Minnesota's

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Prepared by: Minnesota Department of Natural Resources
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Minnesota's lake and river shorelands reflect a variety of physical and cultural factors - from pristine wilderness environments to high intensity, commercial and industrial uses. The manner in which we use these shorelands today dictates to a great degree the usefulness and value of this resource to future generations.

In recognition of the growing pressures on our priceless lakes and rivers, and the increasing problems of water pollution, overcrowding, unwise development, destruction of fish and wildlife habitat, and impairment of natural beauty the 1969 State Legislature passed the Shoreland Management Act.

As stated in the Act, its purpose is:

> ... to provide guidance for the wise development of shorelands of public waters, preserve the economic and natural environmental values of shorelands and provide for the wise utilization of water and related land resources of the state.

The Act affects shorelands within 1,000 feet of a lake, pond or flowage (reservoir) or 300 feet from a river or stream.

The two basic requirements of the Act were: that the Department of Natural Resources (DNR) adopt minimum development standards to guide the use and development of shoreland areas by June 30, 1970; and second, that each county adopt a shoreland management ordinance which incorporates at least these minimum standards by July 1, 1972.

The 1973 Legislature amended this law expanding the scope of the Shoreland Management Program to shorelands in incorporated areas. This Act provides for the establishment of minimum statewide shoreland standards and criteria for incorporated areas by no later than April 1, 1974. These standards and criteria are now being developed by the DNR in cooperation with various other state agencies, the League of Minnesota Municipalities and other interested groups. Under the Act, local communities are required to submit any present ordinances affecting shoreland development to the Commissioner of Natural Resources for his review by

no later than April 1, 1974. The Commissioner is to review these ordinances to determine their compliance with the minimum shoreland standards and then to notify the municipalities as to which portions of their ordinances must be amended to comply with the standards. The local community would have one year from the date of this notification to make the necessary changes. If a municipality does not have any type of shoreland conservation ordinance in effect on April 1, 1974 then it would have to adopt one meeting state standards by July 1, 1975. As presently is the case with counties, the Commissioner of Natural Resources can adopt a shoreland ordinance for a community which fails to comply with the Act.

As mentioned above, the rules and regulations of the Commissioner of Natural Resources which are now in effect apply only to unincorporated areas. Specifically, these rules and regulations regulate: (1) type and placement of sanitary and waste disposal facilities; (2) size and length of water frontage of lots suitable for building sites; (3) placement of structures in relation to shorelines and roads; (4) alteration and preservation of the natural landscape; and (5) subdivision of shoreland areas.

Location of new sewage disposal systems are regulated according to lake classification. On Natural Environment Lakes and Streams, the soil absorption system must be set back at least 150 feet from the normal high water mark; on Recreational Development Lakes at least 75 feet; and on General Development Lakes and Streams at least 50 feet.

When setting these distances, the typical soil types and ground slopes of lakes and rivers in each of the three classifications were given prime consideration. These setbacks provide a reasonable amount of assurance that nutrients from individual sewage disposal systems will not reach the lake or river.

The state's minimum shoreland standards also focus on other problems. They will reduce the overcrowding and curb poorly planned development of shoreland areas and thus hopefully stabilize property values. They will also preserve the natural characteristics of shorelands and adjacent water areas by regulating the alteration of the natural landscape.

Minimum lot sizes were set to insure a level of protection for each class of public waters consistent with management goals and objectives. Two basic considerations in determining minimum sizes are evident: (1) to insure that a lot will be large enough to meet the various dimensional standards, especially for sanitary facilities; and (2) to set an overall density of development for a given body of water.

Minimum lot sizes include: for Natural Environment Lakes and Streams at least 80,000 sq. ft. and 200 feet of water frontage; for Recreational Development Lakes at least 40,000 sq. ft. and 150 feet of frontage; and for General Development Lakes and Streams at least 20,000 sq. ft. in area and at least 100 feet in width.

To avoid flooding and to maintain aesthetic values of lakeshore property, codes were established to control setback of buildings. These standards are: at least 200 feet from the normal high water mark for Natural Environmental Lakes and streams: 100 feet for Recreational Development Lakes; and 75 feet for General Development Lakes and Streams. No buildings can be constructed in the floodway of any stream.

The Statewide Standards and Criteria for Management of Shoreland Areas of Minnesota were officially promulgated on June 30, 1970. At that time approximately 40 percent of Minnesota's counties had some form of land use control ordinance - usually a zoning ordinance or subdivision control ordinance.

No county had an ordinance which substantially complied with the statewide shoreland standards. On July 1, 1972 (the deadline for adoption of a county

shoreland management ordinance complying with state standards) approximately fifty percent of all Minnesota counties had adopted a shoreland management ordinance in substantial compliance with the minimum state standards.

This large number of complying counties in such a short period of time is quite surprising when one considers the complexities involved in the ordinance adoption and implementation process. In 1970 most counties had no form of shoreland ordinace on which to build the required shoreland provisions. Local opposition to zoning in general ran high in many areas of the state. Many local officials were unsure of the legal procedures to follow in adopting and enforcing zoning controls. Many were unsure or ignorant concerning the technical aspects of land use control administration and enforcement, sewage disposal methods, subdivision control criteria and evaluation, building site evaluation, soil capabilities, hydrologic considerations, data availability, etc.

It is not that the counties didn't want to get the job done, and it is not that they didn't want to provide greater protection to the state's lakes and rivers, its just that they weren't quite sure how to go about it and if they did they weren't sure if they were justified in their subsequent actions.

All in all they desperately needed guidance - they needed a set of state sanctioned standards - they needed technical advice, assistance and information, and they needed to know that the state would support their actions if they were challenged.

Since then, the state shoreland program and the rules and regulations developed under it have provided much of this help.

At this point it would be helpful to review the procedures and administrative philosophy of the Department of Natural Resources as it proceeded to implement the shoreland program.

Upon passage of the 1969 Act the Department was faced with the problem of utilizing existing lake and river data and the experience of other states that had shoreland programs to develop a workable and effective set of regulations for

Minnesotans and Minnesota waters. Luckily, a great deal of detailed, accurate resource data was available and readily accessible. It was put to good use in formulating the regulations.

Based on what the DNR had seen in other states which had similar programs it became evident that any workable and enforceable set of regulations had to be based on need, had to be reasonable, had to protect the individuals constitutional rights and had to be effective in solving the problems.

To do this; to enable the architects of the rules to clearly see what was to be regulated, this data bank was essential, and always will be essential, to any comprehensive zoning or land use control program.

With the help of other state agencies, the Association of Minnesota Counties, and a great deal of sensible and informative input from local officials, a set of proposed rules and regulations was developed. It was felt that because of the careful drafting and substantiating data available, the regulations would be effective, workable, flexible, enforceable, and reasonable.

The next step was to take the proposed regulations to the people. Active citizen participation was recognized as an essential ingredient to the ultimate success of the proposed regulations. A slide show was produced to graphically explain not only what the regulations were, but why each specific standard was needed and how it was justified. Those responsible for drafting the rules and regulations held eighteen informational and fact finding meetings at nine locations throughout Minnesota prior to the official public hearing required by law.

The purpose of these meetings was to receive formal and informal statements, suggestions, and critizisms of the proposed rules. The meeting proceedings were recorded and carefully evaluated. It is felt that the meetings provided a valuable opportunity for state and local officials to discuss a vital matter in an informal atmosphere. Local officials could ask any question of the state officials and the state officials learned much about the real world of county

zoning and planning, and the problems associated with it.

The DNR's involvement didn't end here, however. Once the shoreland rules became final, the DNR proceeded to develop three detailed informational manuals to elaborate on the rational of the shoreland regulations. It was obvious that if local officials were given the reasons and justifications for the regulations, then it would be much easier for them to implement the program at the local level. A "Guide for Buying Lakeshore" was published as well as a report explaining in detail the public waters classification system. Another report was developed detailing the rational for each specific regulation. Still another report was written outlining the administrative procedures for implementing the shoreland program by counties. The Department is now in its fourth printing of these publications.

DNR officials spent much of their time between 1970 and 1972 attending County Board and Planning Commission meetings explaining the regulations, distributing informational materials, and helping make the necessary changes in local ordinances to comply with the state regulations. In some cases the regulations were modified to fit the unique attributes of a county or public water body. The regulations and state officials involved were flexible enough to realize that local ordinances must reflect local conditions if they are to be enforceable. The primary role of the DNR in this period was to assist counties in adopting and implementing shoreland ordinances which were tailored to local resource characteristics, which were within the scope and intent of the law, and to provide the necessary technical data and assistance to substantiate the local ordinance provisions. Many counties felt compelled to strengthen the state minimum standards because of localized problems. This was encouraged and justified based on sound resource information and local input. During this period over sixty percent of the counties enacted at least one shoreland provision which was more restrictive than the state minimum standards.

Between 1970 and 1973 the shoreland staff of the DNR (three people) attended over 300 meetings with county officials in 87 counties. Approximately 17,500 of the above referenced reports have been distributed to county officials and the general public.

Earlier in this report it was noted that approximately one-half of Minnesota's counties were unable to adopt a satisfactory shoreland management ordinance by the July 1, 1972 deadline. There were a number of reasons for this but probably the most important ones were that the counties lacked the technical expertise, personnel and in some cases money to develop a viable shoreland ordinance. In some cases the counties felt that their present ordinances were sufficient to protect their lakes and rivers, and in others there was simply substantial grass roots opposition to any form of zoning controls - especially any mandated from the state.

Early in 1972 it became evident to the Commissioner of Natural Resources that a number of counties would not meet the July 1, 1972 deadline. A major policy decision had to be made concerning the exercise of the Commissioner's enforcement authority vested in the Shoreland Management Act regarding non-complying counties. The Commissioner clearly was authorized and in fact mandated to adopt an ordinance for any county which failed to act by July 1, 1972. The Commissioner could then charge the county for any adoption and hearing costs incurred in this process.

The Commissioner recognized that the Shoreland Management Act clearly placed the responsibility of ensuring compliance with its provisions upon the DNR. Likewise, it was obvious that if the Commissioner used a "big stick" and adopted an ordinance for a county, the county would probably be reluctant to actively administer and enforce it. Without the support of the county government a shoreland ordinance isn't worth the paper its written on and obviously the goals of the Shoreland Management Act would be difficult if not impossible to achieve.

The solution: the Commissioner notified each affected county that if it could not meet the July 1, 1972 deadline it must submit to the Commissioner a formal "resolution of intent" declaring the county's intention to adopt a satisfactory ordinance, setting forth a compliance schedule, and ordering the halt of any substandard platting in the interim. A copy of the official policy statement and notification of the Commissioner of Natural Resources which was sent to each affected county is reproduced on the attached addendum sheet.

This firm, yet responsive and flexible approach, enabled each county to develop a carefully thought out and enforceable ordinance. Every county which could not achieve the deadline submitted the requested resolution of intent and the Commissioner was not compelled to exercise his enforcement authority. Every county in Minnesota (except Hennepin and Ramsey which were excluded from the basic Act) subsequently adopted a shoreland management ordinance complying with the minimum state standards by September 1, 1973.

Counties are for the most part attempting to actively administer and enforce their shoreland ordinances. Problems and limitations do exist however. Many counties still lack the technical expertise to properly and effectively undertake shoreland management activities. Development pressures are so great in some parts of Minnesota that counties are continually barraged with requests for residential subdivisions. Many counties need much help in evaluating these proposals - from the legal and social aspects to the technical aspects of site evaluation. Many counties need support in their decision making. Some counties feel compelled to grant variances merely because no one objects to the variance proposal. In some counties over 90% of the existing individual home sewage disposal systems are faulty and the zoning administrator or sanitarian is completely overwhelmed with requests for technical assistance for upgrading these systems as required by law. Indeed, the Shoreland Management Program has begun in an admirable fashion. If it is to continue to be a viable and

increasingly effective one then it needs the continued technical, administrative and financial support of the State. Local government is where the majority of land use decisions must be made. If these decisions are to be made in a consistent, logical and meaningful fashion, are to keep pace with advancing technology, and are to be for the benefit of a majority of Minnesota's citizens then continual State guidance and assistance is essential.

In summary, the role of the Department of Natural Resources in terms of the Shoreland Management Program has been, and should continue to be, that of providing guidance, assistance and advice to local units of government regarding the technical, administrative and enforcement aspects of shoreland management. It should continue providing them with the moral and legal support needed to make rational, sound and sometimes very difficult decisions about the use and development of shorelands. The DNR must continually be cognizant of the increasing demands placed upon our shoreland resources and keep its procedures, philosophy and rules in pace with these changes. It must continue to monitor the effectiveness of the program statewide and must be prepared at all times to lend as much support as needed to local government in the complex task of guiding the development and use of our sensitive shoreland resources.

Regarding Laws of Minnesota 1969 Chapter 777

Pursuant to M. S. Chapter 105.485, Subdivision 4,

> *If a county fails to adopt a shoreland conservation ordinance by July 1, 1972, or if the commissioner of conservation at any time after July 1, 1972, after notice of hearing as provided in Minnesota Statutes, Section 105.44, finds that a county has adopted a shoreland conservation ordinance which fails to meet the minimum standards established pursuant to this section the commissioner shall adapt the model ordinance to the county. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in Minnesota Statutes, Section 394.26, after giving notice as provided in Section 394.26. This ordinance is effective for the county on the date and in accordance with such regulations relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in Minnesota Statutes, Section 394.37. The penalties prescribed in Minnesota Statutes, Section 394.37, apply to violation of the ordinance so adapted by the commissioner.*

Recognizing that the ultimate administrative and enforcement responsibilities of shoreland management ordinances is the responsibility of the county government, the Commissioner of Natural Resources intends to carry out his responsibility of insuring adoption and administration of the Shoreland Management Program in the following manner.

Any county which will not meet the requirements and obligations of Laws of Minnesota 1969, Chapter 777, must, prior to July 1, 1972, demonstrate by resolution of the County Board of Commissioners that it fully intends to comply with these requirements and obligations by a prescribed date and in accordance with a schedule implementation plan, all as approved by the Commissioner.

To insure timeliness of action and to prevent substantial substandard subdivision and development of shoreland areas in this interim, the County Board of Commissioners shall include in the above resolution a provision which precludes the subdivision, by platting or by metes and bounds description, of shoreland areas within the county until an acceptable shoreland management ordinance is adopted by the county and approved by the Commissioner of Natural Resources. The only exception shall be plats submitted which conform to all provisions of the Statewide Standards and Criteria for Management of Shoreland Areas of Minnesota. This provision shall be effective on July 1, 1972.

If a county fails to proceed as outlined above then the Commissioner of Natural Resources shall initiate the proceedings provided in Minnesota Statutes Chapter 105.485, Subdivision 4.