Dane County Lakes and Watershed Commission intends to recommend that these standards apply within both unincorporated towns and incorporated cities and villages.

2. Q: What will be the beneficial impacts of this plan?

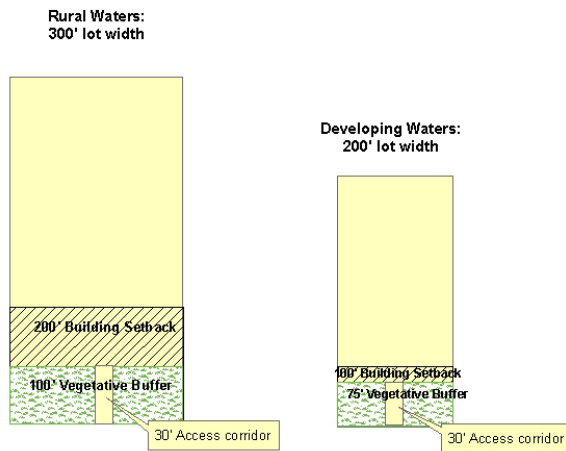
A: Some of the practical benefits of the recommendations in this plan include:

- Protection of current water quality in areas subject to new development, due to more sustainable development practices;
- Gradual improvement of water quality in already developed shorelands areas, as existing development installs stormwater, infiltration and other mitigation practices;
- Better protection against runoff problems onto neighboring properties due to development changes;
- More flexibility for owners of nonconforming shoreland lots or buildings, while providing better environmental protection;
- More permits will be handled administratively, instead of relying on Board of Adjustment variances;
- Consistency across municipal boundaries for similar types of waters;
- More intact and diverse shoreland and riparian habitat throughout the county, ultimately resulting in more waterfowl, wading birds, turtles, frogs, dragonflies (many of which eat mosquitoes) and other near-shore species along Dane County waters;
- New financial cost-share programs to assist landowners with shoreland restorations;
- Improved visual aesthetics and recreational opportunities.

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3. **Q: What are the proposed setbacks and lot sizes for each class?**

A: For Urban Waters, minimum lot sizes and setbacks would continue to be set by local or county zoning. In Urban Waters, special review and mitigation would be required before constructing new buildings closer than 35 feet from the water. The figure below shows proposed primary vegetative buffer, building setback and lot size for Developing and Rural Waters. Classes are based on the Waterbody Classification Project Phase I: [Waterbody Classification System](#).



4. **Q: How will this plan affect undeveloped land in urban areas?**

A: Most standards for new development in Urban Waters will remain the same as under the current county zoning ordinance. One exception would be for stricter standards on how the first 37.5 feet from the shore is maintained. The proposed ordinance would restrict “vegetation removal” instead of “clear-cutting” as the current ordinance does. The new ordinance is intended to promote protection or restoration of a more complete buffer of native vegetation.

Landowners would have options to abide by performance standards (see Question 5) or to mitigate changes to legal, nonconforming properties (see Questions 6, 7 & 11). Cities and villages that do not already have similar shoreland zoning or environmental corridor standards may have to adopt or amend ordinances to match county standards.

5. **Q: Is there any flexibility in proposed setbacks, buffers or lot sizes?**

A: For each class of Urban, Developing and Rural lakes, ponds, rivers and streams, the plan recommends two sets of regulatory policies:

- traditional zoning standards, based on setbacks and designated buffer areas, and;
- performance-based standards, based on designs that meet objective, measurable engineering criteria.

The two sets of standards are designed to be functionally equivalent in terms of their ability to protect water quality, habitat and natural scenic beauty. Communities may enact a

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traditional zoning model, a performance based model, or a combination of both. In Dane County’s case, the plan recommends a hybrid approach, where shoreland developers may choose which set of standards will apply to their particular development. In every case, however, proposed regulatory standards will meet or exceed the statewide minimum requirements required under [Chapter NR 115, Wisconsin Administrative Code](#).

6. Q: How many properties would be affected?

A: 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 proposed 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 proposal.

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

Even under enhanced setback standards, the vast majority of shoreland properties would already comply. Some of those properties that do not meet proposed setbacks may already conform to proposed performance standards, and so would be considered compliant. Even for those properties that meet neither setback nor performance standards, most should be able to meet proposed performance standards with relatively simple mitigation (See Question 9 for examples of mitigation techniques.)

7. Q: I have an existing house in a shoreland zone. How will this affect what I can or can’t do with my property?

A: You will not have to make any changes to your property unless you are proposing additions, expansions or reconstruction projects that would disturb land or add to the footprint of the house. Interior remodeling, re-roofing and similar projects would be exempt. Properties not immediately adjacent to the water are exempt from proposed habitat and scenic standards. Many properties qualify for proposed lot design standards and would not have to install additional practices. Properties that have adequate existing stormwater practices that meet current county standards and good existing vegetative buffers near the shore would also be exempt. In Urban Waters, new stormwater standards would apply only

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if you are proposing more than 4,000 square feet of impervious surface area, or more than 65% of the lot. For those remaining properties that do not qualify for an exemption, you may need to:

- Install carefully designed temporary erosion control measures until the construction site is stabilized and seeded with permanent ground cover;
- As part of the construction project, include simple, low-maintenance infiltration and sediment control practices to provide permanent protection, and;
- If adjacent to the water, maintain or restore a good vegetative buffer near the shore.

8. *Q: I have a mowed lawn all the way down to the water's edge. Will the proposed ordinance make this illegal?*

A: If you are in an Urban Water shoreland, proposed habitat standards do not apply. If you are in a Developing or Rural Shoreland, the ordinance will not require you to change anything you do on your property unless you are proposing a major expansion or redevelopment project. At that time, you may be asked to let an area near the shore regrow naturally, or to plant native plants to restore a natural buffer. Appropriate plant species include many flowering plants and grasses, in addition to taller trees. You should be able to design an inexpensive buffer that provides valuable near shore habitat and buffer functions without obscuring your view or blocking your access to the water.

9. *Q: What kinds of practices would I have to install on my property to meet performance or mitigation standards? Are they expensive?*

A: The answer will depend on many factors, including the size of your lot, the degree of nonconformance with proposed prescriptive standards, the extent of existing natural vegetation, and the slope and type of soils on your property. In many cases, however, proposed performance standards can be met with fairly inexpensive practices. Some examples of practices to meet performance standards include:

Vegetated Buffer Strip

- Located in [Appendix I, page I.V-1.1](#), of the Dane County Erosion Control and Stormwater Management Manual
- DNR Technical Standard 1054
- Typical Cost: \$0.25 per square yard
- Typical Size 50 feet x width of lot

Raingarden (Infiltration Basin)

- Located in [Appendix I, page I.R-1.1 \(Raingarden\)](#) and [I.I-1.1 \(Infiltration Basin\)](#), of the Dane County Erosion Control and Stormwater Management Manual
- DNR Technical Standard 1003
- Typical Cost: \$6 to \$8 per square foot
- Typical Size: 200 to 1000 square feet

Bioretention Basin

- Located in [Appendix I, page I.B-3.1](#), of the Dane County Erosion Control and Stormwater Management Manual
- DNR Technical Standard 1004
- Smallest footprint on site of any practice
- Typical Cost: \$10 to \$12 per square foot
- Typical Size: 100 to 500 square feet

Sediment Trap

- Located in [Appendix I, page I.S-2.1](#), of the Dane County Erosion Control and Stormwater Management Manual
- DNR Technical Standard 1063
- Typical Cost: \$300 to \$500

10. Q: What if conditions on my property make it impossible to meet either prescriptive zoning standards or performance standards?

A: We anticipate that, on most properties, even on small lots, landowners should be able to meet proposed performance standards. For those relatively rare circumstances where conditions on the property make compliance with performance standards impossible, landowners would still have the option of either redesigning their project to comply, or of obtaining a variance from the Board of Adjustment or Board of Appeals. Boards should find it easier to deal with the relatively few variances that are needed, since performance standards will provide quantifiable measures of how effective mitigation efforts are. This will make it easier to determine when hardship is present.

11. Q: How will this plan affect redevelopment on shoreland lots?

A: If an existing structure on a shoreland lot is completely torn down and rebuilt, the new development would have to meet the same prescriptive zoning or performance standards that apply to new development. See the answers to questions 7, 8 & 9 for examples of how standards may apply.

12. Q: Why does the plan focus on riparian zone development, and ignore the impacts of agriculture, development throughout the watershed, wastewater or existing urban development?

A: The Waterbody Classification System and Riparian Management Plan is only one of a wide variety of county, regional and state initiatives to address surface water quality, habitat and natural scenic beauty in Dane County. This program is intended to fill in some significant gaps in the county's surface water management programs to improve environmental standards. It is also intended to complement, not replace, other ongoing water quality programs in the region.

In Dane County, approximately 90% of all farms are under a site-specific farm conservation plan approved by the county Land Conservation Division. These and other LCD measures have reduced agricultural soil erosion from 10.5 tons/acre/year in 1985 to under 3.6 tons/acre/year, a 67% decrease. This compares very favorably with adopted [Land and Water](#)

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[Resource Management Plan](#) goals of a tolerable soil loss of 4.1 tons/acre/year. Although poorly managed farmland can indeed result in significant soil erosion, all evidence suggests that in Dane County, this is (in general) under pretty good control. Dane County has also expended considerable effort at controlling nonpoint water pollution originating from runoff throughout watersheds. [Chapter 14, Dane County Code](#), adopted under [Lakes and Watershed Commission](#) authority establishes county-wide sediment, runoff volume, rate and infiltration standards for managing stormwater from major subdivision, commercial development and redevelopment projects.

Due to increased impervious surface areas, urban or suburban development, especially in sensitive shoreland areas, can have a disproportionate impact on surface water resources. In the critical areas near the shore, there is less margin for error, since sediments or pollutants have less far to travel before entering county waters. Many existing shoreland lots are small, having been platted many years before current minimum lot sizes went into effect. Many shorelands contain a high concentration of wetlands, floodplains and other water-based environmental resources that are particularly sensitive to development impacts.

Dane County's programs to minimize impacts from shoreland development or redevelopment is in need of an overhaul. When it comes to shoreland management, Dane County has lagged behind many other counties in Wisconsin. For example, Dane County's shoreland zoning ordinance ([Chapter 11, Dane County Code](#)) is based on a 23-year old DNR model ordinance. Many other Wisconsin counties have modernized their shoreland regulations to provide better environmental protection, while at the same time providing greater flexibility for landowners. Other counties, such as [Burnett County](#) in northern Wisconsin, have combined low-cost incentives with modern regulations into very effective programs that encourage landowners to restore their shoreline to more natural conditions. The Riparian Management Plan is intended to bring Dane County's shoreland management program up to the same standard as current county urban erosion control, stormwater and agricultural soil and water conservation programs.

13. Q: Will this just be adding another layer of regulation?

A: The Riparian Management Plan recommends a multi-pronged approach to shoreland and riparian management that includes a variety of regulatory, incentive, land acquisition, stewardship, infrastructure and educational programs to achieve stated goals.

County shoreland zoning standards ([Chapter 11, Dane County Code](#)) already apply within unincorporated shorelands and shorelands annexed into incorporated cities and villages after May 7, 1982. For Urban Waters, the basic setback and unsewered lot size requirements would remain the same as under current ordinance. If adopted by the county board, the Riparian Management Plan and subsequent ordinance amendments would:

- change minimum lot sizes for sewerred Urban Waters lots from 10,000 square feet to 20,000 square feet;
- increase setbacks and minimum lot sizes in Developing and Rural Waters, and;
- change standards for vegetation removal, boathouses and riparian access corridors for all classes of waters, and;

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- allow for alternative designs or mitigation that meet specific performance standards for each class of water.

However, the basic types of activities regulated and permits required will remain largely unchanged, for all classes.

For territories annexed to a city or village after May 7, 1982, compliance with county shoreland standards is required under s.59.692(7), Wisconsin Statutes. If recommendations contained in this report are adopted by the County Board, Dane County will work with the [Capital Area Regional Planning Commission](#) to make sure environmental corridor standards are compatible with county shoreland zoning standards.

The Dane County [Lakes and Watershed Commission](#) has unique legislative authority ([Wisconsin Act 324](#)). It can propose to the County Board regulatory standards for water quality that would apply in incorporated areas in Dane County as well, including areas incorporated before May 7, 1982. For example, in 2002 the Commission used this authority to establish uniform erosion control and stormwater management standards countywide. The standards establish minimum levels which municipalities need to meet or exceed. If the proposed ordinance changes are recommended by the Lakes and Watershed Commission and adopted by the Dane County Board of Supervisors, municipalities would need to upgrade their ordinances to be consistent with the county minimum standards. Administration and enforcement of city or village ordinances would remain at the local, not the county, level.

14. Q: Is this plan consistent with the proposed changes to NR 115?

A: It is consistent and is of the same spirit of the law. The County may be more restrictive than the state, but must be at least as restrictive. Classification and a shoreland management program built off of a classification system need not have anything to do with NR 115 – it's a local attempt to tailor water resources management to meet the counties needs, and the approaches being proposed here are more closely related to prior innovations of other Wisconsin counties than the DNR's current [NR 115 proposal](#). State law will require that all properties, regardless of classification, will have to meet or exceed NR 115 minimum standards for lot size, setback, vegetative buffers and impervious surface limits. The Waterbody Classification Project and Riparian Management Plan proposes that Urban Waters remain at NR 115 minimums, while Developing and Rural Waters receive additional protection.

15. Q: What happens when a local municipality already has an existing water quality planning corridor such as in Cross Plains?

A: Proposed setback and other prescriptive zoning standards are intended as minimum requirements. Local municipalities would be welcome to exceed those standards, such as requiring a greater building setback, if they see fit. If a municipality has already adopted water quality standards that are less restrictive than the county's proposed prescriptive zoning standards, the city or village would have the option of bringing their setback and other prescriptive standards up to county minimums, adding provisions requiring compliance (by installing additional practices or improving management of riparian buffers) with county performance standards, or a combination of both.

16. Q: Will increased setbacks and lots sizes encourage sprawl in Developing and Rural watersheds?

A: The plan deals just with the well-defined and narrow band of the riparian shoreland zone, not the entire watershed, and so should have minimal impact on overall development density. Also, the plan allows for alternative designs that meet established, objective performance standards. For example, a community along a Developing water could implement enhanced stormwater controls, habitat restoration and scenic buffers to compensate for clustered, dense development at other points along the shore.

17. Q: Why is this proposed as an amendment to the county shoreland zoning ordinance (Chapter 11, Dane County Code) instead of the county's general zoning ordinance (Chapter 10, Dane County Code)?

A: The Wisconsin Legislature granted county governments the primary responsibility and obligation for creating local shoreland zoning ordinances to protect water quality, wildlife habitat and natural scenic beauty (Section 59.692, Wisconsin Statutes) in unincorporated areas. In addition, Wisconsin Act 324 allows the Dane County Lakes and Watershed Commission to recommend shoreland zoning standards within incorporated areas, but that authority does not extend to general zoning ordinances.

18. Q: Why is there so much focus on "natural scenic beauty?"

A: Wisconsin statutes ([s. 59.692, Wis. Stats.](#)) require that counties adopt shoreland zoning ordinances to protect water quality, wildlife habitat and "natural scenic beauty." Historically, aesthetic and scenic beauty considerations have received less attention, since objective standards were difficult to develop and administer. As development and redevelopment in shoreland zones has intensified in recent years, more and more communities are paying attention to scenic issues. Maintaining or restoring a high quality, native vegetative buffer nearest the shore is the single best way to not only meet statutory scenic objectives, but also water quality and riparian habitat concerns as well.

However, we also recognize that, for many properties with existing development or heavily disturbed shorelines, re-establishing a high-quality natural vegetative buffer dense enough to provide scenic benefits may not be realistic. Consequently, we have included other practices to reduce visual impact, including reducing building height or volume where feasible, as alternatives to help meet scenic goals.

19. Q: *Would there be reclassification of waters as development occurs?*

A: The Waterbody Classification System is based on levels of existing development. One of the stated goals of the plan is that development should not result in the reclassification of waters to a more impacted category. We would encourage communities to consider the waterbody classification implications of new development as they consider amendments to their comprehensive plans. We do intend to reassess and update the Waterbody Classification System on a periodic basis as conditions or plans change, or as we get better information.

20. Q: *If ordinance standards are not changing in Urban Waters, what benefit does this plan provide to waters in urban areas?*

A: In Urban Waters, the proposed zoning setbacks, minimum lot sizes and primary buffer depths are identical to the current county shoreland zoning ordinance, and to state minimum standards. However, proposed erosion control and performance and mitigation standards for larger projects offer a good opportunity to gradually improve existing water quality, habitat and scenic conditions in urbanized areas as redevelopment occurs. Proposed performance standards should allow greater flexibility than the current ordinance does for Urban Waters landowners of small shoreland lots. We anticipate that these changes should reduce current reliance on Board of Adjustment variances and should provide more consistency in how such standards are administered.

21. Q: *Does the plan recognize riparian rights and the regulatory impacts on those rights?*

A: The plan tries to strike an appropriate balance between private property rights of riparian landowners and the county's obligation to protect public navigable waters under the Wisconsin Constitution. Proposed regulations are proportional to the potential impact of development on each class of public waterways and are triggered only when landowners propose new development, redevelopment or other significant changes in the use of their property. Proposed performance and mitigation standards should not only provide greater flexibility for riparian landowners, but should also help improve water quality, habitat and scenic conditions in shorelands with existing development. Finally, proposed incentive, outreach and technical assistance programs should benefit all riparian landowners interested in improving the stewardship of their lands.

22. Q: *Have the economic cost value of regulations been considered?*

A: We believe the economic impact of the Shoreland and Riparian Management Plan recommendations will not place an undue burden on riparian landowners. Proposed setback areas would represent between 34%-37% of the minimum lot size for each class of water, comparable to similar percentages under existing regulations. Landowners would have the option of complying with performance standards instead of prescriptive zoning standards, allowing for a great deal of flexibility in site design. Proposed performance standards should give owners of small lots in Urban Waters, for example, more development options than they have under current county shoreland zoning. For those few landowners who find it impossible to meet either proposed prescriptive or performance standards, they could still

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apply for a variance. The variance process should prevent landowners from being deprived of reasonable use of their property.

Meanwhile, proposed incentives, technical assistance and education and outreach programs would provide a tangible economic benefit to many riparian landowners. Taken as a whole, proposed riparian management programs should enhance, not reduce, riparian property values. Riparian landowners already pay a premium for their property simply because it is near the water. Proximity to clean water, with abundant fish and wildlife, and attractive natural shorelines, should make such properties even more valuable.

For more information:

Dane County Office of Lakes and Watersheds

http://www.danewaters.com/management/water_body_classification.aspx

Dane County Department of Planning and Development

<http://www.countyofdane.com/plandev/default.aspx>

Dane County University of Wisconsin Extension

<http://www.uwex.edu/ces/cty/dane/index.html>

Capital Area Regional Planning Commission (Phase I Waterbody Classification Study)

<http://www.capitalarearpc.org/>

WI DNR Shoreland Management Program

<http://dnr.wi.gov/org/water/wm/dsfm/shore/>

University of Wisconsin Extension Center for Land Use Education

Lake Classification Fact Sheets

<http://www.uwsp.edu/cnr/uwexlakes/factsheets/>

Wisconsin Legislative Reference Bureau bibliography on shoreland zoning:

<http://www.legis.state.wi.us/LRB/pubs/ttp/ttp-01-2004.html>

Wisconsin Association of Lakes Lake Classification

<http://www.wisconsinlakes.org/LakeGroups/classification.htm>