

## Considerations for Township Adoption of a Shoreland Ordinance

Development of this guidance was led by the Minnesota Department of Natural Resources (DNR) in collaboration with the Minnesota Association of Townships (MAT) and the Minnesota Association of County Planning and Zoning Administrators (MACPZA). This was a multi-year effort between January 2022 and December 2023. This document can also be found as *Appendix A* in the [PZ1000-Planning and Zoning General Overview](#) document at the Minnesota Association of Townships website.

### I. Intro & Purpose

The statutes and rules governing shoreland management are not clear when it comes to townships taking on shoreland zoning authority, particularly with respect to procedures, roles, and responsibilities. Furthermore, unlike when townships take on local administration of other statewide programs, the shoreland management program requires that counties play a role in township ordinance adoption. This guidance has been developed by the Minnesota Department of Natural Resources (DNR) in consultation with the Minnesota Association of Townships (MAT) and the Minnesota Association of County Planning & Zoning Administrators (MACPZA) to provide townships and counties with more clarity on this process. This guidance represents our shared understanding of state law as applied to townships and provides best practices and strategies to help townships understand what they are taking on, avoid litigation risk, and successfully adopt and administer compliant shoreland ordinances.

Specifically, this guidance:

- explains the purpose and importance of shoreland regulations for protecting public waters and shoreland resources,
- identifies what townships must do under state law, clarifies roles and responsibilities of townships, counties, and the DNR, and provides recommended strategies and suggested approaches where there is ambiguity in state law.

### II. Shoreland Zoning Overview

#### A. Shoreland zoning

- The purpose of the Shoreland Management Act is to guide the wise development of shorelands and public waters to preserve and enhance clean water and the natural environment.
- The statewide shoreland rules provide **minimum** shoreland zoning standards for cities and counties. Many cities and counties have adopted standards that are more restrictive than the minimum standards.
- The DNR reviews and approves city and county shoreland zoning ordinances. Township ordinances must be consistent with and at least as restrictive as county ordinances.

- The DNR [Shoreland program](#) webpages contain complete program information.

## B. Township shoreland zoning authority

- Towns are defined as a municipality under MS [462.352](#), Subd. 2 and are thus enabled to adopt zoning under Chapter 462.
- MS [394.33, Subd. 1](#) requires that townships shall not enact or enforce official controls **inconsistent with or less restrictive** than county controls. This requirement applies regardless of whether a township initially took on zoning under MS 366.10 or MS 462.357. **Note:** The Legislature repealed MS 366 in 2022. Going forward, townships can take on zoning authority under MS 462.357.
- Minnesota’s Shoreland rules ([MR 6120.3900, Subp. 4a](#)) specify requirements for shoreland management by townships, including evaluating whether township controls are consistent with and no less restrictive than county controls, as further described in this document.

## III. Initial Adoption of Shoreland Ordinance

### A. Drafting and adopting the ordinance

- 1) **Requirements.** In addition to the [394.33, Subd. 1](#) requirement that townships must enact official controls consistent with and no less restrictive than the county controls, [MR 6120.3900, Subp. 4a](#) provides more specific requirements and procedures for townships. Under the rules, township shoreland ordinances are consistent with county controls only if:

- (a) They cover the same full range of shoreland controls in the county ordinance.

If a township takes on shoreland zoning, it should take on the same full range of shoreland controls in the county ordinance. Picking and choosing certain shoreland provisions and leaving the rest to the county creates a confusing patchwork of regulations for shoreland property owners to figure out.

The rules do not define “full range.” Based on the Statement of Need and Reasonableness (SONAR) document that accompanied the 1989 shoreland rules, the DNR considers the full range of shoreland controls to include anything that regulates uses, activities, and dimensional standards specific to shoreland, including but not limited to:

- Anything that involves structure placement relative to the water or to bluffs as defined by the shoreland rules.
- Lot dimensions and density standards within shorelands.
- Land alteration and vegetation management activities within shorelands.
- Impervious surface or any other development relative to the water and shoreland resources.

This includes standards that regulate shoreland uses and development but are in another section of the county ordinance (not necessarily in a section labeled “shoreland”). For example:

- If a county’s zoning ordinance specifies allowable or prohibited uses in shorelands, those would be part of the full range of shoreland controls.
- If a county’s shoreland ordinance refers to its underlying zoning for uses, lot dimensions and structure setbacks, those would be part of the full range of shoreland controls.
- If a county has shoreland PUD provisions in another part of its ordinance or if a county’s shoreland ordinance refers to PUD provisions elsewhere in ordinance, those would be part of the full range of shoreland controls.
- If a county adopts higher standards to address shoreland development issues, such as OHWL setbacks for RVs, those would be part of the full range of shoreland controls, even though RVs aren’t a type of structure specifically listed in the shoreland rules.

A township is not required to adopt parts of the county ordinance that apply within the shoreland area but are not specific to shoreland. For example, a county-wide noise ordinance or short-term rental provisions are examples of regulations that are NOT specific to shoreland and would not be part of the full range shoreland controls. Townships and counties should consult their attorneys for questions on what constitutes shoreland controls.

**It is important to note that townships may always be more restrictive than the county.**

Townships may choose to have more restrictive dimensional standards as described in item (b) below or to prohibit uses as described in item (c) below.

- (b) They contain dimensional standards at least as restrictive as the county’s.

This typically includes lot area, setback, building height, and impervious surface standards. However, it also includes any “quantifiable” shoreland standard in the county ordinance. Townships may always have more restrictive standards than the county.

- (c) They do not allow land uses that are not allowed under the county ordinance.

If a county prohibits or otherwise does not allow a use in its shorelands, a township cannot allow such use. For example, a township could not allow residential and commercial PUD land uses (high density/intensity uses in shoreland) if the county does not allow them. Conversely, a township can be more restrictive and prohibit these uses and other uses (e.g. feedlots and mining) even when a county has adopted standards more restrictive than state rule requirements to regulate the use.

- (d) Property owners will not be required to obtain similar permits or approvals under both the county and township shoreland ordinances.

While state statute does not explicitly prohibit counties from continuing to administer and enforce zoning controls in a township that takes on zoning, this rule provision is

intended to minimize confusion and burdens on property owners by ensuring that either the county or the township regulates shoreland development, not both.

This does not mean that the county and township couldn't regulate other activities in each other's jurisdiction (i.e., septic regulations) or enter into cooperative agreement to jointly administer land in the shoreland area. Minnesota Rules [6120.3900, Subp. 5](#) encourages entering into agreements with adjacent or otherwise similarly situated local units of government to jointly administer shoreland management controls pursuant to MS [394.32](#) and [471.59](#) to facilitate more logical, consistent, and efficient administration. In these cases, the agreements and the township and county ordinances should be clear about what permits and approvals are required under each.

## 2) Strategy.

The basic strategy for complying with these legal requirements and coordinating with the county is to adopt all shoreland controls that are in the county ordinance, including any higher standards. At the Town Board's discretion, it can adopt even stricter controls.

Wording and structure may differ from the county ordinance, and could include language from the [shoreland model ordinance](#), but the regulatory affect must be the same.

### **Best Practice! - Document all Zoning Responsibilities with County**

It is important to document any sharing of responsibility, permit approval, decision-making, and coordination between a township and county to save time and reduce confusion for local staff and citizens. This documentation can be in the form of a communication plan, memorandum of understanding, joint resolution, Joint Powers Agreement (JPA), or other relevant documentation (see Attachment A – Itasca County and Wabana Township Shoreland Zoning Matrix). It is also very helpful to clearly lay out roles and responsibilities in both the county and township ordinances.

Shared responsibilities and coordination could include shoreland or other zoning, grading and filling, building, and ISTS permits or decision-making, subdivision review and approval, as well as ongoing administration and enforcement. See appendix for example of method for identifying responsibilities.

## B. Developing administrative & enforcement procedures

- 1) **Requirements.** Township must provide administration and enforcement of the ordinance as effective as county implementation in accordance with [MR 6120.3900 Subp. 4a. B.](#)
- 2) **Strategies.** Although the rules do not explain what is meant by administration and enforcement "as effective" as the county implementation, there are several strategies to help ensure that township administration and enforcement is as procedurally effective as the county's:
  - (a) Land use/permit application forms collect the same information as those used by the county.

- (b) Application review and evaluation procedures are consistent with the county's. This includes application completeness determinations, ordinance interpretation, site plan reviews and planning reports. Towns should ask counties for documents specifying internal review and evaluation procedures.
- (c) Monitoring and enforcement procedures and fines are consistent with the county.
- (d) Amount of administrative time allocated to shoreland administration per permit approval or project is similar to that of the county's.
- (e) Township staff should be qualified to administer the ordinance based on the expected needs. This could include hiring a consultant or contracting with county staff. Typical qualifying training and skills include working in local planning or natural resource management, GIS, report writing, and ability to read site plans and contour lines. The DNR provides [free training for local government staff and officials](#) on a variety of shoreland ordinance administration topics.
- (f) Staff should have ready access to training and other resources on an ongoing basis to address the range of issues expected. This could include arrangements with and/or access to county zoning staff, town attorney, DNR staff, and participation in relevant zoning training.
- (g) Responsibilities between the county and township for administration and enforcement is documented.

### C. Demonstrating to county

- 1) **Requirement.** Townships must demonstrate to the county board that the proposed ordinance and its administration is at least as restrictive and effective as the county prior to final adoption by the township in accordance with MR 6120.3900 Subp. 4a. B.
- 2) **Suggested Approach.** State law does not provide a procedure for demonstrating to the county. A well-documented procedure adopted in the county zoning ordinance can help to clarify expectations and reduce risk of future litigation. If there are no specific procedures in place, the township and county attorneys and county planning staff are encouraged to develop procedures to coordinate efforts. Following is one suggested procedure that has worked well in practice:

- (a) Township submits the following documents to county staff and DNR for review and comment:
  - Proposed shoreland ordinance.
  - Other sections of the township ordinance documenting administration and enforcement of shoreland provisions, if not contained in the shoreland ordinance.
  - Documentation explaining administration:
    - Administration responsibility for primary permits/approvals between town and county (building, septic, zoning, variances, CUPs, plats/subdivisions, PUDs).
    - Sample application/review forms to be used.
    - Identification of review and approval processes, if not explicit in ordinance.

- (b) DNR submits comments to township and county.
- (c) County evaluates proposed ordinance and administrative procedures based on the following criteria (same as described above in 2A. and 2. B.) from the shoreland rules:
  - Township ordinance contains the full range of shoreland management provisions contained in the county shoreland controls.
  - The township provisions contain dimensional standards at least as restrictive as those in the county controls.
  - Township controls do not allow land uses in areas that are not allowed under the county's controls.
  - Property owners will not be required to obtain similar permits or approvals under both the county and township ordinance.
  - Township proposed administration and enforcement is at least as effective as county implementation.
- (d) County staff summarize evaluation in memo to County Board and if proposed ordinance and administrative documents meet evaluation criteria, county staff prepare resolution for County Board containing findings restating the criteria. Alternatively, instead of a resolution, the County Board approves other documentation outlining shared responsibility with the township and signifying that the proposed ordinance is consistent with the county ordinance and there is agreement on how to coordinate zoning administration.
- (e) County Board reviews staff memo and votes on resolution or approves other documentation acknowledging that the town has sufficiently demonstrated to the County Board that the proposed ordinance and administration is at least as restrictive as the county's (see Attachment B – Itasca County Resolution)
- (f) Town Board adopts ordinance and begins administration.

#### D. Notification to DNR

- 1) **Requirement.** Townships must send notices of public hearings to the DNR in accordance with [MR 6120.3900 Subp. 4a. B and Subp. 6.](#)
- 2) **Suggested Approach:**
  - (a) Townships notify the DNR of interest in adopting shoreland controls early in the process to help ensure the ordinance meets the shoreland rule requirements as described above.
  - (b) Townships send notification of intent to adopt a shoreland ordinance and all proposed ordinances to the DNR at [ordinance.review.dnr@state.mn.us](mailto:ordinance.review.dnr@state.mn.us).

### IV. Ongoing Administration of Shoreland Ordinances

#### A. Notifications to the DNR

- 1) **Requirement.** Townships are required to send notices of public hearings to consider ordinance amendments, variances, and CUPs to the DNR and County at least 10 days prior to public

hearings. If any of these notices include consideration of plats, proposed plats must be submitted with the notice of hearing. Townships are also required to submit approved ordinance amendments and plats, and final decisions on variances and CUPs within 10 days of final action.

- 2) **Suggested Approach.** Send notices, earlier than 10 days, for ordinance amendments, variances, and CUPs to the DNR and County. Townships should send notification of variances and CUPs, including shoreland PUDs, to their [DNR area hydrologist](#), and send intent to amend shoreland ordinances and all proposed amendments ordinances to the DNR at [ordinance.review.dnr@state.mn.us](mailto:ordinance.review.dnr@state.mn.us) with a copy to the DNR area hydrologist.

#### **B. General/Overall Best Practices for ongoing Administration**

- (a) Townships monitor all notices from counties (under Minn. Statute 394.26) for shoreland ordinance amendments and amend township shoreland ordinances to remain consistent with and no less restrictive than the county ordinance.
- (b) For ordinance amendments, all parties follow the same suggested procedures described above for taking on shoreland zoning for the first time.
- (c) Formalize any joint town/county administration through documentation describing shared responsibility.
- (d) Attend DNR shoreland trainings (consider joint MAT/DNR trainings).
- (e) Post all ordinances, administrative procedures, and forms online.
- (f) Periodically, review ordinance administration procedures and results with county staff to identify areas where improvements in administration are warranted.

The statements in this document do not have the force and effect of law. This document is informational only and should not be interpreted as creating new criteria or requirements beyond what is already established in the relevant statutes and rules. Whether a local shoreland ordinance or zoning decision complies with the relevant statutes and rules will be determined on a case-by-case basis. Nothing in this document should be considered legal advice. Local governments should consult their attorney for specific advice in adopting, amending, and administering ordinances.

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