

SHORELAND ORDINANCE

MARSHALL COUNTY

208 EAST COLVIN AVENUE
WARREN, MN 56762

TABLE OF CONTENTS

<u>SECTIONS</u>		<u>PAGE</u>
Section 1.0	Statutory Authorization & Policy	1
1.1	Statutory Authorization	1
1.2	Policy	1
Section 2.0	General Provisions and Definitions	1
2.1	Jurisdiction	1
2.2	Compliance	2
2.3	Enforcement	2
2.4	Interpretation	2
2.5	Severability	2
2.6	Abrogation and Greater Restrictions	2
2.7	Definitions	3
Section 3.0	Administration	8
3.2	Certificate of Zoning Compliance	9
3.3	Variances	9
3.4	Notifications to the Department of Natural Resources	9
Section 4.0	Shoreland Classification System and Land Use Districts	10
4.1	Shoreland Classification System	10
4.2	Land Use District Descriptions	12
4.21	Criteria For Designation	12
4.22	Land Use District Descriptions	13
4.23	Use and Upgrading of Inconsistent Land Use Districts	16
Section 5.0	Zoning and water Supply/Sanitary Provisions	17
5.1	Lot Area and Width Standards	17
5.11	Unsewered Lakes	18
5.12	Sewered Lakes	18
5.13	River/Stream Lot Width Standards	19
5.14	Additional Special Provisions	19
5.2	Placement, Design, and Height of Structures	21
5.21	Placement of Structures on Lots	21
5.22	Design Criteria For Structures	23
5.3	Shoreland Alterations	25
5.31	Vegetation Alterations	26
5.32	Topographic Alterations/Grading and Filling	27
5.4	Placement and Design of Roads, Driveways, and Parking Areas	29
5.5	Stormwater Management	29
5.51	General Standards	29
5.52	Specific Standards	30

5.6	Special Provisions		30
	5.61	Standards for Commercial, Industrial, Public, and Semipublic Uses	30
	5.62	Agriculture Use Standards	32
	5.63	Forest Management Standards	32
	5.64	Extractive Use Standards	33
	5.65	Mining of Metallic Minerals and Peat	33
5.7	Conditional Uses		33
	5.71	Evaluation Criteria	33
	5.72	Conditions Attached to Conditional Use Permits	34
5.8	Water Supply and Sewage Treatment		34
	5.81	Water Supply	34
	5.82	Sewage Treatment	34
Section 6.0	Nonconformities		35
	6.1	Construction on nonconforming lots of record	35
	6.2	Additions/expansions to nonconforming structures	36
	6.3	Nonconforming sewage treatment systems	36
	6.4	Damage or destruction to nonconforming structures	37
Section 7.0	Subdivision/Platting Provisions		37
	7.1	Land suitability	37
	7.2	Consistency with other controls	38
	7.3	Information requirements	38
	7.4	Dedications	38
	7.5	Platting	39
	7.6	Controlled Access or Recreational Lots	39

MARSHALL COUNTY SHORELAND ORDINANCE

SECTION 1.0 - STATUTORY AUTHORIZATION AND POLICY

1.1 Statutory Authorization

This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 394.

1.2 Policy

The uncontrolled use of shorelands of Marshall 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 Marshall County.

SECTION 2.0 - GENERAL PROVISIONS AND DEFINITIONS

2.1 Jurisdiction

The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Section 4.0 of this ordinance. Pursuant to Minnesota Regulations, Parts 6120.2500 - 6120.3900, no lake, pond, or flowage less than 10 acres in size in municipalities or 25 acres in size in unincorporated areas need be regulated in a local government's shoreland regulations. 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.

2.2 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.

2.3 Enforcement

The Shoreland Administrator 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. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 3.1 of this ordinance.

2.4 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.

2.5 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.

2.6 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.

2.7 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application. For the purpose of this ordinance, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

2.711 Accessory structure or facility. "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setback.

2.712 Bluff. "Bluff" means a topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):

- (1) Part or all of the feature is located in a shoreland area;
- (2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;
- (3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- (4) The slope must drain toward the waterbody.

2.713 Bluff impact zone. "Bluff impact zone" means a bluff and land located within 20 feet from the top of a bluff.

2.714 Boathouse. "Boathouse" means a structure designed and used solely for the storage of boats or boating equipment.

2.715 Building line. "Building line" means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

2.716 Commercial planned unit developments. "Commercial planned unit developments" are typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.

2.717 Commercial use. "Commercial use" means the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

2.718 Commissioner. "Commissioner" means the commissioner of the Department of Natural Resources.

2.719 Conditional use. "Conditional use" means a land use or development as defined by the ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

2.720 Deck. "Deck" means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

2.721 Duplex, triplex, and quad. "Duplex," "triplex," and "quad" means a dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

2.722 Dwelling site. "Dwelling site" means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

2.723 Dwelling unit. "Dwelling unit" means any structure or portion of a structure, or other shelter designed as short-or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

2.724 Extractive use. "Extractive use" means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, sections 93.44 to 93.51.

2.725 Forest land conversion. "Forest land conversion" means the clear cutting of forested lands to prepare for a new land use other than re-establishment of a subsequent forest stand.

2.726 Guest cottage. "Guest cottage" means a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

2.727 Hardship. "Hardship" means the same as that term is defined in Minnesota Statutes, Chapter 394.

2.728 Height of building. "Height of building" means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

2.729 Industrial use. "Industrial use" means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

2.730 Intensive vegetation clearing. "Intensive vegetation clearing" means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

2.731 Lot. "Lot" means a parcel of land designated by plat, metes and bounds, registered land survey, auditor's plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

2.732 Lot width. "Lot width" means the shortest distance between lot lines measured at the midpoint of the building line.

2.733 Nonconformity. "Nonconformity" means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

2.734 Ordinary high water level. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

2.735 Public waters. "Public waters" means any waters as defined in Minnesota Statutes, section 103G.005, subdivisions 15.

2.736 Residential planned unit development. "Residential planned unit development" means a use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. To qualify as a residential planned unit development, a development must contain at least five dwelling units or sites.

2.737 Semi-public use. "Semi-public use" means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

2.738 Sensitive resource management. "Sensitive resource management" means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

2.739 Setback. "Setback" means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

2.740 Sewage treatment system. "Sewage treatment system" means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Section 5.8 of this ordinance.

2.741 Sewer system. "Sewer system" means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

2.742 Shore impact zone. "Shore impact zone" means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

2.743 Shoreland. "Shoreland" means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or 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 which extend landward from the waters for lesser distances and when approved by the commissioner.

2.744 Significant historic site. "Significant historic site" means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

2.745 Steep slope. "Steep slope" means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

2.746 Structure. "Structure" means any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone telegraph, gas lines, towers, poles, and other supporting facilities.

2.747 Subdivision. "Subdivision" means land that is divided for the purpose of sale, rent, or lease, including planned unit developments.

2.748 Surface water-oriented commercial use. "Surface water-oriented commercial use" means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

2.749 Toe of the bluff. "Toe of the bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

2.750 Top of the bluff. "Top of the bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

2.751 Variance. "Variance" means the same as that term is defined or described in Minnesota Statutes, Chapter 394.

2.752 Water-oriented accessory structure or facility. "Water-oriented accessory structure or facility" means a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

2.753 Wetland. "Wetland" means a surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

SECTION 3.0 - ADMINISTRATION

3.1 Permits Required

3.11 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, and those grading and filling activities not exempted by Section 5.3 of this ordinance. Application for a permit shall be made to the Shoreland Administrator on the forms provided. The application shall include the necessary information so that the Shoreland Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.

3.12 A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Section 5.8, shall be reconstructed or replaced in accordance with the provisions of this ordinance.

3.2 Certificate of Zoning Compliance

The Shoreland Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 3.1 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 punishable as provided in Section 2.3 of this ordinance.

3.3 Variances

3.31 Variances may only be granted in accordance with Minnesota Statutes, Chapter 394, as applicable. 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.

3.32 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 Section 3.42 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.

3.33 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.

3.4 Notifications to the Department of Natural Resources

3.41 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.

3.42 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.

4.0 - SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS

4.1 Shoreland Classification System

The public waters of Marshall County have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory (PWI) Map for Marshall County, Minnesota. A listing of protected waters and wetlands larger than 25 acres that are not currently shoreland classified is attached for reference (Appendix A).

4.11 The shoreland area for the waterbodies listed in sections 4.12 and 4.13 shall be as defined in section 2.743 and as shown on the Official Zoning Map (if and where available).

4.12 Lakes

A. Natural Environment Lakes:

<u>Lake Name</u>	<u>Protected Waters Inventory I.D. #</u>
1. Thief	45-0001
2. Mud	45-0002
3. Kuriko	45-0003
4. Elm	45-0006
5. Horseshoe	45-0007

B. Recreational Development Lakes:

<u>Lake Name</u>	<u>Protected Waters Inventory I.D. #</u>
1. Unnamed (Florian Park Reservoir)	45-0119

4.13 Rivers and Streams:

A. Forested Rivers:

Legal Description

Middle River

From East Section line -
Section 10 ; T157, R43W
To South section line -
Section 4; T156, R44W

B. Agricultural Rivers:

Legal Description

Red River of the North

From South section line -
Section 7; T154, R50W
To North section line -
Section 6; T158, R50W

Tamarac River

From East section line -
Section 25; T158, R46W
To West section line -
Section 19; T158, R48W

Tamarac River

From East section line -
Section 22; T158, R50W
To Confluence with Red
River of the North -
Section 20; T158, R50W

Snake River

From North section line -
Section 8; T156; R45W
To South section line -
Section 12; T154, R49W

Snake River

From South section line -
Section 8; T154, R49W
To Confluence with Red
River of the North -
Section 9; T157, R50W

Middle River	From	North section line - Section 9; T156, R44W South section line - Section 34, T157, R49W
Thief River	From	Basin 2 - Section 28, T156; R42W
	To	South section line - Section 9; T154; R43W

C. Tributary Streams

*

* All protected watercourses in Marshall County shown on the Protected Waters Inventory Map for Marshall County, a copy of which is hereby adopted by reference, not given a classification in Items A-E above shall be considered "Tributary".

4.2 Land Use District Descriptions

4.21 Criteria For Designation. The land use districts in Section 4.22, and the delineation of a land use district's boundaries on the Official Zoning Map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan (when available) and the following criteria, considerations, and objectives:

A. General Considerations and Criteria for all Land Uses:

- (1) preservation of natural areas;
- (2) present ownership and development of shoreland areas;
- (3) shoreland soil types and their engineering capabilities;
- (4) topographic characteristics;
- (5) vegetative cover;
- (6) in-water physical characteristics, values, and constraints;
- (7) recreational use of the surface water;
- (8) road and service center accessibility;

- (9) socioeconomic development needs and plans as they involve water and related land resources;
- (10) the land requirements of industry which, by its nature, requires location in shoreland areas; and
- (11) the necessity to preserve and restore certain areas having significant historical or ecological value.

4.22 Land Use District Descriptions. The land use districts provided below, and the allowable land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of this county. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120.3200, Subp. 3. P = Permitted Use, C = Conditional Use, N = Prohibited Use.

A. Land Use Districts for Lakes

(1) <u>Agricultural Protection District - Uses</u>	<u>Recreational Development</u>	<u>Natural Environment</u>
- Forest management	P	P
- Sensitive resource management	P	P
- Agricultural: cropland & pasture	P	P
- Agricultural feedlots	C	C
- Parks and historic sites	C	C
- Extractive use	C	C
- Single residential	C	C
- Mining of metallic minerals and peat	C	C
(2) <u>Residential District - Uses</u>		
- Single residential	P	P
- Semipublic	C	C
- Parks and historic sites	C	C
- Extractive use	C	C
- Duplex, triplex, quad residential	P	C
- Forest management	P	P
- Mining of metallic minerals and peat	C	C

(3) High Density Residential District - Uses

- Residential planned unit developments	C	C
- Single residential	P	P
- Surface water oriented commercial	C	C
- Semipublic	C	C
- Parks & historic sites	C	C
- Duplex, triplex, quad residential	P	P
- Forest management	P	P

(4) Water Oriented Commercial District - Uses

- Surface water-oriented commercial	P	C
- Commercial planned unit development	C	C
- Public, semipublic	C	C
- Parks & historic sites	C	C
- Forest management	P	P

(5) General Use District - Uses

- Commercial	P	C
- Commercial planned unit development	C	C
- Industrial	C	N
- Public, semipublic	P	C
- Extractive use	C	C
- Parks & historic sites	C	C
- Forest management	P	P
- Mining of metallic minerals and peat	C	C

B. Land Use Districts for Rivers and Streams

(1)	<u>Agricultural Protection District - Uses</u>	<u>Forested</u>	<u>Agricultural</u>	<u>Tributary</u>
	- Forest Management	P	P	P
	- Sensitive resource management	P	P	P
	- Agricultural: crop land & pasture	P	P	P
	- Agricultural feedlots	C	C	C
	- Parks & historic sites	C	C	C
	- Extractive use	C	C	C
	- Single residential	C	C	C
	- Mining of metallic mineral & peat	C	C	C
(2)	<u>Residential District-Uses</u>			
	- Single residential	P	P	P
	- Semipublic	C	C	P
	- Parks and historic sites	C	C	C
	- Extractive use	C	C	C
	- Duplex, triplex, quad residential	C	C	C
	- Forest management	P	P	P
	- Mining of metallic minerals & peat	C	C	C
(3)	<u>High Density Residential-Uses</u>			
	- Residential planned unit developments	C	C	C
	- Single residential	P	P	P
	- Surface water oriented commercial	C	C	C
	- Semipublic	C	C	C
	- Parks and historic sites	C	C	C
	- Duplex, triplex, quad residential	P	P	P
	- Forest management	P	P	P

(4) Water-oriented
Commercial - Uses

- Surface water-oriented commercial	C	C	C
- Commercial planned unit development	C	C	C
- Public, semipublic	C	P	P
- Parks and historic sites	C	C	C
- Forest management	P	P	P

(5) General Use District - Uses

- Commercial	C	C	C
- Commercial planned unit development	C	C	C
- Industrial	C	N	C
- Public, semipublic	C	C	C
- Extractive use	C	C	C
- Parks and historic sites	C	C	C
- Forest management	P	P	P
- Mining of metallic minerals & peat	C	C	C

4.23 Use and Upgrading of Inconsistent Land Use Districts.

- A. Local governments with adopted land use zoning districts in effect on the date of adoption of this ordinance may continue to use the districts until revisions are proposed to change either the land use district designation within an existing land use district boundary shown on the Official Zoning Map or to modify the boundary of an existing land use district shown on the Official Zoning Map.
- B. When a revision is proposed to an inconsistent land use district provision, the following additional criteria and procedures shall apply:
 - (1) For Lakes: When a revision to a land use district designation on a lake is considered, the land use district boundaries and use provisions therein for all the shoreland areas within the jurisdiction of this ordinance on said lake must be revised to make them substantially compatible with the framework in Sections 4.21 and 4.22 of this ordinance.

- (2) For Rivers and Streams: When a revision to a land use district designation on a river or stream is proposed, the land use district boundaries and the use provisions therein for all shoreland on both sides of the river or stream within the same classification within the jurisdiction of this ordinance must be revised to make them substantially compatible with the framework in Sections 4.21 and 4.22 of this ordinance. If the same river classification is contiguous for more than a five-mile segment, only the shoreland for a distance of 2.5 miles upstream and downstream, or to the class boundary if closer, need be evaluated and revised.

- C. When an interpretation question arises about whether a specific land use fits within a given "use" category, the interpretation shall be made by the Board of Adjustment. When a question arises as to whether a land use district's boundaries are properly delineated on the Official Zoning Map, this decision shall be made by Marshall County Board of Commissioners.

- D. When a revision is proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner will only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. Marshall County Board of Commissioners will direct the Shoreland Administrator to provide such additional information for this waterbody as is necessary to satisfy Items A and B.

- E. Marshall County Board of Commissioners must make a detailed finding of fact and conclusion when taking final action that this revision, and the upgrading of any inconsistent land use district designations on said waterbody, are consistent with the enumerated criteria and use provisions of Section 4.2.

5.0 - ZONING AND WATER SUPPLY/SANITARY PROVISIONS

5.1 Lot Area and Width Standards

The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex and quad residential lots created after the date of enactment of this ordinance for the lake and river/stream classifications are the following.

5.11 Unsewered Lakes

A. Natural Environment:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	80,000	200	80,000	200
Duplex	120,000	300	160,000	400
Triplex	160,000	400	240,000	600
Quad	200,000	500	320,000	800

B. Recreational Development:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	40,000	150	40,000	150
Duplex	80,000	225	80,000	265
Triplex	120,000	300	120,000	375
Quad	160,000	375	160,000	490

5.12 Sewered Lakes:

A. Natural Environment:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	40,000	125	20,000	125
Duplex	70,000	225	35,000	220
Triplex	100,000	325	52,000	315
Quad	130,000	425	65,000	410

B. Recreational Development:

	Riparian Lots		Nonriparian Lots	
	<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
Single	20,000	75	15,000	75
Duplex	35,000	135	26,000	135
Triplex	50,000	195	38,000	190
Quad	65,000	255	49,000	245

5.13 River/Stream Lot Width Standards. The minimum area of a lot shall be 1 acre. The minimum lot width standards for single, duplex, triplex and quad residential developments for the six river/stream classifications are:

	For- ested	Agri- cultural	Tributary No sewer	Sewer
Single	200	150	100	100
Duplex	300	225	150	115
Triplex	400	300	200	150
Quad	500	375	250	190

5.14 Additional Special Provisions.

A. Subdivisions of duplexes, triplexes, and quads on Natural Environment Lakes must also meet the following standards:

- (1) each building must be set back at least 200 feet from the ordinary high water level;
- (2) each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;
- (3) watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and
- (4) no more than 25 percent of a lake's shoreline can be in duplex, triplex, or quad developments.

B. One guest cottage may be allowed on lots meeting or exceeding the duplex lot area and width dimensions presented in Sections 5.11-5.13, provided the following standards are met:

- (1) for lots exceeding the minimum lot dimensions of duplex lots, the guest cottage must be located within the smallest duplex-sized lot that could be created including the principal dwelling unit;
- (2) a guest cottage must not cover more than 700 square feet of land surface and must not exceed 15 feet in height; and

- (3) a guest cottage must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.

C. 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:

- (1) they must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.
- (2) If docking, mooring, or over-water storage of more than six (6) 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

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

- (3) 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

- (4) 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.

5.2 Placement, Design, and Height of Structures.

5.21 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 without a variance 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.

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

Classes of Public Waters	Setbacks*		Sewage Treatment System
	Unsewered	Sewered	
<u>Lakes</u>			
Natural Environment	150	150	150
Recreational Development	100	75	75
<u>Rivers</u>			
Forested	150	150	100
Agriculture & Tributary	100	50	75

*On water-oriented accessory structure designed in accordance with Section 5.22 of this ordinance may be set back a minimum distance of ten (10) feet from the ordinary high water level.

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

<u>Setback From:</u>	<u>Setback (in feet)</u>
(1) top of bluff;	30
(2) unplatted cemetery;	50
(3) right-of-way line of federal, state or county highway, and;	50
(4) right-of-way line of town road, public street, or other roads or streets not classified	20

- C. Bluff Impact Zones. Structures and accessory facilities except stairways and landings, must not be placed within bluff impact zones.
- D. Uses Without Water-oriented Needs. Uses without water-oriented needs shall be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

5.22 Design Criteria For Structures

- A. 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:
 - (1) for lakes, by placing the lowest floor at a level at least one foot above the highest known water level, or one foot above the ordinary high water level, whichever is higher;
 - (2) for rivers, streams, and reservoirs, by placing the lowest floor at least one foot above the Regulatory Flood Protection Elevation (RFPE), if data is available. If data is not available, a technical elevation must be conducted to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under both 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. The highest flood protection elevation determined must be used for placing structures and other facilities; and
 - (3) 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.

- B. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Section 5.21 of this ordinance if this water-oriented accessory structure complies with the following provisions:
- (1) the structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed eight feet above grade at any point;
 - (2) the setback of the structure or facility from the ordinary high water level must be at least ten feet;
 - (3) 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;
 - (4) the roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;
 - (5) the structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and
 - (6) as an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting equipment, may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.
- C. 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:
- (1) 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;

- (2) 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;
- (3) canopies or roofs are not allowed on stairways, lifts, or landings;
- (4) 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;
- (5) 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
- (6) 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.

D. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

E. Steep Slopes. The Shoreland 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.

5.3 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.

5.31 Vegetation Alterations.

- A. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 5.4 of this ordinance are exempt from the vegetation alteration standards that follow.
- B. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Sections 5.62 and 5.63, respectfully, is allowed subject to the following standards:
 - (1) 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.
 - (2) 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:
 - (a) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
 - (b) along rivers, existing shading of water surfaces is preserved; and
 - (c) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

5.32 Topographic Alterations/Grading and Filling.

- A. 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 Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- B. Public roads and parking areas are regulated by Section 5.4 of this ordinance.
- C. Notwithstanding Items A and B above, a grading and filling permit will be required for:
 - (1) the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
 - (2) the movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.
- D. 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:
 - (1) Grading or filling in any type 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*:
 - (a) sediment and pollutant trapping and retention;
 - (b) storage of surface runoff to prevent or reduce flood damage;
 - (c) fish and wildlife habitat;
 - (d) recreational use;
 - (e) shoreline or bank stabilization; and
 - (f) 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.

- (2) 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;
- (3) 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;
- (4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
- (5) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local Soil and Water Conservation District and the United States Soil Conservation Service;
- (6) Fill or excavated material must not be placed in a manner that creates an unstable slope;
- (7) 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;
- (8) Fill or excavated material must not be placed in bluff impact zones;
- (9) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, section 103G.245;
- (10) 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

(11) 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.

E. 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.

5.4 Placement and Design of Roads, Driveways, and Parking Areas.

5.41 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.

5.42 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, and must be designed to minimize adverse impacts.

5.43 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 Section 5.32 of this ordinance must be met.

5.5 Stormwater Management

The following general and specific standards shall apply:

5.51 General Standards:

A. 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.

- B. 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.
- C. 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 manmade materials and facilities.

5.52 Specific Standards:

- A. Impervious surface coverage of lots must not exceed 25 percent of the lot area.
- B. 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.
- C. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

5.6 Special Provisions for Commercial, Industrial, Public/Semipublic, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat.

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

- A. 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:
 - (1) 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;

- (2) 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
 - (3) 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:
 - (a) no 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;
 - (b) 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
 - (c) 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. Uses without water-oriented needs shall be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

5.62 Agriculture Use Standards.

- A. 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 (Resource Management Systems) 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.
- B. Animal feedlots must meet the following standards:
 - (1) 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
 - (2) 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 zones.
- C. Use of fertilizer, pesticides, or animal wastes within shorelands must be done in such a way as to minimize impact on the shore impact zone or public water by proper application or use of earth or vegetation.

5.63 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."

5.64 Extractive Use Standards.

- A. 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.
- B. 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.

5.65 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 conditional use as well as satisfy the provisions of Minnesota Statutes, sections 93.44 to 93.51.

5.7 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 apply within shoreland areas:

5.71 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.

5.72 Conditions Attached to Conditional Use Permits. Board of Adjustment 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.

5.8 Water Supply and Sewage Treatment

5.81 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.

5.82 Sewage Treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

- A. Publicly-owned sewer systems must be used where available.
- B. 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.
- C. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 5.21 of this ordinance.
- D. 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:

- (1) depth to the highest known or calculated ground water table or bedrock;
- (2) soil conditions, properties, and permeability;
- (3) slope; and
- (4) the existence of lowlands, local surface depressions, and rock outcrops.

- E. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with section 6.3 of this ordinance.

SECTION 6.0 - 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 county 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:

- 6.1 Construction on nonconforming lots of record.
- A. 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 Section 5.1 of this ordinance may be allowed as building sites without variances from lot size requirements provided 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, 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 Section 5.1 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 section 5.1 of the ordinance as much as possible.

6.2 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 Section 5.0 of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section 3.3.
- B. Deck additions may be allowed without a 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.

6.3 Nonconforming sewage treatment systems.

- A. A sewage treatment system not meeting the requirements of Section 5.8 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. Marshall County will require upgrading or replacement of any nonconforming system identified by this program. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, section 103F, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, 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.

6.4 Damage or Destruction to nonconforming structures. If damage or destruction occurs to a nonconforming structure, the structure may be rebuilt or repaired conforming to the following conditions:

- A. The structure may be repaired or rebuilt to the original outside dimensions only. Additions or expansions outside of the original outside dimensions shall meet the requirements of Section 5.0 and Section 6.2 of this ordinance.
- B. A rebuilt structure shall be repositioned on the lot to minimize as many violations of the setback requirements as determined by the Board of Adjustment.
- C. If the nonconforming structure is not in the process of being rebuilt or repaired within 12 months of the damage or destruction, any further construction or repairs will be considered a new structure or addition, and must meet all requirements of this ordinance.

SECTION 7.0 - SUBDIVISION/PLATTING PROVISIONS

- 7.1 Land suitability. Each lot created through subdivision 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 be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

- 7.2 Consistency with other controls. Subdivisions must conform to all official controls of this county. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Sections 5.2 and 5.8 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 5.1, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.
- 7.3 Information requirements. Sufficient information must be submitted by the applicant for the county to make a determination of land suitability. The information shall include at least the following:
- (1) topographic contours at ten foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
 - (2) 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;
 - (3) 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;
 - (4) information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediment, and aquatic vegetation, and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
 - (5) location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and
 - (6) 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.
- 7.4 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 and significant wetlands.

- 7.5 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.
- 7.6 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 Sections 5.11-5.14 of this ordinance.

APPENDIX A

MARSHALL COUNTY PROTECTED WATERS GREATER THAN 25 ACRES, UNCLASSIFIED

<u>Protected Waters Inventory I.D. #</u>	<u>Water Body Name</u>	<u>Acres</u>
450014	Agder WMA	74
450047	Agder WMA	641
450049	Agder WMA	25
450052	Agder WMA	135
450011	East Park WMA	1720
450115	East Park WMA	31
450116	Elm Lake WMA	36
450013	Elm Lake WMA	200
450121	Elm Lake WMA	42
450122	Florian Marsh	206
450123	Little Moose Marsh	349
450124	Unnamed	40
450012	Unnamed	2000
450023	Unnamed	300
450024	Unnamed	725
450054	Unnamed	47
450010	Unnamed	300
450009	Unnamed	88
450008	Unnamed	100
450016	Unnamed	248
450026	Unnamed	44
450030	Unnamed	165
450032	Unnamed	151
450033	Unnamed	132
450037	Unnamed	116
450038	Unnamed	98
450039	Unnamed	47
450040	Unnamed	46
450041	Unnamed	423
450042	Unnamed	30
450056	Unnamed	62
450065	Unnamed	55
450066	Unnamed	258
450067	Unnamed	46
450068	Unnamed	56
450071	Unnamed	76
450075	Unnamed	51
450080	Unnamed	51
450083	Unnamed	32
450084	Unnamed	176
450085	Unnamed	66
450087	Unnamed	27
450089	Unnamed	106
450091	Unnamed	25
450098	Unnamed	68
450099	Unnamed	35

450102	Unnamed	115
450103	Unnamed	73
450107	Unnamed	63
450108	Unnamed	156
450109	Unnamed	76
450110	Unnamed	62
450111	Unnamed	45
450114	Unnamed	39
450117	Unnamed	51
450118	Unnamed	82
450120	Unnamed	66
450125	Unnamed	45
450128	Unnamed	48
450129	Unnamed	40
450131	Unnamed	35
450133	Unnamed	50
450136	Unnamed	50
450138	Unnamed	55
450139	Unnamed	190
450140	Unnamed	70
450141	Unnamed	28
450142	Unnamed	25
450143	Unnamed	25
450144	Unnamed	25
450145	Unnamed	135
450146	Unnamed	270
450149	Unnamed	35
450154	Unnamed	28
450156	Unnamed	50
450160	Unnamed	31
450161	Unnamed	25
450162	Unnamed	25
450163	Unnamed	32
450164	Unnamed	40
450170	Unnamed	75
450173	Unnamed	45
450182	Unnamed	25
450183	Unnamed	70
450184	Unnamed	130
450186	Unnamed	35
450188	Unnamed	35
450189	Unnamed	50
450197	Unnamed	65
450053	Unnamed	244
450059	Unnamed	166
450060	Unnamed	45
450061	Unnamed	50