

Mitigation Questions and Answers

The Zoning Department tells me I have to do mitigation. What's that mean?

The Wisconsin state code regulating shorelands (NR 115) mandates that mitigation be required when certain zoning permits are applied for. Until 2016, mitigation usually involved addressing the condition of your shoreline buffer. The *shoreline vegetation protection area*, or “buffer”, is a strip of natural vegetation that runs along the shoreline of a lake, river or creek. This area is a “no-disturb” zone which extends from the ordinary high water mark (OHWM) of the water body landward to a minimum distance of thirty-five feet. Buffers are essential for protection of wildlife habitat and aquatic ecosystems. Many natural buffers have been depleted or removed. In this instance, mitigation means to lessen the impacts of near-shore construction by creating/restoring buffers, or allowing them to re-vegetate naturally.

Are there ways to mitigate that do not involve the shoreland buffer?

The short answer is “yes”. Wisconsin Act 55, passed in 2015, mandated that counties could no longer require a property owner to restore or create a buffer (except in the case of one specific type of permit) but that buffer creation could be a choice of one available method of mitigation.

So what kinds of permits or activities kick in the mitigation requirement?

Currently, there are three types of permits that will initiate the mitigation requirement. Mitigation will be required if you exceed an impervious surface standard §38-598D (2), if you expand a nonconforming principal structure within the setback §38-600 C., or if you relocate a nonconforming structure within the setback area §38-600 E. As always, specific buffer mitigation is also addressed when one applies for a gazebo permit or when the buffer is destroyed (enforcement action).

So, how does the process work?

When you apply for a permit that requires mitigation, the Zoning Department will inspect the property to verify the information on the application, determine the condition of the shoreline buffer and look for possible opportunities to mitigate the impact of the project. Then the Zoning Department, along with the applicant, will decide upon the type and extent of mitigation that may be appropriate. In section 38-602 of the Zoning Ordinance, the types of permits that require mitigation are described along with an amount of “mitigation points” that are needed. There is also a list of mitigation options, each worth a certain amount of points, which will satisfy the requirement. Once the project is agreed on, the method of mitigation will be recorded on an affidavit with the property deed to ensure the mitigation is accomplished. Once the affidavit is recorded, your permit will be issued. You will have two years to complete the mitigation and /or comply with other conditions recorded on the affidavit.

So after the affidavit is recorded, am I finished?

That depends on the extent of the mitigation you are required to do. If your buffer is in a natural condition, you may earn points just by agreeing to preserve it. You could earn still more points by agreeing to make the

buffer even larger. Regardless of the project, our office will verify if it has been completed in two years from permit issuance.

What if I don't know how to create a buffer?

In most cases when mitigation is required, all you will have to do is agree to leave your buffer in its current natural condition or stop all mowing and disturbance in that area to allow your buffer to regenerate. If your situation requires that you actually create a buffer by installing plants and trees, you may design the plan yourself or a plan can be prepared for you by the Washburn County Land and Water Conservation Department (LWCD). There are fees associated with their services as described below:

Permit applicant prepares own plan, LWCD reviews and approves-\$100.00

LWCD prepares plan for permit applicant- \$200.00

LWCD prepares plan for applicant who failed to restore/create buffer after two years of permit issuance (non compliance)-\$300.00

LWCD prepares plan for applicant that removed/destroyed existing natural buffer or portions thereof (enforcement action)-\$400.00

What if I don't want to do mitigation?

Good question. Some people want to keep their "yard" the way it is, or they feel that they should have the right to add on to their home with just a permit. If you never apply for zoning permits that require mitigation, you may be able to avoid this requirement. If you do apply for one of these permits, we will look for other opportunities for mitigation that are unique or perhaps not on the list. The reality however is that we will not be able to issue that permit without mitigation being addressed.

Is that it?

For now that is all. This will be explained again when you apply for a land use permit. This Q&A sheet hopefully just explained the basics about mitigation. If you have more questions about the requirement, contact the Zoning Department at 715-468-4690. For general questions about buffer creation or planning, contact the LWCD at 715-468-4644. Other information may be obtained from following County websites:

www.co.washburn.wi.us/departments/zoning

www.co.washburn.wi.us/departments/landwatercons