



Minnesota Department of Natural Resources
Division of Ecological and Water Resources (EWR)
2118 Campus Dr. SE, Suite 100
Rochester, Minnesota 55904

November 4, 2024

Cristal Adkins, Fillmore County Zoning Administrator
Blake Lea, Land Use Director
101 Fillmore St, P.O. Box 655
Preston, MN 55965

Re: Conditional Approval of Fillmore County Shoreland Ordinance Amendment to Change Shoreland Classification “Natural Environment” to “Forested”

Dear Cristal and Blake:

The DNR reviewed its shoreland classifications for public watercourses when we launched the online [Shoreland Mapping Application](#) and noticed that Fillmore County classifications were not consistent with the DNR classification system adopted in 1989.

We propose that the county amend its shoreland ordinance to change the classification of trout streams from Natural Environment (NE) to Forested. With this change, county classifications will be consistent with the public facing shoreland mapping application, thus reducing any concern or confusion by property owners. For your consideration and as a service to you, we have edited the county’s ordinance to make this simple change. We only changed the name from “NE” to “Forested” in all the relevant areas within your ordinance keeping all dimensional standards intact or unchanged. The standards for NE become the standards for Forested. These changes do not represent a comprehensive review of your shoreland ordinance but do reflect simple adjustments that will provide clarity for county residents and businesses.

We also added some text in the shoreland classification table (see page 4) stating that any additional listings of trout streams by the DNR would be included in your classification list as “Forested.” This language would eliminate the need for future ordinance amendments each time new trout streams are designated in Minnesota Rule.

The DNR brought this issue to the County’s attention by email correspondence on November 11, 2022, December 19, 2022, May 12, 2024, and on May 17, 2024. Following the May 17th email, the DNR provided conditional approval on July 11, 2024 for the County to adopt the changes.

Since our July 11, 2024 conditional approval letter, we have revised our comments to your shoreland ordinance to address issues we missed in our earlier review. One issue deals with a missing comma that affects the meaning of a vegetation provision and the other pertains to subdivision conformance with zoning standards.

Enclosed you will find the proposed shoreland ordinance amendment the DNR has determined to be compliant with statewide rules and is hereby conditionally approved, provided all the conditions of approval in this letter are met.

Ordinance Evaluation

We have reviewed and edited the following sections of the proposed ordinance dated May 12, 2024, for compliance with Minn rules 6120.2500 – 6120.3900:

- 602.02 (Shoreland Classification)
- 612.05 (Performance Standards)
- 612.17 (Planned Unit Developments)

Attached is the proposed amendment with our comments. The yellow highlighted comments identify changes related to changing classifications from “NE” to “Forested.”

Conditions of Approval

The following conditions must be met before the DNR will issue final approval:

1. Accept all the changes in the document.

Next Steps

The steps for completing and receiving final DNR approval for your amendment include:

1. Revise the amendment based on the conditions listed above.
2. The county board adopts the revised amendment according to the listed conditions.
3. Email the completed Ordinance Processing Checklist (attached) and the documents identified on the checklist within 10 days of county board adoption to:
 - a. Nicole Lehman, DNR Area Hydrologist by email at Nicole.lehman@state.mn.us and Ordinance.review.dnr@state.mn.us
4. We will review the amendment adopted by the county board for consistency with the above conditions.
5. If the adopted amendments are consistent with the conditions, I will send you a “final approval” letter. State rules require DNR final approval of shoreland ordinances and amendments for those ordinances to be effective.

A shoreland ordinance is an important land use regulation that helps to protect surface water quality, near shore habitat, and shoreland aesthetics of Minnesota’s public waters. We appreciate your efforts to protect these resources for all present and future Minnesotans. Nicole Lehman is available to assist with ordinance technical guidance and to consult with you on other land and water-related projects.

Sincerely,



Megan Moore
South District Manager

Attachments:

Proposed Ordinance with DNR comments
Ordinance Processing Checklist

c: Nicole Lehman DNR Area Hydrologist
Ordinance.review.dnr@state.mn.us

SECTION 6
Zoning Districts and Provisions

601. Zoning Districts

The zoning districts are so designed as to assist in carrying out the intents and purposes of this Zoning Ordinance.

For purposes of this Ordinance, Fillmore County is hereby divided into the following Zoning Districts:

<u>Symbol</u>	<u>Name</u>
A	Agricultural District
RA	Residential Agricultural District
R-1	Single and Two Family District
B-1	General Commercial District
I-1	General Industrial District

602. Overlay Zoning Districts and Shoreland Classification System

602.01. Zoning Overlay Districts

The following overlay districts are also made part of the Zoning Ordinance on property where both the zoning district (Section 601) and the overlay district would apply. The use or development of such a property shall comply with both districts. The following symbols and names shall represent Fillmore County's overlay districts:

<u>Symbol</u>	<u>Name</u>
FP	Flood Plain District
ST	Scenic Trail District
SH	Shoreland District
BL	Bluffland
DS	Decorah Shale

602.02. Shoreland Classification

The public waters of Fillmore County have been classified below consistent with the criteria found in Minnesota Rules and Regulations, Part 6120.3300 and the Protected Waters Inventory Map for Fillmore County, Minnesota.

River and Stream Classification	Legal Description
A. Transition	
Root River	West Section line S27 T104N R10W to Confluence with S. Branch Root River in S7 T103N R9W
Root River, South Branch	Bridge on Co Hwy 5 in S22 T102N R12W to Bridge in S4 102N R11W
Deer Creek	Bridge on Co Rd 1 in S9 T103N R13W to Co. Rd. 8 bridge, east half S8 T103N R12W
B. Agricultural	
Root River	Confluence with N. Root and Middle Branch Root in S17 T104N R11W to East Section line, S28 T104N R10W
Root River	Confluence with S. Branch Root River in S7 T103N R9W to Border of Houston and Fillmore Counties
Root River, South Branch	Border of Mower and Fillmore Counties to Bridge on Co Hwy 5 in S22 T102N R12W
Root River, South Branch	Bridge in S4 T102N R11W to Confluence with Root River in S7 T103N R9W
Root River, Middle Branch	Co Rd 8 Bridge, East half, S8 T103N R12W to Confluence with N. Branch Root River in S17 T104N R11W
Deer Creek	Border of Mower and Fillmore Counties to Bridge on Co Rd 1 in S9 T103N R13W
Root River, North Branch	Border of Olmsted and Fillmore Counties to Confluence with Middle Branch Root River in S17 T104N R11W
Root River, South Fork	Co. Rd. bridge in S1 T101N R10W to Border of Houston and Fillmore Counties
C. <u>Forested Natural Environment</u> Trout Streams	
<u>Big Springs Creek to Root River</u>	S15 T104N R9W to Confluence with Root River at S24 S26 T104N R9W
<u>Camp Creek</u>	S5-S9 T101N R10W to Confluence with S. Branch Root River at S5 T102N R10W
<u>Camp Creek</u>	S5 T101N R10W to S5 T101N R10W
<u>Camp Creek</u>	S17 T102N S9 T101N R10W to S5 T102N R10W
<u>Camp Hayward Creek</u>	S32 T104N R8W to Confluence with Root River at S30 T104N R8W
<u>Canfield Creek</u>	S25 T102N R12W to <u>Confluence with S. Branch Root River at S24 T102N R12W</u>
<u>Chickentown Creek</u>	S33 T102N R8W to Confluence with Wisel Creek at S32 T102N R8W
<u>Crystal Creek</u>	S35 T102N R11W to Confluence with Willow Creek at S36 T102N R11W
<u>Diamond Creek</u>	S13 S19 T103N R8W to S2 S10 T103N R9W
<u>Unnamed Creek to Diamond Creek</u>	S24 T103N R9W

Commented [LN(1)]: Legal description errors were corrected throughout this table to be consistent with current Minnesota Rules 6264.0050, Subp. 4 and Minnesota Statutes 103G.005, Subd. 15.

Commented [PD(2)]: New text, changing NE to Forested

Commented [LN(3)]: The following designated trout streams were not previously classified by Fillmore Co so they were added to be consistent with current designations:

1. **Camp Hayward Creek** (adds 3 new sections) **all of this is in the City of Rushford Village**
2. **Camp Creek** (adds 6 new sections)
3. **Chickentown Creek** (adds 2 new sections)
4. **Crystal Creek** (adds 2 new sections)
5. **Diamond Creek** (adds 6 new sections)
6. **Etna Creek** (adds 2 new sections)
7. **Frego Creek** (adds 4 new sections)
8. **Partridge Creek** (adds 2 new sections)
9. **Partridge Creek** (adds 1 new section)
10. **Rush Creek** (adds 5 new sections) **Section 13 is in the City of Rushford remainder is in Rushford Village)
11. **Schueler Creek** (adds 3 new sections) **some residential development is occurring within shoreland district with residences ~150ft from the stream** All of this is in the City of Rushford Village
12. **Shattuck Creek** (adds 8 new sections)
13. **Vesta Creek** (adds 1 new section)
14. **Watson Creek** (adds 12 new sections)
15. **Wisel Creek** (adds 2 new sections)

Unnamed Creek to Diamond Creek, South Fork	S24 T103N R9W to Confluence with Diamond Creek at S13 S14 T103N R9W
Duschee Creek	S1 T102N R10W to <u>Confluence with S. Branch Root River at S24 T103N R10W</u>
Unnamed Creek to Duschee Creek	S35 S36 T103N R10W to S1 T102N R10W
<u>Etna Creek</u>	<u>West Section Line S36 T102N R13W to Confluence with S. Branch Root River at S25 T102N R13W</u>
<u>Etna Creek, South Branch</u>	<u>S36 T102N R13W</u>
Forestville Creek	S15 T102N R12W to <u>Confluence with S. Branch Root River at S13 T102N R12W</u>
<u>Frego Creek</u>	<u>S22 T101N R9W to S14 T101N R9W</u>
Gribben Creek	S27 T103N R9W to S9 T103N R9W
<u>Sokup Spring Unnamed Creek to Gribben Creek</u>	S33 T103N R9W to <u>Confluence with Gribben Creek in S28 T103N R9W</u>
<u>Hallum Creek Unnamed Creek to South Fork Root River</u>	S36 5 T103N R8W to <u>Border of Houston and Fillmore Counties S36 T103N R8W</u>
<u>Hamilton Creek to Bear Creek</u>	<u>North Section Line at S1 T103N R14W to Confluence with Bear Creek at S6 T103N R13W</u>
Kedron Creek	S36 T104N R13W
<u>Little Jordan Creek (AKA Carson Creek)</u>	S21 T104N R12W to <u>Confluence with Middle Branch Root River in S27 S26 T104N R12W</u>
<u>Lost Creek (AKA Upper Bear Creek)</u>	S8 T104N R12W to S15 S10 T104N R12W
Lost Creek (AKA Upper Bear Creek)	S18 T104N R12W
Lynch Creek	<u>Border of Olmsted and Fillmore Counties at S2 T104N R11 to Confluence with the Root River in S14 T104N R11W</u>
Maple Creek Unnamed Creek to S. Fork Root River	S2827 T103N R8W to <u>Confluence with S. Fork Root River at S10 T102N R8N</u>
<u>Unnamed Creek to Wisel-Newburg Creek</u>	S8 T101N R8W to <u>Confluence with Wisel Creek at S5 T101N R8W</u>
<u>Partridge Creek</u>	<u>S4 T101N R10W to S33 T102N R10W</u>
<u>Partridge Creek</u>	<u>S20 T102N R10W</u>
Pine Creek	Border of Winona and Fillmore Counties at S4 S2 T104N R9W to Border of Winona and Fillmore Counties at S2 T104N R9W
Rice Creek <u>to Root River</u>	S7 T103N R11W to <u>East Section Line S28 T104N R11W</u>
Rice Creek <u>to Root River</u>	West Section Line S22-S23 T104N R11W to <u>Confluence with Root River at S14 T104N R11W</u>
Big Springs Creek <u>to Rice Creek</u>	S3 T103N R11W <u>to S33 S4 T103N T104N R11W</u>
Riceford Creek	<u>Border with Houston and Fillmore Counties at S24 T101N R8W to Border with Houston and Fillmore Counties at S124 T101N R8W</u>
<u>Unnamed Creek to Riceford Creek</u>	S13 T101N R8W to S12 T101N R8W
<u>Riceford Creek</u>	S12 T101N R8W to S1 T101N R8W

<u>Unnamed Creek to Riceford Creek</u>	S42 T101N R8W to Border of Houston and Fillmore Counties S1 T101N R8W
<u>Root River, Middle Branch</u>	S8 T103N R12W to S9 T103N R12W
<u>Root River, South Branch</u>	S21 T102N R12W to Confluence of Root River at S7 T103N R9W
<u>Root River, South Fork</u>	S26 T102N R9 to S2 T102N R8W
<u>Rush Creek</u>	Border of Winona and Fillmore Counties S4 T104N R8W to the -Rushford city limit boundary in S11 T104N R8W S134 T104N R8W
<u>Schueler Creek</u>	S1 T104N R8 to Confluence with Rush Creek at S3 T104N R8W
Shady Creek	S31 T104N R11W to East Section Line S20 T104N R11W
<u>Shattuck Creek</u>	S2 T102N R9W to Confluence with S. Fork Root River at S9 T102N R8W
Spring Valley Creek	West Section Line S29 T103N R13 to Confluence with Middle Branch Root River at S8 T103N R12W
<u>Mahoods Creek (to Spring Valley Creek)</u>	S20 T103N R12 to Confluence with Spring Valley Creek in S20 T103N R12W
Torkelson Creek	North Section Line S25 T104N R10W to Confluence with Root River at S36 T104N R10W
Trout Run Creek	Border of Winona and Fillmore Counties at S5 T104N R10W to Confluence with Root River at S20 T104N R10W
Vesta Creek	S14-S23 T102N R8W to Confluence with S. Fork Root River at S11 T102N R8W
Watson Creek	S30 T103N R11W to Confluence with S. Branch Root River at S29 S21 T103N R11W
<u>Willow Creek</u>	S36-S12 T101N R11W to Confluence with S. Branch Root River at S1 T102N R11
Wisel Creek	S5-S6 T101N R8W to Confluence with S. Fork Root River at S19 T102N R8W
Any additional watercourses designated as a trout stream under Minn. Rule 6264.0050, Subp. 4(R) and designated as a public watercourse in Minn. Statute 103G.005, Subd. 15. (a)(10) shall be classified as "Forested."	

Commented [PD(4): New language

D. Tributary

The "Tributary" classification applies to all other public rivers and streams shown on the Public Waters Inventory Map for Fillmore County ~~remaining non-classified protected watercourses in Fillmore County as shown on the Protected Waters Inventory Map~~, a copy that is hereby adopted by reference.

Commented [PD(5): This language added so that Tributary remains the default classification for any stream that isn't classified as agricultural, transition and forested.

612. Shoreland District (SH)

612.01. General Provisions

- 1) Lands to which this Section Applies: This Section shall apply to all land designated as

Shoreland area within the jurisdiction of Fillmore County. This area includes lands three hundred (300) feet landward from the ordinary high water level of all protected watercourses as identified on the Protected Waters and Wetlands Map and listed in Section 602.02 of this Ordinance.

- 2) Compliance: The use of any shoreland, the size and shape of lots, the building of new or the alteration of existing structures, the installation and maintenance of water supply or sewage treatment systems shall be in full compliance with the terms of this Ordinance and other applicable regulations.
- 3) 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 statute.

612.02. Purpose

To provide an overlay district to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shoreland, and provide for the wise use of waters and related land resources.

612.03. Permitted Uses

- 1) In the Ag District:
 - a. Ag Buildings.
 - b. Dwellings.
 - c. General Ag Use.
 - Raising crops
 - Livestock (provided they do not constitute an animal feedlot)
 - Poultry
 - Dairy
 - Horticulture
 - And other similar agriculturally related uses
 - d. Drainage systems, flood control and watershed structures and erosion control devices provided each will meet the appropriate safety laws and regulations.
 - e. Temporary or seasonal roadside stands not to exceed one (1) stand per Ag lot and with adequate off-street parking.
 - f. Forest and Game Management areas.
 - g. Home Occupations.
 - h. Accessory uses incidental to any of the above permitted uses when located on the same property.
 - i. Electrical distribution and transmission lines and other essential services in accordance with Section 733.
 - j. Kennels.
 - k. Stables.
 - l. Publicly owned and operated buildings.

- 2) In the Rural Residential District (RA):
 - a. One single family dwelling per lot.
 - b. Keeping and raising of livestock or poultry, provided they are housed and fenced so as not to become a nuisance; and
 - Clearly not commercial in nature;
 - Animal density shall not be greater than one (1) animal unit per acre of pasture. See definition in Section 302(8).
 - No structure for housing poultry or livestock may be located nearer than fifty (50) feet to any property line.
 - c. Public or private schools provided no building shall be located within fifty (50) feet of any lot line of a residential use.
 - d. Churches.
 - e. Limited ag use and truck gardening activities to include, but not be limited to, carrots, radishes, sweet corn, potatoes, beans, rhubarb, cabbage, lettuce, pumpkins, watermelon, corn, beans, and hay.
 - f. Home Occupations.
 - g. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same property.
 - h. Electrical distribution and transmission lines and other essential services in accordance with Section 733.

- 3) In the Single and Two Family Residential District (R-1):
 - a. One and two family residential dwellings.
 - b. Public and parochial schools of general instruction.
 - c. Essential services and electrical distribution and transmission lines in accordance with Section 733.
 - d. Churches and Chapels, including parish houses.
 - e. Home Occupations.
 - f. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same property.
 - g. Electrical transmission lines and substations.

612.04. Conditional Uses

- 1) In the Ag District:
 - a. Mining or extraction of minerals or raw materials regulated in Section 721.
 - b. Public Parks.
 - c. Commercial and industrial uses primarily intended to serve the agricultural uses.
 - d. Animal feedlots exceeding nine-hundred ninety nine (999) animal units as defined in Section 302 (8). No new animal feedlots are allowed within three hundred (300) feet of a public water course, nor are existing animal feedlots allowed to encroach further within three hundred (300) feet of a public water course. Setbacks from a feedlot shall be from the nearest point of the dwelling to the border of the feedlot as determined and measured by the Fillmore County Feedlot Officer. Setback from the

- public waters shall be measured on a horizontal plane from the river bank to the dwelling.
- e. Public Utility Buildings and Structures such as substations, transformer stations, regular stations, and communications stations.
 - f. Accessory Structures and Uses customarily incidental of any of the above conditional uses when located on the same property.
 - g. Campgrounds, including recreational camping vehicle, trailer and tent camps.
 - h. Planned Unit Development.
- 2) In the Rural Residential District (RA):
- a. Railroad Rights of Way, but not including railroad yards.
 - b. Public Utility Buildings and structures as specified in 604.03(10).
 - c. Accessory Structures and Uses customarily incidental to any of the above conditional uses when located on the same property.
 - d. Electrical Distribution Lines and Substations.
 - e. Parks and Recreation Areas owned or operated by government agency.
 - f. Planned Unit Development.
- 3) In the Single and Two Family Residential District (R-1):
- a. Municipal Office Buildings and Day Care Centers.
 - b. Multiple Family Dwellings for any number of families, including row houses and terrace dwellings.
 - c. Cemeteries, Memorial Gardens and Funeral Homes meeting the conditions of Section 604.03(4).
 - d. Boarding or Rental of Rooms including Bed and Breakfast Establishments.
 - e. City buildings and structures including police and fire stations, libraries, museums, and art galleries.
 - f. Nursing homes, hospitals and sanitariums, water supply buildings and reservoirs, elevated tanks, utility buildings, substations, and transformer stations.
 - g. Planned Unit Development (PUD).
 - h. Professional Offices limited to a maximum of two (2) employees.
 - i. Semi-private Recreation Areas. Clubs, Lodges, and Centers including country clubs, swimming pools and golf courses but not including such uses as camping areas, miniature golf courses, or private driving tees which are operated for commercial purposes.
 - j. Manufactured Home Parks
 - k. Any other use of the same character as those listed as permitted uses.
- 4) In the General Commercial District (B-1):
- a. Business Services including banks, offices and postal stations.
 - b. Clothing Services including dry cleaning and laundry establishments, Laundromats, dressmaking, millinery and tailor shops, shoe repair shops.
 - c. Equipment Services including radio and television shops, electrical appliance shops, showroom of a plumber, decorator or similar trade. Food Services including grocery stores, fruit, vegetable and meat markets, supermarkets, restaurants, delicatessen, candy shops, and bakeries whose products are sold only at retail on the premises.

- d. Personal Services including barber and beauty shops, reducing salons, photographic shops and funeral homes.
 - e. Retail Services including drug stores, hardware stores, haberdasher, stationery and book stores, new shops, apparel shops, showroom for articles to be sold at retail, flower shops, and commercial greenhouses.
 - f. Electrical Distribution and Transmission Lines, Substations and other Essential Services.
 - g. Automobile Services including auto equipment sales, car wash service, new and used car sales lot, trailer sales areas, gasoline service station and auto repair garages.
 - h. Drive-in restaurants, drive-in banks and other drive in services.
 - i. Open Air Display Areas for the sale of products such as garden furniture, hardware items, nursery stock or automobiles or areas used to display rental equipment such as tools or trailers.
 - j. Accessory Structures and Uses customarily incidental to any of the above conditional uses when located on the same property.
 - k. Planned Unit Development.
- 2) In the General Industrial District (I-1):
- a. Building materials storage yards, lumber yards, machinery lots, car lots, contractor(s) equipment rental and storage yards. *
 - b. Wholesale Businesses including warehousing and storage buildings, Light Manufacture, Compounding Treatment and Assembly of Articles or merchandise previously manufactured elsewhere. *
 - c. Manufacturing Processes and Treatments of Products using light machinery such as tool and die shops, metal fabricating plants and welding shops.
 - d. Public Utility Service Buildings and Yards, Electrical Transformer Stations, Substations, and Gas Regulator Stations.
 - e. Dwellings for Watchmen or Custodians of industrially used property only.
 - f. Automobile Service Stations.
 - g. Outdoor Storage of Vehicles or Materials or Open Sales Lot, Farm Implement Sales.
 - h. Restaurants, Lunch Counters, Confectioneries to serve the employees of the district.
 - i. Retail Sales incidental to and in connection with the aforementioned permitted uses. These uses shall be conducted wholly within a building with a landscaped front yard and with side and rear yard used for loading, unloading and parking. Visitor parking may be allowed in the front yard.
 - j. Accessory Uses shall be: Off-street parking, storage garages, and building and loading facilities as regulated in this Ordinance. Buildings temporarily located for purposes of construction. Essential security and safety facilities as approved by the County. Offices accessory to the principal use.
 - k. Electrical Distribution and Transmission Lines, Substations and other Essential Services in accordance with Section 733.
 - l. Planned Unit Development.

* Uses permitted in those items noted above shall be conducted entirely within a building with a landscaped front yard and with side and rear yards used for loading, unloading, and parking. Visitor parking may be allowed in the front yard.

612.05. Performance Standards

- 1) Lot Area-Refer to the Underlying District.
- 2) Lot Width for Public Waters by Classification (in feet).

Number of Units	Transition	Trout Forested	Agricultural	Tributary
Single	250'	250'	150'	150'
Two	375'	375'	225'	150'
Three	500'	500'	300'	200'
For Each Additional Unit (Add)	+ 125'	+ 125'	+ 75'	+ 50'

Commented [PD(6): New text, changing trout streams/NE to Forested

- 3) Height regulations refer to the underlying District.
- 4) Front, Side, and Rear Yard Setbacks from OHWL to nearest point of a structure.
 - a. Refer to the Underlying District.
 - b. Setbacks from Ordinary High Water Level

Public Waters Classification	Structures Unsewered	Structures Sewered	Sewage Treatment System
Transition or Forested Trout Streams	150'	150'	100'
Agricultural or Tributary	100'	50'	75'

Commented [PD(7): New text, changing trout streams/NE to Forested

Additional Structure Setbacks

Setback from	Setback
1) Top of Bluff	80'
2) Unplatted Cemetery	50'
3) Road Right-of-Way-Federal, State	
Co. Hwy	100'
All others	100'
4) Ordinary High Water Level	
New animal feedlots	300'

612.06. Special Provisions Applicable to Lot Area and Width Standards

- 1) Residential subdivisions with dwelling densities exceeding these established in the performance standards of each land use district can only be allowed if designed and approved as residential PUD's.
- 2) Lots intended as controlled accesses to public waters or as recreation lots within PUD's 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. They must be jointly owned by all purchasers of lots in the PUD and or by all

purchasers of non-riparian lots in the PUD who are provided riparian access rights on the access lot.

612.07. Design Criteria for Structure

- 1) High Water Elevations. Structures must be placed in accordance with any flood plain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or floor proofed must be determined as follows:
 - a. For rivers and streams, by placing the lowest floor at least three (3) feet above the flood of record, if data is available. If data is not available, by placing the lowest floor at least three (3) feet 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 Minnesota Rules 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.
- 2) 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.

612.08. 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. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 612.09 of this Ordinance are exempt from the vegetation alteration standards that follow.

- 1) Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Section 612.11, 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

Commented [DP8]: This missing comma affect the meaning of this sentence in an important way. Please add a comma.

stairways and landings, picnic area, access paths, livestock water areas, beach and watercraft access areas provided that:

- i) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.
 - ii) along rivers, existing shading of water surfaces is preserved; and
 - iii) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.
- 2) Use of fertilizer and pesticides in the Shoreland District must be done in such a way as to minimize run-off into the shore impact zone or public water by the use of earth, vegetation, or both.
 - 3) Grading, filling, and excavations necessary for 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.
 - 4) Public roads and parking areas are regulated by Section 612.09 of this Ordinance.
 - 5) Notwithstanding items three (3) and four (4) 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 fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.
 - 6) The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances, and PUD approvals:
 - a. Grading or filling in any type 2, 3, 4, 5, 7, or 8 wetland must be evaluated* to determine how extensively the proposed activity would affect the following functional qualities of the wetland:
 - i) sediment and pollutant trapping and retention;
 - ii) storage of surface run-off to prevent or reduce flood;
 - iii) fish and wildlife habitat;
 - iv) recreational use;
 - v) shoreline or bank stabilization; and
 - vi) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
 - 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 thirty (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 103 G.245.
- 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.
- 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 (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet.

* This evaluation must also include a determination of whether the wetland alteration being proposed required 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.

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

- 1) 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.
- 2) 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.
- 3) 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 612.08 of this Ordinance must be met.

612.10. Stormwater Management

- 1) When possible, existing natural drainage ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater run-off before discharge to public waters.
- 2) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, run-off velocities, erosion potential, and reduce and delay run-off 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 run-off 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.
 - 4) Impervious surface coverage of lots must not exceed twenty-five (25%) percent of the lot area.
 - 5) 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.
 - 6) New stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

612.11. Special Provisions for Commercial, Industrial, Public/Semi-public, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat

- 1) Standards for Commercial, Industrial, Public and Semi-Public Uses:
 - a. Surface water oriented commercial uses and industrial, public, or semi-public uses with similar needs, which need 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:
 - i) 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 without water oriented needs must be located on lots or parcels without public waters frontage or, if located on lots or parcels with public waters frontage, must either be setback double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.
- 2) Agriculture Use Standards:
 - a. General Cultivation Ag Uses, 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 perennial 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 National Resources Conservation Service, as provided by a qualified individual or agency.
 - b. Landowners owning property with permitted agricultural land uses adjacent to a water body identified and mapped on a buffer protection map as public waters must maintain a buffer to protect the State's water resources as follows:
 - i. Must maintain a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation. The width of a buffer on public waters must be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water

- level.
- ii. May meet the requirements by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board, that provide water quality protection comparable to the buffer protection for the water body that the property abuts. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource.
- 3) May meet the requirements by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board, that provide water quality protection comparable to the buffer protection for the water body that the property abuts. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource. 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”.
- 4) Extractive Use Standards:
 - a. Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved by the appropriate State agency 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) 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.

612.12. Water Supply and Sewage Treatment

- 1) Water Supply. Any public and 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.
- 2) 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, Minnesota Rule 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 612.05.
- d. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria. 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 boring and percolation tests from on-site field investigations.
- e. Evaluation criteria:
 - i) depth to the highest known or calculated groundwater table or bedrock;
 - ii) soil conditions, properties and permeability
 - iii) slope;
 - iv) the existence of low lands, local surface depressions, and rock outcrops.
- f. Non-conforming sewage treatment systems shall be regulated and upgraded in accordance with Section 612.15 of this Ordinance.

612.13. Construction of Non-Conforming Lots of Record

- 1) Lots of record in the office of the County Recorder on the date of enactment of local shoreland controls that do not meet the Performance Standards of the individual land use districts 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 treatment and setback requirements of this Ordinance are met.
- 2) 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.
- 3) If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the Performance Standards, Section 6 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 Performance Standards as established in this ordinance as much as possible.

612.14. Additions/Expansions to Non-Conforming Structures

- 1) All additions or expansion to the outside dimensions of an existing non-conforming structure must meet the setback, height, and other requirements of Section 6 of this Ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section 505.
- 2) 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:

- a. the structure existed on the date the structure setbacks were established;
- b. 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;
- c. the deck encroachment toward the ordinary high water level does not exceed fifteen (15%) percent of the structure from the ordinary high water level or does not encroach closer than thirty (30) feet, whichever is more restrictive; and
- d. the deck is constructed primarily of wood and is not roofed or screened.

612.15. Non-conforming Sewage Treatment Systems

- 1) A sewage treatment system not meeting the requirements of Section 612.12 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 non-conforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
- 2) The governing body of Fillmore County has by formal resolution notified the Commissioner of its program to identify non-conforming sewage treatment systems that are located in the Shoreland Overlay District. A property owner will be required to submit a Certificate of Inspection from a certified sewage treatment system installer indicating whether the treatment system conforms to MPCA 7080 rules. This shall be done prior to the owner's making application for a building permit, requesting a variance, or a rezoning.

The certificate shall also be required by the Fillmore County Recorder prior to the recording of a transfer of property on which a structure exists. Should the property owner choose, the County will conduct the sewage treatment system inspection and make the determination whether the said system conforms to MPCA 7080 rules. The owner shall pay a fee, as established by the Fillmore County Board.

If, at the time of inspection, the system is determined to be non-conforming, the property owner will be required to bring the system into conformance within ninety (90) days.

Sewage treatment 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 cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the MPCA Chapter 7080 for design of on-site sewage treatment systems, shall be considered non-conforming.

612.16. Subdivision/Platting Provisions

- 1) Land Suitability. Each lot created through subdivision, including planned unit developments authorized under Section 609 of this Ordinance, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the Fillmore County Zoning Office shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitation for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities near shore aquatic conditions in unsuitable areas 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 PUD or of the community.
- 2) Consistency with Other Controls. Subdivisions, including PUD's, must conform to all official controls of this County. A subdivisionPUD 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 subdivisionPUD will not be approved unless domestic water supply is available and a sewage treatment system consistent with Sections 612.05 and 612.12 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Section 612.05 and the requirements set forth in the underlying district, including at least a minimum contiguous lawn area that is free of limiting factors sufficient for the construction of two (2) standard soil 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 Fillmore County Zoning Office to make a determination of land suitability. The information shall include at least the following:
 - a. topographic contours at ten (10) 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 run-off and erosion both during and after construction activities; and
 - e. location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and 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.
- 4) Dedications. When a land or easement dedication is a condition of PUD approval, the approval must provide easements over natural drainage or ponding areas or management of stormwater and significant wetlands.
- 5) Platting. All PUD's that create five (5) or more lots shall be processed as a plat in accordance with Minnesota Statutes Chapter 505. No permit for construction of

Commented [DP9]: MR 6120.3500 Subp. 3 applies to all subdivisions, not just PUDs. Please make this change. With this change, it would be helpful to address procedures with the Recorder/Assessor's office so that lot splits are reviewed by the zoning administrator to ensure compliance with this provision before the Recorder/Assessor office approves the lot split.

buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as a part of a formal PUD.

- 6) Controlled Access or Recreational Lots. Lots intended as controlled accesses to public waters or for recreational use areas for use by non-riparian lots within a subdivision must meet or exceed the sizing criteria in Section 612.06 of this Ordinance.

612.17. Planned Unit Development (PUD's)

- 1) Types of PUD's Permissible.

Planned unit developments (PUD's) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing building and land. The land use districts in which they are an allowable use are identified in the land use district descriptions in Section 602 of this ordinance and the official zoning map. For the purposes of this Section (612) the following definition shall apply.

Planned Unit Development. A development of a unified site whereby dwelling units or dwelling sites are grouped or clustered in and around common open space areas, in accordance with a pre-arranged site plan submitted by a developer and requiring membership in an association

- 2) Permitted Uses.

In the Ag District these developments may be organized and operated as campgrounds, recreational vehicle parks, and conversions of structures and land uses to these uses. In the incorporated areas of the County that have adopted the Fillmore County Zoning Ordinance, these developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks resorts, hotels, motels, and conversions of structures and land uses to these uses.

- 3) Processing of PUD's

Planned unit developments must be processed as a conditional use, except that an expansion to an existing commercial PUD involving six (6) or less 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 Section 612.17(5.). Approval cannot occur until the environmental review process (EAW/EIS) is complete.

- 4) Application for a PUD

The applicant for a PUD must submit the following documents prior to final action being taken on the application request:

- 1) 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 (10) 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.

- 2) A property owner’s association agreement (for residential PUD’s) with mandatory membership, and all in accordance with the requirements of Section 6 of this ordinance. Deed Restrictions, covenants, permanent easements and 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 Section 612.17(11) of this ordinance.
- 3) When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied.
- 4) Those additional documents as requested by the Fillmore County Board of Commissioners that are necessary to explain how the PUD-will be designed and will function.

5) 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.

- 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	Unsewered (Feet)	Sewered (Feet)
All river classes	300	300

- 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.

6) Residential and Commercial PUD Density Evaluation

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

7) Residential PUD Base Density Evaluation:

- 1) The suitable area within each tier is divided by the single residential lot size standard 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 Section 612.17(5) and (6).

8) Commercial PUD Base Density Evaluation:

- a. 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.
- b. Select the appropriate floor area ratio from the following table:

Commercial Planned Unit Development
Floor Area Ratios*

unit floor area sq. ft.	Public waters classes		
	tributary river segments	*Average transition and forested river segments	Natural agricultural lakes and remote river segments
200	.040	.020	.010
300	.048	.024	.012
400	.056	.028	.014
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

Commented [PD(10)]: Forested is already here!

For average unit floor areas less than shown, use the floor area ratios listed for two-hundred (200) square feet. For areas greater than shown, use the ratios listed for one thousand five hundred (1,500) square feet. For recreational camping areas, use the ratios listed at four hundred (400) square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home, or if unknown, the ratio listed for one thousand (1,000) square feet.

- c. 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.
- d. Divide the total floor area by tier computed in Item C. 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.

- e. 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 Section 612.17(5) and (6).

9) Density Increase Multipliers:

- a. Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in Section 612.17(5) are met or exceeded and the design criteria in Section 612.17(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 fifty (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 twenty five (25) percent greater than the minimum setback.
- b. 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	100
Third	200
Fourth	200
Fifth	200

10) Maintenance and Design Criteria

Maintenance and Administration Requirements:

- a. 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.
- b. 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:
 - i) commercial uses prohibited (for residential PUD's);
 - ii) vegetation and topographic alterations other than routine maintenance is prohibited; and
 - iii) construction of additional buildings or storage of vehicles and other materials is prohibited; and uncontrolled beaching of watercraft is prohibited.
- c. 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:
 - i) membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers;
 - ii) any unpaid assessments can become liens on units or sites;

- iii) assessments must be adjustable to accommodate changing conditions; and
- iv) the association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

11) Open Space Requirements: Planned unit developments must contain open space meeting all of the following criteria:

- 1) at least fifty (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, are developed areas and shall not be included in the computation of 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 for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;
- 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;
- 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 fifty (50) percent of the shore impact zone area of existing developments or at least seventy (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 fifty (50) percent of the shore impact zone must be preserved in its natural state.

12) Erosion Control and Stormwater Management

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

- a. 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, 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
- b. be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier must not exceed twenty-five (25) percent of the tier area, except that for commercial PUD's thirty-five (35) percent impervious surface coverage of general development lakes with an approved stormwater management plan and consistency with Section

612.17(3)(5).

13) Centralization and Design of Facilities. Centralization and design of facilities and structures must be done according to the following standards:

- a. 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 Sections 612.17(5) 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;
- b. 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 Section 612.17(5) of this ordinance for developments with density increases;
- c. 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 (not with standing 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; and
- d. structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shoreland 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; accessory structures and facilities must meet the required principal structure setback and must be centralized.

14) 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:
 - i) Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
 - ii) remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and
 - iii) 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.
- 15) Existing dwelling unit or dwelling sites densities that exceed standards in Section 612.17(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 recreational facilities, installing new sewage treatment systems, or other means.