



ECWRPC Zoning Mini conference

April 28, 2017

Presented by:

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Shoreland Zoning

Protecting lakes through a partnership between citizens, lake associations, county zoning staff, county boards, DNR, UW-Extension and more

In Wisconsin, we are fortunate to have over 15,000 lakes and over 80,000 miles of streams

For many people in Wisconsin, our waters are part of who we are

Healthy fish, abundant wildlife and clear water all depend on how waterfront properties are developed

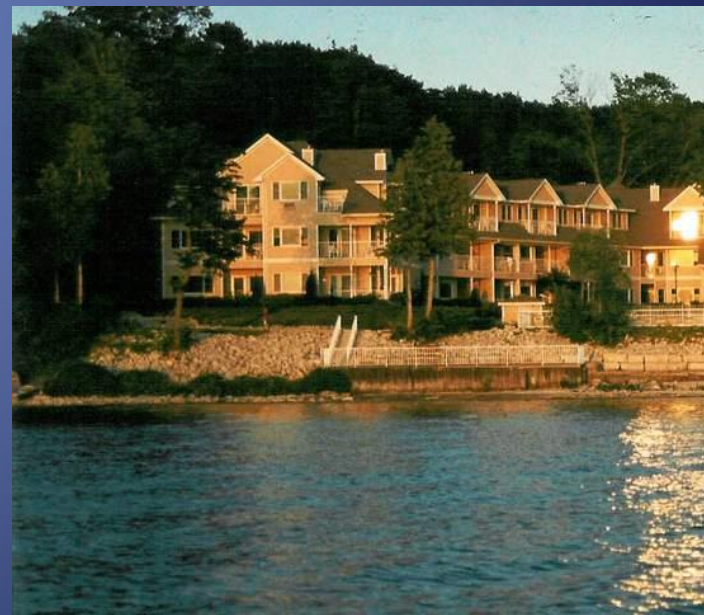


Public Trust Doctrine & Shoreland zoning history

- The **Wisconsin Constitution**, adopted in 1848, 170 years ago, copied the Northwest Ordinance language verbatim to say **navigable waters are “common highways and forever free”**
- This led to **“The waters of WI belong to the people of WI”** and the State holds them in trust for all residents
- **Public rights** in all navigable waters include boating, fishing, swimming & hunting
- These rights have been challenged & defended in WI courts

s. 281.31 Wisconsin Statutes

See short videos **Champions of the Public Trust** dnr.wi.gov/topic/waterways/about_us/doctrine.htm



50 years ago

- 1966 – Wisconsin Legislature passed Water Resources Act, which included shoreland zoning to protect our lakes and rivers

Purposes of shoreland zoning include...

- Prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Reserve shore cover and natural beauty



s. 281.31 Wis. Stats.

Shoreland Zoning History

- 1968 – State set minimum standards
- Counties could be more protective or restrictive than state minimum standards to effectively manage the lakes and rivers in their counties.

NR 115 Shoreland Zoning Standards

- 1. Minimum Lot Sizes
- 2. Vegetation
- 3. Building Setbacks
- 4. Filling, grading, lagooning, dredging, ditching and excavating
- 5. Impervious Surfaces
- 6. Height
- 7. Nonconforming Structures and Uses

Shoreland zoning standards protect property values

Less clear water = Lower waterfront property values

- A study of over 1200 waterfront properties in Minnesota found when water clarity went down by 3 feet, waterfront property values around these lakes went down by tens of thousands to millions of dollars



What shoreland practices make water less clear?

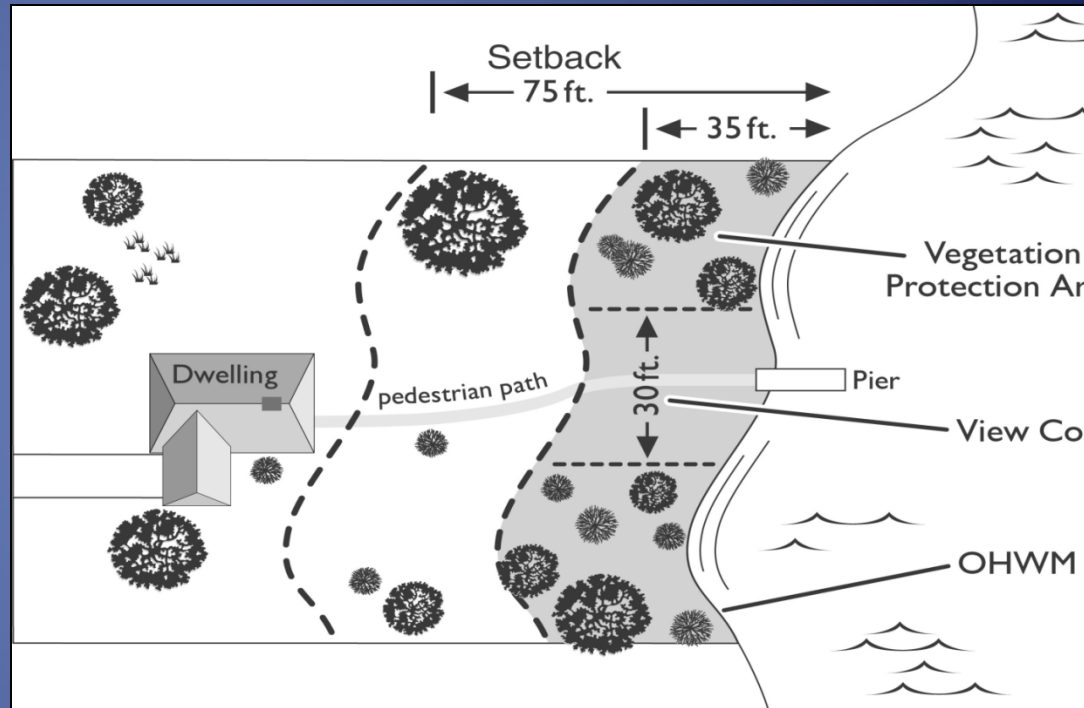
- Rooftops and pavement close to the water cause runoff that carries pollutants to waterway
- Soil erosion
- No shoreline buffer to filter runoff

Many counties had the minimums until



Higher standards adopted by counties...

- Larger lot areas: 41
- Larger lot widths: 43
- Larger setbacks: 25
- Larger buffer sizes: 17
- Imp. surface stds: 17



Only 17 counties had no standards higher than state minimums

2015: Act 55 (effective July 14, 2015)_

- Counties can no longer have shoreland zoning standards that are any more restrictive (higher) than the state standards for any of their lakes and streams.
- Cannot require establishment of vegetative buffer on previously developed lands. Allows for larger V/A corridor.
- Allows for nonconforming structures to be reconstructed w/in footprint and vertically expanded. No permit required.
- See 3 short videos about 2015-16 changes on YouTube. Search for “shoreland zoning”

Other Matters:

Counties may regulate “matters” that are not regulated by a shoreland zoning standard in NR 115. *59.692(1d)(b)*

Other matters must address the purposes of s. 281.31 – to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

Examples of other matters

- Escarpment regulations and setbacks
- Wetland setbacks
- Density requirements – ex. # of structures with living quarters permitted on a lot
- Land uses: residential, commercial, etc.
- Land suitability & buildable areas

Interaction with other statutes

- Acts 55 affected 59.692 shoreland zoning
- Act 55 **did not impact** a county's ability to enact ordinances under other statutes such as 59.69 (general zoning), 87.30 (floodplain zoning), 236 (land division), etc.....
- Floodplain, sanitary, building -UDC, general zoning are all layers that still apply.

Why minimum lot sizes?

- Limit intensity of development to something that won't degrade the lake or river
- Each shoreland lot typically has
 - Tree removal
 - Filling and grading
 - Driveways, parking areas and buildings
- Allow adequate room on the lot for septic systems, wells, and the structure to meet required spacings
 - Wells 50' away from sanitary systems
 - Sanitary systems 50' back from OHWM

75 foot wide lots



Larger lots



Effects of lot sizes

Higher standards by
some counties

300 foot lots

22 homes



Effects of lot sizes

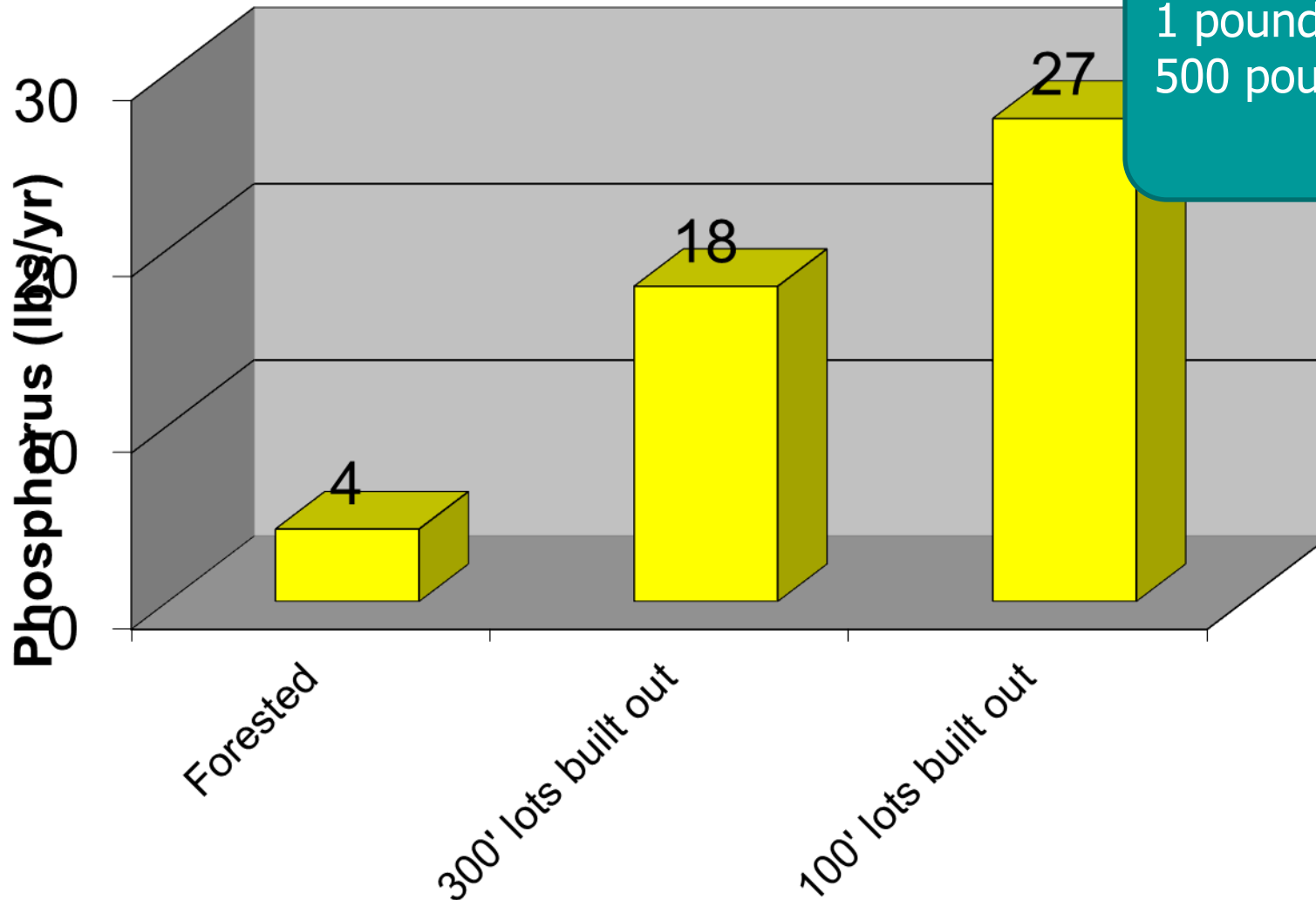
Current statewide
shoreland standards

Unsewered
100 foot lots
66 homes

Sewered
65 foot lots
105 homes



More development = More Phosphorus



1 pound of P =
500 pounds of algae





43 counties adopted larger shoreland minimum lot sizes prior to 2015 for some or all of their lakes or streams

Shoreland zoning lot size standards after Act 55 are **one-size-fits-all** statewide

- 20,000 square feet and 100' wide – unsewered
- 10,000 square feet and 65' wide – sewer

Shoreline Buffers & Setbacks



- Areas of undisturbed soils and vegetation
- Provide natural shoreland functions: protects water quality, provides habitat for wildlife and fish

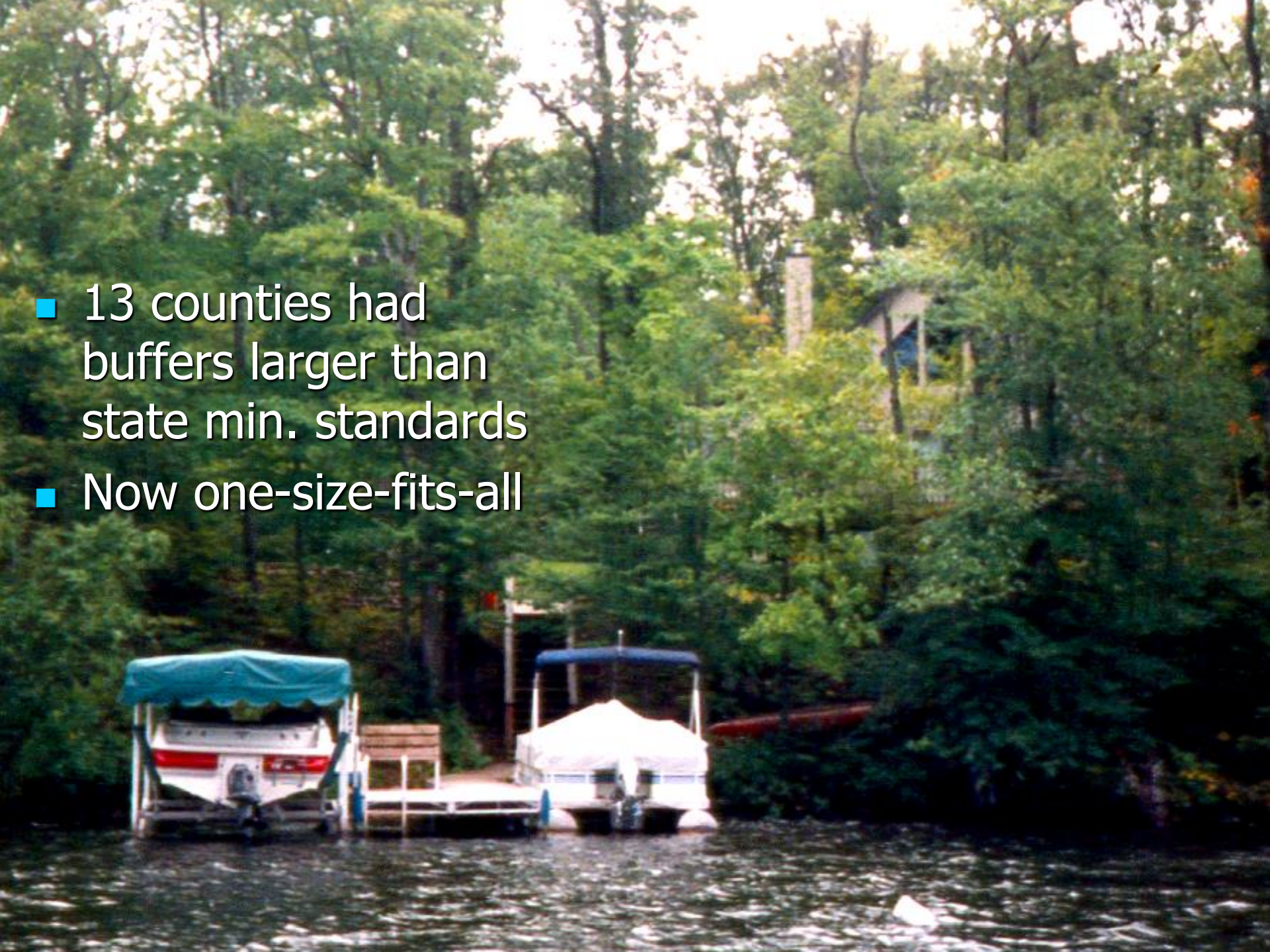
What happens when a shoreline buffer is cut?



Developed site in Vermont

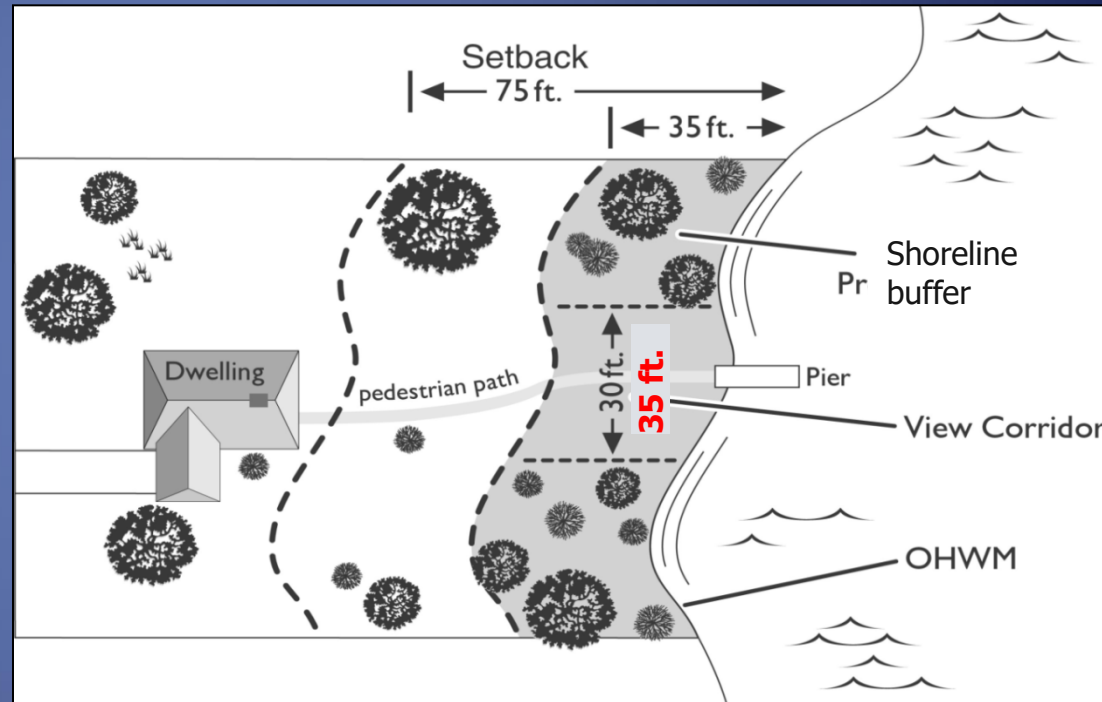
- Shoreline bank is destabilized and eroded
- Soil washed into the lake contains phosphorus which increases algae growth
- Eroded soil covers spawning beds, smothering fish eggs
- Less shade leads to warmer water temperatures
- Habitat needed by birds, frogs and other wildlife is lost

- 13 counties had buffers larger than state min. standards
- Now one-size-fits-all

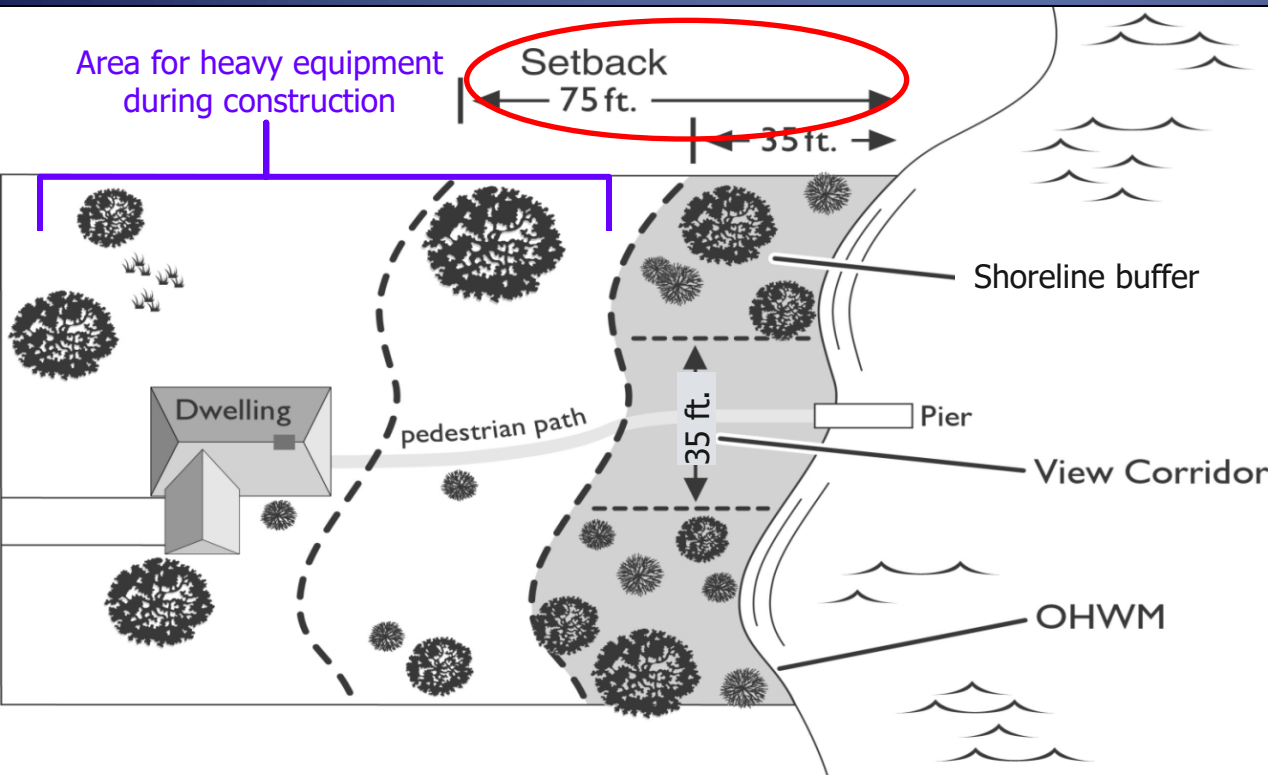


2015-16 buffer changes

- Counties may not require buffers larger than 35'
- Viewing corridor in buffer increased to 35' in every 100'
- Viewing corridor is allowed to run contiguously for the entire maximum width



Why shoreline setbacks?



- To provide space for the shoreline buffer
- To keep the shoreline buffer intact during and after home construction
- To keep homes & other buildings on stable ground

Prior to 2015

- 25 counties had larger setbacks for some or all of their lakes or streams

Now:

- All counties have a 75 foot setback without averaging
- Counties must use setback averaging to reduce setbacks less than 75 feet if 2 adjacent principal structures exist at less than 75' for new principal structures only.
- Additional averaging options.



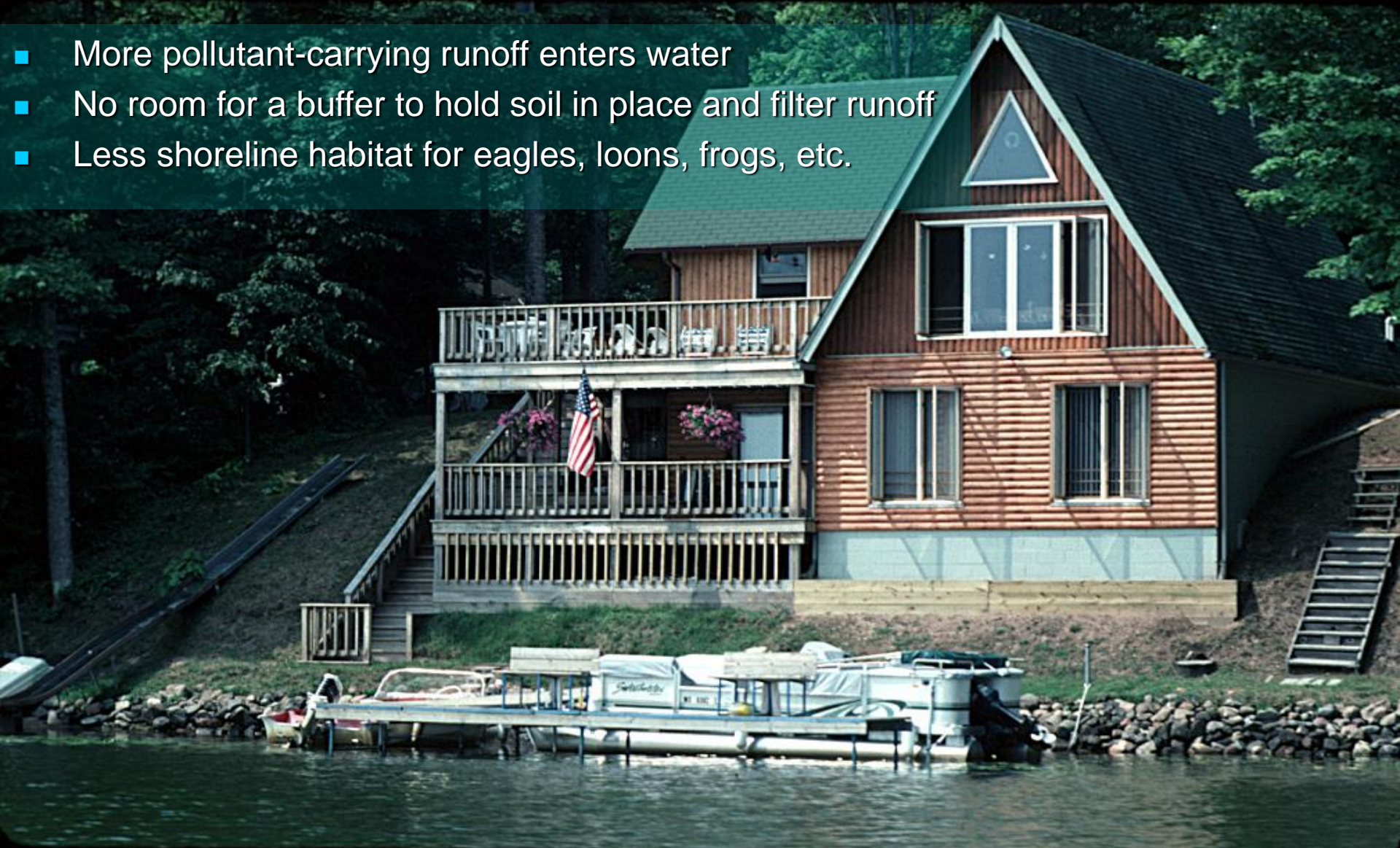
The closer a structure is to the shoreline
...the greater impact it has on the waterway

- Built at the shoreland setback
- Buffer in place to filter runoff

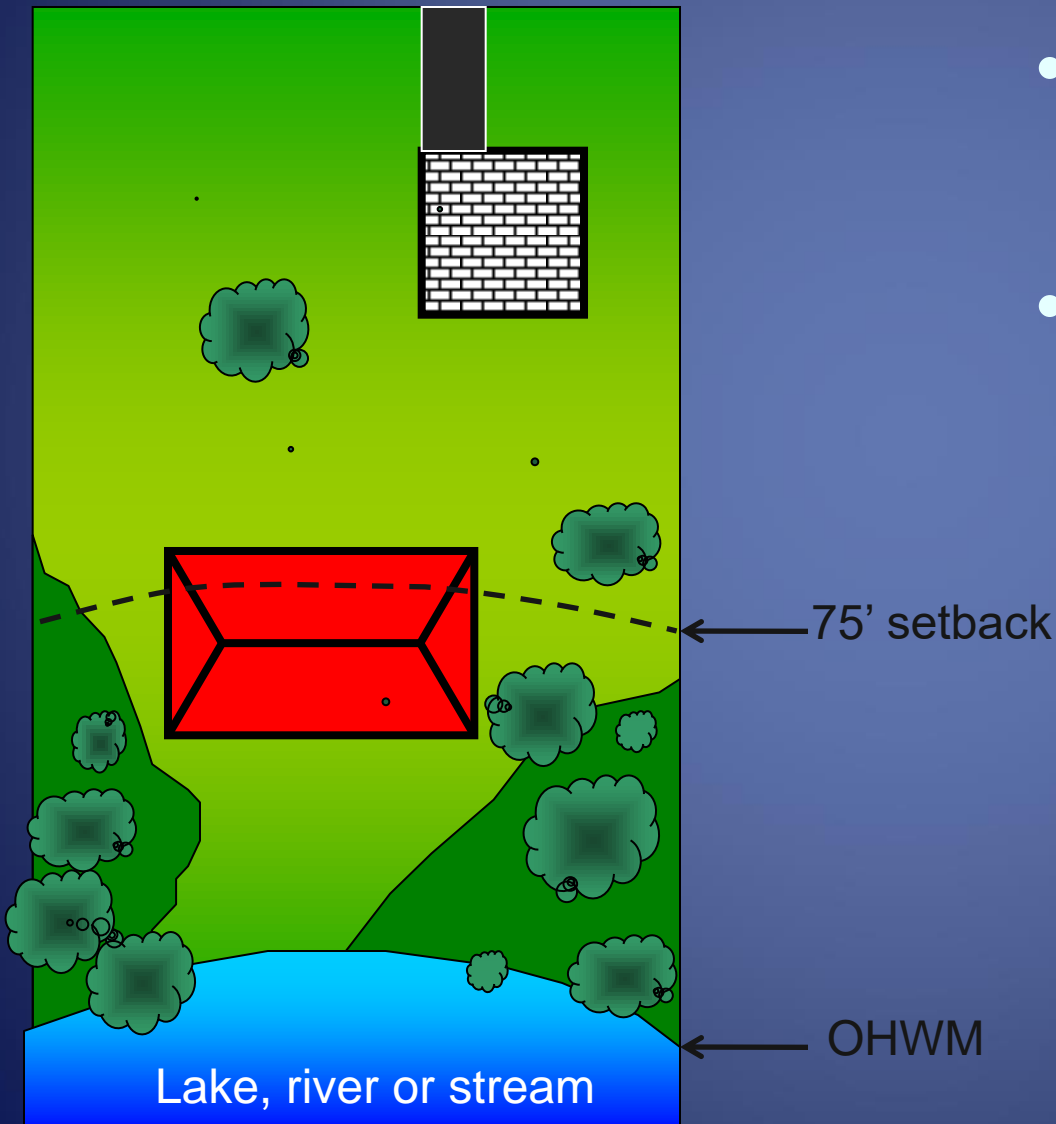


The closer a structure is to the shoreline ...the greater impact it has on the waterway

- More pollutant-carrying runoff enters water
- No room for a buffer to hold soil in place and filter runoff
- Less shoreline habitat for eagles, loons, frogs, etc.



Structures not meeting 75' setback



- Red house does not meet shoreland setback
- Could be:
 - Nonconforming structure
 - Allowed by variance
 - Allowed by setback averaging
 - Illegal structure

Nonconforming Structures



- What is a **nonconforming structure (NCS)** for shoreland zoning purposes?
 - A structure that was lawfully placed when constructed but does not comply with the required setback from the ordinary high water mark
- Regulating NCSs has always been a **careful balancing act** between property rights of the owner to keep what they have, and limiting expansion and rebuilding closer to the water than is allowed today for new structures, in order to maintain fairness and protect the lakes and rivers

2015-16 changes

- NCS and structures located at less than the shoreland setback by variance before July 13, 2015 can be replaced in their current location if the activity does not expand the footprint
- NCS and structures located at less than the shoreland setback by variance before July 13, 2015 can be expanded to 35 feet in height
- No approval, fee or mitigation required **through shoreland zoning** for replacement or vertical expansion
- A building permit, general zoning permit, floodplain zoning permit, etc. may be needed

Review

- The quality of a lake or river depends on what's happening on the land around it
- Shoreland zoning **can** be an effective tool to protect lake health and fisheries
- From 1968-2015 the state set minimum shoreland standards, and at least 54 counties adopted higher standards for their local lakes and streams
- In July 2015, the WI Legislature set **one-size-fits-all** shoreland standards statewide. Counties are no longer allowed to have higher standards.
- Lot sizes matter: they define future development & impacts on lakes and rivers



Questions? Comments?

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