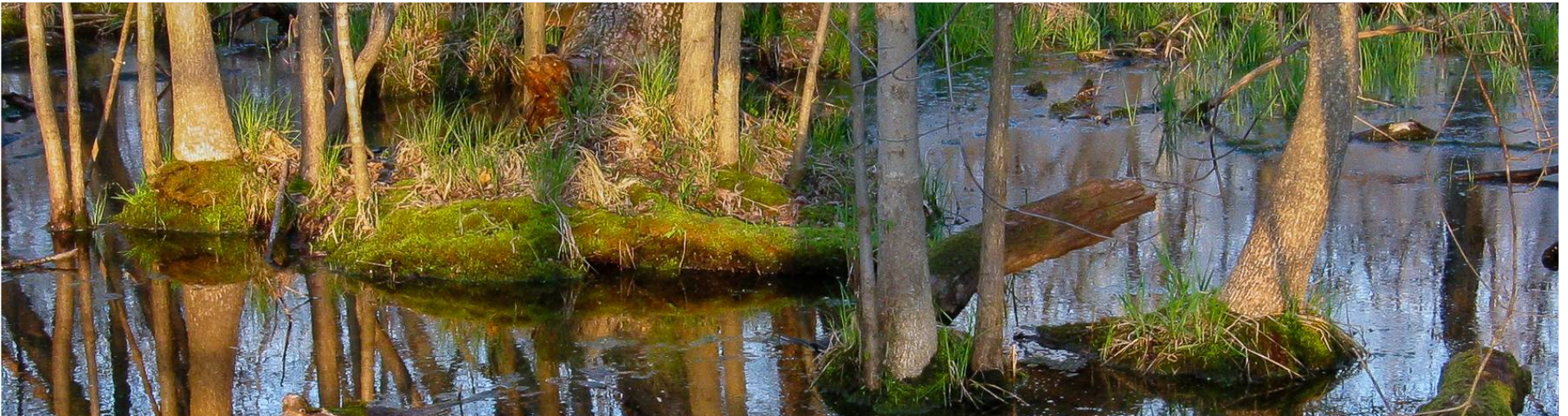


Land Use and Wetlands

Opportunities for Local Governments to Engage in Wetland Conservation

Kyle Magyera & Rebecca Roberts
August 21, 2014



Discussion Outline

- Why wetlands matters
- Existing laws and how they fall short
- Opportunities for planning and conservation
- Role of local officials, staff, and others

Poll Question

What group do you represent?

- Elected or appointed official
- Planning or zoning staff
- Land conservation staff
- Federal or state agency staff
- Consultant
- Watershed/conservation group
- Other

Engaging in Local Wetland Conservation

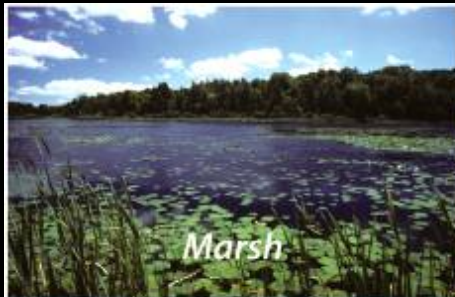


IDENTIFY

(Understand what wetlands are and
where they are located)

What are Wetlands?

Wetlands vary in size, type, and appearance. There are 12 community types, including some that may be wooded or only wet at certain points throughout the year.



Marsh



Fen



Sedge Meadow



Low Prairie



Alder Thicket



Open Bog



Ephemeral Pond



Shrub Carr



Coniferous Bog



Coniferous Swamp



Floodplain Forest



Lowland Hardwood Swamp

What are Wetlands?

Where land and water meet; characterized by 3 main criteria:

- 1) Wetland hydrology: water at or beneath the land surface for at least a portion of the year
- 2) Hydric (wet) soils: soil types known to develop under wet conditions
- 3) Hydrophytic (wetland) vegetation: plants adapted to wet conditions



These Indicators may still be present on sites that were previously disturbed (e.g., pasture).
Professional judgment may be needed if an indicator is not clearly evident at the site

The Wetland Permit Process

REQUIRED Protections	FEDERAL	STATE	LOCAL
Jurisdiction	Wetlands near waterways	ALL wetlands	Shoreland wetlands
Authority	Section 404 Clean Water Act	State statutes & Admin rules	Shoreland zoning (NR 115, 117)
Key Actor(s)	US Army Corps District Engineer	WDNR Water Mgmt Specialist	Zoning staff & local officials

Federal and state regulations apply to wetlands, in their jurisdictions, based on field conditions

Federal and State Laws

Laws discourage, but don't forbid wetland fill

They require avoidance and minimization, but:

- Regulations start and stop at the wetland boundary
- There's inconsistency in what's protected
- Permit decisions occur on a case-by-case basis and with minimal consideration of adjacent land uses



Wetland Mapping Tools

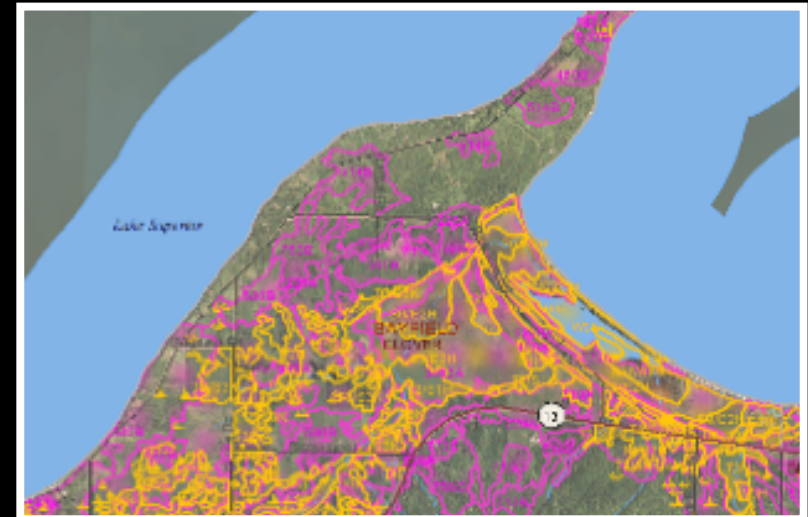
The screenshot displays the 'Surface Water Data Viewer' application. The interface includes a top menu bar with options like 'Basic Tools', 'Identify Tools', 'Drawing Tools', 'Measuring Tools', 'Find Location', 'Maps & Data', and 'Help'. Below the menu is a toolbar with icons for Home, Show Layers, Show Legend, Pan, Zoom In, Zoom Out, Previous Extent, Full State, Point Identify, Enter Coords, Plot Coords, Clear Coords, and Print Map. A search bar at the top right contains the text 'Search for map features...'. The main map area shows an aerial view with various wetland indicators overlaid, including polygons and points labeled with codes such as MmA, Kb, RaA, Fn, KdA, Sm, and Aza. A 'Map Layers' panel on the left lists categories like 'Wetlands & Soils' and 'Wetland Class Areas' with corresponding symbols. The bottom of the interface has a 'Home' button and a 'Map Layers' button.

DNR Surface Water Data Viewer: <http://dnr.wi.gov/topic/surfacewater/swdv/>

Inconsistency of Protecting Wetlands Based on Mapping

Local programs (e.g., NR 115/117) require protections for wetlands that appear on WI Wetland Inventory Maps

- Not always reflective of field conditions
- Shows those only larger than 2 (or 5) acres
- Underrepresented wetland types
- Public misperception
- Ongoing need for updates



PLAN

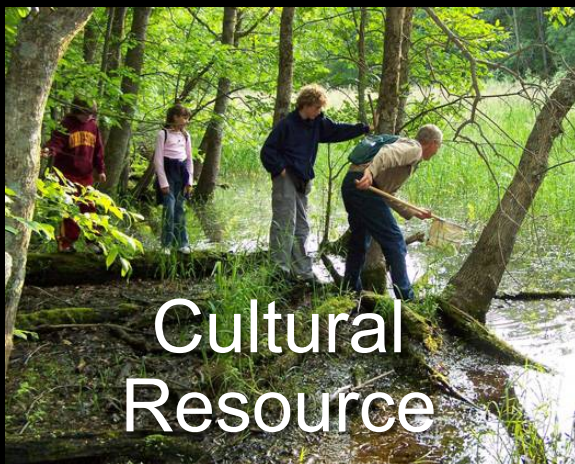
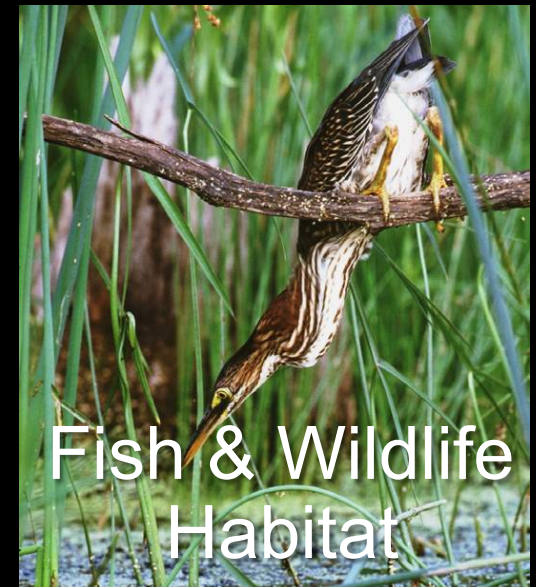
(To better understand how wetlands do
or can benefit our communities)

Community Planning



- Allows a community to identify, anticipate, balance and decide how to meet its needs
- Fosters predictable and defensible decisions
- Provides a proactive approach to the future

Why Plan for Wetlands?



Wetland Planning Questions

1. Where do wetlands currently exist?
2. Where did they historically exist?
3. What functions do wetlands provide?
4. What are your priorities for protecting and restoring wetlands?
5. How do wetlands relate to other water management needs?
6. What are the costs/benefits of protecting wetlands *compared to other options?*

Prioritize Wetlands in Goals and Objectives

Policy Options:

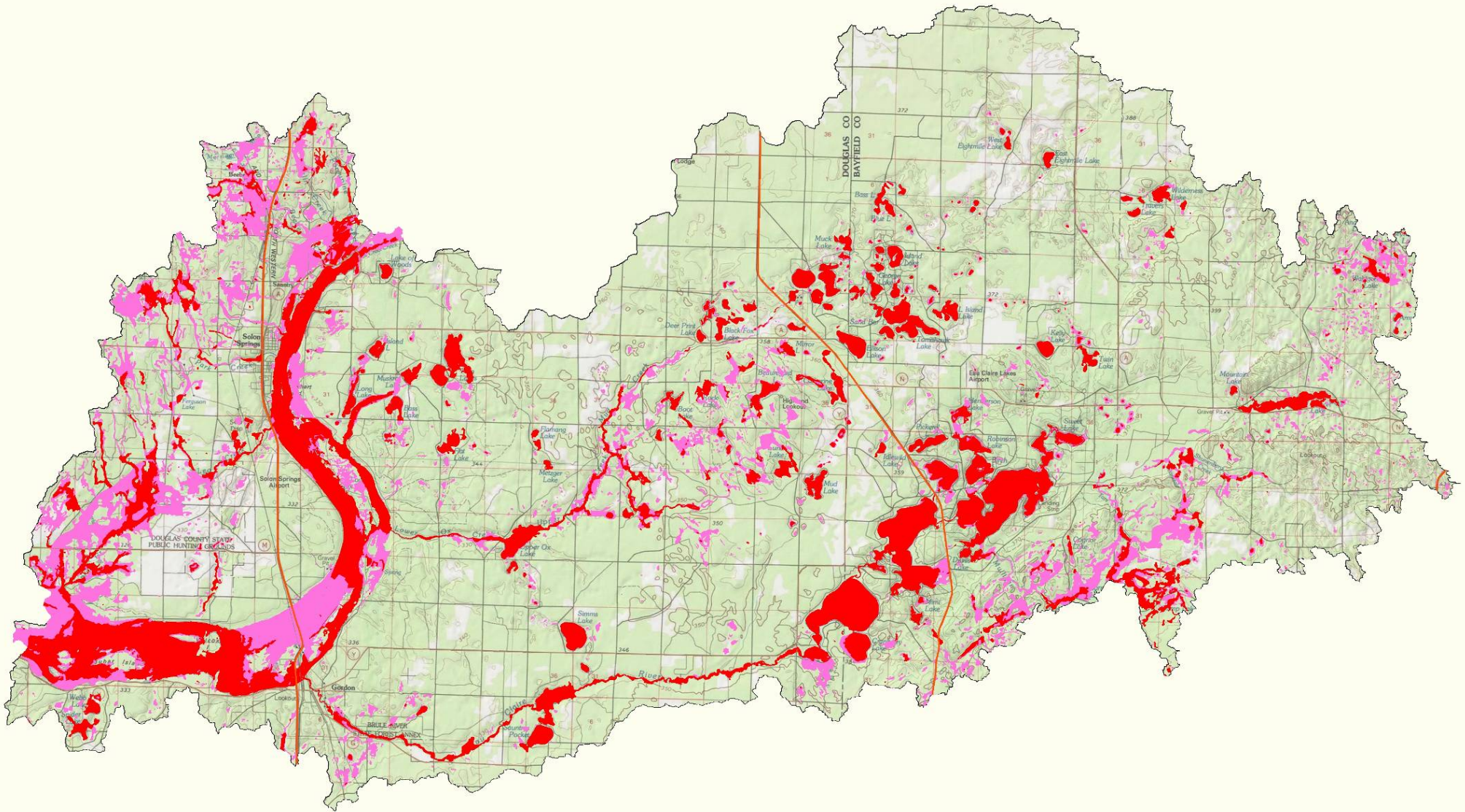
- Identify wetland conservation as a distinct goal in local plans, policies and ordinances
- Establish priorities or criteria for identifying wetlands
 - Versus simply recognizing wetland protection or restoration as a goal or objective

GIS-Based Wetland Planning & Assessment Approaches



Methods to:

1. Identify “potentially restorable wetlands” (DNR)
2. Evaluate/rank/model wetland functions or potential functions (NWI+)
3. Prioritize protection or restoration to meet various objectives



PROTECT

(Develop and enforce policies
that protect wetlands)

Policy Development

Local governments have **clear** authority to protect wetlands.

1. Allow regulation based on field conditions
2. Adopt structural setback or vegetated buffer requirements
3. Exercise more oversight over local wetland disturbances



LAND USE AND WETLANDS:
An Inventory of Wisconsin Coastal Counties'
Zoning and Land Division Ordinances



LAND USE AND WETLANDS:
Zoning Opportunities to
Improve Wetland Protection

Wisconsin
Wetlands
Association
www.wisconsinwetlands.org



Allow Regulation Based on Field Conditions

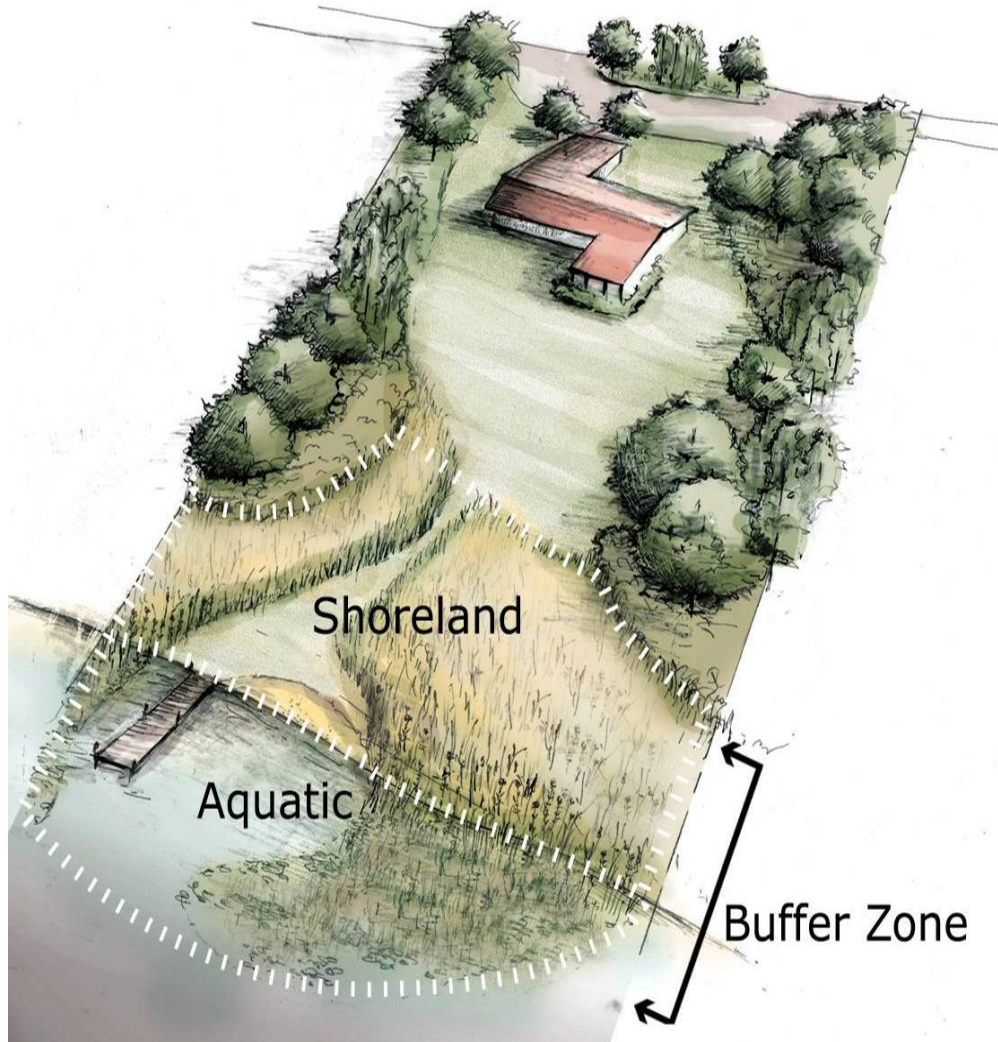
Policy Option: Clarify that county shoreland-wetland zoning district is intended to protect all wetlands (regardless of size or whether they appear on a map)

Policy Option: Clarify that local government may use best available data, including field inspections, when determining wetland boundaries

Policy Option: Adopt district that explicitly protects unmapped wetlands



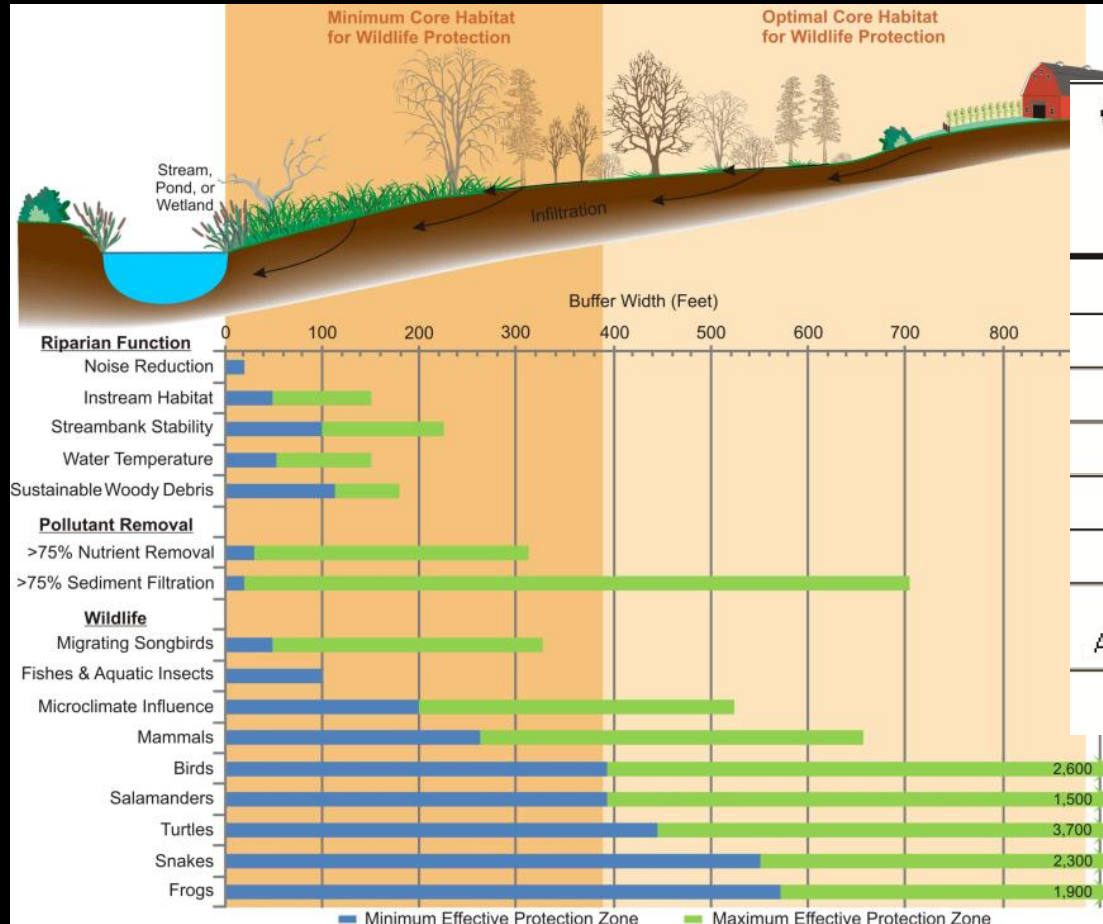
Adopt Structural Setback or Vegetated Buffer Requirements



Can compensate for inaccuracies in WWI wetland boundary

Policy Option: Science-based-buffer (or “core-habitat”) with natural vegetation preserved and/or restored

Adopt Structural Setback or Vegetated Buffer Requirements



Wisconsin Species	Minimum Core Habitat (feet)	Optimum Core Habitat (feet)	Number of Studies
Frogs	571	1,043	9
Salamanders	394	705	14
Snakes	551	997	5
Turtles	446	889	27
Birds	394	787	45
Mammals	263	No data	11
Fishes and Aquatic Insects	100	No data	11
Mean	388	885	

From Southeastern Wisconsin Regional Planning Commission (2010) Managing the Water's Edge

More Local Review of Wetland Disturbances

WDNR & Corps do not have final say on wetlands
Their jurisdiction is limited to wetland fill

Policy Option: Adopt Wetland Approval Process

Policy Option: Require consideration of adjacent, downstream, or upstream effects of development and land use activities.

Development Review

- Wetlands are not explicitly considered in most development review decisions

	Who Decides?	Standards?
Variance	BOA	State statutes
Conditional Use	PC / GB / BOA	Local ordinance
Plat Review	PC / GB	Local ordinance
Rezone	PC / GB	Legislative authority

Development Review

Variance

Policy Options:

- Identify wetlands in ordinance purpose
- Revise application/decision forms to check for wetlands

Dodge County

- Purpose: "Prevent adverse impacts on sensitive natural resources and availability of water, water quality, roads and transportation, floodplains, wetlands, shallow soils, and steep slopes"

3 Statutory Tests

1. Unnecessary hardship
2. Unique property limitations
3. No harm to public interest

Development Review

- Update guides, checklists and forms to include wetland considerations

Sample Development Guide

CITY OF JAI

What is Zoning
Regulating the
avoided and p
zoning district
permitted. Th
ments such as
about the City

To find out wh
site will allow

Sample Pre-Application Checklist



General

Y N
 Y N
 Y N
 Y N
 Y N
 Y N
 Y N
 Y N

§275-24C(2) P
This is a lett

Department of Community Development
3805 S. Casper Drive
P.O. Box 510921

Sample Application Form



City of New Berlin Department of Community [unclear]
3805 S. Casper Drive, New Berlin
Phone (262) 797-2445 / Fax (262) 780-4612 / www.newberlinwi.gov

Subdivision / Land Division / Developer's Agreement Application

Applicant / Surveyor / Engineer

(Surveyor or Engineer required for all Subdivision Plats)

Property Information

RLS/PE Name _____
 Company _____
 Address _____
 City, State, Zip _____

Property Address _____
 Tax Key Number(s) _____
 Current Zoning _____
 Property Owner(s) _____



R1—Si

R1D—

- The estimate
- The number
- Number of v
- The expecte

Project Name / New Company Name (if applicable) _____

Representing _____

Existing Use of Property _____

Development Review

Conditional Uses

Policy Option: Require specific consideration of wetland impacts as part of CUP application and review

Sheboygan County

- “Evaluate degree of site disturbance and its impact upon adjoining natural resource areas including wetlands”

Development Review

Plat Review – can deny plat on basis of state statutes, local ordinances, or comprehensive plan

Policy Options:

- Adopt explicit standards related to wetlands
- Require pre-application conference to spot issues upfront

Development Review

Rezoning – broad legislative authority

Policy Option: Adopt explicit standards for reviewing ordinance amendments

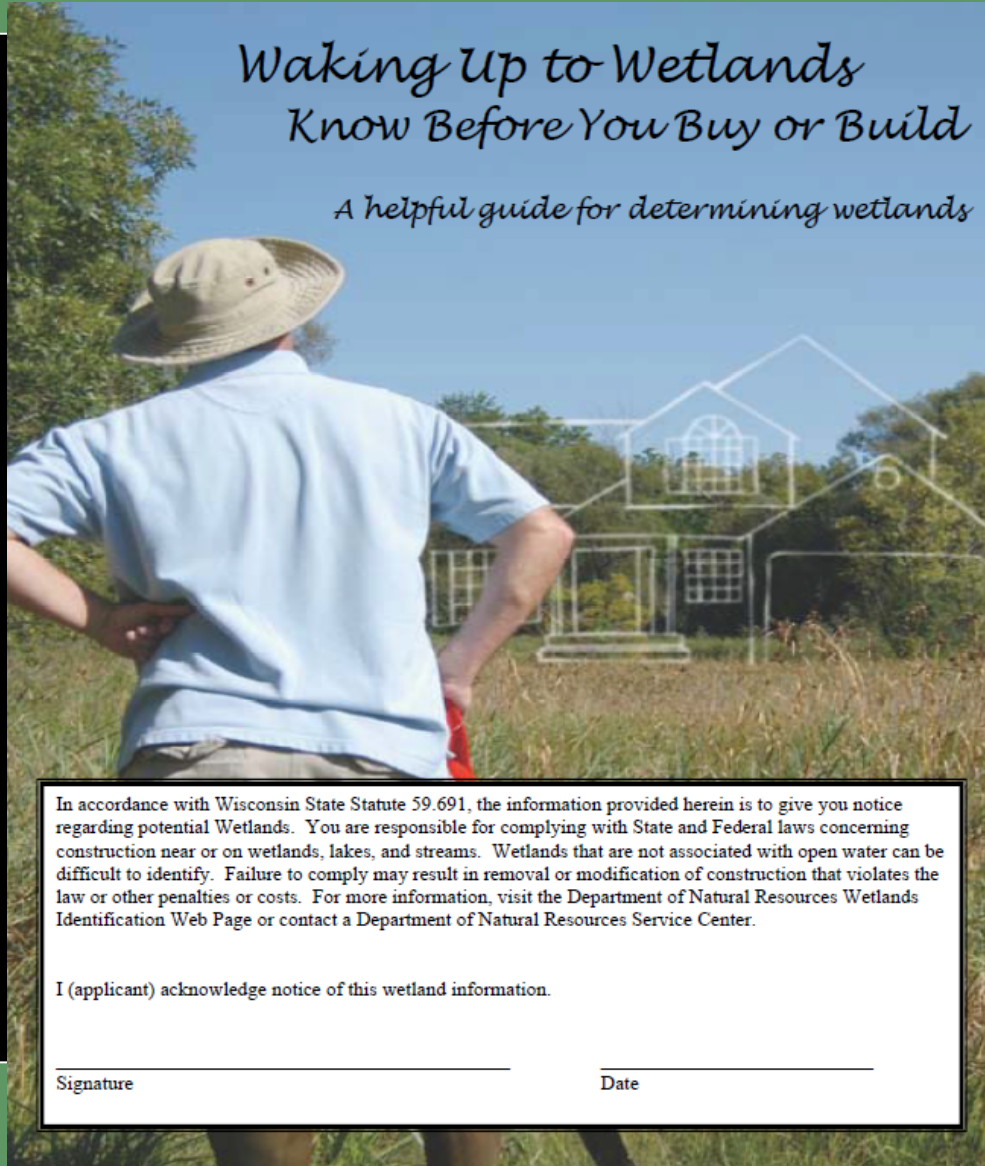
Dodge County

- Amendment is consistent with comprehensive plan and purposes of zoning ordinance
- Amendment will not result in significant adverse impacts on the natural environment (including wetlands)

Development Review

Waking Up to Wetlands Know Before You Buy or Build

A helpful guide for determining wetlands



In accordance with Wisconsin State Statute 59.691, the information provided herein is to give you notice regarding potential Wetlands. You are responsible for complying with State and Federal laws concerning construction near or on wetlands, lakes, 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 Wetlands Identification Web Page or contact a Department of Natural Resources Service Center.

I (applicant) acknowledge notice of this wetland information.

Signature _____

Date _____

Wetland Clues Checklist

Is there evidence of water?

Yes No

- Are there ponds, lakes, streams, springs or seeps?
- Are there "low spots" where water collects or the ground is soggy for at least a week?
- Are there drainage channels or has the site been ditched or tiled in spots to "dry it out?"
- If the site is a farm field, are there areas where crops do not grow or the plants are stunted or yellowing during years with normal rainfall?
- Are there water marks or stains on tree trunks?
- Do trees have a shallow root system?
- Are there areas where water has scoured away plants and leaves, flattened vegetation or where no vegetation is growing?
- Are sticks, leaves, soil and other debris deposited by water in a line on plants and trees?

Are water-loving plants present?

Yes No

- Are these plants present: cattails, reed canary grass, sedges, rushes, blue flag iris, joe-pye-weed, new england aster, sensitive fern, skunk cabbage or sphagnum moss?
- Are these shrubs present: dogwoods, willows, alder, leatherleaf, spiraea or blueberry?
- Are these trees present: willows, silver maple, box elder, black or green ash, cottonwood, elm, balsam fir, tamarack or spruce?
- Do plants have roots growing from their stems above the soil?
- Do trees have multiple trunks or are the trunks expanded or swollen at the base?

Are there wet soils or signs of them?

Dig a hole down 20 inches:

Yes No

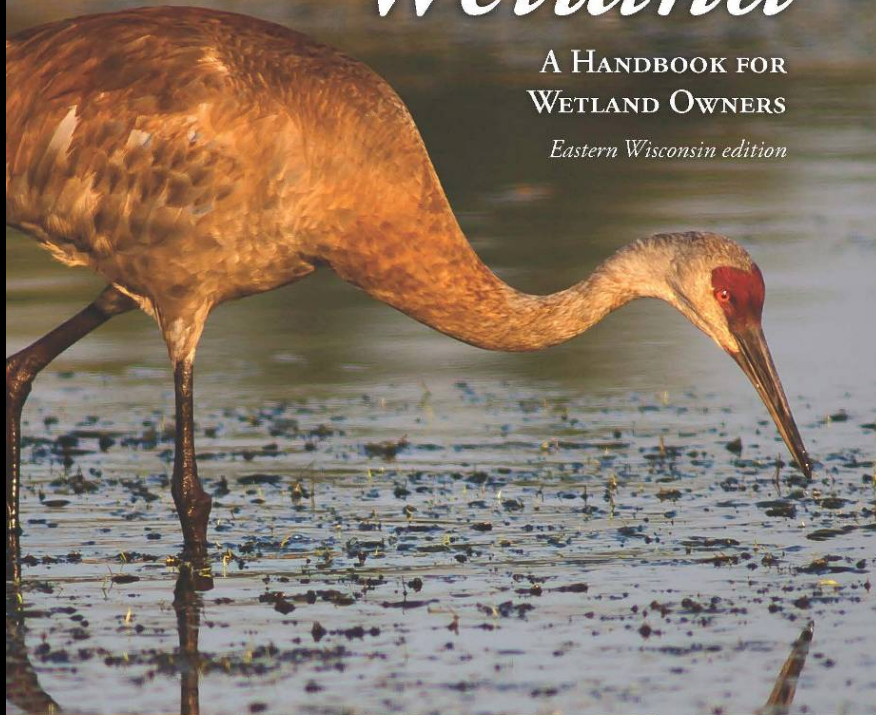
- Is the soil dark brown or black?
- Does the soil feel moist or can you squeeze out water?

Development Review

My Healthy Wetland

A HANDBOOK FOR
WETLAND OWNERS

Eastern Wisconsin edition



*A publication of Wisconsin Wetlands Association
and the Aldo Leopold Foundation*

Educate wetland
landowners on
importance of
preserving wetlands
and potential
management options

Poll Question

What policies do you currently have in place?

- District that specifically considers wetlands
- Requirements for reviewing projects in wetlands (i.e., beyond NR 115/117 reqs).
- Standards for considering impacts of adjacent land uses/activities on wetlands
- Structural setback or vegetated buffer

***What role do local officials,
staff, and others play in
protecting wetlands?***

Plan Commission P&Z Committee



Role – Land use advisors

- May act as first point of contact for development review
- Know who to contact if wetlands are involved (County, DNR, Corps, etc.)
- Consider wetlands in development review (rezones, conditional uses, land divisions)
- Recommend consideration of wetlands in local plans, programs and ordinances

Zoning Board

Role – Land use judge

- Consider wetlands in development review (variances, conditional uses, appeals)
- Inform plan commission and governing body of opportunities to strengthen zoning ordinance



Governing Body



Role – Law makers

- Consider wetlands in development review (rezones, conditional uses, land divisions)
- Revise plans and ordinances to include wetlands
- Direct plan commission and staff to consider wetlands in policy and planning efforts
- Allocate public funds to support wetland planning and protection

Staff

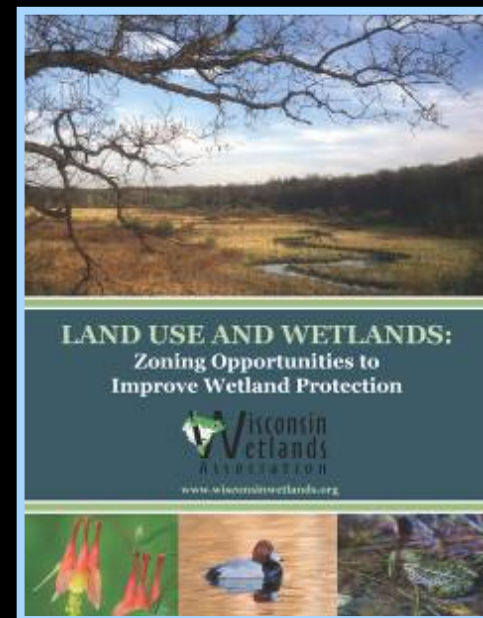
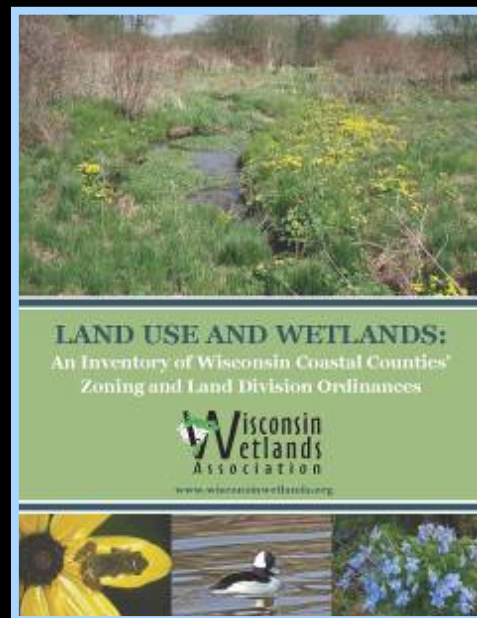


*Role – Administrator,
Enforcer, Technical advisor*

- First point of contact for development review
- Help public understand rationale for regulations, navigate the application process, and select options to minimize wetland impacts
- Provide GIS and technical support to identify and prioritize local wetlands
- Provide technical and funding support for wetland conservation activities

Land Use and Wetlands Publication Series

1. Local Decision Makers' Guide to Wetland Conservation
2. Inventory of Coastal Zoning and Land Division Ordinances
3. Zoning Opportunities to Improve Wetland Protection



www.wisconsinwetlands.org/localgovs.htm

Training for Local Officials

1. Workshops, Handbooks and Newsletter for local Plan Commissions and Zoning Boards
2. Request training from WWA or CLUE

Land Use Tracker,
Summer 2013,
Wetlands Edition



www.uwsp.edu/cnr-ap/clue

Funding Opportunities

Available for planning, policy, and restoration activities.

- DNR Lake/River Grants Program
 - FEMA Hazard Mitigation Grant Program
 - DATCP Farmland Preservation Program
 - WI Coastal Management Program
- *Contact WWA for more ideas*

Discussion Question

What actions will you take as a result of this presentation?

- Recommend consideration of wetlands in planning documents
- Explore feasibility of completing watershed-scale wetland assessment in my community
- Consider wetlands and watershed impacts in development review
- Verify that landowners/developers have identified wetlands
- Initiate policy changes to strengthen consideration of wetlands

Thank You!

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