

Greater Lakes Association of Realtors (GLAR) Comments and Responses

The Resilient Region appreciates the comments received from the Greater Lakes Association of Realtors (GLAR). They reflect the association's commitment to a fair set of rules that continue to provide a wide range of residential and commercial development options for those lucky enough to live, work and play in the five-county region. The Resilient Region wants fair rules, too. It's been said that land use isn't rocket science; it's harder. Add to that already daunting task the concept of sustainability – thinking about how our behaviors on the land today will impact future generations and how they are able to use the land – and the process of crafting fair rules becomes that much more difficult. Not impossible, but difficult and necessary.

Ordinance changes will always be greeted with a mix of support and concern. What's good for one group/individual isn't necessarily seen as good for another group/individual. The beauty of sustainability ordinances is that they take into account three different, but very important viewpoints – those speaking up for a strong, healthy economy, those speaking up on behalf of a clean, healthy environment, and those speaking up for the needs of healthy, livable communities. All three voices are equally important. The secret is finding a balance based on science and valid, full-cost economic review. This requires communities to look differently at how they grow. Development for development's sake is no longer a viable option. Communities can't continue to support ever-increasing rates of growth that don't come close to covering the costs of maintaining and eventually replacing their decaying infrastructure – roads, bridges, sewer lines, etc.

The model ordinances presented by the Resilient Region project should be viewed by local governments as guidance documents to help them get closer to sustainability. For example, if a local unit of government decides that downtown revitalization is a priority and they want to be more prescriptive in their ordinances, they need only look at the examples of a Downtown Mixed-Use District Ordinance, the Historical Overlay District Ordinance, and the Pedestrian Overlay District Ordinance as starting points for discussion. The Resilient Region project is not presenting these model ordinances as applicable to all communities as written, but if a community wants to be more fiscally sound, socially equitable and environmentally astute, these model ordinances provide a basis for achieving that. Like it or not, those are the characteristics of communities that will succeed long into the future.

Issues Raised by Specific Aspects of the Model Ordinances

GLAR Concern: Model Ordinances do not sufficiently address their potential to create nonconformities.

GLAR Suggestion: We request that the model ordinance incorporate specific instructions for local governments in regards to nonconformities, as the adoption of the model ordinance may result in the creation of numerous nonconformities within jurisdictions. Without this inclusion, local governments may need to make choices to provisions for nonconformities in their local zoning codes which may result in inconsistencies within the region. By providing guidance to

local jurisdictions, we believe this will assist in facilitating preservation of property values, as well as promote investment and redevelopment within the jurisdiction.

Resilient Region Response: Ordinances are constantly updated, especially ordinances that do not agree with a community's Comprehensive Plan – its vision for the future. For example, if a Comprehensive Plan, which should be updated about every five years, encourages lower density development in shorelands to better protect water quality, or better protection of prime farmland, or more walkable communities, the zoning ordinances should reflect that desire. The model ordinances offered by the Resilient Region reflect the desire of many communities in the region with a vision to be more sustainable. They want strong local economies, but in the five counties that make up the Resilient Region, economic engines are the industries of tourism, agriculture and forestry, all of which depend on a healthy environment if they are to flourish in the future.

Changing ordinances – the rules of development – will greatly impact new construction, but new rules can sometimes affect existing structures. When that happens, nonconforming structures can be created. These are often defined as dwellings or other buildings that existed lawfully before the current zoning ordinance was enacted or amended, but now, they no longer conform with one or more of the current development regulations such as setback, height, lot coverage, impervious surface area, etc. Most communities, when crafting new ordinances, will look at the potential for creating nonconformities. Specific ordinance language can be fine-tuned so as not to create a large number of nonconformities. That said, in almost all communities, nonconforming structures can remain legal and may continue including through repair, restoration, maintenance or improvement. Any additions or expansions to a nonconforming structure, however, must comply with current development regulations. In other words, one cannot make a nonconforming structure more nonconforming. For example, a cabin that is nonconforming for being too close to the lake may not expand any closer to the lake. A property owner always has the option of requesting a variance when they want to do something that is not allowed in the current zoning ordinance.

The Resilient Region will add to the model ordinances the previous paragraph.

GLAR Concern: The Agriculture and Forest District and the Alternative Shoreland District Standards model ordinances propose overly restrictive requirements.

GLAR Suggestions: The aforementioned ordinances impose significant restrictions on the development of property within the districts. The Association would recommend that the ordinances be analyzed further to determine whether the districts are suitable for all jurisdictions within the region. Determine if the adoption of the model ordinances will have a significant effect on the development of potential properties within the jurisdiction, as well as an evaluation of its impact on private property rights and development plans. The Association requests that the Resilient Region take a further look at the impact that the model ordinances could have on the Livability Principle concerning housing affordability and the economic viability of existing communities.

Resilient Region Response: The Agriculture and Forest Protection District Ordinance and the Alternative Shoreland District Standards were not part of the document entitled, *Model Ordinances for the HUD/Region 5 Resilient Region Sustainability Project* done by law students at the William Mitchell College of Law, which is the document receiving comments from the Greater Lakes Association of Realtors (GLAR). Those model ordinances are, however, part of another document entitled, *Model Comprehensive Plan Policies and Model Ordinances to Implement the Livability Principles*, which was done by students at the University of Minnesota's law school.

The Agriculture and Forest Protection District Ordinance is based in part on the existing Morrison County Zoning Code. Currently, all five counties within the Resilient Region have zoning ordinances that establish Agriculture or Agriculture/Forestry districts because these industries are vital to local economies. These current districts, however, permit a wide range of uses that diminish farmland and forests essential to the region's future economic health and prosperity. Intensive development in designated agriculture, forest and shoreland districts directly affects surface and groundwater flows, aquifer recharge and water quality of scale for lakes, rivers, and streams, local private and community wells and the source of drinking water for those living downstream in St. Cloud and the Twin Cities. The goal of the model ordinance is to limit Agriculture and Forest districts to their best uses and restrict uses that are better suited for more developed areas of the county.

The Alternative Shoreland District Standards were developed by a citizen's advisory committee in north-central Minnesota, which included the counties of Cass and Crow Wing. The committee included stakeholder groups representing developers, local governments, Realtors, lake associations, business interests, conservation nonprofits and state agencies. The process of revising the shoreland rules happened because of a citizen outcry that the current state rules were outdated (they were created in the early-1970's and last updated in 1989) and unable to keep up with current intense development pressures in shorelands. Reputable data showed that lake and river water quality was generally decreasing across the state and the number of impaired water bodies was increasing every year. This inspired the committee to make recommendations based on sound scientific data rather than opinions. The completed rules, much like the Resilient Region's model ordinances, were offered to local governments, not as a requirement, but as a voluntary set of updated regulations that local governments could adopt if they chose to do so.

The Minnesota Department of Natural Resources (DNR) used the recommendations of the Alternative Shoreland District Standards as a starting point for their re-evaluation of the Statewide Minimum Shoreland Standards, which all local governments in Minnesota must follow. To date, those statewide rule change recommendations by the DNR, which were also based on the best scientific data available, have not been presented to Governor Dayton for his approval.

Ordinances like the Agriculture and Forest Protection District Ordinance and the Alternative Shoreland District Standards will always provoke discussion and dissention because they propose changes to what has been done before and what people are used to. Groups like GLAR may find these ordinances to be "overly restrictive," while other groups like lake associations will say, "It's a start, but they're not restrictive enough." These kinds of civil disagreements

educate communities and help them decide how they want to grow and develop in ways that respect their vision for the future.

General Concerns about the Model Ordinances

Chapter Two: Terms

GLAR Concern: There are numerous errors and inconsistencies in the defined terms within the model ordinances.

GLAR Suggestion: The Association recommends that the Resilient Region revise the draft model ordinance to remove any conflicting or duplicated definitions, as well as remove regulatory provisions from definitions. The Association also suggests the elimination of subjective and ambiguous criteria within the definitions.

Specific GLAR Suggestion: The definition of “Accessory Structure” presumes that there will be one principle structure on a parcel or lot; however, this may not be the case if a jurisdiction seeks to promote mixed-use development.

Resilient Region Response: On page 6 of the model ordinance, accessory structure is defined as “A building or other structure that is supportive, secondary, and subordinate in use and/or size to the Principle Structure on the same parcel or lot which, because of the nature of its use, can reasonably be located at, or greater than, minimum structure setbacks. Includes all structures not considered as the Principle Structure including, but not limited to, T.V. towers, antennas, dish antennas, outdoor swimming pools, outdoor hot-tubs, detached garages, sheds, Guest Quarters, and boathouses.” This definition is in agreement with other definitions found. For example, in Crow Wing County, accessory structure is defined as “A structure which is subordinate to and on the same lot as the principle structure and does not include living quarters. Such structures include sheds, storage shelters, pole buildings, detached garages, and similar structures. No accessory structures shall be used for human habitation.” The City of Glendale, Arizona defines accessory structure as “A detached subordinate building or structure the use of which is customarily incidental to that of the main building(s) or use(s) located on the same lot. Accessory buildings and structures do not include accessory living quarters and/or guest houses.”

In mixed-use development, there is still a principle structure, but since mixed-use allows a mix of residential and commercial uses in the district and on an individual lot (such as commercial/retail space at street level and residential apartments above on the second floor), there is more leeway in the definition of what exactly a primary structure is. Those kinds of nuances can be dealt with in a specific mixed-use ordinance. For the Resilient Region’s model ordinance, the current definition for “accessory structure” is in agreement with other definitions used by other communities, so it does not need to be changed.

Specific GLAR Suggestion: Buildable Area is defined within the model ordinance in Chapters 2 and 3, but the term is not used in the ordinance.

Resilient Region Response: The term “buildable area” is defined on pages 6 and 19 of the ordinance. It is defined as “Land that does not contain designated flood plain, wetlands or areas in excess of twenty-five (25) percent slope.” The term “buildable lot area” is used in the tables on page 14 and 20. Cass County defines “buildable lot area as “A lot having sufficient size to meet the minimum square footage, buildable area, width standards, and setbacks in the Cass County Land Ordinance.” Crow Wing County defines “buildable lot area” as follows: “The minimum required area remaining on a newly created parcel or platted lot after all public road rights of way, road easements, setbacks and wetlands are subtracted. In the shoreland district, all land below the Ordinary High Water Level (OHWL) of public waters, bluffs, areas with slopes greater than 25%, and floodways shall also be subtracted.” The Resilient Region will modify its term to “buildable lot area” instead of “buildable area.” The definition will be a hybrid of the Cass and Crow Wing definitions. The Resilient Region definition will read as follows: “A lot having sufficient size to meet the minimum square footage requirements after all public road rights of way, road easements, setbacks, bluffs, areas with slopes greater than 25%, wetlands and flood plains are subtracted. In the shoreland district, all land below the Ordinary High Water Level (OHWL) of public waters shall also be subtracted.”

Specific GLAR Suggestion: The definition of the term Conditional Use is somewhat unclear. Within the definition it is stated: “may be allowed without restrictions of condition.” This is contrary to the rest of the definition which presumes that the jurisdiction will approve a use with conditions, it also suggests that conditions are required in all cases, which may not be true if a jurisdiction’s ordinance allows otherwise.

Resilient Region Response: On page 6 of the model ordinance, conditional use is defined as “A land use or development as defined by the ordinance that would not be appropriate without restriction, but may specifically be allowed without restrictions of conditions as determined by the <Jurisdiction> upon a finding that (a) the proposed use or development is an appropriate conditional use, (b) the use or development, with conditions, conforms to the comprehensive land use plan, if any, (c) the use, with conditions, is compatible with the existing neighborhood and (d) the use, with conditions, would not be injurious to the public health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the <Jurisdiction>.”

The Resilient Region agrees that this definition, like many other land use definitions, can be confusing, especially to the layperson. A simpler definition can be found in Cass County, which defines conditional use as “A use that may be appropriate in a given zoning district but which requires special planning considerations in each instance and which only will be allowed in a specific location under conditions specified by the Cass County Land Use Ordinance and the Planning Commission.” Crow Wing County defines conditional use as “A land use that would not be appropriate generally in a land use district, but may be allowed with appropriate restrictions as provided by official controls upon a finding that: A) Certain conditions as detailed in the ordinance exist and B) The use or development conforms to the comprehensive land use plan and C) is compatible with the existing neighborhood.”

To help eliminate confusion, the Resilient Region will change its definition of conditional use to the one used by Crow Wing County. This definition removes the unclear passage: “may be allowed without restrictions of condition,” and like almost everything else in the model

ordinances, it allows for local interpretation and local fine-tuning. A community wishing to become more sustainable shouldn't let a definition stop them from doing that.

Specific GLAR Suggestion: In the definition of the term impervious coverage or surface, the inclusion of gravel drives and parking may not be consistent with the Low Impact Development design techniques that are referenced in the Sustainability Toolkit, which includes the use of porous or permeable pavement including those that are constructed using gravel materials.

Resilient Region Response: The Resilient Region cannot find any conflicting statements in the model ordinances and the Sustainability Toolkit about the lack of porosity of gravel driveways and roadways. It is generally felt that gravel driveways and roadways, because of their compaction properties, are now considered impervious or impermeable and are not recommended as a way to reduce runoff. In the Crow Wing County definition of impervious surface, it states examples of impervious surface include “rooftops; sidewalks; patios; parking lots; storage areas; concrete, asphalt, or gravel driveways; and other similar surfaces.” Therefore, the definition of impervious coverage or surface will not be changed in the model ordinances.

Specific GLAR Suggestion: In defining the term lot width, the term “building line” should also be defined to prevent the potential for confusion in interpretation.

Resilient Region Response: The Resilient Region prefers the definitions for lot width used by both Crow Wing and Cass Counties. Their definitions are virtually identical and they both define lot width depending on if the lot is riparian (lakeside) or non-riparian. Lot width (non-riparian) is defined as “The shortest distance between side lot lines as measured at the midpoint of the longest axis of the lot.” Lot width (riparian) is defined as “The minimum distance between: A) side lot lines measured at the midpoint of the building setback line; and B) the minimum distance between side lot lines at the Ordinary High Water Level (OHWL).” These two definitions (for riparian and non-riparian lots) will replace the current definition for lot width in the model ordinances.

Specific GLAR Suggestion: When defining the term mixed-use the term “development” should also be defined.

Resilient Region Response: On page 7 of the model ordinances, mixed-use is defined as “Two or more residential, commercial, cultural, institutional, or industrial uses contained within a building or development.” Wikipedia defines mixed-use as follows: “In a broad sense, any urban, suburban or village development, or even a single building, that blends a combination of residential, commercial, cultural, institutional, or industrial uses, where those functions are physically and functionally integrated and that provide pedestrian connections. Mixed-use development may also be used more specifically to refer to a mixed-use real estate development project – a building, complex of buildings, or district of a town or city that is developed for mixed use by a private developer, (quasi-) governmental agency, or a combination thereof.”

The Resilient Region will modify its definition as follows: “Two or more residential, commercial, cultural, institutional, or industrial uses contained within a single building or within

a specified area of a community. Mixed-use districts support a variety of different living activities (live, work, shop and play) and are pedestrian-friendly.”

Specific GLAR Suggestion: The term overlay district need not always “supersede” the underlying district use regulations, but supplement, or modify the approval process for the list of allowed uses in the district.

Resilient Region Response: On page 7 of the model ordinances, overlay district is defined as “a zoning district containing regulations and superseding the underlying zoning district use regulations.” Watering down an ordinance with non-specific language (like “supplement” and “modify”) that allows multiple interpretations by planning commission members and citizens is not the best way to implement change in a community. According to *Webster’s New World Dictionary*, the word “supersede” means “to replace or succeed.” If a community truly wants to create overlay districts like those suggested in the model ordinances (Historic Overlay District, Traditional Neighborhood Zone Overlay District, Pedestrian Overlay District, and Infill Residential Overlay District) they need examples with strong, specific language that doesn’t create confusion as to what its meaning is. This, in fact, is what GLAR has suggested in other comments regarding the model ordinances. For example, GLAR has opined that the Resilient Region “incorporate specific instructions for local governments” and encourage “the elimination of subjective and ambiguous criteria with the definitions.” The Resilient Region feels that the current definition of overlay district (without the words “modify” and “supplement”) accomplishes both of those goals.

Specific GLAR Suggestion: The definition of Principal Structure presumes that there can only be a single principal structure on a lot. The definition is unclear in stating how a structure can be defined as a “use.”

Resilient Region Response: On page 8 of the model ordinances, principal structure is defined as “The single primary structure or use on a lot, as distinguished from accessory uses or structures. To be considered a principal structure, the structure must be at least 400 square feet in area and must be utilized for the purpose of the principal use of the property.” The Resilient Region will eliminate the word “single” from the definition of principal structure. Principal structures are first determined by the designated principal use of the land, which is defined on page 8 as “The primary purpose for which land or a building is arranged, designed, intended, or used.” This definition is the exact definition currently used by Crow Wing County. For example, if the use of a piece of land is designated by its zoning as residential, the primary structure on that piece of land would be a dwelling. Use and structure must always agree.

Specific GLAR Suggestion: The definition of Principal Use seems to imply that there can only be one principal use for a parcel which may not always be the case, especially in mixed-use development.

Resilient Region Response: Generally, only one principal use may be allowed on a single lot, but in cases of mixed-use development, there may be multiple uses on a single lot and within a larger mixed-use district. For example, the district may allow residential dwellings, commercial buildings, office space, retail, government buildings, etc. On a single lot, there may be a

building containing retail space on the ground floor with offices or apartments or upper floors. Therefore, the Resilient Region will amend its definition of “principal use” to read as follows: “The primary purpose for which land or a building is arranged, designed, intended, or used. In mixed-use development, there may be multiple uses within a district or on a single lot.”

Specific GLAR Suggestion: In defining the term Residential the term housing should also be defined or replaced with another term such as “dwelling units.”

Resilient Region Response: On page 8 of the model ordinances, residential is defined as “An area primarily used for housing.” The term “dwelling units” is sometimes used by local governments as a general housing term, but it is just as generic as the term housing. To be a bit more specific, the Resilient Region will keep the word “housing,” but will add the following to the end of the current definition: “Housing may include things like single-family housing units, multi-family housing units such as apartments, townhomes, and condominiums, and mobile homes.”

Specific GLAR Suggestion: The term Planned Unit Development (PUD) has two conflicting definitions within the model ordinance.

Resilient Region Response: On page 8 of the model ordinances, Planned Unit Developments (PUDs) are defined twice – one under “Planned Unit Developments” and another under “PUDs.” The first definition states that Planned Unit Developments are “a type of building development that is a designed grouping of both varied and compatible land uses, such as housing, recreation, commercial centers, and industrial parks, all within one contained development or subdivision.” The second definition for PUDs is “A land use characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent or lease, and also usually involving clustering of these units or sites to provide areas of common green space, density increases, and a mix of structure types and land uses. Does not include a duplex where specifically allowed in a zoning district on a single parcel of land.” The Resilient Region will eliminate the first definition and keep the second one.

Specific GLAR Suggestion: The Associations suggests that the term Setback be divided into several definitions for certain types of setbacks (i.e. setback-side, setback-front). We also suggest that the definition not include substantive standards (i.e. ...3 feet from stoop to ground...)

Resilient Region Response: On page 8 of the model ordinances, Setback is defined as “The minimum horizontal distance between a structure, sewage treatment system, top of bluff, road, highway, property line or other facility. Three (3) feet of rood overhang, stoops not exceeding 30 square feet and steps from stoop to ground no over 4 feet wide may protrude into the setback.” In comparison, Cass County uses the following definition: “The minimum horizontal distance between a structure, ISTS, feedlot, manure storage structure or other facility and road, highway, property line or natural feature such as OHW, bluff or wetland.” Crow Wing County defines Setback as “The minimum horizontal distance between a structure, sewage treatment system or other facility and the Ordinary High Water Level, sewage treatment system, top of bluff, road, highway, property line or other facility.” The Resilient Region will use the following

hybrid: “The minimum horizontal distance between a structure, sewage treatment system, feedlot, manure storage structure or other facility and road, highway, property line or natural feature such as the Ordinary High Water Level (OHWL), bluff or wetland. Setbacks from a structure to property lines are sometimes designated ‘front setback,’ ‘back setback,’ and ‘side setback.’”

Specific GLAR Suggestion: The definition of Structure is over-inclusive and may be misconstrued to encompass items such as a fence making it subject to structure setbacks.

Resilient Region Response: On page 9 of the model ordinances, Structure is defined as “Any building, appurtenance including decks or other facility constructed, placed or erected by man except aerial or underground utility lines such as sewer, electric, telephone, telegraph, gas lines and except walks or steps on grade not more than 4 feet wide outside of the shore impact zone, stoops not exceeding 30 square feet, temporary furniture, planter, or decorative material and retaining walls consisting of wood or decorative block.” Cass County defines Structure as “Anything constructed, placed or erected by humans, including but not limited to homes, garages, accessory buildings, manufactured housing, recreational vehicles left on site for 14 consecutive days, signs, storage buildings, decks, fences and fish houses.” Crow Wing County defines Structure as “Anything constructed, placed or erected by humans, including but not limited to homes, garages, accessory buildings, manufactured housing, recreational vehicles left on a site for 14 consecutive days, signs, storage buildings, decks, fences and fish houses. For E911 purposes a structure can also include a physical point (i.e. bridge, telephone booth, tower, etc.) which is addressed for the purpose of location in emergency situations.” Both definitions count fences as structures, knowing that there are different setback requirements for fences than homes or sewage systems. The Resilient Region will use the Crow Wing County definition.

Chapter Three, Urban Residential District, terms

Specific GLAR Suggestion: The definition of the term Downtown is duplicated in Chapters 2 and 3.

Resilient Region Response: The term Downtown is defined in Chapter 2 (page 7) under the general terms for the entire document. It reads: “of, in, or characteristic of the central area or main business and commercial area of a town or city.” The term is again defined in Chapter 3 (page 19) as part of the specific Urban Residential District Ordinance. A community may adopt the ordinance from Chapter 3, but may not need all the other definitions that are listed in Chapter 2. Therefore, both definitions will continue to appear in both chapters in the document.

Specific GLAR Suggestion: The definition of the term Downtown-Mixed Use District contains subjective terminology such as “smaller... requirements than most” which may lead to problems of interpretation.

Resilient Region Response: On page 11 of the model ordinances, there is a sentence that reads: “The Downtown Mixed-Use District (DMU) has smaller minimum lot size, building width and setback requirements than most residential zones in the region and substantially increases the maximum density allowed for development.” On page 13 – the Downtown Mixed-Use District

Ordinance – it reads that the purpose of the ordinance is “to provide a zoning district that mixes higher-density residential and commercial uses.” It further states: “The denser development patterns in these districts make them ideal locations for multi-family housing without sacrificing community, while also providing residents with closer proximity to jobs, retail, alternative transportation routes, and public services. Along with the descriptions of what a Downtown Mixed-Use District is – higher density with smaller minimum lot size, smaller building width and smaller setback requirements – there is a table on page 14 titled “Lot and Density Requirements,” which makes specific recommendations about what “smaller minimum lot width, buildable lot area and setback requirements than most residential zones in the region” might look like. Since the term “smaller” is well defined by the specifics in the table, it is appropriate to keep the term.

Chapter Four, Traditional Neighborhood Zone Overlay District, terms

Specific GLAR Suggestion: The Association recommends that the final sentence used (“commercial lots may be developed with mixed use lots...”) in defining Commercial Lots be stricken from the definition and instead placed in a table within the ordinance text.

Resilient Region Response: The term Commercial Lots is defined on page 42 of the model ordinances as follows: “Properties located in the Neighborhood Center intended for Commercial Uses that support and primarily serve the surrounding residential community. Commercial Lots may be developed with mixed-use buildings that have offices or residential dwellings on upper floors.” As it states in the ordinance on page 42, “The purpose of the Traditional Neighborhood Zone Overlay District (TNZ) is to permit new development to occur in a manner that is consistent with the historic character and development pattern of the existing community, while providing an alternative to typical suburban-style development patterns.” Suburban-style development does not typically allow the mixing of commercial uses with residential uses, but in a Neighborhood Center, and as part of a Traditional Neighborhood Zone Overlay District, a mixing of residential and commercial uses makes sense, and the questioned phrase is a good reminder of that. Therefore, it will remain as part of the definition of “Commercial Lots” with regards to a Traditional Neighborhood Overlay District. One can further see in the table on pages 43-45 that Commercial Lots in this overlay district allow the permitting of “secondary dwelling units located above a permitted use on the ground or lower levels.”

GLAR Suggestion: The definition of Streetscape is duplication of the Chapter 2 definition. Streetscape is also defined in Chapter 4, Pedestrian Overlay District; however the definition of the term differs from that in Chapter 2 and earlier in Chapter Four.

Resilient Region Response: Streetscape is defined in Chapter Two on page 9 as follows: The sum of the man-made and planted features within and adjacent to the street right-of-way that create the character of public space. The Streetscape often includes sidewalks, street trees and plantings, street furniture such as benches, street lights, signs, trash receptacles, railings and fences, fountains, planters, banners and flags, public art and similar publicly visible features.” It is defined again in Chapter Four on page 42 as part of the language of the actual Traditional Neighborhood Zone Overlay District Ordinance. Streetscape is again defined in Chapter Four on page 53 as part of the Pedestrian Overlay District Ordinance. The definition on page 52 differs

slightly from those found on pages 9 and 42. Therefore, the definition on page 53 will be changed to that found on pages 9 and 42.

Chapter Four, Pedestrian Overlay District, terms

Specific GLAR Suggestion: The definition of Grade, which can also be found in Chapter 2, is difficult to understand. The Association recommends that the definition of this term be revisited.

Resilient Region Response: Grade is defined on pages 7 and 52 of the model ordinances as “amount of inclination of that surface to the horizontal.” Granted, this can be a confusing definition, but even Wikipedia’s definition is similar: “Grade (also called slope, incline, gradient, pitch or rise) of a physical feature, landform or constructed line refers to the inclination of that surface to the horizontal.” *Webster’s New World Dictionary* defines grade as “the degree of slope.” *The Merriam-Webster Dictionary* and the FreeDictionary.com define it the same: “The degree of inclination of a slope, road or other surface.” The Resilient Region will change its definition of grade to the following: “Also called slope, incline, gradient, pitch or rise, it is the degree of inclination of a slope, road or other surface.”

Chapter Five, Accessory Dwelling Unit, terms

Specific GLAR Suggestion: The term Dwelling Unit is defined differently in this chapter, as well as in Chapter 2.

Resilient Region Response: Dwelling Unit is defined on page 7 of the model ordinances as “a 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.” On page 64 as part of the Accessory Dwelling Unit Ordinance, dwelling unit is defined as follows: “One (1) or more rooms arranged for residential use containing cooking, living, sanitary and sleeping facilities and physically separated from any other room or dwelling units which may be in the same structure.” The Resilient Region will change the definition of dwelling unit on page 64 to that found on page 7.

General Comments on Model Ordinances

Specific GLAR Concern: The Association believes that several of the “Factors Considered” for conditional use permits within the Model Ordinances will be difficult to apply.

Specific GLAR Suggestions: The Association requests that the “factors considered” in the draft model ordinances be amended to remove any factors that will be difficult to apply to all conditional uses, or define certain factors to be only applicable to distinct and relevant conditional uses. In particular, the factors only concerning housing should be removed from ordinances that are not exclusively for residential uses.

Resilient Region Response: This suggestion is a broad one as “factors considered” can be found on page 21 (Urban Residential District Ordinance), page 32 (Highway Commercial District Ordinance), page 45 (Traditional Neighborhood Zone Overlay District Ordinance) and page 78

(Small Wind Energy Conversion Systems Ordinance). It's important to remember that model ordinances like those presented by the Resilient Region can work quite well as written, but they may work better when a local government views them as a starting point for discussion and fine-tuning to meet their perceived special needs. All communities view themselves as unique – different from every other community out there. Therefore, an ordinance that has been tailored by a community to meet that community's "unique" vision has a far better chance of getting buy-in from a community's elected leaders and its citizenry because it is uniquely theirs and not someone else's. The Resilient Region even states on page 21 that "the use regulations ... are merely suggestions." Some of the "Factors Considered" for the model ordinances listed above include: the use is consistent with the Comprehensive Plan; the use will expand the energy-efficient housing choices for people of all ages, incomes and family sizes; whether there is adequate transportation, sewer and water infrastructure available for the use; whether the design creates a pedestrian-friendly internal site layout and streetscape; the use will expand the location of housing choices for people of all ages, incomes and family sizes; the use will lower the combined cost of housing and transportation for people of all ages, incomes and family sizes; the visual impact of the Small Wind Energy Conversion Systems (SWECS) or Meteorological Tower; and the noise expected to be generated by the SWECS or Meteorological Tower. These are all reasonable criteria to consider if a community wants to implement ordinances that require conditions for approval. Granted, some of the criteria/conditions are more easily measurable than others, so it is inevitably up to the community to decide which of the suggested "Factors Considered" would work for them and give them the best ordinance.

Specific GLAR Concern: Many of the architectural and design standards in the model ordinances contain standards for decision-making that are susceptible to inconsistent and potentially unfair or arbitrary interpretation and application.

Specific GLAR Suggestion: The Association recommends that the model ordinance be revised to remove any imprecise and unclear development regulations in the Architectural Design Standards sections.

Resilient Region Response: Again, this suggestion is a broad one as architectural design standards are given on page 27 (Highway Commercial District Ordinance), page 50 (Traditional Neighborhood Zone Overlay District Ordinance), page 54 (Pedestrian Overlay District), page 60 (Infill Residential Overlay District Ordinance), page 65 (Accessory Dwelling Unit Ordinance) and page 79 (Small Wind Energy Conversion Systems Ordinance). On page 32, the Resilient Region states "The design standards are suggestions." On page 27, it further states, "Not all standards will be appropriate in all locations." Like the response to the question above, it is inevitably up to the community to decide which of the suggested design standards work for them. Adopting all of the design standards is certainly one way to go. Adopting only those that a community feels are appropriate for their "unique" situation is another way to go, as long as the new ordinance implements change that gets the community closer to sustainability.

Specific GLAR Concern: The Adequate Public Facilities (APF) model ordinance lacks sufficient requirements to guide a local government in its adoption of Level of Service (LOS) standards and a Capital Improvement Plan.

Specific GLAR Suggestion: The Association recommends the removal of the APF from the model ordinance as it may cause municipalities unforeseen administrative burdens in its implementation. If the Resilient Region chooses to include the APF in the model ordinance, the Association recommends providing additional standards and guidance to cities and towns, as well as caution them regarding the potential for administrative burdens in its implementation.

Resilient Region Response: The Adequate Public Facilities (APF) Ordinance, which is on page 89 of the model ordinances, provides a mechanism to ensure that development is commensurate with infrastructure capacity. It seeks to encourage growth while limiting the use of public infrastructure to subsidize fiscally unsustainable growth in largely undeveloped areas. It does this by making certain that public facilities needed to support new development meet or exceed the level of service (LOS) standards established in the community's comprehensive plan. Revitalization of existing neighborhoods and investment in developed areas near city centers can encourage growth and at the same time, lower public infrastructure costs. Simply put, building where there is already existing infrastructure is an inexpensive way to grow, relatively speaking. Sprawling out and building new infrastructure is a very expensive way to grow that few, if any, communities can afford without raising taxes through the roof, and that option is very unpalatable for most citizens. Limiting sprawl and leapfrog development patterns, which the APF Ordinance seeks to accomplish, is the best way for communities to rein in costs, ease administrative burdens, and achieve new levels of sustainability. Not all communities will want to adopt the APF Ordinance, but as written, it is a great example for communities wishing to become more fiscally responsible in their development patterns, but not knowing how to start.

When it comes to LOS standards, the model APF Ordinance, like all the other model ordinances, allows for flexibility. The APF ordinance states that "the adopting jurisdiction should insert standards it wishes to adopt." The APF Ordinance helps a community become more sustainable by connecting its desires for sustainability, its Capital Improvements Plan and its LOS standards through a Concurrency Agreement, which is described on page 90. On page 63, the Resilient Region states: "The Ordinance is primarily recommended for large cities but may also make sense at the regional or individual county level. Smaller communities may find the ordinance useful on a more limited scale. For example, a community may find it useful to narrow the definition of 'Adequate Public Facilities' to essential services such as water, wastewater and roads. A limited implementation of this ordinance allows smaller communities to ensure that new development is commensurate with essential infrastructure capacity."

Issues Raised by Specific Aspects of the Model Ordinances

Downtown Mixed Use District and Urban Residential District

GLAR Suggestion: The Association would recommend that these sections be separated out to allow jurisdictions to adopt these ordinances separately.

Resilient Region Response: The Downtown Mixed Use District (DMU) Ordinance and the Urban Residential District Ordinance are two separate ordinances. The former is found on page 13; the latter on page 19. At the beginning of Chapter Three, on page 11, they are described together in three paragraphs because they are complementary and if used together, they can

create a powerful tool for implementing a mixed-use development policy by creating adjacent zoning districts. It states in the description: "Together, these districts allow greater density for multi-family housing and a mix of commercial and residential uses. The goal [of both] is to create housing within walking or biking distance of jobs and retail in <Jurisdiction's> downtown area." Since the actual ordinances are separate and stand alone, local governments can adopt one or both if they want to encourage more mixed use opportunities. By having them described together in those three paragraphs on page 11, local governments are reminded that while each ordinance alone is effective, the two together can be that much more transformational for a community wishing to promote mixed-use development.

Urban Residential District, Section 5.4 Performance Standards

GLAR Suggestion: The Association recommends the addition of parking requirements to this section of the ordinance given the higher density of residential development and the proximity to downtown amenities.

Resilient Region Response: Parking for this ordinance is not described in the detail used for the Mixed Use Downtown District because this district is high-density residential with only a small amount of commercial development. Therefore, the parking plan for this ordinance allows a great deal of flexibility on the part of the local jurisdiction. On page 21, the ordinance allows structured parking facilities that primarily serve residents. Other criteria for parking might be similar to that found in the Mixed Use District Ordinance, which states: "Landscape Buffering: Suitable trees and shrubs must be planted between parking lots and all adjacent sidewalks and buildings." On page 22, as part of the conditions, the Urban Residential District Ordinance states: "the design will minimize the potential for traffic and/or parking congestion caused by the proposed use." Another condition is "a plan for vehicular access points and off-street parking that serves the proposed use(s) and minimizes traffic congestion, parking problems, and conflict with through traffic movement." Specifics are left up to the discretion of the jurisdiction. Another condition calls for "equipment to enable secure and convenient parking of bicycles."

Many communities across the country are wrestling with parking issues in high density residential neighborhoods that are close to downtown mixed-use districts. Cincinnati, Ohio, Middletown, Connecticut, and Palo Alto, California are a few examples. Most concerns come from residents of the high density neighborhoods who don't want to see their neighborhood streets overrun with parked cars from non-residents who are willing to walk an extra 20 – 30 minutes into downtown while taking advantage of free, on-street parking in the nearby neighborhoods. Some communities have looked at residential parking permits for on-street parking, as well as parking lots and parking garages for visitors, but planners must take measures to overcome the visually blighting effect of large parking facilities. Sensitive design and consideration of the overall appearance of the neighborhood must be priorities. Possible additional parking standards for this ordinance, in addition to the landscape buffering passage mentioned above, could be similar to those suggestions found in the Traditional Neighborhood Zoning Ordinance such as: "Parking lots or structures shall be located to the rear and sides of all buildings. Only on-street (parallel or angled) parking shall be permitted in front of commercial uses."

Historical Overlay District

GLAR Suggestion: The Association suggests that this section of the ordinance be revised to provide “by-right” uses and to define conditional use standards for the purpose of use within this district. Allowing by-right would be consistent with many of the economic tools outlined in the Sustainability Toolkit.

Resilient Region Response: Land-use controls have been part of western civilization since the Roman Empire in 450 B.C. promulgated regulations concerning setback lines of buildings from boundaries and for distances between trees and boundaries. Nowadays, all lands that are used for residential or commercial purposes have rules that guide owners about what can and can’t be done with regards to development. Many of these rules are to protect property values for the owners of said property. Rules prohibit objectionable land uses that may negatively impact neighboring properties as well. The purpose of the Historical Overlay District Ordinance is not to take away the rights of property owners, but to preserve, protect and promote historic districts and historic landmarks, sites and structures in order to foster greater civic pride in the beauty and notable accomplishments of the past. Property owners within a Historical Overlay District still have the right to own, sell and develop property. The rules to develop properties within the district, however, are crafted to protect the things a community has deemed worthy of special consideration. The Historic Overlay District Ordinance is drafted under the authority of the Minnesota Historic Districts Act (Minn. Stat. 471.193) and another statute governing the control and maintenance of historic districts (Minn. Stat. 138.74). These statutes grant counties and cities the authority to create special zoning conditions and control the types of buildings that are included in the historic district. In the model ordinance, it states in Section 4.2.1 that “all proposed uses in the Historic Overlay District are conditional uses subject to the conditional use permit process. <Jurisdiction> may attach such conditions to the granting of a conditional use permit as it deems necessary to fulfill the purposes of this Ordinance and to ensure that the development relates to and complements the existing buildings in the district, particularly those adjacent to the site, in scale and design by maintaining similar height, mass, setbacks, façade divisions, roof lines, rhythm and proportions of openings, building materials and colors.” Specific conditions placed on new development within the historic district are left to the discrepancy of the local jurisdiction. The ordinance recommends the creation of an Historic Preservation Commission, which acts as an advisory board to promote comprehensive historic preservation and educate citizens and visitors.

There are multiple economic tools in the Sustainability Toolkit that match up nicely with the concept of creating an Historical Overlay District. For example, the Toolkit encourages communities to take advantage of their unique cultural heritage that is meaningful to residents and can be a draw for visitors. The Toolkit encourages communities to embrace “placemaking,” which is an emerging strategy for unlocking the potential of existing community spaces to be active and engaging places. Town Centers need to find creative ways to compete with the big box stores located on the fringes of communities. Downtown business districts should take advantage of their historical significance and promote unique living, shopping and visiting experiences that allow residents and visitors to get out of their cars and walk with their neighbors in visually stimulating spaces that promote a strong sense of community – something that one can’t experience in a big-box environment. The Historical Overlay District Ordinance is perfect

for older neighborhoods – like town centers – because they are likely based on pre-Euclidian zoning layouts amenable to mixed-use development and walkability. The Historical Overlay District Ordinance establishes guidelines for the preservation of a community’s inventory of historic structures.

Infill Overlay District

GLAR Suggestion: The Association recommends that the model ordinance be revised to incorporate standards and guidelines for the evaluation of underutilized lots.

Resilient Region Response: The term, “underutilized lots” was not defined in the model ordinance because it can mean different things to different people. For some, it is simply vacant land. For others, the notion of underutilized real estate can include all properties that can be put to a higher, better use. For example, underutilized land can be a parking lot that would better serve the community as a grocery store. Some say that part of the definition of the term “underutilized” must take into account compatibility with the character of nearby existing structures on the street, on the block, and in the neighborhood. A good general definition that the Resilient Region will insert is “land that has not reached its build-out potential based on its present land use classification.” Inevitably, it should be up to each community to come up with standards and guidelines for the evaluation of “underutilized lots” in their unique circumstances.



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Land Use and Design

Claire Worshtil
Program Manager, Land Use

MEMO

To: Colleen M. Faacks, Executive Officer, Mid-Minnesota Builders Association
From: Claire Worshtil, Program Manager, Land Use
Date: 11/26/13
Subject: Review of Model Ordinances for the HUD/Region 5 Resilient Region Sustainability Project

We have reviewed Model Ordinances for the HUD/Region 5 Resilient Region Sustainability Project as requested and have provided our comments below. Please be aware that our comments are based on the language of the ordinance and our knowledge of national practices and trends. They do not reflect any particular knowledge of your local political situation or local development practices. We recommend that you read the comments for consistency with your state and local policies and positions before sharing them with local officials.

I. General Observations

The Obama Administration's livability principles are imbedded throughout this project. Livability principles focus on better integrating transportation, land use and housing. These federal planning objectives are being pushed out to the state and local level via a variety of grant programs, one of which funded this document. Typically, this has been a very urban-oriented vision that is based on the old "spokes in the wheel" planning model in which most jobs are located in the central city. That being said, we were pleasantly surprised that, for the most part, these model ordinances reflect the local densities and character of the region.

Surprisingly however, green development incentives were not integrated into these new model ordinances. If the true goal of this planning effort is to create more resilient buildings and infrastructure, then green development and building practices should be an incentivized part of any new development.

[The ICC-700 National Green Building Standard™](#) offers a diverse menu of options for builders and developers that can be tailored to varying site, lot, and building conditions and opportunities, and municipalities should be encouraged to review these options. Further, everyone responds better to encouragement rather than ultimatums, and developers are no different. For this reason, incentives typically produce a better response and result than mandates. With that in mind, there are various types of incentives communities can and should offer to encourage green development. These fall into the broad categories of reduced impact fees, reduced or waived development standards, density bonuses, and expedited permitting.

II. Downtown Mixed Use District

Although not explicitly mentioned in the text, there are many planning principles incorporated here that stem from current trends sweeping through the planning community, including the Location Affordability Index and Complete Streets. The Location Affordability Index is a consumer education tool commissioned by HUD that is better suited for use in urban locations served by mass transit systems. There are also many elements of Complete Streets incorporated into this district and throughout many of these model ordinances. The Downtown Mixed Use District is the most appropriate zone in which to incorporate these principles. Complete Streets are best accomplished when implementation begins at the city center and continues to move outward as municipal funds become available. When the developer is required to implement these principles in outlying communities, it creates a piecemeal network instead of an integrated biking system.

Section 5.1 Lot and Density Requirements

The lot and density requirements are compatible with the scale of the existing communities in the region. However, the text states that "*lot and density requirements should be uniform across the Region to minimize costs to developers*". While the development approval process should be uniform across the region in order to minimize costs, this is not true of the lot and density requirements. If there is one part of the region that merits an increased density or decreased density, that should be taken into consideration. For example, Crow Wing County has a much higher population than other municipalities in the region and may warrant different density requirements and thus a greater range of housing types.

Section 5.2 Use Regulations

The table currently states that Nursing Homes, Assisted Living, and other Housing Types with Supportive services are a conditional use in the Downtown Mixed Use District. It is important for Assisted living facilities to be near downtown so the residents can easily access doctors offices, groceries, and other necessary services without needing a car. I would recommend making this a permitted use in the Downtown Mixed Use District.

Theaters, indoor entertainment facilities, fitness centers and health clubs are currently listed as conditional uses. If you want to create more of a downtown, you need to draw people there for purposes other than work. A downtown that is void of people after 5 PM will not thrive. These uses should be listed as permitted uses because they draw people to the other uses downtown.

Section 5.4.1 (D) Bicycle Parking

There is likely not enough of a demand for bicycle parking to necessitate bicycle parking at every commercial property downtown. This should be provided by the municipality at appropriate intervals and increased if necessary as demand for bicycle parking increases.

III. Urban Residential District

I suggest changing the title of this district to reflect the small town character of these communities. Perhaps "Downtown Residential District" or "Town Residential District" would be more appropriate.

Section 5.1 Lot and Density Requirements

The Maximum Building Height is "Five stories of 50 feet, whichever is greater". Based on existing densities and building heights in these municipalities, I would recommend lowering this to 4 stories. If this is supposed to be a step down from the Mixed Use district, you will want your maximum building heights to step down as well.

Section 5.2 Use Regulations

In this district, public parks and playgrounds are a conditional use, however, based on the park dedication requirements, it would appear that this is a required use for all new residential development. If that is the case, then I would recommend making public parks and playgrounds a permitted use.

IV. Highway Commercial District

Section 4.5.12 Building Colors

This section is too prescriptive and may prohibit some typical commercial branding. In general, while architectural guidelines increase curb appeal and limit the monotony of commercial buildings along a highway, strict architectural guidelines can limit innovative and creative architectural design and make reviews a daunting task for municipalities. I recommend reviewing all of the architectural guidelines to make sure they are not too limiting.

Section 4.5.13 Parking

It would be helpful to include an illustrative example of a cross-section of one of these internal circulation streets.

Section 4.5.15 Interior Parking Lot Landscaping

If the purpose of this document is to incorporate sustainable practices, turf grass should be limited, and the parking areas should be landscaped in a way that better manages stormwater. The National Green Building Standard provides good examples of how this can be achieved.

V. Historic Overlay District

The terms Historic Preservation Commission and Heritage Preservation Commission are used interchangeably throughout this section. Whether these are a single entity or separate entities needs to be specified.

Section 2. Definitions

This section needs to include a definition of what is considered historic. Is this a federal designation? State? Local?

VI. Traditional Neighborhood Zone Overlay District

Section 4.8 Civic Use Area Standards

Section 4.8.6 states "*Development of the Civic Use Areas should be completed upon the sale of 75 percent of the lots in the TNZ*". There may be certain market realities that prevent this from happening. I recommend taking this formulaic approach out of the ordinance.

VII. Pedestrian Overlay District

The new zones previously discussed all include provisions to make them bicycle and pedestrian friendly. There doesn't appear to be anything in this overlay district that wouldn't be covered under the Downtown Mixed Use, Urban Residential, Highway Commercial, or Traditional Neighborhood Overlay zones. As previously stated, if this is incorporated as an overlay, it should start in the downtown areas and possibly move outward over time in order to create a comprehensive pedestrian and bicycle network.

Section 4.2.2 Bicycle Amenities

As previously stated, if this network within the overlay district does not connect to a larger bicycle lane/trail network, then it only creates the ability to bike around a particular development. This overlay should apply to areas in the downtown first as part of a larger effort by the municipality to incorporate bike lanes and sidewalks throughout existing areas and then spread outward to create a true network instead of a piecemeal approach.

Section 4.3 Design Standards

Most of these elements are being incorporated in the other new zones presented in this document and do not need to be called out within this specific overlay. It would be better to incorporate these elements into the other new zones instead of putting pedestrian overlay districts over all new development and creating administrative problems and developer confusion.

VIII. Infill Residential Overlay District

Section 3 Purpose and Preamble

This section states that it establishes regulatory and financial incentives for growth through infill and redevelopment. These incentives should be given for green and sustainable development practices as well.

Section 4.2.3 Infill Development Fee Waivers

In addition to decreased fees, the municipalities should also incorporate an expedited approval and permitting process for these projects.

IX. Accessory Dwelling Units

Section 4.1 (C) Design Standards

The ordinance states that there shall be one off-street parking space provided for an Accessory Dwelling Unit with one bedroom and two off-street parking spaces provided for an Accessory Dwelling Unit with two or more bedrooms. Based on the definition of family, it is unlikely that the residents of the Accessory Dwelling Unit will require 2 off-street parking spaces even if the unit has 2 or more bedrooms. Recommend a second parking space only if the unit has 3 or more bedrooms.

X. Park Dedication Requirements

It should be noted that park dedication ordinances are governed by Minnesota Statutes. Minn. Stat. § 462.358 subd. 2b (for cities and towns) and § 394.25, subd. 7 (for counties) regulate how park dedication fees are charged and spent.

Section 4.2 Required Dedication

The existing language requires a park dedication from all subdivisions regardless of size. I recommend putting a minimum subdivision size requirement for park dedications so as not to discourage small-scale and infill subdivisions that will not have much land to dedicate. It would be more appropriate to not require a park dedication for subdivisions under a certain size (ex: 4 lots) and create a sliding scale for dedication based on size.

Jurisdictions make decisions regarding the amount of land to be dedicated using different methodologies. Some require a percentage of land based on project acreage, some use a formula that calculates a percentage based on the number of residents, and some use a uniform percentage for all projects no matter the size or demand. If the municipality chooses to go with a standard percentage, 5-7% is a common percentage. If incorporating an adequate public facilities requirement, the formula may be the best approach because it can easily be incorporated into an Adequate Public Facilities database.

XI. Small Wind Energy Conservation Systems

Section 4.1 Where Permitted

Developers should be required to consult with military installations throughout the state to make sure the turbines do not interfere with their frequencies and that they are not constructed under military training routes.

XII. Adequate Public Facilities

It should be noted that the text explicitly states that the ordinance is primarily recommended for large cities but may also make sense at the regional or individual county level.

Section 4.2.3 Effect of Annual Review

In the interest of economic development, if adequate public facilities are not planned to service a particular project, the municipality should work with the developer to explore [alternative infrastructure financing options](#).

[Recipient]
January 7, 2014
Page 6

Section 5.3.7. (C) Conditions that May Be Imposed to Ensure Availability and Adequacy of Public Facilities.

The state of Minnesota allows the following forms of infrastructure financing by statute:

- Community Development Districts
- Design-Build
- GARVEE Bonds
- State Revolving Loans/Infrastructure Banks
- Tax Increment Financing

The municipality should explore alternative financing methods when a project that will bring economic development to the region does not meet LOS requirements.

I hope that these comments will be helpful. Please contact me if I can provide additional information.

Claire Worshtil

Program Manager, Land Use

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From: Mark, Larissa [mailto:lmark@nahb.org]
Sent: December 17, 2013 10:46 AM
To: 'cmfaacks@brainerd.net'
Cc: Mittelholzer, Michael; Bassert, Debra; Asmus, Susan
Subject: Review of model ordinances

Colleen,

Good afternoon, my name is Dr. Larissa Mark, PhD and I am the Environmental Policy Manager covering sea level rise, water quantity, climate change, and endangered species and habitat. On November 18 Debbie Bassert requested that the land development department, along with the environmental policy department review ordinances and model ordinances recently presented by the Region Five Development Commission in Minnesota. Below is my review of the sections addressing the "Comparing and Contrasting Shoreland Ordinances in Region 5" and the "Wildlife Habitat Protection: Options for the Resilient Region Project" documents.

1. Comparing and Contrasting Shoreland Ordinances in Region 5

This document provides a comparative analysis on several shoreland ordinances adopted by Crow, Wing, Todd, Wadena, Morrison, and Cass Counties. This document did not provide a proposed or model ordinance but instead looked at the different ordinances currently available to determine the feasibility to develop one model ordinance to implement throughout the area. The paper did acknowledge that there could not be a once size fit all scenario and therefore any ordinance that is developed must be flexible enough to be adopted in areas with differing environmental conditions.

2. Wildlife Habitat Protection: Options for the Resilient Region Project

This document, while very informative, is not intended to suggest an ordinance or model ordinance. Instead this document provides background information on the federal and state laws and jurisdictions that addresses species and habitat protections. At the end of the document it provides information on other plans that have been developed to address wildlife habitat protections in the built environment and also discusses the steps necessary to get Region 5 started down that path. The document, while failing to provide model ordinances to review does provide general options to the commission for further review including: 1) developing a task force to research the issue further; 2) research the possibility of using wildlife habitat overlay districts and/or other generic ordinances that do not have a zoning overlay district.

When a species is designated it is normally required to have critical habitat designated shortly after listing. While the listing process does not take into account the actual impact of listing, the critical habitat designation process is a vehicle for submitting information regarding the economic impacts associated with habitat designation. Once a habitat is designated on the federal level and a federal permit is required for a project to proceed, all projects must comply

with the Endangered Species Act and ensure the proposed project does not adversely harm, modify or impact a species or its critical habitat.

Minnesota currently has at least 10 federally listed species and is not severely impacted by recent settlement agreements to review hundreds of additional species for possible protection. More specifically, while the Fish and Wildlife Service is projected to review 7 species by 2018 for the state, none of the counties included in Region 5 have any species that are currently under review for possible listing. While this doesn't necessarily preclude them from future petition requests for species protections, it does minimize the urgency the commission may feel to get the process of developing a wildlife protection plan started.

I hope this provides clarification on these two sections! Please let me know if you have any questions regarding the information provided.

Cordially,

Larissa Mark, PhD

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Williams Mitchell Community Development Clinic reviewed the Stormwater Management Plan of Cass, Crow Wing, Morrison, Todd and Wadena County in Minnesota. The stormwater management plans have some variation in the requirements, and the overall recommendation from the William Mitchell Law Clinic is to help to bring uniformity and focus on sustainable efforts. These recommendations will assist builders and developers by providing clarity in the requirements, and bringing consistency which is especially useful if some permittees have projects in multiple counties.

Minnesota Pollution Control Agency¹ has a statewide stormwater permit as required by the Clean Water Act's National Pollutant Discharge Elimination System (NPDES). Builders and developers have to apply for the statewide permit and local ordinances. All County ordinances should be aligned with the MPCA permit standards which will streamline the permitting structure for developers. Otherwise, developers are submitting separate applications under the MPCA permit and county ordinances and this may require more time for the permittees to comply with both permits.

The next step for the counties in Region 5 will be to adopt the Qualifying Local Program² principle. A Qualifying Local Program is a way for a municipality to reduce the regulatory burden upon operators of small construction sites within their jurisdiction. The municipality's construction program essentially replaces the State's program for these 1-5 acre construction sites. Applying for Qualifying Local Program status is an option for municipalities to improve compliance with permit requirements and encourage sustainability by improving permit compliance. The counties in Region 5 should be encouraged to adopt the Qualifying Local Program which will ease burden on permittees.

¹ <http://www.pca.state.mn.us/index.php/view-document.html?gid=18984>

² The regulations at 40 CFR 122.44(s) establishes the concept of A qualifying local program for construction activity. Both Phase I and II communities may be recognized as qualifying local programs and the concept may be used to address both small and large construction. The preamble to the Phase II regulations also contains some useful discussion and examples (e.g. 64 FR 68722-68777, December 8, 1999).