

Section 1370 - Special Zoning Overlay Districts

1370.01 Purpose. To address specific concerns related to such issues as the environment and preservation, to further protect the health, safety, and welfare of the public from the harms of certain types of development in sensitive land areas, and to implement the requirements imposed by State and Federal statutes and regulations, the City has adopted special zoning overlay districts.

1370.02 Scope. The requirements of each district established under this Section shall be in addition to the general requirements imposed by the regulations of this Chapter relating to the underlying zoning district.

1370.03 Shoreland Management District.

Subd. 1 Statutory Authorization. The Shoreland Regulations of this Subsection are adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Rules, Parts 6120.2500-6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

Subd. 2 Policy. The uncontrolled use of shoreland in the City affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The legislature of Minnesota has delegated responsibility to local governments of the State to regulate the subdivision, use and development of the shorelands of public water and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City.

Subd. 3 Jurisdiction. The provisions of this Chapter shall apply to the shorelands of the public water bodies as classified in this Chapter, and illustrated on the Official Zoning Map. Pursuant to Minnesota Rules Parts 6120.2500-6120.3900, no lake, pond, or flowage less than 10 acres in size in municipalities, or 26 acres in size in unincorporated areas, need be regulated in a local government's shoreland regulation. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this Subsection.

Subd. 4 Compliance. The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this Subsection and other applicable regulations.

Subd. 5 Enforcement. The Newport Zoning Administrator shall be responsible for the administration and enforcement of this Subsection. Any violation of the provisions of this Subsection or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this Subsection can occur regardless of whether or not a permit is required for a regulated activity pursuant to this Chapter.

Subd. 6 Interpretation.

- A. In their interpretation and application, the provisions of this Subsection shall be held to be minimum requirements and shall be liberally construed in favor of the governing and shall

not be deemed a limitation or repeal of any other powers granted by State Statutes.

Subd. 7 Abrogation and Greater Restrictions. It shall not be intended by this Subsection to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Subsection imposes greater restrictions, the provisions of this Subsection shall prevail.

Subd. 8 Definitions. Unless specifically defined below, words or phrases used in this Subsection shall be so interpreted as to give them the same meaning as they have in common usage and so as to give this Subsection its most reasonable application. For the purpose of this Subsection, the words "must" and "shall" are mandatory and not permissive and the word "may" is permissive. All distances, unless otherwise specified, shall be measured horizontally.

- A. Accessory Structure or Facility. "Accessory Structure or Facility" shall mean any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.
- B. Bluff. "Bluff" shall mean a topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered of the bluff):
 1. Part or all of the feature shall be located in a shoreland area;
 2. The slope rises at least 25 feet above the ordinary high water level of the waterbody;
 3. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
 4. The slope shall drain toward the waterbody.
- C. Bluff Impact Zone. "Bluff Impact Zone" shall mean a bluff and land located within 20 feet from the top of a bluff.
- D. Board of Appeals and Adjustments. "Board of Appeals and Adjustments" shall mean the authority responsible for exclusive power to grant variances to the Shoreland Management provisions of this Section, and shall be provided for by Subsection 1310.05.
- E. Boathouse. "Boathouse" shall mean a structure designed and used solely for the storage of boats or boating equipment.
- F. Building Line. "Building Line" shall mean a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
- G. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Natural Resources.
- H. Conditional Use. "Conditional Use" shall mean a land use or development as defined by this Chapter that would not be appropriate generally, but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the Zoning Section of this Code exist, the use or development conforms to the comprehensive Land Use Plan of Newport, and the use is compatible with the existing neighborhood.

- I. Deck. "Deck" shall mean a horizontal, unenclosed platform with or without attached railings seats, trellises, or other features, attached or functionally related to a principle use or site and at any point extending more than three feet above ground.
- J. Dwelling Unit. "Dwelling Unit" shall mean any structure or portion of a structure, or other shelter designed as long-term living quarters for one or more persons.
- K. General Business. "General Business" shall mean the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.
- L. General Use District. "General Use District" shall mean land already developed or suitable for development with concentrated commercial land uses.
- M. Guest Cottage. "Guest Cottage" shall mean a structure that contains sleeping spaces only in addition to those provided in the primary dwelling unit on a single lot.
- N. Hardship. "Hardship" shall mean a condition in which the property in question cannot be put to a reasonable use if used under conditions required by the official controls, the plight of the landowner is due to circumstances unique to the property, and the problem is not created by the landowner.
- O. Height of Building. "Height of Building" shall mean the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.
- P. Industrial District. "Industrial District" shall mean areas adjacent to major thoroughfares and in areas where public utilities are available for the express use of industrial developments.
- Q. Industrial Storage District. "Industrial Storage District" shall mean areas bordering City limits and in areas adequately buffered with open land to permit storage of petroleum products and other similar storage uses.
- R. Intensive Vegetation Clearing. "Intensive Vegetation Clearing" shall mean the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
- S. Lot. "Lot" shall mean a parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by the description for the purpose of sale, lease or separation.
- T. Lot Width. "Lot Width" shall mean the shortest distance between lot lines measured at the building setback line.
- U. Nonconformity. "Nonconformity" shall mean any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.
- V. Non-Water-Oriented Accessory Structure. "Non-Water-Oriented Accessory Structure" shall mean an uninhabited subordinate building or other subordinate structure including,

but not limited to, garages, sheds or storage buildings up to a total of 864 square feet, swimming pools or spas located on the same lot as a principal building, the use of which shall be clearly subordinate to the use of the principal building. Also, Accessory Structures other than Water-Oriented Accessory Structures as shall be defined below (see QQ).

- W. Ordinary High Water Level. "Ordinary High Water Level" shall mean the boundary of public waters and wetlands, an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinarily high water level shall be the elevation of the top of the bank of the channel.
- X. Planning Commission. "Planning Commission" shall mean a commission of five members, appointed by the City Council, with the purpose of making recommendations to the City Council regarding conditional use permits, rezoning, and subdivision of property.
- Y. Public Waters. "Public Waters" shall mean any waters as defined as waters of the State which have been determined to be public waters or navigable waters by a court of competent jurisdiction and shall include all wetlands.
- Z. Residential, One Family. "Residential, One Family" shall mean use of a single building for residential purposes by no more than one family as defined in this Chapter.
- AA. Riparian Lot. "Riparian Lot" shall mean a lot with owned water frontage.
- BB. Semipublic Use. "Semipublic Use" shall mean the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.
- CC. Sensitive Resource Management. "Sensitive Resource Management" shall mean the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding or occurrence of flora or fauna in need of special protection.
- DD. Setback. "Setback" shall mean the minimum horizontal distance between a structure or other facility and an ordinary high water level, top of a bluff, road, highway, property line, or other facility.
- EE. Sewer System. "Sewer System" shall mean pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or other appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.
- FF. Shore Impact Zone. "Shore Impact Zone" shall mean land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.
- GG. Shoreland District. "Shoreland District" shall mean land located within 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever shall be greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.

- HH. Significant Historic Site. "Significant Historic Site" shall mean any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota State Archaeologist or the Director of the Minnesota Historical Society. All unplatted cemeteries shall be automatically considered to be significant historic sites.
- II. Special Purpose District. "Special Purpose District" shall mean land to be used to limit and properly manage development in areas that are generally unsuitable for development or uses due to flooding or major physical constraints. Land used to manage and preserve areas with special historical, natural or biological characteristics.
- JJ. Steep Slope. "Steep Slope" shall mean land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriated design and construction techniques and farming practices are used in accordance with the provisions of this Subsection. Where specific information is not available, steep slopes shall be land having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that shall not be bluffs.
- KK. Structure. "Structure" shall mean any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, cable television, towers, poles and other supporting facilities.
- LL. Subdivision. "Subdivision" shall mean land that is divided for the purpose of sale, rent, or lease.
- MM. Toe of the Bluff. "Toe of the Bluff" shall mean the lower point of a 50-foot segment with an average slope exceeding 18 percent.
- NN. Top of the Bluff. "Top of the Bluff" shall mean the higher point of a 50-foot segment with an average slope exceeding 18 percent.
- OO. Variance. "Variance" shall mean a modification from the literal requirements of this Subsection.
- PP. Water-Oriented. "Water-Oriented" shall mean a structure or facility whose frontage faces the water.
- QQ. Water-Oriented Accessory Structure or Facility. "Water-Oriented Accessory Structure or Facility" shall mean a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities shall include bathhouses, gazebos, screen houses, fish houses, pump houses, and detached decks.
- RR. Wetland. "Wetland" shall mean a surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition), or is designated a wetland by the DNR.

Subd. 9 Permits Required. A permit shall be required for the construction of buildings or building additions (and such related activities as construction of decks and signs) and those grading and filling activities not exempted by this Subsection or other applicable Code provisions.

Application for such a permit shall be made to the Zoning Administrator on forms provided by the City. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use.

Subd. 10 Certificate of Zoning Compliance. The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in this Subsection. This certificate shall specify that the use of land conforms to the requirements of this Subsection. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this Subsection and shall be punishable as provided in this Subsection.

Subd. 11 Variances.

- A. Variances may only be granted from the literal provisions of this Subsection in instances where strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration and when it is demonstrated that the variance would be consistent with the spirit and intent of this Subsection. Undue hardship shall mean the property in question cannot be put to a reasonable use if used under conditions allowed by this Subsection, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, would not alter the essential character of the neighborhood. Economic consideration alone shall not constitute an undue hardship if reasonable use of the property exists under the terms of this Subsection.
- B. A variance shall not circumvent the general purposes and intent of this Subsection.
- C. No variance shall be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.
- D. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest.
- E. In considering a variance request, the Board of Appeals and Adjustments shall also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

Subd. 12 Board of Appeals and Adjustments.

- A. The Board of Appeals and Adjustments shall hear and decide request for variances in accordance with the rules that it has adopted for the conduct of business.
- B. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Subdivision 13 below, shall also include the Board of Appeals and Adjustments's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

- C. For existing developments, the application for variance shall clearly demonstrate that the subject property shall be connected to the City Sewer System.

Subd. 13 Notification to the Department of Natural Resources.

- A. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management shall be sent to the Commissioner or the Commissioner's designated representative and shall be postmarked at least ten (10) days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
- B. A copy of approved amendments and subdivision/plats, and final decisions granting variances or conditional uses under local shoreland management controls shall be sent to the Commissioner or the Commissioner's designated representative and shall be postmarked within ten (10) days of final action.

Subd. 14 Shoreland Classification System.

- A. The public waters of the City listed below have been classified consistent with the criteria found in Minnesota Rules and the Protected Waters Inventory Map for Washington County, Minnesota.
- B. The shoreland area for the waterbody listed in Part C. below, shall be as defined in this Subsection and as shown on the Official Zoning Map.
- C. Rivers and Streams. Urban Rivers: Mississippi River. Legal Description: See official Zoning Map.

Subd. 15 Land Use District Descriptions.

- A. The land use districts in Part B. below, and the delineation of a land use district's boundaries on the Official Zoning Map, shall be consistent with the goals, policies, and objectives of the Comprehensive Land Use Plan and the following criteria, considerations, and objectives:
 1. Preservation of natural areas.
 2. Present ownership and development of shoreland areas.
 3. Shoreland soil types and their engineering capabilities.
 4. Topographic characteristics.
 5. Vegetative cover.
 6. In-water physical characteristics, values, and constraints.
 7. Recreational use of the surface water.
 8. Road and service center accessibility.
 9. Socioeconomic development needs and plans as they involve water and related land resources.

10. The land requirements of industry which, by its nature, requires location in shoreland areas.
 11. The necessity to preserve and restore certain areas having significant historical or ecological value.
- B. The land use districts provided below, and the allowable land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of the City.

These land use districts shall be in conformance with the criteria specified in Minnesota Rules. The following uses shall be allowed in the districts shown on the chart and the Official Zoning Map:

1. Residential District shall be primarily intended to allow year-round residential uses on lands suitable for such uses. It shall also be intended to prevent establishment of various commercial, industrial, and other uses in these areas that cause conflicts or problems for residential uses.
2. Special Purpose District shall be intended to be used for two basic purposes. The first purpose shall be to limit and properly manage development in areas that are generally unsuitable for development or uses due to flooding, erosion, limiting soil conditions, steep slopes, or other major physical constraints. A second purpose shall be to manage and preserve areas with special historical, natural, or biological characteristics.
3. General Use District shall be intended to be used only for lands already developed or suitable for development with concentrated urban, particularly commercial, land uses.

C. Land Use Districts for Rivers in Urban Area.

DISTRICT CODES	Residential	Special Purpose	General Use
Residential: One Family Dwelling	P	P	N
Public, Semi-public	C	N	P
Parks, Historic Sites	C	C	C
Industrial Storage	N	N	P
General Business	N	N	P
Industrial	N	N	C

P = Permitted, C = by Conditional Use Permit, N = Not Permitted

Subd. 16 Use and Upgrading of Inconsistent (Non-conforming) Land Use Districts.

- A. The land use districts adopted in this Chapter (Subsection -? Check, cite), as they apply to shoreland areas, and their delineated boundaries on the Official Zoning Map, are not

consistent with the land use district designation criteria specified in Subd. 15. These inconsistent land use district designations may continue until revisions are proposed to change either the land use district designation within an existing land use district boundary shown on the Official Zoning Map, or to modify the boundary of an existing land use district shown on the Official Zoning Map.

- B. When a revision shall be proposed to an inconsistent land use district provision, the following additional criteria and procedures shall apply:
 - 1. For Rivers. When a revision to a land use designation on the river is proposed, the land use district boundaries and the use provisions therein for all shoreland along the river within the same classification within the jurisdiction of this Subsection shall be revised to make them substantially compatible with the framework in this Subd. 15 of this Subsection.
- C. When an interpretation question arises about whether a specific land use fits within a given "use" category the interpretation shall be made by the Board of Appeals and Adjustments. When a question arises as to whether a land use district's boundaries are properly delineated on the Official Zoning Map, the decision shall be made by the City Council.
- D. When a revision shall be proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner shall only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. The City Council shall direct the Zoning Administrator to provide such additional information for this waterbody as shall be necessary to satisfy Parts A and B.
- E. The City Council shall make a detailed finding of fact and conclusion when taking final action that this revision, and the upgrading of any inconsistent land use district designations on the river, shall be consistent with the enumerated criteria and use provisions of Subd. 15.

Subd. 17 Minimum Requirements. The lot area (in square feet) and lot size standards (in feet) for single residential lots created after the date of enactment of this Code for the river classifications shall be the following:

- A. "Residential Single Family" River Lot Length, Width and Area Standards.
 - 1. Minimum lot width at building setback line and at ordinary high water level: 75 feet.
 - 2. Minimum lot length (depth): 130 feet.
 - 3. Minimum lot area-(only land above ordinary high water level): 9,750 sq. ft.
- B. "Residential Single Family" Controlled Access Lots/Recreational Areas Used by Nonriparian Lot Owners Length, Width and Area Standards.
 - 1. Minimum lot width at building setback line and at ordinary high water level: 75 feet.
 - 2. Minimum lot length (depth): 130 feet.
 - 3. Minimum lot area-(only land above ordinary high water level): 9,750 sq. ft.
- C. Special Purpose District Lots for Residential Single Family.

1. Minimum lot width at building setback line and at ordinary high water level: 75 feet.
2. Minimum lot length (depth): 130 feet.
3. Minimum lot area-(only land above ordinary high water level): 9,750 sq. ft.

D. General Use District Lots for General Business Property.

1. Minimum lot width at building setback line and at ordinary high water level: 60 feet.
2. Minimum lot length (depth): 150 feet.
3. Minimum lot area-(only land above ordinary high water level): 15,000 sq. ft.

E. General Use District Lots for Industrial and Industrial Storage Property.

1. Minimum lot width at building setback line and at ordinary high water level: 100 feet.
2. Minimum lot length (depth): 200 feet.
3. Minimum lot area-(only land above ordinary high water level): 30,000 sq. ft. With on-site sewer: minimum lot area is 3 acres.

Subd. 18 Additional Requirements.

A. Additional Requirements and Covenants for Controlled Access Lots/Recreational Areas Used by Non-riparian/Riparian Lot Owners.

1. Shall be suitable for the intended uses of controlled access lots.
2. Shall be jointly owned by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot.
3. Shall have covenants or other legal instruments that specify which lot owners have authority to use the access lot and what activities are allowed.
 - a. Allowed activities may include watercraft launching, loading, storage, beaching, mooring, or docking.
 - b. Allowed activities shall include other outdoor recreational activities that shall not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners; such as sunbathing, fishing or picnicking.
 - c. Covenants shall limit the total number of vehicles allowed to be parked on the property.
 - d. Covenants shall limit the total number of watercraft allowed to be continuously moored, docked, and stored over water.
 - e. Covenants shall require centralization of all common facilities and activities in the

most suitable locations on the lot, to minimize topographic and vegetation alterations.

- f. Covenants shall require all parking areas, storage buildings in conjunction with a principal structure, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf on conditions.
- B. One guest cottage may be allowed on lots meeting the following lot width dimensions provided the following standards are met:
1. Allowed on riparian lots only.
 2. Contains sleeping spaces only.
 3. Shall not be connected to sewer and water facilities and shall not contain kitchen facilities.
 4. Minimum lot width for a guest cottage on principal structure lot is 115 feet.
 5. Minimum lot length (depth): 130 feet.
 6. Minimum lot area: (only land above ordinary high water level): 14,950 sq. ft.
 7. Square footage of guest cottage shall be no more than 1% (one percent) of total lot area.
 8. Minimum allowed square footage for guest cottage shall be 150 square feet.
 9. Maximum allowed square footage for guest cottage shall be no more than 600 square feet.
 10. Maximum height for guest cottage shall not exceed 15 feet in absolute height.
 11. A guest cottage shall be located or designed to reduce its visibility as viewed from the river by vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.

Subd. 19 Placement, Design and Height of Structures.

- A. Placement of Structures on River Lots in Residential and Special Purpose Districts.
1. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks.
 2. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.
 3. The structure setback from the Ordinary High Water Level is 50 feet. However, one water-oriented structure designed in accordance with this Subsection may be set back a minimum distance of ten feet from the ordinary high water level.

4. Additional structure setbacks apply as follows:
 - a. from top of bluff-30 feet.
 - b. from right of way line of public street or other unclassified roads-30 feet.
 - c. side yard setback, interior lot-10 ft.
 - d. side yard setback, corner lot-20 ft.
 5. Structures and accessory facilities, except stairway and landings, shall not be placed within bluff impact zones.
- B. Placement of Structures on Non-River Lots in Residential and Special Purpose Districts.
1. When more than one setback applies to a site, structures and facilities shall be located to meet all setbacks.
 2. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site shall not be located in a shore impact zone or in a bluff impact zone.
 3. The structure setback from the Ordinary High Water Level shall be 50 feet. However, one water-oriented structure designed in accordance with this Subsection may be set back a minimum distance of ten feet from the ordinary high water level.
 4. Additional structure setbacks apply as follows:
 - a. from top of bluffC30 feet.
 - b. from right of way line of public street or other unclassified roadsC30 feet.
 - c. side yard setback, interior lotC1 ft.
 - d. side yard setback, corner lotC20 ft.
 5. Structures and accessory facilities, except stairway and landings, shall not be placed within bluff impact zones.
- C. Placement of Structures on River Lots in General Use Districts.
1. When more than one setback applies to a site, structures and facilities shall be located to meet all setbacks.
 2. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site shall not be located in a shore impact zone or in a bluff impact zone.
 3. The structure setback from the Ordinary High Water Level is 50 feet. However, one water-oriented structure designed in accordance with this Subsection may be set back a

minimum distance of ten feet from the ordinary high water level.

4. Additional structure setbacks apply as follows:
 - a. from top of bluff thirty (30) feet.
 - b. from right-of-way line of public street or other unclassified roads thirty (30) feet.
 - c. side yard setback, interior lot one (1) foot.
 - d. side yard setback, corner lot twenty (20) feet.
5. Structures and accessory facilities, except stairway and landings, shall not be placed within bluff impact zones.
6. Non-Water Oriented Accessory Structures located on riparian lots shall be setback from the right of way line of a public street or other unclassified road based on the Principal Structure having a water orientation.

Non-Water-Oriented Accessory Structures may be located between the principal structure and the right of way line of a public street or other unclassified road but in no case shall they be located closer than 30 feet to the public street or other unclassified road.

7. General Use Districts without water-oriented needs shall be located on lots or parcels without public water frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

D. Placement of Structures on Non-River Lots in General Use Districts.

1. When more than one setback applies to a site, structures and facilities shall be located to meet all setbacks.
2. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site shall not be located in a shore impact zone or in a bluff impact zone.
3. Additional structure setbacks apply as follows:
 - a. top of bluff thirty (30) feet.
 - b. right of way line of public street or other unclassified roads twenty (20) feet.
 - c. side yard setback, interior lot five (5) ft., may be 0 feet with variance.
 - d. side yard setback, corner lot twenty (20) ft. this setback is for parking and service areas not building set back.
4. General Use Districts without water-oriented needs shall be located on lots or parcels without public water frontage.

Subd. 20 Design Criteria For Structures.**A. High Water Evaluations.**

1. Structures shall be placed in accordance with Subsection 1370.05 of this Chapter regulating the Floodplain applicable to the site. Newport's Floodplain Regulations state "that the evaluation shall be an elevation no lower than one foot above the elevation of the regional floodplain plus any increases in fixed elevations caused by encroachments on the floodplain that result from the designation of a floodway."
2. All technical evaluations shall be done by a qualified engineer or hydrologist consistent with Minnesota Rules, Chapters 6120.5000 to 6120.6200 governing the management of flood plain areas.
3. Water-oriented accessory structures, allowed with a principal structure, may have the lowest floor placed lower than the elevation determined in this Subdivision if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

B. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure, in conjunction with a principal structure, not meeting the normal setback in this Subsection if this water-oriented accessory structure complies with the following provisions.

1. Each water-oriented accessory structure or facility, allowed in conjunction with a principal structure, shall not exceed 10 feet in height, exclusive of safety rails, and shall not occupy an area greater than 250 square feet. Detached decks shall not exceed 8 feet above grade at any point.
2. The setback of structure or facility from the ordinary high water level shall be at least 10 feet.
3. The structure or facility shall be treated to reduce visibility as viewed from the river and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions.
4. The roof of the structure or facility may be used as a deck with safety rails, but shall not be enclosed or used as a storage area.
5. The structure or facility shall not be designed or used for human habitation and shall not contain water supply or sewer treatment facilities.
6. In a General Use Zone as an alternative for general development and recreational development along the river, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented sporting equipment, may occupy an area of up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.

C. Stairway, Lifts and Landings. Stairways and lifts shall be the preferred alternative to major topographical alterations for achieving access up and down bluffs and steep slopes to shore

areas. Stairways and lifts shall meet the following design requirements:

1. Stairways and lifts shall not exceed four (4) feet in width on residential lots. Wider stairways may be used for industrial properties, industrial storage, light industrial and public open space properties.
2. Landings for stairways and lifts on residential lots shall not exceed 32 square feet in area. Landings larger than 32 square feet may be used for industrial, industrial storage, light industrial, and public open space properties.
3. Canopies or roofs shall not be allowed on stairways, lifts or landings.
4. Stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
5. Stairways, lifts and landings shall be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.
6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons shall also be allowed for achieving access to shore areas, provided that the dimensional and performance standards of the previous Subparts 1-5 are complied with, in addition to Minnesota Rules, Chapter 1340.

D. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the value of the site unless adequate information about the site has been removed and documented in a public depository.

E. Steep Slopes.

1. The City Zoning Administrator shall evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of roads, driveways, structures, or other improvements on steep slopes.
2. When determined necessary by the City Zoning Administrator, conditions shall be attached to issued permits to prevent erosion and to preserve existing vegetation, screening of structures, vehicles, and other facilities as viewed from the surface of the river waters, assuming summer, leaf-on vegetation.

Subd. 21 Height of Structures. All principal structures in residential districts, except churches, shall not exceed 25 feet in height.

Subd. 22 Shoreland Alterations. Alteration of vegetation and topography shall be regulated to prevent erosion in public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping and protect fish and wildlife habitat.

A. Vegetation Alterations.

1. Use of Best Management Practices for application of fertilizer and pesticides shall be required.

2. Vegetation alteration necessary for the construction of structures and the construction of roads and parking areas regulated by this Subsection shall be exempt from the vegetation alterations that follow.
3. Removal or alteration of vegetation shall be allowed subject to the following standards:
 - a. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes shall not be allowed.
 - b. In shore and bluff impact zones and on steep slopes, limited clearing of trees, shrubs and cutting, pruning, and trimming of trees shall be allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
 1. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions shall not be substantially reduced.
 2. Along rivers, existing shading of water surfaces shall be preserved.
 3. The above provisions shall not be applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

B. Topographic Alterations/Grading and Filling.

1. Grading and filling and excavations necessary for the construction of structures and driveways under validly issued construction permits for these facilities shall not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section shall be incorporated into the issuance of permits for construction of structures and driveways.
2. Public roads and parking areas shall be regulated by Subdivision 23 of this Subsection.
3. Notwithstanding items 1 and 2 above, a grading and filling permit shall be required for:
 - a. The movement of more than ten (10) cubic yards of materials on steep slopes or within shore or bluff impact zones.
 - b. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
4. The following considerations and conditions shall be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
 - a. Grading or filling in any type 2, 3, 4, 5, 6, 7 or 8 wetland shall be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland (This evaluation shall also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, federal agencies. The applicant shall be so advised):
 1. Sediment and pollutant trapping and retention.

2. Storage of surface runoff to prevent or reduce flood damage.
 3. Fish and wildlife habitat.
 4. Recreational use.
 5. Shoreline or bank stabilization.
 6. Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals or others.
- b. Alterations shall be designed and conducted in a manner that ensures only the smallest amount of bare ground shall be exposed and for the shortest time possible.
 - c. Mulches or similar materials shall be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover shall be established as soon as possible.
 - d. Methods to minimize soil erosion and to trap sediments before they reach any surface water shall be used.
 - e. Altered areas shall be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
 - f. Fill or excavated material shall not be placed in a manner that creates an unstable slope.
 - g. Plans to place fill or excavated material on steep slopes shall be reviewed by the City Engineer for continued slope stability and shall not create finished slopes of 30 percent or greater.
 - h. Fill or excavated material shall not be placed in bluff impact zones.
 - i. Any alterations below the ordinary high water level of the Mississippi River shall first be authorized by the Commissioner.
 - j. Alterations of topography shall only be allowed if they are accessory to permitted or conditional uses and shall not adversely affect adjacent or nearby properties.
 - k. Placement of natural rock riprap, including associated grading of the shorelines and placement of a filter blanket, shall be permitted if the finished slope shall not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap shall be within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level shall not exceed three (3) feet.
5. Connections to public waters. Excavations where the intended purpose shall be connection to the river, such as boat slips, lagoon, and harbors, shall be controlled by this Subsection. Permission for excavations may be given only after the Commissioner of Natural Resources has approved the proposed connection to public waters.

Subd. 23 Placement and Design of Roads, Driveways, and Parking Areas.

- A. Public and private roads and parking areas shall be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from the river. Documentation shall be provided by the City Engineer that all roads and parking areas shall be designed and constructed to minimize and control erosion to the river consistent with the filed office technical guides of the local soil and water conservation district, or other technical materials.
- B. Roads, driveways, and parking areas shall not be placed within bluff and shore impact zones, when other reasonable and feasible alternatives exist. If no alternatives exist, they may be placed within these areas, but shall be designed to minimize adverse impacts.
- C. Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this Subsection are met. For private facilities, the grading and filling provisions of Subdivision 22 shall be met.

Subd. 24 Stormwater Management. The following general and specific standards shall apply:

A. General Standards.

- 1. When possible, existing natural drainageways, wetlands and vegetated soil surfaces shall be used to convey, store, filter, and retain stormwater runoff before discharge to the river.
- 2. Development shall be planned and conducted in a manner that shall minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas shall be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- 3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used.

Preference shall be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

B. Specific Standards.

- 1. Impervious surface coverage of lots shall not exceed 25 percent of the lot area.
- 2. When constructed facilities are used for stormwater management, documentation shall be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation district.
- 3. New constructed stormwater outfalls to the river shall provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

Subd. 25 Special Provisions for Water-Oriented-Commercial Uses.

A. Standards for Water-Oriented-Commercial Uses.

1. Existing surface water-oriented industrial, light industrial, industrial storage, public and semipublic uses with similar needs have access to and use of public waters may be located on parcels or lots with frontage on the river. Those existing uses with water-oriented needs shall meet the following standards:
 - a. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this Subsection, the uses shall be designed to incorporate topographic and vegetative screening of parking areas and structures.
 - b. Existing uses that require short-term watercraft mooring for patrons shall centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.
 - c. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following standards:
 1. No advertising signs or supporting facilities for signs may be placed in or upon public waters.
 2. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the Washington or Dakota County Sheriff.
 3. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey the location and name of the establishment. The signs shall not contain other detailed information such as product and prices, shall not be located higher than ten (10) feet above the ground, and shall not exceed 32 square feet in size. If illuminated by artificial lights, the lights shall be shielded or directed to prevent illumination out across the river.
 4. Other outside lighting may be located within the shore impact zone or over the river if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This shall not preclude the use of navigational lights.
2. Uses without water-oriented needs shall be located on lots or parcels without river frontage, or, if located on lots or parcels with river frontage, shall either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

Subd. 26 Conditional Uses.

- A. Conditional uses allowable within shoreland areas shall be granted under the following criteria. In granting a Conditional Use Permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions including parking facilities on adjacent streets and land, and the effect on values of property in the surrounding area, and the effect of the proposed use on the Comprehensive Plan. If the Council shall determine that the proposed use shall not be detrimental to the health safety, morals or general welfare of the City, nor shall cause serious traffic congestion or hazards, nor shall seriously depreciate surrounding property values, and

that the use shall be in harmony with the general purpose and intent of this Code, the Comprehensive Plan, and the specific criteria of this Chapter, the City Council may grant the Conditional Use Permit.

- B. The following additional evaluation criteria and conditions apply within shoreland areas:
1. A thorough evaluation of the river and the topographic, vegetation, and soil conditions on the site shall be made to ensure:
 - a. The prevention of soil erosion or other possible pollution of the river, both during and after construction.
 - b. The visibility of structures and other facilities as viewed from the river is limited.
 2. The City Council, upon consideration of the criteria listed above and the purposes of this Subsection, shall attach such conditions to the issuance of the conditional use permits as it shall deem necessary to fulfill the purposes of this Subsection. Such conditions may include, but shall not be limited to the following:
 - a. Increased setbacks from the ordinary high water level.
 - b. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
 - c. Special provisions for the location, design, and use of structures, docking areas, watercraft launching, and vehicle parking areas.

Subd. 27 Water Supply and Sewage Treatment.

- A. All public or private supply for domestic purposes shall meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.
- B. Any premises used for human occupancy shall be provided with an adequate method of sewage treatment, by connection to City-owned sewer systems.
- C. Existing nonconforming sewage treatment systems shall be regulated and upgraded in accordance with the provisions of this Subsection.

Subd. 28 Nonconformities. All legally established nonconformities as of the date of the adoption of this Code may continue, but the legally established nonconformities shall be managed according to applicable State Statutes and other regulations of the City for the subjects of alterations and addition, repair after damage, discontinuance of use, and intensification of use; except that the following standards shall also apply in shoreland areas:

- A. Construction on Nonconforming Lots of Record.
 1. Lots of record in the Office of the Washington County Recorder on the date of enactment of this Code that do not meet the requirements of Subd. 17 of this Subsection, may be allowed as building sites without variances from lot size requirements provided the use shall be permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of

this Subsection shall be met.

2. A variance from setback requirements shall be obtained before any use, sewage treatment systems, or building permit shall be issued for a lot. In evaluating the variance, the Board of Appeals and Adjustments shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
3. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Subd. 17 of this Subsection, the lot shall not be considered as a separate parcel of land for the purposes of sale or development. The lot shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of this Subsection as much as possible.

B. Additions/Expansions to Nonconforming Structures.

1. All additions or expansions to the outside dimensions of any existing nonconforming structure shall meet the setback, height, and other requirements of this Subsection. Any deviation from these requirements shall be authorized by a variance pursuant to this Subsection before being permitted.
2. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards shall be met.
 - a. The structure existed on the date the structure setbacks were established.
 - b. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure.
 - c. The deck encroachment toward the ordinary high water level shall not exceed 15 percent of the existing setback of the structure from the ordinary high water level or shall not encroach closer than 30 feet, whichever is more restrictive.
 - d. The deck is constructed primarily of wood, and is not roofed or screened.

C. Nonconforming Sewage Treatment Systems.

1. A sewage treatment system not meeting the requirements of this Code shall be connected to Newport City Sewer if Sewer Main is provided adjacent to the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
2. The City Council has by formal resolution notified the Commissioner of its program to identify nonconforming sewage treatment system. The City shall require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which shall not exceed 2-years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, Chapter 103F, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching

pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.

Subd. 29 Subdivision/Platting Provisions.

- A. Land Suitability. Each lot created through subdivision, shall be suitable in its natural state for the proposed use with minimum alteration. Suitability analysis by the City shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the City.
- B. Consistency With Other Controls. Subdivisions shall conform to all official controls of the City. A Subdivision shall not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by City-owned Sewer and Water Systems, a subdivision shall not be approved unless domestic water supply shall be available and a sewage treatment system consistent with this Code can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Subd. 17 of this Subsection including at least a minimum contiguous lawn area, that shall be free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks shall not be approved.
- C. Information Requirements. Sufficient information shall be submitted by the applicant for the City to make a determination of land suitability. The information shall include at least the following:
 - 1. Topographical contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics.
 - 2. The surface water features required in Minnesota Statutes, Section 505.02, , to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources.
 - 3. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation test, or other methods.
 - 4. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and propose methods for controlling stormwater runoff and erosion, both during and after construction activities.
 - 5. Location of 100-year flood plain areas and floodway districts from existing adopted maps or data.
 - 6. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the

river.

- D. Dedications. When a land or easement dedication is a condition of subdivision approval, the approval shall provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.
- E. Processing as a Plat. All subdivisions that create five (5) or more lots or parcels that are 2-1/2 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.
- F. Control Access or Recreational Lots. Lots intended as controlled access to the river or for recreation use areas for use by nonriparian lots within a subdivision shall meet or exceed the sizing criteria of this Subsection.

Subd. 30 Administration.

- A. Enforcement. The City shall provide for the administration and enforcement of the Shoreland Management Regulations adopted in this Subsection through building permit, sewer and water permit, grading and filling permit, and vegetation clearing permit procedures.
- B. Variances. Variances may only be granted in accordance with Minnesota Statutes Chapter 462. No variance may be granted that would allow any use that is prohibited in the underlying zoning district in which the subject property is located. Conditions may be imposed in the granting of variances to ensure compliance and to protect adjacent properties and the public interest. In considering variance requests, the Board of Appeals and Adjustments shall also consider whether property owners have reasonable use of the lands without the variances, whether existing sewage treatment systems on the properties need upgrading before additional development is approved, whether the properties are being used seasonally or year-round, whether variances are being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
- C. Conditional Uses. In granting a conditional use permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions including parking facilities on adjacent streets and land, and the effect on values of property in the surrounding area, and the effect of the proposed use on the Comprehensive Plan. In addition to the above standards Newport uses for reviewing conditional use permits, the following standards shall also be used for reviewing conditional uses located in shoreland areas:
 - 1. A thorough evaluation of the topographic vegetation, soils conditions on the site to ensure:
 - a. the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - b. limiting visibility of structures and other facilities as viewed from public waters; and
 - c. adequacy of the site for water supply and on-site sewage treatment; and

2. An assessment of the types, uses and numbers of watercraft that the project will generate in relation to the suitability of public waters to safely accommodate these watercraft.
 3. Additional conditions imposed when granting conditional use permits shall include:
 - a. Increased setbacks from public waters.
 - b. Vegetation allowed to be removed or required to be established.
 - c. Location, design and use requirements for watercraft launching or docking.
 - d. Location, design and use requirements for vehicular parking.
 - e. Structure or other facility design, use, and location.
 - f. Phasing of construction.
 - g. Other conditions considered necessary by the City.
- D. Nonconformities. The City shall require the replacement of all existing, on-site sewage treatment systems identified as a nonconformity under a program established under Minnesota Rules Part 6120.3400. Systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, Chapter 103F, in effect at the time of installation may be considered conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other disposal methods, or systems with less soil treatment area separation above groundwater than required by Minnesota Rules Chapter 7080, shall be considered nonconforming. All other nonconformities other than on-site sewage treatment systems shall be managed according to applicable State Statutes and City of Newport Official Controls.

Subd. 5 Joint Exercise of Powers. To facilitate more logical, consistent and efficient administration of shoreland management controls, the City shall reserve the right to enter into joint powers agreements with adjacent or otherwise similarly situated local units of government to jointly administer shoreland management controls pursuant to the procedures and authority of Minn. Stat. ' 471.59, which govern joint power agreements between governmental entities.

A. Notification Procedures.

1. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls shall be sent to the Commissioner or the Commissioner's designated representative and shall be postmarked at least ten days before the hearings. Notices of hearings to consider proposed plants shall include copies of the plats.
2. A copy of City Council approved amendments and plats, and final decisions granting variances or conditional uses under local shoreland management controls shall be sent to the Commissioner or the Commissioner's designated representative and shall be postmarked within ten days of final action.

1370.04 Critical Overlay District.

Subd. 1 Findings. The City finds that the Mississippi River corridor within the Metropolitan Area and the river, is a unique and valuable local, state, regional, and national resource. The river is an essential element in the local, regional, state, and national transportation, sewer and water, and recreational system and serves important biological and ecological functions. The prevention and mitigation of irreversible damage to this resource, and preservation and enhancement of its natural, aesthetic, cultural and historical values shall be in furtherance of the health, safety, and general welfare of the City.

Subd. 2 Purpose and Intent. It shall be the purpose and intent of this Subsection to prevent and mitigate irreversible damage to this unique state, local, regional and national resource, to preserve and enhance its value to the public and protection and preserve the system as an essential element in the City's transportation, sewer and water, and recreational systems in accordance with the following policies:

- A. The Mississippi River Corridor shall be managed as a multi-purpose public resource by continuing use of the river channel for transportation, conserving the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions for the river corridor, and providing for the continuation of development for a variety of urban uses within the river corridor.
- B. The Mississippi River Corridor shall be managed in a manner consistent with its natural characteristics and its existing development and in accordance with regional plans for the development of the Metropolitan Area.
- C. The Mississippi River Corridor shall be managed in accordance with the Critical Areas Act of 1973, the Minnesota Environmental Policy Act of 1973, and the Governor's critical area designation order, Executive Order No. 130 dated November 19, 1976, and other applicable State and Federal laws.

Subd. 3 Establishment of Critical Area Overlay District. A critical area overlay district with its attendant regulations shall be hereby established as part of the Zoning regulations of Newport, Minnesota. This district shall overlay existing zoning districts so that any parcel of land lying in the overlay district shall also lie in one or more of the underlying established zoning districts. Territory within the overlay district shall be subject to the requirements established in this Subsection, as well as restrictions and requirements established by other applicable Code Sections, ordinances and regulations of the City. Within the overlay district, all uses shall be permitted in accordance with the regulations for the underlying zoning district(s) provided, however, that such uses shall not be entitled to or issued the appropriate development permit until they have first satisfied the additional requirements established in this Subsection.

Subd. 4 District Boundaries. This Subsection shall apply to the critical areas district which shall be specially delineated on the official zoning map of the City for purposes of determining the application of this Subsection to any particular parcel of land. The above-referenced map shall be on file in the office of the Zoning Administrator and shall be available for inspection and copying.

Subd. 5 Definitions.

- A. Barge Fleeting Area. "Barge Fleeting Area" shall mean a portion of the riverfront where barges are temporarily secured while awaiting loading, unloading, or shipment.

- B. Barge Unloading Facility. "Barge Unloading Facility" shall mean a facility located on the riverfront for the loading or unloading of a barge, either as a part of trans-shipment of goods or related specifically to a product manufactured, stored, excavated, or utilized at the site.
- C. Channel. "Channel" shall mean a natural or artificial depression of perceptible extent, with definite bed and banks to confine and conduct flowing water either continuously or periodically.
- D. Critical Area. "Critical Area" shall mean the area known as the Mississippi River Corridor Critical Area designated by the Governor in Executive Order No. 130 dated November, 1976.
- E. Crown Cover. "Crown Cover" shall mean the ratio between the amount of land shaded by the vertical protection of the branches and foliage area of standing trees to the total area of land, usually expressed as a percentage.
- F. Dimensional Requirement. "Dimensional Requirement" shall mean minimum and maximum setbacks, yard requirements, or structure height or size restrictions contained in the underlying district regulations of this Chapter.
- G. Encroachment Lines. "Encroachment Lines" shall mean the lateral limits or lines drawn along each side and generally parallel to a stream or another body of water, which delineates the floodway and within which the flood carrying capacity of the stream or other body of water is to be preserved. Their location, if along a stream, shall be such that the floodway between them shall effectively carry and discharge a flood not less than the regional flood.
- H. Equal Degree of Encroachment. "Equal Degree of Encroachment" shall mean a method of determining the location of encroachment lines so that flood plain lands on both sides of a stream shall be capable of conveying a proportionate share of flood flows. This shall be determined by considering the effect of encroachment on the hydraulic efficiency of the flood plain along both sides of a stream for a significant reach.
- I. Erosion. "Erosion" shall mean the general process by which soils are removed by flowing surface or sub-surface water or wind.
- J. Flood. "Flood" shall mean a temporary rise in stream flow or stage which results in inundation of the areas adjacent to the channel.
- K. Flood Frequency. "Flood Frequency" shall mean the average frequency, statistically determined, for which it shall be expected that a specific flood stage or discharge may be equaled or exceeded. By strict definition, such estimates shall be designated "exceedence frequency", but in practice, the term "frequency" may be used. The frequency of a particular stage or discharge is usually expressed at having a probability of occurring once within a specified number of years. See also "Recurrence Interval", subpart AA below.
- L. Flood Fringe. "Flood Fringe" shall mean that portion of the flood plain outside of the floodway.

- M. Flood Peak. "Flood Peak" shall mean the highest value of stage or discharge attained during a flood event; this peak stage or peak discharge.
- N. Flood Plain Management. "Flood Plain Management" shall mean the full range of public policy and action for insuring wise use of the flood plains. It shall include everything from collection and dissemination of flood control information to actual acquisition of flood plain lands, construction of flood control measures, and enactment and administration of codes, ordinances, and statutes regarding flood plain use.
- O. Flood Profile. "Flood Profile" shall mean a graph or longitudinal plot of water surface elevations of a flood event along a reach of stream or river.
- P. Flood Proofing. "Flood Proofing" shall mean a combination of structural provisions, changes or adjustment to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings in a flood hazard area.
- Q. Flood Stage. "Flood Stage" shall mean that stage, at a particular river gauge, when overflow of the natural banks of the stream results in significant flood damage in any portion of the reach for which the gauge shall be a representative index.
- R. Floodway. "Floodway" shall mean the channel of the watercourse and those portions of the adjoining floodplains which shall be reasonably required to carry and discharge the regional flood.
- S. Gross Soil Loss. "Gross Soil Loss" shall mean the average annual total amount of soil material carried from one acre of land by erosion.
- T. Lift Station. "Lift Station" shall mean a facility, usually including pumping facilities, for the lifting of sewage or stormwater runoff to a higher sewage facility or stormwater runoff facility.
- U. Marina. "Marina" shall mean facilities which may include piers or systems of floating or fixed access ways, providing moorings for motor boats and yachts and offering supply, repair and other facilities for said use.
- V. Natural Rate of Absorption. "Natural Rate of Absorption" shall mean the amount of stormwater absorbed into the soil during a storm of once in twenty-year occurrence.
- W. Person. "Person" shall mean any individual, firm, corporation, partnership, association or other private or governmental entity.
- X. Pipeline. "Pipeline" shall mean an underground line of pipe including associated pumps, valves, control devices, and other structures utilized for conveying liquids, gases, sewage or other finely divided solids from one point to another.

- Y. Pleasure Craft. "Pleasure Craft" shall mean a boat or yacht used primarily for recreational activity.
- Z. Reach. "Reach" shall mean the hydraulic engineering term used to describe longitudinal segments of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would typically constitute a reach.
- AA. Recurrence Interval. "Recurrence Interval" shall mean the average interval of time, based on a statistical analysis of actual or representative stream flow records, which can be expected to elapse between floods equal to or greater than a specified stage or discharge. The recurrence interval is generally expressed in years. See also: "Flood Frequency", subpart K above.
- BB. Regional Flood. "Regional Flood" shall mean a flood which shall be representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval.
- CC. Regulatory Flood Protection Elevation. "Regulatory Flood Protection Elevation" shall mean a point not less than one (1) foot above the water surface profile associated with the regional flood plus any increases in flood heights attributable to encroachment on a flood plain. It shall be the elevation to which uses regulated by this Subsection shall be required to be elevated or flood proofed.
- DD. Retaining Wall. "Retaining Wall" shall mean a structure utilized to hold a slope in a position which it would not naturally remain in.
- EE. Riverfront. "Riverfront" shall mean every lot or parcel of land which is immediately adjacent to the Mississippi River.
- FF. Sediment. "Sediment" shall mean suspended matter carried by water, sewage or other liquids.
- GG. Septic Tank. "Septic Tank" shall mean any device for the treatment and disposal of human waste which utilizes the percolation of the liquid portion of the waste into the soil including all portions of the system which are not contained inside a building.
- HH. Sign, Advertising. "Sign, Advertising" shall mean a structure or portion thereof that shall be intended for advertising purposes on which letters, figures, or pictorial matters shall or shall be intended to be displayed for advertising purposes, other than the name, occupation, and/or nature of the enterprise conducted on the premises. This definition, shall not be held to include a real estate sign advertising for sale or rent the property on which it stands.
- II. Single-Family Dwelling. "Single-Family Dwelling" shall mean a building intended for human habitation by one family or not more than six unrelated people.
- JJ. Slope. "Slope" shall mean the inclination of the natural surface of the land from the horizontal.
- KK. Soil. "Soil" shall mean the upper layer of earth which may be dug or plowed; the loose

surface material of the earth in which vegetation normally grows.

- LL. Standard Project Flood. "Standard Project Flood" shall mean the flood that may be expected from the most severe combination of meteorological and hydrological conditions that is considered reasonably characteristic of the geographical area in which the drainage basin is located, excluding extremely rare combinations. Such floods shall be intended as practicable expressions of the degree of protection that should be sought in the design of flood control works, the failure of which might be disastrous.
- MM. Structure. "Structure" shall mean anything manufactured, constructed, or erected, which is normally attached to or positioned on land, including portable structures.
- NN. Substation. "Substation" shall mean any utility structure other than lines, pipelines, holes or towers.
- OO. Terrace. "Terrace" shall mean a relatively level area bordered on one or more sides by a retaining wall.
- PP. Tree. "Tree" shall mean any woody plant that has at least one trunk whose diameter at four feet above the ground shall be four inches or greater.
- QQ. Utility Facility. "Utility Facility" shall mean physical facilities of electric, telephone, telegraph, cable television, water, sewer, solid waste, gas, and similar service operations.
- RR. Vegetation. "Vegetation" shall mean all plant growth, especially trees, shrubs mosses and grasses.
- SS. Water Body. "Water Body" shall mean any lake, stream, pond, wetland, or river.
- TT. Watercourse. "Watercourse" shall mean a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term shall apply to both natural and artificially constructed channels.
- UU. Water Dependent Uses. "Water Dependent Uses" shall mean uses which in order to exist or function require a location on or use of the riverfront including, but not limited to: barge loading and large floating areas, marinas, industries which receive or ship goods or materials by water an essential part of their operation, boat and barge construction, dismantling and repair, riverfront recreation, intakes and outfalls, and water monitoring and measuring facilities.
- VV. Wetland. "Wetland" shall mean any land which is seasonably wet or flooded, including all marshes, bogs, swamps, and floodplains.

Subd. 6 Site Planning Requirements.

- A. Site Plan Required. No building permit, zoning approval, subdivision approval, permit, or certificate shall be issued for any action located in an area covered by this Subsection until a site plan has been prepared and approved in accordance with the provisions of this Subsection.
- B. Exceptions.

1. No site plan shall be required for an existing single-family dwelling, nor for the extension, enlargement, change or alteration thereof, nor accessory structures thereto, provided that the dwelling remains a single-family dwelling.
 2. No site plan shall be required for any use permitted on a temporary basis for a period not to exceed two years when such use is established without site preparation and makes no discharge onto the site. No extensions shall be granted beyond the two-year temporary permit.
- C. Site Plan Application. A written application for site plan approval shall be filed with the Zoning Administrator containing evidence adequate to show that the proposed use shall conform to the standards set forth in this Subsection. Twelve sets of clearly legible blue or black-lined copies or drawings and required information shall be submitted to the Zoning Administrator and shall be accompanied by an application fee as set from time to time by the Council, and the bond, when required by the City Council, in the amount calculated by the City Council.
- D. Site Plan Contents.
1. Site plans shall be prepared to a scale appropriate to the size of the project and suitable for the review to be performed, which shall not be greater than 1" = 100' - 0" or less than 1" = 20' - 0".
 2. The following information shall be provided in the site plan:
 - a. Location of the property including the name and numbers of adjoining roads, railroads, existing subdivisions, or other landmarks.
 - b. The name and address of the owner (s) or developer (s), the section, township and range, northpoint, date and scale of drawing, and number of sheets. In addition, a blank space 3" high and 3" wide shall be reserved for use by the approving authority.
 - c. Existing topography as indicated on a contour map having a contour interval no greater than 2 feet per contour: the topography map shall also clearly delineate any bluffline, all streams, including intermittent streams and swales, waterbodies, and wetlands located on the site, including depth of water, bottom slope, a description of body materials and all vegetation which may be found in the waterbody by the Minnesota Department of Natural Resources and the Minnesota PCA, if any. The topography map shall indicate the floodway and/or flood fringe lines.
 - d. A plan delineating existing drainage of the water setting forth in which direction the volume and at what rate stormwater is conveyed from the site and setting forth those areas of the site where stormwater collects and is gradually percolated into the ground or slowly released to stream or lake.
 - e. A description of the soils of the site, including a map indicating soil types by areas to be disturbed, as well as a soil report prepared by a soil scientist containing information on the suitability of the soils for the type of development proposed and for the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable. All areas proposed for grading

shall be identified by soil type, both as to soil type of existing top soil and soil type of the new contour. The location and extent of any erosion area shall be indicated. The stability of rock units along bluff lines shall be included in the soils description.

- f. A description of flora and fauna, which occupy the site or are occasionally found thereon, setting forth with detail those areas where unique plant or animal species may be found on the site.
- g. A description of any features, buildings or areas which are of historic significance.
- h. A map indicating proposed finished grading shown at contours at the same intervals as provided above, and as shall be required to clearly indicate the relationship of proposed changes to existing topography and remaining features.
- i. A landscape plan drawn to an appropriate scale, including dimensions and distances, the location, type, size, and description of all existing vegetation, clearly locating and describing any vegetation proposed for removal and all proposed landscape materials which will be added to the site as part of the development.
- j. A proposed drainage plan of the developed site delineating in which direction, the volume, and at what rate stormwater will be conveyed from the site and setting forth the areas of the site where stormwater will be allowed to collect and gradually percolate into the ground, or be slowly released to stream or lake. The plan shall also set forth hydraulic capacity of all drainage structures to be utilized, including volume of holding ponds and design storm.
- k. An erosion and sedimentation control plan indicating the type, location, and necessary technical information on control measures to be taken both during and after construction, including a statement expressing the calculated anticipated gross soil loss expressed in tons/acre/year, both during and after constructions.
- l. The proposed site, alignment, height and intended use of any structures to be erected or located on the site.
- m. A clear delineation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used.
- n. A description of the method to be provided for vehicular and pedestrian access to the proposed development and public access to the river and/or public river view opportunities both before and after development; and a description of the development's impact on existing views of and along the river.
- o. A description of all parking facilities to be provided as part of the development of the site, including an analysis of parking needs generated by the proposed development.
- p. A delineation of the area or areas to be dedicated for public use.
- q. A delineation of the location and amounts of excavated soils to be stored on the site during construction.
- r. Any other information pertinent to the particular project which in the opinion of the

Zoning Administrator or applicant shall be necessary or helpful for the review of the project.

- s. The Zoning Administrator may waive any of the above requirements that are not applicable.
- E. Site Plan Approval. The Zoning Administrator shall approve or deny all applications, except those that would normally need approval by the City Council. If the applicant is not satisfied with the decision of the City Clerk-Administrator, the decision may be appealed to the City Council after recommendation from the Planning Commission.
- F. Site Plan Approval Standards. No site plan which fails to satisfy the following standards shall be approved by the City Council or City Clerk-Administrator.
1. The applicant shall demonstrate that the proposed development shall be planned, designed, constructed and maintained to avoid substantial probabilities of:
 - a. accelerated erosion.
 - b. pollution, contamination, or siltation of water bodies, rivers, and streams.
 - c. damage to vegetation.
 - d. injury to wildlife habitats.
 - e. increased flood potential.
 - f. decreased groundwater recharge.
 2. The applicant shall demonstrate that the types and densities of land use proposed shall be suited to the site and soil conditions and shall not present a threat to the maintenance of the groundwater quality, a potential increase in maintenance cost of utilities, parking areas, or roads, and shall not be subject to problems due to soil limitations, including, but not limited to soil bearing strength, shrink/swell potential, and excessive frost movement.
 3. No development shall be permitted on land having a slope before alteration in excess of 12 percent unless the applicant shall prove that the following conditions shall have been met:
 - a. The foundation and underlying material of any structure, including roads, shall be adequate for the slope condition and soil type.
 - b. Adequate controls and protections exist uphill from the proposed development such that there is no danger of structures or roads being struck by falling rocks, mud, uprooted trees, or other materials.
 - c. The proposed development presents no danger of falling mud, uprooted trees, or other materials to structures downhill.
 - d. The view of the developed slope from the river and opposite riverbank is consistent with the natural appearance of the undeveloped slope, consistent with any historic

areas nearby, compatible with the view from historic areas, and compatible with surrounding architectural features. To the maximum extent possible, the use of natural devices, including vegetation management shall be preferred over the construction of artificial devices, including culverts, holding ponds, walls, and terracing.

- e. All structures other than buildings and roadway surfaces, but including retaining walls, shall meet the following design requirements:
 - (1) retaining walls or terrace contours shall not exceed five feet in height;
 - (2) construction shall be of native stone, wood, or cast in place concrete;
 - (3) the minimum space between terraces and retaining walls shall be twenty feet;
 - f. Any lift stations required to service the slope development with local sewer systems shall be designed in accordance with local design standards and approved by the City Engineer. The applicant shall furnish a satisfactory arrangement or agreement by which the cost of maintenance and operation of the lift station shall be borne by those serviced by the facility.
 - g. No septic tank shall be placed on a slope of greater than 12 percent. The natural slope may not be altered in any way when the septic tank system or part thereof is to be located. The drain lines shall be located parallel to contour lines.
 - h. In no case shall slopes with a natural slope in excess of 45 percent be developed.
4. During construction and until such time as final control measures shall be fully implemented and established, adequate development practices shall be maintained to insure that gross soil loss levels (expressed in terms of tons per acre per year) shall not exceed 5 tons per acre per year during construction and one-half ton per acre per year after the construction activities are completed as calculated in accordance with the Uniform Soil Loss Equation, Appendix A of this Subsection.
 5. Development shall not substantially diminish the scientific, historical, educational, recreational or aesthetic value of natural areas and unique plant and animal species, and shall not substantially alter the supporting environment necessary for food supply and the reproductive cycle of the species.
 6. Erosion protection measures shall make maximum use of natural in-place vegetation rather than the placing of new vegetation on site as erosion control facilities. The use of natural erosion control devices shall be preferred to the maximum extent over the construction of artificial drainage devices, including culverts, holding ponds, and ditches.
 7. The development shall be located in such a manner as to minimize the removal of vegetation and alteration of the natural topography.
 8. The applicant shall demonstrate that there shall be no feasible or prudent alternatives to cutting trees on the site; development shall be permitted only in such a manner that the maximum number of trees shall be preserved. No trees may be cut except those occupying the actual physical space in which a structure, drive or roadway shall be

erected. In the event that solar collection is utilized, trees may be cut to allow sufficient sunlight to the solar collectors if the applicant can demonstrate there are no feasible or prudent alternatives. If trees are cut, the density of trees shall be restored to that which existed before development, but in no case shall the applicant be required to raise the density above 10 trees per acre. The applicant shall demonstrate that all grading which takes place shall be conducted in a manner that preserves the root zone aeration and stability of existing trees and provides an adequate watering area equal to at least one-half of each tree's crown cover.

9. Development in woodlands shall not reduce the existing crown cover greater than 50 percent and shall be conducted in such a manner that the understory and litter shall be preserved.
10. Filling in a wetland shall not exceed the excess storage and nutrient stripping capabilities of the wetland based on the ultimate projected development of the wetland watershed. Flood storage and nutrient stripping capabilities shall be calculated in accordance with Appendix A of this Section.
11. Wetlands and other water bodies shall not be used as primary sediment traps during or after construction.
12. The proposed development shall not increase the runoff rate or decrease the natural rate of absorption of stormwater.
13. The quality of water runoff and water infiltrated to the water table or aquifer shall be as high after development as it was before development of the site.
14. When filling in a wetland, a minimum amount of filling may be allowed when necessary but in no case shall the following restrictions on total amount of filling be exceeded. Since the total amount of filling which can be permitted is limited, the City, when considering permit applications, shall consider the equal apportionment of fill opportunity to riparian land owners.
 - a. Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the projected volume of runoff from the whole developed wetland watershed generated by a 6-inch rainfall in 24 hours. Any increase in runoff shall be detained for on-site infiltration through the soil to the water table.
 - b. Total filling shall not cause the total natural nutrient stripping capacity of the wetland to fall below the nutrient production of the wetland watershed for its projected development.
 - c. Only fill free of chemical pollutants and organic wastes may be used.
15. No part of any septic tank system shall be allowed in the Critical Area, except those non-residential systems specifically allowed by this Section.
16. The development shall be consistent with the reasonable preservation of the view of the river corridor from other properties and by the public rights-of-way has been minimized.
17. The grades of any streets shall not exceed 10 percent.

18. Any, and all erosion control, stormwater runoff, utility access, and similar structures shall be designed to be maintained, cleaned out, and otherwise operated without requiring the crossing of private lands with, or the operation of motorized heavy maintenance vehicles and equipment, such as bulldozers, trucks, and back-hoes on slopes in excess of 8 percent. As used in this Section, private lands shall include any outlots.
19. The proposed development, both vehicular and pedestrian, shall be adequate and consistent with local transportation and thoroughfare planning.
20. The proposed development shall not lessen public access to and along the river bluff, nor shall it lessen public opportunity to view the river from within the corridor.
21. The conduct of all grading, landscaping, structure placement, and street routing shall be consistent with and to the maximum extent in furtherance of the goals and policies for the development of the Critical Area Plan adopted by the City of Newport. .

Subd. 7 Critical Area Crossings.

- A. Utility Facilities. Utility crossings of the critical area corridor or routing within the corridor shall meet the following standards:
 1. Underground placing of the utility facility shall be required unless economic, technological and land characteristic factors make underground placement feasible. Economic considerations alone shall not be made the major determinate regarding feasibility.
 2. Overhead crossing, if required shall meet the following criteria:
 - a. The crossing shall be adjacent to or part of an existing utility corridor, including bridge or overhead utility lines.
 - b. All structures utilized shall be as compatible as practical with land use, scenic views, and existing transmission structures in height, material, color, and design.
 - c. Right-of-way clearance shall be kept to a minimum.
 - d. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements.
 - e. Routing shall avoid unstable soils, blufflines, or high ridges. The alteration of the natural environment, including grading, shall be minimized.
 - f. The crossing shall be subject to the site planning requirements set forth in this Subsection.
 3. Utility substations shall be subject to the following standards:
 - a. All substations shall be subject to the site planning requirements set forth in Subsection

- b. New substations or refurbishment of existing substations shall be compatible in height, scale, building materials, landscaping, and signing with the surrounding natural environment or land uses. Screening by natural means shall be encouraged and should be compatible with the surrounding environment.
 - 4. Pipelines and underground utility facilities shall be subject to the following standards:
 - a. All pipelines and underground facilities shall be subject to the site planning requirements of this Chapter.
 - b. The facilities shall be located to avoid wetlands, woodlands, and areas of unstable soils.
 - c. All underground placing of utility facilities and pipelines shall be followed by revegetation and rehabilitation to the conditions which existed on site prior to development, providing the original conditions were environmentally and aesthetically desirable.
- B. Public and private Roads. New roads crossing the critical area corridor or routed within the critical area corridor shall meet the following standards:
- 1. Roads shall be constructed to minimize impacts on the natural terrain and natural landscape.
 - 2. Extreme cuts and fills shall be avoided.
 - 3. All roads shall be subject to the site planning requirements set forth in this Subsection.
 - 4. New roads shall not utilize the river corridor as a convenient right-of-way for new arterials.
 - 5. New roads shall be restricted to those facilities needed to access existing and planned residential uses.

Subd. 8 Existing Uses.

- A. Existing Structures. Existing structures, the location, or the use of which is inconsistent with this Subsection shall not be eligible for any permit granted by the City for expansion, change of use, renewal of existing permit, or building permit, unless the following criteria shall be met:
 - 1. The applicant shall provide and maintain adequate screening of the structure from the water through the use of natural vegetative means.
 - 2. The public's ability to view the river and river corridor from existing public streets shall not be further degraded by the proposed activity.
- B. Signs.
 - 1. All advertising signs permitted within the Critical Area shall conform with the provisions of Section 1380 of this Code.

2. Views of the water from vistas and public roads shall not be impaired by the placement of business or advertising signs.
3. All advertising signs, the location of which is not in conformance with this Section shall be deemed non-conforming uses and shall be removed within three years of the effective date of this Code.

Subd. 9 On Site Sewer Disposal in Non-residential Areas.

A. Purpose and Intent. The following regulations shall be adopted for the purpose to:

1. Regulate individual sewer disposal systems so as to prevent contamination of underground bodies of water, streams, or other surface bodies of water.
2. Prevent individual sewer disposal systems from creating a health hazard and/or a nuisance for the general public or individuals.

B. General Requirements.

1. Location and installation of the individual sewage disposal system and each part thereof shall be such that, with reasonable maintenance, it shall function in a sanitary manner and shall not create a nuisance nor endanger the safety of any domestic water supply. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, depth of ground water, geology, proximity to existing or future water supplies, accessibility for maintenance, and possible expansion of the system.
2. No part of the system shall be located so that it is nearer to any water supply, or so that surface drainage from its location may reach any domestic water supply.
3. Raw sewage, septic tank effluent, or seepage from a soil absorption system shall not be discharged to the ground surface, abandoned wells, or bodies of surface water, or into any rock formation the structure of which shall not be conducive to purification of water by filtration, or into a well or other excavation in the ground. This requirement shall apply to the disposal of sewage in accordance with a process approved by the State Board of Health or the Water Pollution Control Commission.
4. The lot size shall be three (3) acres minimum in size to permit installation of the individual sewage disposal system in accordance with all the requirements pertaining thereto.
5. Installation of individual sewage disposal systems shall not be made in low swampy areas or areas which may be subject to flooding.
6. Installation of individual sewage disposal systems shall not be made in areas already served by sanitary sewer or in areas where sanitary sewer installation is economically feasible as determined by the City Council.
7. In areas with a high ground-water table or where limestone or any geological formation similarly faulty is covered by less than fifty (50) feet of earth, the final disposal unit shall

be a tile field. The bottom of the trenches shall not be less than four (4) feet above the highest known or calculated water table or the surface of the faulty rock formation.

8. Bulldozers, trucks or other heavy machinery shall not be driven over the system after installation.
9. The system or systems shall be designed to receive all sewage from the dwelling, building or other establishment served, including laundry waste and basement floor drainage. Footing or roof drainage shall not enter any part of the system. Where the construction of additional bedrooms, the installation of mechanical equipment, or other factors likely to affect the operation of the system can be reasonably anticipated, the installation of a system adequate for such anticipated need shall be required.
10. The system shall consist of a building sewer, a septic tank, and a soil absorption unit. The soil absorption unit shall consist of a sub-surface disposal field. All sewage shall be treated in the septic tank and the septic tank effluent shall be discharged to the disposal field. The septic tank drain field system shall be considered the only acceptable system for installation unless it can be demonstrated that this system shall not be feasible on the particular lot in question and if it can be demonstrated that the system being proposed as an alternate shall not create a pollution problem.
11. Soil absorption systems for the disposal of sewage waste shall not be installed on land where the slope exceeds twelve percent (12%).
12. The system or systems shall be subject to approval by the City Engineer. No permits shall be granted by the Building Inspector until a report has been filed by the City Engineer. All regulations of this Subsection are in addition to and not in lieu of regulations imposed by the Pollution Control Agency.
13. Sewage tanks shall not be placed in areas subject to flooding or in flood plains delineated on the Official Zoning Map.

C. Maintenance Requirements.

1. At least once a year, the owner of any septic tank or his or her agent shall measure or arrange for measurement of the depth of sludge and scum in such septic tank. When, as a result of such measurement, the top of the sludge layer in the tank or any compartment of the tank is found to be less than twelve (12) inches below the bottom of the outlet baffle or submerged pipe, or if the bottom of the scum layer is less than three (3) inches above the bottom of the septic tank outlet baffle or submerged pipe, the owner or agent shall arrange for the removal and sanitary disposal of sludge and scum from the tank, provided that the requirement for measuring shall be waived for any septic tank which is cleaned as indicated at least once each calendar year.
2. At least once each year, the owner of any system equipped with a distribution box shall arrange for the opening of the distribution box and the removal of any settled solids therein. The material shall be disposed of to the septic tank or by other means acceptable to the City Clerk-Administrator.
3. At least once, between May 1 and June 30 of each year, the depth of liquid in each seepage pit shall be measured. When, as a result of such measurement it is found that the

liquid level in the pit is less than one foot below the inlet, a second measurement shall be made eight (8) to twelve (12) hours after the first measurement, during which time no liquid shall be discharged to the seepage pit. If, as a result of the second measurement, it is found that the liquid level in the pit has not lowered at least two (2) feet during the indicated period of time, an additional seepage pit or other acceptable soil absorption system shall be provided.

4. Servicing of septic tanks and soil absorption units shall conform to the Minnesota Department of Health and Minnesota Pollution Control Agency specifications. Disposal of sludge and scum removed from the system shall be:
 - a. into a municipal sewer disposal system where practical.
 - b. in the absence of a public sewer, at a disposal site approved by the City Clerk-Administrator.
 - c. sludge shall not be discharged into any lake or water-course, nor upon land without burial.

D. Alternative System.

1. Alternative methods of sewage disposal, such as holding tanks, electric or gas incinerators, biological and/or tertiary treatment plants or land disposal systems, wherever required or allowed in particular circumstances, shall be subject to the standards, criteria, rules and regulations of the Minnesota Department of Health and Minnesota Pollution Control Agency, and shall also require approval of the City Engineer.

APPENDIX A - Soil Loss Calculations.

Soil losses due to sheet erosion of soil can be predicted using the universal soil loss equation. The equation is: $A = R K C P$ where A=the soil loss due to sheet erosion expressed in tons per acre per average yearly rainfall: R=the rainfall factor. (The R value for the Seven County Metropolitan Areas is 2150): LS shall be the expected ratio of soil loss per unit area. It represents the effect of the length of a slope and its steepness. LS values are obtained by reading from Table 2: K is the soil erodibility factor for each soil type. K values are different soil types and are shown in Table 3 and Figure 1: C is the land management factor. P is the conservation factor. The C factor (land management and conservation) is equal to 1 when land is stripped and no erosion control measures are implemented. The value diminishes as control measures are implemented. CP values are listed in Tables 4-5. Since the soil loss calculated with this formula is for one full year, it shall be necessary to modify the formula to obtain the potential soil loss during the period of duration of construction. The yearly figure shall be multiplied by a factor "M" (Table 6) which is the percentage of annual erosion occurring in a given month. For example, during June through August, erosion value would be 75% of annual value, and for a period of May through September of the following year, the erosion value would be 199 percent of the annual value. Table 7 provides the conversion factors for soil weights.

1370.05 FLOOD PLAIN MANAGEMENT DISTRICTS

Subd. 1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the (Governing Body) of the City of Newport, Minnesota, does ordain as follows:

- A. Findings of Fact - The flood hazard areas of the City of Newport, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - 1. Methods Used to Analyze Flood Hazards - This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
 - 2. National Flood Insurance Program Compliance - This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.
 - 3. Statement of Purpose - It is the purpose of this Ordinance to promote the public health, safety, and general welfare, and to minimize those losses described in Subd. 2A by provisions contained herein.

Subd. 2 General Provisions:

- A. Lands to Which Ordinance Applies - This Ordinance shall apply to all lands within the jurisdiction of the City of Newport, Minnesota shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.
- B. Establishment of Official Zoning Map - The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Ordinance. The attached material shall include the Flood Insurance Study for Washington County, Minnesota And Incorporated Areas and Flood Insurance Rate Map Panels therein numbered 27163C0319E, 27163C0340E, 27163C0382E and 27163C0405E, all dated February 3, 2010 and prepared by the Federal Emergency Management Agency. The Official Zoning Map shall be on file in the Office of the City Clerk and the Zoning Administrator.
- C. Regulatory Flood Protection Elevation - The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

D. Interpretation:

1. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the Governing Body, and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
 2. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.
- E. Abrogation and Greater Restrictions - It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.
- F. Warning and Disclaimer of Liability - This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City of Newport or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.
- G. Severability - If any section, Subd. clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.
- H. Definitions - Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.
1. Accessory Use or Structure - A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure. In the case of any lot which is both in the flood plain governed by this section, as well as areas not governed by this section, any limitations on accessory uses or structures imposed by this section shall govern the entire contiguous lot.
 2. Basement - Means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

3. Conditional Use - Means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:
 - a. Certain conditions as detailed in the zoning ordinance exist.
 - b. The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.
4. Equal Degree of Encroachment - A method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
5. Flood - A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.
6. Flood Frequency - The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.
7. Flood Fringe - That portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Washington County, Minnesota and Incorporated Areas.
8. Flood Plain - The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
9. Flood Proofing - A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
10. Floodway - The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.
11. Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.
12. Manufactured Home - A structure, transportable in one or more Subds. which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."
13. Obstruction - Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

14. Principal Use or Structure - Means all uses or structures that are not accessory uses or structures.
15. Reach - A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.
16. Recreational Vehicle - A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.
17. Regional Flood - A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
18. Regulatory Flood Protection Elevation - The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
19. Structure - Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in Subd. 9.31 of this Ordinance and other similar items.
20. Substantial Damage - Means damage of any origin sustained by a structure where the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent (50%) of the market value of the structure before the damage occurred.
21. Substantial Improvement - Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
 - a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - b. Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.

22. Variance - Means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.
23. Annexations - The Flood Insurance Rate Map panels adopted by reference into Subd. 2B above may include floodplain areas that lie outside of the corporate boundaries of the City of Newport at the time of adoption of this Ordinance. If any of these floodplain land areas are annexed into the City of Newport after the date of adoption of this Ordinance, the newly annexed floodplain lands shall be subject to the provisions of this Ordinance immediately upon the date of annexation into the City of Newport.

Subd. 3 Establishment of Zoning Districts:

A. Districts:

1. Floodway District - The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in Subd. 2B.
2. Flood Fringe District - The Flood Fringe District shall include those areas designated as floodway fringe. The Flood Fringe District shall include those areas shown on the Flood Insurance Rate Map as adopted in Subd. 2B as being within Zone AE but being located outside of the floodway.
3. General Flood Plain District - The General Flood Plain District shall include those areas designated as Zone A on the Flood Insurance Rate Map adopted in Subd. 2B.

B. Compliance - No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway, Flood Fringe, and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Subds. 4, 5, and 6 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

1. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Ordinance and specifically Subd. 9.
2. Modifications, additions, structural alterations, normal maintenance and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Subd. 11.
3. As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Subd. 10 of this Ordinance.

Subd. 4 Floodway District (FW):

A. Permitted Uses:

1. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Industrial/commercial loading areas, parking areas, and airport landing strips.
3. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
4. Residential lawns, gardens, parking areas, and play areas.

B. Standards for Floodway Permitted Uses:

1. The use shall have low flood damage potential.
2. The use shall be permissible in the underlying zoning district if one exists.
3. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations, or storage of materials or equipment.

C. Conditional Uses:

1. Structures accessory to the uses listed in Subd. 4 A above and the uses listed in C(2) – C(8) below.
2. Extraction and storage of sand, gravel, and other materials.
3. Marinas, boat rentals, docks, piers, wharves, and water control structures.
4. Railroads, streets, bridges, utility transmission lines, and pipelines.
5. Storage yards for equipment, machinery, or materials.
6. Placement of fill or construction of fences.
7. Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Subd. 9C of this Ordinance.
8. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

D. Standards for Floodway Conditional Uses:

1. All Uses - No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected. All floodway conditional uses shall be subject to the procedures and standards contained in Subd. 10D of this Ordinance.
2. The conditional use shall be permissible in the underlying zoning district if one exists.
3. Fill:
 - a. Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
 - b. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
 - c. As an alternative, and consistent with Subd. (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.
4. Accessory Structures:
 - a. Accessory structures shall not be designed for human habitation.
 - b. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - c. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - d. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
 - e. Accessory structures shall be elevated on fill or structurally dry classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards.

5. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls.
6. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and,
7. To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.
8. Storage of Materials and Equipment:
 - a. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 - b. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
9. Structural works for flood control that will change the course, current or cross Subd. of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.
10. A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

Subd. 5 Flood Fringe District (FF):

- A. Permitted Uses - Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District “Permitted Uses” listed in Subd. 5B and the "Standards for all Flood Fringe Uses" listed in Subd. 5E.
- B. Standards for Flood Fringe Permitted Uses:
 1. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

2. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with Subd. 4D(4)(e).
 3. The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Subd. 5B(1) of this ordinance.
 4. The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
 5. The provisions of Subd. 5E of this Ordinance shall apply.
- C. Conditional Uses - Any structure that is not elevated on fill or flood proofed in accordance with Subd. 5B(1) – 5B(2) and or any use of land that does not comply with the standards in Subd. 5B(3) – 5B(4) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Subds. 5D – 5E and 10D of this Ordinance.
- D. Standards for Flood Fringe Conditional Uses:
1. Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
 - a. Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - b. Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - i. A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would

suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and

- ii. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.
2. Basements, as defined by Subd. 2H(2) of this Ordinance, shall be subject to the following:
 - a. Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - b. Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Subd. 5D(3) of this Ordinance.
 3. All areas of non residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.
 4. When at any one time within 5 years more than 200 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shore land management ordinance. In the absence of a state approved shore land ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
 5. Storage of Materials and Equipment:
 - a. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 - b. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
 6. The provisions of Subd. 5E of this Ordinance shall also apply.

E. Standards for All Flood Fringe Uses:

All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

1. Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
2. Manufacturing and Industrial Uses - Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Subd. 5E(2) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
3. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
4. Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
5. Standards for recreational vehicles are contained in Subd. 9C.

6. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

Subd. 6 General Flood Plain District

A. Permissible Uses:

1. The uses listed in Subd. 4A of this Ordinance shall be permitted uses.
2. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Subd. 6B below. Subd. 4 shall apply if the proposed use is in the Floodway District and Subd. 5 shall apply if the proposed use is in the Flood Fringe District.

B. Procedures for Floodway and Flood Fringe Determinations within the General Flood Plain District.

1. Upon receipt of an application for a permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the Floodway or Flood Fringe District.
 - a. A typical valley cross-Subd(s). showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-section, areas to be occupied by the proposed development, and high water information.
 - b. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - c. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - d. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
2. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

- a. Estimate the peak discharge of the regional flood.
 - b. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - c. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5 foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
3. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Subd. 4 and 5 of this Ordinance.

Subd. 7 Subdivisions

- A. Review Criteria - No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
1. Floodway/Flood Fringe Determinations in the General Flood Plain District - In the General Flood Plain District, applicants shall provide the information required in Subd. 16B of this Ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.
 2. Removal of Special Flood Hazard Area Designation - The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

Subd. 8 Public Utilities, Railroads, Roads, and Bridges

- A. Public Utilities - All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.
- B. Public Transportation Facilities - Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Subds. 4 and 5 of this Ordinance. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.
- C. On-site Sewage Treatment and Water Supply Systems - Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Subd.

Subd. 9 Manufactured Homes and Manufactured Home Parks and Placement of Recreational Vehicles

- A. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Subd. 7 of this Ordinance.
- B. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Subd. 5 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Subd. 5E(1), then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Governing Body.
 - 1. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- C. Recreational vehicles that do not meet the exemption criteria specified in Subd. 9C(1) below shall be subject to the provisions of this Ordinance and as specifically spelled out in Subds. 9C(3)-9C(4) below.
 - 1. Exemption - Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Subd. 9C(2) below and further they meet the following criteria:
 - a. Have current licenses required for highway use.

- b. Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.
 - c. The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
2. Areas Exempted For Placement of Recreational Vehicles:
- a. Individual lots or parcels of record.
 - b. Existing commercial recreational vehicle parks or campgrounds.
 - c. Existing condominium type associations.
 - d. Recreational vehicles exempted in Subd. 9C(1) lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in Subds 4 and 5 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood-free location should flooding occur.
3. New commercial recreational vehicle parks or campgrounds and new Residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:
- a. Any new or replacement recreational vehicle will be allowed in the Floodway or Flood Fringe Districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with Subd. 5E(1) of this Ordinance. No fill placed in the floodway to meet the requirements of this Subd. shall increase flood stages of the 100-year or regional flood.
 - b. All new or replacement recreational vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of Subd. 10D of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of Subd. 9C(1)(a) and (b) of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Subd. 8C of this Ordinance.

Subd. 10 Administration

- A. Zoning Administrator - A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Subd. 12 of the Ordinance.
- B. Permit Requirements:
1. Permit Required - A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.
 2. Application for Permit - Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
 3. State and Federal Permits - Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.
 4. Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use - It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.
 5. Construction and Use to be as provided on Applications, Plans, Permits, Variances, and Certificates of Zoning Compliance - Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Subd. 12 of this Ordinance.
 6. Certification - The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

7. Record of First Floor Elevation - The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.
8. Notifications for Watercourse Alterations - The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
9. Notification to FEMA - When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

C. City Council:

1. Variances – In addition to any and all other valid considerations and restrictions to the granting of variances under this Code and State law, the following additional restrictions shall apply to areas governed by this section. No variance shall have the effect of allowing in any district uses prohibited in that district; permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
 - a. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - b. Variances shall only be issued by a community upon:
 - i. A showing of good and sufficient cause
 - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

2. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
 3. Flood Insurance Notice and Record Keeping - The Zoning Administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.
- D. Conditional Uses - The City Council shall hear and decide applications for conditional uses permissible under this Ordinance in the same manner and procedure as is otherwise provided herein. Except as otherwise provided herein, any conditional use permit granted by the City shall be in accordance with its standard procedures for the consideration, granting or denial of any such request.
1. Hearings - Upon filing with the City Council an application for a conditional use permit for a use or location within those areas governed by this section, the City Council shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.
 2. Decisions - In granting a conditional use permit for a use or location within the flood plain, the City Council shall prescribe appropriate conditions and safeguards, in addition to those specified in Subd. 10. D 6 which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Ordinance punishable under Subd. 12. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
 3. Procedures to be followed by the City Council in Passing on Conditional Use Permit Applications Within all Flood Plain Districts:
 - a. Require the applicant to furnish such of the following information and additional information as deemed necessary by the City Council for determining the suitability of the particular site for the proposed use:
 - i. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
 - ii. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.

- b. Transmit one (1) copy of the information described in Subd. 10 D (3)(a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 - c. Based upon the technical evaluation of the designated engineer or expert, the City Council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
- 4. Factors upon Which the Decision of the City Council Shall Be Based - In passing upon conditional use applications, the City Council shall consider all relevant factors specified in other Subds. of this Ordinance, and:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts, or other hydraulic structures.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - l. Such other factors which are relevant to the purposes of this Ordinance.
- 5. Time for Acting on Application - The City Council shall act on an application in the manner described above within sixty (60) days from receiving a completed application, except for such additional time as it may be allowed, with notice, by law. Any application where additional

information is required pursuant to 10.D (3) of this Ordinance will be deemed incomplete on its face until such information is received by the City.

6. Conditions Attached to Conditional Use Permits - Upon consideration of the factors listed above and the purpose of this Ordinance, the City Council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:
 - a. Modification of waste treatment and water supply facilities.
 - b. Period of use, occupancy, and operation.
 - c. Imposition of operational controls, sureties, and deed restrictions.
 - d. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - e. Flood proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

Subd. 11 Nonconforming Uses

- A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following additional conditions. Historic structures, as defined in Subd. 2H(20)(b) of this Ordinance shall be subject to the provisions of Subds. 11 A(1) – (5) of this Ordinance.
 1. No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity, except as otherwise permitted or required by law.
 2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in (3) and (5) below.
 3. The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent (50%) of the market value of the structure unless the conditions of this Subd. are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent (50%) of the market value of the structure, then the structure must meet the standards of Subd. 4 or 5 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

4. If any nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this Ordinance. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of twelve (12) months.
5. If any nonconforming use or structure is substantially damaged, as defined in Subd. 2. H (3) of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Subds. 4, 5, or 6 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe, or General Flood Plain District, respectively.
6. If a substantial improvement occurs, as defined in Subd. 2H(20) of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Subd. 4 or 5 of this Ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

Subd. 12 Penalties for Violation

- A. Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.
- B. Nothing herein contained shall prevent the City of Newport from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
 1. In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures, or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
 2. When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

3. The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/ development approval within a specified period of time not to exceed thirty (30) days.
4. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Ordinance.

Subd. 13 Amendments

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given ten (10) days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the Ordinance amendment or technical study under consideration.

1370.06 Bluffland Area Overlay District.

Subd. 1 Findings. The City finds that uncontrolled and inadequately planned use of wetlands, habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety and general welfare by contributing to pollution and other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the City to provide adequate water, sewage, flood, fire protection and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas which may be affected by unplanned land usage.

Subd. 2 Purpose and Intent. The purpose of this Subsection shall be to promote, preserve and enhance the natural resources within the City and protect them from adverse effects occasioned by poorly sited or incompatible development by regulating developments that would have a severe adverse and potentially irreversible impact on unique and fragile environmentally sensitive land; by minimizing conflicts and encouraging compatibility between environmentally sensitive lands; and by requiring detailed review standards and procedures for developments proposed for such areas thereby achieving a balance between urban growth and development and protection of natural areas.

Subd. 3 District Boundaries and Scope. This overlay district shall apply to those areas zoned R1 and R2 as delineated on the official zoning map of the City. In addition to the above zoned parcels, this overlay district shall apply to those areas which lie above the indicated sea level elevations as outlined below, based on USGS datum. The requirements of this Subsection shall be in addition to all requirements in the underlying zoning district.

- A. Elevation 750 from the northerly municipal boundary to Ford Avenue;
- B. Elevation 800 south of Ford Avenue to the southerly municipal boundary.

Subd. 4 Definitions. For the purposes of this Subsection, the following terms shall have the definition provided. All other terms shall be given their normal definitions so as to give this Subsection its fullest application.

- A. Bluffland Area. "Bluffland Area" shall mean the area which lies above USGS sea level elevation 750 from the northerly boundary and to Ford Avenue and the area which lies above USGS sea level elevation 800 south of Ford Avenue to the southerly municipal boundary.
- B. Crown Cover. "Crown Cover" shall mean the ratio between the amount of land shaded by the vertical protection of the branches and foliage area of standing trees to the total area of land, usually expressed as a percentage.
- C. Dimensional Requirement. "Dimensional Requirement" shall mean minimum and maximum setbacks, yard requirements, or structure height or size restriction as set in this Chapter for the underlying zoning district. .
- D. Erosion. "Erosion" shall mean the general process by which soils are removed by flowing surface or sub-surface water or wind.
- E. Gross Soil Loss. "Gross Soil" loss shall mean the average annual total amount of soil material carried from one acre of land by erosion.
- F. Lift Station. "Lift Station" shall mean a facility, usually including pumping facilities, for the lifting of

sewage or storm water runoff to a higher sewage facility or storm water runoff facility.

- G. Natural Rate of Absorption. "Natural Rate" of absorption shall mean the amount of storm water absorbed into the soil during a storm of once in twenty year occurrence.
- H. Person. "Person" shall mean any individual, firm, corporation, partnership, association or other private or governmental entity.
- I. Pipeline. "Pipeline" shall mean an underground line of pipe including associated pumps, valves, control devices, and other structures utilized for conveying liquids, gases, sewage or other finely divided solids from one point to another.
- J. Retaining Wall. "Retaining Wall" shall mean a structure utilized to hold a slope in a position which it would not naturally remain in.
- K. Sediment. "Sediment" shall mean suspended matter carried by water, sewage or other liquids.
- L. Septic Tank. "Septic Tank" shall mean any device for the treatment and disposal of human waster which utilizes the percolation of the liquid portion of the waste into the soil including all portions of the system which are not contained inside a building.
- M. Sign Advertising. "Sign Advertising" shall mean a structure or portion thereof that is intended for advertising purposes on which letters, figures, or pictorial matters are or are intended to be displayed for advertising purposes, other than the name, occupation, and/or nature of the enterprise conducted on the premises. This definition shall not be held to include a real estate sign advertising for sale or rent the property on which it stands.
- N. Single-Family Dwelling. "Single-family Dwelling" shall mean a building intended for human habitation by one family or not more than six unrelated people.
- O. Slope. "Slope" shall mean the inclination of the natural surface of the land from the horizontal.
- P. Soil. "Soil" shall mean the upper layer of earth which may be dug or plowed; the loose surface material of the earth in which vegetation normally grows.
- Q. Structure. "Structure" shall mean anything manufactured, constructed, or erected which is normally attached to or positioned on land including portable structures.
- R. Substation. "Substation" shall mean any utility structure other than lines, pipelines, holes or towers.
- S. Terrace. "Terrace" shall mean a relatively level area bordered on one or more sides by a retaining wall.
- T. Tree. "Tree" shall mean any woody plant that has at least one trunk whose diameter at four feet above ground is four inches or greater.
- U. Utility Facility. "Utility Facility" shall mean physical facilities of electric, telephone, telegraph, cable television, water, sewer, solid waste, gas, and similar service operations.
- V. Vegetation. "Vegetation" shall mean all plant growth, especially trees, shrubs, mosses and grasses.

W. Wetland. "Wetland" shall mean any land which is seasonably wet or flooded including all marshes, bogs, swamps, and floodplains.

Subd. 5 Scope and Effect.

- A. Applicability. Site plans, prepared and approved in accordance with the provisions of this Subsection, shall be required to assist the City in the review of specified applications for building permits, and to assure compliance with all applicable requirements of this Subsection. Every applicant whose zoning matter or subdivision matter is referred to the City shall be required to submit an environmental site plan to the Zoning Administrator. No building permit, zoning approval or subdivision approval permit or certificate shall be issued for any action located in an area covered by this site planning Subsection until site planning approval or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this Subsection.
- B. Exceptions.
1. An Environmental Site Plan shall not be required for a single-family dwelling constructed by the intended residents nor for extension, enlargements, additions, changes or alterations thereto nor accessory structures thereto.
 2. No site plan shall be required for any use permitted on a temporary basis for a period not to exceed two years which such use is established without site preparation and makes no discharge onto the site.
 3. The Board of Appeals and Adjustments, upon recommendation of the Zoning Administrator, may waive any requirement of this Section upon making a finding that the waiver of such requirement shall not adversely affect the standards and requirements set forth in this Chapter. The Board of Appeals and Adjustments may require as a condition of such waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet said standards and requirements. Any decision of the Board of Appeals and Adjustments may be modified, reversed, or affirmed by the City, upon appeal by any person aggrieved by the decision, the appeal shall be filed within ten days of the decision.

Subd. 6 Site Plan Approval Procedure.

- A. Application. A written application for site plan approval shall be filed with the Zoning Administrator and shall include a statement indicating the grounds upon which the permit is requested, that the proposed use shall be permitted by right or an exception in the underlying zoning district, and adequate evidence showing that the proposed use shall conform to the standards set forth in this Subsection.
1. Ten (10) sets of clearly legible blue or black lined copies of drawings and required information shall be submitted to the City Council and shall be accompanied by a receipt from the City Clerk-Administrator evidencing the payment of all required site plan fees for processing and approval as set forth in this Chapter and a bond when required by this Chapter in the amount to be calculated in accordance with this Chapter.
- B. Site Plan Contents.
1. Site plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed, which shall not be greater than 1" = 20' or less than 1" = 100'.

2. The following information shall be provided in the site plan:
 - a. Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, subdivisions, towns and districts or other landmarks.
 - b. The name and address of the owner or developer, the section, township and range, north point, date and scale drawing number of sheets. In addition, a blank space 3" wide and 3" high shall be reserved for use by the approving authority.
 - c. Existing topography with a contour interval appropriate to the topography of the land but in no case having a contour interval greater than 2 feet; the topography map shall also clearly delineate any bluffline, all streams, including intermittent streams and swales, water bodies, wetlands and vegetation on the site.
 - d. Proposed finished grading shown at contours at the same interval as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features.
 - e. A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size, and description of all existing vegetation, clearly delineating any vegetation proposed for removal and clearly delineating and describing all proposed landscape materials which will be added to the site as part of the development.
 - f. A drainage plan of the site delineating in which direction and at what rate storm water is conveyed from the site and setting forth those areas of the unaltered site where storm water collects and is gradually percolated into the ground.
 - g. A proposed drainage plan of the developed site delineating in which direction and at what rate storm water will be conveyed from the site and setting forth the areas of the site where storm water shall be allowed to collect and gradually percolate into the ground.
 - h. A description of the soils of the site, including a map indicating soil types of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of development proposed and for the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable.
 - i. An erosion and sedimentation control plan indicating the type, location, and necessary technical information on control measures, as well as a statement on the anticipated gross soil loss (expressed in tons/acre/year) during and after construction.
 - j. A description of the flora, fauna, fish, birds and mammals or other wildlife which occupy the site or are occasionally found thereon, setting forth with detail those areas where unique plant and animal species may be found on the site.
 - k. A description of any features, buildings, or areas which are of historical significance.
 - l. The proposed size, alignment and intended use of any structures to be erected on the site.
 - m. A clear delineation of all areas which shall be paved or surfaced, including a description of

the surfacing material to be used.

- n. A description of the method to be provided for vehicular and pedestrian access to the proposed development.
 - o. A description of all parking facilities to be provided as part of the development of the site including an analysis of parking needs generated by the proposed development.
 - p. A delineation of the area or areas to be dedicated for public use.
 - q. A delineation of the location and amounts of excavated soils to be stored on the site during construction.
 - r. Any other information pertinent to the particular project which in the opinion of the inspector or applicant shall be necessary or helpful for the review of the project.
- C. Site Plan Review Procedure. Site plans meeting the requirements of this Chapter shall be submitted to the Planning Commission for review in accordance with the standards of this Section. The Commission shall grant or deny site plan approval by a resolution which shall be filed with the City Clerk-Administrator.
- 1. Expiration, Extension and Revisions.
 - a. Approval of a site plan submitted under the provisions of this Subsection shall expire one year after the date of approval unless construction has commenced in accordance with the approved site plan.
 - b. Should construction not be commenced as specified in this Subsection, approval shall become void; provided, however, that if prior to the date established for expiration of the permit, the permittee makes a written request to the City for an extension of time to commence construction setting forth the reasons for the requested extension, the City Council may grant one extension of not greater than one single year.
 - c. Any request for an extension shall be acknowledged within 15 days and a decision made in that regard within 30 days of receipt by the Planning Commission.
 - d. Any site plan may be revised in the same manner as originally approved.
 - 2. Conditions.
 - a. A site plan may be approved subject to compliance with conditions reasonable and necessary to insure compliance with the requirements contained in this Subsection. Such conditions may, among other matters limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, state the work over time, require the alteration of the site design to insure buffering, and require the conveyance to the local governmental unit or other public entity of certain lands or interests therein.
 - 3. Performance Bond.

- a. Prior to approval of any site plan, there shall be executed by the owner and developer and submitted with the site plan an agreement to construct the required physical improvements, to declare the property or easements, and to comply with the conditions as may have been agreed to. The agreement shall be accompanied by a bond with surety or condition acceptable to the City Council in the amount of the established cost of complying with the agreement.
 - b. The agreement and performance bond required by Part A shall be provided for guaranteeing completion and compliance with conditions within the time to be approved by the City Council, which time may be extended in accordance with Section.
 - c. The adequacy, conditions, and acceptability of any bond under this Subdivision shall be determined by the City Council or any official of the City as may be designated by resolution of the City Council.
4. Appeals.
- a. Appeal from a decision of the Planning Commission approving, disapproving, establishing conditions or setting the bond requirement, may be taken to the City Council within ten days after the decision is filed with the Zoning Administrator. The appeal shall be filed in writing specifying wherein there was an error in the decision of the Planning Commission. The appeal, if timely filed, automatically stays proceedings in the matter until a final determination is made by the Board. The Planning Commission shall transmit to the Board a copy of its decision and findings, and all other maps, plans and exhibits relating to its decision. After hearing the appeal, the Council may, by resolution filed with the Zoning Administrator, affirm, modify in whole or part, or reverse the approval of the Planning Commission. The decision shall contain concurrent findings of fact showing wherein the proposed development meets or fails to meet the site plan requirements set forth in this Subsection and the standards delineated in Section in approving or modifying the approval of a site plan, the City Council may impose such conditions as it shall deem necessary and desirable to protect the public health, safety and welfare and to promote and achieve the intent and purpose of this Section.
5. Fees.
- a. A schedule of fees for the examination and approval of site plans and the inspection of all required improvements and conditions in such plans shall be determined by resolution of the City Council, which may from time to time change the schedule. Prior to approval of any site plan, the fee shall be paid to the Zoning Administrator and be deposited to the credit of the general fund.
- D. Site Plan Approval Standards. No site plan which fails to satisfy the following standards shall be approved by the Planning Commission.
- 1. The applicant shall demonstrate that the proposed development shall be planned, designed, constructed and maintained to avoid substantial probabilities of:
 - a. accelerated erosion.
 - b. pollution contamination, or siltation of water bodies, rivers and streams.

- c. damage to vegetation.
 - d. injury to wildlife habitats.
 - e. increased flood potential.
 - f. decreased groundwater recharge.
2. The applicant shall demonstrate that the types and densities of land use proposed shall be suited to the site and soil conditions and shall not present a threat to the maintenance of the groundwater quality, a potential increase in maintenance cost of utilities, parking areas, or roads, and shall not be subject to problems due to soil limitations, including, but not limited to soil bearing strength, shrink/swell potential, and excessive frost movement.
 3. No development shall be permitted on land having a slope before alteration in excess of 12 percent unless the applicant shall prove that the following conditions shall have been met:
 - a. The foundation and underlying material of any structure, including roads, shall be adequate for the slope condition and soil type.
 - b. Adequate controls and protections exist uphill from the proposed development such that there shall be no danger of structures or roads being struck by falling rock, mud, uprooted trees, or other materials.
 - c. The proposed development shall present no danger of falling rock, mud, uprooted trees, or other materials to structures downhill.
 - d. The view of the developed slope from the river and opposite riverbank shall be consistent with the natural appearance of the undeveloped slope, consistent with any historic areas nearby, compatible with the view from historic areas, and compatible with surrounding architectural features. To the maximum extent possible, the use of natural devices, including vegetation management shall be preferred over the construction of artificial devices, including culverts, holding ponds, walls and terracing.
 - e. All structures other than buildings and roadway surfaces, but including retaining walls shall meet the following design requirements:
 - (1) retaining walls or terrace contours shall not exceed five feet in height;
 - (2) construction shall be of native stone, wood, or cast in place concrete.
 - f. Any lift stations required to service the slope development with local sewer systems shall be designed in accordance with local design standards and approved by the City Engineer. The applicant shall furnish a satisfactory arrangement or agreement by which the cost of maintenance and operation of the lift station are borne by those serviced by the facility.
 - g. No septic tank shall be placed on a slope of greater than 12%. The natural slope shall not be altered in any way where the septic tank system or part thereof is to be located. The drain lines shall be located parallel to contour lines. No on-site sewer system shall be permitted on a parcel that is less than three (3) acres in size.

- h. In no case shall slopes with a natural slope in excess of 45% be developed without submission of a detailed set of construction documents, under the direction of a licensed architect and certified by the architect.
4. During construction and until such time as final control measures are fully implemented and established, adequate development practices shall be maintained to insure that gross soil loss levels (expressed in terms per acre per year) shall not exceed 2 tons per acre per year during construction and one-half tone per acre per year after the construction activities are completed as calculated in accordance with the Uniform Soil Loss Equation, Appendix A of Subsection 1370.04.
5. Development shall not substantially diminish the scientific, historical, education, recreational or aesthetic value of natural areas and unique plant and animal species, and shall not substantially alter the supporting environment necessary for food supply and the reproductive cycle of the species.
6. Erosion protection measures shall make maximum use of natural in-place vegetation rather than the placing of new vegetation on site as erosion control facilities. The use of natural erosion control devices shall be preferred to the maximum extent over the construction of artificial drainage devices including culverts, holding ponds, and ditches.
7. The development shall be located in such a manner as to minimize the removal of vegetation and alteration of the natural topography.
8. The applicant shall demonstrate that there are no feasible or prudent alternatives to cutting trees on the site; development shall be permitted only in such a manner that the maximum number of trees shall be preserved. No trees may be cut except those occupying the actual physical space in which a structure, drive or roadway is to be erected. In the event that solar collection is utilized, trees may be cut to allow sufficient sunlight to the solar collectors if the applicant can demonstrate there are no feasible or prudent alternatives. If trees are cut, the density of trees shall be restored to that which existed before development, but in no case shall the applicant be required to raise the density above 10 trees per acre. The applicant shall demonstrate that all grading which takes place shall be conducted in a manner that preserves the root zone aeration and stability of existing trees and provides an adequate watering area equal to at least one-half of each tree's crown cover.
9. Development in woodlands shall not reduce the existing crown cover greater than 50 percent and shall be conducted in such a manner that the understory and litter shall be preserved.
10. Filling in wetland shall not exceed the excess storage and nutrient stripping capacities of the wetland based on the ultimate projected development of the wetland watershed.
11. Wetlands and other water bodies shall not be used as primary sediment traps during or after construction.
12. The proposed development shall not increase the runoff rate or decrease the natural rate of absorption of storm water.
13. The quality of water runoff and water infiltrated to the water table or aquifer shall be as high after development as it was before development of the site.

14. When filling in a wetland, a minimum amount of filling may be allowed when necessary but in no case shall the following restrictions on total amount of filling be exceeded. Since the total amount of filling which can be permitted is limited, the City, when considering permit applications shall consider the equal apportionment of fill opportunity to riparian land owners.
 - a. Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the projected volume of runoff from the whole developed wetland watershed generated by a 6" rainfall in 24 hours. Any increase in runoff shall be detained for on-site infiltration through the soil to the water table.
 - b. Total filling shall not cause the total natural nutrient stripping capacity of the wetland to fall below the nutrient production of the wetland watershed for its projected development.
 - c. Only fill free of chemical pollutants and organic wastes shall be used.
15. No part of any septic tank system shall be located closer than 150 feet from the edge of a water body or water course unless it can be shown that no effluent shall directly or indirectly reach the water body, water course or wetland.
16. The development shall be consistent with the reasonable preservation of the view of the river corridor from other properties.
17. The grades of any streets shall not exceed 10 percent.
18. Any and all erosion control, storm water runoff, utility access, and similar structures shall be designed to be maintained, cleaned out, and otherwise operated without requiring the crossing of private land without the operation of motorized heavy maintenance vehicles and equipment, such as bulldozers, trucks, and back-hoes, on slopes in excess of 8 percent. As used in this Section, private lands include any out-lots.
19. The proposed development, both vehicular and pedestrian, shall be adequate and consistent with local transportation and thoroughfare planning.
20. The proposed development shall not lessen public access to and along the bluffland, nor shall it lessen public opportunity to view the bluff from the valley below.
21. The conduct of all grading, landscaping, structure placement, and street routing shall be consistent with and to the maximum extent in furtherance of the goals and policies for the development of the Newport Development Guide Plan adopted by the City.

Subd. 7 Bluffland Area Crossings

- A. Utility Facilities. Utility crossings in the critical area corridor or routing within the corridor shall meet the following standards:
 1. Underground Placement. Underground placing of the utility facility shall be required unless economic, technological and land characteristic factors make underground placement feasible. Economic considerations alone shall not be made the major determinate regarding feasibility.
 2. Overhead Crossings. Overhead crossings, if required, shall meet the following criteria:

- a. The crossings shall be adjacent to or part of an existing utility corridor, including bridge or overhead utility lines.
 - b. All structures utilized shall be as compatible as practicable with land use, scenic views, and existing transmission structures in height, material, color, and design.
 - c. Right of way clearance shall be kept to a minimum.
 - d. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements.
 - e. Routing shall avoid unstable soils, blufflines, or high ridges, the alteration of the natural environment, including grading shall be minimized.
 - f. The crossing shall be subject to the site planning approval standards set forth in this Section.
- B. Utility Substations. Utility substations shall be subject to the following standards:
1. All substations shall be subject to the site planning approval standards set forth in this Section.
 2. New substations or refurbishment of existing substations shall be compatible in height, scale, building materials, landscaping and signing with the surrounding natural environment or land uses. Screening by natural means shall be encouraged and shall be compatible with the surrounding environment.
- C. Pipelines. Pipelines and underground utility facilities shall be subject to the following standards:
1. All pipelines and underground facilities shall be subject to the site planning approval standards set forth in this Section.
 2. The facilities shall be located to avoid wetlands, woodlands, and areas of unstable soils.
 3. All underground placing of utility facilities and pipelines shall be followed by revegetation and rehabilitation to the conditions which existed on site prior to development providing the original conditions were environmentally and aesthetically desirable.
- D. Public and Private Roads. New roads crossing the critical area corridor or routed within the critical area corridor shall meet the following standards:
1. Roads shall be constructed to minimize impacts on the natural terrain and natural landscape.
 2. Extreme cuts and fills shall be avoided.
 3. All roads shall be subject to the site planning approval standards set forth in this Section.
 4. New roads shall not utilize the river corridor as a convenient right-of-way for new arterials.
 5. New roads shall be restricted to those facilities needed to access existing and planned residential uses.

Subd. 9 Existing Uses.

- A. Existing Structures. Existing structures, the location, or the use of which is inconsistent with this Subsection shall not be eligible for any permit granted by the City for expansion, change of use, renewal of existing permit, or building permit, unless the following criteria shall be met:
1. The applicant shall provide and maintain adequate screening of the structure from the water through the use of natural vegetative means.
 2. The public's ability to view the bluff from existing public streets shall not be further degraded by the proposed activity.

Subd. 10 On Site Sewer Disposal.

- A. Purpose and Intent. The following regulations are adopted for the purpose of:
1. Regulate individual sewer disposal systems so as to prevent contamination of underground bodies of water, streams or other bodies of water.
 2. Prevent individual sewer disposal systems from creating a health hazard and/or a nuisance for the general public or for individuals.
- B. General Requirements.
1. Location and installation of the individual sewage disposal system and each part thereof shall be such that with reasonable maintenance it shall function in a sanitary manner and shall not create a nuisance nor endanger the safety of any domestic water supply. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, depth of ground water, geology, proximity to existing or future water supplies, accessibility for maintenance, and possible expansion of the system.
 2. No part of the system shall be located so that it is nearer to any water supply, or so that surface drainage from its location may reach any domestic water supply.
 3. Raw sewage, septic tank effluent, or seepage from a soil absorption system shall not be discharged to the ground surface, abandoned wells or bodies of surface water, or into any rock formation the structure of which shall not be conducive to purification of water by filtration, or into any well or other excavation in the ground. This requirement shall apply to the disposal of sewage in accordance with a process approved by the State Board of Health or the Water Pollution Control Commission.
 4. The lot size shall be three (3) acres minimum in size to permit installation of the individual sewage disposal system in accordance with all the requirements pertaining thereto.
 5. Installation of individual sewage disposal systems shall not be made in low swampy areas or areas which may be subject to flooding.
 6. In areas with a high ground-water table or where limestone or any geological formation similarly faulty is covered by less than fifty (50) feet of earth, the final disposal unit shall be a tile field. The bottom of the trenches shall not be less than four (4) feet above the highest known or calculated water table or the surface of the faulty rock formation.

7. Bulldozers, trucks or other heavy machinery shall not be driven over the system after installation.
8. The system or systems shall be designed to receive all sewage from the dwelling, building or other establishment served, including laundry waste and basement floor drainage. Footing or roof drainage shall not enter any part of the system. Where the construction of additional bedrooms, the installation of mechanical equipment, or other factors likely to affect the operation of the system can be reasonably anticipated, the installation of a system adequate for such anticipated need shall be required.
9. The system shall consist of a building sewer, a septic tank, and a soil absorption unit. The soil absorption unit shall consist of a sub-surface disposal field. All sewage shall be treated in the septic tank and the septic tank effluent shall be discharged to the disposal field. The septic tank drain field system shall be considered the only acceptable system for installation unless it can be demonstrated that this system is not feasible on the particular lot in question and if it can be demonstrated that the system being proposed as an alternate shall not create a pollution problem.
10. Soil absorption systems for the disposal of sewage waste shall not be installed on land where the slope exceeds twelve percent (12%).
11. The system or systems shall be subject to approval by the City Engineer. No permits shall be granted by the Building Inspector until a report has been filed by the City Engineer. All regulations of this Section shall be in addition to and not in lieu of regulations imposed by the Pollution Control Agency or other State regulation regarding individual sewage treatment standards.

C. Maintenance Requirements.

1. At least once a year the owner of any septic tank or his or her agent shall measure or arrange for measurement of the depth of sludge and scum in the septic tank. When, as a result of the measurement the top of the sludge layer in the tank or any compartment of the tank is found to be less than twelve (12) inches below the bottom of the outlet baffle or submerged pipe, or if the bottom of the scum layer is less than three (3) inches above the bottom of the septic tank outlet baffle or submerged pipe, the owner or agent shall arrange for the removal and sanitary disposal of sludge and scum from the tank; provided that the requirement for measuring shall be waived for any septic tank which is cleaned as indicated at least once each calendar year.
2. At least once each year the owner of any system equipped with a distribution box shall arrange for the opening of the distribution box and the removal of any settled solids therein. The material shall be disposed of to the septic tank or by other means acceptable to the Zoning Administrator.
3. At least once between May 1 and June 30 of each year the depth of liquid in each seepage pit shall be measured. When, as a result of the measurement it is found that the liquid level in the pit is less than one foot below the inlet, a second measurement shall be made eight (8) to twelve (12) hours after the first measurement, during which time no liquid shall be discharged into the seepage pit. If, as a result of the second measurement, it is found that the liquid level in the pit has not lowered at least two (2) feet during the indicated period of time, an additional seepage pit or other acceptable soil absorption system shall be provided.
4. Servicing of septic tanks and soil absorption units shall conform to the Minnesota Department of Health and Minnesota Pollution Control Agency specifications. Disposal of sludge and scum

removed from the system shall be:

- a. into a municipal sewer disposal system where practicable.
- b. in the absence of a public sewer, at a disposal site approved by the Zoning Administrator.
- c. sludge shall not be discharged into any lake or water-course nor upon land without burial.

D. Alternative Systems.

1. Alternative methods of sewage disposal such as holding tanks, electric or gas incinerators, biological and/or tertiary treatment plants or land disposal systems, wherever required or allowed in particular circumstances, shall be subject to the standards, criteria, rules and regulations of the Minnesota Department of Health and Minnesota Pollution Control Agency.

1370.08 Conservation Residential Overlay District.

Subd. 1 Findings. The City finds that the lands and resources within the Conservation Residential Overlay District are a unique and valuable resource to the community. The prevention of irreversible damage to the bluffs, woodlands and other resources, and preservation and enhancement of its natural, aesthetic, cultural and historical values will further the health, safety, and general welfare of the City.

Subd. 2 Purpose and Intent. The Conservation Residential Overlay District is established to protect the bluffs, woodlands and other resources of the District by allowing the development of Conservation Residential Subdivisions (CRS), providing for the protection of ecologically significant areas, natural landscapes, scenic attributes, open space, and cultural features, as an alternative to standard single-family residential plats in the District.

Subd. 3 Objectives. The objectives of this district are to:

- A. Preserve natural resources as identified in the Comprehensive Plan.
- B. Preserve permanent natural habitat and vegetated corridors for the movement of wildlife.
- C. Provide commonly owned open space areas and trails for passive and/or active recreational use by residents of the development and where specified, the larger community
- D. Reduce the costs of construction and maintenance of public facilities, infrastructure and services.
- E. Provide for efficient use of the land while maintaining contiguous blocks of mature woodlands, open space, natural habitat and corridors, scenic views, natural drainage systems, and other desirable features of the natural environment.
- F. Encourage innovation and promote flexibility, economy and creativity in residential development.

Subd. 4 Establishment of Conservation Residential Subdivision Overlay District. A Conservation Residential Overlay District with its attendant regulations shall be hereby established as part of the Zoning regulations of Newport, Minnesota. This district shall overlay the existing Residential Estate (RE) Zoning District so that any parcel of land lying in the overlay district shall also lie in the underlying established zoning district. Territory within the overlay district shall be subject to the requirements established in this Section, as well as restrictions and requirements established by other applicable Code Sections, the Subdivision Ordinance, and other ordinances and regulations of the City. Within the overlay district, all uses shall be permitted in accordance with the regulations for the underlying zoning district provided, however, that such uses shall not be entitled to or issued the appropriate development permit until they have first satisfied the additional requirements established in this Subsection.

Subd. 5 District Boundaries. This Subsection shall apply to the Conservation Residential Overlay District which shall be specially delineated on the official zoning map of the City for purposes of determining the application of this Subsection to any particular parcel of land. The above-referenced map shall be on file in the office of the Zoning Administrator and shall be available for inspection and copying.

Subd. 6 Definitions.

- A. Community Garden. "Community garden" shall mean land which is cultivated by the residents of the development for the production of trees, vegetables, fruits, flowers, herbs and grasses for the residents' use.
- B. Conservation Easement. "Conservation Easement" shall mean an interest in real property created in a manner that imposes limitations or affirmative obligations in regard to the use of property including the retention, protection and maintenance of natural resource and open space.
- C. Conservation Residential Subdivision (CRS). "Conservation residential subdivision" shall mean a grouping of residential structures on smaller lots than allowed in the specific zoning district, leaving some land dedicated as open space for the protection of ecologically significant areas, natural landscapes, scenic attributes, open space and cultural features.
- D. Cultural Resource. "Cultural resource" shall mean the historic and archeological characteristics of the land, including buildings and landscapes, which provide information regarding the history of Newport and its people.
- E. Homeowners Association. "Homeowners association" shall mean a formally constituted non-profit association or corporation made up of the property owners and/or residents of the development for the purpose of owning, operating and maintaining common open space and facilities.
- F. Neighborhood. "Neighborhood" shall mean an area containing a contiguous group of residential lots where people live in close proximity to one another.
- G. Open Space. "Open space" shall mean land used for agriculture, natural habitat, pedestrian corridors and/or recreational purposes, that is undivided and permanently protected from future development.
- H. Perimeter Road. "Perimeter road" shall mean a road lying outside of and abutting the development parcel.
- I. Plant Community. "Plant community" shall mean a grouping of plants with common environmental requirements living within the landscape, i.e., wetlands, grasslands, woodlands.
- J. Protective or Restrictive Covenant. "Protective or restrictive covenant" shall mean a contract entered into between private parties that constitutes a restriction of the use of a particular parcel of property.
- K. Resource Inventory. "Resource inventory" shall mean a survey of the land's features including its natural resources, cultural resources, scenic views and physical characteristics.

Subd. 7 Applicability. The Conservation Residential Subdivision (CRS) standards are an alternative set of standards for residential development within the RE (Residential Estate) district. CRS shall be permitted with a conditional use permit within that district.

Subd. 8 Application Procedure. All procedures for a standard subdivision as provided in the Subdivision Ordinance shall be followed for a CRS. A conditional use permit is required for a CRS.

In addition, the application process and requirements for CRS include the following:

- A. Meeting with potential easement holders. In addition to a pre-application meeting with the city, it is recommended that the applicant meet with potential conservation easement holders in order to be made fully aware of any procedures, policies or other issues regarding the easement required and the CRS.
- B. Meeting with the city. The applicant shall meet with the City to prior to the preparation and submittal of the sketch plan for the CRS.
- C. Conditional Use Permit. A permit application shall be filed, in writing with the City, including the items identified in Section 1310.10 and in Chapter 12, Section 401. In addition to those criteria, the following items shall be submitted as part of the Sketch Plan for a CRS:
 - 1. Topographic contours at 2-foot intervals, showing rock outcrops and slopes of more than 12 percent.
 - 2. Soil type locations and identification of soil type characteristics such as depth to bedrock and suitability for wastewater disposal systems.
 - 3. Hydrologic characteristics, including surface water bodies, floodplains, wetlands, natural swales and drainageways.
 - 4. A resource inventory, including vegetation of the site, according to general cover type [pasture, woodland, etc., using the Minnesota Land Cover Classification System (MLCCS)]. The cover type map shall define the boundaries of wetlands and woodland areas and identify any stand-alone trees with a caliper of more than 8 inches when measured at a point four feet above the ground level. The resource inventory shall also include all resources identified on the site or adjacent areas by the Minnesota DNR Natural Heritage Program.
 - 5. Current land use, existing buildings and structures, paved areas, and all encumbrances, such as easements or covenants.
 - 6. Visual resources, showing views onto the tract from surrounding roads and public areas, as well as views within the tract.
 - 7. Cultural resources, including a historic buildings and structures, archaeological features, and historically important landscapes.
 - 8. Context: general outlines of existing buildings, land use, and natural features, such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph at a scale of no less than 1 inch: 500 feet.
 - 9. General location map.
- D. Yield Plan. The applicant shall submit a “yield plan” with the Sketch Plan showing the maximum number of dwelling units that would be permitted given the minimum lot size, lot widths, and other requirements of the Development Code and Subdivision Regulations for a conventional subdivision in the RE Residential Estate district. The yield plan need not be

engineered, however, it shall be drawn to scale and it shall identify all the major physical features on the parcel.

The minimum lot area for in RE Residential Estate zoning district are as following

	Minimum Lot Size	Minimum Lot Width
Lots with Municipal Sewer	2 Acres	160 Feet

- E. Concept Subdivision Plan. The Sketch Plan application shall include one or more CRS subdivision plans to scale, meeting the intent of this Chapter and including at least the following information:
1. Open space areas indicating which areas are to be protected and their size, configuration and location within the subdivision.
 2. Boundaries of areas to be developed and proposed street and lot layout.
 3. Number and size of proposed lots.
 4. Number and type of housing units proposed.
 5. Areas proposed for stormwater management and on- or off-site sewer systems
- F. Phasing Plan. CRS may be phased developments in accordance with a unified development plan for the entire tract meeting the following requirements.
1. A phasing plan identifying the sequence of development showing approximate development areas in each phase, serially numbered with a description of each phase. Information shall be provided regarding the number of dwelling units, proposed improvements, and common facilities for each.
 2. The phasing plan shall be made a part of the conditional use permit and is effective for five (5) years from the date of preliminary plat approval. If final plat approval is not received within five (5) years, the permit shall become null and void.
 3. Any common facilities shall be constructed prior to the sale of any lots and shall be clearly marked on a site map which shall be an attachment to all sales agreements for individual lots.
 4. As part of the development agreement, a financial guarantee to ensure completion of common facilities, trails and landscaping shall be provided.
- G. Application Process. Upon submittal of a Sketch Plan, the Conditional Use Permit application for the CRS shall be processed according to the Subdivision process required in Chapter 12 Subdivision Ordinance.

Subd. 9 Uses.

- A. The uses permitted within the CRS are the same as those permitted in the underlying zoning district.

- B. Open Space. The following uses are allowed uses in the designated open space:
1. Conservation of natural community areas (i.e. woodlands, prairies)
 2. Community gardens
 3. Recreational uses intended mainly to serve the residents of the development
 - a. Non-motorized trails (walking, skiing, cycling, horseback riding)
 - b. Picnic areas
 - c. Community gardens
 - d. Composting (for organic waste generated by residents of the development).
 - e. Turf areas for informal play.
 - f. Common areas such as greens or squares
 - g. Ballfields, playgrounds, courts (tennis, basketball, etc.)
 - h. Common recreational buildings
 4. Stormwater management facilities
 5. Recreational uses available to the public, including:
 - a. Trails
 - b. Playgrounds
 - c. Ballfields, courts (tennis, basketball, etc.)

Subd. 10 Development Standards for CRS

- A. Minimum land area. To be eligible for Conservation Residential Subdivision, the development must contain a minimum of 20 acres.
- B. Minimum open space. A minimum of 35 percent of the gross land area of the development site shall be dedicated as preserved open space protected by a conservation easement or deed restrictions in favor of the city. Of that 35 percent, 50 percent shall be developable area, a bluff area, or a significant natural area identified by the Minnesota DNR.
- C. Open space requirements. Open space intended to be preserved as part of a CRS preservation development shall meet the following criteria:
 1. Open space shall be protected by the placement of a conservation easement or deed restriction over the open space and used for the purposes as defined by this Ordinance. The conservation easement shall be dedicated to the City, an acceptable land trustee or other similar organization as approved by the City.

2. Open space shall be in an accessible, contiguous, connected configuration including or adjacent to existing natural areas or parks when feasible. Open space may be considered contiguous and connected if separated by a local street.
3. Open space in long, narrow corridors in back yards does not qualify as open space for conservation easements.
4. Open space shall be maintained free of noxious weeds, litter or debris.
5. Open space shall be owned by an individual, homeowners' association, city or other legal entity that will use the land for open space purposes pursuant to the conservation easement.
6. The City shall have the option to require that shoreline, areas along streams, areas within significant natural communities identified by the Minnesota DNR or areas in natural resource corridors be included as preserved open space.
7. The City shall have the option to require that a public trail corridor be dedicated within the open space area if the City's Comprehensive Park and Trail Plan has identified a trail corridor near the area.
8. A financial guarantee ensuring the construction and completion of the common facilities shall be submitted to the City Administrator.

D. Residential Lot Requirements.

1. Minimum Lot Size: 1 Acre in areas without municipal sewer service.
2. Principal Building Setbacks

<i><u>Areas without city sewer</u></i>	
a. Front lot line	30 feet
b. Side lot line	15 feet
c. Rear lot line	30 feet
3. Accessory Building Setbacks

a. Side lot line	15 feet
b. Rear lot line	10 feet
4. Maximum lot coverage: 25%
5. Maximum building height: 35 feet
6. All lots shall take access from interior local streets developed as part of the CRS. A local street may separate lots from the open space.

E. Neighborhood Siting Standards

1. CRS neighborhoods shall be located to minimize their impacts on the natural, scenic and cultural resources of the site.
2. Fragmentation of open space shall be minimized.

3. CRS shall minimize disturbance to woodlands, mature trees or other significant vegetation.

F. Water and sewer systems

1. Water may be provide by individual on-site wells, or by one or more community wells in open space areas, meeting all State Department of Health requirements, or if available within 125' by connection to the municipal water system water for domestic use shall be provided by connecting to the municipal water system.
2. If a municipal sewer system is not available within 125', individual sewage treatment systems are required to be located on each individual lot, except as otherwise approved by the City Council. The developer must identify both primary and secondary on-site system locations.
3. The City may approve a centralized wastewater treatment system and smaller individual lots, provided the applicant can show compliance with MPCA standards and City standards, and would have no adverse impact on the environment or neighboring properties. Centralized wastewater treatment systems may be located in common open space within an easement. The area of land dedicated for the centralized wastewater treatment system may be located in the common open space, but this area shall not be included in the land area required to be dedicated for preserved open space. A sewage treatment system management plan must be submitted to the City that must be reviewed and approved prior to being recorded with the final plat. The plan shall clearly identify the following:
 - a. The applicant must provide the following information to support the proposed primary and secondary septic sites:
 - i. Hydrologic study prepared by a qualified individual for the proposed septic site.
 - ii. A minimum of 4 soil borings on each primary septic site and 2 soil borings on each secondary site.
 - iii. Percolation tests for the primary septic site.
 - iv. Well locations for the proposed development
 - b. The applicant must provide a management (replacement and repair) plan for centralized wastewater treatment system as approved by the City. The management plan must be reviewed and approved by the City Council and recorded with the final plat. The plan should clearly identify the following:
 - i. The ownership of the centralized wastewater treatment system.
 - ii. An annual schedule for maintenance, inspection and monitoring of the centralized wastewater treatment system.
 - iii. Contingency plan in the event of failure of the centralized wastewater treatment.
 - iv. Provisions describing how the sewage treatment portion of the system will be protected from vehicles, animals, humans and other sources of risk
 - v. Assignment of responsibility for the management of land payment for the centralized wastewater treatment system
 - vi. The name and license number of the system's designer.

Subd. 11 Calculation of Bonus Density for Open Space. A CRS that provides the minimum open

space and meets the open space requirements identified in this Section shall receive a 20% bonus.

Subd. 12 Homeowners' Associations

- A. A Homeowners' Association shall be established if the open space is owned by a homeowners' association. Membership in the Association is mandatory for all purchasers of homes in the development and their successors.

A Homeowners' Association Agreement, guaranteeing continuing maintenance, shall be submitted to the City as part of the data required for the preliminary plat. The Homeowners' Association documents or the declaration of covenants, conditions and restrictions shall contain the following information:

1. The legal description of the common lands or facilities;
2. The restrictions placed upon the use and enjoyment of the lands or facilities including the persons or entities entitled to enforce the restrictions.
3. A mechanism for resolving disputes among the owners or association members;
4. A mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums;
5. The conditions and timing of the transfer of ownership and control of land or facilities to the Association or to common ownership;
6. The management of collector sewage treatment systems, if applicable.
7. Any other matter the developer or City deems appropriate.

1370.09 River Redevelopment Overlay District.

Subd. 1 Findings. The City finds that the development of new transit facilities in the MX-3 Transit-Oriented Mixed Use District and redevelopment of the MX-3 District will benefit the general health and welfare of the residents of Newport by fulfilling needs for housing, transportation, and employment. Redevelopment in the MX-3 District may encourage redevelopment of adjacent industrial zoning districts in the long-term. Redevelopment in adjacent areas should be coordinated with the City's long-range plans for the MX-3 District to benefit the community and make the best use of public and private investment in the area.

Subd. 2 Purpose and Intent. The River Redevelopment Overlay District is created to coordinate future redevelopment in the overlay district with redevelopment in the adjacent MX-3 Transit-Oriented Mixed Use District.

Subd. 3 Objectives. The objectives of this district are to:

- A. Provide for City review of proposed new uses and redevelopment of parcels in within the River Redevelopment Overlay District.
- B. Coordinate redevelopment within the Overlay District with redevelopment plans and activities in the adjacent MX-3 Transit-Oriented Mixed Use District.
- C. Implement the City's concept plans for redevelopment in and around the MX-3 District by creating connections to the Mississippi River.

Subd. 4 Establishment of the River Redevelopment Overlay District. A River Redevelopment Overlay District with its attendant regulations shall be hereby established as part of the Zoning regulations of Newport, Minnesota. This district shall overlay the existing I-1 and I-2 Zoning Districts so that any parcel of land lying in the overlay district shall also lie in the underlying established zoning district. Territory within the overlay district shall be subject to the requirements established in this Section, as well as restrictions and requirements established by other applicable Code Sections, the Subdivision Ordinance, and other ordinances and regulations of the City. Within the overlay district, all existing uses shall be permitted in accordance with the regulations for the underlying zoning district provided, however, parcels within the overlay district shall not be entitled to add new uses or redevelop their sites until they have first satisfied the additional requirements established in this Subsection.

Subd. 5 District Boundaries. This Subsection shall apply to the River Redevelopment Residential Overlay District which shall be delineated on the official zoning map of the City for purposes of determining the application of this Subsection to any particular parcel of land. The above-referenced map shall be on file in the office of the Zoning Administrator and shall be available for inspection and copying.

Subd. 6 Definitions.

- A. Redevelopment. "Redevelopment" is the construction of new buildings, facilities or uses on a site that has existing uses.

Subd. 7 New Uses Permitted. Permitted uses in the River Redevelopment Overlay District are those uses which are acceptable to any overall redevelopment plan adopted by the City and specific redevelopment plans approved by the City. Uses permitted in the MX-3 District are permitted within

the River Redevelopment Overlay District. Upon approval of the specific redevelopment plans, the City shall determine the specific uses that are permitted within the development.

Sub. 8 New Uses Excluded. The following types of uses are not permitted in the River Redevelopment Overlay District:

- A. Uses which may be dangerous, create annoying odors, noise disturbances or be otherwise detrimental to the general welfare of persons residing or working in the vicinity thereof or may impair the use, enjoyment or value of any property.
- B. Trucking terminals.
- C. Uses whose operation requires the outdoor storage of materials or equipment, including the outdoor manipulation of said materials or equipment.
- D. Uses whose principal operation requires the outdoor storage of motor vehicles, including the outdoor manipulation of said motor vehicles.

Subd. 9 Process for Approval of Redevelopment Plans. Plans for each new use or redevelopment project or combination of projects in the River Redevelopment Overlay District must be submitted to the City Administrator for concept plan review. Site plan approval is required for all new construction in the River Redevelopment Overlay District. Applications and process for site plan approval shall follow the requirements for site plan approval identified in Section 1350.17.