

# Town of Duluth Zoning Ordinance Number 6 April 20, 2022



#### **Incorporating**

- **Amendment 6.1, Adopted  
July 14, 2022**
- **Amendment 6.2, Adopted  
December 8, 2022**

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## Article I: Establishment and Purpose

### Section 1 Title

Zoning Ordinance for the Town of Duluth, Minnesota, otherwise known as Ordinance Number 6.

### Section 2 Repealer

This Ordinance hereby repeals and replaces Ordinance Number 5, Zoning Ordinance for the Town of Duluth, Minnesota as amended Dec. 31, 2015

### Section 3 Intent and Purpose

**A. Purpose.** The purpose of this Ordinance is threefold.

1. To protect, preserve and enhance healthy ecosystems for future generations and recognize the interconnectedness and interdependence of humans and ecosystems. Healthy ecosystems are the basis for healthy sustainable communities.
2. To preserve and enhance ruralness and community life in the Township.
3. To strive for a balance between community needs and individual freedoms.

**B. Goals.** Goals of this Ordinance include the following.

1. Nurture and advocate for healthy ecosystems by recognizing, protecting, and enhancing ecosystem services. These ecosystem services include those that provide humans and nonhumans with food, fresh water, shelter, fiber, fuel, etc. and include the basic ecosystem services of nutrient recycling and soil formation necessary for the production of resources.
  - a. Recognize and support the role ecosystems serve in regulating climate, regulating and purifying water, and regulating diseases.
  - b. Recognize and support the role ecosystems play in providing aesthetic value, natural and spiritual connections, and opportunities for education and recreation.
  - c. Encourage the most appropriate use of land in the Township to support healthy ecosystems.
  - d. Regulate land use in accordance with the Comprehensive Land Use Plan to support healthy ecosystems.
2. Preserve and enhance the ruralness of the Township through, but not limited to, the following:
  - a. Divide the Township into zones and regulate the uses of land and placement of structures.
  - b. Encourage the most appropriate use of land in the Township.
  - c. Regulate land use in accordance with the Comprehensive Land Use Plan.
  - d. Promote orderly development by concentrating intensive uses such as businesses, industrial uses, and denser residential areas. In predominantly rural areas integrate residential and rural uses favoring agricultural uses.
  - e. Regulate the location, height, and bulk of structures.
  - f. Regulate setbacks.
  - g. Regulate size and width of lots and other open spaces.

### Section 4 Adult Uses

Adult uses are governed by Town of Duluth Zoning Ordinance Number 3A, adopted June 2006, which is supplementary to this Zoning Ordinance and is expressly incorporated herein. Zoning Ordinance 3A's length and the publishing costs associated with it have led to a decision to have it be supplementary to this Ordinance and not published herein. Copies of Zoning Ordinance Number 3A regulating adult uses can be

obtained from the Duluth Town Clerk upon request.

## **Section 5 Consistency with County Zoning**

As directed by Minn. Stat. § 394.33, subd. 1, the official land use controls of the Town shall not be inconsistent with or less restrictive than the standards prescribed in the official controls adopted by the County. The Town may adopt official controls, including shoreland regulations, which are more restrictive than provided in the controls adopted by the County.

## Article II: Definitions

**Accessory Use or Structure** – A use or structure, not a dwelling, located on the same lot and customarily incidental and subordinate to a principal use or structure.

**Agricultural Land** – Land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but not including any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use.

**Airport** – A commercial enterprise either on land or water, that is regularly used or intended to be used for the landing and take-off, storage, or servicing of aircraft.

**Airstrip** – A non-commercial landing strip for aircraft intended for individual, private use.

**Animal Hospital** – A facility used in the care and treatment of animals.

**Animal, Regulated** – (1) All members of the Felidae family including, but not limited to, lions, tigers, cougars, leopards, cheetahs, ocelots, and servals, but not including domestic cats or cats recognized as a domestic breed, registered as a domestic breed, and shown as a domestic breed by a national or international multibreed cat registry association; (2) bears; and (3) all nonhuman primates, including, but not limited to, lemurs, monkeys, chimpanzees, gorillas, orangutans, marmosets, lorises, and tamarins.

**Animal Unit** – The number of acres per animal required for various types of animals.

**Attorney** – The Attorney for the Town of Duluth, Minnesota, or authorized representative.

**Auditor** – The County Auditor of St. Louis County, Minnesota, or authorized representative.

**Basement** – A space having over 25% of its floor to ceiling height below the average adjoining ground level and with a floor-to-ceiling height of not less than seven and one-half (7½) feet.

**Bluff** – A topographic feature such as a hill, cliff, or embankment having the following characteristics:

1. Part or the entire feature is located in the Lake Superior Shoreland Overlay (LSSLO) or the Streams Shoreland Overlay (SSLO);
2. The slope rises at least 25 feet above the ordinary high water level (OHWL) of the water body;
3. An area with an average slope of less than 18 percent over a distance of 50 feet or more shall not be considered part of the bluff;
4. The grade of the slope from the toe of the bluff to a point 25 feet or more above the OHWL averages 30 percent or greater;
5. The slope must drain toward the water body.

**Bluff Impact Zone** – A bluff and land located within 20 feet from the top of a bluff.

**Board of Adjustment** – The Board of Adjustment for Duluth Township, Minnesota, as created by ordinance pursuant to Minnesota Statutes 462.354 and all acts amendatory thereof. In amendments to this Ordinance implemented August 2009, the existence of a Board of Adjustment as a separate body within Duluth Township was terminated. Statutory authorities associated with the Board of Adjustment have been assigned to other bodies as described in **Article XIV**.

**Boathouse** – A structure along the shore, designed and used solely for the storage of watercraft and directly related equipment.

**Borrow Pit** – See **Extractive Uses**

**Buffer** – Open spaces, landscaped areas, fences, walls, or berms used to separate, screen, or visually block one use from another.

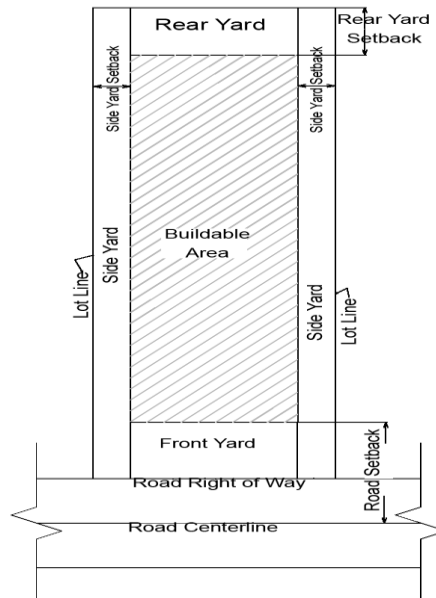
**Building** – Any structure for the shelter, support or enclosure of persons, animals, or property of any kind.  
(see also **Structure**)



**Building Line** – A line parallel to a lot line or the ordinary high water level at the required setback beyond where a structure may not extend. (See **Figure 1**)

**Buildable Lot Area** – The area of a lot exclusive of public rights-of-way, building setbacks or wetlands, that is at least 3 (three) feet above the ordinary high water line. (See **Figure 1**)

**Figure 1**  
**Identifying Setbacks, Yards, Buildable Area**



**Commercial Use** – The principal use of land or buildings is for the sale, lease, rental, or trade of products, goods, and services, the nature of which is not covered by more specific definitions (e.g., highway commercial).

**Commercial, Principal Structure Mixed Use** – A multi-use, multi-purpose structure that physically and functionally provides space to integrate residential, commercial and public uses. To be considered a mixed-use structure, a structure must have at least 33 percent of its total square footage used by one of the three major land uses that is different than its principal use. For example, a structure that has office space on the ground floor and apartment units on the top floor would be considered mixed-use residential or mixed-use office space.

**Community Center Facility** – A building, group of buildings, or use of land intended to serve a community's educational, recreational, and service activities, typically containing space for a meeting hall, town garage, post office, or fire hall.

**Conditional Use** – A land use or development that would not generally be appropriate without restriction throughout the zone district but which, if controlled as to number, area, size, location, design, performance, or relation to the neighborhood, and as to compatibility with official Town of Duluth plans, would not be injurious to the public health, safety, order, comfort, appearance, prosperity or general welfare.

**Concept Plan** – A drawing to rough scale showing initial ideas regarding a proposed use.

**Day Care Facility** – A licensed nonresidential program with a licensed capacity of 12 or fewer persons and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445, to serve 14 or fewer children shall be considered a permitted single-family residential use of property for the

purposes of zoning and other land use regulations. (MN Statutes)

**Deck (attached)** – A horizontal, unenclosed platform that is attached, or functionally related to a structure. An attached deck shall have no roof, extended soffit, nor walls, but may have railings, seats, or other related features. An attached deck is considered an accessory structure.

**Deck (detached)** – A horizontal, unenclosed platform that is freestanding, greater than 18 inches in height above grade at any point, and not attached nor functionally related to a structure. A detached deck shall have no roof, extended soffit, nor walls, but may have railings, seats or other related features. A detached deck is considered an accessory structure. (see also **Structure**)

**Driveway** – A way not designed or intended to serve as a road; rather a driveway. Provides access for not more than two dwellings or other principal uses to a road at a density not higher than two dwellings per quarter-quarter section (40 acres) or government lot. Private access to agricultural land by culverting a ditch solely for the purpose of agricultural access to the property shall not constitute a driveway.

**Dwelling** – Any structure designed or used as the living quarters for one or more households.

**Dwelling, Accessory, Subordinate Residential** – An accessory residential structure to accommodate family members.

**Dwelling, Accessory, Guest Cottage** – A non-commercial residential dwelling used by property owners for temporary guests.

**Dwelling, Primary, Leased in Public Forest Land Zone Districts** – A dwelling on land leased by St. Louis County or the State of Minnesota.

**Dwelling, Principal, Duplex** – A dwelling structure on a single lot having two (2) units, that share common walls. Each unit is equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

**Dwelling, Principal, High-Frequency Short-Term Rental** – A rental of a single-family residential dwelling for less than or equal to thirty (30) days at a frequency greater than four (4) times per calendar year. Short-term rentals are only allowed in principal single-family residential dwellings that are occupied by the owner as a primary residence for at least 9 months of the year. The allowable number of days a high-frequency short-term rental may be rented will be no more than 60 days per year with the year commencing on the start date of the rental as established in the Interim Use Permit. There shall be only one single-family dwelling short-term rental in the Township per owner.

**Dwelling, Principal, Long-term Rental** – A rental of a principal single-family residential dwelling for greater than thirty (30) days. The dwelling cannot be occupied by the owner of the dwelling during the rental period.

**Dwelling, Principal, Residential Bed and Breakfast** – A principal single-family dwelling containing from one (1) to six (6) dwelling units providing lodging accommodations by prior arrangement, for compensation, with restrictions on the time involved. The primary residence in the building must be occupied by the building owner on a permanent basis. It includes serving of meals to guests.

**Dwelling, Principal, Single-Family** – A detached residence, including a mobile or manufactured home, designed for one (1) family only and having an approved sewage disposal system.

**Dwelling, Principal, Single-Family, Hosted High-Frequency Short Term Rental** – A rental of part of a principal, single-family dwelling where the owner occupies the dwelling during the rental period. The rental is for less than or equal to thirty (30) days at a frequency greater than four (4) times per calendar year.

**Dwelling, Principal, Single-Family, Low-Frequency Short-Term Rental** – A rental of a principal, single-family dwelling for less than or equal to thirty (30) days that does not occur more than four (4) times per calendar year.

**Dwelling, Principal, Social Service** – A residential facility licensed by the State of Minnesota or the St. Louis County Social Services Department which serves persons with special needs. Residences for

government authorized social service programs with a maximum occupancy of six (6) residents shall be considered as a principal, residential single-family dwelling.

**Dwelling, Principal, Triplex, or Quad** – A principal, residential dwelling structure on a single lot having three (3), or four (4) units, that share common walls. Each unit is equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

**Dwelling Site** – A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

**Dwelling Unit** – Any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel and resort rooms, and cabins.

**Dwelling Unit, Planned Unit Development** – Individual dwelling component providing sleeping, bathing, and sanitary services generally accessible from a separate entrance, including facilities known as lockouts.

**Easement** – A non-possessing interest held by one person, group or government in land of another person whereby the first person, group or government is accorded partial use of such land for specific purposes. Easements fall into three broad classifications: surface easements, subsurface easements, and overhead easements.

**Ecosystem** – A community or group of living organisms that live in and interact with each other in a specific environment. The living and physical components are linked together through nutrient cycles and energy flows. Ecosystems may be of any size but are usually particular to a place.

**Ecosystem Services** – Benefits from ecosystems are referred to as “ecosystem services.” These services are commonly divided into four components:

1. Support: Ecosystems provide services such as nutrient recycling and soil formation, and are necessary for primary production of resources.
2. Provisioning: Ecosystems provide humans and non-humans with food, fresh water, shelter, wood, fiber, fuel, etc.
3. Regulation: Ecosystems serve to regulate climate, regulate and purify water, and regulate diseases.
4. Cultural: Ecosystems provide humans with a certain aesthetic and provide for spiritual connections, educational opportunities and recreational opportunities.

**Erosion Hazard Area** – Those areas susceptible to erosion and identified in the maps by the North Shore Management Plan detailing Lake Superior shoreline’s Erosion Hazard Areas.

**Extractive Uses** – Use operations involving excavation, removal, storage, or processing of borrow or aggregate material, such as but not limited to borrow pits and gravel pits.

**Family** – Any person or group of persons whether related by blood or marriage.

**Farm Stand** – A temporary accessory structure used for the retail sale of fresh fruits, eggs, vegetables, flowers, herbs, or plants. It may also involve the accessory sales of other unprocessed foodstuffs, home processed food products such as jams, jellies, pickles, sauces or baked goods, and homemade handicrafts. No commercially processed or commercially packaged foodstuffs shall be sold at a farm stand unless those products are produced on the farmstead.

**Feedlot** – A lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. “Feedlot” does not include a winter grazing or feed area where animals are normally pastured at other times of the year, or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, or areas used for animal husbandry and normal farming practices, provided that the bare soil area is not a significant source of pollution to waters of the state.

**Filter Strip** – The use of land topography and native vegetation to provide runoff, erosion, and sedimentation control.

**Fish Cleaning House** – An accessory structure used for the cleaning of fish.

**Foundation** – Permanent footings and walls for a structure that extend to the frost line or ledge-rock, are intended to carry the weight of the structure, and are made of masonry, concrete or treated wood.

**Gazebo** – A freestanding roofed structure usually open on the sides.

**Gravel Pit** – See **Extractive Uses**

**Greenhouse, Industrial and Commercial** – A wholesale business whose principal activity is the growing and selling of plants or crops, having one or more structures with roofs and sides made largely of glass or other transparent or translucent materials that, in order to function as intended, requires non-passive systems which may include, but are not limited to, mechanical systems, artificial lighting, plumbing, and ventilation.

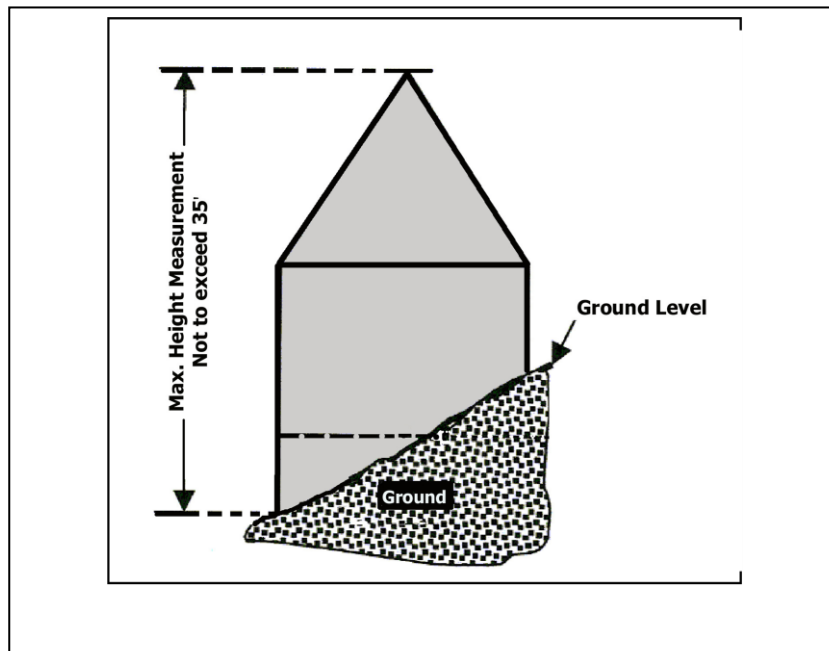
**Greenhouse, Farmstead** – An accessory structure primarily used to extend the growing season of plants or ornamental crops for use on the farm or for retail sales on or off the farm. A structure with roof and sides made largely of glass or other transparent or translucent materials and in which lights, mechanical systems, irrigation, temperature and humidity can be regulated for the cultivation of delicate or out of season plants.

**Greenhouse, Residential** – An accessory structure with roof and sides made largely of glass or other transparent or translucent materials and in which temperature and humidity can be regulated for the cultivation of delicate or out of season plants. Is used primarily for the production of plants or ornamental crops for use by residents and not for sale to the public.

**Health Center, Commercial** – Facility used for providing health care services for humans.

**Height of Building** – The vertical distance between the highest point on the roof and the lowest at the ground level where the building foundation meets the ground. (See **Figure 2**)

**Figure 2 – Measurement of the Height of a Building**



**Highway Commercial Uses** – Those uses, which by their nature customarily relate to, depend upon, or

provide essential services to the highway traveling public, on arterial and major collectors, including, but not limited to, gasoline service and light automotive repair stations, drive-in food service facilities, motels, and truck stops, and which do not include operational activities that are or may be a nuisance to or are otherwise incompatible with the existing or intended development pattern of the area.

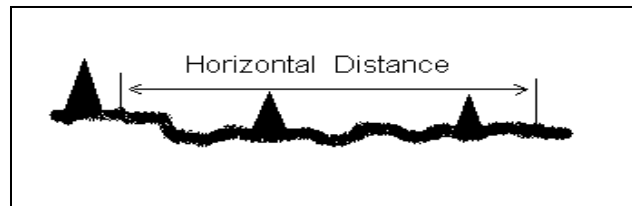
**Historic Site, Significant** – Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places, or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, Section 307.08. An 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 are automatically considered significant historic sites.

**Home-Based Business** – A commercial or minor industrial business use conducted on the same property on which the owner's home is situated, which may employ no more than five (5) persons who are not residents of the owner's home, which is of a type or character consistent with rural residential lifestyle, and which is established and operated under such conditions that the use is not a nuisance to or otherwise incompatible with the surrounding area and is not considered a planned unit development (PUD), highway commercial, neighborhood commercial, light industrial manufacturing, or waterfront commercial use.

**Home Occupation** – A use of non-residential nature conducted entirely within the dwelling or accessory buildings and carried on only by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes, and which does not include an operational activity that is or may be a nuisance to or otherwise incompatible with the surrounding area.

**Horizontal Distance** – A distance measured along a plane that is perpendicular to an axis running through the center of the earth at the point of measurement. (See **Figure 3**)

**Figure 3 – Measurement of Horizontal Distance**



**Impervious Surface** – A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

**Improved Public Road** – Any constructed road maintained by a unit of government as an official portion of that government's road system.

**Industrial, Light** – Research and development activities, the manufacturing, compounding, processing, packaging, storage, assembly, and / or treatment of finished or semifinished products from previously prepared materials, which activities are conducted wholly within an enclosed building. Warehousing, wholesaling, and distribution of the finished products produced at the site are allowed as part of this use.

**Intensive Vegetative Clearing** – The removal of trees, shrubs or plants in a contiguous patch, strip, row, or block.

**Interim Use** – A temporary use of property until a particular date, until the occurrence of a particular event, or

until zoning regulations no longer permit it.

**Isolated Camping Site** – A temporary, short-term rental use occurring in a temporary living space made of canvas or similar material which may or may not be on temporary platforms that offer outdoor camping experiences with amenities such as beds, cots, and heat. Plumbing is not permitted. No isolated camping site or structure shall be located, placed, used, or occupied for residential purposes.

**Junk or Salvage Yard** – Any place where three (3) or more motor vehicles not displaying current license plates, or not in operable condition, are stored in the open. In addition, any place where the salvaging or scavenging of any other goods, articles, or merchandise not contained entirely within enclosed buildings is conducted.

**Kennel, Boarding** – Any structure or premises intended for commercial activity where four (4) or more dogs over four (4) months of age are kept or raised for compensation. A person's home where dogs are kept as pets is not a "kennel."

**Kennel, Sled Dog** – Any structure or premise on which four (4) or more dogs are kept or raised for mushing. This kennel may be for commercial or personal purposes.

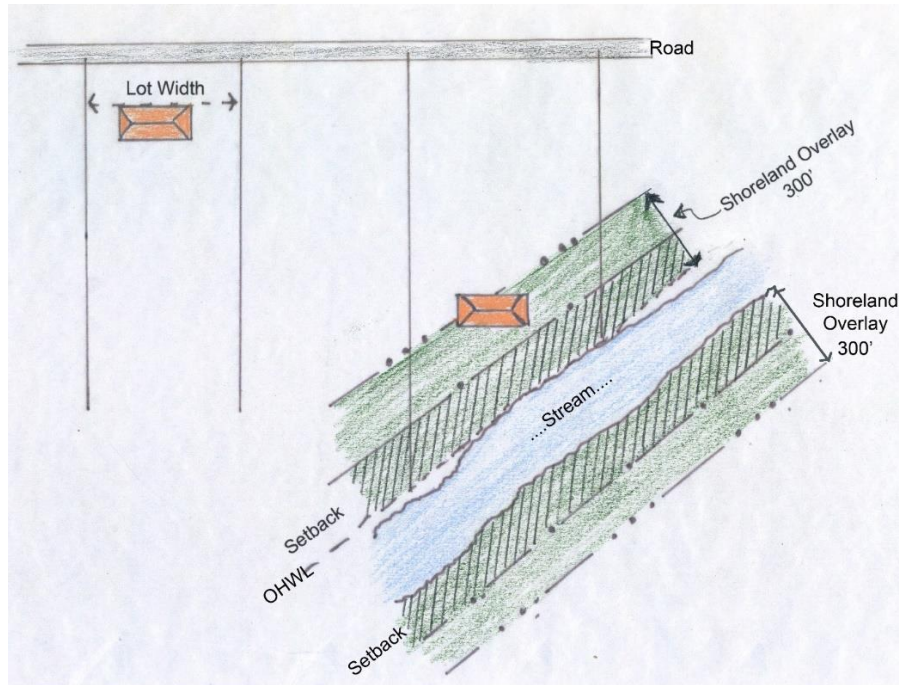
**Land Use Permit** – A permit issued for a specific use of or activity on the land. These include, but are not limited to, Structure Land Use permits, Sign Permits, Driveway Permits, Parking Lot Permits, Conditional Use Permits, and Planned Unit Developments.

**Livestock** – Farm animals such as, but not limited to, horses, cows, sheep, goats, and poultry, kept for use or profit, excluding poultry and rabbits kept as pets or raised for personal use.

**Lot** – A parcel of land designated by plat, metes and bounds, registered land survey, auditor's plat, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

**Lot Frontage** – The front of a lot shall be the portion bordering the street or a body of water if the lot has water frontage. For determining yard requirements on corner lots and through lots (through lots are lots running from street to street), all portions of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under **Yards** in this section. (see **Figure 1 and Figure 4**)

**Figure 4**  
**Identifying Stream Shoreland Setbacks**  
**Identifying Lot Width**



**Lot of Record** – A lot which is part of a subdivision recorded in the office of the County Recorder or Registrar of Titles of St. Louis County, Minnesota, or a lot or parcel described by metes and bounds, the description of which has been lawfully created and recorded prior to the date of enactment of this Ordinance or amendments thereto, provided that a lot on federal, state, tax forfeited or Minnesota Power lands that has been leased out prior to June 14, 1979 shall be considered a lot of record even though that lot has not been individually recorded in the office of the County Recorder or Registrar of Titles.

**Lot, Water Frontage** – The minimum distance between the points of intersection of the side lot lines and the ordinary high water level. (see **Figure 4**)

**Lot Width** – The distance between the side lot lines measured at the building line. The building line for parcels with shore frontage shall be the minimum principal structure setback distance as required for each river and lake classification. Lot width for parcels that do not have shore frontage shall be the location in which the building is located. (see **Figure 1 and Figure 4**)

**Manufactured Home** – A dwelling, transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred-twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. (see also **Mobile Home**)

**Market Farm** – A farm existing to produce and sell agricultural products to the local region which may include some or all of the following seasonal activities: on-farm and/or off-farm sales of agricultural and related value-add products, on-site agricultural related events, food sales, and pick or cut your own operations.

**Mineral Evaluation** – Mineral exploration exceeding four (4) test borings per forty (40) acre parcel and including development drilling, trenching, and bulk sampling.

**Mineral Exploration** – Exploratory drilling not to exceed four (4) test borings per forty (40) acre parcel.

**Mitigation** – To rectify a wetland impact by repairing, rehabilitating, or restoring the affected environment or by compensating for those impacts by replacing or providing substitute wetlands.

**Mobile Home** – Manufactured homes built prior to *HUD CFR 3280 Standards*, effective June 15, 1976, or built prior to Minnesota inspection and certification requirements in accordance with *ANSI Standards*

A119.1, July 1, 1972. (see also **Manufactured Home**)

**Mobile Home Park** – A lot that has been planned and improved for the placement of, or that contains, two (2) or more mobile or manufactured homes.

**Motel** – A building having two or more units or a series of buildings operated as a commercial establishment providing accommodations to the transient traveling public in habitable units for compensation, and including both short stay and extended stay facilities, and that may offer customarily incidental services.

**Neighborhood Commercial Uses** – Those uses that provide neighborhood level convenience services to communities such as small grocery stores, small sundry and convenience item stores, and small professional office buildings, such as doctor and dental clinics, which uses are of such size and nature as to blend well with the existing and intended development pattern of the neighborhood.

**Nonconformity** – Any legal use, structure, or parcel of land already in existence, recorded or authorized prior to the adoption of this Ordinance or amendments hereto which would not have been permitted to become established under the terms of this Ordinance as adopted or amended, if this Ordinance had been in effect as of the date the use, structure, or parcel was established, recorded, or authorized.

**North Shore Management Zone within Duluth Township** – An area boundary defined from the shoreline of Lake Superior to the centerline of Highway 61 Expressway.

**Open Space** – Areas that are not developed; these may or may not be specifically designated.

**Open Space Plan** – Areas that are designated to be maintained in an open space condition.

**Ordinary High Water Level (OHWL)** – The boundary of public waters and wetlands, which shall be an elevation delineating the highest water level that 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 ordinary high water level shall be the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level shall be the operating elevation of the normal summer pool.

**Outdoor Lighting Fixtures** – Outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to, search, spot, and flood lights for: buildings and structures, recreational areas, parking lot lighting, landscape lighting, billboards and other signs (advertising or other), street lighting, product display area lighting, building overhangs and open canopies.

**Overlay District** – A regulatory district that is stacked on top of a zoning district or districts setting additional land use regulations, incentives, requirements, preferences, or other standards, including the Lake Superior Shoreland Overlay, Streams Shoreland Overlay, and the Sensitive Area Overlay districts. The overlay district standards are cumulative to rather than substituting for the base zoning district standards. Where the overlay and the zoning district provisions are in conflict, the more restrictive of the provisions apply.

**Pasture or Grazing Area** – An area where animals graze in large open areas where stocking densities, management systems and management of feed sources ensure that sufficient vegetative cover is maintained over the entire area at all times. A pasture or grazing area is not an animal feeding operation.

**Permitted Use** – A use that is specifically allowed in a zone district. (see **Article V**)

**Person** – A firm, association, organization, partnership, trust, company, or corporation as well as an individual.

**Planned Unit Development, Commercial** – A type of development characterized by a unified site design. A planned unit development with typical uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, and other primarily service-oriented activities are commercial planned unit developments. Residential structures where an agent is employed to promote rental of units in a manner similar to a



resort shall be considered a commercial planned unit development.

**Planned Unit Development, Residential** – A type of development characterized by a unified site design. A planned unit development with uses where the nature of residency is non-transient and the major or primary focus of the development is not service-oriented. Residential structures where an agent is employed to promote rental of units in a manner similar to a resort shall be considered a commercial planned unit development.

**Planned Unit Development, Mixed-use** – A type of development characterized by a unified site design. A planned unit development where a mix of both residential and commercial uses are combined. The ratio of residential and commercial will be determined on a case-by-case basis.

**Planning Commission** – The Planning Commission of the Town of Duluth, Minnesota, as created by ordinance pursuant to Minnesota Statutes 462.354 and 366.17, and all acts amendatory thereof.

**Planning Director** – The Planning Director of the Town of Duluth, Minnesota, hereinafter variously referred to as Director, Zoning Director or Planning and Zoning Director, or her/his authorized representative who administers the Zoning Ordinance and other land use official controls.

**Platform (detached)** – A horizontal surface, without rails, seats, or other elevated features, that is no greater than 18 inches in height above grade. (see also **Deck**)

**Principal Use or Structure** – A structure or use that is the primary or predominant focus of activity on a parcel.

**Public Facility Renovation** – The utilization of a former public or semi-public building, such as a school, town hall, or fire hall for residential, commercial, semi-public, industrial, or mixed uses where the existing structure will be preserved, will be compatible with the neighborhood, and the proposed use will enhance social and economic opportunities for the area.

**Public Recreation Facility** – A recreational facility open to the public.

**Public Transportation Terminal** – A terminal open to the public for the purpose of people gathering to use public transportation.

**Public Trails, Beaches, and Waysides** – Those facilities used by the public on public lands.

**Public Water, Protected** – For the purpose of this Ordinance, this shall be construed to mean any Minnesota Department of Natural Resources (MnDNR) designated trout stream or tributary of a MnDNR designated trout stream, other public watercourses defined by the MnDNR, unclassified watercourses with a defined bottom, any lake or pond greater than 25 acres, and Lake Superior. Refer to the Zoning Map for the exact delineations of a protected public watercourse in the Town of Duluth, with the exception of unclassified watercourses with defined bottoms.

**Qualified Professional** – Engineers, soil scientists, hydrologists, land use planners, and other experienced or licensed professionals.

**Recreational Camping Vehicle** – As defined in Minnesota Statutes Section 327.14:

1. Any vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation, and vacation uses.
2. Any structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.
3. Any portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.
4. Any folding structure mounted on wheels and designed for travel, recreation, and vacation use.

**Recreational Camping Park** – A commercial establishment with two or more sites made available on a temporary basis for a limited time for shelters such as tents, recreational camping vehicles, or similar devices and which may include outdoor recreational facilities located on the real property.

**Recycling Center (Publicly Owned Collection Site)** – A publicly owned and operated center where residents may bring in and deposit their recyclable articles which will then be picked up and transferred to a central location.

**Remodel** – An alteration of the interior or exterior portion of a structure that *does not* involve the replacement of the main structural frame, walls, or changes in the exterior dimensions of the structure (see also **Structural Alteration**). Remodeling of an existing structure shall be considered one or more of the following:

1. Work performed on the interior of a structure (provided the work does not increase the number of bedrooms or increase water usage);
2. Replacement of siding, windows, doors, soffit, fascia, roofing (i.e., if roofing replacement does not increase height by more than two (2) feet), and ornamentation;
3. Creation of additional windows or doors.

**Residence** – See **Dwelling**, by type.

**Resort** – A commercial planned unit development where the primary purpose is to provide lodging and/or recreational opportunities.

**Retail and Service** – Those commercial activities that sell products or services in small quantities directly to the end user.

**Riparian** – The area of land and water forming a transition from aquatic to terrestrial ecosystems along streams, lakes and open-water wetlands.

**Road** – A public or private way which affords primary means of access by pedestrians and vehicles to adjacent properties whether designated as a drive, easement, avenue, highway, road, boulevard, cartway or however otherwise designated. A road is defined as any way that serves more than two (2) parcels per forty acres or government lot.

**Road, Public** – A road open to public travel that is under the jurisdiction of and/or maintained by a state, county or township authority, as defined or described in Minnesota Statutes, section 160.02.

**Road Classification** – Road classes are identified by St. Louis County and may change from time to time.

**Sauna** – An accessory structure used for the sole purpose of a steam bath and change room, and/or storage of materials directly related to such activity.

**Sawmill, Portable** – A small sawmill permanently mounted on a trailer and not requiring removal from same to become operational. (see also **Wood Processing**)

**School, Public or Private** – A facility that individuals attend for instruction and learning.

**Screening** – The use of fences, vegetation, berms, or other methods that reduce visual impact of a structure or use upon adjacent structures or uses.

**Semipublic Use** – 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.

**Sensitive Areas Overlay (SENSO)** – Those areas that are sensitive to development practices and defined as having any or a combination of the following factors: moderate to steep slopes, shallow soils, high erosion potential caused by either slope or soils conditions, wetlands, flood plains, limitations associated with ground water recharge areas, and site limitations for waste water treatment. These sensitive areas are designated on the Town of Duluth Zoning Map, as Sensitive (SENSO) areas. (see **Article VI and the Zoning Map**)

**Setback, When Accessed from a Public Road** – The minimum horizontal distance at the minimum lot width between which a structure or principal use may be placed.

**Setback, When Not Accessed from a Public Road** – The front yard setback is determined by the direction from which the parcel is approached. The front yard setback dimension is the same as that required for

the side yard setback for a principal structure in the zone district where the parcel is located. The road setback is measured from the access way and the dimension is the same as that required for the side yard setback for a principal structure in the zone district where the parcel is located. Side and rear yard setbacks are those that are listed in **Article V, Table 5.1** for principal and accessory structures.

**Sewage Treatment System** – A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated by St. Louis County Subsurface Sewage Treatment System Ordinance 61 and amendments thereto.

**Sewer System** – Pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

**Shooting Range** – An area or facility commercially operated primarily for the use of firearms, or archery, or similar uses. This does not include the use of firearms or archery uses of individual owners on their own property for their own use in discharging firearms, archery, or similar uses when in accordance with State and Federal laws.

**Shoreland Overlay Area - Lake Superior Shoreland Overlay (LSSLO)** – The Shoreland Overlay Area adjacent to Lake Superior extends from the ordinary high water level of Lake Superior to the Highway 61 Expressway.

**Shoreland Overlay Area - Streams Shoreland Overlay (SSLO)** – An area located along streams designated as Public Waters in this Ordinance and Zoning Map. The SSLO extends 300 feet on both sides of the stream or river measured from the Ordinary High Water Level (OHWL) or the landward extent of a flood plain designated by the Federal Emergency Management Agency (FEMA), whichever is greater. The setback for structures is within the SSLO on both sides of the stream and is measured from the OHWL or the landward extent of a flood plain designated by FEMA, whichever is greater. (see **Figure 4, above**)

**Shoreline, Lake Superior** – The shoreline is located at the ordinary high water level (OHWL) which is determined by the Minnesota Department of Natural Resources as the ordinary water elevation of Lake Superior (601.5 feet).

**Shoreline, Stream** – The shoreline is located at the ordinary high water level (OHWL).

**Sign** – Any device designed to inform or attract the attention of persons not on the premises on which the device is located, including any structure erected primarily for use in connection with the display of such device and all lighting or other attachments used in connection therewith.

**Sign, Changeable Electronic Variable Message Sign** – An outdoor advertising device that contains light-emitting diodes or other technology to display copy visible during the day and during the night, with the copy changes initiated electronically.

**Sign, On-site** – A sign where the subject matter relates only to the premises on which it is located, or to products, services, accommodations, or activities on the premises.

**Sign, Off-site** – Any sign other than an on-site sign.

**Small Animal** – Including but not limited to dogs, cats, birds, rabbits, and potbelly pigs.

**Small Firearms Manufacturing** – The manufacture of firearms as defined in 18 U.S.C. Chapter 44 which requires a Federal Firearms License and meets the definition of small firearms as defined by MN Rules 7504.0100 and amendments thereto.

**Soil, Slumping** – A subsidence of soil material commonly caused by a de-stabilization of lower horizons causing structural dislocation or failure.

**Soil, Angle of Repose for Saturated Soil Conditions** – The angle of maximum slope at which the soil is stable.

**Solar Energy Systems for Primary or Accessory Uses and/or Structures** – A solar energy system

associated with primary or secondary uses including but not limited to roof structure mounted systems and ground mounted systems. This system is for use by the property owner and for resale to an electric company.

**Solar Energy, Community and Large-Scale Solar Arrays** – A commercial solar energy system that converts sunlight into electricity for the primary purpose of serving electric demands off-site from the facility, either retail or wholesale. Community-scale systems are principal uses and projects typically cover less than 10 acres.

**Steep Slope** – Lands outside of the LSSLO and SSLO Overlays having an average slope greater than twelve percent (12%), as measured over horizontal distances of fifty (50) feet or more, which are not bluffs. (see also **Bluff**)

**Structure** – Anything more than thirty (30) inches high placed, constructed, or erected with a fixed location on the ground, including portable buildings, mobile homes, signs, earth sheltered homes, and swimming pools. Fences, utility poles, lawn lights, non-commercial communication towers not containing dish antennas, unattached decks regardless of height shall be considered structures if within the shore setback area for principal structures.

**Structural Alteration** – Any change other than incidental repairs which would affect the supporting members of a building, such as bearing walls, columns, beams, girders or foundations. (see also **Remodel**)

**Subdivision** – Land that is divided for the purpose of sale, rent, or lease, transfer or gift including planned unit developments.

**Subdivision Plat, Conservation** – A method of subdivision characterized by common open space and compact residential lots that may or may not be clustered. The purpose of a conservation development is to create greater community value through common open space amenities for homeowners and protection of natural resources, while allowing for residential densities consistent with prevailing zoning.

**Subdivision Plat, Conventional** – A pattern of subdivision development that is characterized by lots that are spread uniformly throughout a parcel in a lot and block design, as per Minnesota Statutes, Chapter 505.

**Toe of the Bluff** – The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper. If no break in the slope is apparent, the toe of the bluff shall be determined to be the lower end of lowest fifty (50) foot segment, measured on the ground, where the slope exceeds eighteen percent (18%).

**Top of the Bluff** – The point on a bluff where, as visually observed, there exists a clearly identifiable break in the slope from steep to gentle. If no break is apparent, the top of the bluff shall be the upper end of uppermost fifty (50) foot segment where the slope is less than six percent (6%).

**Tower, Camouflaged** – Any tower or supporting structure that, due to design, location or appearance, partially or substantially hides, obscures, conceals, or otherwise disguises the presence of the tower and one or more antennas or antenna arrays, affixed to the structure.

**Tower, Communication** – A principal structure that is intended to support communication equipment for wireless, broadcast, and similar communication purposes. Communication towers include, but are not limited to, monopole (free standing), lattice (self-supporting), or guyed (anchored with guy wires or cables). This definition applies to all towers intended for communication purposes.

**Tower, Commercial Communication** – A facility that transmits and/or receives electromagnetic signals for commercial purposes. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking areas, and other accessory development. The facility provides licensed commercial wireless telecommunication services, including cellular, personal communication services, specialized mobilized radio, enhanced specialized mobilized radio, paging, and similar services that are marketed to the public.

**Town** – Any town (or township), including those with the powers of a statutory city pursuant to law.

**Transfer of Development Rights (TDR)** – A system that generally restricts the amount of development that may be carried out on a particular parcel of land, but allows the landowner to transfer the unused potential development capacity to another parcel of land for more intense development than would have been possible without such a transfer. This procedure may be used as a means of reducing the density of development in an area. Transfer-of-development-rights may be used to preserve historical landmarks and open places as well as environmentally sensitive areas; conversely, it may be used to enable greater density in developable areas while restricting development in those areas that have low development potential.

**Trout Stream** – A river classification to be used on all trout streams designated by the Commissioner of the Minnesota Department of Natural Resources.

**Unclassified Watercourse** – A naturally occurring named or unnamed water with a defined bottom.

**Use** – The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

**Utility Corridor** – A generally narrow corridor used for the transmission of a utility commodity such as but not limited to gas, oil, communications, or electricity.

**Utility Facilities** – A use, building, or structure, including communication towers, electrical substations, solid waste dump stations and telephone maintenance centers and other similar facilities that are normally uninhabited, do not contain sanitary facilities, and are not intended as a long-term work site.

**Variance** – Any modification or relief from a Town of Duluth Land Use Ordinance within a permitted use where it is determined by the Planning Commission that, because of practical difficulties, the strict enforcement of the provisions of such ordinance would prevent the property owner from using the property in a reasonable manner not permitted by such ordinance when the plight of the property owner is due to circumstances unique to the property not created by the property owner; and, if granted, will not alter the essential character of the locality.

**Vegetation Line** – Measurements taken from the point where existing terrestrial vegetation begins. This is commonly where vegetation is stable and a sod layer has developed.

**Warehousing, General** – A structure where raw materials or manufactured goods may be stored before their distribution for sale.

**Water-Oriented Accessory Structure or Facility** – A small, aboveground 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 include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

**Waterfront Commercial Uses** – Those uses located in the Lake Superior Shoreland Overlay area that, by their nature, customarily relate to or service recreational water activities, such as marinas, fishing and boating resorts, canoe outfitters, campgrounds, boat sales if part of a permitted marina, restaurants and supper clubs if part of a permitted resort, but which do not include operational activities or development characteristics that are or may be a nuisance to or otherwise incompatible with the existing or intended development pattern of the area.

**Wetland** – Transitional lands between terrestrial and aquatic systems where the water table is usually at or near the surface as defined by Minnesota Wetland Conservation Act of 1991, Chapter 354, and all subsequent amendments. Further detailed in MN Rule 8420 and subsequent amendments.

**Wind Energy Conversion System (WECS)** – An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, and substations that operate by converting the kinetic energy of wind into electrical energy. The energy maybe used on-site or distributed into the electrical grid.

**Wind Energy Conversion System (WECS), Tier 1** – A utility-scale WECS of equal to or greater than 100

kW in total nameplate generating capacity.

**Wind Energy Conversion System (WECS), Tier 2** – A WECS of 10 to 100 kW in total nameplate generating capacity; these include systems that are primarily used for power on-site or those that are net-metered.

**Wind Energy Conversion System (WECS), Tier 3 Micro** – A small WECS with up to 10 kW capacity.

**Wind Energy Conversion Systems (WECS), Building Mounted Systems** – A WECS that is attached to a structure.

**Wood Processing Activities** – A use involving mechanical equipment for the purpose of altering timber and timber by-products, such as debarking, chipping, and/or milling.

**Wood Processing Facility, Commercial** – A permanent wood processing facility used to process timber products for commercial use.

**Wood Processing Facility, Non-commercial** – A wood processing facility, such as a portable sawmill, that is used for personal use. (see also **Sawmill, Portable**)

**Yard, Front** – A yard extending across a lot between the side yard setback lines and lying between the right-of-way line of a road and the road setback or, in the case of water frontage only, lying between the ordinary high water level and the shoreline setback. (see **Figure 1 and Figure 4**)

**Yard, Rear** – A yard extending across a lot between the inner side yard lines, and extending from the rear lot line or shoreline to the minimum rear yard or shoreline setback. (see **Figure 1 and Figure 4**)

**Yard, Side** – A yard extending from the front lot line to the rear lot line, and extending from the side lot line a distance equal to the minimum side yard setback for accessory structures. (see **Figure 1 and Figure 4**)

**Zoning Districts** – Areas of land delineated and described in the Town of Duluth Zoning Ordinance for which minimum lot size, setbacks, coverage requirements, and permitted uses are established in the Ordinance. (see **Article V, and the Zone Map**)

## Article III: General Provisions

### Section 1 Application and Interpretation

#### A. Rules

1. For the purposes of this Ordinance, words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined herein, are construed according to such special meaning or their definition.
2. The words “shall” or “must” are mandatory, not permissive.
3. The singular includes the plural; and the plural, the singular.
4. Words used in the past or present tense include the future.
5. General words are construed to be restricted in their meaning by preceding particular words.
6. All distances, unless otherwise specified, shall be measured horizontally; measures of height are vertical.
7. References to Minnesota Statutes and Rules incorporate the language of the Statute or Rule as if contained in, and pertained to, this Ordinance.

#### B. Contractor Responsibility

1. Each contractor shall ascertain that all work done on the property of another person has the proper permit to do such work and complies with the applicable Ordinance standards. Failure of any such contractor to comply herewith shall be considered a violation of this Ordinance and subject to the enforcement provisions of **Article X**.

#### C. Applicant Responsibility

1. Actions taken pursuant to permits granted under this Ordinance are the sole responsibility of the property owner or their agents.
2. Property owners are presumed to know the location of their property lines and may not rely on Planning Department staff or geographic information system (GIS) data to determine such locations.
3. The Town of Duluth assumes no liability for any adverse effects to the property owner, or to third parties, caused by any actions taken pursuant to permits granted under this Ordinance. Property owners and their agents are responsible for determining, locating and complying with setbacks when developing a lot.

#### D. Conformance with Subdivision Requirements

1. All subdividing of land, platted subdivisions, lot line adjustments, and their specified processes and requirements as described in St. Louis County Subdivision Ordinance 60, or subsequent amendments to or replacements of, are adopted by the Town of Duluth with the exception of minor subdivisions. Minor subdivisions are not permitted in the Town of Duluth.
2. No land use permit shall be issued to establish a use on any lot that has been created, divided or transferred in violation of the subdivision regulations of St. Louis County, or when the Planning Director determines such violation exists.

#### E. Flood Plain Requirements

1. No land use permit shall be issued that is not in compliance with county floodplain regulations. Where the 100-year flood elevation has not been determined with a detailed study, Minnesota Rule 6120.3300 shall be utilized to approximate the flood elevation. Development that occurs

within a regulatory floodplain, as identified on the official FEMA Flood Insurance Rate Maps, shall be subject to a separate permit from the county to ensure all floodplain standards are met. Lowest floors in shoreland districts must meet the standards in **Section 4.A.2** of this Article.

- F. Permit required.** No structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered including the addition of basements and no land shall change in use until the Planning Director has approved and issued a land use permit.
- 1. Application.** A land use permit application for constructing a structure is not considered complete until the following are received:
    - a.** Fully completed application including scaled maps or drawings showing the following:
      - i.** The accurate location, size and shape of the lot(s) involved.
      - ii.** The accurate location of all existing and proposed structures, including relation of those structures to property lines, abutting roads, lakes or streams.
      - iii.** The existing or proposed use of each structure.
    - b.** A St. Louis County Sewage Treatment System number is required for any proposed structure that will have human habitation. In the Duluth North Shore Sanitary District (DNSSD) a number is required for construction of any structure. Any construction occurring in the DNSSD requires approval from the District regarding the proposed location of the structure.
    - c.** The correct fee.
    - d.** If structures are being constructed on property that is being subdivided, all documents related to and required by St. Louis County Subdivision Ordinance Number 60.
- G. Dimensional Standards Set.** All development shall meet minimum standards for the relevant zoning district.
- 1. Double counting prohibited.** In each zone district each structure or use hereafter erected, altered or established, shall be provided with the yards and setbacks specified, and shall not exceed the percent of maximum total impervious surface coverage as specified in this Ordinance. No open space, lot, off-street parking, or loading space required for a building or structure shall be included as part of the lot, open space, off-street parking, or loading space for another building structure.
  - 2. Minimums required.** The minimum lot width, lot area, and setback requirements established herein shall be maintained for the placement of all structures and additions unless otherwise provided as specifically set forth in this Ordinance. Greater lot area per unit may be required if necessary to provide for proper sewage disposal.
  - 3. Side-yard encroachment exception.** Any structure in any zone district may have an extended roof line which encroaches upon the minimum side and rear yard (shoreline) setbacks, provided such extension does not encroach more than three (3) feet into the required setback and does not interfere with the adjacent property's solar access or create a drainage problem.
- H. Sewage Disposal.** All development shall meet sewage and wastewater standards provided in this Ordinance.
- 1. Public sewer hookup required.** Structures that require sewage disposal facilities and are located on a lot serviced by public sewage facilities shall be required to connect to such facilities subject to the approval of the local unit of government operating the sewage collection/disposal system. No Land Use Permit shall be issued prior to such permit or approval.
  - 2. Approved sewage disposal required.** Any premises intended for human occupancy must be provided with an approved method of sewage disposal designed in accord with all regulations of the Minnesota Department of Health or St. Louis County, or as otherwise specified in this Ordinance. No land use permit shall be issued prior to such permit or approval.
- I. Permit Exceptions.**



1. Land use permits are not required for the following. However, if these activities occur in a floodplain, a permit is required from the county.
  - a. Local public utility distribution lines.
  - b. Farming.
  - c. Private recreational trails.
  - d. Forest management activities (except as required in the Shoreland Overlay (see **Article VI**), and in Bluffs and Steep Slopes (see **Article III**).
  - e. Lawn ornamentation.
  - f. Remodeling of existing structures that does not involve the replacement of the main structural frame, walls, or changes in the exterior dimensions of the structure or impacts to water usage.
  - g. Accessory structures expressly for non-dwelling use of one-hundred forty-four (144) square feet or less that meet all setbacks.
  - h. Satellite receiving antennas and apparatus of a diameter of ten (10) feet or less that meet all setbacks.
  
- J. **Time Limit for Start of Construction.** Construction must commence upon issuance of a Land Use Permit according to the following standards.
  1. **Within 12 months.** Construction of a building or commencement of a use shall be substantially begun within twelve (12) months of the date a permit is issued or the permit shall become void.
  2. **Extensions.** Permit extensions may be granted by the Planning Director, if the proposal meets Ordinance requirements.
  
- K. **Roadway Classification System.** Structure road setbacks are affected by the road classification system.
  1. **Setbacks.** Structure setbacks from roads are available on the **Zoning Map** and in **Article V**.
  2. **Classifications may change.** Classifications of roads or sections of roads are subject to change from time to time as the result of changes in traffic patterns.
  3. **Public hearing required for change.** Public hearings by the Planning Commission are required for new road construction that changes existing setback requirements or creates a setback requirement. No public hearing is required when the road classification change is the result of St. Louis County conforming to Minnesota Department of Transportation classification criteria.
  4. **Effect of change on existing structure setbacks.** No variance for meeting setback criteria will be required for additions to structures that become nonconforming because of the change in road classification provided the addition goes no closer to the road than permitted under the original road classification.

## Section 2 Environmental Review

- A. **Planning Commission Authority.** The Planning Commission shall act upon all environmental review petitions, worksheets and impact statements that involve conditional uses, subdivision plats, or other development proposals. At a minimum, analysis will include potential impacts on, but not limited to, the following:
  1. **Sustainability.**
    - a. The carrying capacity of lands and/or watersheds. Prohibit, limit or redirect development that puts the capacity at risk.
    - b. The engineered carrying capacity of community or regional infrastructure. Prohibit, limit or redirect development that puts the capacity at risk.
    - c. The costs and benefits of the project (priced and non-priced benefits) as well as the long-term, cumulative effects on sustainability.
  2. **Climate Change.**

- a. Land use changes to the natural environment.
  - b. Changes as the result of construction and development to the built environment.
  - c. Changes that affect the community and community infrastructure.
- 3. Ecosystem Services.**
- a. **Support.** Processes ecosystems provide that provide the support necessary for primary production of resources such as nutrient recycling and soil formation.
  - b. **Provisioning.** Maintenance of natural resources within the ecosystem that provide humans and non-humans with food, fresh water, shelter, wood, fiber, fuel, etc.
  - c. **Regulation.** Processes ecosystems provide that serve to regulate climate, regulate and purify water, and regulate diseases.
  - d. **Cultural.** The enrichment ecosystems provide to the human community, including, but not limited to, aesthetics, spiritual connections, educational opportunities and recreational opportunities.
- B. Applicant Responsible.** It shall be the responsibility of the applicant to supply all required information and to pay all fees.
- C. Information Requirements.** The Planning Commission, on any development proposal, may require the applicant to provide information regarding the environmental effects of a proposal either through a discretionary EAW or as part of the permit review process.
- D. EAW and EIS Review.** The Planning Director shall review all Environmental Assessment Worksheets (EAW) and Environmental Impact Statements (EIS) for accuracy and completeness. Upon certification, the Planning Director may submit the report to the appropriate review agencies in accordance with State regulations.
- E. Public Comment.** The Planning Director may refer the issue of accuracy and completeness to the Planning Commission who shall hold a public hearing on the draft environmental review.
- F. Public Hearing.** It shall be the responsibility of the Planning Commission after holding a public hearing to make the final declaration regarding the environmental review.

### Section 3 Steep Slopes

- A. Erosion Control Plan Requirement.** In bluff and steep slope areas the Planning Director may require that for any land use permit application, the applicant submit information on how erosion will be prevented and existing vegetation preserved to screen the structure as well as prevent erosion.
- B. Accessory Structures.** Selective vegetation removal shall be allowed to accommodate the placement of accessory structures. No accessory structures are allowed in the bluff impact zone in the Streams Shoreland Overlay.
- C. Intensive Vegetative Clearing.** In no case shall intensive vegetative clearing be allowed on bluffs and steep slopes.
- 1. The removal of natural vegetation is limited to the removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants and the trimming and pruning of trees, shrubs and plants.
  - 2. No more than twenty-five percent (25%) of trees greater than two (2) inches in diameter (measured at four and one-half (4 ½) feet above ground) may be removed at one time.
  - 3. Removal of trees, shrubs and plants shall not be done by heavy equipment.
  - 4. Removal in excess of twenty-five percent (25%) of existing vegetation is allowed if:

- a. It is replaced with trees, shrubs and plants that have at least similar erosion preventive and screening value as previously existed, or
  - b. it is for the purposes of forest management activities associated with timber management practices such as thinning.
- D. Bluff and Steep Slope Alterations.** Stairways, lifts, and landings are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas.
- E. Grading Limitations.** No slope may be graded greater than the angle of repose for saturated soil conditions, unless the soil material on such slope is retained by some adequate erosion controlling structure or other stabilizing measures including, but not limited to, drains, rip rap, sod, and walls.

## Section 4 Site Suitability Requirements

- A. Site Suitability.** No building intended for human use or occupancy shall be erected, structurally altered, or relocated on land that is:
- 1. Not adequately drained at all times due to adverse soil conditions, steep slopes, shallow impermeable bedrock, or periodic flooding, or
  - 2. Where the lowest floor level is less than three (3) feet above the highest water level or less than one (1) foot above the one hundred (100) year storm wave run-up elevation on Lake Superior as determined by a licensed engineer. No land disturbing or development activities shall be permitted on slopes of eighteen percent (18%) or more.

## Section 5 Stormwater, Erosion, and Sediment Control

- A. Land Disturbing Activities.**
- 1. See the Town of Duluth Stormwater, Erosion, and Sediment Control Ordinance Number 1 for specific requirements.
  - 2. The following are exempt from land disturbance permits:
    - a. Nursery, home gardening, and agricultural operations that are confined to private property.
    - b. Forest management activities.
    - c. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
    - d. Road maintenance on gravel surfaced roads and driveways. However, the Planning Director or designee has the authority to add requirements.
    - e. Federal, State and County projects where the Town does not have regulatory authority.
    - f. Small utilities working in the right-of-way of Town Roads.
- B. Stormwater Management Plan.** The Town of Duluth has identified the following minimum standards for a Stormwater Management Plan when required for meeting the provisions of this Ordinance or as requested by the Planning Director. The plan must identify how the development will accomplish all of the following:
- 1. Be able to attenuate/retain/detain runoff from a one (1) inch twenty-four (24) hour storm event for twenty-four (24) hours. For new construction, the plan should include design practices to retain, on the site, soil particles greater than five (5) microns, assuming no sediment re-suspension.
  - 2. Be able to reduce peak runoff rate for storms up to and including a ten (10) year event to that of a two (2) year event.
  - 3. Where frequent downstream flooding occurs, the plan should identify the means by which the development will reduce peak runoff rate of storms larger than a ten (10) year event up to and

including a one-hundred (100) year event, to ninety percent (90%) of the “pre-development” peak runoff rate.

4. For commercial or industrial development, the plan should identify how the first half (½) inch of runoff will be treated to remove oil and grease. The plan should identify the best oil and grease removal technology available. The Planning Director may waive the requirement to control for oil and grease if the applicant demonstrates, in writing, that installation of such practices is not necessary.

**C. Post-Construction Stormwater Management Plan.** The Town of Duluth has identified the following minimum standards for a Stormwater Management Plan when required for meeting the provisions of this Ordinance or as requested by the Planning Director. The plan must identify how the development will accomplish all of the following:

1. Be able to attenuate/retain/detain runoff from a one (1) inch one (1) year twenty-four (24) hour storm event for twenty-four (24) hours. For new construction, the plan should include design practices to retain, on the site, soil particles greater than five (5) microns, assuming no sediment re-suspension.
2. Be able to reduce peak runoff rate for storms up to and including a ten (10) year event to that of a two (2) year event.
3. Where frequent downstream flooding occurs, the plan should identify the means by which the development will reduce peak runoff rate of storms larger than a ten (10) year event up to and including a one-hundred (100) year event, to ninety percent (90%) of the “pre-development” peak runoff rate.
4. For commercial or industrial development, the plan should identify how the first half (½) inch of runoff will be treated to remove oil and grease. The plan should identify the best oil and grease removal technology available. The Planning Director may waive the requirement to control for oil and grease if the applicant demonstrates, in writing, that installation of such practices is not necessary.

## **Section 6 Screening – When Required as a Condition or Suggested as a Guideline**

- A. Screening Defined.** Screening may consist of walls, fences, landforms or natural or planted landscape materials, and shall effectively screen the use or structure from roads or adjacent residential parcels.
- B. Requirements.** Screening must be on the same parcel as the structure or use being screened. It is the responsibility of the owner to maintain the screening. The order of preference for screening is as follows:
  1. Maintaining existing vegetation and using natural topography.
  2. Planting native vegetation that is a minimum of four (4) feet high at the time of planting, and is planted and maintained in accordance with accepted silvicultural practices.
  3. Construction of a berm, which must be seeded and cannot have side slopes exceeding a two-to-one (2:1) ratio. The planting of vegetation shall meet the technical standards of the Soil and Water Conservation District.
  4. Construction of a solid wood fence.
  5. Construction of a chain link fence.

## **Section 7 Wetlands**

- A. Federal and State Requirements.** All development shall conform to Federal and State Wetland

regulations and it shall be the responsibility of the applicant to demonstrate conformance with the appropriate regulations.

- B. Delineations.** The Planning Director will work with St. Louis County to determine if wetlands are involved.
- C. County Approvals.** Approval of Land Use Permits is contingent upon County approval of any required wetland permit.
- D. No Net Loss.** The goal for the Town of Duluth is to have no net loss of wetlands.
- E. Development Requirements.** Applicants proposing development shall demonstrate a sequencing process as follows in descending order of priority:
  - 1. Avoid direct or indirect activities that will increase stormwater runoff and erosion or the draining or filling of wetlands.
  - 2. Minimize those impacts by limiting the degree or magnitude of the activity.
  - 3. Reduce those impacts through sound erosion and stormwater control measures and by restoring or replacing wetland losses.

## **Section 8 Significant Historical Sites**

- A. Cemeteries.** No structure or use may be established within 50 feet of a platted or unplatted cemetery unless approved by the State Archaeologist.
- B. Significant Historic Site.** No structure or use may be placed on a significant historic site (defined by the Minnesota State Historic Preservation Office) that affects the values of the site unless adequate information about the site has been documented and removed, if warranted, and the Planning Commission approves the documentation and any such removal.

## **Section 9 Placement and Design of Roads and Driveways**

- A. Public Access Required.** Each lot where a dwelling is to be erected, altered in its exterior dimensions, or moved, shall have frontage on or access to an improved public road.
- B. Public Access Requirements.** Construction of a dwelling on a lot without frontage on an improved public road must meet all of the following criteria.
  - 1. **Proof of permanent access required.** The lot owner shall present to the Planning Director proof of permanent access to the property from an improved public road.
  - 2. **Requirements of lot owner.** The lot owner shall sign before a notary public and record with the County Recorder's Office, an affidavit, agreeing to the following:
    - a. The lot owner shall agree to maintain a private access to the lot, within the easement, at his or her own expense, that allows the reasonable access of emergency vehicles.
    - b. The lot owner will not demand public road maintenance
    - c. School bus service shall be provided solely at the discretion of the local school district.
  - 3. **Must comply with all other provisions.** The lot owner will comply with all other County and Township official controls including subdivision, zoning, sanitary, and rural addressing ordinance.
  - 4. **Subdivision.** Subdivision of property must comply with requirements of St. Louis County Subdivision Ordinance 60, or subsequent revisions.
- C. Screening Encouraged.** Visual screening is encouraged along public or private roads, driveways, and parking areas. Screening should be designed to take advantage of natural vegetation to achieve

maximum screening.

- D. Line of Sight Screening.** Visual screening is also encouraged by slight bending of roads and driveways.
- E. Minimize Width.** Driveway and road widths shall be minimized, consistent with safety and engineering road design standards.
- F. Driveways per Parcel.** For each lot served by a public road, there will be only one (1) driveway entrance unless permission is given by the appropriate road authority. Private access to agricultural land by culverting a ditch solely for the purpose of agricultural access to the property shall not constitute a driveway.
- G. Driveway Locations**
1. A Land Use Permit is required for construction of all driveways or private roads that enter onto public roads.
  2. The appropriate road authority shall approve all site entries onto public roads.
  3. On Township roads a site entry permit is required from the Township before construction of a new driveway or private road from/onto a Township Road.
  4. The applicant shall, if possible, make use of common access points to any road.
  5. In land use districts RR-1, FL-1, FL-2, and FFL-1, new driveways or private roads off of public roads, when feasible, shall not be located closer than 300 feet to another driveway or private road. If practicable, they should be shared with existing driveways to meet this standard.
  6. In zone districts FL-1, FL-2 and FFL-1 side yard and rear yard setbacks for all driveways or private roads are the same distance as accessory structure setbacks from property lines unless there is agreement amongst all affected parties allowing a reduced property line setback.
  7. In zone districts RR-1, SC-1A, SC-1B, COM-1, LIM-1 SSUR-1, SUR-1, and SUR-2, side yard and rear yard setbacks for all driveways or private roads are (1/2) one-half of the distance of the accessory structure setback for the zone district unless there is agreement amongst all affected parties allowing a reduced property line setback.
  8. In all zone districts, the setbacks for all driveways or private roads from Public Waters must be the same distance as required for structure setbacks from Public Waters for the zone district.
  9. In no case shall a driveway entrance be permitted to be within one-hundred (100) feet of the right-of-way line of any intersecting road.
- H. Minimize Stormwater Runoff.** Private roads and driveways will be designed and constructed to minimize erosion and runoff and will meet the following guidelines wherever possible.
1. Private roads and driveways will be located above the highwater mark of streams, lakes, wetlands, and seasonal ponds.
  2. Private roads and driveways will not be located on unstable slopes (slopes subject to creep or slumping).
  3. Private roads and driveways will not be constructed on slopes greater than ten percent (10%). On highly erodible soils, maximum grades of five percent (5%) will not be exceeded.
  4. Down-road flow and ponding will be minimized by using a slight grade of one (1%) to two percent (2%) and with ditches or swales where practical.
- I. Private Road and Driveway Construction Standards.**
1. Install drainage structures as construction proceeds.
  2. Provide adequate drainage for road grades during construction to minimize erosion of unconsolidated materials.

3. Provide temporary cross-drainage structures (such as water bars) during construction.
4. Construction shall meet the requirements of the Town's Stormwater, Erosion, and Sediment Control Ordinance Number 1 and revisions thereto.

**J. Wetland Impact.**

1. Wetland impacts resulting from private roads, driveways and parking areas shall be avoided.
2. Approval to impact wetlands shall be obtained from St. Louis County prior to construction of any private roads, driveways or parking area where wetlands cannot be avoided.
3. Applicants proposing development shall avoid or reduce stormwater runoff and/or erosion by demonstrating a sequencing process as follows in descending order of priority:
  - a. Avoid direct or indirect activities that will increase stormwater runoff and erosion or the draining or filling of wetlands.
  - b. Minimize those impacts by limiting the degree or magnitude of the activity.
  - c. Reduce those impacts through sound erosion and stormwater control measures and by restoring or replacing wetland losses.

## Article IV: Nonconformities

### Section 1 General

Where the districts established by this Ordinance, and amendments thereto, contain structures, uses or lots of record that were legally established or created prior to the enactment of this Ordinance, and amendments thereto, and which structures, uses or lots of record would be prohibited under the provisions of this Ordinance, said structures, uses or lots of record may be continued subject to the provisions herein described.

### Section 2 Nonconforming Uses – All Zone Districts

- A. No Increase Allowed.** Nonconforming uses shall not be enlarged, increased, moved, or extended to occupy a greater area of land than was occupied at the effective date of this Ordinance and amendments thereto, except to bring the use into conformity with the provisions of this Ordinance.
- B. No Change to Other Nonconforming Uses.** Nonconforming uses shall not be changed to another nonconforming use.
- C. Effect of Discontinuance.** Nonconforming uses shall not be re-established if voluntarily discontinued for a continuous twelve (12) month period.
- D. Accessory Structure Allowed.** Nonconforming uses may add an accessory structure, provided the structure does not increase the nonconformity or create a new non-conformity.

### Section 3 Nonconforming Structures - All Zone Districts

- A. Conditions for Enlargement. A nonconforming structure may be enlarged as follows:**
  - 1. If the proposed addition meets the required setbacks for the zone district the addition shall not exceed seventy-five percent (75%) of the original ground floor area of the structure and the height of the completed structure will not exceed that of the original structure.
  - 2. If a proposed addition does not meet the required setbacks for the zone district, the addition shall not exceed 25% of the original ground floor area of the structure and the height shall not exceed that of the original structure.
  - 3. A non-conforming structure may be enlarged only once.
- B. Effect of Destruction.** Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of this Ordinance, may be continued, including repair, replacement, restoration, maintenance, and improvement that does not include expansion, unless:
  - 1. The nonconformity or occupancy is discontinued for a period of more than (1) one year, or
  - 2. The nonconforming use is destroyed by fire or other peril to the extent of greater than fifty percent (50%) of its market value, and no land use permit has been applied for within one-hundred-eighty (180) days of when the property is damaged. In this case, Duluth Township Planning Commission may impose reasonable conditions upon a land use permit in order to mitigate any newly created impact on adjacent property. Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. Duluth Township may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit Duluth Township from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.



- C. Moving of Structure.** Should a non-conforming structure be moved for any horizontal distance, it shall be done in such a manner as to conform to the regulations for that district in which it is located after it is moved.
- D. Repair and Maintenance Allowed.** Normal repairs and maintenance necessary to keep nonconforming structures in sound condition, not including exterior structural alterations, shall be permitted.

## Section 4 Construction on Nonconforming Lots of Record

- A. Lots of Record – Generally.** A lot of record may be permitted as a buildable lot if all of the following criteria can be met:
  - 1. The lot is a lot of record that meets the following definition:
    - a. A lot that is part of a subdivision recorded in the office of the County Recorder or Registrar of Titles of St. Louis County, Minnesota, or
    - b. A lot or parcel described by metes-and-bounds, the description of which has been lawfully created and recorded prior to the date of enactment of this Ordinance, or amendments thereto, provided that a lot on federal, state, tax forfeited or Minnesota Power lands that have been leased out prior to the date of enactment of this Ordinance shall be considered a lot of record even though that lot has not been individually recorded in the office of the County Recorder or Registrar of Titles.
  - 2. The lot is in separate ownership from abutting lands at the time of the adoption of this Ordinance.
  - 3. The lot meets fifty percent (50%) of the lot width and lot area requirements for lots in **FL-1**, **FL-2**, **FFL-1**, and **RR-1** districts.
  - 4. All other applicable zoning requirements are met.
- B. Lots of Record within the Shoreland Overlay Area.**
  - 1. A nonconforming single lot of record located within the Shoreland Overlay Area may be allowed as a building site without variances from lot size requirements, provided that:
    - a. All structure and septic system setback distance requirements can be met;
    - b. A Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
    - c. The impervious surface coverage does not exceed twenty-five percent (25%) of the lot.
  - 2. In a group of two or more contiguous lots of record under a common ownership, an individual lot will be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
    - a. The lot must be at least sixty-six percent (66%) of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
    - b. The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and this Ordinance;
    - c. Impervious surface coverage must not exceed twenty-five percent (25%) of each lot;
    - d. Development of the lot must be consistent with the comprehensive plan.
  - 3. A lot subject to **B.2**, above, not meeting the requirements of **B.2** must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.
  - 4. Notwithstanding **B.2**, contiguous nonconforming lots of record in the Shoreland Overlay Area under a common ownership will be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots

are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

5. In evaluating all variances, zoning and building permit applications, or conditional use requests, the Planning Commission shall require the property owner to address the applicable provisions of **Article VI** of this Ordinance.
  6. A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.
- C. Adding Accessory Structure.** Nonconforming lots containing a principal structure may add a permitted accessory structure, provided the accessory structure will meet all minimum setback requirements of this Ordinance and will not cause the maximum percentage of impervious surfaces to be exceeded.
- D. Additions.** Additions to principal or accessory structures located on nonconforming lots may be permitted, if any such addition will meet all minimum setback requirements of this Ordinance, and will not cause the maximum percentage of impervious surfaces to be exceeded.
- E. Requirement for Combining of Individual Nonconforming Lots.** Except for lots within the Shoreland Overlay Area as described in Section 4-B, if, in a group of two (2) or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Article V, Section 3, of this Ordinance, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Article V, Section 3, of this Ordinance.

## **Section 5 Amortization of Certain Nonconformities in All Zone Districts**

- A. Existing Uses that Must Conform to Screening.** All presently existing open-land uses of the type listed in Article III, Section 5, (junk yards, auto wrecking yards, solid waste disposal facilities, building material storage yards, maintenance equipment or contractor yards, bulk oil and gas plants, borrow pits, and other similar uses) that do not conform to the screening requirements in Article III, Section 5, shall be required to conform and comply to this Ordinance upon written notice from the Planning Director, or to cease and remove the nonconforming use. The notice shall establish a reasonable time limit within which the owner shall provide screening.
- B. Signs in the Public Right-of-Way.** All signs located within the right-of-way of any public road shall be removed. The Planning Director may enter upon the right-of-way of any public road and remove any advertising sign after receipt of permission from the appropriate road authority.

## Article V: Land Use Zone Districts

### Section 1 Zone District Establishment and Relationship of Zones

**A. Zone Districts Established.** The Town of Duluth hereby establishes the zone districts listed in Section 2 of this Article. All zone districts in the Town of Duluth have dimensional standards, land uses, and a purpose statement. Each district is based on State, Federal, County, other governmental regulations, and the Town of Duluth Comprehensive Land Use Plan.

**B. Zone District Relationship to Overlay Zones.** Some of the zone districts in this Ordinance are overlay zones. Overlay zones are zones that cover a portion of a base zone district, cover several zones, or portions of several zones.

The overlay zones establish requirements for the areas that they overlay in addition to the provisions in the base, or underlying zone district. In areas with overlay zones, the most restrictive provisions apply. For example, if the underlying zone district establishes setbacks of fifty (50) feet and the overlay zone establishes setbacks of seventy-five (75) feet, the overlay setback is the most restrictive and applies.

### Section 2 Land Use District Titles and Purpose Statements

The following are the titles of the Land Use Districts in Duluth Township and the abbreviation for the District used in the text of the Zoning Ordinance and on the Zoning Map:

**A. Forest Lands – FL-1**

The primary purpose of this district is to preserve, maintain, and enhance ecosystem services focusing on sustainability and climate resilience. This district is developed at very low densities and often there is considerable contiguous acreage of government ownership. This District helps to maintain and promote the ruralness of the Township by a preponderance of very low levels of human development.

**B. Forest Lands – FL-2**

The primary purpose of this district is to preserve, maintain, and enhance ecosystem services focusing on sustainability and climate resilience. This district is developed at low densities and often there is considerable contiguous acreage of government ownership intermingled with private ownership. This District helps to maintain and promote the ruralness of the Township by a preponderance of low levels of human development.

**C. Farm and Forest Lands – FFL-1**

The purpose of this district is to maintain and support farming and natural resource endeavors. This district, for the most part, features farming and natural resource uses that support the ecosystem services provided by the land. This district contributes to maintaining the ruralness of the Township. This district provides opportunities for locally grown and marketed agricultural products. This district typically has land developed at low densities.

**D. Rural Residential – RR-1**

This district is intended to maintain and promote the rural character of the Township, and to prevent urban and suburban encroachment upon these areas. A moderately low level of development is important in this district since the uses encouraged in RR-1 would be less compatible in a more urban setting.

**E. Shoreland Suburban Residential – SSUR-1**

The purpose of this district is to provide for predominantly residential uses on a suburban scale of development. Very limited mixed uses may occur and those that do are consistent with the recreational, residential and natural attributes of Lake Superior.

**F. Shoreland Urban Residential – SUR-1**

The purpose of this district is to provide for almost entirely residential uses on an urban scale of development. Mixed uses are extremely rare and those that do occur are consistent with the urban residential nature of the district.

**G. Shoreland Urban Residential – SUR-2**

The purpose of this district is to provide for almost entirely residential uses on an urban scale of development. Mixed uses are extremely rare and those that do occur are consistent with the urban residential nature of the district.

**H. Shoreland Commercial – SC-1A**

This district is intended for concentrated, commercial development that promotes the efficient delivery of goods and services. Development largely supports the local community and surrounding areas. The availability and accessibility of consumer goods and services enhances the Township’s economic base and liveability.

**I. Shoreland Commercial – SC-1B**

This district is intended for concentrated, locally based, commercial development along the shores of Lake Superior, for uses consistent with providing goods and services for the local community, and incidentally for the locally based tourism industry. This district supports a light level of development intensity.

**J. Light Industrial Manufacturing – LIM-1**

The purpose of this district is to maintain the existing limited industrial uses that provide for light industrial and light manufacturing uses that do not adversely affect the residential character of the surrounding area. A preference for development is focused on high technology and green technology industries.

**K. Lake Superior Shoreland Overlay – LSSLO**

This overlay district is intended to protect the lands adjacent to Lake Superior, extending from the lake to the north side of the Highway 61 Expressway. Where the LSSLO standards conflict with the standards for the underlying zoning district, the more restrictive of the standards apply.

**L. Streams Shoreland Overlay – SSLO**

This overlay district is intended to protect the soils and water quality associated with streams in all Zoning Districts including the SENSO district. This includes trout streams, tributaries of trout streams, unclassified established watercourses with a defined bottom, and other water public watercourses defined by the Minnesota Department of Natural Resources. Where the SSLO standards conflict with the standards for the underlying zoning district, the more restrictive of the standards apply.

**M. Sensitive Area Overlay – SENSO**

This overlay district is intended to provide protection for natural resources located in areas of moderate and steep slopes, drainages, wetlands, erosive soils, shallow soils, and ground water recharge. Where the SENSO standards conflict with the standards for the underlying zoning district, the more restrictive of the standards apply.

### Section 3 Dimensional Standards

The following dimensional requirements shall apply to the listed land use district:

**Table 5.1 – Dimensional Requirements for Structures in all Land Use Districts**

Land Use District	Minimum Lot Area	Minimum Lot Width	Maximum Impervious Surface	Minimum Setback from Road	Minimum Lot Line Side Yard Setback		Minimum Lot Line Rear Yard Setback		Maximum Structure Height
					Principal	Accessory	Principal	Accessory	
FL-1	35.0 Ac	600'	(3)	(6)	100'	100'	100'	100'	35'
FL-2	17.0 Ac	600'	(3)	(6)	100'	100'	100'	100'	35'
FFL-1	9.0 Ac	300'	(4)	(6)	75'	75'	100'	100'	35'
RR-1	4.5 Ac	300'	(2)	(6)	50'	50'	50'	50'	35'
SSUR-1	2.0 Ac	200'	(1)	(6)	35'	25'	45'	25'	35'
SUR-1	0.5 Ac	80'	(1)	(6)	20'	10'	45'	10'	35'
SUR-2	16,000 SF	80'	(1)	(6)	20'	10'	45'	10'	35'
COM-1	0.5 Ac	100'	(1)	(6)	(5)	(5)	(5)	(5)	35'
SC-1A	1.0 Ac	200'	(1)	(6)	(5)	(5)	(5)	(5)	35'
SC-1B	1.0 Ac	200'	(1)	(6)	(5)	(5)	(5)	(5)	35'
LIM-1	9.0 Ac	600'	9%	(6)	100'	100'	100'	100'	35'

**Notes for Table 5.1:**

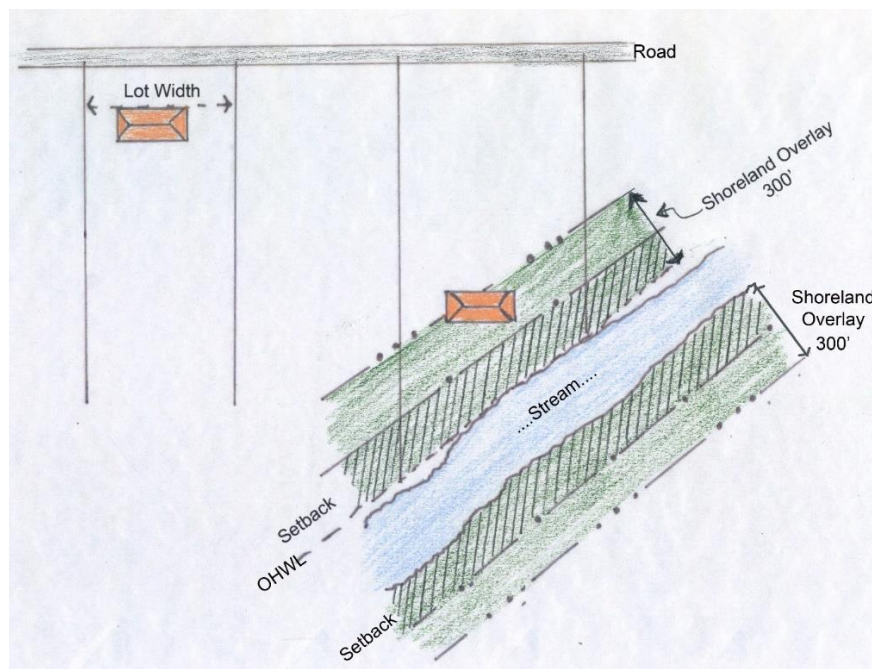
- (1) Impervious surfaces shall not exceed twenty-five percent (25%). No variance shall be granted on impervious surface thresholds unless a Stormwater Management Plan is completed by a qualified, licensed professional. In any case, impervious surface shall not exceed twice the allowed maximum.
- (2) Impervious surfaces shall not exceed seven percent (7%). If in the SENSO and less than 9 acres impervious surface areas shall not exceed five percent (5%) (see **Article VII**). No variance shall be granted on impervious surface thresholds unless a Stormwater Management Plan is completed by a qualified, licensed professional. In any case, impervious surface shall not exceed twice the allowed maximum.
- (3) Impervious surfaces shall not exceed two percent (2%). No variance shall be granted on impervious surface thresholds unless a Stormwater Management Plan is completed by a qualified, licensed professional. In any case, impervious surface shall not exceed twice the allowed maximum.
- (4) Impervious surfaces shall not exceed five percent (5%). No variance shall be granted on impervious surface thresholds unless a Stormwater Management Plan is completed by a qualified, licensed professional. In any case, impervious surface shall not exceed twice the allowed maximum.
- (5) All structures on commercially zoned property must be set back a minimum of twenty (20) feet unless they abut a district other than commercial, in which case they must be set back a minimum of fifty (50) feet from side lot lines and one-hundred (100) feet from rear lot lines.
- (6) See Zoning map.

**Table 5.2 – Lake Superior Shoreland Overlay (LSSLO) and Stream Shoreland Overlay (SSLO) Dimensional Requirements**

<p><b>Streams Shoreland Overlay (SSLO)</b> An area located along streams designated as Public Waters in this Ordinance and Zoning Map. The SSLO extends 300 feet on both sides of the stream or river measured from the Ordinary High Water Level (OHWL) or the landward extent of a flood plain designated by the Federal Emergency Management Agency (FEMA), whichever is greater. The setback for structures is within the SSLO on both sides of the stream and is measured from the OHWL or the landward extent of a flood plain designated by FEMA, whichever is greater.</p>				
		<b>SSLO</b>	<b>Minimum Structure Setback from Water Body</b>	<b>Minimum Driveway Setback</b>
<b>Type of Water Body</b>	<b>Trout streams</b>	300 feet	200 feet	200 feet
	<b>Tributaries of trout streams</b>	300 feet	100 feet	100 feet
	<b>Other public watercourses</b>	300 feet	100 feet	100 feet
	<b>Unclassified, established watercourses with defined bottom</b>	None	50 feet	50 feet
<p><b>Lake Superior Shoreland Overlay (LSSLO)</b> The Shoreland Overlay Area adjacent to Lake Superior extends from the ordinary high water level of Lake Superior to the Highway 61 Expressway.</p>				
<b>Minimum Structure Setback from Lake Superior</b>			<b>Minimum Road Setback</b>	
100 feet*			Underlying zone district	

\* Except in erosion hazard areas (see Article VI Section 3)

**Figure 5.1  
Identifying Stream Shoreland Setbacks**



## Section 4 Use Classification

- A. Uses Not Permitted (Ø).** The following uses are not permitted in the Town of Duluth.
1. Contaminated soil treatment facilities
  2. Nuclear waste disposal
  3. Spreading of human sewage sludge
  4. Airports
  5. Off-site signs
  6. Junk and salvage yards
- B. Permitted Uses (P).** These uses are allowed provided all standards found in this Ordinance are followed and a permit, if required, is obtained from the Town of Duluth. They are designated with a letter “P” in **Table 5.3**.
- C. Permitted with Performance Standards (PS).** These uses are permitted if the standards found in this Ordinance are met and a permit, if required, is obtained from the Town of Duluth. If the standards cannot be met, the use may still be allowed through the variance or conditional use process, depending upon the nature of the non-compliance. They are designated with a letter “PS” in **Table 5.3**. (see also **Article VIII: Performance Standards**)
- D. Conditional Use Permits (C).** These uses require approval by the Town of Duluth Planning Commission in accordance with the criteria set forth in this Ordinance. They are designated with a letter “C” in **Table 5.3**. (see also **Article IX: Conditional Uses**)
1. A sub-group of conditional uses, **interim uses**, may be those uses which meet the following criteria:
    - a. There is a time certain when the use will terminate; the type of use is one that is inherently temporary.
    - b. The type of use creates a heightened concern for public health and safety requiring a closer monitoring of the use after the permit is issued.
    - c. There will be a known change in zoning in the near future or there is a belief that future development patterns in the area will conflict with the conditional use being requested.
  2. An “I” in the table indicates that only an interim use may be granted.
  3. A “C” in the table indicates that the Planning Commission may decide whether the use would be a conditional use or an interim use based on the criteria in **D.1** above.
- E. Uses not Listed in This Ordinance.** The appropriate land use classification for uses not specifically mentioned in this Ordinance will be determined by the Town of Duluth Planning Commission.

## Section 5 Zone District Land Use Matrix

Table 5.3 describes the classification of various uses in each zone district.

### Legend for Table 5.3: Zone Districts

**Ø – Use Not Permitted**

**P – Use permitted.** Use permitted provided all standards found in this Ordinance are followed and a permit, if required, is obtained from the Town of Duluth.

**PS – Permitted with Performance Standards.** Use permitted provided all standards found in this Ordinance are followed and a permit, if required, is obtained from the Town of Duluth. If performance standards cannot be met, use may still be allowed through variance or conditional use process, depending upon nature of the non-compliance. (see also Article VIII: *Performance Standards*)

**C – Permitted with Conditional Use Permit.** Use requires approval by the Town of Duluth Planning Commission through Conditional Use Hearing process in accordance with the criteria set forth in this Ordinance. If conditions are not defined in Article IX for the particular use, conditions will be established as part of the Conditional Use Hearing. The Commission may impose additional and/or more strict conditions than those listed in Article IX. A “C” in the table indicates that the Planning Commission may decide whether the use would be a conditional use or an interim use based on the criteria in Article V Section 4.D.1, above.

**I – Permitted with Interim Use Permit.** Temporary use requiring approval by the Town of Duluth Planning Commission through Conditional Use Hearing process in accordance with the criteria set forth in this Ordinance. If conditions are not defined in Article IX for the particular use, conditions will be established as part of the Conditional Use Hearing. The Commission may impose more strict conditions than those listed in Article IX. An “I” in the table indicates that only an Interim Use may be granted for that use.

### Legend for Table 5.3: Overlay

**A – Use is allowed within the Overlay.** All setbacks for the Overlay and the underlying zone district must be met. The requirements in Article VI must be met. All other applicable requirements of this Ordinance must be met.

**Ø – Use is not allowed within the Overlay.**

**C – Use is allowed within the overlay with Conditional Use Permit.** See “C” above in “Designations for Table 5.3, Zone Districts”

**D – Use is allowed within the Overlay.** Must meet all setbacks along the shoreline of Lake Superior as defined in Table 5.2, Lake Superior Shoreland Overlay and in Article VI. Sections 2 and 3., and all other applicable requirements of this Ordinance.

**E – Use is not allowed in the part of the Overlay south of North Shore Scenic Drive (St. Louis County CSAH 61).** Use is allowed in the remainder of the LSSLO and must meet all other applicable requirements of this Ordinance.

**PS – Use is allowed within the Overlay with Performance Standards.** (See “PS” above in “Designations for Table 5.3, Zone Districts”). The requirements in Article VI must be met. All other applicable requirements of this Ordinance must be met.



**Table 5.3 – Zone District Land Use Matrix**

Table 5.3.1 - Dwellings Land Use	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Principal Dwelling, Single-Family	PS	PS	P	P	PS	PS	PS	C	P	P	P	A	A
Principal Dwelling, Social Service Residential	PS	PS	P	P	PS	PS	PS	C	P	P	P	A	A
Principal Dwelling, Duplex	Ø	Ø	PS	PS	PS	PS	Ø	Ø	PS	PS	PS	A	A
Principal Dwelling, Triplex or Fourplex	Ø	Ø	C	C	C	C	Ø	Ø	C	Ø	Ø	C	C
Accessory Dwelling, Guest Cottage	P	P	P	P	Ø	Ø	Ø	Ø	P	P	P	A	A
Accessory Dwelling, Subordinate Residential	I	I	I	I	I	I	I	I	I	I	I	A	A
Dwelling, Primary, Leased in Public Forest Land Zone Districts	PS	PS	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	A
Recreational Camping Vehicle Used as Temporary Dwelling Unit on Lots	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Principal Dwelling, Rentals													
Single-Family Residential Long-Term Rental	P	P	P	P	P	P	P	Ø	P	P	P	A	A
Single-Family Residential Low-Frequency Short-Term Rental	PS	PS	PS	PS	PS	PS	PS	C	PS	PS	PS	A	A
Single-Family Residential High-Frequency Short-Term Rental	I	I	I	I	I	I	I	I	I	I	I	A	A
Single-Family Residential Hosted High-Frequency STR	I	I	I	I	I	I	I	I	I	I	I	A	A
Bed & Breakfast	I	I	I	I	I	I	I	I	I	I	I	A	A
Isolated Camping Site	I	I	I	I	Ø	Ø	Ø	Ø	I	Ø	Ø	A	A

Table 5.3.2 - Commercial and Industrial Land Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Commercial Use	Ø	Ø	Ø	C	C	Ø	Ø	PS	C	Ø	Ø	D	Ø
Commercial, Neighborhood & Accessory Structure	Ø	Ø	C	C	PS	PS	PS	Ø	C	Ø	Ø	D	Ø
Commercial, Highway & Accessory Structure	Ø	Ø	Ø	Ø	PS	PS	PS	Ø	Ø	Ø	Ø	D	Ø
Commercial, Waterfront & Accessory Structure	Ø	Ø	Ø	Ø	Ø	C	C	Ø	Ø	Ø	Ø	D	Ø
Commercial, Principal Structure Mixed Use	Ø	Ø	Ø	Ø	C	C	C	Ø	C	Ø	Ø	D	Ø
Light Industrial	Ø	Ø	Ø	Ø	Ø	Ø	Ø	PS	Ø	Ø	Ø	D	Ø
General Warehousing	Ø	Ø	Ø	Ø	PS	PS	PS	PS	Ø	Ø	Ø	D	Ø
Wood Processing Facility, Commercial	C	C	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Extractive Uses (Gravel pits, Borrow Pits, etc.)	C	C	C	C	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Greenhouse, Industrial / Commercial	Ø	Ø	Ø	Ø	C	Ø	C	Ø	Ø	Ø	Ø	D	Ø
Health Center, Commercial	Ø	Ø	Ø	Ø	PS	PS	PS	Ø	Ø	Ø	Ø	D	Ø
Mobile Home Park	Ø	Ø	C	C	C	C	C	Ø	C	Ø	Ø	C	Ø
Recreational Camping Park	C	C	C	Ø	C	C	C	Ø	C	Ø	Ø	C	C
Shooting Ranges	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Home Based Business	C	C	C	C	C	PS	PS	PS	Ø	C	C	A	A
Home Occupation	P	P	PS	PS	PS	PS	PS	Ø	PS	PS	PS	A	A
Day Care Facility	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Farm Stands	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Market Farm	PS	PS	PS	PS	Ø	Ø	Ø	Ø	PS	Ø	Ø	D	A

Table 5.3.2 - Commercial and Industrial Land Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Boarding Kennel	C	C	C	C	Ø	Ø	C	Ø	Ø	Ø	Ø	Ø	Ø
Sled Dog Kennel	C	C	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
On-Site Signs	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Changeable Electronic Variable Message Signs (CEVMS)	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Mineral Evaluation	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Ø	Ø
Mineral Exploration	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Ø	Ø
Solar Energy Systems for Community and Large-Scale Solar Arrays	C	C	C	C	Ø	Ø	C	C	C	Ø	Ø	C	Ø
Wind Energy Conversion System (WECS) Tier 1	C	C	C	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø

Table 5.3.3 - Public Facility Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Community Center Facilities	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Publicly Owned Recreation Facility	C	C	C	C	C	C	C	Ø	C	C	C	C	A
Public Trails, Beaches, Waysides	C	C	C	C	C	C	C	C	C	C	C	C	A
Public Transportation Terminal	Ø	Ø	Ø	C	C	C	Ø	Ø	C	C	C	D	Ø
Recycling Centers (Public Collection Site)	PS	PS	PS	PS	PS	PS	PS	PS	Ø	Ø	Ø	Ø	Ø
School, Public or Private	Ø	Ø	C	C	Ø	Ø	Ø	Ø	C	C	C	C	A

Table 5.3.3 - Public Facility Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Utility Corridors	C	C	C	C	C	C	C	C	C	C	C	C	C
Utility Facilities	C	C	C	C	Ø	Ø	C	Ø	Ø	Ø	Ø	C	C

Table 5.3.4 - Accessory Structures and Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Accessory Structure 2000 sq ft or more	P	P	PS	PS	Ø	Ø	PS	PS	Ø	Ø	Ø	Ø	A
Accessory Structure between 1000 & 2000 sq ft	P	P	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Accessory Structure 1000 sq ft or less	P	P	P	P	PS	PS	PS	PS	P	P	P	A	A
Fish Cleaning House	P	P	P	P	PS	PS	P	PS	P	P	P	A	PS
Greenhouse, Farmstead	PS	PS	PS	PS	PS	PS	PS	PS	PS	Ø	Ø	D	A
Greenhouse, Residential	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	D	A
Gazebos	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	A	A
Stairways and Lifts	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS
Sauna	PS	PS	PS	P	PS	PS	PS	PS	PS	PS	PS	A	A
Boat Docks and Boat Houses	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Airstrip, Private	C	C	C	C	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	C
Extractive Use (Borrow Pit) for Individual Property Owner Use	P	P	P	P	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	C

Table 5.3.4 - Accessory Structures and Uses	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
Livestock	PS	PS	PS	PS	Ø	Ø	Ø	Ø	PS	Ø	Ø	PS	PS
Wood Processing Facility, Non-Commercial	P	P	PS	PS	Ø	Ø	Ø	PS	Ø	Ø	Ø	Ø	Ø
Solar Energy Systems for Primary and/or Accessory Uses and Structures	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS
Wind Energy Conversion System (WECS) Tier 2	PS	PS	PS	C	C	C	PS	PS	PS	Ø	Ø	PS	PS
Wind Energy Conversion System (WECS) Tier 3 (Micro)	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS
Wind Energy Conversion System (WECS) Building Mounted	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS

Table 5.3.5 Planned Unit Developments	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR <sup>-1</sup>	SUR-1	SUR-2	LSSLO	SSLO
PUD Mixed Use	Ø	Ø	Ø	Ø	C	C	C	Ø	Ø	Ø	Ø	Ø	C
PUD Commercial	Ø	Ø	Ø	Ø	C	C	C	Ø	Ø	Ø	Ø	Ø	C
PUD Residential	C	C	C	C	C	C	Ø	Ø	C	C	C	C	C

## Article VI: Shoreland Overlays

### Section 1 Overlay District Establishment

- A. **Designated Areas.** Trout streams, tributaries to trout streams, and the erosion hazard areas along the shore of Lake Superior are designated on the land use zone district map (see **Zone Map**).
- B. **Unclassified Watercourses.** Unclassified watercourses with defined stream bottoms will be determined by the Planning Director.
- C. **Areas and Setbacks.** **Table 5.2** identifies areas included in the Shoreland Overlay Areas and setback requirements for each type of water body.

### Section 2 Lake Superior Shoreland Overlay (LSSLO)

- A. **Activities within Building Setbacks from Lakeshore.** The following standards apply to activities within the area defined by the building setback from the lakeshore.
  - 1. **Alterations below ordinary high water level.** Any alterations below the ordinary high water level of public waters must first be authorized by the Minnesota Department of Natural Resources.
  - 2. **Filter strips.** The setbacks listed in **Table 5.2** function as filter strips. These strips provide a zone of infiltration that protects surface water by allowing remaining vegetation to remain essentially undisturbed, allowing the forest floor to trap sediment from adjacent land areas. Filter strips will be maintained as follows:
    - a. They will border and parallel the edge of the lakeshore.
    - b. Existing vegetation must be maintained, subject to the exceptions listed in **3** below.
    - c. Soil exposure is limited to less than five percent (5%) of surface area well distributed throughout the filter strip.
    - d. Cultivated lawns and lawn fertilizer are not permitted in the filter strip area.
    - e. Erosion control measures such as straw bales, mulch and silt fences will be used when an area of soil is exposed within the filter strip and sedimentation is likely to result. (see *the Town Erosion and Sediment Control Ordinance*)
    - f. There shall be no commercial harvesting of trees within these filter strips.
  - 3. **Removal of vegetation in the LSSLO area.** The removal of natural vegetation is not allowed without first obtaining a permit from the Planning Director. Exceptions to this requirement are:
    - a. The removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants.
    - b. The trimming and pruning of trees, shrubs and plants.
- B. **Activities within LSSLO.** The following standards apply to activities within the Lake Superior Shoreland Overlay area.
  - 1. **Vegetation management plan.** A vegetation management plan will be required for total vegetation removal of over ten-thousand (10,000) square feet or twenty-five percent (25%) of the development site, whichever is less.
  - 2. **Removal of vegetation limited.** Removal of woody vegetation shall be restricted on bluffs, steep slopes and within the structure setback area to maintain stable soil conditions. (see **Article III, Section 3: Steep Slopes**)
  - 3. **Vegetation as screening.** Removal of woody vegetation shall be limited so that vegetation serves as a screen for structures, parked vehicles or other facilities viewed from public roads and

Lake Superior. Selective removal of woody vegetation shall be allowed to provide a reasonable view of Lake Superior from individual residences.

4. **Clear cutting and timber harvest.** Clear cutting and timber harvest are prohibited, except under the following conditions.
  - a. Clear cutting is allowed only if it is part of an approved site development plan, or if it is conducted or required by an authorized public service such as public roads or utilities.
  - b. Timber harvesting is allowed only if it is outside the building setback from the lakeshore and it is part of a forest management plan, written in the last ten (10) years by a Department of Natural Resources approved plan writer.
5. **Best management practices.** Cutting, pruning and trimming of trees shall be based on sound horticultural and forest management practices for each individual tree species.
6. Private drives and public utility lines. Private driveways shall blend into the existing terrain as much as possible, and public utility lines to private landowners shall be buried if possible.

### Section 3 Erosion Hazard Areas, Lake Superior

- A. **NSMB Designated Erosion Areas.** The North Shore Management Board (NSMB) has determined erosion hazard areas for land within the Town of Duluth along the shores of Lake Superior. These are defined as those areas of the North Shore where the long-term average annual rate of recession is one (1) foot or greater per year. The areas are those designated and mapped by the North Shore Management Board as of May, 2004 or subsequently designated by NSMB or another agency.
- B. **Erosion Area Requirements. Those areas as identified must meet the following requirements:**
  1. The Planning Director, at the time of permitting, will notify the property owner of the restrictions of this section.
  2. The burden of proof concerning the suitability of land in designated Erosion Hazard Area is the responsibility of the property owner.
  3. Site development plans shall be required and approved by the Planning Director for all new construction in the Erosion Hazard Area. The site plans shall include a description of the following: surface runoff including roof drains, subsurface runoff, vegetation removal including proposed landscaping, proposed sewage treatment systems, topography of site, structure and driveway location, potential bluff toe protection, slope alteration, and other pertinent information as requested.
  4. The site development plan shall include setback and shoreline erosion control recommendations, and shall comply with the shoreland alteration provisions of this Ordinance.
  5. Structures and soil absorption areas shall be set back one-hundred-twenty-five (125) feet from the top edge of the eroding bluff, and where slumping is evident, the setback shall be measured from the uppermost shear zone (point at which the soil separates and slumping begins). Sewage treatment systems shall not be located within the structure setback area. The above standard may be modified by variance if the landowner provides technical data proving a different recession rate or that the erosion hazard area, although correctly estimated, can be mitigated by structural protection.

### Section 4 Streams Shoreland Overlay (SSLO) - All Trout Streams, Tributaries to Trout Streams, Other Public Watercourses, and Unclassified Established Watercourses

- A. **Activities within Setbacks of Streams.** The following standards apply to activities within the area defined by the setback requirements for streams.

1. **Alterations below OHWL.** Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner of the Minnesota Department of Natural Resources.
2. **Filter strips within setback from streams.** The setbacks listed in **Table 5.2** function as filter strips. These strips provide a zone of infiltration that protects surface water by allowing vegetation on the forest floor to trap sediment from adjacent land areas and provide shading for streams to maintain fish habitat. Filter strips will be maintained as follows:
  - a. They will border and parallel the edge of streams.
  - b. At a minimum, existing vegetation must be maintained within the setback requirements listed for each type of stream in **Table 5.2, Dimensional Requirements**.
  - c. Soil exposure is limited to less than five percent (5%) well distributed throughout the filter strip.
  - d. Cultivated lawns and lawn fertilizer are not permitted.
  - e. Erosion control measures such as straw bales, mulch and silt fences will be used when an area of soil is exposed within the filter strip and sedimentation is likely to result. (see *the Town Erosion and Sediment Control Ordinance*)
  - f. There shall be no commercial harvesting of trees within these filter strips.
  - g. The removal of natural vegetation (i.e., trees, shrubs, and plants) is restricted and limited to the following:
    - i. The removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants.
    - ii. The trimming and pruning of trees, shrubs and plants in accordance with accepted horticultural and forest management practices to provide a view.
    - iii. Removal of woody vegetation shall be limited so that vegetation serves as a screen for structures, parked vehicles or other facilities viewed from the stream.
    - iv. Removal of trees, shrubs and plants shall be accomplished through human means (i.e., hands, axe, chainsaw, etc.).
3. **Setbacks within bluff area.**
  - a. **General standards.** Unless other provisions have been established for specific soil conditions, the following standards shall apply in bluff areas:
    - i. The land must slope toward a public water.
    - ii. The land must rise a minimum of twenty-five (25) feet from the Ordinary High Water Level.
    - iii. The land has a slope of thirty percent (30%), but if at any location within the slope, that percent slope becomes eighteen percent (18%) or less over a fifty (50) foot run, or there is an obvious break in the slope, the bluff impact zone shall not include that area.
  - b. **Shallow soils bluff standard.** This standard applies to a bluff where the soil depth over ledge rock averages twenty-four (24) inches or less. Where this condition exists, structures may be placed on the bluff at a setback from the ordinary high water level that equals one-hundred fifty percent (150%) of the standard setback requirement (see **Article V, Table 5.2 and Section 3 of this Article**), provided all of the following conditions are met:
    - i. The parcel shall have suitable area set aside for a sewage treatment system and expansion area.
    - ii. Erosion control standards consistent with Soil and Water Conservation Service guidelines are followed.
  - c. **Exception from the one-hundred-fifty percent (150%) setback requirement.** Structures may be placed between the standard and the one-hundred-fifty percent (150%) setback requirement of this sub-section if all the following conditions exist:
    - i. Approved sewage treatment and expansion exists.
    - ii. Sufficient screening and vegetative filter strip exists.



- iii. Erosion control standards consistent with Soil and Water Conservation Service guidelines are followed.
- 4. Setback for Lake Superior watershed rivers.** The red clay areas of the Lake Superior watershed have been identified as having significant potential for erosion and such erosion would severely affect the streams that border these areas. Therefore, the following standards shall apply whenever they result in a greater structure setback than outlined in the general standards.
- a. The bluff impact zone is measured as follows:
    - i. The zone shall be the vertical distance from the ordinary high water level, inland to a point where the slope levels to six percent (6%) over a one-hundred (100) foot run.
    - ii. The toe of the six percent (6%) slope shall serve as the point where the OHWL top of the bluff measurement shall be made.
    - iii. The vertical height from the OHWL to the start of the six percent (6%) slope shall be measured, and that height shall be multiplied by four (4). This distance shall serve as the bluff impact, and shore impact zone for the purposes of vegetation removal. The principal structure setback from the top of the bluff shall be thirty (30) feet.
  - b. No water oriented accessory structures are permitted in this bluff impact zone.
- B. Activities within Shoreland Overlay.** The following standards apply to activities within the Streams Shoreland Overlay.
- 1. **Timber harvest within SSLO.** There will be no timber harvesting within the SSLO dimensions specified in **Table 5.2** unless it is part of a forest management plan, written in the last ten (10) years by a Department of Natural Resources approved plan writer, that describes the necessity for harvest to improve the forest condition.
  - 2. **Structures.** Structures are permitted in the SSLO as long as setbacks are met. Reasonable clearing is permitted for construction and for protecting structures from wildfires.
  - 3. **Trails clearing.** Reasonable clearing for trails is permitted.
  - 4. **Removal of natural vegetation.** The removal of natural vegetation (i.e., trees, shrubs and plants) is limited to twenty-five percent (25%) of trees (greater than two (2) inches in diameter at breast height), shrubs and plants.

## **Section 5 Stairways and Lifts to a Shoreline and Water Oriented Structures in LSSLO and SSLO**

See Performance Standards, Article VIII Sections 28 and 29.

## Article VII: Sensitive Area Overlay (SENSO)

### Section 1 Overlay District Establishment

- A. Overlay Location.** The Sensitive Area Overlay District in the Town of Duluth is designated on the land use zoning district map. (see the **Zoning Map**)
- B. Purpose.** This overlay was established to protect the water quality of the North Shore streams and Lake Superior. These areas were designated sensitive because of, but not limited to, factors including topography, soils, depth to bedrock, vegetation, and including wetlands.

### Section 2 Requirements in the SENSO Area

- A.** Any application for a land use permit on a parcel less than nine (9) acres in size must include the following:
  - 1. Impervious Surface Area.** Impervious surface area shall not exceed five percent (5%) of the total lot area. No variance shall be granted on impervious surface thresholds unless a Stormwater Management Plan is completed by a qualified, licensed professional. In any case, impervious surface shall not exceed twice the allowed maximum.
  - 2. Identification of Sensitive Areas on Parcel.**
    - a.** The landowner will provide a map indicating any sensitive areas or resources on the property where structures will be constructed and/or will impact the resource. This must be submitted along with the Land Use Permit Application. Sensitive areas include, but are not limited to:
      - i.** Wetlands
      - i.** Watercourses
      - ii.** Springs
      - iii.** Seeps
      - iv.** Groundwater recharge areas
      - v.** Steep slopes
      - vi.** Shallow soils (if less than the frost line)
  - 3.** The site map will be to scale and include the above references areas.
- B. Mitigation Plan.** A mitigation plan is required if impacted sensitive areas and/or resources are identified.
  - 1.** The mitigation plan must include the following:
    - a.** Sensitive areas and/or resources on the scale map of the parcel.
    - b.** Measures and actions that will be taken to protect and minimize impact and disturbance of sensitive areas and/or resources. These measures may include, but are not limited to:
      - i.** Undisturbed buffer zones
      - ii.** Vegetation plantings
      - iii.** Retaining walls
      - iv.** Terraced landscapes
      - v.** Permanent stormwater management measures to retain runoff
- C. Site Visit by the Planning Director.**
  - 1.** The Planning Director will arrange for a site visit after the parcel map and mitigation plan (if needed) have been submitted for a land use permit on parcels less than nine (9) acres in size.

- a. The purpose of the visit will be to verify the accuracy and completeness of the map and proposed mitigation measures.
- D. **Complete Application.** A complete application includes a map to scale of the parcel, mitigation plan (if needed), the fee, and the land use application itself. The decision on the adequacy of a proposed mitigation plan is made by the Planning Director.
- E. **Wetland Credits.** No wetland “credits” (i.e., substituting wetland areas on another lot for wetlands in this overlay) shall be permitted or allowed under any circumstances.

### **Section 3 Consistency with Other Articles.**

All underlying zone district requirements must also be met.

## Article VIII: Performance Standards

### Section 1 General

- A. Review as Conditional Use or Variance.** If a use requiring performance standards cannot meet the standards contained in this article, or the applicant does not wish to follow those standards, the use may then be reviewed as a conditional use or variance, and is subject to additional or alternative conditions, or denial, in accordance with the criteria found in this Ordinance.
- B. Revocation of Permit for Failure to Comply.** Every land use permit issued with performance standards shall be conditioned upon the proposed development being in full compliance with the terms of the specified standards. Failure to comply with the terms shall result revocation of the permit.
- C. Minimum Standards for Conditional Use or Variance.** Uses that are listed as performance standards as stated in A above, shall use the standards contained in this section as minimum standards. Failure to comply with the terms shall result in revocation of the permit.
- D. Applied to Accessory Structures.** All land use districts permit accessory structures related to the principal structure, but in designated circumstances, performance standards or a conditional use permit may be required (see **Article 5, Table 5.3**).

### Section 2 Residential Uses

- A. In Commercial and Borrow Pit Areas.** Residential uses in commercial and borrow pit areas are permitted in such areas provided they meet the following standards:
  - 1. All standards found in this and other Town of Duluth ordinances are met.
  - 2. An affidavit shall be signed by the homeowner acknowledging the existence of the commercial or borrow pit area and that he/she understands the potential impact such uses may have on the home.
- B. Two Structures on One Parcel.** Two (2) residential structures may be allowed on one (1) parcel if each structure meets the minimum lot area, width, and dimensional requirements of the zone district and for a proper and legal subdivision.
- C. Primary Dwelling on Leased Land Public Forest Land Zone Districts.** Seasonal cabins leased on State and St. Louis County land in the FL-1 and FL-2 zone districts may be permitted on lots as small as two and one-half (2 ½) acres provided that each forty (40) acre tract is limited to one (1) lease.
- D. Single-Family Residences in FL-1 and FL-2.** Single-family dwellings may be allowed in FL-1 and FL-2 zones as an allowed use if they have frontage on an improved public road or are part of a planned unit development or platted subdivision.
- E. Dimension Requirements.** See **Table 5.1** in **Article 5, Section 3: Dimension Requirements for Land Use Districts**.

### Section 3 Recreational Camping Vehicle Used as a Temporary Dwelling Unit on Lots

Recreational camping vehicles and other camping are permitted on parcels without a land use permit, provided the following standards are followed.

- A. **Number of Vehicles.** No more than one (1) recreational camping vehicle per parcel.
- B. **Licensed.** The recreational camping vehicle shall have a current motor vehicle license.
- C. **Standards.** All standards, including but not limited to bluff setbacks, vegetative removal, and shoreland alteration standards must be observed.
- D. **Sewage Treatment Systems.** Sewage treatment systems must be approved by St. Louis County or the DNSSD.
- E. **Other Structures.** No structures including decks shall be placed on the property.
- F. **Recreational vehicles may remain on lots when not in use.**

#### Section 4 Community Centers

All community centers that are operated by a public agency shall be considered permitted uses on any acreage and width if the following standards are met.

- A. **Setbacks and Lot Size.** The lot is of sufficient size to meet the following standards: side and rear yard setbacks of the district in which the use is located.
- B. **Parking.** On-site parking must be adhered to as required in this Ordinance.
- C. **Wastewater.**
  - 1. On-site sewage treatment systems must meet with the approval of St. Louis County.
  - 2. Community centers constructed within the Duluth North Shore Sanitary District (DNSSD) must meet the requirements of the DNSSD.
- D. **Wells.** The State Well Code is followed.
- E. **Access.** Appropriate road authority authorizes access onto the road from the parcel.
- F. **Public Participation.** The authorization to place the use on the parcel was done at a public meeting where members of the public had an opportunity to know about the proposal and comment on it.

#### Section 5 Home-Based Businesses in Commercial Areas (COM-1, SC-1A SC-1B, LIM-1)

In that home-based businesses are associated with a residential dwelling, the same standards listed in Section 2 of this Article must be met.

#### Section 6 Livestock

- A. **General.** The Town of Duluth recognizes that agricultural, residential, and other uses should exist in a manner that promotes and protects the interests of all concerned. Therefore, the following standards shall apply in the areas designated for keeping of animals. If these standards are exceeded, an individual must apply for a conditional use permit.
- B. **LSSLO, SSLO, Bluffs, and Steep Slopes.** Animals shall not be picketed, fenced or otherwise contained in shore and bluff impact zones or on steep slopes.
- C. **In zone districts RR-1, FFL-1, FL-1, and FL-2 the following standards shall be met:**

1. Impact of animals is determined using **animal unit** equivalents. **Table 8.1** shows the animal unit conversion for each type of animal. Types of animals may be mixed but the maximum number of animal units per acre for the underlying zone district cannot be exceeded.

**Table 8.1 – Animal Unit Equivalents**

Animal	Animal Units (AU)	Animal per Acre
One dairy cow	<b>2</b>	<b>1 animal / 2 acres</b>
One slaughter steer or heifer	<b>2</b>	<b>1 animal / 2 acres</b>
One equid or llama	<b>1</b>	<b>1 animal / 1 acre</b>
One swine	<b>1</b>	<b>1 animal / 1 acre</b>
One sheep, goat, dog, cat, alpaca, emu, ostrich	<b>0.3</b>	<b>3 animals / 1 acre</b>
One duck, turkey, chicken, rabbit	<b>0.1</b>	<b>10 animals / 1 acre</b>

*For example, 2 acres is required for each dairy cow, heifer or steer; 1 acre per equid, llama or swine; 0.3 acre per sheep, goat, dog, cat, alpaca, emu, or ostrich; and 0.1 acre per duck, chicken, turkey or rabbit. Combinations of different types of animals can be calculated using **Table 8.1**.*

- D. **Animal Units Allowed.** The following table, **Table 8.2**, shows the animal units allowed by zone district and parcel size. No restrictions in this section apply to dogs and cats kept as pets for noncommercial purposes.

**Table 8.2 – Animal Units and Animals Allowed, by Zone District**

Zone District	Animals Units/Animals Allowed
<b>All zone districts</b> on parcels equal to or greater than 2 acres	One (1) Animal Unit per acre
<b>All zone districts</b> on parcels less than 2 acres	None except for dogs, cats, poultry and rabbits. 1. Dogs and cats – One (1) Animal Unit per acre 2. Chickens and rabbits - Five (5) hens or rabbits and no roosters per acre
<b>SUR-1 and SUR-2</b>	Only poultry, rabbits and pets allowed. No livestock allowed.
<b>SSUR-1</b>	Only poultry, rabbits, pets and equids allowed. No other livestock allowed.
<b>LIM-1, SC-1A, SC-1B, and COM-1</b>	Only poultry, rabbits and pets allowed. No livestock allowed.

**E. Requirements**

1. No animals may be penned within two-hundred (200) feet of a neighboring residence or one-hundred-fifty (150) feet from any well, except up to five (5) domesticated dogs or cats and up to **ten (10)** chickens shall be permitted. Penned is defined as the confined feeding, breeding, raising, or holding of animals. This provision does not apply if the animals are pastured.
2. The keeping of amounts greater than one-thousand (1,000) poultry or small animals, or more than two-hundred-fifty (250) swine shall require a conditional use permit.
3. Commercial feedlots are not permitted.
4. Where any parcel contains five (5) or more animal units of swine or poultry, enclosed quarters or fencing shall be provided at no less than twice the required setback for the zone district unless the provision in **E.1** above results in a greater setback.
5. All required state and federal permits shall be obtained for the keeping of animals.
6. Animal waste must be disposed of in an environmentally sound manner, and in no case shall runoff from waste discharge directly into a lake, river, unsealed well, or wetland.
7. The keeping of poultry, fowl and rabbits on parcels less than two acres shall meet the following requirements:
  - a. The principle use of the property where the animals are to be kept is a single-family dwelling.
  - b. No person shall keep more than ten (10) chickens, rabbits or other poultry.
  - c. No person shall keep a rooster.
  - d. Animals shall be provided a secure and well-ventilated roofed structure.
  - e. Animals shall be kept in the roofed structure or any attached fenced yard enclosure at all times.
  - f. The floors and walls of the roofed structure and fenced area shall be kept in a clean, sanitary and healthy condition with all dropping and body excretions collected on a daily basis and placed in a fire-proof covered container until applied as fertilizer, composted or transported off the premises.
  - g. No roofed structure or fenced yard enclosure shall be located closer than 25 feet to any residential dwelling on the adjacent lots.

**F. FFL-1, FL-1, FL-2, and RR-1 Zone Districts.** The keeping of livestock and related farming activities should be considered preeminent over non-agricultural uses in these districts.

**G. Regulated Animals**

1. It is unlawful for a person to possess a regulated animal except a person who possesses a valid United States Department of Agriculture license and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards.

## **Section 7 Signs**

- A. Sign Regulation Purposes.** The purposes of this section are to protect the natural scenic beauty and rural character of Duluth Township, promote aesthetic interests, minimize visual clutter, maintain property values, protect public safety, eliminate traffic hazards, and provide important information to the residents of the Township and the traveling public. These purposes shall be achieved by restricting the number, size, location, maintenance, and spacing of outdoor advertising signs through the administration of this section.
- B. General Restrictions.** No outdoor advertising sign visible to the traveling public shall be erected, structurally altered, or maintained except as provided in this section.
- C. Off-Site Signs.** Off-site signs are prohibited.
- D. Sign Permits.** Sign permits for on-site signs shall be required and shall be subject to performance standards herein, except for the following:

1. Signs not exceeding six (6) square feet in area and bearing only property numbers, post box numbers, names of occupants, or other identification of premises, not having commercial connotations other than that listed in **D.7**, below. All signs shall be set back a minimum distance of ten (10) feet from any front, side, or rear lot line.
2. Flags and insignias of any government except when displayed in connection with commercial promotion or D.8 below.
3. Legal notices, identification, information, or directional signs erected or required by governmental bodies, as defined in Minnesota Laws 1971, Chapter 173, Sec. 173.02, Subdivision 6.
4. Signs directing and guiding traffic and parking on private property but bearing no advertising matter.
5. A temporary sign indicating real estate for rent or for sale, related to the premises only on which it is located, and not exceeding six (6) square feet in area.
6. Signs used on a temporary basis in conjunction with garage, estate, rummage and produce sales, or other community events, and not exceeding six (6) square feet in area.
7. Home based businesses, short-term rentals, and bed and breakfast businesses shall be limited to one (1), non-illuminated, on-site sign not to exceed twenty (20) square feet in area and shall not exceed eight (8) feet in height. Home occupations shall be limited to one (1), non-illuminated on-site sign not to exceed six (6) square feet.
8. Political posters, erected or placed in accordance with all applicable State laws, may be allowed without obtaining a land use permit provided that they are removed within thirty (30) days following the election for which they were intended, and provided that such posters do not exceed thirty-two (32) square feet in area. In the event that the posters are not removed within the specified period of time, the Town may remove them at the name bearer's expense.

**E. Prohibited Devices.** No advertising device shall be erected or maintained that:

1. Claims to be or resembles, hides from view, or interferes with the effectiveness of any official traffic or railroad control device, sign, or signal.
2. Obstructs or interferes with a driver's view of approaching, merging or intersecting traffic.
3. Prominently displays the words "stop" or "danger."
4. Is painted or drawn upon rocks, trees, public utility poles, or abandoned buildings.
5. Allows access to be obtained only from an interstate main-traveled way, but excluding frontage roads adjacent thereto.
6. Is structurally unsafe, or in disrepair.
7. Is located within the right-of-way of any public way.
8. Is located in, over, or upon public waters, unless authorized by public authority.

**F. On-Site Signs.** All on-site signs, not otherwise excepted, shall require a sign permit and conform to the following:

1. Signs joined with a common standard and angled no more than thirty degrees between surfaces shall be considered a single sign and sized according to the larger surface.
2. All signs shall be set back a minimum distance of 10 (ten) feet from any front, side, or rear lot line.
3. Signs in commercial and industrial zone districts allowing commercial and industrial uses must meet the following standards.
  - a. One (1) sign is allowed, not to exceed fifty (50) square feet in surface area and not exceeding twenty (20) feet in height. Modifications from the above standard shall require a variance.
  - b. Illuminated signs are permissible provided they are lighted by light sources directed from above the sign toward the ground.



- G. Changeable Electronic Variable Message Signs.** Changeable electronic variable message signs are prohibited.

## Section 8 Outdoor Lighting

- A. Floodlight Projection.** Outdoor floodlighting by floodlight projection above the horizontal plane or onto adjoining properties is prohibited.
- B. Light Pollution.** All light fixtures shall be located, aimed, or shielded to minimize stray light trespassing across property boundaries.
- C. High Intensity Lights.** Search lights, strobe lights, laser source lights, or any similarly, high-intensity fixture shall not be permitted except in emergencies by police and fire personnel or at their direction or for meteorological data gathering purposes.
- D. Shielding.** All new outdoor light fixtures shall be fully shielded or constructed so that minimal light rays are emitted by the installed fixture at angles above the horizontal plane or on to adjoining properties.
- E. Advertising Lighting.** Lighting for outdoor advertising signs shall be mounted at the top of the sign structure and such fixtures shall comply with shielding requirements above.
- F. Energy Efficiency.** The preferred illumination sources for lighting are those lamps that are most energy efficient.
- G. Height.** Except for towers as permitted by the federal government, no mounted lighting fixture shall exceed thirty-five (35) feet in height.
- H. Elimination of Non-Conforming Lighting.** Non-conforming lighting is subject to the following standards.
  - 1. No outdoor lighting fixture, which was lawfully installed prior to the enactment of this ordinance, shall be required to be removed or modified; however, no modification or replacement shall be made to a non-conforming fixture unless the fixture thereafter conforms to the provisions of this Ordinance.
  - 2. In the event that any non-conforming lighting fixture is abandoned or is damaged and if the damage exceeds fifty percent (50%) of the replacement value, exclusive of foundations, the fixture shall be brought into conformance with the provisions of this Ordinance.
- I. Exemption.** Seasonal decorative lighting is permitted.

## Section 9 Accessory Structures

Where performance standards are required for accessory structures (see **Table 5.3**), and in the Sensitive Area Overlay, the following standards shall be met.

- A. Minimum Side Yard Setback.** For any increase in square footage above the allowable maximum size the minimum side yard setback will be determined as follows:
  - 1. Divide the square footage of the proposed structure by the allowable maximum.
  - 2. Multiply the side yard set back by this figure and round to the nearest whole number.
- B. Screening.** Permanent and effective screening from the lakeshore and adjacent properties shall be established and maintained (see **Article III, Section 5**).

- C. Solar Access.** Structure shall not be placed in a manner that obstructs solar access of adjacent properties, as far as practicable.

## **Section 10 Commercial Districts (COM-1) Shoreland Commercial (SC-1A)**

- A. Requirements.** In addition to those items listed in **10.B** and **10.C** below, the commercial proposal must meet the requirements of all other articles in this Zoning Ordinance.
- B. Loading.** Space for off-street loading and unloading of vehicles shall be provided for every building used or designed for commercial, light industrial, manufacturing or warehousing purposes. One (1) such space shall be provided for every ten-thousand (10,000) square feet of floor area or fraction thereof, and such spaces shall be a minimum of ten (10) feet in width, and thirty-five (35) feet in length.
- C. Parking.**
  - 1. Off-street automobile parking or storage space shall be provided on every lot on which any new structures are hereafter established. Such space shall be provided with vehicular access to a street or alley, and such space shall be provided with a suitable area for vehicle turn-around so as to allow vehicles safe entry onto the roadway, and such space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
  - 2. When a structure is enlarged, the required off-street parking space shall be provided for the enlarged portion if the enlargement increases the demand for parking. If a use is changed to a different use requiring more parking, additional parking area as determined by the Planning Director shall be provided.
  - 3. Facilities that operate on shifts shall have sufficient parking based on the standards in this section and the maximum number of employees that would park at the facility at any given time.
  - 4. In addition, the following minimum standards shall apply:
    - a. An off-street parking space shall comprise an area with dimensions of nine (9) feet by eighteen (18) feet plus necessary maneuvering space; total area for parking and maneuvering shall not encroach upon any public right-of-way.
    - b. Residential dwellings shall have one (1) parking space for each unit.
    - c. Tourist accommodations shall have one (1) parking space for each room or unit, and one (1) parking space for each non-resident employee.
    - d. Theater, stadium, auditorium, church, or other places of public assembly shall have one (1) parking space for each five (5) seats, based on maximum seating capacity, and one (1) parking space for each employee.
    - e. Stores and other retail business establishments shall have five and one-half (5 ½) parking spaces for each one-thousand (1000) square feet of total floor area, and one (1) parking space for each employee.
    - f. Office buildings shall have one (1) parking space for each two hundred (200) square feet of office floor area.
    - g. Industrial, manufacturing or wholesale establishments shall have one (1) parking space for each three (3) workers, based on peak employment in any one shift.
    - h. Restaurants, supper clubs, taverns and bars shall have one (1) parking space for each four (4) seats, based on maximum seating capacity, and one (1) parking space for each employee.
    - i. Off-street parking areas, whether public or private, for more than five (5) vehicles, shall be effectively screened from residential uses. All public or private parking areas shall be separated from the right-of-way of any road by means of a sod strip not less than three (3) feet in width or other barrier that clearly delineates the parking lot from the road.

## Section 11 Shoreland Commercial (SC-1B)

- A. Compatible with Surrounding Residential Area.** This district supports a light level of commercial development intensity. Development intensities and uses should be compatible with the surrounding residential scale and density abutting the commercial district. Permitted uses and standards associated with the use will reflect the surrounding intensity and scale of the neighborhood.
- B. Hours of Operation.** Hours of operation will be consistent with residential neighborhoods, generally limited to the hours between 7:00 AM and 9:00 PM. Hours of operation will be based on but not limited to the following factors and be limited accordingly.
  - 1. Amount of noise associated with the operation of the business.
  - 2. Intensity and amount of light associated with operation of the business after sunset.
  - 3. Amount of increased traffic on residential and non-arterial roads, including business traffic to the establishment as well as the shipping and receiving of goods and services.
- C. Lighting and Signage.**
  - 1. All lighting and signage shall meet the general requirements of this Ordinance.
  - 2. In addition, signage shall not be lit past hours of operation of the business.
- D. Increase in Traffic.** The intensity, amount, and scale of use permitted with the commercial development will be directly related to the amount of increased traffic as a result of the commercial use. The proposed use should not result in a significant increase in traffic on non-arterial roads in the surrounding neighborhoods.
- E. Screening and Buffering of Commercial Uses.** Screening and buffering will be provided between the commercial use and the surrounding neighborhoods. (see **Article III, Section 5**)

## Section 12 Home Occupation

- A. Parking.** The applicant shall provide sufficient parking areas to accommodate occasional visitors.
- B. Screening and Buffering.** Screening and buffering shall be provided between incompatible land uses.

## Section 13 Recycling Centers (Publicly Owned Collection Site)

- A. Activities.** Centers are not considered a long-term work site.
- B. Size.** The structure shall not exceed four-hundred-fifty (450) square feet in area.
- C. Parking.** Site must provide a minimum of four (4) parking spaces and a turnaround.
- D. Road Agreements.** If the site is on a private road, there must be a written agreement with the owners of the road to use such a road.
- E. Permits.** All appropriate government permits and authorizations must be followed.

## Section 14 Duplex Dwellings

Duplex dwellings shall be located on a lot that is at least one and one-half (1 ½) times the minimum lot area and at least one and one-half (1 ½) times the minimum lot width required for a single-family dwelling.

## Section 15 Dwellings, Low-Frequency Short-Term Rental

### A. Special Requirements and Conditions.

1. **Licensing and permits.** The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
2. **Property oversight and complaint response.** Thirty (30) days prior to rental of the property in any calendar year and anytime the contact information changes, the property owner shall provide to the Township Planning Director the name and phone number of a contact person with the capability and authority to address complaints or concerns regarding the property. This phone number shall also be provided to all other property owners within five hundred (500) feet of the lot boundary. The contact person must be available at all times during rental periods, and able to be at the property within thirty (30) minutes.
3. **Rental Frequency.** Low-frequency short-term rental frequency is limited to once during any thirty (30) day period. Once during any thirty (30) day period means that a subsequent rental cannot begin less than thirty (30) days from the initiation of the prior rental.
4. **Rental Records.** A log shall be kept of the renter, date of arrival, date of departure, and number of guests for all rentals. A copy of the log shall be provided to Planning Director upon request.
5. **Parking.** Off street parking shall be provided.
6. **Temporary Sleeping Facilities.** No temporary sleeping facilities may be used on the property during rentals (i.e., recreational camping vehicles, tents, etc.).
7. **Land Use Permit.** Low-frequency short-term rentals require a land use permit.

## Section 16 Light Industrial Manufacturing (LIM-1)

This district is designed to accommodate small, light industrial and manufacturing uses in low density areas without adversely affecting the residential character of the surrounding area through the use of site design and performance standards. The implementation of these performance standards is intended to minimize conflict between dissimilar uses.

- A. **Requirements.** In addition to those items listed in this section, the light industrial use must meet all other applicable requirements in the Zoning Ordinance.
- B. **Loading.** Space for off-street loading and unloading of vehicles shall be provided for each building used or designed for light industrial, manufacturing or warehouse purposes. One (1) such space shall be provided for every ten-thousand (10,000) square feet of floor area or fraction thereof, and such spaces shall be a minimum of ten (10) feet in width, thirty-five (35) feet in length.
- C. **Parking.**
  1. Facilities that operate on shifts shall have sufficient parking based on the standards in this section and the maximum number of employees that would park at the facility at any given time. In addition, the following minimum standards shall apply.
    - a. An off-street parking space shall comprise an area with dimensions of nine (9) feet by eighteen (18) feet plus necessary maneuvering space; total area for parking and maneuvering shall not encroach upon any public right-of-way.
    - b. Industrial, manufacturing and wholesale establishments shall have one (1) parking space for each three (3) workers, based on peak employment in any one shift.
    - c. Off-street parking areas, whether public or private, for more than five (5) vehicles, shall be effectively screened from residential uses. All public or private parking areas shall be separated from the right-of-way of any road by means of a sod strip not less than three (3) feet in width or other barrier that clearly delineates the parking lot from the road.

- D. Environmental Standards.** Current Minnesota Pollution Control Agency standards on air, water, noise, solid and hazardous wastes, as adopted or amended in Minnesota Statutes, shall apply.
- E. Hours of Operation.** All light industrial use shall be conducted within the confines of a structure; exceptions may be allowed on an emergency basis.
- F. Lighting.** Lighting shall not be directed upon nearby or adjacent properties pursuant to **Town of Duluth Zoning Ordinance Article VIII Performance Standards, Section 8.**
- G. Screening and Buffering.** Screening and/or buffering shall be provided between potentially incompatible land uses.
- H. Signs.** Adherent to **Town of Duluth Zoning Ordinance Article VIII Performance Standards, Section 7.**

## **Section 17 Small Firearms Manufacturing**

- A. Standards. The following minimum standards shall apply.**
  - 1. There will be no testing of firearms or ammunition on site.
  - 2. The lot size must be at least forty (40) acres.
  - 3. The use and operations must comply with all state and federal regulations.
  - 4. Security/surveillance cameras will be installed, functional, operational, and recording at all times.
  - 5. After one year of operation the land use permit will be reviewed. If there are unforeseen issues that develop the Township may amend the permit with additional performance standards. The land use permit will continue to be reviewed on a yearly basis with the possibility of amending the permit to address any issues that may arise.
  - 6. The use will be restricted to small firearms as defined in MN Rules 7504.0100 (there will be no more than 50 pistols displayed for sale at any time).
  - 7. The Planning Director will determine if the public road serving the manufacturing site can be utilized by the applicant without adversely affecting natural resources or the ability of the public road to support the activity.
  - 8. Within 30 days after receiving the Federal Firearms License (FFL) the permittee will notify the Town of Duluth Fire Department and the Town of Duluth Police Department of the approval.

## **Section 18 Mineral Exploration and Evaluation**

This activity is permitted through a land use permit if the following standards are met. A conditional use application is required for all exploration and evaluation that cannot meet these standards.

- A.** Activity is outside the Lake Superior Shoreland Overlay Area.
- B.** Operations are a minimum of one-quarter mile from a residence.
- C.** Access to the site is obtained.
- D.** The surface owner has authorized the activity.
- E.** All state regulations are followed, including reclamation.
- F.** Any damage to roads and other facilities shall be repaired.

## Section 19 Principal Dwelling Social Service Residential

- A. The maximum capacity is 6 residents.
- B. Lighting will be adequate to provide for the safety of residents and meet the standards of this Ordinance.
- C. Off street parking must be able to accommodate staff members, expected visitors, and residents.
- D. Dwellings must meet all St. Louis County and Minnesota state standards.

## Section 20 Day Care Facility

- A. Must provide off-street parking spaces for pick-up and drop-off to be sufficient to provide for the safe pick-up and drop-off of users of the facility based on the maximum licensed capacity of the facility, the configuration of the facility, the types and intensity of other uses adjacent to the facility, the intensity of traffic adjacent to the facility and other factors determined to be relevant to the safe pick-up and drop-off of users of the facility. The Planning Director will determine if the drop off and pickup meet the above standards.

## Section 21 Farm Stands

- A. Farm stands shall be located on the owner's property and not in any right of way.
- B. All customers must be able to park on the farm stand owner's property.
- C. There may be one small sign posted at the end of the driveway on the landowner's property. The sign shall not exceed 18 sq ft. The sign shall not be illuminated.
- D. All state requirements for food production must be adhered to.
- E. A land use permit is required. There will be no charge for the land use permit.

## Section 22 Solar Energy Systems for Primary and/or Secondary Uses and Structures

- A. **Considered accessory structures.** Ground mounted solar energy systems are a permitted accessory use in all zoning districts where structures of any sort are allowed, subject to certain requirements as set forth below and are subject to the standards for the district in which it is located, including but not limited to, setback, height, and impervious surface coverage limits.
- B. **Land Use Permit.**
  - 1. Ground mounted solar energy systems with a footprint of more than 150 square feet require a land use permit; systems with a footprint of 150 square feet or less do not require a land use permit, but must still meet other requirements.
  - 2. Roof or wall mounted systems do not require a land use permit
- C. **Screening.** Solar energy systems shall not be required to be screened.
- D. **Height.** Solar energy systems must meet the following height requirements:
  - 1. Building- or roof- mounted solar energy systems shall not exceed the maximum allowed height in any zoning district.

2. Ground- or pole-mounted solar energy systems shall not exceed 15 feet in height when oriented at maximum tilt.
- E. Setbacks.** Solar energy systems must meet the accessory structure setbacks for the zoning district in which the system is located.
- F. Impervious Surfaces.**
1. Ground-mount systems shall be exempt from impervious surface standards if the soil under the collector is maintained in vegetation and not compacted.
  2. Ground-mounted systems shall not count toward accessory structure limitations.
- G. Compliance with State Electric Code.** All photovoltaic systems shall comply with the Minnesota State Electric Code.
- H. Compliance with State Plumbing Code.** Solar thermal systems shall comply with applicable Minnesota State Plumbing Code requirements.
- I. Variance Required.** Solar energy systems that do not meet the design standards A - E require a variance.

## **Section 24 WECS - Tier II and Tier III (Micro)**

Tier II WECS are WECS of 10 to 100 kW in total nameplate generating capacity. Tier II WECS are permitted with performance standards in all zone districts except SUR-1 and SUR-2 where they are not permitted.

Tier III WECS are WECS of up to 10 kW in total nameplate generating capacity; these WECS are permitted with performance standards in all zone districts.

### **A. Tier II WECS Total Height and Lot Size.**

1. For zone districts FL-1, FL-2, FFL-1, COM-1, and LIM-1. The total height including tower and rotor at its highest point, must be less than or equal to 200 feet.
2. For zone districts RR-1, SC-1A, SC-1B, SSUR-1. The minimum lot size is 4.5 acres. Total height, including tower and rotor at its highest point, must be less than 125 feet.
3. Zone districts SUR-1 and SUR-2. Not permitted.

### **B. Tier III WECS Total Height and Lot Size.**

1. For all zone districts. For lots less than 2 acres, the total height, including tower and rotor at its highest point, must be less than 70 feet.
2. Zone districts RR-1, SC-1A, SC-1B, SSUR-1, SUR-1, SUR-2, COM-1, and LIM-1. For lots 2 acres to 4.5 acres, total height including tower and rotor at its highest point, must be less than or equal to 100 feet. For lots greater than 4.5 acres, total height, including tower and rotor at its highest point, must be less than 125 feet.
3. Zone districts FL-1, FL-2, FFL-1. For lots 2 acres or greater, total height, including tower and rotor at its highest point, must be less than 200 feet.

### **C. Setbacks for Tier II and Tier III WECS.**

1. Property line setbacks for all zone districts. The tower shall meet all setback requirements applicable to the lot. In all cases the base of the tower shall be setback from all property lines by a minimum of 1.1 times the height of the tower and rotor at its highest point or the distance of the fall zone, as certified by a professional engineer plus ten (10) feet.
2. Occupied structures. The base of the tower shall be setback from all occupied structures by a

minimum of 1.1 times the height of the tower and rotor at its highest point or the distance of the fall zone, as certified by a professional engineer plus ten (10) feet.

3. Road rights-of-way and other rights-of-way (railroads, power lines, etc.) for all zone districts. The tower must be set back from rights-of-way (the setback shall be measured from future rights-of-way if a planned changed or expanded right-of-way is known) by a minimum of 1 times the height of the tower and rotor at its highest point or the distance of the fall zone, as certified by a professional engineer plus ten (10) feet.

**D. Best Management Practices for Protecting Flyways.**

1. Avoid siting in areas where risks to birds and bats cannot be mitigated.
2. Minimize the impacts of roads, power lines, and other associated infrastructure, including burying power lines when possible to avoid bird conflicts and not locating lines in frequent bird flight paths.
3. Implement measures to minimize habitat fragmentation such as reducing the number of new roads, fences, and other disturbances that fragment habitat.
4. Use native species and other tactics to reduce the establishment of non-native invasive species.
5. Avoid guy (stabilizing) wires on facility infrastructure when possible.
6. Locate turbines in places that do not separate birds and bats from frequently used places like roosts, feeding areas, or nests.
7. Use buffer zones to protect habitat or high-risk areas.
8. Minimize the impacts of lighting.
9. Employ practices to reduce the attraction of predators.
10. Adhere to Federal laws protecting wildlife including, but not limited to the following
  - a. Endangered Species Act,
  - b. National Environmental Policy Act,
  - c. Bald and Golden Eagle Protection Act, and
  - d. Migratory Bird Treaty Act.
11. Adhere to Minnesota laws protecting wildlife.

**E. Safety Design Standards.**

1. **Engineering Certification.** Engineering certification must be provided showing that turbine, foundation, and tower design is within accepted professional standards, given local soil and climate conditions. For Tier II and Tier III WECS, certification can be demonstrated by the manufacturer's engineer or another qualified engineer.
2. **Rotor Safety.** Each Tier II WECS shall be equipped with both a manual and automatic braking device capable of stopping the WECS operation in high winds (40 mph or greater).
3. **Warnings.**
  - a. For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of 8 feet above the ground. Visible fencing shall be installed around anchor points of guy wires.
  - b. Consideration shall be given to painted aviation warning on metrological towers of less than 200 feet.

**F. Energy Storage.** Batteries or other energy storage devices shall be designed consistent with the Minnesota Electric Code and Minnesota Fire Code.

**G. Equipment Design and Performance Standards.**

4. **Established Wind Resource.** All WECS shall only be installed where there is an established



wind resource. An established wind resource can be documented in the following ways.

- a. The planned turbine site has a minimum 11 MPH average wind speed at the designed hub height, as documented on the most recent version of Minnesota Department of Commerce statewide wind speed maps.
  - b. The planned turbine has a minimum hub height of eighty (80) feet and the blade arc is 30 feet higher, on a vertical measurement, than all structures and trees within 300 feet of the tower.
  - c. The applicant submits an analysis conducted by a certified wind energy installer or site assessor (North American Board of Certified Energy Professional, NABCEP, or equivalent) that includes estimates of wind speed at turbine height based on measured data, estimated annual production, and compliance with the turbine manufacturer's design wind speed.
5. **Turbine Certification.** Tier II and III WECS turbines shall be certified or in the process of being certified by the Small Wind Certification Council (SWCC), Microgeneration Certification Scheme (MCS), or must be listed by the Interstate Turbine Advisory Council.
  6. **Tower Configuration.** A monopole type tower is preferred. In the case of a lattice tower, measures must be taken to prevent unauthorized climbing of the tower.
  7. **Color and Finish.** All Tier II and III wind turbines and towers shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matt or nonreflective.
  8. **Lighting.** Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations.
  9. **Other Signage.** All signage on site shall comply with Town of Duluth sign requirements. The manufacturer's or owner's company name and/or logo may be placed upon the nacelle, the compartment containing the electrical generator, of the WECS.
  10. **Feeder Lines.** All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried where reasonably feasible.
  11. **Shadow Flicker.** Tier II and III WECS shall be designed to avoid unreasonable adverse shadow flicker effect at any occupied buildings located on a nonparticipating property.
- H. Discontinuation and Decommissioning.**
1. **Abandonment.** A WECS shall be considered abandoned after one (1) year without energy production, unless a plan is developed and submitted to the Planning Director outlining the steps and a schedule for returning the WECS to service. All WECS and accessory facilities shall be completely removed within 80 days of abandonment.
  2. **Decommissioning Plan Required.**
    - a. Tier II WECS shall have a decommissioning plan outlining the anticipated means and cost of removing the WECS at the end of their serviceable life or upon abandonment. The cost estimates shall be made by a competent party such as a professional engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning.
    - b. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities. For Tier II WECS the Town of Duluth may, at its discretion, require a letter of credit or security bond with adequate funds to cover decommissioning costs, and naming the Town as the executor so decommissioning of the turbine(s) can be completed if necessary.
- I. Repowering.** A Tier II WECS is an allowed alternative to decommissioning at the end of the turbine's life. Repowering must not change any regulated component or design element of the turbine, as originally approved in the conditional use permit.
- J. Noise.** All WECS shall comply with Minnesota Rules 7030 governing noise, or shall be certified to operate at noise levels not to exceed fifty (50) dB(A) at a distance no greater than the distance from

the base of the tower to the closest property line, whichever is stricter. The audible noise from wind energy facilities may periodically exceed allowable noise levels during extreme wind events (winds greater than 30 mph).

- K. Electrical Codes and Standards.** All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
- L. Additional Towers.** A Tier II or III WECS systems may include more than one turbine if all other requirements are met and total generating capacity does not exceed 100 kW.

## Section 25 WECS - Building Mounted Systems

- A. Building Mounted Systems.** Building mounted WECS shall be set back from property lines by a distance equal to the tower height and shall provide engineering documentation that the structure upon which the wind energy conversion system is to be mounted shall have the structural integrity to carry the weight and wind loads of the wind energy conversion system and have minimal vibration impacts on the structure. The maximum height, including the structure and the WECS, shall be a maximum of 35 ft.

## Section 26 Wood Processing Facility, Non-Commercial in FFL-1 and RR-1

- A.** Permitted hours of operation are between 8 AM to 6 PM.
- B.** The portable sawmill will comply with setbacks for accessory structures.
- C.** The portable sawmill may be left in place when not in use.
- D.** All wood processed is for personal use only and not for sale to the public.

## Section 27 Greenhouses

- A. Lighting.**
  - 1.** All lighting, interior and exterior, shall be fully shielded and project downward.
  - 2.** Interior lighting utilized for growing of plants shall not be operated between 8 PM and 6 AM by current time (daylight savings time or central standard time, whichever is in effect at time of use). Wastewater Treatment. All wastewater treatment must be approved by St. Louis County through their permitting process.
- B. Hazardous Waste, Chemical Use and Disposal.** All solid and hazardous waste shall be stored and disposed of in accordance with County, State and Federal regulations.
- C. Notification to Fire Department for Industrial /Commercial Greenhouses.** The Fire Department must be made aware of any hazardous, toxic, or flammable materials kept on the property.

## Section 28 Stairways and Lifts to a Shoreline

- A. Conditions for Stairways.** Stairways to the shoreline may be allowed if the structure is necessary to access the shoreline because of steep slopes or wet, unstable soils.
- B. Location.** The structure shall be located to minimize earth disturbing activities and shoreline vegetation removal during construction and to be visually inconspicuous as viewed from the adjacent waterway and public thoroughfares.

- C. **Maximum Width.** The structure shall be no more than four (4) feet wide.
- D. **Color.** Structures shall be inconspicuously colored.
- E. **Maximum Area.** Landings for stairways and lifts on residential lots must not exceed thirty-two (32) square feet.
- F. **Canopies.** Canopies or roofs are not allowed on any stairways, lifts or landings in the bluff or steep slope areas.
- G. **Railings.** Railings are permitted only where required by safety concerns.
- H. **Erosion Control.** Stairways, lifts, and landings may be constructed above the ground on posts or pilings, located on ledge rock, or designed in a manner that ensures control of erosion. Landings shall be located as close to the ground surface as feasible.
- I. **Visual Considerations.** Stairways, lifts, and landings, must be located in the most visually inconspicuous portions of lots as viewed from the surface water if location is suitable for such construction.
- J. **Handicapped Access.** Facilities such as ramps, lifts, or mobility paths for the physically handicapped are permitted provided the standards found above are followed and the requirements of state regulations relating to design and construction of such facilities are followed.
- K. **Minimizing Impacts.** Structures shall be constructed in accordance with best management practices for minimizing adverse impacts on the shoreland area and adjoining water.

## Section 29 Water Oriented Structures

- A. **Allowed Water Oriented Structures.** Specific water oriented accessory structures allowed in shoreland areas include saunas, fish cleaning houses, screen houses, gazebos, and detached decks.
- B. **Saunas.** The following standards apply to saunas.
  - 1. Saunas shall meet the structure setbacks in **Article V, Table 5.2, Lake Superior Shoreland Overlay and Stream Shoreland Overlay Dimensional Requirements.**
  - 2. The maximum size shall be two-hundred (200) square feet in floor area and twelve (12) feet in height.
  - 3. The structure may include a changing room, but this area may not be used for sleeping or cooking.
  - 4. A deck is allowed, but it must meet setback requirements described in **1**, above, and it shall be included when calculating the maximum floor area.
  - 5. The structure shall be served by a grey water septic system, approved by the St. Louis County Health Department.
  - 6. The structure shall not be used to store combustible petroleum products, nor shall it be attached to a structure where such products are present.
  - 7. The structure shall be stained or painted in unobtrusive colors.
  - 8. The sauna shall be screened from the shore by natural means.
- A. **Fish Cleaning Houses.** The following standards apply to fish cleaning houses.
  - 1. The structure shall meet the structure setbacks in **Article V, Table 5.2, Lake Superior Shoreland Overlay and Stream Shoreland Overlay Dimensional Requirements.**

2. The structure shall be limited in size to two-hundred (200) square feet of floor area and twelve (12) feet in height.
3. The structure may not be constructed on slopes exceeding twenty percent (20%).
4. The structure shall not be used for human habitation.
5. The structure shall not have an attached deck.
6. Waste from fish cleaning houses must be disposed of in a manner that conforms to County regulations and policies regarding waste disposal.
7. The structure shall be painted or stained in unobtrusive colors.
8. The structure shall be substantially screened from the lake by natural means.

**B. Gazebos and Screen Houses.** The following standards apply to gazebos and screen houses.

1. Gazebos and screen houses shall meet the structure setbacks in **Article V, Table 5.2, Lake Superior Shoreland Overlay and Stream Shoreland Overlay Dimensional Requirements**.
2. The structure shall be limited to one-hundred-fifty (150) square feet in size.
3. The structure shall be limited to one (1) story and twelve (12) feet in height.
4. The structure shall not have pressurized water, nor kitchen or sanitary facilities.
5. The structure shall be setback from the ordinary high water level a minimum of fifty (50) feet.
6. The structure shall not have decks.
7. The structure shall be painted or stained in an unobtrusive color.
8. The structure shall be substantially screened from the lake by natural means.

**C. Boat Docks and Boat Houses.** Boat docks and boat houses are not permitted.

## **Section 30 Market Farms**

- A. Minimum Lot Size.** A market farm must be a minimum of 9 acres.
- B. Hours.** Market farms may be open to the public during seasonal hours and may have employees as necessary for support of the operation.
- C. Festivals.** Festivals are allowed up to four times per year for three consecutive days each.
- D. Retail Sales.** Retail sales and value-added sales, including agricultural, horticultural, Cottage Foods, and silvicultural products are allowed. Retail sale products must be produced on the farm or be 50% locally sourced.
- E. Parking.** All customers must be able to park on the farm property.
- G. Signage.** There may be one sign posted at the end of the driveway on the landowner's property. The sign shall not exceed 18 sq ft. The sign shall not be illuminated.
- H. Regulations.** All applicable federal, state, and local health regulations must be adhered to.
- I. Land Use Permit.** A land use permit is required. There will be no charge for the land use permit.
- J. Sanitary Facilities.** Onsite sanitary facilities sufficient to meet needs must be provided during open hours of operation.

## Article IX: Conditional Uses

### Section 1 General

Any use listed in this Ordinance as a conditional use may be permitted only after an application for a conditional use permit has been reviewed and approved by the Planning Commission. The Planning Commission shall have the authority to approve or deny all conditional use permit applications, and to direct the issuance of conditional use permits.

### Section 2 Application for a Conditional or Interim Use

#### A. General.

1. Upon receipt of a request for an application for a conditional use permit, the Planning Director will present it to the Planning Commission at the first meeting subsequent to the request. The Planning Commission will determine if the proposed conditional use is permitted. At the public hearing, the Planning Commission may designate the conditional use as an interim use if the proposed use meets any of the following criteria:
  - a. There is a time certain (for example, a date or particular event) when the use will terminate or the type of use is one that is inherently temporary.
  - b. The type of use creates a heightened concern for public health and safety, requiring a closer monitoring of the use after the permit is issued.
  - c. There will be a known change in zoning in the near future or there is a belief that future development patterns in the area will conflict with the conditional use being requested.
2. The Planning Commission will determine the area of impact and identify the people, organizations, agencies, etc. to be notified regarding the proposed conditional/interim use.
3. The Planning Commission will set a date for the public hearing on the conditional/interim use.
4. The applicant will complete and submit the application for a conditional/interim use permit, which includes the Community Participation Plan.
5. The Planning Commission will notify those in the area of impact of the proposed conditional/interim use including the applicant's name and that the applicant will be gathering information for their part of the community participation process.
6. The Community Participation Report must be completed by the applicant and must be submitted at least seven (7) days prior to the public hearing. If the Community Participation Report is not completed and submitted at least seven (7) days prior to the public hearing, the conditional/interim use permit shall be denied. The applicant may re-apply for the conditional/interim use permit. The applicant will be required to pay an additional application fee to be heard again.

#### B. Community Participation Plan. Every application includes a Community Participation Plan that must be completed prior to the Public Hearing. An application will not be considered complete until the Community Participation Plan is completed.

1. The purpose of the Community Participation Plan is to:
  - a. Ensure that applicants pursue early and effective community participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;
  - b. Ensure that the community has an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process.

- c. Facilitate ongoing communications between the applicant, the community, the Planning Commission and elected officials.
    - d. Encourage applicants to be good neighbors and to allow for informed decision-making. It is not intended to produce complete consensus on all applications.
  2. Information required. At a minimum, the Community Participation Plan shall include the following information:
    - a. How those affected or otherwise interested will be provided an opportunity to discuss the applicants' proposal with the applicant and express any concerns, issues, or problems they may have with the proposal.
  3. Area of impact. The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. The area of impact for notification will be determined by the Planning Commission based on the following:
    - a. Extent of the effects (including effect on natural resources, visual effects, and social effects) of the conditional/interim use.
    - b. Intensity of the effects of the conditional/interim use.
    - c. For an interim use, duration of the effects of the interim use.
  4. At a minimum, the area of impact shall include owners of record within one-quarter (1/4) mile of the affected property or the ten (10) properties nearest to the affected property, whichever would provide notice to the greatest number of owners.
- C. **Community Participation Report.** The applicant shall provide a written document on the results of their effort as part of the public hearing process. This report will be attached to the Planning Commission's record of decision. At a minimum the document will include a summary of concerns, issues, and problems expressed during the process including:
  1. The substance of those concerns, issues, or problems.
  2. How the applicant has addressed or intends to address the concerns, issues, or problems.
  3. Concerns, issues, or problems the applicant is unwilling or unable to address and why.

### Section 3 Public Hearing

The conditional/interim use application will be heard by the Planning Commission provided all of the requirements for holding the public meeting are met. In the event the applicant does not meet the time schedule set forth or other requirements for the public hearing, the permit will be denied. The applicant may apply again for the conditional/interim use permit.

### Section 4 Public Hearing Notice Requirements

- A. **Minimum Coverage.** Notices will be sent to owners of record within at least one-quarter mile (¼) mile of the affected property, to be determined by the Planning Commission. See B.4 above.
- B. **Publication.** Notice of hearing will be published in the newspaper of record for the Town of Duluth.
- C. **Minimum Notice.** All notices will be published or sent a minimum of ten (10) days prior to the date of the Public Hearing.
- D. **Additional Studies.** The costs of special or environmental studies that might be required in conjunction with a conditional/interim use shall be borne by the applicant.
- E. **Fee.** The required fee shall accompany the application.
- F. **Insufficient Application.** The Planning Director shall reject any application not accompanied by the

required fee or by other material and information as required by this Ordinance. Notification of rejection, along with the reason for such action, shall be given the applicant within fifteen (15) business days of receipt of the application. The applicant shall have the opportunity to resubmit a substantially complete application after being notified of the rejection. For purposes of Minnesota Statutes section 15.99, the 60-day review period does not start until the Planning Director has received a substantially complete application.

## Section 5 Decisions

The Town of Duluth uses the following process and requirements for conditional/interim use decisions.

- A. Basis for Decisions.** Decisions of the Planning Commission on applications shall be made according to the general requirements and criteria for such permits as listed in this Article, Section 7, and any special requirements applicable to the particular application listed in this Article.
- B. Decision Timeframe, Evaluation Basis.** The Planning Commission will render its decisions in writing within sixty (60) days of accepting the conditional/interim use permit application, stating its reasons in sufficient detail so that it can be determined that the decision was made in reliance on testimony given at the public hearing and according to the criteria contained in this Ordinance. The vote of the Commission will be indicated on the written decision.
- C. Filing with County.** After a conditional/interim use permit is granted, a certified copy of the decision will be filed with the County Recorder or Registrar of Titles. It is the responsibility of the Planning Director to carry out this provision.

## Section 6 Conditions

The Town of Duluth sets the following standards for regulating land uses listed as conditional or interim.

- A. Public Interest.** The Planning Commission may impose such conditions or restrictions, as it deems necessary to protect the public interest.
- B. Unlisted Land Uses.** When a specific use requiring a conditional/interim use permit is not noted in this Article and the St. Louis County Zoning Ordinance lists performance standards and/or requirements for the use, they will become required conditions for that particular use at a minimum. The Town of Duluth Planning Commission may require stricter requirements if it deems them appropriate.
- C. Covenants.** When appropriate, restrictive covenants may be entered into regarding such matters.
- D. On-Going Observation of Conditions.** A conditional use permit shall remain in effect for so long as the conditions agreed upon are observed.
- E. Required Securities.** A bond, cash deposit or other security may be required by the Town of Duluth as a condition for the issuance of a conditional/interim use permit to secure compliance with the conditions of the permit. The form and amount of such security shall be at the discretion of the Planning Commission and may be equal to, but not exceed, the amount estimated to cover the costs of meeting those conditions it secures.
- F. Termination Due to Discontinuance.** If a conditional/interim use is discontinued for thirty-six (36) consecutive months, the conditional/interim use permit authorizing it shall automatically terminate, and any future use of the building, structure or property to which the permit pertained shall conform to Article IV *Nonconformities*.

- G. On-Going Review.** Conditional/interim uses with conditions may be reviewed periodically by the Planning Commission. Where such a use does not continue in conformity with the conditions of the original approval, the permit shall be terminated and such non-compliance shall constitute a violation of this Ordinance.
- H. Listed Conditions.** All of the requirements in this Article, Section 7, *General Criteria and Requirements*, must be met. In addition, special conditions and requirements for specific uses listed in this Article, Sections 10 through 25 must also be met.
- I. Time Period for Interim Uses.** Applications reviewed by the Planning Commission deemed to be an interim use will state the period of time for which the permit is valid.

## **Section 7    General Criteria and Requirements for Conditional / Interim Uses**

The Town of Duluth sets the following general criteria and requirements for conditional/interim use applications and approvals.

- A. Approval Standards.** At a minimum, a conditional/interim use permit may be approved only upon a showing by the applicant that all of the standards and criteria stated in this section will be satisfied. Since by definition a conditional/interim use is a special use not generally appropriate within the zone district, the applicant bears the burden of demonstrating a right to the permit. Absent such showing, the Planning Commission shall deny any application.
- B. Necessary Findings.** A conditional/interim use permit may be granted only upon finding all of the following:
  - 1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
  - 2. The use is compatible with the existing neighborhood.
  - 3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
  - 4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
  - 5. The proposed use will comply with the wetlands requirements in **Article III, Section 6** of this Ordinance.
  - 6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur.
  - 7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
  - 8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
  - 9. Adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.
  - 10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.
  - 11. The location of the site is appropriate with respect to existing or future access roads.
  - 12. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met.



- C. Additional Information Needed.** When in the opinion of the Planning Commission a conditional/interim use permit may result in a material adverse effect on the environment, the applicant may be requested by the Planning Commission to demonstrate the nature and extent of the effect by performing an Environmental Assessment Worksheet or other form of environmental assessment. The purpose of an environmental assessment is to carefully evaluate proposed actions in order to assure safe, healthful, productive and aesthetically pleasing surroundings and to discourage ecologically unsound practices.

## Section 8 Interim Uses

- A. General.** If a conditional use application has been deemed to be an interim use by the Planning Commission the following sections shall apply to the interim use.
- B. Purpose and Intent.** The purpose and intent of interim uses are:
1. To allow for a use that creates a heightened concern for public health and safety, requiring closer monitoring of the use after the permit is issued.
  2. To allow for a use for which there is a time certain (for example, a date or a particular event) when the use will terminate, or for a use that is inherently temporary.
  3. To allow for a time-limited use in an area where there will be a known change in zoning in the near future or in an area where there is a belief that future development patterns will conflict with the use being requested.
- C. An Interim Use Shall Comply with the Following:**
1. The use will meet the general criteria and requirements set forth in **Section 7** of this **Article**.
  2. The use will conform to the applicable zoning district standards.
  3. The use will meet any applicable requirements for conditional uses as identified in **Section 10** through **Section 20** of this **Article**.
  4. The date or event that will terminate the use can be identified with certainty.
  5. The use will not impose additional unreasonable costs on the public.
  6. The user agrees to any conditions imposed by the Planning Commission.
- D. Termination.** An interim use shall terminate on the happening of any of the following events, whichever occurs first:
1. The date stated in the permit.
  2. Upon violation of conditions under which the permit was issued.
  3. If the Town's zoning regulations change and render the use non-conforming, the Town will consider not renewing or extending the permit.
  4. The redevelopment of the use and property upon which it is located to a permitted or conditional use.
- E. Amendments.** Holders of an interim use permit may propose amendments to the permit at any time, following the procedures for a new conditional use permit set forth in this Ordinance. No significant changes in the circumstances or the scope of the interim use shall be undertaken without approval by the Planning Commission. The Planning Commission shall determine what constitutes significant change. Significant changes include, but are not limited to, hours of operation, number of employees, expansion of structures and/or premises, and operational modifications resulting in increased external activities and traffic. The Planning Commission may approve significant changes and modifications to interim use permits, and may revise or apply additional conditions. The user agrees to any conditions that the Planning Commission deems appropriate for permission of the use.

- F. **Expiration.** Interim use permits which have been issued under the provisions of this Ordinance shall expire without further action by the Planning Commission. The permit holder may apply to the Planning Commission for an extension no later than sixty (60) days prior to the expiration of the permit. The approval of a request for extension will require a public hearing. Approval for an extension of the permit will be based on an evaluation of the interim use in terms of demonstrated compatibility with the neighborhood, any detrimental effects documented during the period of the interim use, and any increased costs to the Town as a result of the interim use.

## Section 9 Appeals from Decisions

Appeals from decisions made by the Planning Commission or appeals from administrative determinations made by the Planning Director may be made according to procedures outlined in **Article XIV**.

## Section 10 Private Airstrips

In addition to the general criteria and requirements listed in **Section 6** of this **Article**, and the zoning requirements of the zone district in which it is to be located (as described elsewhere in this Zoning Ordinance), the Town of Duluth requires the following special conditions for private airstrips.

- A. **Hours.** Airstrips may only be used for landing and takeoff during daylight hours.
- B. **FAA Standards.** The airstrip shall be in conformance with all standards, regulations, and recommendations set forth by the Federal Aviation Administration.
- C. **Use.** Airstrips shall only be used for destination landings and takeoff. Touch and go practice landings shall not be permitted.
- D. **Safety.** The applicant must demonstrate that the site has adequate runway length and approach to assure the safety of the community.
- E. **Utility Structures.** Airstrips shall not be located within areas adjacent to utility structures if the proximity constitutes a danger to the community.

## Section 11 Home-Based Business

In addition to the general criteria and requirements listed in **Section 6** of this **Article**, and the zoning requirements of the zone district in which it is to be located (as described elsewhere in this Zoning Ordinance), the Town of Duluth requires the following special conditions for home-based businesses.

- A. **Storage.** No outside storage of material or equipment shall be permitted.
- B. **Waste.** All waste shall be disposed of in accordance with County and State Regulations.
- C. **Traffic.** The Planning Commission must determine that the road can be utilized by the home-based business without adversely affecting the public safety or the ability of the road to support additional traffic. In addition, approval from the appropriate road authority shall be obtained to address public safety and any increased traffic from the proposed home business.
- D. **Sewage Treatment System.** County on-site sewage treatment regulations must be met.
- E. **Fire Code.** The design, placement of structures and the storage of materials must meet State Fire Code regulations.
- F. **Notification to the Fire Department.** The Fire Department must be made aware of any hazardous,

toxic, or flammable material kept on the property.

- G. Limitations on Use.** The home-based business shall not be a limited manufacturing use, salvage yard, or other use that is industrial in character.
- H. Petition.** A majority of the property owners within one quarter mile (1/4) of the proposed home-based business must sign a petition in support of the proposal. The petition must be included as part of the Community Participation Report.
- I. Prohibited Uses.** The home business shall not be a rural industry, salvage facility, or other use that is industrial in character.

## Section 12 Mobile Home Parks

In addition to the general criteria and requirements listed in **Section 6** of this **Article** and regulations explained elsewhere, including but not limited to lighting, screening and signage, the Town of Duluth requires the following special conditions for mobile home parks.

- A. Size Minimum.** Each mobile home park shall contain a minimum of five (5) acres or meet the minimum lot size in the zone district, whichever is greater.
- B. Site Width.** The minimum site width per mobile home unit within the park shall be fifty (50) feet. Each site shall be clearly defined by a permanent marker in the ground.
- C. Site Area.** The minimum site area per mobile home unit site within the park shall be five-thousand (5000) square feet.
- D. Non-Residential Uses Forbidden.** No mobile home in the park shall be used for any purpose other than a dwelling.
- E. One Home per Site.** No mobile home site shall be used as the location for more than one (1) mobile home or trailer.
- F. Site Surface.** Each mobile home unit site shall be equipped with a hard surface gravel base of sufficient size to support the wheels or support structure for the unit and the front parking jack.
- G. Access Requirement.** Each park shall have direct access to a state highway, county, or township road and each mobile home site shall have direct access to a connecting private hard-surface road.
- H. State Regulatory Approval.** All State of Minnesota regulations must be met.
- I. Common Area.** A commons area for residents of the park shall be provided and maintained based on the following formula: a minimum of one hundred (100) square feet for each mobile home unit.
- J. Walkways.** Walkways at least three (3) feet wide shall be constructed and maintained throughout the mobile home park to provide access to the general park facilities including all buildings and sanitation facilities. Such walkways shall be separate from roadways or driveways for auto traffic.
- K. Parking.** Provision shall be made for a minimum of one (1) individually accessible and one (1) tandem parking space per mobile home site.
- L. Additional Parking.** In addition to the above described parking spaces, to provide for excess parking of campers, boats, pickup trucks, hauling trailers, and the like, there shall be provided "reservoir parking" in the ratio of one (1) such parking space for every four (4) mobile home sites. Each reservoir parking space shall be at least ten (10) feet by thirty (30) feet in size.

**M. Storage Areas.** There shall be provided a minimum storage facility of ninety (90) cubic feet on each mobile home site. Storage facilities shall be designed in a manner that will enhance the appearance of the mobile home park and shall be constructed of suitable weather resistant materials.

**N. Underground Utilities.** All service utilities such as electricity, water, gas, and the like within the property lines of the premises of a mobile home park shall be installed underground.

## Section 13 Recreational Camping Parks

In addition to the general criteria and requirements listed in **Section 6** of this **Article** and regulations explained elsewhere, including but not limited to lighting, screening and signage, the Town of Duluth requires the following special conditions for creating and operating recreational camping vehicle parks.

**A. Permanent Structures Limited.** Permanent structures in recreational camping parks and accessory uses are limited to a permanent residence for the manager, vending machines, and recreational facilities for the exclusive use of the park occupants.

**B. Occupancy Limits.** Occupancy of each site is limited to one (1) recreational camping vehicle or tent, one (1) automobile or truck, accommodating one (1) camping party. The length of stay for any one party is limited to a maximum of one-hundred-twenty (120) days in any twelve (12) month period.

**C. Park Size.** Each park shall contain a minimum of ten (10) acres.

**D. Site Width.** The minimum width per unit site within the park shall be sixty (60) feet.

**E. Recreation Areas.** A recreation area of at least ten thousand (10,000) square feet shall be provided. Recreation equipment, such as a pool, playground, and picnic tables, and a service building, including toilets, showers, and laundry, can be located within the recreation area.

**F. Sanitation Stations.** All parks must meet the requirements of either St. Louis County or the North Shore Sanitary District, dependent upon the jurisdiction.

**G. Minimum Site Area.** The minimum site size is three thousand six hundred (3,600) square feet.

**H. Screening.** The park will be screened from residential areas.

**I. Sites.** Maximum number of sites per acre is 10.

**J. Water Supply.** An accessible, adequate, safe and potable supply of water under pressure shall be provided in every park that has RV sites. The water supply system shall be designed, constructed and maintained in compliance with Minnesota State Health Department standards.

**K. Refuse Disposal.** The storage, collection and disposal of refuse shall be performed so as to minimize accidents, fire hazards, air pollution, odors, insects, rodents or other nuisance conditions. All refuse shall be stored in durable, washable and nonabsorbent metal or plastic containers with tight-fitting lids. Containers shall be provided for recycling.

**L. Fires.** Fires shall be allowed only in stoves or in designated fire rings no more than three (3) feet in size. Fire rings and stoves must be placed in safe and convenient locations where they will not constitute fire hazards to vegetation, undergrowth, trees, tents, or RVs. No open fires are allowed.

**M. Swimming Pools.** Swimming pools and natural swimming areas shall be operated, maintained and used in compliance with recommendations and requirements of Minnesota Department of Health's Regulations and Standards Governing Swimming Pools and Swimming Areas.

**N. Detailed Land Use Plan.** The detailed land use plan must include the following.

1. Plans must be drawn to a scale of 1" = 100' unless a larger scale is necessary, and must include the dimensions and location of all rental spaces, service buildings, common and recreation areas, surrounding land uses, and zoning districts.
2. Typical street cross sections.
3. Location and widths of roadways, sidewalks and pedestrian ways.
4. Topography of site, at two (2) foot contours.
5. Grading and drainage plans.
6. Utility plans.
7. Legal description of property, including acreage.
8. Copy of title.
9. Landscaping, screening and fencing plans.
10. Fire protection plan.
11. Location and description of all permanent structures and common facilities.
12. Acreage and percentage of land to be set aside as open space.
13. Density of rental spaces and type of rental spaces (tent or RV) per acre.
14. Vicinity map drawn to a scale of 1" = 1,000' or 1" = 5,000'.
15. Location of all areas subject to inundation or storm water overflow and the location, area and direction of flow of all water courses, including the 100-year floodplain boundaries.
16. Location and principal dimensions of all existing or proposed easements, water course boundaries, public utilities, monuments, pins, benchmarks and other significant features.
17. Proposed surface treatment and design of all interior roadways and rental pads.

**O. Stormwater.** The requirements of the Town's Stormwater, Erosion and Sediment Control Ordinance must be met.

## Section 14 Utility Facilities

In addition to the general criteria and requirements listed in **Section 6** of this **Article** and regulations explained elsewhere, including, but not limited to, lighting, screening and signage, the Town of Duluth requires the following special conditions for construction and operation of utility facilities.

**A. Size and Height.** Requirements for all utility structures (commercial, public and private):

1. A structure greater than fifty (50) feet in height requires a conditional use permit.
2. Structures will not exceed six-hundred (600) square feet in area. This may be in a single structure or a series of structures at the site provided the total area does not exceed six-hundred (600) square feet.

**B. Utility Facility Requirements.** Requirements for all commercial or public utility facilities:

1. One (1) parking place will be provided for at each facility.
2. If the site is on a private road, there must be an agreement to use such a road from the appropriate party.
3. A performance bond will be required to ensure that the standards associated with the permit are met, including, but not limited to the removal of the structure when it is no longer used.
4. Facilities that are no longer being utilized for their intended purposes for a period of one (1) year will be considered an inactive permit, subject to the permit requirements (if any) regarding

their removal.

5. Prior to the submission of any application, the applicant will discuss the Town's emergency and public information needs with the Planning Commission and other appropriate government agencies.
6. All appropriate government permits and authorizations must be obtained and complied with and submitted and included in the Community Participation Report.
7. All facilities will have a landscaping or vegetative protection plan, property maintenance plan (including structural maintenance), and a fencing plan. These will be submitted to the Planning Commission and included in the Community Participation Report.
8. No advertisement will be placed on utility structures except for the name of facility owners as required by State or Federal Regulatory agencies.

**C. Utility Facility: Commercial Communication Towers.** Requirements for commercial towers include the following:

1. The conditional use requirement for towers is waived for antennas placed on utility structures such as water towers, utility poles, steeples, public buildings or similar facilities if the overall height does not increase more than twenty (20) feet.
2. Commercial towers will be outside of significant migratory bird flight paths as determined by the Minnesota Department of Natural Resources or the U.S. Fish and Wildlife Service.
3. Towers within one-thousand (1,000) feet of a classified lake or residential zoned district are restricted to a height less than or equal to one-hundred (100) feet.
4. Towers located between one-thousand (1,000) feet and one-half (1/2) mile of a lake are restricted to a height less than or equal to two-hundred (200) feet.
5. Towers located within one-quarter mile of Types III, IV, or V wetlands, Lake Superior Shoreland Overlay (LSSLO), Streams Shoreland Overlay (SSLO), public parks and recreation areas, landing approach to private airstrips and Highway 61 Expressway are restricted to heights less than or equal to two-hundred (200) feet.
6. The structure must not encroach on any shoreland, road, or yard setbacks for the zone or overlay district in which it is located.
7. Facilities less than one-hundred (100) feet shall not be illuminated.
8. Nighttime strobe lights will not be permitted unless specifically approved during the conditional use permit process, and then only to meet Federal Standards or for protection of migratory birds.
9. Towers will not be closer than two (2) times the tower height to the nearest structure off the property.
10. At a minimum, the tower will be located a distance from property lines equal to the tower height. This setback will also apply from the ordinary high water mark for properties on a lake or river. All other utility structures are required to follow principal structure setback requirements.
11. No additional permits are required for the placement of additional antennas on an approved tower provided tower height is not increased by more than twenty (20) feet and the new tower height does not exceed two-hundred (200) feet or lighting is required where previously lighting was not required.
12. All utility structures within parcels containing active or inactive borrow pits must demonstrate that they will not interfere with the reclamation of the borrow pit or deny access to aggregate material.
13. For commercial communication towers, an alternatives analysis shall be prepared by the actual applicant or on behalf of the applicant by its designated technical representative, which

identifies at least three (3) sites, technically feasible alternative locations and/or facilities that could provide the proposed telecommunication service. The intention of the alternative analysis is to present alternative strategies that could minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the community. The analysis shall address the potential for co-location and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the determination of the Planning Commission that the site applied for is more advantageous than any available, feasible alternative site. The Town of Duluth may require independent verification of this analysis at the applicant's expense.

14. For commercial communication towers, a tabular and map inventory of all of the applicant's existing telecommunications facilities that are located within the Town of Duluth and including all of the existing facilities that do or could provide services within the Town of Duluth, but are not physically within the Town shall be provided. The inventory shall specify the location, height, type, and design of each of the applicant's existing telecommunication facilities, and the ability of the tower or antenna structure to accommodate additional co-location antennas.
15. On commercial communication towers, co-location of antennas is required, unless it can be demonstrated by the applicant that it is not possible. Co-location is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a significant period of time, such as would be occasioned by requiring a replacement tower or reconstruction of an existing tower to facilitate co-location. In general, it is anticipated that co-location will not result in any disruption of service. All co-located and multiple-user telecommunication facilities shall be designed to promote site sharing.
16. Windmills/wind generation units must follow all setback requirements for the zone district in which they are located except that the side yard setback shall be equal to the height of the windmill.
17. No permit is required for communication towers used by amateur radio operators that are authorized by the Federal Communications Commission or other towers incidental to the principal use as long as they are less than or equal to fifty (50) feet in height.
18. Communication towers used by amateur radio operators that are authorized by the Federal Communications Commission must meet all principal structure setback requirements in the zoning district.
19. Communication towers used by amateur radio operators that are authorized by the Federal Communications Commission may not be illuminated unless required to meet Federal regulations.
20. The Community Participation Report must include:
  - a. Explanation of the reasons the particular site has been selected.
  - b. Documentation that the structure has been designed to conform to the applicable State Structural Building Codes.
  - c. Documentation that the structure complies with the applicable provisions of the National Electrical Code and identification of a qualified engineer licensed in the State of Minnesota who will inspect the facility when required.
  - d. Documentation of compliance with all applicable State and Federal regulations.
  - e. Where identified in **C.13**, above, an alternatives analysis.
  - f. Any other information the Planning Commission deems necessary to make a decision regarding the issuance of a conditional/interim use permit.

## **Section 15 Tier I Wind Energy Conversion Systems (WECS)**

In addition to the general criteria and requirements listed in **Section 6** of this **Article** and regulations

explained elsewhere, the Town of Duluth requires the following special conditions for Tier I Wind Energy Conversion Systems.

**A. Purpose.** The purpose is to regulate the installation and operation of Tier I Wind Energy Conversion Systems (WECS) within the Town of Duluth not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (MS 216E.01 – 216E.18), to encourage local wind energy development in priority wind energy areas, and to meet the values, vision, goals, and policies of the Town of Duluth Comprehensive Land Use Plan and the climate protection goals of the State of Minnesota.

**B. Interpretation and Conflict.**

1. In interpreting these regulations and their application, the provisions of these regulations shall be held to be the minimum requirements for the protection of public health, safety, and general welfare. These regulations shall be constructed to broadly promote the purposes for which they are adopted.
2. These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law except as provided in these regulations. In cases of conflicting regulations, the more restrictive shall apply.

**C. Total Height.** The highest point, above ground level, reached by a rotor tip or any other part of the WECS.

**D. Setbacks.** All towers shall adhere to the setbacks established in **Table 9.1** below.

<b>Table 9.1 – Setbacks for Tier I WECS</b>	
<b>Property Lines</b>	5 rotor diameters along the primary wind axis, 3 rotor diameters along the secondary wind axis (rotor diameters are between 250 and 400 feet)
<b>Residential Dwelling, Participating*</b>	750 feet
<b>Residential Dwelling, Non-participating</b>	1,000 feet
<b>Road Rights-of-Way**</b>	1 times the height; may be reduced for minimum maintenance roads or a road with average daily traffic count of less than 10
<b>Other Rights-of- Way (Railroads, Power Lines, etc.)</b>	To be considered by the Planning Commission
<b>Wetlands, USFW Types III, IV and V</b>	600 feet
<b>Other Structures</b>	To be considered by the Planning Commission
<b>Migratory Birds Flyways</b>	Use Best Management Practices identified in <b>E</b> , below



- \* The setback for dwellings shall be reciprocal in that no dwelling shall be constructed within 750 feet of a Tier I wind turbine.
- \*\* The setback shall be measured from future rights-of-way if a planned change or expansion of right-of-way is known.

**E. Best Management Practices for Protecting Flyways**

1. Avoid siting in areas where risks to birds and bats cannot be mitigated.
2. Minimize the impacts of roads, power lines, and other associated infrastructure, including burying power lines when possible to avoid bird conflicts and not locating lines in frequent bird flight paths.
3. Implement measures to minimize habitat fragmentation such as reducing the number of new roads, fences, and other disturbances that fragment habitat.
4. Use native species and other tactics to reduce the establishment of non-native invasive species.
5. Avoid guy (stabilizing) wires on facility infrastructure when possible.
6. Locate turbines in places that do not separate birds and bats from frequently used places like roosts, feeding areas, or nests.
7. Use buffer zones to protect habitat or high-risk areas.
8. Minimize the impacts of lighting.
9. Employ practices to reduce the attraction of predators.
10. Adhere to Federal laws protecting wildlife including, but not limited to, the following.
  - a. Endangered Species Act
  - b. National Environmental Policy Act
  - c. Bald and Golden Eagle Protection Act
  - d. Migratory Bird Treaty Act
11. Adhere to Minnesota laws protecting wildlife.

**F. Safety Design Standards**

1. **Engineering Certification.** Engineering certification must be provided showing that turbine, foundation, and tower design is within accepted professional standards, given local soil and climate conditions.
2. **Controls and Brakes.** All WECS shall be equipped with a braking system that conforms to applicable industry standards.
3. **Warnings.**
  - a. For all Tier I WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable point.
  - b. For all guylines, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of 8 feet above the ground. Visible fencing must be installed around anchor points of guy wires.
  - c. Consideration shall be given to painted aviation warning on metrological towers of less than 200 feet.
4. **Energy Storage.** Batteries or other energy storage devices shall be designed consistent with the Minnesota Electric Code and Minnesota Fire Code.

**G. Equipment Design and Performance Standards**

1. **Established Wind Resource.** All WECS shall only be installed where there is an established wind resource. An established wind resource can be documented in the following ways.

- a. The planned turbine site has a minimum 11 MPH average wind speed at the designed hub height, as documented on the most recent version of Minnesota Department of Commerce statewide wind speed maps.
  - b. The planned turbine has a minimum hub height of eighty (80) feet and the blade arc is 30 feet higher, on a vertical measurement, than all structures and trees within 300 feet of the tower.
  - c. The applicant submits an analysis conducted by a certified wind energy installer or site assessor (North American Board of Certified Energy Professional, NABCEP, or equivalent) that includes estimates of wind speed at turbine height based on measured data, estimated annual production, and compliance with the turbine manufacturer's design wind speed.
2. **Tower Configuration.** All Tier I wind turbines shall be installed with a tubular, monopole type tower.
  3. **Color and Finish.** All Tier I wind turbines and towers shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matt or nonreflective.
  4. **Lighting.** Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations.
  5. **Other Signage.** All signage on site shall comply with the Town of Duluth sign requirements. The manufacturer's or owner's company name and/or logo may be placed upon the nacelle, the compartment containing the electrical generator, of the WECS.
  6. **Feeder Lines.** All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried where reasonably feasible.
  7. **Shadow Flicker.** Tier I WECS shall be designed to avoid unreasonable adverse shadow flicker effect at any occupied buildings located on a nonparticipating property.

**H. Discontinuation and Decommissioning.**

1. **Abandonment.** A WECS shall be considered abandoned after one (1) year without energy production, unless a plan is developed and submitted to the Planning Director outlining the steps and a schedule for returning the WECS to service. All WECS and accessory facilities shall be completely removed within 80 days of abandonment.
  2. **Decommissioning Plan Required.** Tier I WECS shall have a decommissioning plan outlining the anticipated means and cost of removing the WECS at the end of their serviceable life or upon abandonment. The cost estimates shall be made by a competent party such as a professional engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities. The Town of Duluth may, at its discretion, require a letter of credit or security bond with adequate funds to cover decommissioning costs, and naming the Town as the executor so decommissioning of the turbine(s) can be completed if necessary.
  3. **Repowering.** Repowering Tier 1 WECS is an allowed alternative to decommissioning at the end of the turbine's life. Repowering must not change any regulated component or design element of the turbine, as originally approved in the conditional use permit.
- I. Orderly Development.** Upon issuance of a conditional use permit, all Tier I WECS applicants shall notify the appropriate State of Minnesota's Siting Act program staff of the project location and provide details on the survey form specified by the agency.
- J. Noise.** All WECS shall comply with Minnesota Rules 7030 governing noise, or shall not exceed fifty (50) dB(A) when measured from the nearest property line or road. The audible noise from wind energy facilities may periodically exceed allowable noise levels during extreme wind events (winds greater than 30 mph).

- K. Electrical Codes and Standards.** All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

## **Section 16 Commercial Wood Processing Facilities**

These conditions apply to those enterprises that are commercial in nature and operate longer than a six (6) month period. Hours of operation will be set conditional upon the following factors relevant to reducing the adverse effects on the adjacent community: noise, lighting, and hauling of products.

## **Section 17 Extractive Uses (Including but Not Limited to Gravel and Borrow Pits)**

At a minimum, all of the requirements and conditions listed in St Louis County Zoning Ordinance Number 46, Amended March 23, 1998, Article VI, Section 25, or subsequent revision, shall be met. The Planning Commission may require additional conditions.

## **Section 18 Single-Family Dwellings in the Light Industrial Manufacturing District (LIM-1)**

By conditional use permit, there can be a maximum of one single-family dwelling per site and the dwelling must be for personnel directly connected with the industrial operations.

## **Section 19 Accessory Structures Greater than 2000 SF in SSUR-1**

- A. General.** The purpose of these requirements is to provide flexibility to accommodate a desire for larger accessory structures in those parcels that are greater than 2 acres while maintaining the rural character of this area and meeting the goal of minimizing stormwater run-off.
- B. Requirements.** In order to construct structures larger than 2000 SF the following requirements must be met.
1. Where lot sizes are greater than 2 acres, the following formula will be used to determine maximum structure size:  $(\text{Acreage} * 1000) - ((\text{Acreage} - 1) * 500)$ .
  2. The resulting maximum accessory structure coverage would be the total of all accessory structures (one or more) for the parcel(s) that were used to calculate the size.
  3. This formula may be utilized each time the landowner wishes to add an accessory structure until the maximum accessory structure coverage is reached.
  4. If any parcels are combined to achieve the maximum accessory size structure those parcels shall not be separated in the future. The parcels will be considered a single parcel for the purposes of meeting zoning requirements.
  5. Where accessory structures are greater than 2000 sq ft on lots greater than 2 acres, both the rear and side yard setbacks will be determined by the following formula:  $(2.273 * \text{Acreage}) + 20.454$ . Lots 35 acres or greater would not be required to increase setbacks beyond 100 ft.
  6. The maximum impervious surface will not exceed the calculated maximum accessory structure size (**B.1**) plus 10,890 sq ft.

## **Section 20 Dwellings, High-Frequency Short-Term Rental**

- A. Special Requirements and Conditions.**
1. All high-frequency short-term rentals will be considered an interim use.

2. All short-term rentals require a minimum lot size of two (2) acres or the minimum lot size required by the zone district whichever is the largest and the dwelling used for short term rental must meet, at a minimum, fifty (50) foot side and rear yard setbacks or that required by the zone district, whichever is larger.
3. In instances where the property does not meet the minimum two (2) acre lot size or the minimum lot size required by the zone district (whichever is the largest) or any of the fifty (50) foot rear and side yard setback requirements or that required by the zone district, whichever is larger the owner may still apply for high-frequency short term rental if all of the following requirements are met:
  - a. The owner lives within a 2 (two) mile radius of the property where the rental is occurring and they are in residence on their property during the rental period. The two-mile radius is measured from the center of the rental dwelling.
  - b. The rental property is at least 1 (one) acre in size or one half the minimum lot size and setbacks for the zone district whichever is larger.
4. The side and rear yard setbacks must meet at a minimum 50' (fifty feet) or that required by the zone district, whichever is larger, unless the adjacent property is zoned commercial, FL or LIM, then the setbacks shall be as required for the applicant's land use district. All SENSO, LSSLO and SSLO setbacks apply regardless of adjacent property zoning.
5. The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
6. Property oversight and complaint response. Thirty (30) days prior to rental of the property in any calendar year and anytime the contact information changes, the property owner shall provide to the Township Planning Director the name and phone number of a contact person with the capability and authority to address complaints or concerns regarding the property. This phone number shall also be provided to all other property owners within five hundred (500) feet of the lot boundary. The contact person must be available at all times during rental periods, and able to be at the property within thirty (30) minutes.
7. A log shall be kept of the renter, date of arrival, date of departure, and number of guests for all rentals. A copy of the log shall be provided to Planning Director upon request.
8. Off street parking shall be provided.
9. No temporary sleeping facilities may be used on the property during rentals (i.e., recreational camping vehicles, tents, etc.).

## **Section 21 Principal Single-Family Dwelling, Hosted High-Frequency STR**

### **A. Special Requirements and Conditions.**

1. The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
2. The allowable rental frequency for high-frequency short-term rentals will be established as part of the conditional use / interim use permit.
3. Off street parking shall be provided.
4. No temporary sleeping facilities may be used on the property during rentals (i.e., recreational camping vehicles, tents, etc.).

## **Section 22 Principal Single-Family Dwelling, Bed & Breakfast**

### **A. Special Requirements and Conditions.**

1. The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
2. The allowable rental frequency for high-frequency short-term rentals will be established as part of the conditional use / interim use permit.
3. Off street parking shall be provided.
4. No temporary sleeping facilities may be used on the property during rentals (i.e., recreational camping vehicles, tents, etc.).

## Section 23 Accessory Dwelling, Subordinate Residential

- A. **General.** One separate subordinate residential dwelling may be allowed to serve only members of the family on the same parcel.
- B. **Setbacks.** The separate structure must meet setback requirements, as well as other applicable Ordinance provisions for the zone in which it will be located. Non-conformity Ordinance provisions must be observed.
- C. **Wastewater.** Written approval for additional wastewater disposal adequacy must be presented from either the St. Louis County Health Department or the Duluth North Shore Sanitary District, depending upon the zone and which agency has jurisdiction. If separate on-land disposal or separate grinder pump installation becomes necessary, proof of the completion of the implementation must be provided.
- D. **Facilities.** A separate kitchen and bath are allowed as part of the subordinate residential dwelling, subject to 17.C above.
- E. **Discontinuance.** An interim use granted for the purpose above will be specific to the applicant's family only; it is not transferable. When this permitted use is discontinued, any future use of the building, structure or property to which the permit pertained shall conform to Article IV, *Nonconformities*. Future use of the structure as a residence, including rental, is not permitted except as specifically allowed under other portions of this Ordinance.

## Section 24 Commercial Uses

In addition to the general criteria and requirements listed in Section 7 of this Article, and the zoning requirements of the zone district in which it is to be located (as described elsewhere in this Zoning Ordinance), the Town of Duluth requires the following conditions for Commercial Uses:

- A. **Road Access.** The parcel where the proposed commercial use is located must lie along and have direct access to any of the following roads:
  1. Homestead Road from the junction of Shilhon Road south to Scenic Highway 61
  2. Ryan Road from the junction of Lismore Road south to Scenic Highway 61
  3. McQuade Road from the junction of Lismore Road south to Scenic Highway 61
  4. Lismore Road from the junction of Ryan Road west to the McQuade Road
  5. Bergquist Road from the junction of Lismore Road south to the junction of Highway 61 Expressway.
- B. **Minimum Acreage Required.** The minimum acreage required for the commercial use is two (2) times the minimum lot requirement for the Zone Districts RR-1 and SSUR-1.

- C. Minimum Lot Width.** The minimum lot widths are as follows:
1. In RR-1 the lot width must be 1.5 times the minimum lot width required for the zone district.
  2. In SSUR-1 the minimum lot width is that required for the zone district.
- D. Setbacks.** All structures must be set back two (2) times the minimum required setbacks for the zone district for side yards and rear yards.
- E. Maximum Aggregate Square Footage.** The aggregate sum of all structures for the commercial use shall not exceed 10,000 square feet.
- F. Loading.** Space for off-street loading and unloading of vehicles shall be provided for every building used or designed for commercial purposes. At least one (1) such space shall be provided and such spaces shall be a minimum of ten (10) feet in width, and thirty-five (35) feet in length.
- G. Parking.**
1. Off-street automobile parking or storage space shall be provided on every lot on which any new structures are hereafter established. Such space shall be provided with vehicular access to a street or alley, and such space shall be provided with a suitable area for vehicle turn-around so as to allow vehicles safe entry onto the roadway, and such space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
  2. When a structure is enlarged, the required off-street parking space shall be provided for the enlarged portion if the enlargement increases the demand for parking. If a use is changed to a different use requiring more parking, additional parking area as determined by the Planning Director shall be provided.
  3. Facilities that operate on shifts shall have sufficient parking based on the standards in this section and the maximum number of employees that would park at the facility at any given time.
  4. All parking must be accommodated on site.
    - a. Parking areas, whether public or private, shall be effectively screened from residential uses.
    - b. All public or private parking areas shall be separated from the right of-way of any road by means of a vegetative strip not less than 25 feet in width.
    - c. All parking areas shall meet the minimum side and rear yard setbacks as required for non-commercial use structures in the zone district. These setbacks need not be doubled as is required for structures for Commercial Use.
- H. Screening.** Screening and/or buffering shall be provided including the use of fences, vegetation, berms, or other methods that reduce visual impact of a structure or use upon adjacent structures or uses. Permanent vegetation with shrubs, small trees and large trees are preferred.
- I. Hours of Operation.** Hours of operation will be consistent with residential neighborhoods, generally limited to the hours between 7:00 AM and 9:00 PM. Hours of operation will be based on but not limited to the following factors and be limited accordingly.
1. Amount of noise associated with the operation of the business
  2. Intensity and amount of light associated with operation of the business after sunset.
- J. Lighting and Signage.**
1. All lighting and signage shall meet the general requirements of this Ordinance.
  2. Signage shall not be lit past hours of operation of the business.

## Section 25 Dwelling, Principal Triplex or Quad

### A. Lot size requirements and lot width requirements shall be increased as follows.

1. For a triplex it shall be three (3) times the minimum lot size and lot width requirements.
2. For a fourplex it shall be four (4) times the minimum lot size requirement and lot width requirements

## Section 26 Isolated Camping Sites

### A. Special Requirements and Conditions.

1. **Sewage treatment systems.** All St. Louis County onsite sewage treatment systems requirements must be met.
2. **Minimum lot size.** 40 acres.
3. **On-Site Attendant.** An attendant is required to be on site for rental. The attendant may be the owner of the property, residing on the same lot as the isolated camping site. The attendant must have the capability and authority to address complaints or concerns regarding the isolated camping site.
4. **One Site per Owner.** There shall be only one isolated camping site in the Township per owner.
5. **Structure.** A provided camping structure must not exceed 300 square feet, including the platform.
6. **Camper limits.** A limit of four persons per isolated camping site.
7. **Maximum number of days.** The isolated camping site may be rented no more than 60 days per year with the year commencing on the start date of the use as established in the Interim Use Permit.
8. **Rental periods.** Rental periods are limited to 4 days per rental.
9. **Required setbacks.** Isolated camping sites must meet the road setback and two times the side yard and rear yard setbacks for the zone district. Isolated camping sites are not allowed within the Streams Shoreland Overlay.
10. **Parking.** Parking must be available on the property for renters sufficient to accommodate the number of users permitted.
11. **Site clearing.** Clearing on an isolated camping site and adjacent to the site is limited to that necessary to provide for the camping structure, a fire pit, and the safety of its occupants.
12. **Fires.** Fires are permitted only in designated fire rings. Combustible materials must be cleared from 5 ft in all directions from the fire ring. All MNDNR fire restrictions will be adhered to.
13. **Emergency services.** Isolated camping sites must be accessible to emergency services.
14. **Other approvals required.** The owners shall obtain all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
15. **Property oversight and complaint response.** Thirty (30) days prior to rental of the isolated camping site in any calendar year and anytime the information changes, the property owner shall provide to the Township Planning Director the name and phone number of the attendant. This phone number shall also be provided to all other property owners within five hundred (500) feet of the lot boundary.

- 16. Record keeping.** A log shall be kept of the renter, date of arrival, date of departure, and number of guests for all rentals. A copy of the log shall be provided to the Planning Director upon request.

## **Section 27 Solar Energy Systems – Community and Large-Scale Solar Arrays**

- A. Principal Uses.** The Town of Duluth encourages the development of commercial or utility scale solar energy systems where such systems present few land use conflicts with current and future development patterns.
- B. Setbacks.** Community- and large-scale solar arrays must meet the following setbacks:
1. Property line setback for buildings or structures in the district in which the system is located, except as otherwise determined in 24.B.1 below.
  2. Roadway setback of 150 feet from the ROW centerline of State highways and County highways, 100 feet for Town roads, except as otherwise determined in 24.B.1 below.
  3. Housing unit setback of 150 feet from any existing dwelling unit, except as otherwise determined in 24.B.1 below.
  4. Setback distance should be measured from the edge of the solar energy system array, excluding security fencing, screening, or berm.
  5. All setbacks can be reduced by 50% if the array is fully screened from the setback point of measurement.
- C. Screening.** Community- and large-scale solar shall be screened from existing residential dwellings.
1. Screening shall be consistent with the Town’s screening requirements (see **Article III, Section 5**)
  2. Screening shall not be required along property lines within the same zoning district, except where the adjoining lot has an existing residential use.
  3. The Town may require screening where it determines there is a clear community interest in maintaining a viewshed.
  4. A screening plan shall be submitted that identifies the type and extent of screening.
- D. Ground Cover and Buffer Areas.** The following provisions shall be met related to the clearing of existing vegetation and establishment of vegetated ground cover.
1. The project site design shall include the installation and establishment of ground cover meeting the beneficial habitat standard consistent with Minnesota Statutes, section 216B.1642, or successor statutes and guidance as set by the Minnesota Board of Water and Soil Resources (BWSR).
  2. The applicant shall submit a planting plan.
- E. Power and Communication Lines.** Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible, at the discretion of the Planning Director.
- F. Stormwater and NPDES.** Solar farms are subject to the Town’s Stormwater, Erosion, and Sediment Control Ordinance Number 1 and subsequent amendments.
- G. Impervious Surfaces.** Solar collectors shall not be considered impervious surfaces if the project is certified as beneficial habitat, as described in **Section 24.E** above.



- H. Other Standards and Codes.** All solar farms shall be in compliance with all applicable local, state and federal regulatory codes.
- I. Site Plan Required.** A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and any other characteristics as deemed necessary by the Planning Director based on site conditions.
- J. Decommissioning.** A decommissioning is required to ensure that facilities are properly removed after their useful life.
  - a.** Decommissioning of the system must occur in the event the project is not in use for 12 consecutive months.
  - b.** The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and assurances that financial resources will be available to fully decommission the site.
  - c.** Disposal of structures and/or foundations shall meet applicable State and County regulations.
  - d.** The Town may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

## Article X: Administration, Enforcement, Variances, and Review

### Section 1 General

#### A. Planning Director and Staff.

1. The Planning Director, and any assistants, will be hired by the Town Board.
2. The Planning Secretary will be recruited and hired by the Planning Commission with approval from the Town Board.

#### B. Planning Director's Responsibilities.

This Ordinance shall be administered by the Town of Duluth Planning Director who shall assist any applicant in preparing their application, advise the applicant as to the provisions of this Ordinance, and conduct an inspection program.

#### C. Voiding of Permits Issued in Error.

Any permit issued based on an application that is in error, whether the error is intentional or not, shall be null and void. No such permit may be construed as permission to build or begin a land use. It shall be the responsibility of the Planning Director to notify the property owner upon discovery of an erroneous application.

#### D. Administrative Determinations.

Administrative determinations are to be made by the Planning Director as questions arise. Should a question or problem arise concerning an approved Variance, Conditional Use Permit, Land Use Permit, or an existing use or structure, any person may request a review of the matter by the Planning Director. Such a request shall be in writing and shall detail the problem and location of the subject property, if applicable.

1. The Planning Director shall investigate the matter, report to the party making the request within a reasonable period, and take the appropriate action. The Planning Director shall also report his/her findings to the Planning Commission.
2. Any person taking exception to the Planning Director's determination may appeal the determination by the procedures specified in **Article XIV**.
3. Any person wishing to appeal the decision of the Board of Adjustment may appeal to District Court.

#### E. Cooperation with Other Management Entities.

The Town of Duluth shall cooperate with other entities on management issues.

1. North Shore Management Board. The Town of Duluth will cooperate with the North Shore Management Board in the following ways:
  - a. Copies of all adopted or amended ordinances regulating the use of land within the Lake Superior Management Area will be sent to the North Shore Management Board. The Lake Superior Management Area is defined as lying between Lake Superior and the Highway 61 Expressway.
  - b. Copies of all approved variances, conditional uses, new subdivisions plots, and approved Planned Unit Developments will be sent to the North Shore Management Board.
2. Duluth North Shore Sanitary District (DNSSD). The Town of Duluth will continue to cooperate with the Duluth/North Shore Sanitary District in working with the DNSSD to:
  - a. Help assure that growth and development are managed to remain within the capacities of the DNSSD.
  - b. Actively plan with the DNSSD in matters relating to water quality within the Town of Duluth.
3. Minnesota Department of Natural Resources (MnDNR). The Town of Duluth will cooperate with the North Shore Management Board in the following ways:

- a. MnDNR shall be notified a minimum of ten (10) days prior to public hearings relating to the following activity in Shoreland Districts: preliminary subdivision plats, rezoning, amendments to official controls, land use and other plans, conditional uses, administrative determinations, variances, and other permits involving hearings before the Planning Commission or Town Board.
- b. All approved Ordinance amendments and subdivisions/plats, and final decisions approving variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action. 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 shall also include the summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

## Section 2 Enforcement

- A. **Investigations.** The Planning Director shall investigate all violations of this Ordinance, notify the owners of violations and direct the property owner to correct violations within a reasonable period, and, if compliance is not obtained within a reasonable period, shall report such violations to the Attorney, who shall take appropriate and immediate action on the matter.
- B. **Civil Remedies.** The Town of Duluth may enforce all provisions of this Ordinance through such proceedings for injunctive relief as may be proper under the laws of Minnesota. The Town Board or any member thereof, upon notification from the Planning Director, may initiate action to prevent, restrain, correct or abate violations or threatened violations. The Town Board may at a later date vote to discontinue proceeding.
- C. **Taxpayer Mandamus Proceeding.** Taxpayers within the Town may institute mandamus proceedings to compel specific performance by proper officials in reference to administration or enforcement of the Zoning Ordinance.
- D. **Criminal Penalty.** The Town of Duluth sets financial penalties for misdemeanor violations of this ordinance, as described below.
  1. Any person, firm or corporation, or agent, employees or contractors of such, who violate, disobey, omit, neglect, refuse to comply with, or who resist enforcement of any of the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined in an amount not to exceed the maximum permitted for misdemeanors under State statute together with the full costs of such prosecution, plus the costs of any compliance required to rectify the violation.
  2. Any person, and/or his/her authorized agent or contractor, proceeding with any action that requires a permit, without first securing such a permit, shall be subject to an increased fee as stipulated in **Article XVI Fees**.
  3. All fines for violation shall be paid to the Town of Duluth and shall be credited to the General Revenue Fund.
- E. **Refusal to Comply.** In the event that an applicant or their authorized representative violates, neglects or refuses to comply with the conditions, performance standards or dimensional requirements imposed upon the proposed or established use or structure as a condition of granting the permit for said use or structure, they shall be notified by the Planning Director in writing by mail or in person of those requirements that have not been complied with (for purposes of computation of time, notification is complete upon mailing), in which:
  1. He/she shall have no more than thirty days from the date of the notification to satisfy the requirements or be subject to the revocation of the permit; or

2. He/she shall have no more than thirty days from the date of the notification to make appeal to the appropriate body.

**F. Citations.** The Town of Duluth may issue citations for violations of this Ordinance.

1. Citations shall contain the following information:
  - a. The name and address of the person charged with a violation or the owner or person in charge of the premises at which the violation occurs.
  - b. The date and place of the violation.
  - c. A short description of the violation followed by the section of the Ordinance violated.
  - d. The date and place at which the person receiving the citation shall appear and a notice that if such person does not respond, a warrant may be issued for such person's arrest.
2. The citation shall be issued to the person charged with the violation, or in the case of a corporation or unit of government, to any officer or agent authorized to accept such issuance. The citation shall be issued to the person charged pursuant to Minnesota Rules of Criminal Procedure.

**G. Inspections.** All persons involved in land development activity shall allow free access to authorized representatives of the Town of Duluth at any reasonable time for making such inspections as may be necessary to determine compliance with the Official Controls of the Town of Duluth. Failure of such persons to allow an inspection shall be considered a violation of this Ordinance and the Planning Director shall have the authority to take appropriate legal actions, to suspend review of a permit, or to revoke a permit.

### Section 3 Variances

**A. General.** Applications for variances from the terms of this Ordinance shall be made to the Planning Commission.

**B. Application for a Variance.** Applications for variances shall meet the following requirements:

1. An application for a variance shall be filed with the Planning Director on a proper form provided for that purpose.
2. Application forms shall be complete and shall clearly specify the grounds for the variance. Where required by the nature of the variance, the application shall be accompanied by detailed plans, drawn to scale, showing all details of the land area and the nature of the circumstances surrounding the variance.
3. The application shall be accompanied by the required fee.
4. The Planning Director shall reject any application not accompanied by the required fee or by other material and information as required by this Ordinance. Notification of rejection, along with the reason for such action, shall be given the applicant within fifteen (15) business days of the receipt of the application. The applicant shall have the opportunity to resubmit a substantially complete application after being notified of the rejection. For purposes of Minnesota Statutes section 15.99, the 60-day review period does not start until the Planning Director has received a substantially complete application.

**C. Public Hearing.**

1. The Planning Commission shall hold public hearings for all variance applications.
2. Such public hearings may be continued from time to time and additional hearings may be held.
3. Hearings shall be conducted according to applicable Minnesota statutes and to the rules of procedure of the Planning Commission.

**D. Public Hearing Notice Requirements.**

1. All notices will be sent to recipients at least ten (10) days prior to the date of the hearing.
2. Notice of Public Hearing will be published in the official newspaper of the Town of Duluth.
3. At a minimum, owners of record within five hundred (500) feet of the affected property will be notified.

**E. Criteria for Decisions.** The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.

1. Variances shall only be permitted
  - a. When they are in harmony with the general purposes and intent of the Ordinance, and
  - b. When the variances are consistent with the comprehensive plan.
2. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
3. "Practical difficulties," as used in connection with the granting of a variance, means that
  - a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
  - b. The plight of the property owner is due to circumstances unique to the property not created by the property owner; and
  - c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
4. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes section 216C.06, subdivision 14, when in harmony with the Ordinance.
5. The Planning Commission may not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zone where the affected person's land is located.
6. The Planning Commission may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
7. The Planning Commission may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

## Article XI: Amendments

### Section 1 General

This Ordinance and the Zoning Map may be amended, supplemented, or appealed whenever the public health, safety, and general welfare would best be served by such action, in accord with the Town's Comprehensive Land Use Plan by the procedures set forth in this article.

### Section 2 Initiation

- A. Zoning Ordinance Text.** Amendments may be initiated by a land owner, the Planning Commission, or the Town Board. All amendments shall be referred to the Planning Commission for study and public hearing.
- B. Zoning Ordinance Map.**
  - 1. Amendments may be initiated by the Town Board, the Planning Commission, or by the property owner of record or authorized representative.
  - 2. Map amendments initiated by the property owner will require a Community Participation Report.

### Section 3 Public Hearings

- A. General.** Public hearings will be held prior to any Zoning Ordinance text amendment and prior to any Zoning Ordinance Map amendment. These public hearings may be continued from time to time and additional hearings may be held.

### Section 4 Zoning Ordinance Text Amendments

- A. Notice.**
  - 1. Written notice providing the same information will be sent to property owners of record within at least one quarter ( $\frac{1}{4}$ ) mile of the affected property or an area to be determined by the Planning Commission, whichever is greater.
  - 2. Written notice need not be sent to property owners of record in the following instances.
    - a. Revisions of the Township Comprehensive Land Use Plan.
    - b. Proposed Amendments of the Zoning Ordinance.
    - c. Zoning Ordinance updates proposed by the Planning Commission.
- B. Findings from Public Hearing.**
  - 1. The Planning Commission's report to the Town Board will contain a statement of evidence, the factual determinations made from the evidence, and the criteria used in reaching its recommendation.
  - 2. After conducting a public hearing on an ordinance text amendment, the Planning Commission will report in writing to the Town Board within sixty (60) days of the close of the hearing.
- C. Action by Town Board.** Upon filing of a report by the Planning Commission, the Town Board, in the manner prescribed by Minnesota Statutes, may amend the Ordinance as it deems advisable.

## **Section 5 Zoning Ordinance Map Amendments**

- A. Notice.** The Planning Commission will conduct at least one public hearing on all proposed zoning map amendments and report to the Town Board in writing within sixty (60) days of the close of the hearing(s).
1. For map amendments initiated by petition of the property owner, notice of the time, place, and purpose of the public hearing will be published at least ten (10) days prior to the hearing, in the official newspaper of the Town of Duluth. Written notice providing the same information will be sent to property owners of record one-quarter (1/4) mile of the affected property or an area to be determined by the Planning Commission, whichever is greater.
  2. For map amendments initiated by the Town Board or the Planning Commission, notice will be given in the manner prescribed in 5.A.a, above, except that in instances of a completion of a Township wide amendment resulting from the recent completion of a comprehensive plan or plan amendment, written notice need not be sent to property owners of record.
- B. Required Conditions for Requesting a Change.**
1. Rezoning, or amendment to the official land use district map, may be requested by the Town Board, the Planning Commission, or land owner. The Planning Commission may recommend approval of the request under any of the following situations:
    - a. A mistake has been made in the original zoning that was inconsistent with the Comprehensive Plan, which should now be corrected along with the zoning.
    - b. A substantial change has occurred in the community since the adoption of the Comprehensive Plan, which should result in the Plan and the zoning being amended.
    - c. A public need being evident, there shall be a showing that the public interest would be best served by rezoning the property in question, rather than other property in the community.
    - d. One or more property owners who own one-hundred-sixty (160) or more contiguous acres may change their property from a higher or more intensive use to a lower or less intensive use by petition of those landowners to the Town.
- C. Criteria for Approval of Zoning Map Amendments.**
1. **Required Conditions for Approval.** Rezoning or amendment to the official land use district map shall be recommended for approval only upon the finding by the Planning Commission that all of the following conditions exist:
    - a. The proposed zoning shall be consistent with the Comprehensive Plan.
    - b. A clear public need or benefit to be met by the requested zoning change shall exist, which is beyond any benefit or convenience to the landowner
    - c. In the case of changing a zone district from a higher density or more intensive use to a less dense or less intense use, the proposed zoning shall allow the property owner(s) a reasonable use of their property under the terms of this Ordinance, as well as serve the public interest.
    - d. No application for change in the boundary line of zones or districts initiated by a land owner may be granted unless at least fifty percent (50%) of the owners of the lands proposed to be changed file a petition for the change.
- D. Findings**
1. The Planning Commission's report to the Town Board will contain a statement of evidence, the factual determinations made from the evidence, and the criteria used in reaching its recommendation.
  2. After conducting a public hearing on an Ordinance text amendment, the Planning Commission will report in writing to the Town Board within sixty (60) days of the close of the hearing(s).
- E. Action by Town Board**

1. Upon the filing of the report by the Planning Commission or upon expiration of the sixty (60) day period, the Town Board may by resolution, not adopt or adopt the amendment or any portion thereof as it deems advisable
2. Once an amendment has been acted upon by the Town Board, the matter will not be reconsidered, nor will any additional amendments involving the same parcel of property be heard or considered by the Planning Commission or the Town for at least twelve (12) months.

## **Section 6 Interim Zoning Regulations**

Nothing above is intended to abridge the Town Board's authority to proceed in adopting interim zoning regulations.



## Article XII: Subdivision of Property and Planned Unit Developments

### Section 1 Subdivision of Property

- A. Subdivision Standards and Requirements.** Any subdividing of land or creation of lots must meet the standards and procedures of St. Louis County and the Town of Duluth.
- 1. Violation bars issuance of permit.** No land use permit shall be issued to establish a use on any lot that has been divided or transferred in violation of the Subdivision Regulations of St. Louis County, or when the Planning Director determines such violation exists.
  - 2. St. Louis County Subdivision Ordinance 60.** All subdividing of land, platted subdivisions, lot line adjustments, and their specified processes and requirements as described in St. Louis County Subdivision Ordinance 60, or subsequent revision, are adopted by the Town of Duluth with the exception of minor subdivisions. Minor subdivisions are not permitted in the Town of Duluth.
- B. Subdivision of Property Approval Process.** The following is the designated subdivision approval process.
- 1. Planning Director Review.** The Planning Director shall review any proposed subdivision of property as directed in St. Louis County Ordinance Number 60 or amendments made thereto. The Planning Director will coordinate with St. Louis County regarding Town approval that the subdividing meets the requirements of this zoning ordinance.
  - 2. Platted subdivisions.** Platted subdivisions, including conventional and conservation design subdivisions as described in St. Louis County Subdivision Ordinance 60, or amendments made thereto, require a Public Hearing by the Planning Commission and subsequent approval. In addition, a Community Participation Plan as described in **Article IX, Section 2.B** will be completed by the applicant.
- C. Town of Duluth Subdivision Requirements.** The Town of Duluth requires that the subdividing of property meet the following standards unless the subdivisions are conventional platted subdivisions, performance standard subdivisions, conservation design subdivisions, or Planned Unit Developments.
- 1. Conformity with Ordinance required.** No lot shall be created that does not meet the lot width and size requirements of this Ordinance; transfers to adjoining parcels of nonconforming parcels are allowed provided such a transfer does not adversely affect the conformity of the remaining lot as it relates to zoning and sanitary standards.
  - 2. Land-locked lots prohibited.** No lot shall be created or transferred that will then become land locked. Access must be provided for each lot transferred.
  - 3. Conformity with impervious surface requirements.** When splitting a parcel, the parent parcel and the newly created parcels must retain adequate acreage so as to not exceed maximum impervious surface requirements (see **Article V**), as well as the other dimensional requirements stated in this Ordinance.
- D. Conservation Subdivision Design Encouraged.** The Town of Duluth encourages some alternative subdivision designs.
- 1. Conservation subdivision plat.** The traditional subdivision platting process outlined in St. Louis County Subdivision Ordinance Number 60, or amendments made thereto, is an acceptable process for subdividing parcels.
  - 2. Conservation subdivision.** The Town encourages conservation subdivision consistent with the following principles:

- a. Lot sizes may be reduced as long as density is not increased in the subdivision, the subdivision is designed in manner consistent with preserving privacy and rural character, and all required setbacks are met.
- b. All impervious surface requirements must be met.
- c. Lot layout and arrangement will take into consideration the requirement that sewage treatment systems will be clustered whenever feasible and meet the requirements established by St. Louis County.
- d. Lot layout and arrangement is based on the ability of the natural resource systems to sustain the development.
- e. The Town of Duluth, at its discretion, may offer incentives for pursuing conservation design principles.

## Section 2 Planned Unit Developments

- A. The purpose of allowing planned unit development as an alternative development tool is to permit flexibility in the use and design of structures and land in situations where a divergence from the zoning district requirements will not be contrary or harmful to the surrounding development. Its primary intention is to preserve open space while allowing lot size reduction to achieve a density that would be allowed by a normal subdivision.
- B. **Geographic Scope.** The following table displays those land use districts in which planned unit developments (PUD) will be considered, and the type of planned unit developments that can be considered in each land use district or overlay. All planned unit developments require a conditional use permit.

**Table 12.1 – Land Use Districts in Which Planned Unit Developments Are Permitted**

Table 12.1 Type of Planned Unit Development	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR-1	SUR-1	SUR-2	LSSLO	SSLO
Mixed Use Planned Development	Ø	Ø	Ø	Ø	C	C	C	Ø	Ø	Ø	Ø	Ø	C
Commercial Planned Unit Development	Ø	Ø	Ø	Ø	C	C	C	Ø	Ø	Ø	Ø	Ø	C
Residential Planned Unit Development	C	C	C	C	C	C	Ø	Ø	C	C	C	C	C
Recreational Camping Park	C	C	C	Ø	C	C	C	Ø	C	Ø	Ø	C	C

Ø – The type of Planned Unit Development is not permitted in that zone district or overlay.

C – The type of Planned Unit Development requires a conditional use permit to be approved by the Town of Duluth Planning Commission through the Conditional Use Hearing process in accordance with the criteria set forth in this Ordinance. If conditions are not defined in Article IX for the particular use, conditions will be established as part of the Conditional Use Hearing. The Commission may impose additional and/or more strict conditions than those listed in Article IX.

**C. Minimum Development Area Required.** The following table displays the minimum number of acres required in each zone district for a Planned Unit Development.

**Table 12.2 – Minimum Acreage Required for Planned Unit Developments**

Table 12.2 Type of Planned Unit Development	Zone District											Overlay	
	FL-1	FL-2	FFL-1	RR-1	SC-1A	SC-1B	COM-1	LIM-1	SSUR-1	SUR-1	SUR-2	LSSLO	SSLO
Mixed Use Planned Development	Ø	Ø	Ø	Ø	3	3	9	Ø	Ø	Ø	Ø	Ø	C
Commercial Planned Unit Development	Ø	Ø	Ø	Ø	3	3	9	Ø	Ø	Ø	Ø	Ø	C
Residential Planned Unit Development	120	60	20	20	6	6	Ø	Ø	6	3	3	C	C
Recreational Camping Park	10	10	10	Ø	10	10	10	Ø	10	Ø	Ø	C	C

**D.** The minimum number of dwelling or transient units shall be five.

**E. Conditional Use Permit Required.**

1. **Conditional Use.** Planned unit developments must be processed as a conditional use.
2. **Environmental Review.** If an environmental review is required, approval cannot occur until the environmental review is complete.

**F. Administrative Process.**

1. **Pre-Application Meeting.** A pre-application meeting is required between the applicant and the Planning Director to discuss the following:
  - a. The PUD process as contained in this article.
  - b. Requirements for planned unit developments.
  - c. Requirements for Shoreland Overlay District (**Article VI**) or Sensitive Area Overlay Area (**Article VII**) if applicable for the site of the proposed development.
  - d. Permits that might be required from other governmental agencies.
2. **Pre-Application Requirements and Steps in Developing the Preliminary Concept Plan.** The Town of Duluth requires that applicants for planned unit developments conduct specific studies and analyses prior to submitting an application to be considered by the Planning Commission.
  - a. The applicant will conduct a resource survey and site analysis, as described in this **Article, Section 6**.
  - b. Based on the site analysis, the applicant will prepare a Draft of the Preliminary Concept Plan which includes information as described in this **Article, Section 7** and **Section 8**. The applicant will review the Draft Preliminary Concept Plan with the Planning Director.
  - c. The Planning Director will submit copies of the Draft Preliminary Concept Plan to those agencies listed below, and the recipients will have thirty (30) days from the date of mailing to respond to the Draft Preliminary Concept Plan.

- d. Agencies/entities for required distribution of the Draft Preliminary Concept Plan include the following:
    - i. If the proposed development abuts a trunk highway, the Planning Director shall refer one (1) copy to the Minnesota District Highway Headquarters for review.
    - ii. If the proposed development abuts any parcel in the Shoreland Overlay Area (**Article VI**), the Planning Director shall refer:
      - (1) One (1) copy to the Minnesota Department of Natural Resources local office.
      - (2) One (1) copy to St. Louis County Planning Department.
      - (3) One (1) copy to St. Louis County Health Department for review of sewage treatment, if the site is outside the jurisdiction of the Duluth/North Shore Sanitary District.
      - (4) One (1) copy to the North Shore Management Board.
      - (5) One (1) copy to the U.S. Army Corps of Engineers if the parcel abuts the Lake Superior Shoreline.
  - e. If no comments are received from these agencies within thirty (30) days from the date of mailing, the Planning Commission will assume that there are no objections to the Draft Plan as submitted. However, it always remains the applicant's duty and obligation to seek and obtain any necessary or required permits, licenses, or approvals from entities other than the Town of Duluth.
    - i. If any agency listed in this section disapproves of the concepts in the draft plan, then the reasons shall be fully stated in writing. In addition, the agency or entity shall give recommendations, modifications, or revisions requested for any approvals needed from the agency. When any comments are received from an agency, they shall be given by the Planning Director to the applicant.
    - ii. The applicant shall include the recommendations, approval, or disapproval from the recipients listed in this section when submitting the Preliminary Concept Plan to the Planning Commission.
    - iii. If the Planning Commission, in its judgment, decides the agency recommendations for modifications, revisions or disapproval are unreasonable, impractical, and would result in substantial hardship or injustice to the applicant, and also are not required by agency regulations, the Planning Commission may later still approve the Preliminary Concept Plan if it will achieve the objectives of this Ordinance. This constitutes only the approval of the Town of Duluth's Planning Commission, and does not constitute a waiver, modification, or change in any requirement that might be imposed upon the applicant by other units of government.
  - f. The applicant shall prepare and submit to the Planning Director a Community Participation Plan as described in **Article IX, Section 2**.
- 3. The Application.** The application shall be made upon a form provided for that purpose. The application shall be submitted to the Planning Director or the Planning Director's designee.
- a. The application must include the following:
    - i. A fully completed Preliminary Concept Plan and Resource Analysis as described in **Sections 6, 7, and 8** of this **Article**.
    - ii. Responses from the relevant agencies.
    - iii. The required fees.
  - b. The applicant may submit, with the application, such other or additional material that the applicant believes is relevant or useful.
  - c. The Planning Director shall examine the application and, if it does not contain all required information (including the fee), shall send written notice within fifteen (15) business days of the receipt of the application to the applicant rejecting the application and explaining what information was missing.

- d. If the application is complete and complies with all applicable requirements, the Planning Director shall send copies of the application and all documents submitted with the application to every member of the Planning Commission.
- 4. Post-Application Proceedings.** A community open house will be held as described in the Community Participation Plan.
- a. The Planning Director will conduct the open house.
  - b. The open house will be noticed as follows:
    - i. One (1) copy to the Town Clerk.
    - ii. To be posted by the Planning and Zoning Secretary at all official posting places.
    - iii. Other notices as required in the Community Participation Plan or additional notices as approved by the Planning Director.
  - c. The applicant will present the Preliminary Concept Plan at the community open house.
  - d. The applicant will respond to the concerns and suggestions elicited at the open house in preparing the preliminary Concept Plan for decision by the Planning Commission.
- 5. Planning Commission Decision on the Preliminary Concept Plan.** The Planning Director shall present to the Planning Commission for approval the Preliminary Concept Plan and all other information derived from the resource survey, the responses from agencies who received the draft Preliminary Concept Plan, and public comments and responses from the community open house. The approval process shall include a public hearing on the Preliminary Concept Plan and any revisions made by the applicant.
- a. The Planning Commission will conduct the public hearing at their regularly scheduled meeting or at a special Planning Commission meeting if required.
  - b. The public hearing will be noticed as required under **Article IX, Section 4** of this Ordinance.
  - c. The Planning Commission shall either approve or reject the Preliminary Concept Plan with findings based on the submitted information, the public hearing and the Township Comprehensive Land Use Plan and Zoning Ordinance. An approval can include conditions that require additional submittals before the PUD has final approval.
  - d. Approval by the Planning Commission of the Preliminary Concept Plan with or without modifications starts the Final Plan approval process and standards.
- 6. Final Plan Approval.** The Final Plan approval process and requirements are noted below. The approval process shall include a separate public hearing on the Final Plan. The Planning Commission will conduct the public hearing. Public hearing requirements will be met in accordance with **Article IX**.
- a. Before final approval of the Open Space Plan can be granted, the applicant shall have received approval from the Planning Director that the following documents demonstrate that adequate provisions have been developed, which preserve and maintain in perpetuity all open spaces and common facilities. This information shall include:
    - i. Open space preservation: This includes all deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means that have been used to ensure long-term preservation and maintenance of open space.
    - ii. Development organization and functioning: Unless an equally effective alternative community framework is established, when applicable, the plan shall identify for all residential planned unit developments the structure and bylaws of the owners' association. The association must have the following features:
      - (1) Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers.
      - (2) Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites.
      - (3) Assessments must be adjustable to accommodate changing conditions.
      - (4) The association must be responsible for insurance, taxes, and maintenance

of all commonly owned property and facilities.

- b. At the time of final application, planning, and scheduled development of the proposed facility shall be under unified control or ownership.
- c. The applicant will provide a detailed development plan to the Planning Commission that must include a detailed description of:
  - i. The property under consideration, including property boundaries, contours, on-site features, roads, lakes, rivers, wetlands, rock outcroppings, wooded areas, and other relevant features. Property boundaries must be identified on-site by monuments, stakes or flags as described on the submitted plans.
  - ii. Building elevations, location on site, proposed uses, number of units, and commercial operations (for commercial applications).
  - iii. Parking areas and driveways for both residences and commercial activities, vehicle loading/unloading areas, proposed public road entrances, and projected traffic generation of the proposed development.
  - iv. Proposed phasing of the development.
  - v. How the project will operate after completion.
  - vi. The nature of proposed ownership after completion.
  - vii. Proposed fire protection.
  - viii. Proposed homeowner and/or road association agreements, where applicable.
  - ix. Landscape plans including existing vegetation, proposed alterations, new plantings and landscaping that is consistent with shoreland alteration guidelines.
  - x. Recreational space location and use.
  - xi. Open space.
  - xii. Water sources and water supply system plans.
  - xiii. Proposed sewage treatment system plans.
  - xiv. Stormwater runoff plans (construction and operation).
  - xv. Erosion control plan for shoreline, where applicable.
  - xvi. Erosion and sediment control plan for site (construction and operation) consistent with National Pollution Discharge Elimination System Phase II standards.
- d. The applicant will also provide to the Planning Commission:
  - i. Receipt of appropriate permits; County, State and Federal.
  - ii. Evidence of availability of necessary public utilities.
  - iii. Proposed financial plans and necessary performance bonds or escrow agreements to protect the Town's financial liability for site restoration, landscaping, erosion control measures, and sewage treatment systems.
  - iv. The property owners' association agreement (for residential PUDs) with mandatory membership, and all in accordance with the requirements of Minnesota law.
- e. Any other information deemed necessary by the Planning Commission will be provided by the applicant.
- f. The Planning Commission may require plan modifications or require special conditions or performance standards, including environmental review, as part of its approval of the project.
- g. The proposed development plan will demonstrate that the development will conform with adjacent development and be screened from lakes, adjacent roads, and adjacent properties.

**G. Resource Analysis.**

- 1. **Site Analysis.** The following will be considered, at a minimum, in the site analysis.
  - a. Topography
  - b. Wetlands and buffers
  - c. Floodways and floodplains
  - d. Moderate and steep slopes
  - e. Watershed boundaries

- f. Woodlands: type, age, density
- g. Soils
- h. Farmland/open pastureland
- i. Significant wildlife habitat
- j. Historic/cultural features
- k. Scenic viewsheds: aspect and prospect
- l. Geologic formations

**H. Preliminary Concept Plan.**

1. Based on the resource analysis and guided by sustainable design principles the Concept Plan will be developed with consideration given to the following.
  - a. **Delineation.** The delineation of open space areas and their reasons for preservation.
  - b. **Infrastructure.** Location of infrastructure.
  - c. **Structure Sites.** Location of structures associated with PUD
  - d. **Lot Lines.** Location of lot lines to meet dwelling, privacy, and resource considerations.

**I. Preliminary Concept Plan Information Requirements.**

1. **Information.** The following information is required for PUD Preliminary Concept Plans:
  - a. Ten (10) copies of the preliminary plan that shall include a map or maps of the proposed development prepared in the manner and containing the data, documents, and information required by this Ordinance.
  - b. The required number of site plans and/or plats for the projects, at a scale of not less than one (1) inch equals two-hundred (200) feet, showing the legal description of property and any proposed lot divisions.
  - c. Names and addresses of applicant and owner, surveyor, and designer of the plan.
  - d. Graphic scale and arrow indicating the North direction.
  - e. Date of preparation.
  - f. Total acreage of proposed plan and acreage of each proposed subdivision parcel.
  - g. Existing conditions in the parcel(s) and within three-hundred (300) feet surrounding the boundaries of the development.
  - h. All streams, creeks, ponds, and swamps, correctly located, plainly shown, and designated on the plan.
  - i. Layout of existing and proposed roads, showing right-of-way widths.
  - j. Provisions for required open space.
  - k. Erosion control and stormwater management plan.
  - l. Existing and proposed structures and other facilities.
  - m. Proposed land alterations.
  - n. Location of sewage treatment and water supply systems (where public systems will not be provided).
  - o. Refuse disposal.
  - p. Proposed location of utilities.
  - q. All easements that cross the property.
  - r. Topographic contours at ten (10) foot intervals or less.

**J. Development Density.** The density standards found in this article are maximum allowed densities and the Planning Commission, after considering land use and environmental impacts, may decrease the permitted densities.

**K. Base Residential Density Calculation.**

1. **Density.** The residential density of a PUD shall be based on the density allowed in the zoning districts in which the proposed PUD lies.
2. **Calculation of Base Density.** Base density (full yield) shall be calculated by dividing the gross area of all parcels in the proposed development (excluding road rights-of-way), by the minimum lot size requirement of the zoning district in which the property lies.

**L. Density Increase Bonuses.**

1. **Bonus Limitations.** In **SSUR-1, SUR-1, SUR-2, SC-1A, and SC-1B** there will be no bonus increase in density.
2. **Planning Commission Discretion.** In **FL-1, FL-2, FFL-1 and RR-1**, the overall residential density of the PUD may be increased at the discretion of the Planning Commission if the development meets the design criteria contained in this **Article, Section 13**. However, the density increases may not exceed fifty percent (50%) of the base residential density calculated as provided in this **Article, Section 10**, above.
3. **Bonus Conditions.** Density bonuses may be allowed to meet the following conditions:
  - a. If public usage is allowed onto the development's designated open space.
  - b. To encourage the provision of housing that would be more affordable to a broader range of residents.

**M. Commercial Development.**

1. **Land Use Limitation.** Commercial development is allowed only in Commercial districts.
2. **Mixed Use.** Residential development may be allowed in commercial districts and combined with commercial developments to form a mixed use PUD with the requirements described in this section, item **12-C**, below.
3. **Commercial Area Limitation.** A mixed-use development (residential and commercial) is allowed only in Commercial areas and must meet the following requirements:
  - a. In a mixed-use PUD, the site plan and/or plat must indicate and distinguish which buildings and portions of the project are residential, commercial, or a combination of the two.
  - b. Not more than fifty percent (50%) of the units may be commercial.
  - c. When possible, compact site development is preferred, with commercial uses occupying main levels and residential uses in upper floor levels.
  - d. In commercial and mixed-use developments, the development shall provide at least one-and-one-half (1½) parking spaces per unit, and one (1) parking space for each non-resident employee, and two (2) parking spaces for each five (5) seats of seating capacity for restaurants and bars. Space for loading and unloading vehicles shall be provided for buildings used for commercial purposes.

**N. Design Criteria for Residential Planned Unit Developments.** Planned unit developments must meet the following design criteria:

1. **Exterior Setback Standards, Screening, and Lighting.** The exterior standards are noted below.
  - a. Exterior setback and public road setbacks shall be twice that required for the particular zone district in which the planned unit development is located.
  - b. Development in open fields, former fields in early stages of woodland succession, and meadows are likely to be most readily seen and disruptive to the rural landscape. Therefore, location and siting of structures will be in areas that provide the minimum of visual intrusion and are designed to reduce adverse visual effects through screening, increased setbacks, or reduced densities.
  - c. Screening, consisting of existing natural elements will be used. Plantings may be required when the current natural screening is not available.
  - d. Structures, parking areas, and other facilities must be designed and placed to reduce visibility as viewed from lakes, roads and adjacent shore lands by vegetation, topography, increased setbacks, color, or other means, assuming summer, leaf-on conditions.
  - e. Outdoor lighting must be designed and placed in accordance with the provisions of this Ordinance (**Article 8, Section 8**). The result should be a development that is visually unobtrusive to the natural environment or surrounding properties.
  - f. Accessory structures and facilities may be allowed if they meet zone district standards.



2. **Lot Sizes and Siting.** The development must meet the following lot size and siting requirements.
  - a. Minimum lot sizes must be based on the land use district in which they occur.
  - b. Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development.
  - c. Each planned unit development shall have no less than three (3) units.
- O. **Open Space Requirements.** All planned unit developments must meet the following open space requirements:
  1. **Minimum Open Space.** At least fifty percent (50%) of the total project area must be permanently preserved as open space.
  2. **Open Space Limitations.** Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and should not be included in the computation of minimum open space.
  3. **Required Open Space Areas.** Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries.
  4. **Recreational Facilities.** Open space may include outdoor recreational facilities for use by owners of the dwelling units or sites, or the public.
  5. **Required Protection.** The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.
  6. **On-Site Treatment Systems.** Open space may include on-site treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.
  7. **Streams Shoreland Overlay (SSLO).** The Streams Shoreland Overlay must be included as open space.
- P. **Water Supply and Sewage Requirements**
  1. **Water and Wastewater Infrastructure.** Residential planned unit developments must be connected to publicly owned water supply and sewer systems, if available.
  2. **Centralized On-Site Treatment Systems.** On-site Treatment Systems must be centralized if feasible, and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health, the Minnesota Pollution Control Agency, and St. Louis County.
  3. **On-Site Treatment System, Location.** On-site treatment systems must be located on the most suitable areas of the development. Sufficient area free of limiting factors must be provided for a replacement, soil treatment system for each sewage system.
  4. **No Occupancy Without a Working Wastewater System.** No occupancy of any unit or use of any commercial structure of any planned unit development shall be allowed until the approved sewage disposal system is in place and fully operational.

## Article XIII: Planning Commission

### Section 1 Creation

The Town Board of Supervisors hereby creates a Planning Commission pursuant to Minnesota Statutes.

### Section 2 Membership

- A. Regular Voting Members.** The Planning Commission shall consist of seven (7) voting members, who shall be appointed by the Town Board of Supervisors as provided in this Ordinance, all of whom shall be residents of the Town of Duluth.
- B. Ex-Officio Members.** The following Township officers or employees or their representative are hereby designated as ex-officio, non-voting members of the Planning Commission.
  - 1. All Town Board Supervisors
  - 2. Planning Director
  - 3. Assistant Planning Director
  - 4. Town Attorney
  - 5. Planning Secretary

### Section 3 Appointments

- A. Method of Appointment.** Members and staff of the Planning Commission shall be appointed by the following methods:
  - 1. Planning Commission Members.**
    - a. The Planning Director shall advertise Commission vacancies and interview the candidates in conjunction with the Town Board of Supervisors. The Town Board shall select and appoint Commission members.
    - b. At the Town Board's April meeting, the Town Board shall appoint members to the Planning Commission to fill expired terms. The appointments shall be made upon the approval of the Town Board by majority vote of the Board.
  - 2. Secretary and Other Staff.** The Planning Commission shall advertise, interview, and make recommendations to the Town Board about the hiring of the Planning and Zoning secretary or other staff related to the Planning Commission.
- B. Terms of Office. Planning Commission terms of office are governed in the following manner.**
  - 1. Except as provided below, each member of the Planning Commission shall be appointed to serve for a period of three (3) years. Each term will begin in April and end in March. No person shall be appointed for more than two (2) consecutive terms of office or 8 consecutive years.
  - 2. Initial appointments made pursuant to this Ordinance shall be made in such a manner that no more than three (3) members' terms shall expire at the same time.
- C. Vacancies.** Vacancies shall be addressed in the following manner:
  - 1. Appointments shall be made by the Town Board to fill any vacancy for the unexpired duration of the term. Such appointment shall be made at the earliest convenience of the Planning Commission and the Town Board, in accordance with this **Article, Section 3-A.**

2. Vacancies in regular positions shall be declared by the Town Board under any of the following conditions:
    - a. Death of a member.
    - b. Resignation of a member.
    - c. Removal of a member for cause as provided in this Ordinance.
- D. Removal for Cause.** The following shall be deemed sufficient cause for the Town Board to remove any regular Planning Commission member. The Town Board may remove any member upon the occurrence of any of the following conditions as reported to the Board by either the Chairperson of the Planning Commission or the Planning Director.
1. Failure of the member to attend two-thirds of the regularly scheduled Commission meetings in any consecutive twelve (12) month period.
  2. Failure of the member to attend three (3) consecutive regular Commission meetings, or to attend four (4) consecutive regular and special Commission meetings in a year (as defined in **D.1** above).
  3. Attendance at several regular or special Commission meetings for such a short length of time as to render the member's services of little value to the Town. The Town Board shall make judgment on such matters after receiving a report of the Chairperson or the Planning Director as provided in this section above.
  4. Violation by the member of any land use control ordinance adopted by the Town pursuant to Minnesota Statutes, section 366.1 and all acts amendatory thereof.
  5. Any change in residency status from the Town.
  6. Inability to carry out the duties of the Commission due to a conflict of interest.

## **Section 4    Organization and Procedures**

- A. Officers.** Officers for the Planning Commission shall be selected as follows.
1. The Planning Commission shall elect a chairperson and vice-chairperson from among its regular members at the beginning of each year. Each year shall be presumed to run from April to March.
- B. Rules of Procedure.** The Planning Commission shall use the following rules of procedure.
1. The Planning Commission shall adopt rules for the transaction of its business that shall be consistent with the statutes of the State of Minnesota and the Ordinances of the County, and the Town of Duluth.
  2. Meetings shall be held regularly and shall be public.
    - a. The meetings of the Planning Commission shall be held at the call of the chairperson and at such other times as the Commission in its rules of procedure may specify.
    - b. All meetings of the Planning Commission shall be open to the public pursuant to Minnesota Statutes.
  3. Voting on issues before the Planning Commission shall follow specific standards listed below.
    - a. Each regular member, including the chairperson, shall be entitled to vote on all questions, unless a particular issue involves a conflict of interest. A decision to abstain from voting, due to a potential conflict of interest, shall also extend to discussion. Testimony, however, may be offered.
    - b. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the attending members except the member who is being challenged.

- c. Any member who believes he or she may have a conflict of interest, or who has a relative who has an interest in any decision to be made by the Planning Commission shall disclose such interest and either disqualify him or herself or seek a ruling pursuant to **3.b.** above.
  - d. Any person may, in person or in writing, challenge whether any member may have a conflict of interest. Upon any such challenge, the Commission shall decide the question pursuant to **3.b** above.
  - e. Ex-officio members of the Planning Commission shall not have the right to vote on any issues before the Planning Commission.
- C. Records.** The Planning Commission shall keep a written public record of all its transactions, findings, and determinations on all matters referred to it, and shall cause such records to be recorded as necessary pursuant to Minnesota Statutes.

## Section 5 Authority and Duties

- A. Plan Preparation and Review.** The Planning Commission shall conduct comprehensive planning activities and recommendations, consistent with the following:
- 1. The Planning Commission shall cooperate with the Planning Director and other employees of the Town in preparing and recommending to the Town Board for adoption a comprehensive plan and recommendations for plan execution in the form of official controls and other measures, and amendments thereto.
  - 2. The Planning Commission, in conjunction with the Planning Director, shall review any comprehensive land use, or other plans, or any official controls sent to the Town for review by any local unit of government, any council of governments, or any regional, state or federal agency and shall report thereon in writing to the Town Board.
- B. Public Hearings.** The Town of Duluth has determined that public hearings on issues before the Planning Commission are in the public interest.
- 1. The Planning Commission shall hold all required public hearings for comprehensive plans and amendments thereto, official controls and amendments thereto, all conditional use/interim use permit applications, interim use permit extension applications, variances, all subdivision platting proposals, and other matters as may be prescribed by Ordinances of the Town.
    - a. The Planning Commission shall have the final authority to approve or deny all conditional or interim use permit applications, and to direct the issuance of those permits.
    - b. The Planning Commission shall have the exclusive authority to order the issuance of variances from the terms of any official control, including restrictions placed on non-conformities.
    - c. Requests for variance from the subdivision platting regulations of St. Louis County shall be referred to the Planning Commission
    - d. The Planning Commission shall have the exclusive authority to order the issuance of permits for buildings and uses in areas designated for future public use on an official map.
    - e. The Planning Commission may impose conditions in the granting of variance and conditional or interim use permits to insure compliance and protect adjacent properties and public interests.
    - f. On all other matters before the Planning Commission for public hearing, the Commission shall report in writing to the Town Board.
  - 2. The Planning Commission shall set a reasonable time for all hearings, shall give due notice thereof and shall conduct hearings in the manner prescribed by Minnesota Statutes and other ordinances of this Town.

**Section 6 Compensation**

- A. Amount.** The voting members of the Planning Commission and the Secretary may be compensated in an amount determined by the Town Board.
- B. Expenses.** All voting members of the Planning Commission may be paid their necessary expenses in attending meetings of the Planning Commission and in the conduct of the business of the Planning Commission.
- C. Per Diem.** Nothing in this subdivision shall be construed to prohibit the payment of a per diem to the Planning Commission member.

## Article XIV: Appeals

### Section 1 Assignment of Statutory Responsibilities

In September 2009, the Town Board dissolved the Board of Adjustment as a separate entity, and has assigned the statutory authorities of the Board of Adjustment, pursuant to Minnesota Statutes 462.354, Subdivision 2, as amended and all acts amendatory thereof, to other bodies as specified in this Ordinance. The Planning Commission is assigned to hear requests for 1) variances; 2) rezoning requests; 3) conditional use permits; and 4) appeals of determinations by the Planning Director. The Town Board will hear appeals of decisions by the Planning Commission in these matters.

### Section 2 Appeals of Decisions of the Planning Director

- A. Filing an Appeal.** Any aggrieved person may appeal any order, requirement, decision, or determination (“determinations”) made by the Planning Director to the Planning Commission.
1. Appeals must be made in writing and submitted, along with the application fee:
    - a. Within fifteen (15) days of notification of an approval or denial of a land use permit by the Planning Director.
    - b. Within thirty (30) days of notification of any other order, requirement, decision, or determination by the Planning Director that does not involve approval or denial of a permit application.
  2. An appeal stays all proceedings in furtherance of the action appealed from unless the Planning Commission makes written findings and certifies that a stay would cause imminent peril to life or property.
- B. Public Hearing.**
1. The Planning Commission shall conduct a public hearing on all appeals of determinations by the Planning Director.
  2. The Planning Commission will set a time for hearing of all appeals and give due notice to the appellant, to the entity from whom the appeal is taken, and to the public, as prescribed by Minnesota Statutes and the applicable ordinances of the County and Town.
- C. Notification.**
1. Notification will be determined by:
    - a. Extent of the effects of the case (including effect on natural resources, visual effects, and social effects).
    - b. Intensity of the effects of the case.
    - c. Duration of the effects of the case.
  2. At a minimum, the same area of impact for notification identified for the original decision (if applicable) would be notified of the appeal.
- D. Authorities of Planning Commission in Deciding Appeals.** The Planning Commission may reverse or affirm, wholly or partly, or may modify any appealed order, requirement, decision, or determination of the Planning Director, and to that end will have all the powers of the Planning Director.
- E. Decisions.**

1. The Planning Commission will deliver a decision on all appeals in a manner that meets the requirements of the “60-day rule” (Minnesota Statutes, section 15.99) or other applicable statute or ordinance.
2. Criteria for the Planning Commission’s decisions on the appeal shall be based upon:
  - a. The Planning Director’s rationale and consistency in following this Ordinance.
  - b. Relevant findings of fact.
  - c. Interpretation of achieving the goals and visions in the Comprehensive Plan.
  - d. Other criteria the Planning Commission deems appropriate to rendering a fair and just decision.
3. Reasons for the decision(s) shall be stated in writing.
4. All decisions made by the Planning Commission in hearing appeals from any order, requirement, decision or determination by the Planning Director shall be final, except that any aggrieved person or persons, or any department, board, or commission of the jurisdiction or of the State shall have the right to appeal within fifteen (15) days after receipt of notice of the decision, to the BOA as described in this article.

### **Section 3 Appeals of Decisions of the Planning Commission**

- A. Filing an Appeal.** Any aggrieved person may appeal any order, requirement, decision, or determination (“determinations”) by the Planning Commission to the Town Board.
  1. Appeals must be made in writing and submitted, along with the applicable fee within fifteen (15) days of notification to the applicant of the Planning Commission decision to be appealed to the Town Board.
  2. Planning Commission decisions appealed to the Town Board may include granting or denial of a variance or conditional use permit, or a decision by the Planning Commission on an appeal of a determination by the Planning Director.
  3. An appeal stays all proceedings in furtherance of the action appealed from unless the Town Board makes written findings and certifies that a stay would cause imminent peril to life or property.
- B. Public Hearing.**
  1. The Town Board shall conduct a public hearing on all appeals of determinations made by the Planning Commission.
  2. The Town Board will set a time for hearing of all appeals and give due notice to the appellant, to the entity from whom the appeal is taken, and to the public, as prescribed by Minnesota Statutes and the applicable ordinances of the County and the Town.
- C. Notification.**
  1. Notification will be determined by:
    - a. Extent of the effects of the case (including effect on natural resources, visual effects, and social effects).
    - b. Intensity of the effects of the case.
    - c. Duration of the effects of the case.
  2. At a minimum, the same area of impact for notification identified for the original decision (if applicable) would be notified of the appeal.
- D. Authorities of Town Board in Deciding Appeals.** The Town Board may reverse or affirm, wholly or partially, or may modify any appealed order, requirement, decision, or determination of the Planning Commission, and to that end will have all the powers of the Planning Director or Planning Commission.

**E. Decisions.**

1. The Town Board will deliver a decision to the appellant on all appeals within thirty-five (35) days from the date the public hearing was closed, or sooner if required to meet requirements of the "60-day rule" (Minnesota Statutes 15.99) or other applicable statute or ordinance.
2. Criteria for the Town Board's decisions on the appeal shall be based upon evaluation of the relevant facts and law.
3. Reasons for the decision(s) shall be stated in writing.
4. All decisions made by the Town Board in hearing appeals from Planning Commission determinations shall be final, except that any aggrieved person or persons, or any department, board, or commission of the jurisdiction or of the State shall have the right to appeal within thirty (30) days after delivery of the decision to the appellant, to the District Court in St. Louis County on questions of law and fact.



## **Article XV: Validity and Exemptions**

### **Section 1 Severability**

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

### **Section 2 Impact upon Other Property**

Should this Ordinance be declared unconstitutional or invalid in its application to any given property or use, such decision shall not affect the validity or constitutionality of this Ordinance as applied to other properties or uses.

### **Section 3 Federal Government**

No land owned or leased by the Federal Government shall be subject to the provisions of the Ordinance unless agreed to by the Federal Government.

### **Section 4 State Government**

No land owned or leased by the State of Minnesota shall be subject to the provisions of this Ordinance unless agreed to by the State government.

### **Section 5 More Restrictive Standards**

More restrictive Federal, State, or County regulations or standards shall take precedence over the provisions of this Ordinance.

## Article XVI: Fees

### Section 1 General

#### A. Fee Schedule Established.

1. Fees applicable to all permit applications, petitions, and appeals are provided in **Table 16.1**.

#### B. Fee Requirement.

1. No application for a zoning permit, conditional use permit, planned unit development permit, or any other required permit, nor any petition to amend the Zoning Ordinance Map, nor any appeal to the Planning Commission or the Board of Adjustment shall be recognized, acted upon, issued, or granted unless and until all required fees have been submitted in full by means of check or money order to the Town Clerk. Receipt of fees shall be subject to their collection by the Town. If a fee is submitted by check or money order, no permit granted or action taken shall be of any force or effect until the check or money order submitted shall prove collectible. Fees shall be determined by the Planning Commission. Additionally, a recording fee (as determined by St. Louis County) will be charged.

#### C. Refunds.

1. Should a permit, petition, or appeal be denied, the fee shall not be refunded, except as noted elsewhere in this subsection.
2. In matters appealed to the Town Board, if the Town Board reverses or modifies an order, decision, requirement, or determination of the Planning Director or the Planning Commission, the Town Board has the discretion and authority to refund all or a portion of the appeal fee commensurate with the degree to which the Board believes the appellant has prevailed.

#### D. Government Exempted.

1. No local unit of government (city, town, or special purpose district) shall be required to pay a fee for any permit, certificate, or appeal.

#### E. Penalty for Late Application.

1. All fees for permit applications, petitions, certificates of compliances and appeals shall be quadrupled for persons, corporations or their agents applying for a permit after the date they would ordinarily be required to make the appropriate application in order to comply with the terms of this Ordinance.

Table 16.1 – Permit and Administrative Fees	Amount
<b>Single-Family Structures</b>	
Single-Family / Residential Dwelling	\$320
Single-Family Residential Dwelling Additions	\$200
Single-Family / Residential Dwelling Accessory Structures	\$167
Single-Family Residential Accessory Structure Additions	\$167
Deck	\$100
<b>Commercial Structures</b>	
Commercial Structure	\$691
Commercial Accessory Structure	\$319
Commercial Additions	\$234
<b>Administrative Actions</b>	
Administrative Appeal of Planning Director Decision	\$319
Appeal of Planning Commission Decision	\$1,595
After-the-Fact Permit Fee	4 X
Permit Extension	\$64
<b>Conditional Uses</b>	
Conditional / Interim Use Permit - Adult/Sexually Oriented Business, Accessory	\$2,339
Conditional / Interim Use Permit - Adult/Sexually Oriented Business, Principal	\$5,847
Conditional / Interim Use Permit – Commercial	\$691
Conditional / Interim Use Permit - Home Business	\$425
Conditional Use Permit - Public Utility Facility	\$1,169
Conditional / Interim Use Permit - Unless Noted	\$425
Conditional Use Permit - Utility Corridor	\$5,847
<b>Planned Unit Development</b>	
Commercial	\$4,996
Mixed	\$6,272
Residential (6 or Fewer Units)	\$2,551
Residential (7 or More Units)	\$3,083
<b>Signs</b>	
On Site	\$128
<b>Driveway Site Entry Permits</b>	
Driveway / Site Entry (a refundable \$500 performance deposit is also required)	\$106
<b>Parking Lot Permits</b>	
Parking Lot with Land Disturbance Less Than 5,000 SF	\$0
Parking Lot with Land Disturbance from 5,000 SF to Less Than One Acre	\$213
Parking Lot with Land Disturbance of One or More Acres	\$532
<b>Subdivision</b>	
Preliminary Plat	\$1,276
Final Plat	\$638
<b>Variance</b>	
Commercial	\$691
Residential	\$446
<b>Zoning Amendments</b>	
Zoning Text Amendments when Initiated by Property Owner	\$638
Zoning Map Amendments when Initiated by Property Owner	\$638
<b>Short-Term Rental</b>	
Interim Use Permit High-Frequency Short-Term Rental	\$532
Low-Frequency Short-Term Rental (annual fee)	\$100
<b>Other</b>	
Fees Other than Noted	\$120
Subdivision Review	\$80

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Driveway Land Use Permit	\$120
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## Article XVII: Effectuation

This Ordinance shall take effect and be in full force immediately upon its adoption by the **Town Board of Supervisors**, Town of Duluth, Minnesota, and its publication in the Official Newspaper of the Town of Duluth as provided by Minnesota Statutes.

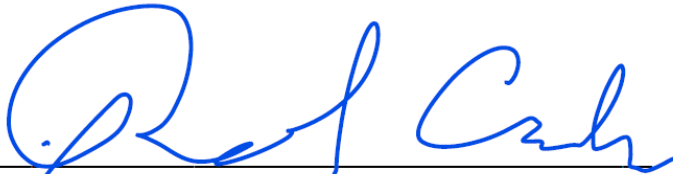
A public hearing was held by the **Town of Duluth Planning Commission** on December 2, 2021.

Recommended to the **Town Board of Supervisors** for adoption on January 27, 2022.

Supervisor Penny Morton moved to revoke **Zoning Ordinance Number 5**, and replace it with **Zoning Ordinance Number 6**, this Ordinance, and Stacia Grayson seconded the motion. It was adopted by the following vote:

Yeas: 5

Nays: 0



Rolf Carlson, Chair, Town of Duluth Board of Supervisors

## **Appendix 1: Amendment 6.1**

On July 14, 2022, the Town Board approved the recommendation by the Planning Commission to amend Zoning Ordinance Number 6 as follows: Move the language regarding Community and Large-Scale Solar Energy Systems from Article VIII Section 23 to Article IX Section 27. to be consistent with the Zoning Ordinance's requirements for other commercial applications and uses of that scale.