

Local Official Recommendations...

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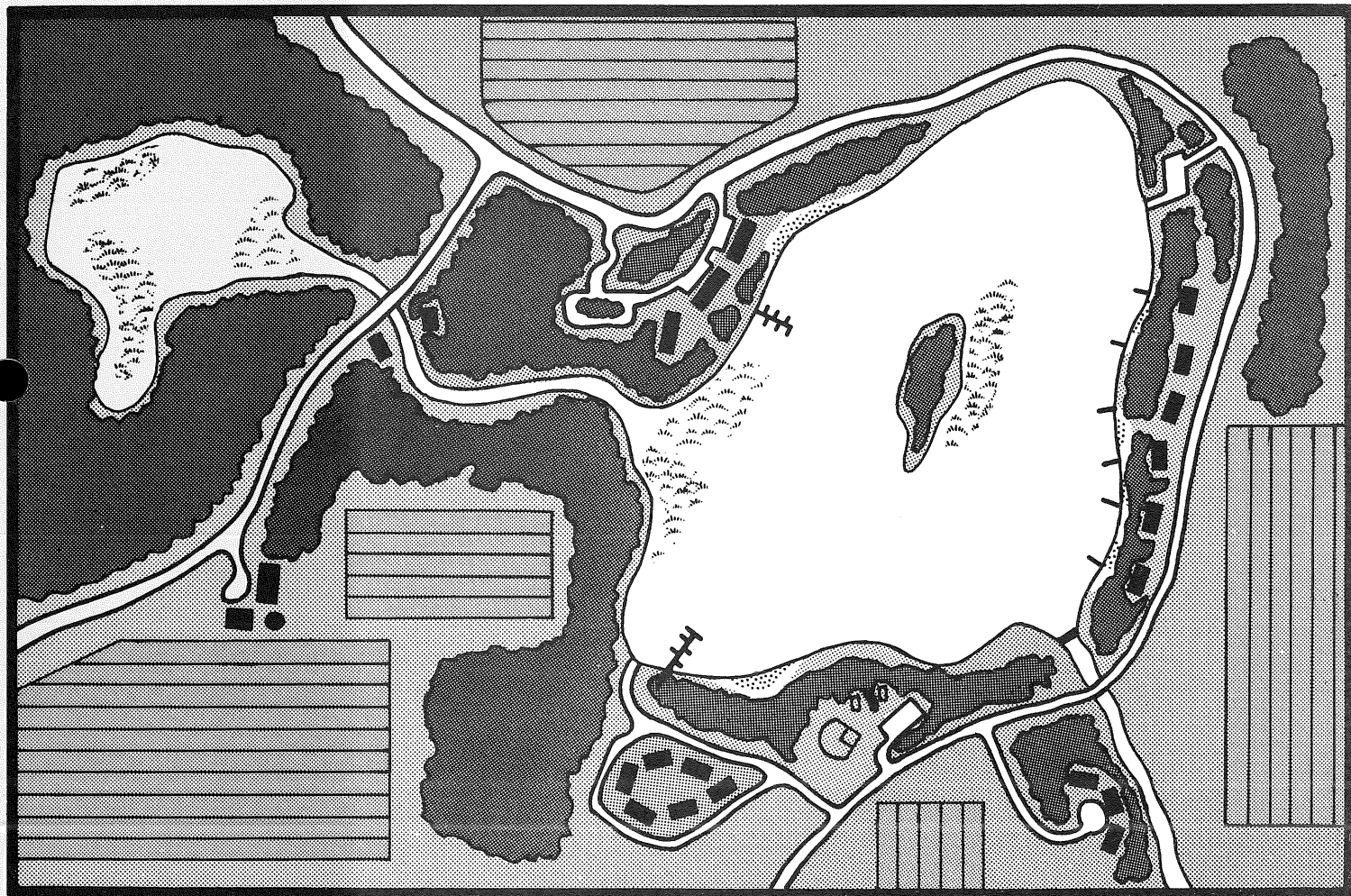
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SHORELAND UPDATE

Report
Number



LOCAL OFFICIAL RECOMMENDATIONS for SHORELAND PROGRAM IMPROVEMENTS



DNR
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 MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
Division of Waters

FLOOD PLAIN/SHORELAND MANAGEMENT SECTION

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SHORELAND UPDATE PROJECT

Report No.3

**LOCAL OFFICIAL
RECOMMENDATIONS
for SHORELAND PROGRAM
IMPROVEMENTS**

by Steve Prestin

1983

St. Paul, Mn.

Minnesota Department of Natural Resources

Division of Waters

Flood Plain/Shoreland Management Section

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ACKNOWLEDGEMENTS

The Shoreland Management Program was originally established by the Legislature as a cooperative effort between counties (and, in 1973, municipalities) and several state agencies, primarily the Department of Natural Resources. Over the ensuing decade counties and many cities have demonstrated that such a framework can work reasonably well. Local officials throughout the state have dealt with thousands of development proposals. In the process, they have gained considerable insight about program deficiencies and problems.

The regional advisory committee effort described in this report tapped their knowledge, experience and enthusiasm to begin a process of improving shoreland management throughout the state. These recommendations are not necessarily endorsed by the Department of Natural Resources or the local units of government whose officials participated in the advisory committee process. The efforts of all who participated in the committees are appreciated. Special thanks goes to the following local government officials who served as co-chairmen of committees with DNR Regional Hydrologists:

DNR Region

Dennis Nagle, Douglas County	1
John Jubala, St. Louis County	2
Jack Wimmer, Stearns County	3
Art Poll, Le Sueur County	4 & 5
Pat McGarvey, City of Lakeville	6

This report is one of a series which are products of the Shoreland Update Project conducted by the Department of Natural Resources Division of Waters and Office of Planning. Funding was provided by the Legislative Commission on Minnesota Resources. Joe Stinchfield, Division of Waters, was responsible for coordinating the advisory committee process.

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INTRODUCTION

A major component of the Update Project was an effort to evaluate how effective the Shoreland Management Program has been during its first decade and to determine what changes are needed to address current and anticipated future problems. An initial step in the evaluation was the mailing of a detailed questionnaire to all local officials responsible for administering adopted shoreland management controls.* A portion of the questionnaire requested these officials to identify important problems and issues needing further investigation. It also asked whether they would be willing to serve on one of several advisory committees to be established throughout the state to discuss these issues and recommend needed actions.

From this questionnaire, 19 issues were identified and 5 advisory committees established. A Department of Natural Resources (DNR) Regional Hydrologist and a local government zoning and planning official were designated to co-chair meetings of the committees through the winter of 1982-83. The co-chairmen were then requested to identify, in order of priority, the eight most important issues for the portion of the state represented by their committee. The remaining eleven issues were considered to be of lower priority for that area. Statewide, this prioritization process identified seven issues which seemed of particular importance. They are:

- Non-conforming sewage systems
- Variance review
- Lot size and setback standards
- Enforcement concerns
- Leased lots
- Boathouses and deck standards
- Campgrounds and recreational vehicle parks

Following the prioritization process, seven high and three low priority issues were assigned to each committee. An attempt was made to assign each of the above issues with statewide importance to two or more committees and to take regional variations into consideration in assigning the other issues. DNR staff in St. Paul developed written descriptions of each issue, their implications, and some possible options for improvement. These were transmitted to each committee as a starting point for discussion and the committees then met several times during the winter months.

Minutes of the meetings were recorded, typed and sent to DNR staff in St. Paul. Copies of the minutes of each meeting of each committee were sent to the chairmen of every other committee to keep them informed of the statewide process. After all minutes of all meetings were received in St. Paul, they were reviewed to identify specific recommendations on each issue and compare recommendations on each developed by different committees.

* See Report #1, Shoreland Management Effectiveness: A Questionnaire Survey of Shoreland Managers, for a description of the responses to the survey given by local officials.

This process led to grouping of the issues into three categories: those whose recommendations are similar, identical, or different, those which were only considered by one committee and those with one or more conflicting recommendations.

On May 11 & 12, 1983 a statewide meeting was held in the Twin Cities to resolve the conflicting recommendations, review recommendations on issues which only one committee addressed, and briefly discuss the remaining issues. Everyone who participated in the advisory committee process was invited to attend. Fourteen local officials and seven DNR field personnel attended the meeting. The following represents the final recommendations of the advisory committees. Issues were assigned reference numbers early in the process and are presented here in numerical order. No prioritization or disproportionate emphasis is intended.

Issue #1: Nonconforming Sewage Systems

1. DNR should develop specific standards, including concise definitions of "non-conforming" and "substandard" sewage systems, for determining which systems are non-conforming and in need of upgrading. Guidelines should also be developed to help standardize methods of identifying non-conforming systems.
2. DNR and local units of government should support legislation for tax credits to property owners who upgrade their sewage systems and have them certified as complying with current design standards.
3. DNR should develop a supplementary report which clarifies the problem and provides the framework for establishing a rational, consistent, statewide program for upgrading non-conforming sewage systems.
4. Each local government should methodically inspect and evaluate all systems installed before shoreland controls were adopted and then identify and rank "improvement areas". All property owners should then be informed which area they are in and when upgrading will be required.
5. Local officials should be given authority to place sanctions (not recording sale of property and not issuing new construction permits were mentioned) on properties if owners refuse to upgrade systems within reasonable time after notification.
6. A good public relations effort should accompany an upgrading program to encourage public acceptance and more voluntary upgrading.
7. The Minnesota Pollution Control Agency should develop a mandatory certification program for installers and inspectors.
8. The Minnesota Department of Health should amend its Well Drilling Code regulations to clear up current problems with existing developments where required separation distances between sewage systems and wells cannot be met when sewage systems are upgraded.

Issue #2: Variance Review

1. Local governments should continue to handle variances under existing legislation, with zoning administrators providing staff reports and recommendations.
2. DNR should develop a list of factors which Boards of Adjustment must consider before making variance decisions.
3. DNR should develop training sessions for DNR field staff, local zoning administrators, and Boards of Adjustment members. Training should cover DNR policies and statutory requirements; include definitions and explanations of Ordinary High Water Mark, variance, practical difficulty and hardship; and use group approach with visual aids to cover several good and bad decisions.

Issue #3: Lot Size and Setback Standards

1. The DNR should change the statewide shoreland regulations for unsewered areas to reduce the Natural Environment minimum lot area from 80,000 ft.² to 60,000 ft.². A change should also be made to give local governments the option of reducing the structure setback from the OHWM* from 200 ft. to as little as 100 ft. to recognize unique constraints posed by such local conditions as ridges and dense vegetation.
2. The ISTS** Advisory Committee should review the statewide sewage treatment standards (6 MCAR § 6.8040) to determine if any reductions in requirements are warranted, especially with regard to existing, substandard development and alternative types of sewage systems.
3. DNR Municipal Shoreland Regulations should be expanded to clarify areas of flexibility in adopting municipal ordinances.
4. DNR Municipal Shoreland Regulations should be reevaluated with respect to impervious surface coverage limits since the current standard is overly restrictive for commercial, industrial, and multiple family developments in urban areas (See recommendation 2 of Issue #10 for more detail).

* Ordinary High Water Mark, which is defined as: A mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominately aquatic to predominately terrestrial. The term "Normal High Water Mark" has been and continues to be frequently used. It is synonymous with OHWM. Setbacks from the OHWM are measured horizontally.

** Individual Sewage Treatment Systems. The committee is established in 6 MCAR § 6.8040 and is composed of local officials, sewage and well contractors, and representatives of various state and federal agencies.

Issue #4: Enforcement Concerns

1. DNR and local governments should develop better public education programs regarding goals and requirements of the Shoreland Program to improve voluntary compliance and reduce the need for enforcement action.
2. DNR and local government officials should work more closely with lakeshore property owners associations and seek their assistance in proper administration of shoreland management controls.
3. DNR and local governments should seek changes to enabling legislation to give local governments more effective enforcement authority. One possibility is to add sewage contractor responsibility provisions.
4. DNR should more aggressively support local governments in pursuing violations through the legal process.
5. DNR should seek development of uniform, statewide guidelines for violation penalties.
6. DNR should initiate an effort, utilizing the Commissioner's influence and working with appropriate state associations of County Attorney's and Judges, to educate key actors in the legal process about the importance of timely and effective handling of shoreland legal cases.
7. Counties should consider alternatives of establishing a system of township administrators of various kinds of official controls similar to the arrangement in McLeod County. An advantage to this approach could be more frequent and effective monitoring of compliance with land use controls. However, for the approach to function well, the township administrators must be adequately trained and monitored.

Issue #5: Leased Lots

Short Range -

1. The Attorney General's staff should be requested to determine what legal authority counties have to ensure leases meet county zoning requirements as required in current state leases.
2. DNR and counties should seek legislative changes to give local governments land use control authority over state owned shoreland lease lots.
3. More specific lease standards, possibly full compliance with all local government land use controls, should be developed.
4. A better lease administration program should be developed to ensure continuing compliance with standards.

Long Range -

1. DNR and counties should develop a planning process to be completed by 1985 to address lease lot problems. A major objective should be long-term compliance with local shoreland management controls.
2. No sale of lease lots should occur unless they comply with shoreland management standards.

Issue #6: Boathouse and Deck Standards

Boathouses -

1. DNR should amend county regulations so that if boathouses are to be exempted by counties from OHWM setback standards, conditional use permits would be required. This would enable counties to adequately evaluate the topographic and other features of each site and attach conditions to address size, use, color and screening.
2. DNR should amend county regulations to include a concise definition which would limit inappropriate uses.

Decks -

1. DNR and local governments should discourage enclosing of decks by encouraging alternatives such as portable screenhouses which can be placed on decks or closer to lakes without permits.
2. DNR should amend statewide regulations to allow local governments the option of allowing decks on waterward side of structure within specified dimensions (perhaps 10 ft.) administratively if the ordinance clearly defines what constitutes a deck and conditions are specified to preclude future alterations into a habitable structure addition.
3. Local government officials should caution building permit applicants to plan ahead and locate dwellings to enable decks to be added in the future are compliant with structure setback standards.

Issue #7: Campgrounds and Recreational Vehicle Parks

1. DNR should amend regulations to include these as a type of Planned Unit Development (PUD).
2. Standards currently in DNR model ordinance should be incorporated into the regulations so sites would meet structure setback standards from the OHWM. Each site should be 4000 ft.² in size. (Reduce for other project features.) Local governments could require larger setbacks, site sizes, or frontage requirements.
3. DNR should amend regulations and local governments amend ordinances to provide for reducing non-conformities of existing situations when approvals for expansions are sought.

4. The Minnesota Department of Health should routinely notify local government officials of proposed expansions of existing facilities.
5. DNR should, with involvement of appropriate industry representatives (i.e., campground and resort associations), develop changes to regulations to provide standards for various types of commercial uses. Existing county ordinances should be reviewed for approaches.
6. DNR should devise and incorporate into the regulations provisions to clearly distinguish campground and recreational vehicle parks from manufactured (mobile) home developments, so standards for former are not used as loophole for the latter.

Issue #8: Shoreland District Dimensions

Existing dimensions in Shoreland Act are still sufficient.

Issue #9: Agricultural Activity

1. The proposed effort by the Center for New Democratic Processes to address this issue should include discussions with the agricultural community of the need for new approaches to address problems associated with animal waste sewage sludge runoff, erosion, sedimentation, and other sources of non-point pollution.
2. Efforts should be made to coordinate with federal cropland set-aside programs to ensure inclusion of shoreland areas.
3. The MPCA should encourage more counties to participate in the Feedlot Runoff Control Program. It should also improve its surveillance and enforcement efforts regarding agricultural runoff problems.

Issue #10: Multiple Structures on Lots

1. DNR should develop a clear definition, for inclusion in regulations, of what constitutes impervious surface.
2. DNR should revise regulations to address number and size of structures on lots by establishing maximum allowable impervious surface coverage limits related to waterbody class, type of zoning district, and urban status.

Issue #11: Alternative Types of Development

1. DNR should revise regulations to eliminate the term "cluster" and replace it with the term "planned unit development." This term should be defined as all types of development which are different than "standard," lot-block subdivisions. It would include duplexes, apartments, townhouses, condominiums, resort conversions, mobile home parks, recreational vehicle developments, and others.
2. DNR should revise regulations to include design standards for commercial, industrial, and other forms of non-residential development.

3. DNR should revise regulations to reduce allowable densities, especially for second and third tier portions of projects and for projects on lakes with high crowding potential, and to require buffer areas between planned unit developments and adjacent properties.
4. DNR should revise regulations to provide for relinquishing DNR approval authority on every project in communities which have adopted PUD standards and demonstrated capability to competently review projects.
5. DNR should develop a position paper regarding problems associated with public sewer availability in unincorporated areas.

Issue #12: Sensitive Area Management

1. DNR and local governments should cooperate in developing definitions and mapping locations of sensitive areas. Some sources of guidance in this effort might include the DNR Scientific and Natural Areas Program, the Critical Area Program, and the U.S. Army Corps of Engineers Permits Program. Some possible types of areas to consider are spawning areas, unique and valuable areas of aquatic or terrestrial vegetation, land where surface is 5 feet or less above the OHWM, important wildlife areas, islands and peninsulas.
2. DNR and local governments should develop a program to protect sensitive areas which could include:
 - subdivision review criteria
 - restrictive zoning districts
 - state purchase of development rights possibly financed with a surcharge on various licenses
3. DNR and local government officials should develop a public education program regarding the need to preserve these areas.

Issue #13: Rivers Management

1. DNR regulations should be amended to include provisions similar to those in the Wild and Scenic Rivers Regulations for maintenance of understory and canopy covers in buffer strips along rivers. Standards should provide for selective cutting and pruning, while controlling erosion, sedimentation, fish and wildlife habitat, and aesthetics. The Mississippi Headwaters Board Plan and associated ordinances may provide guidance. Also, provisions should be included to utilize existing farm or forestry management plans, if possible.
2. Revisions to DNR regulations should include a river-oriented classification system with a relatively small number of classes and appropriate standards for each.
3. Since large quantities of land along many rivers in the northern part of the state are tax-forfeit and under county control, county land commissioners should develop comprehensive plans which are consistent with the Shoreland Program.

4. The Soil Conservation Service and Soil and Water Conservation Districts should increase their efforts to inform the public about the importance of shoreland soil conservation - especially along rivers.

Issue #14: Second and Third Tier Standards

DNR regulations should remain as they are until DNR can develop a "resource impact indicator" which local governments could use to develop and administer more appropriate standards.

Issue #15: Sewage Treatment Consideration in Subdivision Review

1. DNR should revise regulations to clarify that there will be no automatic reduction in dimensional standards for use of alternative sewage systems in new developments.
2. Local governments should consider utilizing subdivision ordinance provisions similar to Pine County's:
 - 3.21 The hazards of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities or any other feature likely to be harmful to the health, safety, or welfare of the future residents of the proposed subdivision or of the community shall be considered.
 - 3.22 Land subject to these hazards shall not be subdivided until all such hazards have been eliminated, unless adequate safeguards against such hazards are provided by the subdivision plan.

Issue #16: DNR as a Service Organization

1. DNR should develop better informational materials for it and local officials to use for informing the public about purposes of shoreland management.
2. DNR should continue providing same types of assistance to local officials as in the past, but should send more letters of explanation and support especially when requested. Whenever possible, written comments should be based on field inspections.
3. Local governments should send copies of all proposed subdivisions to DNR in advance of hearings, but DNR should only comment when requested or when unique features or regulation interpretations are involved.
4. DNR should provide a lead role in resolving region-wide problems.
5. DNR should continue participating in various meetings of the Minnesota Association of County Planning and Zoning Administrators. DNR field staff should attend district meetings and central office staff should attend annual meetings.

6. DNR should have a central office staff person with sole responsibility for monitoring local government shoreland programs statewide to ensure continuing substantial compliance with state regulations. Consideration should be given to evaluating effectiveness of local programs and structuring various levels of DNR involvement to match local needs.
7. Specific and primary responsibility should be given a DNR central office staff person to develop training and education materials for planning commissions, boards of adjustment, local officials, and DNR field staff. The zoning administrators association and the Minnesota Environmental Education Board should play a strong role in this effort.

Issue #17: Shoreland Alterations

1. DNR should develop definitions of alterations and provide performance standard guidelines addressing topography, soils, vegetation, use, screening and views. These should provide guidance for determining which permits can be issued on-site or over-the-counter and which need more thorough review.
2. Local governments should consider establishing procedures for evaluating complex projects which would involve applicants submitting project plans. These would be reviewed by qualified personnel from agencies such as SCS (Soil Conservation Service), SWCD's (Soil and Water Conservation District) DNR, etc. Itasca County has recently amended its controls to formalize such a process.

Issue #18: Protected Waters Inventory

1. For counties, protected wetlands less than 80 acres and protected waters less than 25 acres which are not currently included in shoreland controls should not be required by DNR to be included. These basins should only be added at the discretion of the counties. Basins larger than these cutoffs should be carefully reviewed by DNR and the counties and added only when it is determined they fall within the scope of the Shoreland Management Act.
2. If counties desire to include wetlands in their shoreland management programs which are not required by DNR, several suggestions for management include:
 - a) Only include types IV and V.
 - b) Prohibit commercial development and resorts, and allow single family or seasonal recreational areas.
 - c) Require minimum dimensions for lots of 5 acres, 330' of frontage, 500' of depth, and structure setbacks of 200' on wooded lots and 300' on open lots.
 - d) Allow only 1 living unit/lot and require it to be designed to match surroundings.
 - e) Limit the shoreland district to 500'.

3. Some additional considerations regarding management of wetlands in cities, particularly within the Twin Cities Metro Area, include:
- a) Shoreland of wetlands should be regulated differently than shorelands of lakes.
 - b) Regulation of shorelands of wetlands is necessary, but extent and type of regulations must be appropriate to the functions they serve.
 - c) Shoreland regulations for wetlands should have primary concern for reducing incoming sediment and maintenance of natural vegetation to preserve the wetlands' assimilative capacity.
 - d) A possible form of control would be to consider Type V wetlands (not presently identified as shoreland basins) as General Development basins. Types III and IV basins would have less/more restrictive controls depending on management needs.
 - e) Wetland management should be made an integral component of municipal land use and stormwater management plans.

Issue #19: Substandard Lots of Record

These lots should be handled by local units of government on a case-by-case basis. Adjacent lots under single ownership should be required to be combined as much as possible to attempt to meet current dimensional standards before being allowed to be developed.

CONCLUSIONS

The preceding 70 plus recommendations on nineteen separate issues contain several recurring themes or ideas worthy of further description and consideration. These include the concepts of: greater options or flexibility for local officials, more training for virtually all personnel involved in the program, and regionalization of standards. Each concept is described below.

Local Options

Regional advisory committee recommendations for six issues (2, 3, 6, 11, 18, 19) include references to this concept. The minimum standards developed by the DNR and incorporated by counties into ordinances did not encourage flexibility or choices between options. Although the standards were minimum and counties had the option of being more restrictive, not many chose to do so. The standards originally contained a provision authorizing DNR to accept ordinances tailored to local conditions which did not necessarily comply with every minimum dimensional standard, but few counties at the time chose to pursue this option. All of this is, however, understandable when viewed from the appropriate time perspective. When the program was being initiated (early '70's), many counties had little or no experience with land use controls. They also did not have qualified staff to properly evaluate their unique conditions and needs. During the ensuing years municipalities have been included in the program, considerable development has occurred, and local officials have gained considerable experience implementing land use controls, all of which make conditions now much more favorable for development of "unique" or "flexible" local shoreland management programs. Since establishment of the Program new types of development have begun to appear throughout the country and in Minnesota's shoreland areas. At the same time considerable change has occurred in the ways units of government plan and manage land uses. Many are now relying less on traditional lot-block subdivisions for new residential development and more on Planned Unit Developments. They are utilizing performance controls rather than specific dimensional standards and are encouraging compatible mixes of uses rather than traditional zoning's separation of uses. Most of these new trends involve more flexibility and innovation while concurrently fostering greater economic efficiencies and improved preservation of fragile or valuable resource characteristics. Since these trends appear likely to continue and intensify, the Shoreland Management Program should be revised to accomodate these changes.

Training and Education

A second theme identified in recommendations for several issues (1, 2, 4, 12, 16) is the current and continuing need for training. Although more government officials are better trained now than at any point in the history of the Shoreland Program, there is a pervasive conclusion that overall training needs are just beginning to be addressed. One reason for this perception is the large number of persons involved in the program in an unpaid, voluntary capacity. These people serve on planning commissions, boards of adjustment, and various advisory associations or committees. Although such people are frequently interested in and supportive of the program, they are often not well-trained in relevant fields. These groups also have fairly frequent turn-overs of membership, which compounds the problem.

Other reasons for the persistent desire for training are the trends discussed above. As new types of land development and control begin to appear in shoreland areas, those state and local officials working in the program feel a need to become familiar with new concepts, techniques, laws and equipment. Since the pace of change seems to be accelerating, the desire for more and better training will probably continue to grow.

Regionalization of Standards

Although the shoreland management standards developed by the DNR for counties contained some features which were utilized to reflect regional differences across the state, there seems to be growing impetus to provide even more flexibility. Recommendations on issues 11 and 18 mention the need for regional differentiation of state minimum standards.

One type of regionalization would provide special standards for large, unique lakes, especially Superior. Such resources have physical characteristics considerably different from most other lakes in the state and probably need land use management standards which reflect the differences. Rivers are a similar situation. Currently, rivers are managed in the Shoreland Program with a classification system and dimensional standards designed for lakes. A rivers classification system and associated standards would resolve this problem.

A second type of regionalization would include recognition of the generalized differences in physical characteristics of lakes and rivers and their associated shoreland and watersheds from the northeast part of the state to the southwest. There also appears to be significant differences in development and use characteristics of these resources across a similar continuum. Another version of this type of regionalization would include recognition in the standards of the numerous and significant differences in resource characteristics, development pressures and local government capabilities between the Twin Cities Metro Area and much of the rest of the state.

