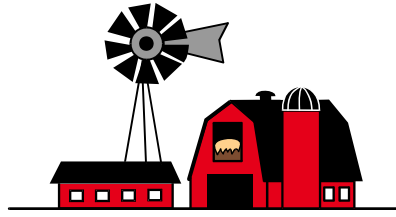


## ***TOWNSHIP COOPERATIVE PLANNING ASSOCIATION***

**4111 11<sup>th</sup> Avenue SW Room 10  
Rochester, MN 55902**

**Phone: (507) 529-0774**



**-TCPA -**

**David H. Meir, Administrator  
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Date: 4/29/2024

To: All TCPA Member Townships

Re: Floodplain and Shoreland Administration Memorandum of Understanding (MOU)

TCPA Members,

The intent of this letter is to explain recent updates to local ordinances regarding Floodplain and Shoreland Management.

Minnesota State Statutes have established that Floodplain and Shoreland ordinances adopted by municipalities are invalid unless they are approved by the Minnesota Department of Natural Resources (DNR). Review of local ordinances and procedures were prompted by a revision to the Olmsted County Flood Insurance Study (FIS) and affected Flood Insurance Rate Maps (FIRMs) completed on September 21, 2023.

TCPA and Olmsted County have cooperated with the DNR to gain approval of a county wide Floodplain and Shoreland Ordinance. This ordinance was adopted by Olmsted County Board of Commissioners on September 5, 2023 as Chapter 3750 – Floodplain and Shoreland Ordinance, under Olmsted County Ordinance No. 23-5.

The attached MOU outlines the relationship between TCPA member townships and Olmsted County.

With these new changes, Townships have the following options regarding Floodplain and Shoreland administration:

- a. Accept the County's ordinance and MOU as presented.
- b. Request revisions to the MOU before accepting the terms and conditions.
- c. Begin the process of adopting new Floodplain and Shoreland ordinances as outlined in attachments 3&4.

Please contact our office to coordinate dates for having this item placed on your agenda for action. We are available to discuss these documents outside of a public hearing, if desired. Please contact our office to schedule an appointment.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jered Staton", is written over the typed name.

Zoning Administrator, TCPA

Attachments:

1. Olmsted County Planning Department Memo
2. Memorandum Of Understanding Between the County of Olmsted and The Township Cooperative Planning Association (TCPA) Member Townships of Olmsted County for Administration and Enforcement of Shoreland and Floodplain Land Use Regulations
3. Considerations for Township Adoption of a Floodplain Ordinance (DNR Guidance)
4. Adopting and Amending Shoreland Ordinances (DNR Guidance)



## **Olmsted County Planning Department**

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# **Memo**

**Date:** April 23, 2024  
**To:** Township Board Representatives  
**From:** Olmsted County Planning Department  
**Subject:** Floodplain & Shoreland Ordinance Administration

### **Summary**

The Olmsted County-Wide Floodplain and Shoreland Ordinance was put into effect on September 21, 2023.

This memo is intended to identify the common Floodplain and Shoreland applications and identify administrative changes under the new ordinance. Where Olmsted County makes the final decision on a permit such as a variance, conditional use permit or a map change, a letter of acknowledgement from the Town Board is required as part of a complete County Application.

This memo also includes alternative Floodplain and Shoreland administration options if a Township is interested in maintaining administration of Floodplain or Shoreland reviews.

Olmsted County has worked with the Township Cooperative Planning Association (TCPA) and recommends signing the Memo of Understanding and repealing any existing Floodplain and Shoreland ordinance to prevent conflict.

If you have any questions, please reach out to the Olmsted County Planning:

Assistant Director/Planning Supervisor-Allison Sosa  
e-mail: [allison.sosa@olmstedcounty.gov](mailto:allison.sosa@olmstedcounty.gov) / Phone: 507-328-6921

Senior Planner & Floodplain Administrator – Kristi Gross  
e-mail: [kristi.gross@olmstedcounty.gov](mailto:kristi.gross@olmstedcounty.gov) / Phone: 507-328-7102

### **Acronyms Defined:**

TCPA- Township Cooperative Planning Commission  
BOA – Board of Adjustment  
OCZBA- Olmsted County Zoning Board of Adjustment  
CUP- Conditional Use Permit

## **Floodplain Administration**

Table 1

<b>Floodplain Administration</b>				
	Pre 2023 Ordinance		After 2023 Ordinance	
Permit Type	Public Hearing required?	Final Permit issued by	Public hearing required	Final permit issued by
Building Permit	No	TCPA	No	TCPA
Grading Erosion Control Permit	No	TCPA	No	TCPA
Variance	Yes	Township BOA	Yes	County OCZBA
Conditional Use Permit	Yes	Township Planning	Yes	County Planning Commission
Zoning Map Amendment	Yes	Township Board	Yes	County Board
Zoning Certificate	No	TCPA	No	TCPA
Floodplain & Shoreland Development Permit	NA	NA	No	County

## **Alternative Floodplain Administration**

A Township may choose to administer its own Floodplain Ordinance. A Township Floodplain Ordinance must be approved by the Mn DNR. The Township must also enroll in the National Flood Insurance Program (NFIP). The program includes specific requirements regarding record keeping, enforcement, and administration. If any of the NFIP mandates are violated, the Federal Emergency Management Agency (FEMA) may suspend the Township's enrollment into the NFIP which will mean that property owners will not be able to obtain or change their flood insurance.

## **Shoreland Administration**

Table 2

<b>Shoreland Administration</b>				
	Pre 2023 Ordinance		After 2023 Ordinance	
Permit Type	Public Hearing required?	Final Permit issued by	Public hearing required	Final permit issued by
Building Permit	No	TCPA	No	TCPA
Grading Erosion Control Permit	No	TCPA	No	TCPA
Variance	Yes	Township BOA	Yes	County OCZBA
Conditional Use Permit	Yes	Township Planning Commission	Yes	Township Planning Commission
Zoning Certificate	No	TCPA	No	TCPA
Floodplain & Shoreland Development Permit	NA	NA	No	County

### **Alternative Shoreland Administration**

A Township may choose to administer its own Shoreland ordinance. A Township Shoreland ordinance cannot be inconsistent with, or less restrictive than, the County Shoreland ordinance. Townships should review MN Rules Chapter 6120.3900, for additional information on Township Shoreland administration.

### **Next Steps**

Townships should repeal any existing shoreland and floodplain regulations to eliminate the possibility of conflicts.

Sign the Memorandum of Understanding.

Reach out to the County Planning Department with any questions.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF  
OLMSTED AND THE TOWNSHIP COOPERATIVE PLANNING  
ASSOCIATION (TCPA) MEMBER TOWNSHIPS OF OLMSTED COUNTY  
FOR ADMINISTRATION AND ENFORCEMENT OF SHORELAND AND  
FLOODPLAIN LAND USE REGULATIONS**

This Agreement is entered into, on the dates when it has been signed below by the parties by and between the County of Olmsted, a political subdivision of the State of Minnesota, hereinafter referred to as "The County" and the Township Cooperative Planning Association (TCPA) member townships located within the County of Olmsted, including New Haven, Kalmar, Cascade, Haverhill, Viola, Salem, Rochester, Dover, Rock Dell, High Forest, Pleasant Grove, Orion, Elmira, and Oronoco bodies corporate and politic within the State of Minnesota, hereinafter collectively referred to as "the Townships".

WHEREAS, Chapter 3750 of the Olmsted County Code of Ordinances has been adopted applying countywide standards for Floodplain and Shoreland regulations; and

WHEREAS, the purpose of this Memorandum of Understanding is to provide an organizational framework for administration of floodplain and shoreland regulations in the unincorporated areas of the County under TCPA jurisdiction which recognizes the Townships' administration of their Township zoning regulations as part of the floodplain and shoreland review process and which avoid duplication of land use regulations. This MOU sets forth the zoning regulations, provisions, responsibilities, and guidelines applicable to Olmsted County and the Townships as part of that process; and,

WHEREAS, the parties possess varying amounts of "shoreland" within their boundaries which is a major asset to local residents and must be protected consistent with shoreland management controls set forth in Minnesota Statutes and Administrative Rules which must be administered and enforcement pursued when violations of these requirements occur; and

WHEREAS, the Minnesota Department of Natural Resources has encouraged the County and the townships to work on shoreland administration and enforcement arrangements that will help ensure that proper shoreland ordinances are in place within the unincorporated areas of the County and that properly trained staff is in place to administer and enforce the shoreland requirements; and,

WHEREAS, as of the date of this MOU, the parties agree the County remains responsible for floodplain regulations and administration since the Townships have not yet had their own floodplain regulations approved by the Minnesota Department of Natural Resources and have not yet enrolled in FEMA's National Flood Insurance Program, but if a township wishes to take on these responsibilities, they may administer and enforce floodplain regulations within their boundaries once the DNR reviews and approves each of the township floodplain ordinances and their administration and enforcement as the designated state agency for the National Flood Insurance Program (NFIP) pursuant to Minn. Stat. Section 103F.121, Subd. 2; and,

WHEREAS, as of the date of the MOU, the parties agree the County remains responsible for administration of Shoreland Regulations and any Township mentioned herein which has taken over responsibility for its planning and zoning administration and passed its own zoning ordinances shall repeal any mention of their own Shoreland Regulations within their Township zoning ordinance except for the processing of conditional use permits which shall first receive a Floodplain and Shoreland Development Permit prior to Township action in accordance with Article 3 of Chapter 3750 of the Olmsted County Code of Ordinances; and,

WHEREAS, as of the date of the MOU, the parties agree the County is solely responsible for Floodplain and Flood Prone Regulations and any Township mentioned herein shall repeal any mention of their own Floodplain or Flood Prone Properties Regulations within their Township Zoning Ordinance; and,

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

#### **ARTICLE 1. LEGAL ASSUMPTIONS UPON WHICH THIS AGREEMENT IS BASED**

Section 1.01 The County has the authority and the duty to prepare and adopt a comprehensive plan for the future development of Olmsted County and official controls in furtherance of the plan which include Chapter 3750 of the Olmsted County Code of Ordinances – the County Floodplain and Shoreland Ordinance, and to amend such plan and controls as may be needed from time to time; and

Section 1.02 The Township has the authority to prepare and adopt a comprehensive plan for the future development of the Township and official controls in furtherance of the plan, and may administer land use controls in floodplain and shoreland areas of the Township subject to the regulatory authority of the Township; and

Section 1.03 Any floodplain and shoreland regulations which may be adopted by the Township must be consistent with and act in furtherance of the goals and objectives of the Township's and the County's Comprehensive Plans and Land Use Plans.

Section 1.04 Any floodplain and shoreland regulations which may be adopted and administered by the Townships shall conform with the provisions of Minnesota Statutes 394.33 Town Powers, which require that no township shall enact or enforce official controls inconsistent with or less restrictive than the standards prescribed in the official floodplain and shoreland controls adopted by the Olmsted County Board.

Section 1.05 Any floodplain and shoreland regulations which may be adopted by the Township must also conform with the provisions of Minnesota Rules 6120.3900, Subp. 4a and Minn. Stat. 103F.121, Subd. 2(d). Adoption process are further detailed in guidance documents provided by MN DNR.

Section 1.06 This agreement is established in order to avoid duplication of floodplain and shoreland land use regulations, to recognize township enforcement of land use regulations in floodplain and shoreland areas when official controls have been properly adopted. In furtherance of these purposes, the following shall apply within this agreement:

## **ARTICLE 2. DUTIES AND CONDITIONS AND DIVISION OF RESPONSIBILITIES FOR THE ADMINISTRATION OF LAND USE REGULATIONS IN FLOODPLAIN AND SHORELAND AREAS**

### **General**

Section 2.00 The Olmsted County Zoning Administrator is defined as the Olmsted County Planning Director or designee.

Section 2.01 A Township Zoning Administrator is defined as TCPA staff designated by the TCPA Board.

Section 2.02 The County hereby agrees that the Township will administer official controls for the underlying zoning district, including but not limited to: Township land use regulations, issuance of zoning certificates, grading and erosion control plans, and minor subdivisions such as metes and bounds subdivisions on properties identified as flood prone, floodplain, or shoreland so long as a Floodplain and Shoreland Development permit as prescribed in Article 3 within Chapter 3750 of the Olmsted County Code of Ordinances is first approved by the County Planning Department. Conditional Use Permits within the Shoreland district may also be approved by the Township so long as a Floodplain and Shoreland Development Permit has been previously approved by the Olmsted County Planning Department as described above. The process for which permit applications are routed between the Township, County and other agencies for review, comment, and final approval is outlined in "Table 1: Olmsted County and Township Floodplain and shoreland Zoning Task Matrix" (Table 1) and "Figure 1: Administrative Process for Shoreland CUP Application" (Figure 1).

Section 2.03 The County agrees to consult with the Township prior to the consideration of any amendment to official controls adopted by the County.

Section 2.04 The Township agrees to consult with the County prior to the consideration of any amendment to official controls adopted by the Township.

Section 2.05 The Township agrees to give notice of public hearings in the manner and to the extent provided in Minnesota Statutes, Section 394.26.

### **Application, Notification and Review**

Section 2.06 All building permits for property located within the special flood hazard area, or the Flood Prone properties district require a Floodplain Development Permit to be issued by the Olmsted County Planning Department before a building permit is issued by the township.

Section 2.07 In the event the County and the Townships determine the permitting procedures or supporting documentation outlined in this MOU requires revisions to reflect agreed upon changes in the processing of planning and zoning applications in floodplain and shoreland areas, the County Planning staff and TPCA staff may amend these documents without the need to seek approval from the County Board or Town Boards.

Section 2.08 Notification to DNR: The County will notify DNR as prescribed in the zoning ordinance for all Shoreland and Floodplain Development permits as well as any required public hearing notice requirements for permits acted on by the County boards and commissions. The Township is responsible for notifying DNR as prescribed in the Ordinance for any Shoreland Conditional Use Permits.

### **Enforcement Activities Collaboration**

Section 2.09 Each township shall work with the County for Zoning Enforcement of all official Township controls within the floodplain and shoreland areas. In certain situations, there may be multiple agencies, (township, county, state or federal) that have overlapping responsibilities related to Enforcement Activities. In those instances where there is a need for a collaborative approach to the enforcement activities, the Township shall engage the appropriate agency, as early as possible, to inform them of potential violations. Olmsted County collaboration agencies may include:

- (a) Olmsted County Soil and Water Conservation District (SWCD) related to wetland violations, public waterway, erosion and grading violations.
- (b) Olmsted County Environmental Resources Department related to County Solid Waste Ordinance violations.
- (c) Olmsted County Public Works Department related to county roadway violations or County Road access permit violations.
- (d) Olmsted County Planning Department related to Shoreland and Floodplain violations.

Based on each violation's unique circumstances, the multiple agencies will determine the best course of action to gain compliance with the ordinances.

### **Shoreland**

Section 2.10 Each township may become primarily responsible for shoreland administration and enforcement in all townships which are parties to this agreement. Townships which are members of the Township Cooperative Planning Association (TCPA) shall use the TCPA staff to provide shoreland administration and enforcement on behalf of the township in that event. Until the approval process set forth in Section 2.12 below has been successfully completed, the County remains responsible for shoreland administration and enforcement in the townships.

Section 2.11 The County's shoreland ordinance is the only ordinance within the unincorporated areas of Olmsted County which has been approved by the DNR as of December 2023. The County's shoreland ordinance shall be the default shoreland ordinance for each township. However, each township may independently decide to adopt their own shoreland management controls pursuant to the process set forth in Minn. Rules Section 6120.3900, Subp. 4a. If any township intends to pursue this option, the township must demonstrate to the County Board that:

- (a) Any controls adopted must not be inconsistent with or less restrictive than the controls in the County's shoreland management ordinance.
- (b) The townships' shoreland ordinances must cover the full range of topics covered by the County's shoreland provisions.
- (c) The ordinances must have dimensional standards at least as restrictive as the County's standards.
- (d) The ordinances cannot allow land uses in shoreland areas not allowed under the County's provisions.
- (e) Any controls provide for administration and enforcement at least as effective as county implementation.
- (f) Any controls to be adopted must follow all of the notification procedures in 6120.3900, Subp.6.
- (g) After adequate shoreland management controls are adopted by a township, property owners must only obtain necessary permits and approvals as required in the township shoreland management controls. Property owners do not have to obtain similar permits or approvals under the County's shoreland controls.

Section 2.12 Once the Township Board has approved the Township's shoreland provisions (in coordination with Olmsted County Staff), the Township shall request a review by the Olmsted County Board of Commissioners. Said review and approval based on the criteria noted above, shall be completed and approved by the Olmsted County Board of Commissioners before any township shoreland provisions shall take effect.

Section 2.13 Under the effective Olmsted County Floodplain and Shoreland Ordinance, Olmsted County is the responsible zoning authority in regard to shoreland and floodplain areas within all Townships that are party to this agreement.

Section 2.14 Olmsted County will provide technical review of all applications associated with shoreland areas in Olmsted County through the use of a Floodplain and Shoreland Development Permit outlined in Section 3.07 of Chapter 3750 of the Olmsted County Code of Ordinances. A technical review of the application compared to the standards within the applicable regulations will be provided for each application. The technical review would include:

- (a) Application of Chapter 3750 of the Olmsted County Code of Ordinances.
- (b) Specific knowledge as a certified administrator.
- (c) Coordination of comments from the appropriate DNR representatives.

Section 2.15 The technical review information provided to the Township Zoning Authority is intended to be incorporated into its staff reports and recommendations to the appropriate Township. This typical review process would not limit the request for additional information on other topics within the Shoreland area, when needed. A shoreland application review, administration or enforcement action will follow the process set forth in "Figure 1".

- (a) Building Permit applications within shoreland areas must first obtain an Olmsted County Floodplain and Shoreland Development permit prior to submittal of the building permit or zoning certificate to the Township Zoning Authority.
- (b) The Townships will remain responsible for building code administration and enforcement for structures located in shoreland areas within the townships.
- (c) "Table 1" identifies various permits and responsibilities that may arise within the Township's shoreland or floodplain areas.

## **Floodplain**

Section 2.16 Each township may become primarily responsible for floodplain administration and enforcement in all townships which are parties to this agreement if they have completed the requirements set forth in Minn. Stat. Section 103F.121, Subd. 2. Townships which are members of the Township Cooperative Planning Association (TCPA) shall use the TCPA staff to provide floodplain administration and enforcement on behalf of the township in that event. The County remains primarily responsible for floodplain administration and enforcement in the townships until those requirements have been completed.

Section 2.17 When a Township chooses to administer a floodplain ordinance, within their jurisdiction, they are required to receive, review and approve the floodplain ordinance provision from Olmsted County to confirm conformance with Minnesota Statutes 394.33.

Section 2.18 When a Township chooses to administer a floodplain ordinance, within their jurisdiction, they are required to receive prior approval of the floodplain ordinance provisions from the Minnesota Department of Natural Resources (MNDNR).

Section 2.19 A Township which administers a floodplain ordinance and complies with the requirements of FEMA shall be required to enroll in and remain in good standing with the National Floodplain Insurance Program (NFIP) in order to continue floodplain administration.

Section 2.20 Each township that has approved floodplain ordinance and is enrolled in NFIP shall be primarily responsible for floodplain administration and enforcement. Townships which are members of the Township Cooperative Planning Association may use that staff to administer and enforce such regulations.

Section 2.21 Olmsted County will provide a technical review in the form of a Floodplain and Shoreland Development permit prior to all township issued non-public hearing applications associated with floodplain areas in Olmsted County. A technical review of the application compared to the standards within the applicable regulations will be provided for each application. The technical review would include:

- (a) Application of Chapter 3750 of the Olmsted County Code of Ordinances,
- (b) Specific knowledge as a certified administrator.
- (c) Coordination of comments from the appropriate DNR representatives.

Section 2.22 The technical review information provided to the Township Zoning Authority is intended to be incorporated into its staff reports and recommendations to the appropriate Township. This typical review process would not limit the request for additional information on other topics within the floodplain area, when needed. A floodplain application review, administration or enforcement action will follow the process set forth in the flow chart found below labeled "Figure 1".

Section 2.23 Building Permit applications within floodplain areas must first obtain an Olmsted County Floodplain and Shoreland Development permit prior to submittal of the building permit or zoning certificate to the Township Zoning Authority.

Section 2.24 The townships will remain responsible for building code administration and enforcement for structures located in floodplain areas within the townships.

### **Supporting Exhibits**

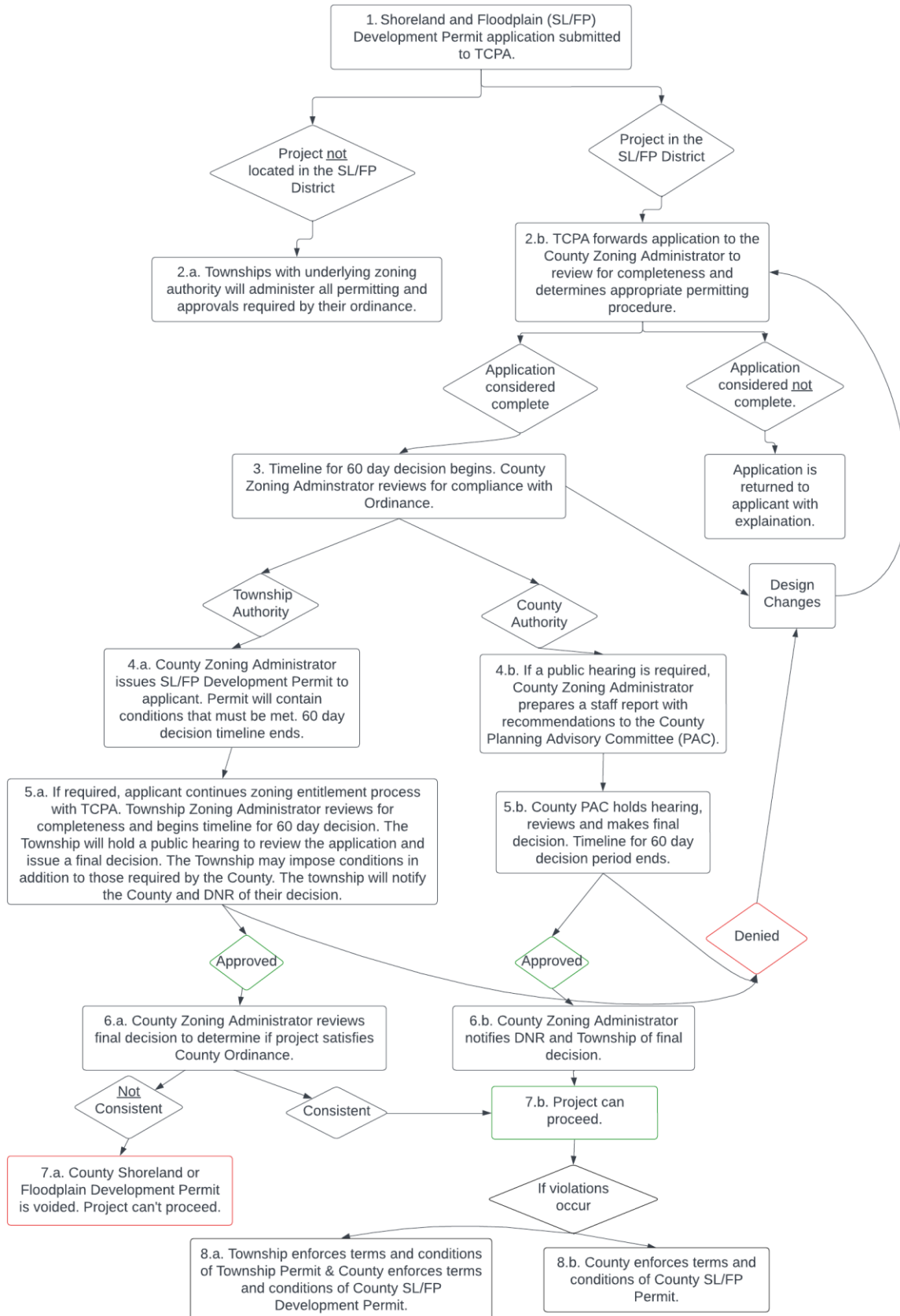
Section 2.25 "Table 1" identifies various permits/issues that may arise within the Town's shoreland/floodplain overlay district, and which agency is the responsible zoning authority. The table applies to all townships which are a party to this agreement.

Section 2.26 "Figure 1" identifies the process an application will follow to seek approval once submitted to the agency with jurisdiction.

Table 1: Olmsted County and Township Floodplain and Shoreland Zoning Task Matrix

<b>Zoning Task</b>	<b>Floodplain Shoreland Development Permit</b>	<b>Public Hearing Held by</b>	<b>Final Authority</b>
<i>Grading, filling, shoreline alteration or other non-building development permits</i>	Required	N/A	Township
<i>Erosion and sediment control permit</i>	Required	N/A	Township
<i>Building permits, and compliance with state building code.</i>	Required	N/A	Township
<i>Compliance with shoreland and floodplain related building placement and design standards (setbacks, minimum floor elevations, floodproofing)</i>	Required	N/A	Township
<i>Accessory structure permits (when building permit is not required)</i>	Required	N/A	Township
<i>Conditional Use Permits Shoreland</i>	Required	Township	Township
<i>Interim Use Permits Shoreland</i>	Required	Township	Township
<i>Conditional Use Permits Floodplain</i>	N/A	County	County
<i>Interim Use Permits Floodplain</i>	N/A	County	County
<i>Variances applicable to FP/SL Ordinance</i>	N/A	County	County
<i>Subdivisions/Plats (including required lot size/width standards in shoreland)</i>	Required	Township	Township
<i>Metes and Bounds Subdivision</i>	Required	N/A	Township
<i>Shoreland Planned Unit Developments (PUDs)</i>	Required	Township	Township
<i>Text Amendments (Town ordinance)</i>	Required	Township	Township
<i>Text Amendments (County ordinance)</i>	Required	County	County
<i>Septic Permits</i>	N/A	Township	Township
<i>Well Permits</i>	N/A	County	County
<i>Nonconforming uses and structures</i>	Required	Township	Township
<i>Rezone/Zoning Map Amendment</i>	N/A	County	County
<i>Appeals to Shoreland Zoning Decisions</i>	N/A	County	County
<i>Violation Enforcement</i>	N/A		County

Figure 1: Administrative Process for Shoreland and Floodplain Permit Application



## Considerations for Township Adoption of a Floodplain Ordinance

### I. Intro & Purpose

Taking on floodplain zoning authority is a big responsibility and has implications for a community's flood risk and the ability of citizens to purchase flood insurance through the National Flood Insurance Program (NFIP). There are many layers of federal and state law, regulations, and technical requirements that local governments must understand and comply with, which can be confusing and complex. 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 their roles and responsibilities. This guidance represents our shared understanding of federal and state law as applied to townships and provides best practices to help townships understand what they are taking on, avoid litigation risk, and successfully adopt and administer compliant floodplain ordinances consistent with the NFIP.

Specifically, this guidance:

- explains the purpose and importance of floodplain regulations for protecting communities from flood risk,
- identifies what townships must do under state law, and
- clarifies roles of townships, counties, and the DNR and provides recommended strategies and suggested approaches where there is complexity or ambiguity in federal and state law.

This guidance does not constitute legal guidance and does not have the force and effect of law. Townships and counties are encouraged to contact their legal staff with specific questions.

### II. Floodplain Program Overview

#### A. Floodplain Management Regulations

Minnesota Statutes establishes policy for floodplain management in Minnesota – notably to ensure sound land use development in floodplains which will minimize loss of life and threat to health, and reduce the private and public economic loss caused by flooding.

See [DNR Floodplain Management page](#) for more information. Questions can be directed to [floodplain.dnr@state.mn.us](mailto:floodplain.dnr@state.mn.us).

#### B. Township Floodplain Zoning Authority and Regulatory Framework

##### 1) Ordinances

- Floodplain ordinances adopted by “local government units” are invalid unless they are approved by the DNR ([MS 103F.121, Subd. 2\(d\)](#)). As such, any township that does not have an enforceable ordinance does not have floodplain zoning authority. The County would therefore maintain authority.
- MS [394.33 Subd. 1](#) requires that townships shall not enact or enforce official controls **inconsistent with or less restrictive** than county controls.

- Under [44 CFR 64.4](#), any community that chooses to exercise floodplain zoning authority must adopt an ordinance complying with all state and federal standards.
- 2) **National Flood Insurance Program (NFIP)**
  - The NFIP is managed by FEMA, and is made up of four intertwined components:
    - floodplain management (regulations),
    - flood hazard modeling and mapping,
    - flood insurance, and
    - mitigation grants
  - FEMA wants all communities to participate in the NFIP. In order for residents to be eligible for flood insurance and for the community to be eligible for mitigation grants, a community must adopt and enforce minimum floodplain standards and be enrolled in the NFIP. Those communities are solely responsible for floodplain management for lands under their jurisdiction. Responsibility cannot be shared between communities (i.e., between a township and a county).
  - For those townships that do not exercise floodplain authority, their participation in the NFIP is extended to them due to the County's enrollment in the NFIP.
  - The primary situation in which a township would be considered "non-participating" by FEMA is if the county recognizes them to be completely independent, and the township does not have a DNR-approved ordinance. Impacts for non-participating communities:
    - Disaster assistance – not eligible for many forms of post-disaster assistance
    - NFIP flood insurance not available
    - Public waters work permits may not be granted (see 103G.245, Subd. 9 – Projects affecting floodwaters)

### **III. Procedures for Floodplain Ordinance Adoption**

#### **A. Drafting and adopting the ordinance**

- Townships must adopt ordinances satisfying all state and federal requirements (i.e., all or none). Due to the way in which FEMA recognizes communities, there is no opportunity to share enforcement authority under a floodplain ordinance.
- DNR will provide assistance to any townships interested in ordinance adoption and NFIP enrollment. DNR would typically recommend townships adopt a variation of the most recent version of the model floodplain ordinance, available [here](#) (as opposed to adoption of the county's ordinance). DNR will help communities incorporate any unique county standards to satisfy MS 394.33.
- NFIP enrollment is required if township has adopted an ordinance and is exercising floodplain zoning authority, per 44 CFR 64.4. DNR Floodplain Program staff will provide assistance with this process.

### **IV. Ongoing Floodplain Ordinance Administration**

#### **A. Administration Requirements**

Townships must fully comply with administrative requirements or their standing in the NFIP is jeopardized. This includes:

- A local permit is required for all development within floodplains (e.g., buildings, including accessory and agricultural buildings; earth moving or filling and grading; ditch repair, improvement or reestablishment; and bridge and culvert construction, repair, replacement or modification, including new and in-kind replacements).

- Engineering analysis, when applicable.
- Enforcement and ensuring compliance, including addressing violations to floodplain standards.
- Recordkeeping – including documenting as-builts, documenting substantial damage and improvements

## **B. Monitoring**

- All communities exercising floodplain authority are subject to regular DNR monitoring and inspections/audits on a 5-year cycle to ensure compliance as required by FEMA (detailed in [FEMA Publication F-776](#)) and Minnesota Statutes ([103F.135](#)).

## **C. DNR Notification Requirements**

- Townships are required to submit ordinances to the DNR for review and approval prior to adoption. The DNR shall approve or disapprove the ordinance within 120 days of receipt.
- Townships are required to send notices to consider variances and CUPs to the DNR at least 10 days prior to public hearings. A copy of all decisions must be sent to the DNR within 10 days of final action.

## **D. Best Practices**

- Township should have administrative capacities to administer the ordinance, and have access to a contracted engineer or work through county staff. Staff should have the skills to review site plans, flood maps, contour lines, and other best available data.
- Township administrators should utilize available resources:
  - Townships should attend DNR and FEMA floodplain management trainings for LGUs (posted [here](#)).
  - Townships may attend DNR/FEMA Floodplain office hours as needed.
  - Subscribe to [Water Talk Newsletter](#).
  - Engage DNR Area Hydrologist and Central Office floodplain program staff ([floodplain.dnr@state.mn.us](mailto:floodplain.dnr@state.mn.us)).

# **V. Considerations/Implications of Townships taking on Floodplain Zoning**

## **A. FEMA Oversight**

- FEMA treats townships who exercise floodplain zoning authority the same as any other “community.”
- Townships recognized as a “community” by FEMA are formally identified in FEMA’s [Community Status Book](#). Only those townships that have (or had) exercised floodplain zoning authority are identified as follows:
  - “Participating Communities.” The first 14 pages of this document identifies counties, cities, and townships, that have a DNR-approved floodplain ordinance and are formally enrolled in the NFIP.
  - “Non-Participating Communities.” The last two pages of this document identify counties, cities, and townships that have FEMA-mapped flood risk and are “non-participating” and/or “sanctioned” by FEMA. At some point, the townships listed here have been identified as independent or separate from the county by FEMA, and were sanctioned because they were not in compliance with floodplain management requirements and did not have DNR-approved floodplain ordinances).
- Townships not recognized as a “community” by FEMA are not identified in the Community Status Book. These townships have never exercised floodplain zoning authority.

- These townships are effectively enrolled in the NFIP through the county, and the county maintains floodplain zoning authority within the townships.
- There may be townships in the state that have been operating independently or separate from the county, but are not yet enrolled in the NFIP or recognized by FEMA as one that exercises floodplain zoning authority. If those townships do not yet have a DNR-approved ordinance, then that ordinance is not effective. As such, the county maintains authority and is responsible for ensuring all floodplain development within the township meets the county's floodplain regulations, including issuing permits and record-keeping. If coordination between county and township is not occurring, it needs to be re-established. Otherwise, the townships would not be in compliance and they would need to be identified by FEMA as "non-participating."

## **B. FEMA mapping implications**

Townships identified in the FEMA Community Status Book must be given an opportunity to participate in the map update process, including notifications of meetings and formal appeal periods, and the community boundaries must be shown on FEMA preliminary and final maps (whether they are enrolled in the NFIP or not).

When FEMA discovers townships that exercise floodplain zoning authority during the map update process, it leads to delays in the map update for all communities in the county. Revised preliminary map panels must be produced to identify these townships, and extra community meetings and appeal periods must be provided for these townships.

## **C. Post-disaster roles and responsibilities for NFIP-enrolled communities**

- The floodplain zoning authority is responsible for making substantial damage determinations and issuing post-disaster permits for repairs to homes and businesses.
- Nothing changes for assessing and reporting damages to public facilities for the purposes of obtaining Public Assistance. Townships are already engaging with County Emergency Managers in post-disaster situations, and they will continue to operate the same way.

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.

**Contributors.** The following individuals contributed to this work:

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# Adopting and Amending Shoreland Ordinances

Local governments with shoreland must have a shoreland ordinance that complies with the state's shoreland rules (<https://www.revisor.mn.gov/rules/?id=6120>). .

The DNR reviews local shoreland ordinances for compliance with the state shoreland rules.

The DNR uses the shoreland model ordinance to evaluate new ordinances and amendments. The model is updated regularly to reflect statute and rule changes. Communities interested in adopting or amending a shoreland ordinance should use the [shoreland model ordinance \(/waters/watermgmt\\_section/shoreland/mod-ord.html\)](/waters/watermgmt_section/shoreland/mod-ord.html).

## Instructions for Local Governments

This process is designed so that local governments obtain conditional DNR approval of proposed ordinances or amendments in time for the public hearing. Conditional approval means that the proposed ordinance or amendment is mostly compliant with the rules and only a few relatively minor changes may be needed before the ordinance is adopted by the board or council.

If the ordinance or amendment has major deviations from the rules or includes other complexities, work with your [area hydrologist \(PDF\)](https://files.dnr.state.mn.us/waters/area_hydros.pdf) ([https://files.dnr.state.mn.us/waters/area\\_hydros.pdf](https://files.dnr.state.mn.us/waters/area_hydros.pdf)) to resolve issues ahead of time. Concerns must be resolved before the DNR will issue conditional approval.

Local governments can expedite conditional approval by using the [shoreland model ordinance \(/waters/watermgmt\\_section/shoreland/mod-ord.html\)](/waters/watermgmt_section/shoreland/mod-ord.html) language for new ordinances and amendments and working with the DNR early in the process.

## Step-by-Step Instructions

[Expand all sections](#)

### + Step 1: Notify the DNR of Intent to Adopt or Amend an Ordinance (Optional)

Informing the DNR gives us a chance to schedule time to help your effort stay on schedule.

1. Complete the Notice of Intent to Adopt or Amend form (DOC) ([https://files.dnr.state.mn.us/waters/watermgmt\\_section/shoreland/ordinance-notice.docx](https://files.dnr.state.mn.us/waters/watermgmt_section/shoreland/ordinance-notice.docx)).
2. Email your materials to the DNR using the submission button below.

### + Step 2: Request DNR Preliminary Review of a Rough Draft Ordinance/Amendment (optional)

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The preliminary review is intended to help local governments develop “near final” language ready for conditional approval. The DNR’s involvement in this phase is especially important if the community will be adopting a new ordinance, making comprehensive changes to an existing ordinance, or requesting to deviate from shoreland provisions through the implementation flexibility process ([/waters/watermgmt\\_section/shoreland/provisions.html](/waters/watermgmt_section/shoreland/provisions.html)). The DNR will comment on draft language, identify issues early, and provide suggestions on language for DNR approval.

To request a DNR preliminary review of a rough draft ordinance/amendment, submit the following items as soon as the proposed ordinance is ready:

1. Proposed ordinance or amendment as a Word document:
  - showing all additions, deletions, and other changes from the model shoreland ordinance or the existing ordinance, and
  - explaining why provisions have been added, deleted, or changed using comments in the Word document. Clarifying and explaining changes will reduce back-and-forth communications and expedite the review.
2. Email explaining:
  - what you are trying to accomplish with the new ordinance or amendment,
  - proposed offsetting higher standards, if requesting implementation flexibility, and
  - anticipated schedule for public meetings, public hearings and adoption.

**Note:** The DNR may require a checklist, depending on the complexity of the ordinance or amendment.

Send an email, along with your proposed ordinance or amendment to the DNR using the submission button below.

### + Step 3: Request DNR Conditional Approval Review of Near Final Draft Ordinance/Amendment (Required)

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The DNR will review proposed ordinances and amendments and provide comments for review at public hearings. The DNR will provide conditional approval if the ordinance or amendment is substantially compliant with the shoreland rules. If they deviate significantly, the DNR will suggest changes, but will not provide conditional approval until the changes have been made.

To request a DNR conditional review of a near final draft, submit the following items at least 30 days before a public hearing.

### **New Ordinance**

1. Complete the New Ordinance Checklist (DOC).  
([https://files.dnr.state.mn.us/waters/watermgmt\\_section/shoreland/ordinance-new-checklist.docx](https://files.dnr.state.mn.us/waters/watermgmt_section/shoreland/ordinance-new-checklist.docx)).
2. The proposed ordinance as a Word document showing all additions and deletions from the model shoreland ordinance.
3. Notices of public hearings to consider the ordinance (must be submitted to the DNR at least 10 days before the public hearing, not 30 days).
4. Email your materials to the DNR using the submission button below.

### **Amendment to an Existing Ordinance**

1. Complete the Amendment Checklist. (DOC).  
([https://files.dnr.state.mn.us/waters/watermgmt\\_section/shoreland/ordinance-amendment-checklist.docx](https://files.dnr.state.mn.us/waters/watermgmt_section/shoreland/ordinance-amendment-checklist.docx)).
2. Proposed amendments as a Word document showing all additions and deletions.
3. A notice of public hearings to consider the ordinance (must be submitted to the DNR at least 10 days before the public hearing, not 30 days).
4. Email your materials to the DNR using the submission button below.

An amendment to an existing ordinance may require a comprehensive review of the entire shoreland ordinance for compliance with state rules. This will only occur in select cases where:

- the organization differs significantly from when it was last approved by the DNR,
- a spot check reveals deviations from minimum standards with no record of DNR approval, or
- there is strong citizen concern about non-compliance of the existing ordinance.

In these cases, the DNR will notify the local government immediately and work with them to make any necessary changes to achieve compliance.

### **+ Step 4: Hold Public Hearing and Revises Ordinance/Amendment Consistent with DNR Conditions (Required)**

The local government holds a public hearing to consider the ordinance or amendment. The DNR comments and conditional approval letter are read and/or entered into the public record. The ordinance or amendment is revised according to DNR conditions of approval before adoption.

### + Step 5: Adopt Ordinance/Amendment and Request DNR Final Approval of Adopted Ordinance/Amendment (Required)

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The local government governing body adopts the ordinance or amendment and submits the final adopted ordinance to the DNR. The DNR will review the ordinance or amendment adopted by the governing authority for consistency with that receiving conditional approval. If they are consistent, the DNR will send a final approval letter to the local government and the ordinance or amendment will be effective.

To request DNR review and final approval of adopted ordinance or amendment, submit the following items within 10-days of adoption.

1. Adopted ordinance or amendment signed and dated by chief elected official (PDF document).
2. Summary of changes made to the ordinance or amendments that deviate from conditions of approval, if any.
3. Completed Ordinance Processing Checklist (PDF) ([https://files.dnr.state.mn.us/waters/watermgmt\\_section/shoreland/ordinance-processing-checklist.pdf](https://files.dnr.state.mn.us/waters/watermgmt_section/shoreland/ordinance-processing-checklist.pdf)), and copies of all items required on the checklist, including affidavit of publication.
4. Email your materials to the DNR using the submission button below.

## Submit Materials

Email all proposed draft ordinances/amendments, checklists, public hearing notices, and all email correspondence about this amendment using the submission button below. Please copy your area hydrologist (PDF) ([https://files.dnr.state.mn.us/waters/area\\_hydros.pdf](https://files.dnr.state.mn.us/waters/area_hydros.pdf)).

Submit Your Materials (<mailto:ordinance.review.dnr@state.mn.us>)

## Resources

### Local Government Requirements for Shoreland Ordinances

- Minnesota statutes ([103F.215 \(https://www.revisor.mn.gov/statutes/?id=103F.215\)](https://www.revisor.mn.gov/statutes/?id=103F.215) and [103F.221 \(https://www.revisor.mn.gov/statutes/?id=103F.221\)](https://www.revisor.mn.gov/statutes/?id=103F.221)) and Minnesota rules

([6120.2800, Subd. 1](#) (<https://www.revisor.mn.gov/rules/?id=6120.2800>). ) requires counties and municipalities with shoreland within their boundaries to have a shoreland ordinance in substantial compliance with the state shoreland standards.

- Minnesota statutes ([414.033 Subd. 11](#) (<https://www.revisor.mn.gov/statutes/?id=414.033>). ) requires municipalities that annex shoreland to adopt a shoreland ordinance for that area or amend the existing shoreland ordinance to include that area.
- Minnesota statutes ([394.33](#) (<https://www.revisor.mn.gov/statutes/?id=394.33>). ) requires townships that take on zoning authority to have a shoreland ordinance that is at least as restrictive as the county shoreland ordinance. Towns are defined as a municipality per Minnesota statute ([462.352 Subd. 2](#) (<https://www.revisor.mn.gov/statutes/?id=462.352>). )

## Questions

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- [Matt Bauman](mailto:matthew.bauman@state.mn.us) (<mailto:matthew.bauman@state.mn.us>) , Floodplain and Shoreland Planner, 651-259-5710

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### Questions?

Call 651-296-6157 or 888-646-6367

Email us: [info.dnr@state.mn.us](mailto:info.dnr@state.mn.us)

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