

Permitting Mooring Facilities & Determining the Number of Mooring Spaces in Shorelands

Purpose

The purpose of this document is to help local governments understand applicable permitting requirements and standards for mooring facilities, including marinas, consistent with local shoreland ordinances and state laws aimed at minimizing impacts to Minnesota’s public waters. This includes determining the number of mooring spaces for residential and commercial uses as regulated under Minnesota’s Shoreland Rules and Public Waters Rules. This document cites relevant rule provisions and assumes that local shoreland ordinances are consistent with the state shoreland rules.

Resource Concerns with Mooring Facilities & Too Many Moorings Spaces

Intensive shoreland development negatively affects lake and river ecosystems. Large docks and platforms with many mooring spaces shade out aquatic plants and eliminate habitat critical for fish spawning, feeding, and refuge from predators. Propellers in shallow areas also disturb sediment, increase turbidity, release phosphorous, and destroy critical fish habitat. Additionally, large docks and platforms privatize public space. The surfaces of Minnesota’s waters are available to any member of the public with legal access to the water body.



Large docks, platforms and mooring facilities can have significant negative impacts on fish habitat.

Overview

Determining when permits are required and what standards apply for mooring facilities and marinas can be complex and confusing. Several different state and local requirements apply, and what applies depends on the type of land use that is generating the demand for mooring spaces. This table can help:

If the demand is generated by:	Then:
Residential subdivisions, residential shoreland PUDs, or commercial shoreland PUDs (campgrounds, resorts or other lodging facilities)	# of mooring spaces is regulated by the local shoreland ordinance; DNR permit generally not required
Restaurants, bars, other non-lodging commercial uses, or other non-residential uses	# of mooring spaces is regulated by local ordinances, unless mooring facility requires a DNR permit (situations requiring a DNR permit are described below)
A marina	# of mooring spaces is regulated through the DNR and local zoning permitting process; DNR permit and local permit required

DNR Permits for Mooring Facilities

A DNR public waters permit is generally not required for the construction, reconstruction or installation of docks, floating or temporary structures, lifts, or **mooring facilities** under Minnesota Rules 6115.0210 Subp. 4, provided the facility:

- is not a hazard to navigation, public health, safety and welfare (local governments should contact the DNR if they are unsure about this standard);
- allows the free flow of water beneath it;
- is not intended to be used as a marina (marinas DO require a DNR permit as explained below);
- is consistent with local regulations, if any;
- length is limited to that necessary to accomplish its intended use, including reaching navigable waters;
- width, other than lifts, is not more than eight feet, and is not combined with other similar structures so as to create a larger structure; and
- is only placed on rock filled cribs if located on waters where the bed is predominantly bedrock and incapable of accepting pilings.

A **mooring facility** is a concentrated area intended solely for the mooring or containment of seven or more watercraft or seaplanes by docks, mooring buoys, or other means.

If the above standards are not met, a DNR permit is required. More specific local standards are often helpful to minimize neighbor conflicts. Local governments have the authority under Minnesota statutes, Sections 86B.205 and 459.20 to regulate the construction of these facilities.

DNR Permits for Marinas

A DNR permit is required for **marinas**, and the permit requires consistency with local zoning. The area must be zoned to allow marinas, or the local government must grant a land use permit for the marina. Also, as part of permitting, DNR must find that the marina is sized consistent with the demand for mooring spaces in the area and the watercraft to be served.

Standards for Marinas & DNR-Permitted Mooring Facilities

For marinas and in situations where a DNR permit is required for a mooring facility, the following standards and criteria must be met:



A marina is a commercial mooring facility that provides spaces for seven or more watercraft or seaplanes, **AND** at least one additional ancillary service such as fuel/bait/concession sales, boat repairs, boat rental, sewage pump out, or mooring space rental.

Under Minnesota Public Water Rules 6115.0210, Subp. 5, facilities must meet the following general criteria:

- Be the minimal impact design solution for the need, as compared to all reasonable alternatives.
- Minimize encroachment, change, or damage to the environment, particularly the ecology of the waters.
- Be consistent with floodplain, **shoreland**, and wild and scenic rivers management standards and ordinances (see text box below addressing shoreland standards).

- Mitigate adverse effects on the physical or biological character of the waters through feasible and practical measures.
- Be consistent with water and related land management plans and programs of local and regional governments, provided they are consistent with state plans and programs.

Under Minnesota Rules 6115.0211, Subp. 4a, facilities must meet the following specific criteria:

- Be designed in a compact fashion so as to blend with the surrounding shoreline and so that all mooring and maneuvering activities can be normally confined to an area bounded by the property lines as extended into public waters while minimizing the surface area occupied in relation to the number of watercraft to be served.
- Minimize encroachment waterward of the OHWL.
- For facilities more than eight feet in width, justification that the proposal is the minimal impact solution for the need, considering all alternatives.
- And, for public mooring facilities that are NOT marinas:
 - they must be available for use by the general public,
 - the local government must approve with a resolution stating the public interests in providing the facility, and
 - they must be appropriately sized, for public mooring, consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

A DNR permit is also needed when dock platforms exceed square footage size limits. See [DNR's docks and access in public waters fact sheet](#) for information on dock and platform size limits. A permit is also needed for excavation in public waters. In these cases, permits are only approved if the community is covered by a DNR-approved shoreland ordinance (Minnesota Statutes, Section 103G.245 Subd. 8 (1)).

Demand for mooring spaces and consistency with shoreland rules. When permitting mooring facilities (including marinas) associated with new or expansions to residential and commercial shoreland PUDs, the DNR will evaluate the number of proposed new and existing (if applicable) mooring spaces for consistency with the number of mooring spaces allowed by residential and commercial shoreland PUD provisions in the local shoreland ordinance (or state rules if the local shoreland ordinance does not contain PUD provisions). Project proposers will need to demonstrate a realistic and plausible demand for all (existing and new) mooring spaces over and above that allowed by the residential and commercial shoreland PUD provisions.

Shoreland Ordinance Administration

Regardless of whether a DNR permit is needed for a mooring facility, local governments must administer applications for mooring facilities and determine the number of spaces consistent with their shoreland ordinance. The local shoreland ordinance provides two methods for regulating mooring spaces: 1) controlled access lots, and 2) through shoreland PUDs/CUPs.

Controlled Access Lots

Mooring spaces for the non-riparian lots of a subdivision are regulated through the controlled access lot provisions in the shoreland rules (Minnesota Rules 6120.3300 Subp. 2. E.). A controlled access lot can only be created during the subdivision process and must meet the minimum lot size for a riparian lot. Six

mooring spaces are allowed with a standard controlled access lot, however, additional mooring spaces may be added with a proportionate increase in the width of the controlled access lot, based on a formula in the rules.

Shoreland PUDs

The number of mooring spaces for residential PUDs and for campgrounds, resorts and other lodging facilities (commercial PUDs) is limited to the number of dwelling units, camp sites or lodging rooms allowed in the first or riparian tier. The shoreland rules (Minnesota Rules 6120.3800) describe how to define the first tier and determine the number of dwelling units, camp sites or lodging rooms allowed in the first tier. If local governments do not have DNR-approved shoreland PUD standards in their shoreland ordinance, the DNR must approve shoreland PUDs for consistency with the shoreland rules (Minnesota Rules 6120.3800 Subp. 1).

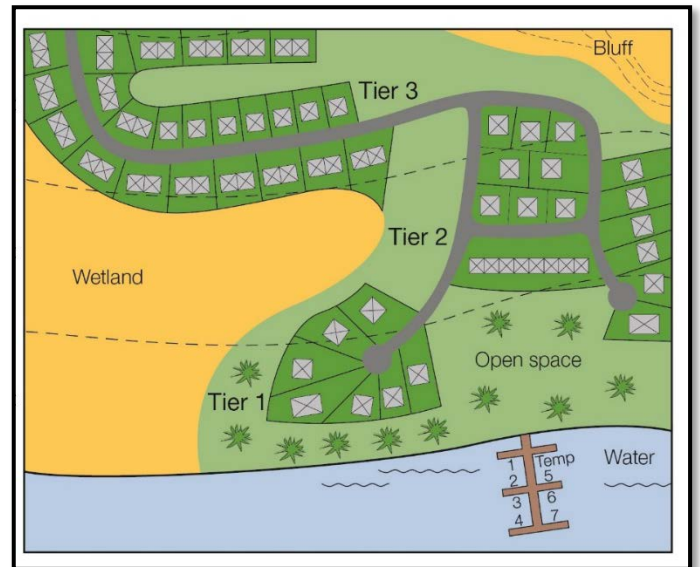
Shoreland PUDs must be processed as a Conditional Use Permit (CUP). Challenges often occur when developers request more mooring spaces than allowed in these situations:

1. New residential or commercial shoreland PUDs/CUPs
2. Expansions to existing residential or commercial shoreland PUDs/CUPs, including existing mooring spaces. In some cases, the previously approved CUP allowed more mooring spaces than allowed by the current shoreland ordinance.
3. Expansions to existing residential developments, campgrounds, resorts or hotels that were not approved with a CUP. These usually existed before the local shoreland was adopted and are considered legal nonconformities. In many cases, these developments were approved with more mooring spaces than allowed by the current shoreland ordinance.

In all of these cases, the total number of mooring spaces cannot exceed that allowed by the shoreland PUD provisions in the ordinance, except for spaces determined to be legal nonconformities. Existing mooring spaces must be included in the assessment of expansions to existing residential and commercial PUDs. All expansions to residential or commercial PUDs, including the number of mooring facilities, must be approved through a CUP, whether or not the existing development was initially approved with a CUP. The number of allowed mooring spaces should always be documented as a condition of approval in the approved CUP.

Developers seeking more mooring spaces than allowed by the shoreland PUD provisions generally have these options:

- Seek a variance to deviate from the number of mooring spaces allowed in the ordinance. The DNR discourages this approach and will often comment on the variance application. The DNR has successfully appealed variances to shoreland mooring space ordinance regulations.



The number of mooring spaces is limited to the number dwelling units, camp sites or lodging rooms allowed in the first tier.

- Seek a DNR permit for a marina. DNR discourages this approach unless the application is for a bona fide marina and a marina is a clearly allowed use in the local zoning ordinance. The DNR will evaluate the number of mooring spaces proposed under a marina application starting with the number of spaces allowed under the shoreland PUD provisions. The developer should provide realistic and plausible documentation of demand from non-residential, campground, resort or hotel uses.

Riparian Residential Lots

There are no state rules limiting the number of mooring spaces available to individual riparian residential lots platted as part of a conventional lot and block subdivision, as long as docks and mooring spaces do not obstruct navigation or cause a safety hazard.

Innovative Solutions

Local governments can improve shoreline protection by adopting specific boat parking and mooring facility standards, such as:

- Require a local permit for mooring facilities and adopt general and specific standards and criteria similar to those in Minnesota Rules described above including a mooring facility plan.
- Establish a maximum boat parking/mooring space limit. Considerations could include the ecological sensitivity of the aquatic near shore area where mooring facilities would be located and limiting boat parking as a small percentage of the minimum vehicle parking requirement.
- Prohibit or limit access easements and private dock rental to address lake crowding, traffic, and noise.
- Prohibit or limit controlled access lots to address lake crowding, traffic and noise concerns

Floodplain Requirements

Marinas and mooring facilities must meet all applicable local floodplain ordinance requirements. This includes ensuring any permanent docks and other navigational-related structures in a mapped floodway provide a “No Rise Certification.” In Zone As and Zone AEs with no designated floodway, especially on rivers and river-like portions of lakes, ensure they don’t cause more of a rise in flood levels than allowed by the local floodplain ordinance.

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 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.