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**STATEMENT OF NEED AND REASONABLENESS**

**FOR**

**PROPOSED SHORELAND MANAGEMENT RULES**

**FOR**

**THE NORTH SHORE OF LAKE SUPERIOR**

**MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF WATERS**

**JULY 1989**

## STATEMENT OF NEED AND REASONABLENESS

### Proposed revisions to Minnesota Rules Parts 6120.2500-6120.3900

	<u>PAGE</u>
Introduction	1
Need and Reasonableness of Proposed Rule Revision/ "North Shore Management Plan"	5
Part One, Shoreland Use Guide Plan and Policies	5
- North Shore Management Planning Area (Planning Boundary)	5
- North Shore Management Goal Statement	6
- Policy Fundamentals	6
- Shoreland Management Areas: Definitions, Goals and Policies	7
Part Two, Development Standards	9
- Zoning Provisions	9
- Lot Area and Width	10
- Building Height	12
- Lot Coverage	12
- Sanitary Systems	12
- Shoreland Alterations	15
- Wetlands	16
- Grading and filling	17
- Erosion Hazard Areas	17
- Planned Unit Development Guidelines	19
- Administrative Review	23
- Rulemaking Considerations of Agricultural Lands and Small Businesses	24
- Agricultural Lands	25
- Small Businesses	25
- Fiscal Note	27
Appendix A, Memorandum of Understanding Between the North Shore Management Board and the Department of Natural Resources	A-1
Appendix B, North Shore Management Board Organization and Committees	B-1

## INTRODUCTION

The Commissioner of Natural Resources is required by statute (Minn. Stat., Sect. 105.485) to promulgate standards for the subdivision, use, and development of shorelands in both unincorporated areas of counties and within cities. Standards for counties were adopted in 1970 and, because the statute was amended to include cities in 1973, standards for cities were adopted in 1976.

After adoption of the county standards in 1970, the DNR notified counties throughout the state of the requirement in the Shoreland Act for them to adopt county ordinances meeting or exceeding the state standards by July 1, 1972. DNR staff then began working with individual counties to finalize lake classifications and develop county ordinances. As this process was completed, individual counties then adopted the ordinances and began to administer them. Most of the counties adopted adequate ordinances by the deadline, and those that did not adopted resolutions which indicated their intent to adopt by a particular date. These counties all completed the adoption process in 1973.

The counties along the North Shore of Lake Superior adopted shoreland management ordinances in conformance with the statewide standards and criteria.

From its inception, the Statewide Shoreland Management program was clearly aimed at inland lakes. Lake Superior is an exception because of its size and other physical and coastal characteristics. Minimum lot sizes, building setbacks, sewage treatment standards, grading and filling provisions, subdivision regulations and vegetation management provisions were all designed to minimize the impact of shoreland development on inland lakes.

The North Shore of Lake Superior is a high amenity area with abundant natural resources and outstanding recreational opportunities. Lake Superior has long been recognized by federal, state and local officials, as well as private interests, as a unique body of water with distinctive shoreland characteristics. Lake Superior is no longer seen as just a products shipping waterway. As demonstrated by the recent increase in fishing, pleasure boating, marina proposals, condominium and townhouse developments and the expansion of land oriented recreational facilities, the North Shore has developed

into an area of multiple uses.

The North Shore will continue to experience significant development pressure over the next several decades. Tourism will play an increasing role in the economy of the area. Townhouses and condominium development, resort/condominium conversions, traditional recreational developments and greater demand for land and especially water based recreational facilities all present economic development opportunities and resource management challenges. Several issues concerning Highway 61, the critical transportation link through the North Shore area, need to be addressed in concert with consistent land and water resources policies.

Minnesota's Statewide Shoreland Management Program was conceived by the Legislature in 1969 as a cooperative effort of the Minnesota Department of Natural Resources (MDNR) and local units of government. In 1981, the Legislative Commission on Minnesota Resources funded a program evaluation which identified Lake Superior as a distinctive management unit, not adequately addressed by the existing Statewide Shoreland Management Program. Recommendations from this evaluation called for the initiation and support of a local government effort to develop a shoreland management plan for the North Shore of Lake Superior.

During the fall of 1986, the MDNR proposed new shoreland management rules. These draft regulations were presented by MDNR staff at a public information meeting to concerned citizens and government officials on the North Shore. During that meeting, it became evident that there was a large amount of opposition to the proposed management regulations. The opposition mainly centered around the rules not specifically accounting for the unique characteristics of the North Shore, the difficulty and added administrative costs for enforcement of the rules, and the lack of a strong local perspective in defining standards to a body of water which is viewed as a unique local resource.

From October 1986 to July 1987, a task force consisting of representatives from the North Shore local units of government, MDNR and the Arrowhead Regional Development Commission (ARDC), discussed the possibility of jointly organizing the government units along the North Shore for the purpose of developing and implementing a management plan for the shoreland corridor of Lake Superior. The establishment of a Joint Powers Board was recommended. In July of 1987 the North Shore Management Board (NSMB), consisting of county, city and township governments, was established (see appendix for Joint Powers Agreement).

The purpose of the NSMB is to direct the development of a North Shore Management Plan with strategies for environmental protection and orderly growth of the North Shore of Lake Superior. The management responsibility is jointly shared by the counties, cities and townships exercising land use control and jurisdiction over certain public and private lands within this

corridor. Management responsibility was accomplished through adoption of a comprehensive North Shore Management Plan which provides the foundation for strong local official controls and policy decisions within the boundaries of the member units of government.

A Memorandum of Understanding between the NSMB and the MDNR pertaining to the coordination, cooperation and responsibilities in developing the Shoreland Management Plan was developed in October of 1987 (see appendix "A" for Memorandum of Understanding). The MDNR and NSMB agreed that the focus of the planning program for 1988-89 would be shoreland management. The goals of the Memorandum of Understanding were to define the responsibilities of the MDNR and NSMB in support of common objectives, interests and statutory requirements; to ensure timely identification and resolution of differences; and, to enhance communication and coordination.

Two sixteen member advisory committees, the Citizens Advisory Committee and the Technical Advisory Committee, were appointed by the NSMB in October of 1987 to provide assistance in defining issues to be addressed during the planning process (see appendix "B" for the Organizational Structure of the NSMB and for a list of all NSMB and committee members). Services were purchased from ARDC to provide technical assistance during the planning process.

The North Shore Management Board adopted the North Shore Management Plan (Plan) on November 29, 1988 after an extensive process of local participation through which all major interests were fully represented. The planning process received considerable statewide media coverage via newspapers and radio broadcasts and the NSMB had a broad mailing list of public notice and informational materials.

When the North Shore Management Board adopted the Plan it requested the Department of Natural Resources to adopt the plan as a state rule through the non-controversial rule making process. As outlined in the Memorandum of Understanding between the Board and the DNR, it has, from the initiation of the process, been the intent of the DNR to adopt the Management Plan as a state rule to replace the Statewide Shoreland Management Rules for the North Shore from and including Lakewood Township in St. Louis County to the Canadian border at the Pigeon River in Cook County. (see next section for a description and explanation of the Planning Boundary).

The process that was used in developing the Plan was a model of public participation and involvement, as well as fully representative of all major interests presently affected by the management plan.

As noted above, upon initiation of the planning process, the Board appointed two sixteen member advisory committees to develop the plan. A listing of Advisory Committee members is found in

the appendix along with an organization chart. As noted in the committee rosters, a very broad cross section of public and private interests were represented on the two committees. The Technical Advisory Committee (T.A.C.) was comprised of local, state and federal agency representatives with management or planning responsibility for some aspect of shoreland management along the North Shore. The T.A.C. was responsible for developing the "Development Standards", and "Administrative Review" chapters in the Plan. The T.A.C. formed various subcommittees to more efficiently carry out its work. Three subcommittees were assigned responsibility for drafting the initial proposals for zoning standards, (lot sizes, building setbacks, lot widths, etc.), sanitary provisions, shoreland alteration provisions (grading and filling, wetland preservation and removal of natural woody vegetation). The entire T.A.C. fully discussed each segment drafted by the respective subcommittees and either approved or rejected all or parts of each proposal. If rejected, the specific provision would be returned to the subcommittee of origin for reworking. When the entire T.A.C. was satisfied with any given section or portion of the plan, the T.A.C. sent it on to the Citizens Advisory Committee for discussion, review and approval. The C.A.C. sometimes asked the T.A.C. for further information or sent particular segments back for further work. When satisfied, the C.A.C. sent the T.A.C. originated provisions to the Board for approval. The Board took action on the various components of the "Development Standards" and "Administrative Review" chapters by either approving as proposed, revising, or returning them to the C.A.C. for further work.

The C.A.C. was responsible for initiating and recommending to the Board for approval, the "Shoreland Use Guide Plan and Policies". The process used for this part of the Plan was similar to that described above. The C.A.C. was very thorough and fully discussed each portion of the Shoreland Use Guide Plan and Policies before sending each segment to the T.A.C. for review. After reviewing T.A.C. comments, the C.A.C. revised each segment as they felt appropriate and sent on to the Board for approval. Board approval of each portion of the Plan submitted to it by the C.A.C. meant that each component was approved for public review.

The Plan was developed methodically, step by step, with each portion or subpart thoroughly discussed and reviewed by each committee and the Board. In this manner, all aspects of the Plan were developed, reviewed and approved from both a technical competency standpoint, and a public policy or public acceptability standpoint. Because both committees contained representatives from the full spectrum of the public, as well as from all affected local, state and federal management agencies, the Plan is technically sound, consistent with the intent and objectives of the Shoreland Management Act and publicly acceptable. Even though the Plan was not patterned after the revised Statewide Shoreland Rules, there are some similarities in procedural requirements, administrative provisions, sanitary provisions and development standards. These similarities have

been addressed in the DNR's Statewide Shoreland Rule SONAR. On balance, however, the Plan is more restrictive than the Statewide Shoreland Rules and these aspects are the focus of this SONAR.

After the Board approved the Plan in its entirety for public review, the Plan was put to the test of full public review and comment. (It should be mentioned here that all committee and Board meetings were open, public meetings). During the months of August and September 1988, the Plan was reviewed and discussed at ten separate meetings at locations along the North Shore. Over 200 people attended these meetings which were held in Duluth Township, Two Harbors, Silver Bay, Tofte and Grand Marais. The first five public meetings were information meetings to explain the contents of the Plan and the rationale for the plan's key provisions. Following the five information meetings, five public hearings were held at the same five locations along the shore. The purpose of these hearings was to receive public comments on the Plan. On balance, comments were favorable and supported adoption of the Plan. The majority of questions dealt with the intent and purposes of the guide plan maps. Concern was expressed that these maps were going to be used as zoning maps and that they would supercede existing official local zoning maps. The final plan clarifies the purposes of the "guide plan" maps, as discussed further on Page 6 of this document.

#### NEED AND REASONABLENESS OF PROPOSED RULE

The format of this section will follow the format of the North Shore Management Plan and will be ordered in the same manner as that Plan.

#### PART ONE, SHORELAND USE GUIDE PLAN AND POLICIES

This part defines the planning area (jurisdiction of plan), establishes goals and six types of management areas for the planning area. Specific goals and policies are included for each type of management area, and is intended to serve as a policy guide for local units of government in adopting/revising and administering shoreland management ordinances consistent with the Plan.

#### North Shore Management Planning Area (Planning Boundary)

The Planning Area extends from Lakewood Township in St. Louis County (northeastern boundary of the City of Duluth) to the Pigeon River forming the international border with Canada in Cook County. The Planning Area extends from the shoreline of Lake Superior and includes the minimum 1,000 foot shoreland jurisdiction established in MS. 105.485, but also extends to include the Highway 61 corridor. Highway 61 is the primary, critical transportation link and it traverses the entire planning corridor. The Board believes that the proper management of the shoreland of Lake Superior must include Highway 61 because of the effects of Highway 61 on the shoreland and vice-versa; Highway 61

dramatically impacts the shoreland corridor and directly affects land use within the Planning Area. They are closely interwoven and it is important from an administrative or enforcement standpoint to manage the shoreland and highway corridor as a single management unit. To ease administration and enforcement of the Plan, it was decided that the legal description of the landward extent of the Planning Area extends from the ordinary high water level of Lake Superior to the nearest 40 acre subdivision lines at least to a point 300 feet landward of Highway 61 or 1,000 feet from Lake Superior, which is the greater distance from the lake. (A further description is shown on the diagram on Page 1 of the Plan.) In this manner, local shoreland use decisions can be made in accordance with the official land subdivision boundaries currently utilized. Highway 61 is greater than 1,000 feet from the shoreline of Lake Superior for approximately 90 miles within the Planning Area, or exceeds the 1,000 foot minimum in approximately 60% of the Planning Area.

#### North Shore Management Goal Statement

The goal statement was developed by the C.A.C. as a guide for local shoreland decision making in implementing the Plan. The goal establishes the basis for the remainder of the Plan and represents the collective vision of the C.A.C. and Board. The goal statement provides the "target" at which the remainder of the Plan aims. The goal statement represents a balance of interests and seeks to provide for a full mix of land uses, respects the needs of North Shore residents, and provides economic opportunity while protecting and enhancing the natural resources of the shore. This fundamental philosophy transcends the full scope of the Plan.

#### Policy Fundamentals

The policy fundamentals provide the basic foundation for the shoreland management standards and criteria which follow in the Plan. They provide a range of options and address anticipated development and shoreland management protection problems and issues. They provide the policy guidance to be followed by local units of government in revising their existing ordinances to be consistent with the Plan, as well as assist in making specific land use decisions during the implementation (administration and enforcement) phases of the Plan. They are intended to address a variety of possible situations, issues and problems and therefore are necessarily broad. They can, however, serve as a policy reference for local zoning officials, planning commissions, boards of adjustment, county boards, or oversight entities like the North Shore Management Board or DNR in deciding specific shoreland use questions. The policy fundamentals are self-evident and are intended to be used in conjunction with the specific management area policies which follow. The specific management area policies should be consulted and the policy fundamentals used as a further guide. Proposed local government ordinances and site-specific developments that are inconsistent



with the specific management area policies and/or the policy fundamentals should not be permitted.

### Shoreland Management Areas: Definitions, Goals and Policies

The shoreland use guide plan defines six types of management areas within the North Shore Planning Area to guide local plan implementation and shoreland decision making. Management areas are defined and goals and policies established for each.

When necessary, local ordinances and/or performance standards will be revised to be consistent with the management area policies. The North Shore Management Board adopted a resolution on May 30, 1989, which stated, "the North Shore Management Board establishes an 18-month implementation schedule for local units of government to revise their ordinances to be consistent with the North Shore Management Plan." The DNR's proposed rule which is to adopt the North Shore Management Plan will incorporate this 18-month implementation schedule starting from the effective date of the DNR's agency rule. The management areas are broadly mapped in the Shoreland Management Area Maps section of the Plan starting on Page 9. The goals and policies are intended to be used by local units of government in carrying out their specific planning and zoning responsibilities. The goals and policies provide a uniform decision-making framework for the North Shore. They address shore wide issues and treat the North Shore as a single resource unit. Local units of government have the responsibility of carrying out their specific planning and zoning responsibilities, including but not limited to the issuance of permits, conditional uses, variances and land use zoning district designations or zoning changes.

To ensure that the goals and objectives of the plan are achieved, these local decisions should be made after consulting these policies and in compliance with them. Oversight will be provided by the NSMB and the Department of Natural Resources to facilitate consistency of implementation along the entire Planning Area. The DNR will continue its existing proactive role of advising local government of the adequacy of local regulations and the administration of them and the appropriateness of existing development proposals.

The management areas are: Protected Resource (PR), Residential (R), Commercial-Rural (CR), Commercial-Urban (CU), Resort Commercial (RC) and Industrial (I). The Management Area Policies together with the maps on Pages 9 - 19 of the Plan provide the framework for future protection and development of the shore. The management area concept is designed to separate incompatible uses, provide for shoreland development and protection consistent with the carrying capacity of the shoreland (provide development policies that will ensure stable, long term growth and protection of environmentally sensitive areas) and foster the "node" concept of development. The "node" concept seeks to centralize like or compatible uses. For example, new resort commercial activity

should occur in areas already developed for such uses, or new single family residential uses should be located in existing residential areas. Sensitive environmental areas or areas that are of exceptional scenic or historical value should be protected from the more intense types of land uses.

Within each management area, specifically designed land use policies provide development and/or performance standards which protect existing uses and land values. Incompatible uses are strongly discouraged; for example a gravel mining operation in a resort area, or a resort area in an industrial area, or a large recreational-commercial facility in the middle of a quiet residential neighborhood. Policies also ensure to the extent possible compatibility with adjacent management areas. For example, uses immediately adjacent to sensitive protected resource areas should be permitted only if such uses do not adversely affect the protected resource area (for example, intensive commercial uses should not be allowed immediately adjacent to a state park.) Low impact uses could be allowed.

The management area policies and maps are a general guide for local shoreland zoning decision making, including zoning district delineation, identifying permitted and conditional uses, and the appropriate development standards. Although local zoning maps need not be amended to strictly conform with the area designations in the Plan, they should provide permitted and conditional use guidelines consistent with the map and policies. For example, if a county is considering a conditional use permit for a residential planned unit development in a residential management area, the policies for the residential management (as well as in this case, the planned unit development guidelines) must be used in determining the terms and conditions of the permit. A more dramatic example may be a proposed planned unit development in a protected resource area, or an industrial use in a residential management area; the plan does not allow uses that are incompatible to this degree with the policies of the management area. In most cases the management area policies are founded on common sense principles and are intended to bracket the range of options available to local decision makers in each management area and provide a degree of consistency along the entire corridor. The ultimate decision for shoreland use is left to the responsible local unit of government, but the plan provides the common policies and parameters for those local decisions. The maps were developed through the committee and public participation process. The criteria used to determine the location of these management areas were: existing development patterns, existing zoning, shoreland resource characteristics, location of scenic and historical areas, and desired location for new uses. The management areas are broadly mapped and do not replace existing zoning maps of the counties, cities or townships. They are intended to reflect existing development patterns and are to be used to further the "node" concept of development and resource protection.

The six general management areas reflect the six existing and probable major land use patterns along the shore. The protected resource area is similar in notion to the special protection districts in the Statewide Shoreland Regulations. Commercial areas (both urban and rural) are reflective of existing commercial use areas. The policies for these areas indicate that new commercial uses should be "clustered" in these areas. Also, major highway intersections, although some are not presently commercialized, were designated as desirable future commercial areas. The resort-commercial management areas are for those areas that are presently developed, or should be developed as commercial areas where resorts are the predominant use. Industrial areas were limited to existing industrialized areas, or where existing industrial parks are located. Only water dependent industrial uses are allowed (and only in Industrial Management Areas). A water dependent use is one that must be located near the lake for its successful existence and/or operation, that is, water is required either for the transportation or use of finished product or raw materials or water is needed for the industrial process, or water is otherwise needed to support or sustain the economic viability of the industry. If an industry does not require a waterfront location to exist, then it is not a water dependent use.

#### PART TWO, DEVELOPMENT STANDARDS

The development standards contained in Part Two respond to the requirements of the Shoreland Management Act regarding standards for lot area, lot width, building setbacks, sanitary waste treatment, removal of natural vegetation and grading and filling in shoreland areas. Standards and policies for managing erosion hazard areas and for planned unit developments are also addressed. There are regulatory concepts that the Plan does not specifically allude to because these concepts are already being addressed by or will be addressed by county-wide regulations for their inland lakes consistent with the revised Statewide Shoreland Rules. It is reasonable to assume that different standards and procedures will not be developed for the Planning Area for these concept areas. They include subdivision procedures, enforcement of the recently revised Minnesota Pollution Control On-Site Sewage Treatment System Standards (Chapter 7080) and dealing with platted, substandard lots of record.

The standards in Part Two provide the minimum standards and criteria for future development within the jurisdiction of the proposed rule. These standards will be incorporated into local shoreland zoning ordinances.

#### Zoning Provisions

The Shoreland Management zoning standards were developed after carefully evaluating the standards currently in effect, shoreland characteristics, and the special needs along the North Shore.

The zoning ordinances from the cities, counties and townships along the North Shore were reviewed and discussed. After this review, it was determined that for the most part, the existing structure placement requirements in these ordinances were more stringent than the state minimum Shoreland Management Standards. It is understood that cities, counties and townships may adopt requirements which are more stringent than these minimums. The lot area and width requirements apply to lots created after the date the local ordinance is amended to be consistent with this plan, although substandard, adjacent lots of record in the same ownership can be required to be combined to meet or reasonably comply with these minimum requirements.

These standards are deemed reasonable and appropriate for the North Shore. They reflect dimensions that are compatible with existing resource conditions, development patterns and the limitations or capabilities of the shoreland areas along Lake Superior's North Shore. They were developed by technical experts on the T.A.C. that were familiar with the resource limitations and special development considerations of the North Shore area.

#### Lot Area and Width

The proposed lot area of 40,000 square feet is double that of the Statewide Shoreland Standards of 20,000 square feet for unsewered, riparian lots on general development lakes (Lake Superior is classified as a General Development Lake). The Statewide Shoreland Rule requires 40,000 square feet for unsewered, non-riparian lots on a general development lake. The increased lot size for unsewered areas is deemed reasonable and necessary because of severe soil limitations for the installation and maintenance of on-site sewage treatment systems. Most of the North Shore is comprised of heavy clay soil or bedrock on or near the surface. The large lot area standard is necessary to ensure in the long term that adequate room on any given lot is available to properly size, and install an on-site soil absorption sanitary system. The proposed minimum lot area is also compatible with existing zoning requirements along the North Shore. Existing minimum lot sizes are for the most part comparable or larger than the proposed lot size of 40,000 square feet.

The 10,000 square foot lot size for sewered areas was deemed appropriate to achieve north shore management objectives, and is consistent with existing zoning lot size and width standards. Lot widths and size are designed to prevent overcrowding and provide lots conforming with accepted subdivision practices. The lot widths were deemed reasonable and appropriate by the Technical Advisory and Citizens Advisory Committee and are consistent with existing zoning standards currently in place along the North Shore. They will achieve the desired management objectives. The lot widths were designed in consideration of the fact that in many unsewered areas along the Shore, the lot depths do not exceed 200 feet, therefore the 200 foot lot width is

necessary to provide for 40,000 square foot lot area. The same rationale applies to the 75 foot minimum lot width in sewered areas. These lot width standards (and area standards for unsewered riparian lots) are more restrictive than the state's existing shoreland standards. The 10,000 square foot lot size minimum matches the proposed shoreland rule for sewered, back-lot sizes, but is less than the 15,000 square foot riparian, sewered lot size minimum. Only a very small percentage of the shoreline is sewered (less than 10%) and these areas are located in the cities of Two harbors, Silver Bay, Grand Marais, and the communities of Taconite Harbor and Knife River. These cities are already fully developed, for all practical purposes. Therefore on balance, the 10,000 square foot minimum can be expected to meet the Shoreland Act's anti-crowding objectives. This standard is more than offset by the 40,000 riparian unsewered lot size for the vast majority of the shoreline in the Planning Area.

In general, structure setbacks are needed to provide an adequate distance between the development in the shoreland area and the adjacent water body to control the resource damaging effects of non-point source pollution. Soil erosion and subsequent sedimentation in water bodies and nutrient loading, toxins and other pollutants to the water body from shoreland surface water runoff are examples of non-point source pollution.

The proposed 40 feet setback from the vegetation line of Lake Superior is in most cases comparable to the 75 feet setback on general development lakes, and in about 75-80% of the time along the North Shore greater than 75 feet from the ordinary high water level (OHWL) of Lake Superior. The 40 feet structure setback is measured from the vegetation line which is that point where the permanent vegetation line is clearly distinguishable and is usually found above the storm beach line. The vegetation line is used as the measuring point for the structure setback instead of the OHWL on Lake Superior because the vegetation line is stable and usually easily determined. The OHWL is not a reliable, nor practical base line because of wave conditions and frequent fluctuating lake levels. It is very difficult, therefore, to consistently measure structure setbacks from the OHWL. On inland lakes the OHWL is fairly easy to determine. It is usually determined as that point where the water level has been maintained for a sufficient period of time to leave evidence upon the landscape. Because of wind and wave conditions on Lake Superior, however, the permanent vegetation line is often many feet landward of the water line. The vegetation line is relatively stable and provides a consistent, reliable measuring point.

It should be noted that it is the intent of the Plan to include all accessory structures in the definition of "structure" thus providing greater protection of the area between the structure setback line and the lake, i.e. all structures, including accessory structures must meet the minimum setback requirements.

### Building Height

The 35 foot maximum structure height along the North Shore is needed to preserve the scenic values of the shoreland area and to minimize potential view obstruction from properties beyond the first tier of shoreland development. The height limitation is consistent with many existing zoning ordinances along the North Shore. Building heights above 35 feet (greater than 2 1/2 stories) have significant potential for obstructing the public's view of Lake Superior from Highway 61. Also, lot size and frontage requirements provide generous space for new development to locate without having to build upward. A two and one half story structure allowance is deemed reasonable and consistent with the goals and policy fundamentals of the North Shore Management Plan. This standard greatly exceeds the statewide shoreland rules which only would apply in residential areas in cities.

### Lot Coverage

The lot coverage requirements in the Plan are necessary to minimize erosion and non-point source pollution from entering Lake Superior. When substantial portions of the natural land surface is paved (made non-permeable) runoff is more rapid and is more rapidly discharged to the surface in the lake. This has the significant potential of increasing erosion. Also, pollutants from automobiles (oil, gasoline) are more readily concentrated in storm runoff and are more likely to enter the lake. It is deemed necessary to limit impervious surfaces on lots to 30% to minimize these problems. Because of the large lot sizes along the majority of the unincorporated/unsewered North Shoreline, and especially the requirement for 40,000 square feet riparian lots in unincorporated areas, it is anticipated that most development would not ever approach the 30% impervious surface per lot. Because stormwater can be managed through proper technology and planning, the minimum lot coverage of 30% can be increased to 50%. It is felt that the increased problems that would have occurred at this higher coverage rate, will be mitigated through the implementation of an approved storm water runoff plan.

### Sanitary Systems

The section in the Plan on sanitary systems was developed by the Technical Advisory Committee. It recommends uniform adoption and enforcement of the Minnesota Pollution Control Agency's Chapter 7080, Individual Treatment System Standards by all local governmental units with the North Shore planning area.

The North Shore Management Board believes that the adoption and strict enforcement of the MPCA's Chapter 7080 code is critical to improving existing water quality problems which have resulted from inadequate sanitary systems along the North Shore. The State's shoreland regulations also require local regulations to

be in compliance with Chapter 7080 in shoreland areas.

Presently most of the rural households along the North Shore rely on septic systems to treat sewage. Residents in the communities of Grand Marais, Beaver Bay, Knife River, Taconite Harbor, Silver Bay, and Two Harbors have access to centralized wastewater treatment facilities, while many smaller communities and developments such as Grand Portage, Terrace Point and Bluefin Bay use packaged treatment plants. Centralized or collector systems, as well as individual, on-site septic systems need proper siting, frequent inspection, and regular maintenance to ensure adequate wastewater treatment.

There are public health, as well as environmental and aesthetic concerns associated with wastewater treatment along the North Shore. The risk of contaminating water supplies, of contracting contagious or non-contagious diseases, and of degrading surface water resources are probable outcomes of inadequate sewage treatment. Surface or ground water supplies may be contaminated with bacteria from human waste or with toxics from improper hazardous waste disposal. This can result in the transmission of such contagious water-borne diseases as cholera, typhoid, and giardiasis and possibly increase the risk of cancer, miscarriage, and genetic defects. Coastal areas of Lake Superior, North Shore rivers, and inland lakes may experience algal blooms, increased growth of aquatic weeds, and unpleasant odors from the addition of increased nutrients or sewage from improperly treated wastewater. These adverse health, environmental, and aesthetic concerns reduce the appeal of the North Shore region.

Water resources of the North Shore are especially susceptible to contamination. Very thin surficial deposits with high clay content overlying impermeable, crystalline bedrock, offer less than optimum conditions for siting septic systems and increase the need for adequate setbacks of sewage treatment systems and regular maintenance and pumping. Rapid runoff and a fractured bedrock aquifer system provide easy opportunity for contamination of ground and surface waters. For these reasons, it is important for the Plan to consider setback and construction requirements, the permitting process, maintenance, and abandonment of individual sewage treatment systems and also on-site municipal and industrial systems, and collector package plants.

There are many types of wastewater sources along the North Shore of Lake Superior. Communities, industries, resorts, businesses, and private homes all generate wastewater in various volumes. Wastewater from each type of source also has a variety of chemical, biological, and physical characteristics. The methods used to treat each source of wastewater as well as the applicable regulations and the responsible unit of government (state vs. local) will vary according to volume and type of sewage to be treated.

Sources of wastewater have been placed into two broad categories

- individual and municipal/industrial. A third category, package wastewater treatment plants, describes a specific set of technologies which is gaining wider usage on the North Shore. Packaged plants may serve most types of wastewater sources. These municipal and package plants are under the regulations of the State of Minnesota as well.

An individual on-site system may treat wastewater from residences and small businesses, as well as small clusters of homes and businesses.

The Minnesota Pollution Control Agency's Chapter 7080, Individual Sewage Treatment System Standards, provides the basic regulatory framework. Chapter 7080 specifies that individual on-site systems that have a monthly average daily flow in excess of 15,000 gallons per day or have an average daily flow in excess of 10,000 gallons per day require an MPCA permit.

The three counties along the North Shore have enacted wastewater treatment ordinances that contain the same basic provisions and follow MPCA's Chapter 7080. Each county has delegated authority to administer their respective ordinances, issue permits, and inspect installations. Chapter 7080 contains state regulations for individual on-site wastewater treatment systems. The cities along the North Shore are sewered. It is assumed that the Plan requires adherence to the revised Chapter 7080 which was in the process of being finalized when this plan was adopted by the North Shore Management Board in November, 1988.

Owners of individual on-site systems are charged with the responsibility to operate the system within design parameters and to maintain the system properly. An important component of maintenance is the inspection of septic tanks and the removal of the accumulated sludge and scum. As a rule of thumb, septic tanks should be pumped out at a frequency of once every three years if the system is designed and operated properly.

The Board, C.A.C. and T.A.C. decided that because of costs, lot size, topography, lot owner preference, and other factors, a pit privy can be constructed and used, according to provisions of Chapter 7080 and county ordinances. Pit privies can only be used for the treatment and disposal of human body wastes without pumping or other water carrying means.

Should soil conditions or topography be severely limiting so as to rule out the construction of an individual on-site wastewater treatment system, a holding tank may then be installed. It must be emphasized that holding tanks are permitted only as a last resort when other wastewater treatment options are not available. (This applies to existing as well as newly created lots.)

Septic tank and soil absorption systems must be setback at least 50 feet from the vegetation line, except in erosion hazard areas where greater setbacks may apply. For the purpose of these



rules, the vegetation line shall be defined as the first clearly identified line of terrestrial vegetation above the ordinary high water level. There must also be a separation distance between a septic system and any nearby wells. This will always meet or exceed the revised State Shoreland Rules. The minimum lot sizes required by the Plan should provide adequate space to meet these requirements on most lots, depending on soil conditions.

### Shoreland Alterations

Shoreland alteration policies and procedures are necessary and important to provide a consistent mechanism whereby local governments along the North Shore can properly manage removal of natural vegetation, grading and filling and protection of precious wetland areas. Mismanagement of soil and vegetation can adversely impact the natural resources of shoreland areas. Examples are adverse impacts which impair or destroy fish and wildlife habitat, soil sedimentation or the intentional filling of areas that previously held and filtered surface water runoff for a period before drainage or discharge to a water body, or the excessive clearing of shoreland vegetation that once provided natural screening of shoreland development and maintained the scenic vistas of Lake Superior.

It is necessary to restrict the removal of woody vegetation on bluffs, steep slopes and within the structure setback area to protect the vegetation and soil resources of those environmentally sensitive areas. The existence of vegetation in these areas is important to reduce the erosive effects of falling precipitation on the soil. Vegetation can also reduce the velocities or disperse the flow of surface water runoff, which is important since high velocity or concentrated surface water runoff can readily erode soils. Additionally, vegetation root systems in these areas will assist in binding the soil column to prevent or reduce the likelihood of bank and slope failure, which further protects the fish and wildlife habitat values associated with shoreland areas. The existence of vegetation in these areas also acts to screen shoreland development activities which will protect and preserve the natural values of shoreland areas as directed by state statute.

The policies and procedures contained in the "Shoreland Alterations" section were developed by the Shoreland Alterations Subcommittee of the T.A.C. These requirements are specifically tailored to the unique resource characteristics of the North Shore and are intended to prevent soil erosion, non-point source pollution, minimize impact of development on erosion prone areas and preserve the natural quality of the shore consistent with the goals and policies of the Plan.

The requirement for vegetation management plans is necessary for large developments such as subdivisions to ensure that all possible preventative and control measures are taken to minimize the impact of such proposals on the sensitive shoreland area.

Intensive land uses such as forestry, mining, extractive uses etc, will probably be very limited, or non-existent in the Planning Area because of the value of the land and other factors. However, such activities, if proposed, would be subject to the shoreland alteration standards, and other relevant parts of the Plan, and applicable state environmental laws.

The T.A.C. determined that a reasonable threshold for determining when a vegetation plan would be necessary was 10,000 square feet or 25% of the lot area. Because most lots are or will be at least 40,000 square feet in area, it was believed by experts familiar with North Shore conditions that clearly natural vegetation removal equal or greater than 1/4 of the lot size had the potential for significant impact upon the shoreland resources. A vegetation management plan would identify specific measures or techniques to minimize these potential impacts.

Significant view corridors to Lake Superior or to uphill natural features should be identified and vegetation selectively removed to enhance these views. Developing and maintaining view corridors is necessary to enhance the public's enjoyment of the natural amenities of the North Shore and is deemed reasonable.

Clearcutting is discouraged because of the significant impact such intensive vegetation clearly can have in causing non-point pollution and can also result in serious damage to fish and wildlife habitat. Clearcutting or intensive vegetation clearing can have serious negative effects on shoreland values, as well as on nearby property values. Clearcutting or complete removal of shoreland trees can cause serious soil erosion, increase shoreline erosion potential significantly and reduce the long term economic value of shorelands. Vegetation also acts to screen shoreland development which helps maintain the natural values of shorelands.

For these reasons it is necessary and reasonable that all proposed clearcutting including cutting by public utilities or private entities be reviewed and approved very sparingly by the local unit of government and carried out using sound forest management practices.

### Wetlands

The plan provides safeguards for the protection of wetlands through existing permit procedures and authorities of the Department of Natural Resources and U.S. Army Corps of Engineers. The plan requirement for approved site development plans prior to alterations of wetlands is necessary to allow local jurisdictions the opportunity to review the total plan for the area prior to any actual wetland alteration work. This requirement is reasonable considering the value of wetlands to fish and wildlife habitat, as well as for their value as nutrient traps and natural filters for storm water runoff, and the very limited number of remaining wetlands along the North Shore. The Plan requires

mitigation for wetland loss; this is especially significant in terms of resource protection for wetlands that are not regulated by the DNR.

### Grading and Filling

The objective of these provisions is to maintain natural topography and minimize soil erosion caused by alteration of the shoreland environment. These provisions are necessary to achieve the objectives of the North Shore Plan and ensure shoreland development consistent with the policy fundamentals of the plan and sound shoreland management practices. They have been developed by the Technical and Citizens Advisory Committees and are tailored to the unique problems caused by the special topographic and geological characteristics of the North Shore. An erosion and sediment control plan is deemed necessary for excavations exceeding 1,000 square feet or 100 cubic yards, or for fill exceeding 1,000 cubic yards or for any shoreland alteration exceeding 50 cubic yards within the structure setback area. These limits were established because it was felt by the technical experts on the T.A.C that these thresholds defined the upper limit of alterations that would be done in conjunction with normal construction, maintenance or repair activities covered under standard building permit issuance. It was felt that alterations exceeding these amounts are significant and warrant scrutiny by local governments. These thresholds are reasonable and necessary to prevent serious soil erosion, non-point pollution problems and loss to fish and wildlife habitat, and are necessary to ensure shoreland management that conforms to the policies of the Plan. It was felt that requiring shoreland alteration plans for less than these amounts would be unnecessary and create numerous requests for local government review for routine projects and be unnecessarily burdensome on the public.

### Erosion Hazard Areas

Shoreline erosion is a severe problem along some areas of the North Shore as it is in many other areas of the Great Lakes. Development close to the shoreline and the erosive process of Great Lakes storms have caused millions of dollars in damage throughout the region. Even if more effective regulation of lake levels is someday feasible, storms, currents and uncontrollable lake level fluctuations will continue to erode and flood Great Lakes shorelines. Many states and Canadian provinces around the Great Lakes have instituted a variety of structural and non-structural programs and regulations to reduce the problem and private costs associated with these hazards. The methods, policies and guidelines described in the Erosion Hazard Area part of the North Shore Plan employ non-structural solutions to the erosion problems along the shore.

Several governments have responded to coastal erosion by regulating new development on shoreline bluffs. The most extensive controls on bluff development are found in Michigan,

New York and Pennsylvania. These states require that homes, businesses and other structures be set back from the bluff's edge. Setback distances are calculated by a formula that incorporates shoreline recession rates and expected lifetime limits for structures. The expected lifetimes vary from as little as 20 years up to 100 years, depending partly on the size and value of the structure.

The erosion hazard provisions in the North Shore Management Plan are designed to specifically address the erosion hazard problems unique to the Shore. The concepts employed are in part modeled after proven techniques and policies used in the states of New York, Michigan and Pennsylvania. This basic premise is that it is the public interest to steer development away from erosion hazard areas where damage result in both substantial private and public cost. Extensive property damage results in substantial loss of revenue to local governments as well as to state and federal agencies in terms of tax losses and publically financed shore protection structures, and flood insurance payments.

Along the North Shore, shoreline erosion adversely affects the property, property values, structures and roadbeds. The specific extent of actively eroding sites is unknown but is estimated, for example, to be up to 30% of the shoreline in Lake County. Erosion is a natural process, but its rate is increased by high lake levels. Lake levels have been high in the mid 1980's and may reach those levels again. The erosion hazard area provisions of the North Shore Management Plan are based on the best available and most up to date geologic and hydrologic data as well as actual field observations available in North Shore erosion hazard areas. Erosion Hazard Areas within the North Shore Planning Area are shown on pages 12, 13, 16 and 17 of the North Shore Management Plan. Only those areas deemed to be of high potential for erosion were put on the maps. Except in rare cases, this was limited to the areas where high clay banks border the lake. Areas of erosion where the long-term erosion rate appeared to be less than the criterion of one foot per year were not mapped. Clearly, there are places outside of the Erosion Hazard Areas shown on the maps where erosion is a problem. However, mapping was limited to those areas where the Erosion Hazard Area policies apply.

The Erosion Hazard Area subcommittee used the following process to identify the Erosion Hazard Areas. First, a detailed soils map from the Coastal Zone Management study was transferred onto a Minnesota Department of Transportation strip map of the North Shore. Then, 199 surveys from a 1986 shoreline erosion survey were transferred to the map. Surveys indicating high erosion rates were tagged for further analysis. Fifty sites were revisited and measurements were made to see how far the erosion had progressed since 1986. From this information, it was determined that many of the erosion problems reported in 1986 were attributed to the extremely high water level and severe storms of the period. Losses of cobble beaches, collapse of sea

caves and the erosion of rocky shorelines were identified as being outside Erosion Hazard Areas. However, areas of high clay banks continued to show signs of failure despite the two intervening years of relatively low, calm water. These are the areas identified as Erosion Hazard Areas on the maps.

The more critical areas of clay banks were examined from the water surface. The area from French River to Split Rock River was covered by boat and pictures were taken of potential Erosion Hazard Areas. Field notes, photos, and the 1986 and 1988 videotapes of the shoreline were then used to set the approximate boundaries.

The Erosion Hazard Areas accurately represent the more severe problems of erosion on the Shore. Erosion hazard areas are defined as those areas where the long term rate of recession is one foot or greater per year. This definition is reasonable considering erosion rates vary considerably with the range being less than one foot per year to three feet per year in some instances. The most serious problems and the threat to property is most prevalent when the erosion rate is one foot or greater per year. This definition was developed by the erosion subcommittee and is deemed necessary and reasonable by the experts on this subcommittee.

The special provisions that apply to erosion hazard areas were designed to provide the public with clear information about the location of erosion hazard areas, and the necessary information to allow them to make informed decisions about purchasing and/or building on such property. Because of the extreme sensitivity of erosion hazard areas to development and because of the potential public and private costs associated with property damage due to erosion, the special provisions contained in this section are both necessary and reasonable. The burden of proof regarding suitability of any given parcel for development is reasonably placed on the proponent of such development. Site development plans for all proposed developments in erosion hazard areas are also necessary considering the high risk associated with development in these areas. The required setbacks are necessary to protect the structures which locate in these areas for their expected lifetimes. The 125 foot setback is reasonable and is based on a conservative estimate of a 2 foot per year long term recession rate. This setback is necessary because in the absence of a known recession rate, it is better to err to the safe side for the protection of the affected property. The 125 foot setback is derived from the 50 year expected structure lifetime times 2 (a conservative long-term recession rate of 2 feet per year) plus 25 feet for maneuvering room for structure relocation.

#### Planned Unit Development Guidelines

The purpose of the Planned Unit Development (PUD) Guidelines is to provide uniform criteria for local approval of planned unit developments within the North Shore Management Planning Area.

The criteria allow for development densities greater than the minimum lot sizes provided in this plan. These provisions apply to new planned unit developments, both commercial and residential, on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land.

Planned unit developments must be designed and operated to be compatible and harmonize with their surroundings and located in compliance with the Shoreland Use Guide Plan. It is the intent of these guidelines to provide the North Shore units of government with the flexibility to review, modify and approve planned unit developments that follow the rules of common sense and practicality. The DNR will continue to approve planned unit developments in shoreland areas as presently defined in state approved shoreland ordinances until such time as the responsible local government adopts regulations compliant with the Plan. The end result should be development which optimizes the use of building sites and protects and enhances the natural amenities of those sites.

It is the goal of the PUD guidelines to provide uniform standards to local officials and potential developers for the optimization of development opportunities and maximum environmental protection on any given planned unit development site.

For the purpose of the guidelines, a planned unit development is defined as: multiple residential or commercial dwelling units including but not limited to townhomes, condominiums, motels, hotels, resorts and related commercial activities consisting of five or more units with a minimum lot area of 2 acres per development and a maximum density of four units per acre.

This definition does not differentiate between residential and commercial PUDs, a distinction which is made in the management area policies section of the Plan. A Residential PUD is considered to be a use where the nature of residency is non-transient and the major or primary focus of the development is not service oriented. For example, residential apartments, timeshare condominiums, townhouses, cooperatives and full fee ownership residences would be considered as residential PUDs. In contrast, commercial PUDs are typically uses that provide transient, short term lodging spaces or rooms and their operations are essentially service oriented. For example, Hotel/Motel accommodations, and other primarily service oriented activities are commercial PUDs. (Campgrounds are not considered to be Planned Unit Developments but it was the intent of the NSMB, T.A.C. and C.A.C. that they be subject to the PUD guidelines (excluding the density standards) of the Plan. (See discussion of campgrounds on Page 16). The PUD Guidelines contain design criteria, sewage treatment standards and plan approval information requirements. The Guidelines were developed initially by the Zoning Subcommittee of the T.A.C. and subsequently reviewed and approved by the C.A.C. and the Board. The guidelines, as is the case with the remainder of the Plan,

are specifically designed to address the special natural resource characteristics and limitations of the North Shore.

The design criteria provide PUD design standards which will need to be incorporated into local shoreland ordinances. The design standards call for visually unobtrusive development consistent with the natural topography and development limitations at the proposed site. The standards are intended to minimize non-point pollution caused by surface runoff and the clearing, grading and filling activities associated with the construction of PUD's. The shoreland alteration provisions in the plan apply to PUD development as well and together with these criteria should minimize harmful environmental impacts and result in development which will harmonize with the shoreland agreement. The development density standards provide the maximum density of which is considered acceptable and within the goals and policy standards of the Plan.

Other design standards are to prevent shoreland crowding, provide sufficient parking for the proposed use, road access, and preserve open space. Wetland areas and areas unsuitable for development due to shallow soils and bedrock outcrops are to be left as open space. This requirement is needed to minimize environmental impacts and encourage site plans which take the natural topographic conditions into strict account. The 50% open space requirement is also to minimize the overall impact of the PUD and fosters the cluster concept of development whereby higher density development than that from the traditional lot and block subdivision approach can be allowed in trade for greater open space. The design standards provide a flexible, yet common sense approach to this type of shoreland development. The open space dedication must be filed as a restriction against the property to ensure that this standard is maintained in perpetuity. The sensitive area between the structure and the lake is also more fully protected by the 25% open space requirement. This ensures open space in this most sensitive location and prevents the "wall effect" which effectively screens the view from and to the lake.

The standards should encourage site specific designs which optimize development on any given development site, provide adequate open space, parking, road access, sewage treatment and development that is consistent with the concept of reasonable development and environmental protection, i.e. to allow well thought out and planned development in areas that are physically suited for such use, consistent with the node or cluster concept of development and that harmonizes with the unique natural and scenic qualities of the North Shore. The dimensional and density standards of the PUD provisions do not apply in commercial urban areas identified in the Guide Plan maps because of the heavily developed nature of these areas. It was felt by the T.A.C. that the dimensional, density and open space aspects of the PUD Guidelines were unrealistic, and impractical in these areas. Also, existing development patterns are already set so the density, and open space provisions would be virtually impossible

to achieve. However, it was felt, that to the extent possible the purposes and intent of the guidelines (to provide for development which harmonizes with the shoreline environment) should be adhered to.

The sewage treatment standards provide additional standards specifically for PUD's; the sanitary system standards on Page 23 of the Plan also apply. These standards are reasonable in that they are consistent with existing state MPCA regulations and are necessary considering the unique problem of sewage treatment along the North Shore posed by very thin surficial deposits with high clay content overlying impermeable, crystalline bedrock. The standards call for centralized water supply and sewage treatment systems which are designed, installed and operated consistent with, or exceeding existing MPCA standards and regulations. The sewage standards also ensure that the sewage system is properly designed to adequately serve the anticipated number of residents or users of the PUD.

The Plan approval standards provide that proposed PUD's must be described in detail in a site development plan which must be approved by the appropriate local entity prior to construction and describe the specific information requirements that must be addressed in the site development plan. These requirements are necessary to enable the local units of government to properly evaluate the proposed PUD to ensure it will be developed in accordance with the Plan and the appropriate local controls. The information described in the Plan is felt to be the minimum necessary to evaluate the soundness, feasibility and operation of the project and protect not only the shoreland resources, but the future homeowners' investment.

Because the Plan does not specifically address campgrounds, a brief discussion of the intent of the Board regarding the treatment of campgrounds under the Plan is appropriate.

Under the Plan, campgrounds are not considered to be Planned Unit Developments as is the case in the revised state shoreland rules. This is evident from a reading of the Plan's definition for a Planned Unit Development. Campgrounds do not utilize dwelling units or structures and therefore do not fall within the Plan's PUD definition. Furthermore, it is not reasonable to expect campgrounds to meet the PUD density requirements of four units per acre; considering the extremely high property values along the Shore, campgrounds would hardly be economically feasible under this standard.

There are relatively few campgrounds on the North Shore. Presently only about six to ten private campgrounds operate along the 150 mile corridor; the majority of the camping sites along the shore are located in state parks. There have been no new private campgrounds proposed in Cook County in the last fifteen years, and very few are expected to locate anywhere along the Shore in the future. It was for these reasons that the Board did



not include detailed campground standards and criteria in the Plan. It was assumed, however, that local governments will consider all proposed campgrounds in the Planning Area through a conditional use procedure and use the PUD Guidelines as the standard in so doing (except for the density and parking requirements).

Subjecting campgrounds to the PUD Guidelines (except density and parking standards) will result in campground development which protects and enhance the natural amenities of the particular site, as well as harmonizes with the North Shore environment. The PUD Guidelines ensure sensitive site development, proper on-site sewage treatment, erosion control, adequate screening from the lake and adjacent roads and properties, and thorough site planning and local review. Protection of the area between the setback line and lake is ensured, open space maintained and an overall high quality development will result. An analysis of the PUD guidelines and the revised state shoreland rules indicate that resultant densities would be comparable on a typical North Shore site.

Other development criteria in the statewide shoreland rules and North Shore Plan as they would apply to campgrounds are comparable. Proposed campgrounds, as any other shoreland development along the North Shore, are also subject to the other provisions of the Plan, including the shoreland alteration provisions, sanitary provisions and structure setback requirements. The few campgrounds that are built in the Planning Area will be subject to development criteria and procedures under the North Shore Plan which are reasonable, flexible and meet the intent of the Shoreland Act, and are comparable with the revised statewide shoreland rules.

#### Administrative Review

This section is divided into three parts, Administrative Review, Variance Policies and Consistency Review. These provisions were developed by the T.A.C. and C.A.C. and are intended to specifically outline the on-going role of the NSMB during plan implementation and on-going administration by local units of government. The Board will carry out a review and monitoring role and the Administrative Review part describes the specific local shoreland decisions that the Board wishes to review. The Board does not want to be another bureaucratic level of government, or place itself in any manner in the local government's decision making role. The items the Board wishes to review will give the Board a good sense of how well the Plan is working and will allow it to obtain the necessary information to document and justify needed changes to the Plan over time. The decisions that the Board wishes to review are in fact "decisions"; the Board does not at this time wish to review proposed decisions, but decisions after they are made. It is the strong belief of the North Shore Management Board that the Plan is well conceived and strongly supported by local units of

government. The Board is confident that this "ownership" will result in careful decision making consistent with the Plan. Conflicts will inevitably arise, however, and the Board is available as an arbitrator and neutral party to help resolve those conflicts. The Board is also a legal unit of government established through a formal Joint Powers Agreement under the authority of M.S.A. 471.59, and can, like other legal entities, initiate legal proceedings to compel compliance with its' adopted Plan. Hopefully, this recourse will never be necessary.

The DNR will continue to play its ongoing technical assistance and monitoring role consistent with the intent of the Shoreland Act in M.S. Chapter 105. Therefore, the Rule adopting the North Shore Management Plan will not supercede Minnesota Rule, Part 6120.3900 (Shoreland Administration). The responsible local governments within the Planning Area will be responsible to mail the required notices of certain local actions and the notice of decisions to the Commissioner of DNR with the period of time specified in Part 6120.3900. The long-term management of the North Shore will be a collaborative effort of the NSMB, the responsible local units of government and the DNR.

The Variance Policies part describes the standards and criteria under which variances can be allowed by local units of government. Variances can only be granted in accordance with standards which have been legislatively established in M.S. Chapters 394 and 462.

Local units of government must revise or adopt shoreland management ordinances or controls to be consistent with the Plan within 18 months of the date that the Plan becomes effective as a State rule. The consistency review part provides the opportunity for Board review and comment on proposed major federal and state government actions to ensure consistency with the adopted North Shore Management Plan. This part is deemed absolutely essential if the goals and policies of the North Shore Management Plan are going to be fully achieved. The Board intends to work cooperatively with the relevant state and federal agencies in developing mutually agreeable procedures for consistency review. The Board will facilitate strong inter-governmental communication and cooperation and provide a link between local units of government and state and federal agencies on all matters affecting this shoreland management plan. The consistency review procedures will provide the vehicle for this important communication role. The Board can serve as a unified voice for the North Shore and provide a convenient forum for discussion of shorewide issues. It will not replace the necessary interaction between local government and state/federal agencies, but will facilitate government decision-making that is in compliance with the North Shore Management Plan.

#### Rulemaking Considerations of Agricultural Lands and Small Businesses

As part of the agency's (Minn. DNR) administrative rulemaking procedures and responsibilities, Minn. Strat. Chapt. 14 requires that the proposed rules be evaluated for potential direct and substantial adverse impacts on agricultural land and for impacts on small businesses. The following discussion addresses this requirement.

### Agricultural Lands

There are no agricultural lands affected by these rules.

### Small Businesses

Minn. Stat. Sect. 14.115 is the statutory reference dealing with small business consideration in rulemaking.

According to the definition of "small business" in Subd. 1, the Department finds that this rule will address small businesses since many businesses in the recreation service and tourism industry as well as many non-recreation and tourism small businesses are within or operate within the area subject to this rule.

Pursuant to Subd. 2, agencies proposing new rules must consider 5 methods for reducing impacts on small businesses. Each of the 5 methods, as they relate to small businesses are discussed below.

(a) "The establishment of less stringent compliance or reporting requirements".

The proposed Rule has no requirements dealing with the reporting of business activities nor do they deal with compliance aspects of reporting business activities.

This proposed Rule has specific policies for commercial and industrial uses, some of which according to Minn. Stat. Sect. 14.115 Subd. 1, could include small businesses. The Rule further differentiates between those industrial uses that need to be near shoreline and those uses that don't, i.e., water dependency policy as it applies to industrial management areas. The orientation of the Rule is that if an industrial use must be near water due to a key function, use or process needed to sustain the industry, it is reasonable to allow such uses in the riparian zone of a shoreland.

With regard to zoning compliance, small businesses are treated no differently or exceptionally less or more restrictive than non small businesses. Depending on the exact nature of a small business or non small business, some may have a large potential for impacting the natural resource value of shoreland areas, whereas others may have minimal potential impacts. Therefore, it is reasonable that these regulations contain standards that equitably provide specific rule requirements, review procedures and associated performance criteria that protect and manage shoreland areas from potential environmental impacts of both

small businesses and non small businesses, in shoreland areas.

(b) "The establishment of less stringent schedules or deadlines for compliance or reporting requirements".

Specific schedules and deadlines for compliance or reporting requirements of small businesses are not contained in these rules.

(c) "The consolidation or simplification of compliance or reporting requirements".

Reporting requirements for small businesses are not contained in this Rule. As mentioned in the discussion of method (a), above, the Rule provides for certain zoning compliance requirements of small businesses as well as non-small businesses in the Planning Area.

Consolidation and simplification of zoning compliance requirements for all types of uses in the Planning Area, including small businesses, was constantly considered during the Plan and rule drafting process. The potentials for consolidation and simplification of zoning compliance requirements were weighed against the various statutory requirements relevant to these rules. The result is that zoning compliance requirements were consolidated and/or simplified whenever possible, while statutory requirements necessitated more complex rule requirements in several cases. It must be pointed out that these proposed rules in and of themselves will not be a tool used directly to regulate small businesses. Instead, local units of government, through the zoning authorities granted them by the state, will implement these rules through local land use ordinances, that can be based on consolidated and simplified model zoning ordinances.

(d) "The establishment of performance standards to replace design or operational standards required in the rule".

The NSMB and the DNR considered performance standards in many areas of the rule as they related to shoreland area uses and development, regardless of whether small or non-small businesses constituted the development or use. The result is that performance criteria are proposed in the rule in those cases where they provide feasible alternatives to design standards and the Shoreland Management Act and other relevant statutory requirements can still be met.

(e) "The exemption of small businesses from any and all requirements of the rule".

The NSMB and the DNR considered this method and found that the purposes, intent and legal requirements of Minn. Stat. Sect. 105.485 would not be met if this method were implemented.

The NSMB and the DNR have incorporated where feasible and prudent, methods to reduce impacts to small businesses and not be contrary to the statutory objectives that are the basis for this rulemaking. For example, in developing the rules relating to

Planned Unit Developments (PUD) the Department utilized input from the NSMB and the Citizens Advisory and Technical Advisory Committees and provided for a flexible and realistic PUD review process. Another example is the development of management area policies in which small businesses could be located or allowed to remain consistent with the proposed framework of that section.

Regarding small business participation in rulemaking, the Department provided an opportunity for small businesses to participate in the process, since notices have been published and invitations sent to associations, groups, or agencies affiliated with small business concerns and were well represented on the C.A.C.

This concludes the discussion of agency compliance with Minn. Stat. Sect. 14.11 and 14.115.

#### Fiscal Note

The foregoing rules will mandate local government to take actions that will result in the local government incurring costs beyond what is currently being expended for shoreland management. Therefore, this fiscal is provided in accordance with Minn. Stat. Sects. 3.982, 3.98 subd. 2, and Minn. Stat. Sect. 14.11 subd. 1.

The first two years costs to local government and state government will be the greater than the long term administrative costs. The first two years will require the local government to draft ordinance amendments, conduct public hearings, publish ordinances, attend training sessions and workshops in administration of the amended ordinances, and perform increased monitoring of ordinance activities.

The estimated cost for the first two years of implementation is estimated to be \$100,000. This anticipates that the 9 local units of government in the Joint Powers Agreement will have to amend or adopt new shoreland ordinances and will continue the current efforts of shoreland ordinance administration and the state will increase its current efforts in assistance to local governments. The actual cost per unit of government will vary throughout the planning area based on the sophistication of existing program and the number of miles of shoreline included within the local units of jurisdiction, as well as the extent to which it is already developed. The cost could vary from \$5,000 to \$30,000 per unit of government. The local government costs indicated here will be offset by a \$250,000 grant from the DNR to the North Shore Management Board. The Board will allocate a portion of the funds to individual local units of government to revise, adopt, and administer local ordinances. These funds were specifically authorized by the 1989 legislature to implement the North Shore Management Plan.

The balance of the fiscal note will be presented in accordance with Minn. Stat. Sect. 3.98 Subd. 2 as follows:

- (1) Cite the effect in dollar amounts
- |                    |   |           |
|--------------------|---|-----------|
| * Local government | - | \$100,000 |
| * State government | - | \$200,000 |
| Total              |   | \$300,000 |
- (2) Cite the statutory provisions affected
- \* Minn. Stat. Sect. 105.484
  - \* Minn. Stat. Chapter 394
  - \* Minn. Stat. Chapter 462
- (3) Estimate the increase or decrease in revenues or expenditures
- \* No change in state revenues is anticipated
  - \* The increase in expenditures is reflected in items (1) and (4).
- (4) Costs which may be absorbed without additional funds
- \* Local in-kind costs \$50,000 reflects support from ongoing activities in management.
  - \* State in-kind costs \$50,000, reflects support from existing efforts in shoreland management.
- (5) Long range implications
- \* An ongoing cost to local governments for ordinance administration, monitoring and enforcement. The actual cost to the local government will depend on the implementation strategies that are selected and the fee structure established in the ordinance.
  - \* Enhanced water quality, protection of economic values of the North Shore of Lake Superior, and protection and enhancement of environmental values of the North Shore and Lake Superior.
  - \* Reduction in the need for and costs of lake improvement and restoration projects.
  - \* A lake management program that will provide for a balance between resource development and resource protection and enhancement for the next 15 to 20 years.
  - \* An on-going program of resource protection and shoreland management through a joint powers board providing the most efficient and effective mechanisms to manage the 150-mile shoreland corridor.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NORTH SHORE MANAGEMENT BOARD  
AND  
THE DEPARTMENT OF NATURAL RESOURCES**

**Pertaining to the Coordination, Cooperation and Responsibilities  
Relating to the Development of the  
North Shore Management Plan**

**I. GOAL**

The Minnesota Department of Natural Resources (MDNR) and the North Shore Management Board (NSMB) agree that Minnesota's North Shore is a special place deserving special attention. The NSMB, established to direct development of a North Shore Management Plan, has certain responsibilities and the MDNR, with the legislated responsibility for development of shoreland management standards, have certain responsibilities in accomplishing the formulation and implementation of a North Shore Management Plan. The goal of the Memorandum of Understanding, is to the degree possible, define these specific responsibilities in support of common objectives, interests and statutory requirements; to ensure timely identification and resolution of differences; and to enhance communication and coordination.

**II. OBJECTIVE**

1. To develop a management plan which is locally initiated and supported and incorporates citizen and broad interest group participation.
2. To develop a management plan that reflects the uniqueness of Lake Superior, its distinctive shoreland characteristics and its various land use and water related issues.
3. To develop a management plan that is consistent with the legislative policies of M.S. 105.485 which states: To provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface water, preserve the economic and environmental values of the shorelands and provide for wise utilization of water and related resources of the state.
4. To develop management standards for the subdivision, use and development of shorelands, as setforth in M.S. 105.485, Subd. 3, which include but are not limited to the following:
  - (a) the area of a lot and length of water frontage suitable for a building site;
  - (b) the placement of structures in relation to shorelines and roads;
  - (c) the placement and construction of sanitary and waste disposal facilities;

- (d) designation of types of land uses;
  - (e) changes in bottom contours of adjacent public waters;
  - (f) preservation of natural shorelands through the restriction of land uses; and
  - (g) variances from minimum standards
5. To consider the existing shoreland management rules, local ordinances, and the shoreland advisory committee recommended rule changes as guidelines in developing specific management plan provisions.
  6. To use applicable state policies and rules of MPCA, MDH, etc. as guidelines in evaluating and formulating specific management plan provisions.
  7. To achieve elements of the management plan in a consensus manner.

### III. IMPLEMENTATION

THE NSMB and the MDNR fully support the concepts of cooperation and coordination and are committed to the development and implementation of the North Shore Management Plan. In carrying out the goals and objectives of the MOU and DNR and NSMB agree as follows:

#### The DNR:

- (a) will formally participate on the Technical Advisory Committee through Dan Retka, Regional Hydrologist;
- (b) will coordinate DNR interdisciplinary input to the plan through frequent communication with other divisions within the DNR;
- (c) will immediately bring to the attention of the Board proposals which the DNR believe are inconsistent with legislated policies, or strongly oppose from a sound shoreland management perspective;
- (d) will in good faith negotiate differences towards finding a consensus of these items;
- (e) will provide information and data relating to need, justification and experience on specific items;
- (f) will adopt the final standards as set forth in M.S. 105.485, Subd. 3.

#### The NSMB:

- (a) will guide and direct the formulation of the North Shore Management Plan consistent with the goals and objectives of this MOU;
- (b) will direct the Technical and Citizens Advisory Committees in a consensus approach to plan formulation



**IV. MODIFICATIONS, TERMINATION AND EXPIRATION**

**This Memorandum of Understanding shall be effective upon the signature of both the parties and remain in effect until terminated, amended or reissued. The DNR and NSMB may terminate this MOU, with cause, by 30 day written notification to the other party.**

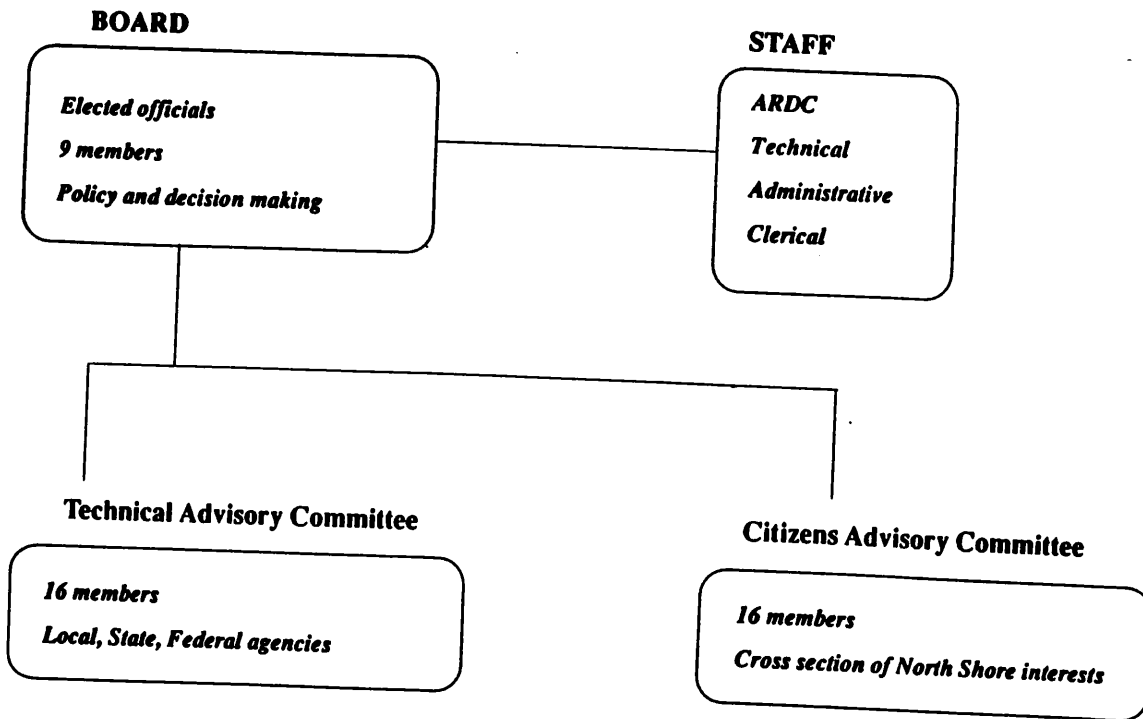
\_\_\_\_\_  
**Joseph N. Alexander**  
**Commissioner**  
**Department of Natural Resources**

\_\_\_\_\_  
**Chester Lindskog**  
**Chairman**  
**North Shore Management Board**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**NORTH SHORE MANAGEMENT BOARD  
ORGANIZATION**



**NORTH SHORE MANAGEMENT BOARD**

Name	Representing
Chet Lindskog <i>Chair</i>	Cook County
Dick Bakke <i>Vice Chair</i>	Duluth Township
Serene Dahle <i>Treasurer</i>	Lake County
David Peterson	Grand Marais
Kenneth Nelson	Beaver Bay
Robert Kind	Silver Bay
Lloyd Shannon	St. Louis County
Bernard Pistner	Lakewood Township
Judith Bellile	Two Harbors

**Citizens Advisory Committee**

Name	Representing
Frank Holappa <i>Chair</i>	Realtors
Glenn Maxham	Environmental
Arnold Overby	Environmental
Gary Kettleson	Developer
Robert Bruce	Tourism
Edward Landin	Tourism
Carol Backlund	Commercial Business
Robert Anderson	Industrial/Manufacturing
Thomas Martinson	Recreation
Herb Naegeli	Recreation
Jon Toft	Recreation
Dexter Nelson	Sportsmen Groups
Robert Pye	Shoreline Property Owner
Bob Ashenmacher	At Large
Deanne Allison	At Large
Bill Corcoran	Grand Portage Reservation

**Technical Advisory Committee**

Name	Representing
Tim Kennedy <i>Chair</i>	Cook County Zoning
Dan Reika	MN Dept. of Natural Resources
Dennis Johnson	MN Dept. of Transportation
John Pegors	MN Pollution Control Agency
Wayne Scidel	Soil and Water Conservation District
Dale Baker	MN Sea Grant Extension
Lucinda Johnson	Natural Resource Research Institute
Courtland Mueller	US Army Corps of Engineers
Paul Sandstrom	US Soil Conservation Service
Dick Sigel	Lake County Zoning & Health
Alan Goodman	Lake County Highways
Dale Schroeder	St. Louis County Health
Richard Hanscn	St. Louis County Highways
Dick Bakke	Duluth Township Zoning
Bernard Pistner	Lakewood Township Zoning
Jim Hulbert	Cook County Zoning
Bill Corcoran	Grand Portage Reservation

**Staff, Arrowhead Regional Development Commission**

- Mike Hambrock, Planning Division Director
- Sue Lindholm, Secretary
- Linda Naughton, Public Information Specialist
- Heidi Falk, Planner
- Joan Hunn, Intern