

## SECTION 14 - SHORELAND OVERLAY DISTRICT

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### Subdivision 1. Statutory Authorization and Policy

1. **Statutory Authorization.** This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 105, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 394.
2. **Policy.** The uncontrolled use of shorelands of Sherburne County, Minnesota, affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by Sherburne County.

### Subdivision 2. General Provision and Definitions

1. **Jurisdiction.** The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Subdivision 4 of this ordinance. This ordinance shall also apply to all lakes and ponds ten (10) acres in size or greater. A body of water created by a private

user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this ordinance.

2. **Compliance.** The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations.
3. **Enforcement.** The Sherburne County Zoning Administrator, or his/her successor is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law further, the Administration may seek enforcement by civil action, and such remedy is not cumulative in nature. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Subdivision 4, Subsection 1, of this ordinance.
4. **Interpretation.** In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes. Any determination of an administrative decision may be appealed to the Sherburne County Board of Adjustment. Such appeal shall be made within thirty (30) days of decision. For adjoining landowners this requirement may be extended to ten (10) days after construction commences.
  - A. If a use is not specifically listed in this ordinance, such use shall not be allowed.
  - B. A zone or classification may only be amended by a 4/5ths vote of the Sherburne County Board of Commissioners.
5. **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
6. **Abrogation and Greater Restrictions.** It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

### **Subdivision 3. Administration**

#### **1. Permits Required**

- A. A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and/or alteration of sewage treatment systems, vegetated alteration (as established under Subd. 5.3 A of this Ordinance), and those grading and filling activities not exempted by Subdivision 5, Subsection 3 of this ordinance. Application for a permit shall be made to the Sherburne County Zoning Administrator on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.
  - B. A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Subdivision 5, shall be reconstructed or replaced as a condition precedent to issuance of a permit, in accordance with the provisions of this ordinance.
2. **Certificate of Zoning Compliance.** The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Subdivision 3, Subsection 1, of this ordinance. This certificate will specify that the use of land conforms to the requirements of this ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this ordinance and shall be enforced as provided in Subdivision 2, Subsection 3, of this ordinance.
3. **Variances**
- A. Variances may only be granted in accordance with Minnesota Statutes, Chapter 394. A variance may not circumvent the general purposes and intent of this ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the board of adjustment must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
  - B. The board of adjustment shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Subdivision 3, Subsection 4-B, below shall also include the board of adjustment's summary of the public record/ testimony and the findings of facts and conclusions which supported the issuance of the variance.
  - C. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the

property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system as a condition precedent to issuance of a permit.

**4. Notifications to the Department of Natural Resources**

- A. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
- B. A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.

**Subdivision 4. Shoreland Classification System and Land Use Districts**

1. **Shoreland Classification System.** The public waters of Sherburne County have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Sherburne County, Minnesota.

A. The shoreland area for the waterbodies listed in Subsections B and C, below, is defined as follows: "Shoreland means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond of flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the Commissioner.

B. Lakes

Natural Environment Lakes	Inventory I.D.#
Rice	480010
Twin	710001
Kliever Marsh	710003
Rice	710015
Unnamed	710017
West Hunter	710022
East Hunter	710023
Unnamed	710027
Stone	710029
Unnamed	710031
Long Pond	710036

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Cantlin	710041
Unnamed	710042
Unnamed	710043
Diann	710046
Mud	710056
Josephine	710068
Unnamed	710072
Rice	710078
Unnamed	710080
Johnson Slough	710084
Big Mud	710085
Unnamed	710086
Unnamed	710087
Unnamed	710089
Bucks	710093
Hidden	710094
Unnamed (Strand)	710095
Thompson	710096
Wood	710098
Danzel Slough	710105
Unnamed	710106
Lundberg Slough	710109
Fredrickson Slough	710110
Unnamed	710115
Clitty	710116
Boyd	710118
Unnamed (Eilers)	710119
Unnamed	710122
Camp	710123
Unnamed	710124
Prairie	710125
Mosford	710126
Unnamed	710018
Unnamed	710025
Unnamed	710026
Unnamed	710034
Little Diamond	710044
Helene	710045
Unnamed	710047
Lake of the Woods	710053
Unnamed	710054
Preusse	710063
Unnamed	710065
Unnamed	710070
Unnamed	710074
Beulah Pond	710101

Unnamed	710104
Duffy	710107
Unnamed	710113
Unnamed	710120
Unnamed	710143
Unnamed	710161
Unnamed	710127
Unnamed	710128
Jones	710129
Crescent	710132
Unnamed	710134
Unnamed	710135
Unnamed	710137
Unnamed	710138
Rice	710142
Unnamed	710144
Unnamed	710148
Stickney	710149
Unnamed	710150
Unnamed	710152
Clear	710153
Unnamed	710154
Unnamed	710155
Cater	710157
Unnamed	710165
Round	710167
Unnamed	710168

Recreational Development Lakes	Inventory I.D.#
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Sandy	710040
Birch	710057
Ann	710069
Julia	710145
Briggs	710146
Rush	710147
Pickerel	710158
Long	710159
Blacks	710097

General Development Lakes	Inventory I.D.#
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Fremont	710016
Elk (East)	710055
Eagle	710067
Mitchell	710081

Big	710082
Keller	710083
Elk (West)	710141

C. Rivers and Streams in the unincorporated portions of Sherburne County

(1) Remote Rivers

None in Sherburne County

(2) Forested Rivers

Briggs Creek - full length  
Snake River - full length  
DNR Designated Trout Streams

(3) Transition Rivers

St. Francis River - full length  
All Tributaries - listed below

(4) Agricultural Rivers

Elk River - full length

\* Please note that the Elk River is a designated tributary to the Mississippi River and portions of it will be affected by Minnesota Rules Parts 6105.0110, Subp. 3, Item B, Subitem (3) and 6105.0120 relating to statewide standards and criteria for Wild, Scenic and Recreational Rivers.

(5) Urban Rivers

None in the unincorporated area of Sherburne County

(6) Tributary Streams

All other non-classified watercourses as shown on the Sherburne County protected waters inventory map and list, shown on following page.

NOTE: The Rum and Mississippi Rivers are also regulated by the Mississippi and Rum Scenic and Recreational River Ordinance.

Non-Classified Watercourses on the Sherburne County Protected Waters List:

Name	Section	From Township	Range	Section	To Township	Range
Battle Brook	3	35	27	3	35	27
	1	35	27	1	34	27
Unnamed to RR	3	35	26	3	35	26
Unnamed to Blue Lake	35	35	26	36	35	26
Unnamed to ER	31 (Basin 67)	34	27	1	33	28
Unnamed to ER	17	34	28	19	34	28
Lilly Creek	34 (Basin 147)	35	29	34 (Basin 141)	35	29
Unnamed to Rush Lake	27 (Basin 146)	35	29	27 (Basin 147)	35	29
Rice Creek (RC)	9 (Basin 142)	35	29	32	35	29
Stony Brook	3	35	29	3	35	29
	2	35	29	3 (Basin 142)	35	29
Unnamed to Rice Lake	3	35	29	3 (Basin 142)	35	29
Unnamed to RC	13	35	30	29	35	29
Unnamed to ER	8 (Hwys. 10 and 52)	35	30	15	35	30
Unnamed to ER	4 (Basin 119)	34	29	3	34	29



2. **Land Use Districts**

- A. Shoreland Overlay District. The Land Use District designations listed in the general Sherburne County Zoning Ordinance and as shown on the Zoning Map shall apply within all shoreland areas of Sherburne County. All Permitted and Conditional Uses listed in the Zoning Ordinance shall apply in the Shoreland Overlay District. Uses not listed are not permitted. When provisions of this ordinance conflict with provisions of the base Zoning District, the more restrictive requirement must apply; however, the Planned Unit Development (PUD) provisions set forth in Subdivision 8 of the Shoreland District shall apply in the General Rural and Urban Expansion District. Shoreland PUD's must be sewerred.

*Advisory Committee Comment: By allowing sewerred PUD's, Sherburne County can help preserve 50% open space and protect natural features in the Shoreland district, as well as better protect ground, and lake water quality by requiring managed sewer systems.*

- B. Criteria for Rezoning. Requests for amendments to the zoning designation of the base Zoning Ordinance (rezonings) that affect shoreland areas shall be subject to the following additional criteria, considerations and objectives:

- (1) General Considerations and Criteria for all Land Uses:
- a. preservation of natural areas;
  - b. present ownership and development of shoreland areas;
  - c. shoreland soil types and their engineering capabilities;
  - d. topographic characteristics;
  - e. vegetative cover;
  - f. in-water physical characteristics, values and constraints;
  - g. recreational use of the surface water;
  - h. road and service center accessibility;
  - i. socioeconomic development needs and plans as they involve water and land resources;
  - j. the land requirements of industry, which, by its nature, requires location in shoreland areas; and
  - k. the necessity to preserve and restore certain areas having significant historic or ecological value.
- (2) Factors and Criteria for Planned Unit Developments:
- a. existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
  - b. physical and aesthetic impacts of increased density;
  - c. suitability of lands for the PUD approach;
  - d. level of current development in the area; and
  - e. amounts and types of ownership of undeveloped lands.

**Subdivision 5. Dimensions, Design and Utilities**

1. **Lot Area and Width Standards.** Lot area requirements shall be controlled by the lot area requirements of the underlying zoning district unless located in the Urban Expansion and General Rural Zoning District and follow the requirements for a PUD.
2. The lot area (in square feet) and lot width standards (in feet) for single residential lots created prior to the date of enactment of this ordinance for the lake and river/stream classifications are shown in the chart below. These dimensions only apply to non-conforming lots that meet the requirements of Subdivision 6, Subsection A-C.

A. Lakes

Natural Environment:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single-family house	80,000	200	80,000	200

Recreational Development:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single-family house	40,000	150	40,000	150
Non-residential development	80,000	200	2.5 ac.	250

General Development:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single-family house	40,000	150	40,000	150
Non-residential development	80,000	150	2.5 ac.	200

- B. **River/Stream Lot Width Standards.** Lot area requirements shall be controlled by the lot area requirements of the underlying zoning district. The lot width standards (in feet) for single-family housing developments for the five river/stream classifications are:

Urban &

	<u>Forested</u>	<u>Transition</u>	<u>Agricultural</u>	<u>Tributary</u>
Single-family house	200	250	150	250

D. Additional Special Provisions.

- (1) Residential subdivisions with dwelling unit densities exceeding those in the tables in Subdivision 5, Subsections 1-A and 1-C, shall only be allowed if designed and approved as residential planned unit developments under Subdivision 8 of this ordinance. Only land above the ordinary high water level of public waters shall be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line. The sewer lot area dimensions in Subdivision 5, Subsection 1-A, shall only be used if publicly owned sewer system service is available to the property.
  
- (2) Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:
  - a. They must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.
  
  - b. If docking, mooring, or over-water storage of more than six watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements

<u>Ratio of lake size to shore length (acres/mile)</u>	<u>Required increase in frontage (percent)</u>
Less than 100	25
100-200	20
201-300	15
301-400	10
Greater than 400	5

- c. They must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot; and
  
- d. Covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the

access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the nonsignificant conflict activities include swimming, sunbathing, or picnicking. The covenants must limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions. A bond, letter of credit, or escrow fund shall be required in a minimum sum of \$5,000 identifying the appropriate governmental agency as the holder/drawee. Such a bond shall be for the purpose of performance of maintenance and payment of property taxes; if necessary.

**2. Placement, Design, and Height of Structures**

A. Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered by administrative exemption using setback averaging to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.

- (1) Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level\*.

<u>Classes of Public Waters</u>	<u>Setbacks *</u>
<u>Lakes</u>	
Natural Environment	150
Recreational Development	100
General Development	75
<u>Rivers</u>	
Forested and Transition	150
Agriculture, Urban and Tributary	100

Designated Trout Streams 200

\* One water-oriented accessory structure designed in accordance with Subdivision 5, Subsection 2-B-2, of this ordinance may be set back a minimum distance of ten (10) feet from the ordinary high water level.

(2) Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the waterbody:

Setback From:	Setback (in feet)
a. top of bluff;	30
b. unplatted cemetery;	50
c. all other setbacks shall be controlled by the underlying land use ordinance	

(3) Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

B. Design Criteria For Structures.

(1) High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

- a. For lakes, by placing the lowest floor at a level at three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
- b. For rivers and streams, by placing the lowest floor at least one foot above the flood of record, if data are available. If data are not available, by placing the lowest floor at least one foot above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and
- c. Water - oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the

structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

- (2) Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Subdivision 5, Subsection 2-A, of this ordinance if this water-oriented accessory structure complies with the following provisions:
  - a. The structure or facility must not exceed ten (10) feet in height, exclusive of safety rails, and cannot occupy an area greater than 400 square feet. Detached decks must not exceed eight feet above grade at any point;
  - b. The setback of the structure or facility from the ordinary high water level must be at least ten feet;
  - c. The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;
  - d. The roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;
  - e. The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and
  
- (3) Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:
  - a. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments;
  - b. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open-space recreational properties, and planned unit developments;
  - c. Canopies or roofs are not allowed on stairways, lifts, or landings;

- d. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
  - e. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and
  - f. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (1) to (5) are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.
- (4) Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the historic value of the site.
- (5) Steep Slopes. The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.
- C. Height of Structures. All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height.
3. **Shoreland Alterations.** Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.
- A. Vegetation Alterations
- (1) Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Subdivision 5, Subsection 4, of this ordinance are exempt from the vegetation alteration standards that follow.
  - (2) Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Subdivision 5, Subsections 6-B and 6-C, respectfully, is allowed subject to the following standards:

- a. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.
  - b. In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
    - 1) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
    - 2) Along rivers, existing shading of water surfaces is preserved; and
    - 3) The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.
- B. Topographic Alterations/Grading and Filling.
- (1) Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Subdivision must be incorporated into the issuance any permit, variance, or Conditional use permit for construction of structures, accessory structures, subdivisions, sewage treatment systems and driveways.
  - (2) Public roads and parking areas are regulated by Subdivision 5, Subsection 4, of this ordinance.
  - (3) Notwithstanding Items A. and B. above, a grading and filling permit will be required for:
    - a. The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and



- b. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
- (4) The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
- a. Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland\*:
    - 1) Sediment and pollutant trapping and retention;
    - 2) Storage of surface runoff to prevent or reduce flood damage;
    - 3) Fish and wildlife habitat;
    - 4) Recreational use;
    - 5) Shoreline or bank stabilization; and
    - 6) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
- \* This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.
- b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
  - c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
  - d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
  - e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local

soil and water conservation districts and the United States Soil Conservation Service;

- f. Fill or excavated material must not be placed in a manner that creates an unstable slope;
  - g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
  - h. Fill or excavated material must not be placed in bluff impact zones;
  - i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 105.42;
  - j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
  - k. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
- (5) A grading and filling permit requires reconstruction of a nonconforming sewage treatment system.
- (6) Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

**4. Placement and Design of Roads, Driveways, and Parking Areas**

- A. Visual Screening. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

- B. Setbacks. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas by variance, and must be designed to minimize adverse impacts.
  - C. Watercraft Access. Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the grading and filling provisions of Subdivision 5, Subsection 3, of this ordinance must be met.
5. **Stormwater Management.** The following general and specific standards shall apply:
- A. General Standards:
    - (1) When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
    - (2) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
    - (3) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.
  - B. Specific Standards:
    - (1) Impervious surface coverage of lots must not exceed 25 percent of the lot (for example: driveways, structures, sidewalks, and patios) area.
    - (2) When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.

- (3) New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

**6. Special Provisions for Commercial, Industrial, Public/Agricultural, Forestry and Extraction Uses and Minerals and Peat**

A. Standards for Commercial, Industrial, Public, and Semipublic Uses.

- (1) Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:

- a. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;
- b. Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and
- c. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
  - 1) No off-site advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff;
  - 2) On-site signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and

- 3) Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

B. Agriculture Use Standards

- (1) General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.
- (2) Animal feedlots must meet the following standards:
  - a. New feedlots must not be located in the shoreland of watercourses or in bluff impact zones and must meet a minimum setback of 300 feet from the ordinary high water level of all public waters basins; and
  - b. Modifications or expansions to existing feedlots that are located within 300 feet of the ordinary high water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.

C. Forest Management Standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment-Forestry and the provisions of Water Quality in Forest Management "Best Management Practices in Minnesota" or its successor publications.

D. Extractive Use Standards

- (1) Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how

the site will be rehabilitated after extractive activities end. A Conditional Use Permit and restoration bond are required for any extractive uses. Additional extractive use standards in the land use ordinance shall be adhered to.

- (2) Setbacks for Processing Machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

E. Mining of Metallic Minerals and Peat. Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51, shall be a permitted use provided the provisions of Minnesota Statutes, Sections 93.44 to 93.51, are satisfied.

7. **Conditional Uses.** Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions shall apply within shoreland areas:

A. Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:

- (1) the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
- (2) the visibility of structures and other facilities as viewed from public waters is limited;
- (3) the site is adequate for water supply and on-site sewage treatment; and
- (4) the types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

B. Conditions attached to conditional use permits. The County Board of Commissioners, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- (1) Increased setbacks from the ordinary high water level;
- (2) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

- (3) Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.
- (4) Special provisions for siting Communication Towers includes:
  1. Communication Towers must be located on existing high power overhead transmission tower, or attached to a pole integrated into a tower, or;
  2. Mounted on an existing structure and does not extend a maximum of 15 feet beyond the highest point of the structure.

**8. Water Supply and Sewage Treatment**

- A. Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.
- B. Sewage treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:
  - (1) Publicly-owned sewer systems must be used where available.
  - (2) All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted by reference and declared to be a part of this ordinance further, holding tanks shall be considered an acceptable sewage disposal system only for short-term emergency purposes.
  - (3) On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Subdivision 5, Subsection 2, of this ordinance.
  - (4) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in subitems (1)-(4). If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

Evaluation Criteria:

- a. Depth to the highest known or calculated ground water table or bedrock;
  - b. Soil conditions, properties, and permeability;
  - c. Slope;
  - d. The existence of lowlands, local surface depressions, and rock outcrops;
- (5) Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Subdivision 6, Subsection 3, of this ordinance.

**Subdivision 6: Nonconformities**

All legally established nonconformities as of the date of this ordinance may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

**1. Construction on Nonconforming Lots of Record**

- A. Riparian lake lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Subdivision 5, Subsection 1, of this ordinance may be allowed as building sites provided that each lot dimension in question measures at least 50 percent of the applicable requirement for lot width of Subdivision 5, Subsection 1, the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, it was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.
- B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Subdivision 5, Subsection 1, of this ordinance, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Subdivision 5, Subsection 1, of this ordinance as much as possible.

**2. Additions/Expansions to Nonconforming Structures**



- A. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Subdivision 5 of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Subdivision 3, Subsection 3.
- B. Deck additions may be allowed without variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:
  - (1) The structure existed on the date the structure setbacks were established;
  - (2) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
  - (3) The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
  - (4) The deck is constructed primarily of wood, and is not roofed or screened.

**3. Nonconforming Sewage Treatment Systems**

- A. A sewage treatment system not meeting the requirements of Subdivision 5, Subsection 8, of this ordinance must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
- B. Sherburne County will require upgrading or replacement of any nonconforming system identified by the following programs:
  - (1) Certification by the Zoning Administration of septic systems as conforming or requiring up-grading prior to property transfer or registration of a contract for deed;
  - (2) enforcement of the permit provisions of this ordinance and the land use ordinance;
  - (3) continued support of the County Lakewater Testing Program;
  - (4) continued encouragement and support for Town Board and Lake Association public education efforts; and
  - (5) encouraging expanded financial support from the Minnesota Legislature and State Agencies for programs of enforcement, public education, and sewage system replacement cost-sharing.

Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, Section 105.485, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspool, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems shall be considered nonconforming.

**Subdivision 7: Subdivision/Platting Provisions**

1. **Land Suitability.** Each lot created through subdivision, including planned unit developments authorized under Subdivision 8 of this ordinance, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to impair the health, safety, or welfare of future residents of the proposed subdivision or of the community.
2. **Consistency with Other Controls.** Subdivisions must conform to all official controls of Sherburne County. Each lot shall meet the minimum lot size and dimensional requirements of Subdivision 5, Subsection 1, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard sewage treatment systems. Lots that would require use of holding tanks must not be approved.
3. **Information Requirements.** Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:
  - A. Topographic contours at two-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
  - B. The surface water features required in Minnesota Statutes, Section 505.02, Subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
  - C. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;

- D. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
  - E. Location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and
  - F. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.
  - G. Any County ditches, historical sites, or any required environmental assessments.
4. **Dedications.** When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater, wetlands or for conservation purposes.
5. **Platting.** All subdivisions that create five or more lots or parcels that are 2-1/2 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.
6. **Controlled Access or Recreational Lots.** Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Subdivision 5, Subsection 1-D, of this ordinance.

**Subdivision 8. Planned Unit Developments (PUD's)**

- 1. **Types of PUD's Permission.** Planned unit developments (PUD's) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land and only allowed in the General Rural and Urban Expansion District. PUD's must be a sewered area
- 2. **Processing of PUD's.** Planned unit developments must be processed as a conditional use, except that an expansion to an existing commercial PUD involving 6 or fewer new dwelling units or sites since the date this ordinance was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Subdivision 8, Subsection 5. Approval cannot occur until the environmental review process (EAW/EIS) is complete.
- 3. **Application for a PUD.** The applicant for a PUD must submit the following documents prior to final action being taken on the application request:

- A. A site plan and/or plat for the project showing locations of property boundaries, surface water features, existing and proposed structures and other facilities, land alterations, sewage treatment and water supply systems (where public systems will not be provided), and topographic contours at ten-foot intervals or less. When a PUD is a combined commercial and residential development, the site plan and/or plat must indicate and distinguish which buildings and portions of the project are residential, commercial, or a combination of the two.
- B. A property owners association agreement (for residential PUD's) with mandatory membership, and all in accordance with the requirements of Subdivision 8, Subsection 6, of this ordinance.
- C. Deed restrictions, covenants, permanent easements or other instruments that: 1) properly address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUD's; and 2) ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in Subdivision 8, Subsection 6, of this ordinance.
- D. When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied.
- E. Those additional documents as requested by the Sherburne County Planning Commission that are necessary to explain how the PUD will be designed and will function.
- F. All PUD developments shall be designed with adequate sewage treatment facilities that meet Minnesota Pollution Control Agency Chapter 7080 standards and must be sewerred, as well as the following:
  - 1. The portion of the sewer system used for final treatment and disposal shall be located in common open space within an easement or designated outlot.
  - 2. Unsewered PUD's are not allowed.
  - 3. PUD's with shared sewage treatment systems shall submit a sewage management plan to Sherburne County that must be reviewed and approved prior to being recorded with the final plat. The plan shall clearly identify the following:
    - a. The owner(s) of the shared sewage system;
    - b. An annual schedule for maintenance, inspection and monitoring of the shared sewage system;

- c. A contingency plan in the event of failure of the shared sewage system;
- d. A provision describing how the sewage treatment portion of the system will be protected from vehicles, animals, humans and other sources of risk;
- e. Assignment of responsibility for the management and payment of the shared system;
- f. The name and license number of the system’s designer.

*Advisory Committee Comment: The management of shared sewer systems is considered to be an essential part of Cluster Plats and PUD’s. Management agreements help assure Sherburne County of professionally managed waste and sustainable growth.*

4. **Site "Suitable Area" Evaluation.** Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in Subdivision 8, Subsection 5.

A. The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions

Lake classification	Sewered PUD Shoreland Tier Dimensions
General Development Lakes	250
Recreational Development Lakes	333
Natural Environment Lakes	333
All River Classes	333

B. The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project are then subjected to either the residential

or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.

**5. Residential and Commercial PUD Density Evaluation**

The procedures for determining the "base" density of a PUD and density increase multipliers are as follows. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any other tier closer to the water body.

**A. Residential PUD "Base" Density Evaluation:**

- (1) The suitable area within each tier is divided by the single residential lot size standard for lakes or, for rivers, the single residential lot width standard times the tier depth, unless the local unit of government has specified an alternative minimum lot size for rivers which shall then be used to yield a base density of dwelling units or sites for each tier. Proposed locations and numbers of dwelling units or sites for the residential planned unit developments are then compared with the tier, density, and suitability analyses herein and the design criteria in Subdivision 8, Subsection 6.

**B. Commercial PUD "Base" Density Evaluation:**

- (1) Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes need not include decks, patios, stoops, steps, garages, or porches and basements, unless they are habitable space.
- (2) Select the appropriate floor area ratio from the following table:

Commercial Planned Unit Development Floor Area Ratios*			
Public waters classes			
	Sewered general development lakes; first tier on unsewered general development lakes; urban, agricultural, tributary river segments	Second and additional tiers on unsewered general development lakes; recreational development lakes; transition and forested river segments	Natural environment lakes
* Average unit floor area (square feet)	.040	.020	.010
200	.048	.024	.012
300	.056	.028	.014
400			

500	.065	.032	.016
600	.072	.038	.019
700	.082	.042	.021
800	.091	.046	.023
900	.099	.050	.025
1,000	.108	.054	.027
1,100	.116	.058	.029
1,200	.125	.064	.032
1,300	.133	.068	.034
1,400	.142	.072	.036
1,500	.150	.075	.038

- For average unit floor areas less than shown, use the floor area ratios listed for 200 square feet. For areas greater than shown, use the ratios listed for 1,500 square feet. For recreational tent camping areas, use the ratios listed at 400 square feet. Recreational Vehicle sites shall use a ratio for 1000 square feet.

- (3) Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.
- (4) Divide the total floor area by tier computed in Item 3 above, by the average inside living area size determined in Item A. above. This yields a base number of dwelling units and sites for each tier.
- (5) Proposed locations and numbers of dwelling units or sites for the commercial planned unit development are then compared with the tier, density and suitability analyses herein and the design criteria in Subdivision 8, Subsection 6.

C. Density Increase Multipliers:

- (1) Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in Subdivision 5 are met or exceeded and the design criteria in Subdivision 8, Subsection 6, are satisfied. The allowable density increases in Item B. below will only be allowed if structure setbacks from the ordinary high water level are increased to at least 50 percent greater than the minimum setback, or the impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the local unit of government and the setback is at least 25 percent greater than the minimum setback.



- (2) Allowable Dwelling Unit or Dwelling Site Density Increases for Residential or Commercial Planned Unit Developments:

Density evaluation tiers	Maximum density increase within each tier (percent)
First	50
Second	50
Third	50
Fourth	50
Fifth	50

**6. Maintenance and Design Criteria**

**A. Maintenance and Administration Requirements**

- (1) Before final approval of a planned unit development, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
- (2) Open space preservation. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protections:
- a. Commercial uses prohibited (for residential PUD's);
  - b. Vegetation and topographic alterations other than routine maintenance prohibited;
  - c. Construction of additional buildings or storage of vehicles and other materials prohibited; and
  - d. Uncontrolled beaching of watercraft prohibited.
- (3) Development organization and functioning.

Unless an equally effective alternative community framework is established, when applicable, all residential planned unit developments must use an owners association with the following features:

- a. Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers;

- b. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites;
- c. Assessments must be adjustable to accommodate changing conditions; and
- d. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

B. Open Space Requirements:

Planned unit developments must contain open space meeting all of the following criteria:

- (1) At least 50 percent of the total project area must be preserved as open space;
- (2) Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;
- (3) Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;
- (4) Open space may include outdoor recreational facilities;
- (5) Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;
- (6) Open space must not include commercial facilities or uses, but may contain water-oriented accessory structures or facilities;
- (7) The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means; and
- (8) The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUD's, at least 50 percent of the shore impact zone area of existing developments or at least 70 percent of the shore impact zone area of new developments must be preserved in its natural or existing state. For commercial PUD's, at least 50 percent of the shore impact zone must be preserved in its natural state.

C. Erosion Control and Stormwater Management.

Erosion control and stormwater management plans must be developed and the PUD must:

- (1) Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant; and
- (2) Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier must not exceed 25 percent of the tier area, except that for commercial PUD's 35 percent impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistency with Subdivision 5, Subsection 3.

D. Centralization and Design of Facilities.

Centralization and design of facilities and structures must be done according to the following standards:

- (1) Planned unit developments must be connected to publicly owned water supply and sewer systems, if available. On-site water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and Subdivision 5, Subsections 2 and 8, of this ordinance. On-site sewage treatment systems must be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system;
- (2) Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks from the ordinary high water level must be increased in accordance with Subdivision 8, Subsection 5-C, of this ordinance for developments with density increases;

- (3) Shore recreation facilities, including but not limited to swimming areas, docks, and watercraft mooring areas and launching ramps, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor). Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers;
- (4) Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided;
- (5) Accessory structures and facilities, except water oriented accessory structures, must meet the required principal structure setback and must be centralized;
- (6) Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Subdivision 5, Subsection 2, of this ordinance and are centralized.

## 7. **Conversions**

Local governments may allow existing resorts or other land uses and facilities to be converted to residential planned unit developments if all of the following standards are met:

- A. Proposed conversions must be initially evaluated using the same procedures for residential planned unit developments involving all new construction. Inconsistencies between existing features of the development and these standards must be identified.
- B. Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities must be corrected as part of the conversion or as specified in the conditional use permit.
- C. Shore and bluff impact zone deficiencies must be evaluated and reasonable improvements made as part of the conversion. These improvements must include, where applicable, the following:

- (1) Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
  - (2) Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and
  - (3) If existing dwelling units are located in shore or bluff impact zones, conditions are attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.
- D. Existing dwelling unit or dwelling site densities that exceed standards in Subdivision 8, Subsection 5, may be allowed to continue but must not be allowed to be increased, either at the time of conversion or in the future. Efforts must be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.