

Minnesota Environmental Quality Board
Proposed Revision of Rules Governing the Environmental Review Program –
“Phase 2”
Preliminary Draft of Possible Amendments
August 2006

Prepared to Accompany the Request for Comments, dated August 7, 2006

This document identifies the parts and subparts of the Environmental Review Program rules which the Environmental Quality Board is considering amending, as noticed in the Request for Comments signed by the EQB Chair on August 7, 2006 and available at the EQB’s website, www.eqb.state.mn.us. For each rule provision being considered for amendment, this document summarizes the issue or problem prompting consideration of revision and either presents proposed revised language or, if revised language has not yet been developed, describes the nature of the proposed revision. The possible amendments are presented in the order that the affected rule parts appear in the present rule. The text of the existing rule (chapter 4410) can be found at the website of the Revisor of Statutes, www.revisor.leg.state.mn.us.

Rule Number	Summary of Problem or Issue	Possible Amendment
1. 4410.0200, subp. 81. Definition of “sewered area”	The 1982 rulemaking record indicates that a centralized septic tank system serving the entirety of a project and owned by the homeowners collectively was intended to be included in this definition, but the present rule wording is ambiguous about this. The importance of this definition is that in the residential project mandatory categories a higher threshold applies to “sewered areas.” In the 2006 Phase 1 rulemaking*, the EQB proposed to amend the definition by inserting “or homeowner owned” after “publicly	The EQB is interested in comments regarding this definition, in particular: (1) should centralized septic tank systems sometimes be treated as “sewered areas”; (2) should type of ownership make a difference, and if so, how; and (3) is it important for this definition to be consistent with that used in the DNR shoreland rules?

	owned.” Commenters suggested expanding the definition to include systems with other types of ownership also. In addition, it was pointed out that this definition is different than that used in the DNR shoreland rules.	<i>*Documents from the Phase 1 rule amendment process may be viewed at the EQB website by selecting “Amending the Environmental Review program rules – Phase 1” under the section “Completed Projects and Studies.”</i>
2. 4410.1100, subp. 2. Citizens’ petition process; petition content	Clarify that the “material evidence” required for a petition must physically accompany the petition, and that it is not acceptable to merely provide a reference to where the alleged evidence may be found. This issue arises primarily due to increased use of the internet to obtain material evidence to file with a petition. In some cases, only URL citations to where the evidence can be located on the internet have included with the petition. As the statute refers to “material evidence accompanying a petition,” and because the EQB believes that the burden is upon the petitioners to make a case that an EAW may be required, the EQB believes that the evidence must physically accompany the petition. This should be clarified in the rules.	Add language stating that the material evidence for the petition must physically accompany the petition.
3. 4410.1100, subp. 2. Citizens’ petition process; EQB handling of incomplete petitions	It has been the EQB’s long-standing practice to return all incomplete petitions (those that do not comply with the content requirements at subpart 2) to the petitioners’ representative with an explanation of why the petition is incomplete. However, the rules do not explicitly provide for this action and it was recently called into question in a particular case. The EQB wishes to add language to the rule to explicitly provide for this practice.	Add language providing that if a petition is found incomplete by the EQB Chair or designee, the petition must be returned to the petitioners’ representative with an explanation of why it is incomplete.

<p>4. 4410.1700, subp. 7, item B.</p> <p>EIS need criterion #2: “The cumulative potential effects of related or anticipated future projects.”</p>	<p>In a recent case (Citizens Advocating Responsible Development vs. Kandiyohi County Board of Commissioners and Duininck Brothers, Inc, filed May 11, 2006), the MN Supreme Court found that this criterion was not equivalent to applying the definition of “cumulative impacts,” as given at 4410.0200, subp. 11. The Court provided an interpretation of how to apply the criterion relative to other projects: limit the geographical scope to “projects in the surrounding area that might reasonably be expected to affect the same natural resources” and the temporal scope to “specific projects actually planned or for which a basis of expectation has been laid.”</p> <p>In light of this court decision, the rules need to be amended to either incorporate the interpretation given by the Supreme Court or establish different criteria for accounting for the impacts of other projects when determining if an EIS is needed.</p>	<p>The EQB is interested in comments about whether the guidance given by the Supreme Court about how to take other projects into account should be incorporated into the rules or whether some other criteria ought to be established by rule amendments (and if so, what those criteria would be?)</p>
<p>5. 4410.3610, subp. 2.</p> <p>AUAR process; use for review of individual projects</p>	<p>In the Phase 1 rulemaking*, the EQB proposed to add a requirement for the RGU to provide for public notice and comment prior to removing a project from an AUAR review in progress. Some commenters objected on the grounds that they believed that once an AUAR is ordered, all development within the AUAR area is obligated to undergo environmental review, and therefore it is simply not permissible for any project to be</p>	<p>The EQB proposes two amendments to this subpart: (1) add an explicit statement that the ordering of an AUAR does not constitute a finding by the RGU that all potential development within the AUAR area has or may have the potential for significant environmental effects; and (2) add a public notice and comment opportunity prior to any removals of projects from the AUAR review, similar to that proposed but withdrawn in Phase 1.</p>

	<p>removed from the AUAR review.</p> <p>The EQB withdrew the proposed amendment from the Phase 1 rulemaking. The EQB is now re-proposing the amendment withdrawn in Phase 1 along with an amendment stating that the ordering of an AUAR does not create a requirement that all developments within the AUAR undergo Environmental Review.</p>	<p><i>*Documents from the Phase 1 rule amendment process may be viewed at the EQB website by selecting “Amending the Environmental Review program rules – Phase 1” under the section “Completed Projects and Studies.”</i></p>
<p>6. 4410.3610, subps. 3 & 4. AUAR Order & analysis; implications of setting the AUAR boundary</p>	<p>In a 2006 case (MN Center for Environmental Advocacy vs. City of St. Paul Park and R. Gordon Nesvig, filed April 4, 2006), the MN Court of Appeals found that the RGU was not required to consider impacts or sources of impacts outside of the designated AUAR boundary. The EQB believes this is illogical and must be corrected.</p>	<p>Add language in one or both of these subparts clarifying that analysis of impacts and impact sources is not intended to be limited to the area inside the AUAR boundary.</p>
<p>7. 4410.3610, subp. 5a (new subpart).</p> <p>AUAR process; additional procedures required when certain large specific projects reviewed.</p>	<p>In the Phase 1 rulemaking* the EQB proposed a new “scoping” step at the start of the AUAR process that would apply in the case that the AUAR was reviewing a specific project that exceeded an EIS threshold or which covered at least 50% of the AUAR area. The new step would allow public input into the development scenarios covered in the AUAR to assure that sufficient alternatives to the specific project in question were reviewed. When the Court of Appeals decision cited in item #4 above was released during the comment period, the EQB decided to withdraw the amendment for further study. After consideration, the EQB is proposing the amendment again.</p>	<p>Add a new subpart to the AUAR procedures to establish a public comment process at the start of an AUAR review if the review will cover a specific project that either meets an EIS threshold or comprises at least 50% of the AUAR area. The comment process is intended to allow input into the development scenarios and major issues to be studied. The procedures would be similar to those proposed but later withdrawn in the Phase 1 rulemaking.</p> <p><i>*Documents from the Phase 1 rule amendment process may be viewed at the EQB website by selecting “Amending the Environmental Review program rules – Phase 1” under the section “Completed Projects and Studies.”</i></p>

<p>8. 4410.4300, new subpart.</p> <p>Mandatory EAW Category: Development within shoreland</p>	<p>The diminishing amount of undeveloped lakeshore in the state has led to noticeable changes in the types of lakeshore projects being proposed and in the nature of the lakeshores under consideration for development. The increasing pressure of these new developments has led to a recognition that the existing mandatory review categories may not be adequate to ensure the needed review of today's lakeshore development projects.</p> <p>In its February 2005 Request for Comments, the EQB asked for comments and advice about creating new categories specific to shoreland development which would take into account the environmental impacts of modern lakeshore developments. The EQB also asked for volunteers to serve on an advisory committee to assist in developing a proposal. The EQB later asked the DNR to lead development of a proposal working with an advisory committee of persons who had volunteered to serve. In April 2006, the DNR presented a proposal to EQB for mandatory EAW and EIS categories for various types of development in shorelands.</p>	<p>Amend the mandatory EAW category list and EIS category list to add new categories for projects in shorelands of lakes and rivers, as recommended in the April 2006 report from the DNR.</p> <p>The categories recommended by the DNR are shown in Appendix A at the end of the table.</p>
<p>9. 4410.4400, new subpart.</p> <p>Mandatory EIS categories: Development within shoreland</p>	<p>See the discussion above, which applies to proposed EIS as well as EAW categories in shorelands.</p>	<p>(See above)</p>

10. AMENDMENTS FOR WHICH LOCATION IN RULES NOT YET DETERMINED.	The EQB proposes to make the following amendments to the Environmental Review program rules, but has not yet identified exactly which rule parts need to be amended to accomplish the intended purposes.	
a. clarify that the Environmental Review program does not apply to quasi-legislative governmental actions, such as planning and zoning actions.	The EQB has a long-standing interpretation that quasi-legislative actions are not subject to this program. This interpretation is backed by certain rule provisions, language in past SONARs, and long-standing application of the program. However, the rules could be made more explicit regarding this interpretation.	Amend the rules at appropriate locations to clarify this interpretation.
b. clarify when an RGU is considering whether a potential environmental impact will be adequately addressed by possible mitigation (such as when determining the need for an EIS), that the standard is whether the mitigation can be “reasonably expected” to handle the impact rather than that it is “certain” to handle the impact.	In a recent decision, the MN Supreme Court stated the standard to use for considering mitigation differently at two places in its opinion, once stating that the mitigation must be “certain” to be applied, and elsewhere that it need only be “reasonably expected” to be applied. The EQB believes that the latter standard is the correct one, in view of other past court opinions, and wishes to avoid confusion by clarifying this point in the rules.	Amend the rules at appropriate location to clearly state that “reasonably expected” is the correct standard.
c. Clarify that an RGU need only consider “adverse” environmental effects when deciding if discretionary review is required.	In a recent opinion, the MN Supreme Court noted that the current rules do not limit an RGU’s consideration of environmental impacts to <i>negative</i> or <i>adverse</i> impacts. The Court noted that the EQB had proposed to add the word “adverse” in 1982, but had	Add appropriate language to clarify that only adverse impacts are reason to order discretionary review.

	<p>withdrawn the amendment due to comments received during the hearing. However, after reviewing the rulemaking record from the 1982 rulemaking, the EQB staff does not find the explanation for deleting “adverse” in 1982 to be compelling – the commenter and the EQB staff focused on whether the project as a whole had adverse or beneficial impacts, not upon whether specific environmental impacts were adverse or beneficial.</p> <p>The EQB believes that despite its past action on this matter, the rule ought to direct the RGU to consider only adverse impacts as a reason to order an EIS. If a project has no negative environmental impacts, how would preparing an EIS be of environmental benefit? Further, as a matter of practice, only adverse impacts have been the basis for requiring review in all cases known to the EQB.</p>	
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APPENDIX A

Proposed Mandatory EAW & EIS Categories for Projects in Shorelands (and Definitions of Terms Used)

This appendix presents the proposed new mandatory EAW and EIS categories for projects in shoreland in two ways. First, draft language as would be used for the new categories and definitions in amended rules is presented. Then, at the end of the appendix, the same proposed thresholds are presented in a table format.

4410.4300. MANDATORY EAW CATEGORIES.

Add the following provisions to Minn. Rules, part 4410.4300:

Subp. 38. **Residential Subdivisions in Shorelands.** An EAW is required for all new residential subdivisions within shorelands if the total number of lots created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Total number of riparian lots within a conventional subdivision:

(1) Twenty (20) or more lots within communities with a DNR approved shoreland management ordinance;

- (2) Sixteen (16) or more lots within communities without a DNR approved shoreland management ordinance;
- (3) Ten (10) or more lots within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
- (4) Eight (8) or more lots within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

B. Total number of shoreland lots within a conventional subdivision:

- (1) Forty (40) or more lots within communities with a DNR approved shoreland management ordinance;
- (2) Thirty-two (32) or more lots within communities without a DNR approved shoreland management ordinance;
- (3) Twenty (20) or more lots within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
- (4) Sixteen (16) or more lots within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

C. Total number of shoreland lots within a conservation subdivision where common open space is less than fifty (50) percent of the parcel or where density exceeds Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and the conservation subdivision contains:

- (1) Fifty (50) or more lots within communities with a DNR approved shoreland management ordinance;
- (2) Forty (40) or more lots within communities without a DNR approved shoreland management ordinance;
- (3) Twenty-five (25) or more lots within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
- (4) Twenty (20) or more lots within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

D. Total number of shoreland lots within a conservation subdivision where the local ordinance is consistent with ALT6120 et. seq. standards or where common open space is equal to or greater than fifty (50) percent of the parcel and where density does not exceed Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and the conservation subdivision contains:

- (1) Eighty (80) or more lots within communities with a DNR approved shoreland management ordinance;
- (2) Sixty-four (64) or more lots within communities without a DNR approved shoreland management ordinance;
- (3) Forty (40) or more lots within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
- (4) Thirty-two (32) or more lots within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

E. Any new riparian access lot created for nonriparian lots or land owners for communities without a DNR approved shoreland management ordinance or within a sensitive shoreland area.

Subp. 39. **Planned Unit Developments in Shorelands.** An EAW is required for all new planned unit developments within shorelands if the total number of units or sites created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Any planned unit development where the unit/site density exceeds Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent or impervious surface coverage exceeds fifteen (15) percent, and the planned unit development contains:

- (1) Twenty (20) or more units/sites within communities with a DNR approved shoreland management ordinance;
- (2) Sixteen (16) or more units/sites within communities without a DNR approved shoreland management ordinance;
- (3) Any proposed planned unit development, regardless of the number of units/sites, within sensitive shoreland areas.

B. Any planned unit development where the unit/site density does not exceed Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and impervious coverage is less than or equal to fifteen (15) percent, and the planned unit development contains:

- (1) Eighty (80) or more units/sites within communities with a DNR approved shoreland management ordinance;
- (2) Sixty-four (64) or more units/sites within communities without a DNR approved shoreland management ordinance;
- (3) Twenty (20) or more units/sites within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
- (4) Sixteen (16) or more units/sites within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

- C. Any planned unit development where the applicable local standards are consistent with ALT6120, et. seq., and the planned unit development contains:
- (1) One hundred (100) or more units/sites within communities with a DNR approved shoreland management ordinance;
 - (2) Eighty (80) or more units/sites within communities without a DNR approved shoreland management ordinance;
 - (3) Fifty (50) or more units/sites within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
 - (4) Forty (40) or more units/sites within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

Subp. 40. **Resorts in Shorelands.** An EAW is required for all new resorts, and all conversions or expansions of existing resorts within shorelands if the total number of units or sites created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

- A. Construction of a new resort where the applicable local standards are not consistent with ALT6120, et. seq., regardless of the number of units/sites;
- B. Construction of a new resort within sensitive shoreland areas, where the applicable local standards are consistent with ALT6120, et. seq., regardless of the number of units/sites;
- C. Conversion of an existing resort to a planned unit or residential development where the applicable local standards are not consistent with ALT6120, et. seq., regardless of the number of units/sites;
- D. Expansion of an existing resort where new units and/or mobile home sites are added to the facility:
- (1) Twenty (20) or more units/sites within communities with a DNR approved shoreland management ordinance;
 - (2) Sixteen (16) or more units/sites within communities without a DNR approved shoreland management ordinance;
 - (3) Ten (10) or more units/sites within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
 - (4) Eight (8) or more units/sites within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.
- E. Expansion of an existing resort where new campsites and/or RV parking sites are added to the facility:
- (1) Thirty (30) or more sites within communities with a DNR approved shoreland management ordinance;
 - (2) Twenty-four (24) or more sites within communities without a DNR approved shoreland management ordinance;
 - (3) Twenty (20) or more sites within sensitive shoreland areas for communities with a DNR approved shoreland management ordinance;
 - (4) Sixteen (16) or more sites within sensitive shoreland areas for communities without a DNR approved shoreland management ordinance.

Subp. 41. **Alteration of Shorelands.** An EAW is required for any other project that results in the alteration of shorelands that equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

- A. Any project that alters more than fifty (50) percent of the shore impact zone and exceeds a total altered area of five thousand (5,000) square feet;
- B. Any project that exceeds twenty-five (25) percent impervious surface coverage;
- C. Any project that exceeds fifteen (15) percent impervious surface coverage within sensitive shoreland areas;
- D. Any project that alters a contiguous length of the shore impact zone or secondary shoreline buffer zone greater than or equal to:
- (1) One thousand, three hundred and twenty (1,320) feet within shoreland areas;
 - (2) Eight hundred (800) feet within sensitive shoreland areas.
- E. Any project that results in the permanent conversion or replacement of natural vegetation within an area greater than or equal to:

- (1) Forty (40) acres within shoreland areas;
- (2) Twenty (20) acres within sensitive shoreland areas.

4410.4400 MANDATORY EIS CATEGORIES.

Add the following provisions to Minn. Rules, part 4410.4400:

Subp. 26. **Residential Subdivisions in Shorelands.** An EIS is required for all new residential subdivisions within shorelands if the total number of lots created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Total number of riparian lots within a conventional subdivision:

- (1) Forty (40) or more lots within non-sensitive shoreland areas;
- (2) Twenty (20) or more lots within sensitive shoreland areas.

B. Total number of shoreland lots within a conventional subdivision:

- (1) Eighty (80) or more lots within non-sensitive shoreland areas;
- (2) Forty (40) or more lots within sensitive shoreland areas.

C. Total number of shoreland lots within a conservation subdivision where common open space is less than fifty (50) percent of the parcel or where density exceeds Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and the conservation subdivision contains:

- (1) One hundred (100) or more lots within non-sensitive shoreland areas;
- (2) Fifty (50) or more lots within sensitive shoreland areas.

D. Total number of shoreland lots within a conservation subdivision where the local ordinance is consistent with ALT6120 et. seq. standards or where common open space is equal to or greater than fifty (50) percent of the parcel and where density does not exceed Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and the conservation subdivision contains:

- (1) One hundred and sixty (160) or more lots within non-sensitive shoreland areas;
- (2) Eighty (80) or more lots within sensitive shoreland areas.

E. Any new riparian access lot created within sensitive shoreland areas that serves ten (10) or more watercraft or ten (10) or more nonriparian lots.

Subp. 27. **Planned Unit Developments in Shorelands.** An EIS is required for all new planned unit developments within shorelands if the total number of units or sites created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Any planned unit development where the unit/site density exceeds Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent or impervious surface coverage exceeds fifteen (15) percent, and the planned unit development contains:

- (1) Forty (40) or more units/sites within non-sensitive shoreland areas;
- (2) Twenty (20) or more units/sites within sensitive shoreland areas.

B. Any planned unit development where the unit/site density does not exceed Minn. Rules, part 6120 single, unsewered, residential density by more than fifteen (15) percent and impervious coverage is less than or equal to fifteen (15) percent, and the planned unit development contains:

- (1) One hundred and sixty (160) or more units/sites within non-sensitive shoreland areas;
- (2) Forty (40) or more units/sites within sensitive shoreland areas.

C. Any planned unit development where the applicable local standards are consistent with ALT6120, et. seq., and the planned unit development contains:

- (1) Two hundred (200) or more units/sites within non-sensitive shoreland areas;
- (2) One hundred (100) or more units/sites within sensitive shoreland areas.

Subp. 28. **Resorts in Shorelands.** An EIS is required for all new resorts, and all conversions or expansions of existing resorts within shorelands if the total number of units or sites created equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Construction of a new resort within shoreland areas:

- (1) Forty (40) or more units/sites within non-sensitive shoreland areas;
- (2) Twenty (20) or more units/sites within sensitive shoreland areas.

B. Expansion of an existing resort where new units and/or mobile home sites are added to the facility:

- (1) Forty (40) or more units/sites within non-sensitive shoreland areas;
- (2) Twenty (20) or more units/sites within sensitive shoreland areas.

C. Expansion of an existing resort where new campsites and/or RV parking sites are added to the facility:

- (1) Fifty (50) or more sites within non-sensitive shoreland areas;
- (2) Thirty (30) or more sites within sensitive shoreland areas.

D. Conversion of an existing resort to a planned unit or residential development where the applicable local standards are not consistent with ALT6120, et. seq.:

- (1) Forty (40) or more units/sites within non-sensitive shoreland areas;
- (2) Twenty (20) or more units/sites within sensitive shoreland areas.

Subp. 29. **Alteration of Shorelands.** An EIS is required for any project that results in the alteration of shorelands that equals or exceeds a threshold of this subpart. The local government unit shall be the RGU.

A. Within non-sensitive shoreland areas, any project that results in the permanent conversion or replacement of natural vegetation within an area greater than or equal to eighty (80) acres;

B. Within sensitive shoreland areas, any project that results in the permanent conversion or replacement of natural vegetation within an area greater than or equal to forty (40) acres.

The following DEFINITIONS AND ABBREVIATIONS are used in the proposed mandatory categories:

Add the following definitions to Minn. Rules, part 4410.0200:

Subp. ?? **Access lot.** “Access lot” means a parcel of land that provides access to public waters.

Subp. ?? **ALT6120, et. seq.**

“ALT6120, et. seq.” means Minnesota’s Alternative Shoreland Management Standards, Version 1, December 12, 2005, Minnesota Department of Natural Resources, St. Paul, Minnesota. These are voluntary, alternative standards corresponding to elements in the Statewide Standards for Management of Shoreland Areas, Minn. Rules, parts 6120.2500 through 6120.3900.

Subp. ?? **Common open space.**

“Common open space” means a portion of a development site that is permanently set aside for public or private use, is held in common ownership by all individual owners within a development, and will not be developed. Common open space shall include wetlands, upland recreational areas, wildlife areas,

historic sites, and areas unsuitable for development in their natural state. Common open space is not the space between buildings of a cluster in a conservation subdivision and planned unit development, and it does not include an area of 25 feet around each structure or any impervious surface.

Subp. ??. **Conservation subdivision.**

“Conservation subdivision” means a method of subdivision characterized by common open space and clustered compact lots, with the purpose of creating greater community value through open space amenities for homeowners and protection of natural resources, while allowing for the residential densities consistent with prevailing densities. Site designs incorporate standards of low impact development, such as the use of some single-load roadways and narrower rights-of-way, looped road-ways versus cul-de-sacs, maximum road setbacks for structures, and preservation of trees, shoreline, unique resources, and scenic vistas, and these developments use stormwater designs that emphasize on-site retention and infiltration through the preservation of native vegetation within the shore impact zone, use of pervious surfaces, rain gardens, and swales.

Subp. ??. **Conventional subdivision.**

“Conventional subdivision” means a pattern of subdivision development that permits the division of land in the standard form where lots are spread evenly throughout a parcel with little regard for natural features or common open space as compared to a conservation subdivision where lots are clustered and common open space is provided.

Subp. ??. **Resort.**

“Resort” means a commercial establishment, that includes buildings, campgrounds, lodges, structures, dwelling units/sites, enclosures or any part thereof kept, used, maintained or advertised as, or held out to the public to be a place where sleeping accommodations are furnished to the public and primarily to those seeking recreation, for periods of one day, one week, or longer, and having for rent three (3) or more cabins, rooms, campsites, or enclosures. These establishments must be primarily service-oriented for transient lodging of guests. All cabins, rooms, dwelling units/sites, or enclosures must be included in the resort rental business. Resorts allow no residential use of a dwelling unit/site for more than thirty (30) days within a calendar year, except dwellings used as residences for the service providers or dwelling units/sites for renters. In order to qualify as a resort pursuant to this definition, a resort shall also be fully licensed and permitted under appropriate state and local regulations. The entire parcel of land must be controlled and managed by the licensee.

Subp. ??. **Secondary shoreline buffer zone.** “Secondary shoreline buffer zone” means the land located between the shore impact zone and the structure setback.

Subp. ??. **Sensitive shoreland.**

“Sensitive shoreland” means any government designated sensitive or vulnerable shoreline or shoreland. Sensitive shorelands shall include the following areas:

- Shorelands of natural environment classified lakes and bays pursuant to Minn. Rules, part 6120.3000, Subp. 1a.;
- Shorelands of special protection classified lakes or districts (or equivalent districts) pursuant to Minn. Rules, part 6120.3200, Subp. 3.;
- Shorelands of designated trout lakes and streams pursuant to Minn. Rules, part 6264.0050;
- Shorelands of designated wildlife lakes pursuant to Minn. Statutes, section 97A.001, subd. 2.;
- Shorelands of designated migratory waterfowl feeding and resting lakes pursuant to Minn. Statutes, section 97A.095, subd. 2.;
- Shorelands of state or federally designated wild and scenic rivers pursuant to Minn. Statutes, sections 103F.305 through 103F.351;
- Shorelands of waterbodies on PCA Special Waters list for stormwater construction permits pursuant to Minn. Rules, part 7001, Appendix A.;
- Shorelands of outstanding resource value waters pursuant to Minn. Rules, part 7050.0180.

Subp. ??. **Shore impact zone.**

“Shore impact zone” means land located between the ordinary high water level of a public water and a line parallel to it at a setback of fifty (50) percent of the structure setback, but not less than fifty (50) feet. This area serves as the primary shoreline buffer.

Sensitive Area		EAW Threshold Category	Non-Sensitive Area	
Without shoreland ordinance	With shoreland ordinance		Without shoreland ordinance	With shoreland ordinance
1. Subdivision				
≥8	≥10	Riparian lots in a conventional subdivision	≥16	≥20
≥16	≥20	Total shoreland lots in a conventional subdivision	≥32	≥40
≥20	≥25	Lots for a conservation subdivision where common open space < 50% of parcel or where density exceeds M.R. 6120 single, unsewered, residential density by more than 15%	≥40	≥50
≥32	≥40	Lots for a conservation subdivision where the local ordinance is consistent with ALT6120 standards or where common open space ≥ 50% of parcel and where density does not exceed M.R. 6120 single, unsewered, residential density by more than 15%	≥64	≥80
Yes	Yes	Any new lake access lot for nonriparians	Yes	No
2. New Planned Unit Development (PUD)				
Any size	Any size	Units/sites for a proposed PUD where the density exceeds M.R. 6120 single, unsewered, residential density by more than 15% or impervious surface coverage exceeds 15%	≥16	≥20
≥16	≥20	Units/sites for a proposed PUD where the density does not exceed M.R. 6120 single, unsewered, residential density by more than 15% and impervious coverage ≤ 15%	≥64	≥80
≥40	≥50	Units/sites for a PUD where local ordinance is consistent with ALT6120	≥80	≥100
3. Resort				
Yes	Yes	Construction of any new resort where local ordinance is not consistent with ALT6120	Yes	Yes
Yes	Yes	Construction of a new resort where local ordinance is consistent with ALT6120	No	No
≥8	≥10	Units added in a resort expansion	≥16	≥20
≥16	≥20	Sites added in a resort expansion	≥24	≥30
Yes	Yes	Conversion to planned unit or residential development where local ordinance is not consistent with ALT6120	Yes	Yes

4. Shoreland Alteration (other projects)

≥800 feet	≥800 feet	Contiguous length of shore impact zone or secondary shoreline buffer zone that any other project alters	≥1320 feet	≥1320 feet
Yes	Yes	Any other land alteration project that alters >50% of the shore impact zone and is larger than 5000 square feet	Yes	Yes
Yes	Yes	Any other project that exceeds 15% impervious surface coverage	No	No
Yes	Yes	Any other project that exceeds 25% impervious surface coverage	Yes	Yes
≥20 acres	≥20 acres	Area of naturally vegetated land that any project permanently converts	≥40 acres	≥40 acres

EIS Threshold Category	Sensitive Area	Non-Sensitive Area
1. Subdivision		
Riparian lots in a conventional subdivision	≥20	≥40
Total shoreland lots in a conventional subdivision	≥40	≥80
Lots for a conservation subdivision where common open space < 50% of parcel or where density exceeds M.R. 6120 single, unsewered, residential density by more than 15%	≥50	≥100
Lots for a conservation subdivision where the local ordinance is consistent with ALT6120 standards or where common open space ≥ 50% of parcel and density does not exceed M.R. 6120 single, unsewered, residential density by more than 15%	≥80	≥160
Any new lake access that serves 10 or more boats or nonriparian lots	Yes	No
2. Planned Unit Development (PUD)		
Units/sites for a proposed PUD where density exceeds density exceeds M.R. 6120 single, unsewered, residential density by more than 15% or impervious surface coverage exceeds 15%	≥20	≥40
Units/sites for a proposed PUD where density does not exceed M.R. 6120 single, unsewered, residential density by more than 15% and impervious coverage ≤ 15%	≥40	≥160
Units/sites where local ordinance is consistent with ALT6120	≥100	≥200

3. Resort		
Units/sites in a new resort to be constructed	≥20	≥40
Units added in a resort expansion	≥20	≥40
Sites added in a resort expansion	≥30	≥50
Units/sites converted to planned unit or residential development where local ordinance is not consistent with ALT6120	≥20	≥40
4. Shoreland Alteration		
Area of naturally vegetated land that any project permanently converts	≥40 acres	≥80 acres