

ENVIRONMENTAL OVERLAY DISTRICTS

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§ 152.400 PURPOSE.

The purpose of this subchapter is to protect environmentally sensitive areas within designated areas of the city.

(Prior Code, § 9-21-1) (Ord. 535, passed 9-4-2001)

§ 152.401 SCOPE.

These districts shall overlay the established zoning districts so that any parcel of land lying in an overlay district shall also lie in one or more of the established zoning districts. Land within an environmental overlay district shall be subject to the requirements established in this subchapter, as well as restrictions and requirements established by other applicable ordinances and regulations of the city. Within each adopted environmental overlay district, all uses shall be permitted in accordance with the regulations for the underlying zoning district(s); provided, however, that the uses must satisfy the additional requirements established within this subchapter before development will be allowed.

(Prior Code, § 9-21-2) (Ord. 535, passed 9-4-2001)

§ 152.402 ESTABLISHMENT OF DISTRICTS.

The following environmental overlay districts are hereby established:

(A) Shoreland Overlay District;

(B) Wetland Overlay District; and

(C) Bluffland Overlay District.

(Prior Code, § 9-21-3) (Ord. 535, passed 9-4-2001)

§ 152.403 LEGISLATIVE FINDINGS.

(A) *Shoreland Overlay District.*

(1) *Statutory authorization.* This Shoreland Overlay District is adopted pursuant to the authorization and policies contained in M.S. Chapter 103F, as it may be amended from time to time, Minnesota Rules Parts 6120.2500 to 6120.3900, and the planning and zoning enabling legislation in M.S. Chapter 462, as it may be amended from time to time.

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

(3) *Jurisdiction.* The Shoreland Overlay District provisions of this subchapter shall apply to the shorelands of the public water bodies as classified in § 152.406(A). Pursuant to Minnesota Rules Parts 6120.2500 to 6120.3900, no lake, pond or flowage less than ten acres in size in a municipality needs to be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the city, be exempt from this subchapter.

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

(B) *Bluffland Overlay District.* There are areas within the city which, due to steep slopes or unstable soils, create ecological problems including siltation and pollution of water bodies and streams due to excessive erosion and runoff and present threats to the public safety in the form of landslide and mudslide dangers. Therefore, the purposes of this subchapter are:

(1) To promote public safety by minimizing the hazards of steep slopes and unstable soils and promote public health by reducing the siltation and pollution of water bodies and streams; and

(2) Promote the general welfare by preserving significant features of the natural character of slopes and conditioning development in a manner that minimizes the above enumerated threats to the health, safety and welfare of the citizens of the city.

(C) *Wetlands Overlay District.* Wetlands and public waters help maintain water quality,

serve to reduce flooding and erosion, act as sources of food and habitat for a variety of fish and wildlife, and are an integral part of the community's natural landscape. Wetlands provide the aesthetic benefits of open space and can be used to provide a natural separation of land uses. It is the intent of this overlay district to establish a policy of sound stewardship through coordination of regulations, which conserve, protect, enhance and result in the no net loss of these environmentally sensitive resources. In addition, it is the intent of the city to promote the restoration of degraded wetlands. This overlay district is adopted in part to implement the Wetland Conservation Act of 1991 (Minnesota Laws 1991, Chapter 354, as amended) including, but not limited to, the wetlands provisions set forth in M.S. Chs. 103A through 103I, and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minnesota Rules Chapter 8420, as amended).

(Prior Code, § 9-21-4) (Ord. 535, passed 9-4-2001)

§ 152.404 OVERLAY ADMINISTRATION.

(A) *Administration.* Except as hereinafter provided, no one may perform any development in an environmental overlay district without first having demonstrated that the proposed activity will meet or exceed the additional performance standards contained in this subchapter. Any application for a development permit on land that is covered, in whole or in part, by this subchapter shall include a site plan. Other engineering data, such as surveys, soil studies and other descriptive information, may also be required at the direction of the city. A specific description of the type, amount and location of the development and a description of the ecological characteristics of the natural features contained on the property, as well as the conservation plan describing actions to be taken to mitigate detrimental effects of development may also be required. When the proposed development includes the construction or alteration of a structure, eight sets of plans shall be submitted with the application.

(B) *Exceptions.*

(1) Emergency work necessary to preserve life or property. A person may commence emergency work necessary to preserve life or property, provided that within ten days following the commencement of that activity, he or she submit a site plan for review along with any other information, requested by the city necessary to determine if the performance standards contained in this subchapter were met. If upon this review it is determined that all of the performance standards were not met, a plan shall be submitted and implemented, following city approval, to restore the natural resources to meet the intent of the performance standards contained in this subchapter.

(2) Repair or normal maintenance.

(C) *Enforcement.* The Zoning Administrator, or his or her designee, is responsible for the administration and enforcement of this subchapter. Any violation of the provisions of this subchapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional and interim uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this

subchapter can occur regardless of whether or not a permit is required for a regulated activity pursuant to this subchapter.

(D) *Variances.* Variances may only be granted in accordance with M.S. Chapter 462, as it may be amended from time to time. A variance may not circumvent the general purposes and intent of this subchapter. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and public interest. The City Council shall hear and decide requests for variances in accordance with § 152.033. 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 City Council's summary of the public record/testimony and the findings of facts and conclusions that supported the issuance of the variance.

(E) *DNR notification.* Copies of all notices of public hearings to consider variances, rezonings, preliminary plats, amendments or conditional uses under local shoreland management controls must be sent to the Commissioner of Natural Resources or the Commissioner's designated representative and postmarked at least ten days before the hearing. A copy of approved amendments and subdivision plats and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner and postmarked within ten days following final action.

(F) *Interpretation.* In their interpretation and application, the provisions of this subchapter shall be held to be minimum requirements and shall be liberally construed in favor of the city and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

(G) *Abrogation and greater restrictions.* It is not intended by this subchapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this subchapter imposes greater restrictions, the provisions of this subchapter shall prevail. All other provisions of this chapter inconsistent with this subchapter are hereby repealed to the extent of the inconsistency only
(Prior Code, § 9-21-5) (Ord. 535, passed 9-4-2001)

§ 152.405 SHORELAND OVERLAY DISTRICT STANDARDS.

(A) *Shoreland management classification.* In order to guide the wise development and utilization of shorelands of protected waters for the preservation of water quality, natural characteristics, economic values and the general health, safety and welfare, certain protected waters in the city have been given a shoreland management classification. These protected waters of the city have been given shoreland classifications as follows and are depicted on the Department of Natural Resources Protected Waters map for the county.

	<i>DNR I.D. Number</i>
Natural Environment	
Rice Lake	70-25
Recreational Development	
Dan Patch Lake	70-16
Cate's Lake	70-18
Hanrehan Lake	70-19
Twin Lakes	259W
McColl Pond	70-17
General Development	
Credit River	NA
Eagle Creek	NA
Transitional River	
Minnesota River - adjacent to P-1 zoning	NA
Urban River	
Minnesota River - adjacent to I-2 zoning	NA

(B) *Shoreland Overlay District.* The shorelands of the city are hereby designated as a Shoreland Overlay District. The purpose of the Shoreland Overlay District is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters of the city.

(1) *Permitted uses.* All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(2) *Conditional uses.* All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(3) *Substandard uses.* Any uses of shorelands in existence prior to the date of enactment of this section which are permitted within the applicable zoning district, but do not meet the minimum lot area, setbacks or other dimensional requirements of this subchapter, are substandard uses. Substandard uses, excluding substandard sanitary facilities, shall be allowed to continue; however, any structural alterations or additions to a substandard use that will increase the substandard dimensions shall not be allowed.

(4) *Prohibited uses.* Any uses that are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(C) *Lot and building requirements.* The following standards shall apply to all shorelands of the protected waters listed in § 152.405(A) within the city. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, then the more restrictive standards shall apply. It is noted that the only natural environment water in Savage is Rice Lake, whose shoreland area is entirely within a federally protected wildlife area.

(1) *Unsewered areas.* Only single-family uses are allowed as new development within unsewered areas, in accordance with the following standards.

Unsewered Areas

	<i>Recreational Development Waters</i>	<i>General Development Waters</i>
Lot area (sq. ft.)	40,000	20,000
Water frontage and lot width at building line	150 feet	100 feet
Structure setback from ordinary high water mark	100 feet	75 feet
Structure setback from roads and highways	50 feet - federal, state or county	
	20 feet - municipal or private	
Structure height limitations	35 feet	35 feet
Impervious surface maximum	30%	30%
Sewage system setback from ordinary high water mark	75 feet	50 feet

(2) *Sewered areas.* All provisions for unsewered areas shall apply to sewered areas except for the following, which shall supersede the provisions applied to unsewered areas.

<i>Sewered Areas*</i>						
	<i>Recreational Development Waters</i>			<i>General Development Waters</i>		
	<i>Single-Family</i>	<i>Duplex</i>	<i>Multi-Family</i>	<i>Single-Family</i>	<i>Duplex</i>	<i>Multi-Family</i>
Lot area (sq. feet.)						
Water front lots	20,000	35,000	15,000	15,000	26,000	12,000
Other lots	15,000	26,000	10,000	10,000	17,500	8,000/D U
Water frontage and lot width at building line	75 feet	135 feet	250 feet	75 feet	135 feet	250 feet
Structure setback from ordinary high water mark	75 feet	75 feet	75 feet	50 feet	50 feet	50 feet
Structure setback from top of bluff	30 feet					
Structure height maximum	25 feet					
Impervious surface maximum	30%					

(3) *Water-oriented accessory structure.* One water-oriented accessory structure may be located no closer than ten feet from the ordinary high water mark of protected waters.

(4) *Structures and accessory structures.* Structures and accessory structures, except stairways, landings and docks, must not be placed within shore and bluff impact zones.

(5) *Non-water oriented commercial, industrial, public and semi-public uses.* Non-water oriented commercial, industrial, public and semi-public uses must have either a setback double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography.

(D) *Substandard lots.*

(1) Lots of record in the office of the County Registrar of Deeds prior to January 12, 1989, which do not meet the requirements of division (C) above, may be allowed as building

sites, provided:

(a) The use is permitted in the zoning district;

(b) The lot is in separate ownership from abutting lands. If, in a group of two or more contiguous lots under the same ownership any individual lot does not meet the requirements of division (C) above, 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 division (C) above as much as possible; and

(c) All other sanitary and dimensional requirements of these shoreland regulations are complied with insofar as practical.

(2) The minimum size and length of water frontage for substandard lots of record to be considered buildable shall be 10,000 square feet in area and 60 feet in width.

(E) *Roads and parking areas.* Roads and parking areas shall be located to retard the runoff of surface waters and nutrients in accordance with the following criteria:

(1) Where feasible and practical, all roads and parking areas shall meet the setback requirements established for structures in division (C) above;

(2) In no instance shall these impervious surfaces be placed less than 50 feet from the ordinary high water mark unless deemed necessary by the City Engineer;

(3) Roads, driveways and parking areas are not allowed in bluff or shoreland impact zones; with the exception of boat launching ramps that have vegetative screening; and

(4) Natural vegetation or other natural materials shall be used to screen parking areas when viewed from the water.

(F) *Design criteria/elevation of lowest floor.*

(1) Structures shall be placed at an elevation consistent with the city's flood plain management controls.

(2) In areas not regulated by flood plain management controls, the elevation to which the lowest floor, including basements, shall be placed shall be determined as follows.

(a) For lakes, ponds and flowages by:

1. An evaluation of available flood information and consistent with *Statewide Standards and Criteria for Management of Flood Plain Areas of Minnesota*; or

2. Placing the lowest floor at a level at least two feet above the highest

known water level. In those instances where sufficient data on known high water levels are not available, the ordinary high water mark shall be used.

(b) For rivers and streams, by an evaluation of available flood information and consistent with *Statewide Standards and Criteria for Management of Flood Plain Areas of Minnesota*.

(c) Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation and electrical and mechanical equipment is placed above the elevation.

(G) *Exceptions to structure setback requirements.*

(1) Setback requirements from the ordinary high water mark shall not apply to piers and docks. Location of piers and docks shall be controlled by applicable state and local regulations.

(2) On undeveloped shoreland lots that have two adjacent lots with existing principal structures on both adjacent lots, any new residential structure may be set back the average setback of the adjacent structures from the ordinary high water mark or 50 feet, whichever is greater, provided all other provisions of the shoreland overlay district are complied with.

(H) *Conditional uses.*

(1) Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures and criteria and conditions for review of conditional uses established community-wide. Also applicable for shoreland areas are evaluation of the waterbody, topography, vegetation and soil conditions to ensure:

(a) The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

(b) The visibility of structures and other facilities as viewed from public waters is limited;

(c) The site is adequate for water supply and on-site sewage treatment; and

(d) The types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

(2) The City Council, upon consideration of the criteria listed above and the purposes of this subchapter, shall attach conditions to the issuance of the conditional use permit as it deems necessary to fulfill the purpose of this chapter. The conditions may include, but are not limited to:

(a) Increased setbacks from the ordinary high water level;

(b) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

(c) Special provisions for the location, design and use of structure, sewage treatment systems, watercraft launching and docking areas and vehicular parking areas.

(I) *Shoreland alterations.* The removal and alteration of natural vegetation shall be restricted to prevent erosion into protected waters, fix nutrients in the soil, preserve shoreland aesthetics, preserve historic values, prevent bank slumping and protect fish and wildlife habitat. Removal of natural vegetation in the shoreland overlay district shall be subject to the following provisions.

(1) Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking area regulated by division (E) above are exempt from the vegetation alteration standards that follow.

(2) Removal or alteration of vegetation, except for agricultural cultivating and grazing and forest management uses, is allowed subject to the following standards:

(a) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed; and

(b) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, access paths, bench and watercraft access areas and permitted water-oriented accessory structures or facilities, provided that:

1. The screening of structures, vehicles or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

2. Along rivers, existing shading of water surfaces is preserved;

3. The above provisions are not applicable to the removal of trees, limbs or branches that are dead, diseased or pose safety concerns; and

4. All tree removal shall be in accordance with the requirements of Chapter 102 of this code.

(J) *Grading and filling.*

(1) A separate grading/filling permit is not required for the construction of structures, sewage treatment systems and driveways that are under validly issued construction permits. However, the standards of this section shall be applied to the issuance of the permits.

(2) Notwithstanding division (J)(1) above, a permit will be required for the grading or filling of material in accordance with §§ 152.560 through 152.575.

(3) Grading and filling in shoreland areas or any alteration of the natural topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties. A permit for the work may be granted subject to the conditions that:

- (a) The smallest amount of bare ground is exposed for as short a time as feasible;
- (b) Temporary ground cover, such as mulch, is used and permanent ground cover, such as sod, is established;
- (c) Methods to prevent erosion and trap sediment are employed;
- (d) Fill is stabilized to accepted engineering standards; and
- (e) Fill or excavated material shall not be placed in bluff impact zones.

(4) The placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.

(5) Excavations on shorelands where the intended purpose is connection to a protected water shall require a permit from the City Engineer before construction is begun. The permit may be obtained only after the Commissioner of Natural Resources has issued a permit to work in the beds of protected waters.

(K) *Protected water alteration.* Any work that will change or diminish the course, current or cross-section of a protected water or wetland shall be approved by the Commissioner of Natural Resources, and the approval shall be construed to mean the issuance by the Commissioner of Natural Resources of a permit under the procedures of M.S. Chapter 103G, as it may be amended from time to time, and other related statutes.

(L) *Sewage treatment required.* Any premises intended for human occupancy shall be provided with an adequate method of sewage treatment to be maintained in accordance with acceptable practices.

(M) *Public/municipal facilities.* Public or municipal collection and treatment facilities shall be used where available.

(N) *MPCA standards.* All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, *Individual Sewage Treatment Systems Standards*, Chapter 7080, adopted by reference and made part of this chapter. On-site systems must be set back from the ordinary high water level in accordance with the setbacks contained in division (C) above.

(O) *Permit requirement - individual systems.* No person, firm or corporation shall install, alter, repair or extend any individual sewage treatment system without first obtaining a permit from the Building Official.

(1) Application for permits shall be made in writing upon printed forms furnished by the Building Official and shall be signed by the applicant.

(2) Each application for a permit shall include: a correct legal description of the property on which the proposed installation, alteration, repair or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, sewage treatment facilities, property lines; a complete plan of the water supply system showing the location, size and design of all parts of the system to be installed, altered, repaired or extended; the name of the person, firm or corporation who is to install the system; any further information as required by the Building Official.

(3) All individual sewage treatment systems within the shoreland overlay district shall be designed, installed, and maintained in accordance with the MPCA.

(4) Any installation, alteration, repair or extension of an individual sewage treatment system shall be inspected to ensure compliance by the Building Official or a qualified inspector following completion of the work but prior to covering of the system.

(P) *Non-conforming individual sewage systems.* All existing sewage treatment systems within shoreland areas which are inconsistent with the standards referenced in division (N) above, as well as any sanitary facility found to be a public nuisance, shall be brought into conformance or discontinued, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this division, a sewage treatment system shall not be considered non-conforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level. The procedures and timeframes for the corrections when a variance or permit is not requested shall in accordance with city regulations regarding sewage disposal systems, or as set forth by City Council from time to time.

(Q) *Water supply.* Public or private supplies of water for domestic purposes shall conform to Minnesota Department of Health standards for water quality.

(R) *Private well – permit.* No person, firm or corporation shall install, alter, repair or extend any private well without first obtaining a permit from the Building Official.

(1) Application for permits shall be made in writing upon printed blanks or forms furnished by the Building Official and shall be signed by the applicant.

(2) Each application for a permit shall include: a correct legal description of the property on which the proposed installation, alteration, repair or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, sewage treatment facilities, property lines; a complete plan of the water supply system showing the location, size and design of all parts of the system to be installed, altered, repaired or extended; the name of the person, firm or corporation who is to install the system; any further information as required by the Building Official.

(S) *Private wells - flooding.* Private wells shall be located in a manner to be free from flooding and the top shall be so constructed and located as to be above all possible sources of pollution. Wells already existing in areas subject to flooding shall be floodproofed.

(T) *Private wells - location.* No private well shall be located closer than three feet to the outside wall of a dwelling. The outside basement footings shall be continuous across the opening of the well alcove. No well shall be located closer than 15 feet to a property line.

(U) *Private wells - MPCA standards.* Private wells shall be located in accordance with the standards of the Minnesota Health Department standards MHD 217 Location of Wells, (c)(1).

(V) *Subdivisions.* No land shall be subdivided which is held unsuitable by the city for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities or any other feature likely to be harmful to the health, safety or welfare of future residents of the proposed subdivision or of the community.

(1) *Submittal required.* Copies of all plats within the shoreland overlay district shall be submitted to the Commissioner of Natural Resources no later than ten days prior to the public hearing by the city.

(2) *Planned unit development (PUD).* Altered zoning standards may be allowed as exceptions to this chapter for PUDs provided preliminary plans are approved by the Commissioner of Natural Resources prior to their approval by the city, and further provided:

(a) The PUD is connected to a municipal sanitary sewer;

(b) Open space is preserved through the use of restrictive deed covenants, public dedications or other methods; and

(c) The following factors are carefully evaluated to ensure the increased density of development is consistent with the resource limitations of the protected water:

1. Suitability of the site for the proposed use;

2. Physical and aesthetic impact of increased density;
3. Level of current development;
4. Amount and ownership of undeveloped shoreland;
5. Levels and types of water surface use and public accesses; and
6. Possible effects on overall public use.

(d) Any commercial, recreational, community or religious facility allowed as part of the planned development shall conform to all applicable federal and state regulations including, but not limited to, the following:

1. Licensing provisions or procedures;
2. Waste disposal regulations;
3. Water supply regulations;
4. Building codes;
5. Safety regulations;
6. Regulations concerning the appropriation and use of protected waters as defined in M.S. Chapter 105, as it may be amended from time to time; and
7. Applicable regulations of the Minnesota Environmental Quality Board.

(e) The final plan for a planned unit development shall not be modified, amended, repealed or otherwise altered unless approved in writing by the developer, the municipality and the Commissioner.

(f) There are centralized shoreline recreation facilities such as beaches, docks and boat launching facilities.
(Prior Code, § 9-21-6) (Ord. 535, passed 9-4-2001; Ord. 636, passed 10-15-2007) Penalty, see § 152.999

§ 152.406 SHORELAND PROTECTION - LOCAL.

In addition to shoreland requirements for DNR Protected Waters as set forth in this chapter, the following regulations shall apply to parcels of land bordering other lakes and ponds that normally contain standing water.

(A) *Application of requirements.* Application of the requirements listed below shall be to type 4 and 5 wetlands according to the standard classification system of the Department of the

Interior, Fish and Wildlife Service. A summary classification is as follows.

(1) *Type 4 - inland deep fresh marsh.* Soil is covered by six inches to three feet of water during the growing season. May comprise shallow lake basins or may border open water. Best breeding habitat in the country, and important feeding places.

(2) *Type 5 - inland open fresh water.* Shallow ponds and reservoirs usually less than ten feet deep, and fringed by a border of vegetation used extensively for nesting.

(B) *Building setback.* No principal building shall be located within 50 feet of the ordinary high water mark of the above wetlands.

(Prior Code, § 9-21-7) (Ord. 535, passed 9-4-2001)

§ 152.407 WETLANDS OVERLAY DISTRICT STANDARDS.

(A) *Intent.* This Code hereby incorporates by reference the Wetland Conservation Act of 1991 [Minnesota Statutes 103G.221 et seq. (herein referred to as WCA)] as amended and Minnesota Rules Chapter 8420 as amended. All wetlands, as defined in Section 152.407(C), including those governed by the Minnesota Department of Natural Resources, are covered by this Code. Standards outlined in this Code have precedence over Minnesota Rules Chapter 8420 as amended in situations where the City Code is more restrictive than Minnesota Rules Chapter 8420 as amended.

(B) *Purpose.* Through the adoption of this Code, the City shall promote the general health, safety, and welfare of its residents by both conserving and protecting wetlands and requiring sound management practices as provided for in Minnesota Rules Chapter 8420 . The intent of this Code is to avoid alteration and destruction of wetlands. By implementation of this Code, the City seeks to accomplish the following:

(1) Balance the need to preserve and protect natural resources and systems with both the rights of private property owners and the need to support the efficient use of land within the City.

(2) Promote water quality by maintaining the ability of wetlands to recharge ground water and receive the discharge of ground water, to prevent soil erosion, and to retain sediment, nutrients and toxicants in wetland buffer strip areas before it discharges into community wetlands, lakes and streams, thus avoiding the contamination and eutrophication of these water features;

(3) Reduce human disturbances to wetlands by providing a visual and physical transition from surrounding yards; and

(4) Provide wildlife habitat and thereby support the maintenance of diversity of both plant and animal species within the City.

(C) *Definitions.* The following definitions shall apply unless the context clearly indicates or

requires a different meaning.

BOG. A bog is a Type 8 Wetland as defined by US Fish and Wildlife Circular

BUFFER. An upland area adjacent to a wetland that is covered in natural vegetation that experiences little to no human impact.

LOCAL GOVERNMENT UNIT. The local government Unit (LGU) is the city council under Minnesota Statutes Section 103B.205.

MNRAM. The Minnesota Routine Assessment Methodology (MNRAM) as referenced in Minnesota Rules Chapter 8420. MNRAM is a field tool used to assess wetland functions on a qualitative basis. Functions include items such as vegetative diversity and integrity; wildlife habitat; water quality protection; flood & storm water attenuation; recreation, aesthetics, education & science; fishery habitat; shoreline protection; groundwater interaction; and commercial uses.

NATIVE VEGETATION. Plant species indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity, and are classified as native in the Minnesota Plant Database (Minnesota DNR, 2002 or as amended). Native Vegetation does not include weeds.

NO-LOSS DETERMINATION. An application to the Local Government Unit (LGU) to evaluate whether the proposed work will result in a loss of wetland within the property. This would include activities listed in Minnesota Rules Section 8420.0415. The landowner is responsible for submitting the proof necessary to show qualification for the claim. The LGU may evaluate evidence for a no-loss claim without making a determination.

NURP POND. A stormwater pond constructed to meet National Urban Runoff Program (NURP) requirements.

REPLACEMENT WETLAND. A wetland restored or created or an area designated in part under Minnesota Rule 8420.0500 or the equivalent, to replace wetland area or the public value of wetland functions lost at an impacted wetland.

SEQUENCING. A five step process outlined in the Minnesota Rules Chapter 8420 that evaluates the necessity of a projects impact on a wetland.

TECHNICAL EVALUATION PANEL. A Technical Evaluation Panel (TEP) is established for each LGU under Minnesota Rules 8420.0240. The TEP assists the LGU in making technical findings and provides recommendations for projects involving wetland alteration or wetland impacts at the request of the LGU, landowner or a member of the TEP. The TEP must include at least one technical representative from Board of Water and Soil Resources (BWSR); Scott Soil and Water Conservation District (SWCD); and Local Government Unit (LGU). The panel also includes a technical professional employee of the Department of Natural Resources for projects affecting public waters, public water wetlands, or wetlands within the shoreland protection zone.

WEEDS. Noxious weeds as defined and designated pursuant to the Minnesota Noxious Weed Law, M.S. §§ 18.75 through 18.91, as they may be amended from time to time; or any volunteer plants, such as but not limited to garlic mustard (*Alliaria Petiolata*), spotted knapweed (*Centaurea Maculosa*) or burdock (*Arctium Minus*). The city weed inspector shall maintain a current list of weeds/volunteer plants that are prohibited.

WETLAND. Transitional land between terrestrial and aquatic systems, where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have a predominance of hydric soils; be inundated or saturated with surface water or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances, support a prevalence of hydrophytic vegetation.

WETLAND ALTERATION. Alteration of a wetland includes changes to the wetland and/or wetland buffer strip in regards to size, depth or contour; dredging; tilling; damming; alteration of the watercourse; ditching; tiling; grading; draining; discharge of water; appropriation of water; changes in vegetation; or otherwise altering or destroying a wetland or wetland buffer or their functions. Alterations would not include native vegetation plantings or selective clearing or pruning of prohibited or restricted noxious weeds as defined in Minnesota Noxious Weed Law, M.S. §§ 18.75 through 18.91, unless within a conservation easement in which case submission of and written approval by the City of a vegetation management plan is required.

WETLAND BANKING. The state wetland banking system is a convenient method that provides a market-based structure to replace unavoidable impacts to wetlands by purchasing wetland credits from a pre-established bank that has already restored or created wetlands for the purpose of allowing credits to be deposited in the Minnesota Wetland Bank.

WETLAND BUFFER STRIP. An area of vegetated ground cover around the perimeter of a wetland that, either in its natural condition or through intervention, has the characteristics of a Buffer as defined in Section 152.407(C) "Buffer".

WETLAND BUFFER STRIP EVALUATION REPORT. A report summarizing the results of an evaluation of a wetland and wetland buffer strip in relation to the requirements defined in 152.407(F) of this Code.

WETLAND DELINEATION. An assessment tool utilized to determine the boundary of a wetland using the US Army Corps of Engineers Wetland Delineation Manual (January 1987) as well as any additional boundary determination requirements established in Minnesota Rules Chapter 8420. A "Wetland Delineation Report" is a document that summarizes the observations, results and conclusions performed during the assessment when wetlands are present on the property.

WETLAND PRESENCE REPORT. An assessment conducted utilizing the US Army Corps of Engineers Wetland Delineation Manual (January 1987) to determine whether a wetland is present within the property that may be impacted by a proposed project. A "Wetland Presence Report" documents the conditions that lead to the conclusion that wetlands may or may not be

present on the property.

WETLAND REPLACEMENT PLAN. A summary of all work items to be completed in relation to any wetland alteration or wetland or wetland buffer strip restoration, replacement, or construction and the estimated cost for each item. Work items include, but are not limited to, wetland buffer strip monument purchase and installation; Weed control; landscaping within the wetland or wetland buffer strip; wetland or wetland buffer strip restoration; wetland and wetland buffer strip monitoring; wetland replacement monitoring; or any items determined to be incomplete during the development review process.

WETLAND, PRESERVE. Preserve wetlands have an exceptional vegetative diversity and integrity function, based on the results of MNRAM. They typically have an undisturbed plant community or a plant community that is sufficiently recovered from past disturbances such that it closely represents pre-European settlement conditions. The wetlands contain an abundance of different plant species with dominance evenly spread among several species. They will contain very few non-native species and they may have or previously had rare, threatened or endangered plant species. Invasive or exotic plant species are either absent or limited to small areas where some disturbance has occurred. These wetlands exhibit no evidence of significant man-induced water level fluctuation.

WETLANDS, MANAGE ONE. Manage One wetlands have a high vegetative diversity and integrity function, based on the results of MNRAM, and are still generally in their natural state. They tend to show less evidence of adverse effects of surrounding land uses. Exotic and invasive plant species may be present and species dominance may not be evenly distributed among several species. There tends to be little evidence of water level fluctuation due to storms and their shorelines are stable with little evidence of erosion. They show little if any evidence of human influences resulting in higher levels of species diversity, wildlife habitat and ecological stability.

WETLANDS, MANAGE TWO. Manage Two wetlands have a moderate vegetative diversity and integrity function, based on the results of MNRAM. They have a slightly higher number of native, non-invasive plant species present than low quality wetlands, often with small pockets of indigenous species within larger areas dominated by non-native, invasive, exotic or weed species. Their relatively greater species diversity results in slightly better wildlife habitat. They exhibit evidence of relatively less fluctuation in water level in response to storms and less evidence of shoreline erosion than low quality wetlands. They also exhibit relatively less evidence of human influences and therefore, tend to be of a higher aesthetic quality than low quality wetlands.

WETLANDS, MANAGE THREE. Manage Three wetlands have a low vegetative diversity and integrity functions, based on MNRAM, and have been substantially altered by activities such as agricultural or urban development that caused over-nitrification, soil erosion, sedimentation and/or water quality degradation. As a result of these factors these wetlands exhibit low levels of vegetation diversity; overcrowding and dominance of invasive or non-native species such as reed canary grass, cattails and purple loosestrife; and a related reduction in the quality of wildlife habitat. These wetlands may also tend to exhibit extreme water level fluctuations in response to

rain events and show evidence of shoreline erosion. These wetlands do provide for water quality and serve an important role in protecting water quality downstream.

WETLAND TYPE. The “Wetland Type” for each water regime will be determined in accordance with United States Fish and Wildlife Service Circular No. 39 (1971 Edition), Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979), Eggers and Reed (1997) and Minnesota Rules Chapter 8420. Each wetland type, which represents at least 10% of the vegetated wetland, including submergent vegetation, must be classified. For Wetland Replacement Plans, the wetland community classification listed in Minnesota Rules 8420.0111 Subp. 75 must be used to determine wetland replacement ratios.

(D) *Official Wetland Map.* The City shall maintain the official wetland inventory, which is hereby adopted by reference. The wetland inventory shall identify each basin as one of four management categories:

- (1) Preserve
- (2) Manage One
- (3) Manage Two
- (4) Manage Three

The presence or absence of a wetland on the City Wetland Map does not represent a definitive determination as to whether a wetland covered by this Code is or is not present. The City Wetland Map does not depict delineated wetland boundaries and shall not be used as such. Wetlands that are identified during site specific delineation activities but do not appear on the City Wetland Map are still subject to the provisions of this Code. It will be the responsibility of the property owner or an applicant to delineate the exact wetland boundary or to determine that no wetland exists on a subject property. All delineations must be reviewed and approved by the City in accordance with Section 152.407(E).

(E) *Wetland Identification and Delineation.* Any time an application is filed or work is done that may affect a wetland, it is the responsibility of the applicant or property owner to determine whether a wetland exists on a subject property or if the property is located within the setback from a wetland on an adjacent property. The following report(s) must be provided based on the site conditions:

(1) If no wetlands are present, the applicant or property owner must provide written documentation of the site conditions in a wetland presence report utilizing the US Army Corps of Engineers Wetland Delineation Manual (January 1987) to determine whether a wetland is present within the property. The wetland presence report shall document the conditions that lead to the conclusion that wetlands may or may not be present on the property.

(2) If a wetland is present, the applicant or property owner must delineate and document the boundary of the wetland(s) and the wetland type(s) in a wetland delineation report in

accordance with City and Minnesota Rules Chapter 8420 requirements and document the conditions of the wetland buffer strip in a wetland buffer strip evaluation report. The wetland delineation shall be completed by a professional wetland delineator and is subject to verification by the City.

(3) A determination of the function and value of the wetlands(s) using the most recent version of MNRAM or other approved assessment methodology under Minnesota Rules Chapter 8420 must be completed for the following:

(a) For wetlands which are not identified on the City Wetland Map;

(b) For wetlands in which the wetland information is significantly different in function, size or position from the City's assessment; or

(c) If required by the City.

(4) It is the responsibility of the property owner or applicant to utilize the MNRAM functional assessment to assign a wetland classification if not previously assigned.

(5) Wetland presence report, wetland delineation and wetland buffer strip evaluation reports shall be valid for no more than 3 years from the date of the field delineation for these reports unless required earlier due to changes in site conditions such as hydrology, soils or vegetation.

(6) Wetland delineations shall be prepared as outlined in Minnesota Rules Chapter 8420 and in the U.S. Army Corps of Engineers "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers and Local Units of Government in the State of Minnesota" and must include information necessary for the City to determine the wetland boundary and wetland type, including wetland delineation field data sheets, survey of the wetland evaluation area, soil analysis data, vegetation data and hydrology information both within and outside of the proposed wetland boundary.

(7) Wetland presence reports, wetland delineation reports and MNRAM assessments conducted or completed outside of the growing season will not be accepted for final review and approval by the City until the following growing season. Determination of non-growing season conditions will be in accordance with the "Guidelines for Submitting Wetland Delineations to the St. Paul District Corps of Engineers (COE) and Local Units of Government in the State of Minnesota" issued on April 17, 1996 (Publication 96-01078-SDE), unless the vegetation cataloging or hydrology conditions are deemed unreliable by the City.

(8) Approvals may be granted for wetland presence reports, wetland delineation reports, and MNRAM assessments conducted during the growing season, but submitted during the non-growing season, if the City determines there is sufficient information in the report and visible in the field at the time of the field verification to assess the three wetland parameters (hydrophytic vegetation, hydric soils and hydrology) in relation to placement of the wetland delineation line. If proper assessment of the delineation is not possible during the non-growing season, the City

would consider the application incomplete until such time that appropriate field verification is possible. Preliminary approvals granted during the non-growing season must be verified during the growing season. If a MNRAM assessment is not provided during the growing season, the quality will be assumed as Manage One.

(9) An applicant or property owner shall not be required to delineate wetlands or determine wetland type on adjacent property. An applicant or property owner will be required to review available information, including but not limited to the City Wetland Map, County Soil Survey Map, U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Maps, and visual information such as the presence of wetland vegetation and hydrologic evidence on an adjacent property which can be viewed from the subject property, to estimate the wetland boundary and wetland type.

(10) An applicant or property owner must contact the City to obtain a wetland or water body identification number and any information regarding the documented wetland, including any existing MNRAM information, for inclusion with documentation provided to the City by the applicant or property owner. The applicant or property owner must also contact the City to obtain a water body identification number for any existing or proposed stormwater pond or stormwater infiltration areas within the development.

(11) Wetland presence reports, wetland buffer strip evaluations, wetland delineations and sequencing flexibility reports and wetland replacement plans supplied by the applicant or property owner shall be prepared by a Minnesota Certified Wetland Delineator in accordance with current state and federal regulations. Wetland delineators must satisfy all certification requirements that are established by the U.S. Army Corps of Engineers and/or BWSR.

(12) All wetland identification and delineation shall comply with the additional requirements for wetland identification, delineation, replacement, testing, reporting and bonding set forth in Minnesota Rules Chapter 8420 as amended.

(F) *General Provisions.* This Section shall apply to all lands containing wetlands and all lands within the setback and wetland buffer strips required by this Code. Wetlands shall be subject to the requirements established herein, as well as restrictions and requirements established by other applicable Federal, State, and City ordinances and regulations.

(1) Activities including, but not limited to, wetland alteration, digging, building, storm water management, draining, paving, filling, mowing, cutting, dumping, yard waste disposal, fertilizer application, placing debris and dredging are prohibited in wetlands and buffer strips.

(2) Structures intended to provide access to or across a wetland or wetland buffer strips shall be prohibited unless a permit is obtained from the City and is in conformance with Minnesota Statutes and applicable state rules and regulations. Docks shall be elevated six to eight inches above the water surface.

(3) Septic and soil absorption system must be setback a minimum of 75 feet from a wetland.

(4) The lowest ground floor elevation shall be a minimum of two feet above the elevation of the wetland boundary.

(5) The Minnesota Pollution Control Agency's Best Management Practices shall be followed in relation to all wetlands.

(6) Wetlands and their buffer strips, as required in Section 152.407(G), shall be kept free of all structures and features, including but not limited to, fences, recreational and play equipment, patios, landscape structures, fire pits and retaining walls.

(7) Wetlands and their buffer strips, as required in Section 152.407(G), shall not be used for outside storage of household or personal items, lawn equipment, furniture, firewood, parts, yard waste and the like.

(8) Clearing, mowing, chemical treatment or removal of vegetation in the wetland and buffer is prohibited, except for the selective clearing and pruning of individual trees and shrubs which are dead or diseased, constitute noxious weeds, or are hazards, all as approved by the City Engineer or his or her designee.

(9) Stormwater runoff shall not be discharged into wetlands without pre-settlement of the runoff.

(10) Before a building permit will be issued for a lot with a required wetland buffer, the following shall be required:

(a) Record a notice of the wetland buffer strip requirement against the title to the lot with the office of the Scott County Recorder.

(b) Install wetland buffer monumentation according to Section 152.407(G)(12).

(G) *Wetland buffer strips and setbacks established.* For lots of record or development permits approved by the City Council after May 20, 2013 a wetland buffer strip and structure setback shall be provided and maintained around the perimeter of all wetlands and stormwater ponds according to the following standards.

<i>Wetland Classification</i>	<i>Permanent Buffer Width</i>	<i>Permanent Structure Setback from Buffer Edge (feet)</i>	<i>Accessory Structure Setback from Buffer Edge (feet)</i>
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Savage Fen/Preserve	50 feet average/30 feet minimum	25	15
Manage 1	40 feet average/25 feet minimum	25	15
Manage 2	30 feet average/25 minimum	25	15
Manage 3	16.5 minimum	25	15

For lots of record or development permits approved by the City Council from January 18, 2000 through May 20, 2013, the following wetland buffer strip requirements shall be provided and maintained around the perimeter of all wetlands and stormwater ponds:

<i>Wetland Classification</i>	<i>Permanent Buffer Width</i>
Savage Fen/Preserve	50 feet
Manage 1	40 feet
Manage 2	30 feet
Manage 3	16.5 feet

(1) Wetland buffers and structure setbacks shall apply to all parcels of land whether or not the wetland is on the same parcel. For parcels in which the wetland is on an adjacent parcel, the setback and wetland buffer strip requirements for the parcel shall be reduced by the distance between the property line of the parcel and the wetland on the adjacent parcel. This provision in no way reduces or eliminates any other setbacks required by the City Code or any other law or regulation.

(2) The locations of buffer strips and wetland setbacks shall be surveyed and included on the certificate of survey. A certificate of occupancy shall not be issued until this has been completed and approved by city staff.

(3) In cases where a site is not subject to the wetland buffer strips and setbacks required by Section 152.407(G), buildings, swimming pools, patios, driveways and parking lots shall be set back a minimum of 16.5 feet from a wetland edge.

(4) All principal structures shall be setback 25 feet from the wetland buffer strip edge. Decks, patios, sport courts, tennis courts, pool aprons, stairways, walkways, and like features may extend up to 10 feet into the wetland setback but may not extend into buffers.

(5) Parking, driveway and other hard surface areas shall not be located within 16.5 feet of a wetland or any required wetland buffer strip.

(6) A setback is not required for fences or retaining walls as long as they are not located within the wetland buffer strip.

(7) Notwithstanding anything else in this Section the City Engineer may determine existing wetland and/or buffer strip vegetation to be unacceptable if the wetland and/or buffer:

(a) Is composed of weeds (including but not limited to common buckthorn, purple loosestrife, leafy spurge and/or other noxious weeds as defined by Minnesota State Statutes, Section 18.75-18.91;

(b) Has topography that tends to channelize the flow of surface runoff;

(c) For some other reason it is unlikely to retain nutrients and sediment.

(8) Areas with unacceptable vegetation shall be re-graded, re-seeded and/or re-planted and maintained as needed. The wetland and wetland buffer planting requirements must be identified in the wetland delineation report or wetland buffer strip evaluation report. Wetland and wetland buffer strip landscaping shall be according to the following standards:

(a) Planted with a diverse native, non-invasive seed mix appropriate for the specific site conditions that contains 100 percent perennial native vegetation. A one-time planting of an annual nurse or cover crop such as oats or rye may be included.

(b) Seed mix used shall be a BWSR seed mix appropriate for the area requiring reseeded or other alternative pre-approved in writing by the City Engineer. The seeding rate shall be at the rate recommended by the BWSR or Minnesota Department of Transportation seed mix criteria or other City pre-approved alternative.

(c) Native shrubs may be substituted for the native seed mix where appropriate. All substitutions must be preapproved in writing by the City. Such shrubs may be bare root seedlings and shall be planted at a minimum rate of 60 plants per acre. Shrubs shall be distributed so as to provide a natural appearance and shall not be planted in rows.

(d) Any groundcover or shrub plantings installed within the wetland or wetland buffer strip are independent of landscaping required elsewhere by the City Code.

(e) Native prairie grasses and forbs shall be seeded or planted in accordance with "Restoring & Managing Native Wetland & Upland Vegetation" (published January 2006 by the Minnesota Department of Transportation (MnDOT) and BWSR) or other alternate method pre-approved by the City Engineer. Determination of the contractor's qualifications shall be made by the City Engineer. It is the responsibility of the Applicant to have the contractor and method used approved by the City Engineer prior to planting or seeding.

(f) No fertilizer shall be used in establishing new wetland buffer strips, except when deemed necessary to establish acceptable wetland and/or wetland buffer strip vegetation

and then limited to amounts indicated by an accredited soil testing laboratory. Determination of proper accreditation shall be made by the City Engineer.

(g) All seeded areas shall be mulched immediately with clean straw at a rate of 1.5 tons per acre. Mulch shall be anchored with a disk or tackifier.

(h) Wetland and wetland buffer strip areas (both natural and created), shall be protected by erosion control during construction in accordance with Section 152.407(G) of this Code.

(i) The erosion control shall remain in place until the cover crop is established.

(9) The property owner or applicant shall establish and maintain the wetland and wetland buffer strip vegetation in accordance with the requirements found in this Section, both during establishment and for two full growing seasons after establishment as determined by the City. During this time, the applicant must replant any wetland and/or wetland buffer strip vegetation that does not survive.

(10) After the second full growing season following establishment, as determined by the City, if the condition of the wetland and/or wetland buffer strip diminishes, the applicant shall not be required to reestablish the wetland and/or wetland buffer strip to meet the standards contained in Section 152.407(G)(7). Wetlands created for wetland replacement must be monitored and maintained by the applicant until the wetland is reviewed and approved by the City in accordance with the requirements established by this Code and Minnesota Rules Chapter 8420. After such times, the owner of the property on which the wetland and/or wetland buffer strip is located shall be responsible for the maintenance of the wetland and/or wetland buffer strip areas and must:

(a) Maintain and repair damage to wetland and/or wetland buffer strip areas from activities such as mowing, cutting, grading or other prohibited activities unless approved by the City in writing as a vegetation management plan.

(b) Maintain only vegetation permitted in the vegetation management plan or as found in 152.407(G) of this Code in the wetland and wetland buffer strip, including the removal of all weeds, unless allowed otherwise in writing by the City.

(c) Ensure that all soil surfaces in wetland and wetland buffer strip areas are planted with permitted vegetation and that there are no open soil surfaces that may result in erosion.

(d) Maintain the wetland and wetland buffer strip as a “no mow” area.

(11) If a structure, driveway or other hard surface area exists prior to the identification and delineation of a wetland it shall be considered legal nonconforming.

(12) Monumentation is required at each lot line where it crosses a wetland buffer strip. Monuments shall be placed along the edge of the wetland buffer strip with a maximum spacing

between monuments of 200 feet. Additional monuments shall be placed as necessary to accurately define the edge of the wetland buffer strip. If no wetland buffer strip is required, monuments shall be placed at the wetland boundary with a maximum spacing between monuments of 200 feet.

(H) *Wetland Alterations.* Except as provided below, the alteration of land within a wetland or a wetland buffer is prohibited unless a wetland permit has been issued. Activities that constitute alteration include changes to the size, depth or contour of the wetlands or its buffer, draining, excavating, dredging, or alterations of wetland or buffer vegetation. A wetland permit is not required for the following:

(1) To remove or alter vegetation from the wetland or its buffer pursuant to a restoration management plan approved by the City Engineer;

(2) To selectively clear or prune individual trees and shrubs which are dead or diseased, constitute noxious weeds, or are hazards, all as approved by the City Engineer or his or her designee.

(3) To repair and maintain existing public facilities such as ponds, trails and utilities if the work does not result in an increased impact to the wetland or its buffer, as determined by the City Engineer or his or her designee;

(4) To remove sediment and debris from the wetland that has resulted from erosion or from work done near the wetland, as approved by the City Engineer or his or her designee.

(I) *Wetland Review Procedures.* The following procedures shall be adhered to when evaluating potential impacts to wetlands:

(1) Wetland Presence Report. Every development permit application must submit a wetland presence report in accordance with this Section if no wetlands are present.

(2) Wetland Delineation Review. If a wetland is present, the applicant or property owner must delineate and document the boundary of the wetland(s) and the wetland type(s) in a wetland delineation report in accordance with City and Minnesota Rules Chapter 8420 requirements and document the conditions of the wetland buffer strip in a wetland buffer strip evaluation report in accordance with Section 152.407. An application for a wetland delineation review shall be made to the City on an approved form and shall be accompanied by the applicable review fee and three (3) hard copies and an electronic copy of the delineated wetland boundaries submitted in a format compatible with the City's GIS database.

(J) *Wetland Alteration Permit.* Prior to the alteration of any wetland or wetland buffers, a wetland replacement plan shall be approved by the City Council. The applicant must provide written documentation that the sequencing steps set forth in Minnesota Rule 8420.0520 have been met. Any alteration to a wetland must result in a zero net loss of wetlands.

(1) An applicant for a permit to alter a wetland shall adhere to the following principles in

descending order of priority:

(a) Avoiding the direct or indirect impact of the activity that may destroy or degrade the wetland;

(b) Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland activity and its implementation;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(e) Filling in wetland areas must be mitigated in accordance with the requirements of this Section and the city's wetland protection and management plan.

(K) *Wetland Replacement Permit.* Prior to any wetland replacement, an application shall be submitted to the City in accordance with Minnesota Rules Chapter 8040. The application shall set forth the location and plan for the proposed project. The applicant must provide one printed and one electronic version in color. The application must include:

(1) The name and address of the applicant.

(2) The name and address of the property owner of the land where the project will occur.

(3) The name and address of the managing agents or consultants that are or may be involved with the wetland alteration and/or replacement activities.

(4) The estimated time period within which the project will be conducted.

(5) A topographical map of the proposed project area to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals. The map shall show:

(a) The size and location of the wetland in relation to the property boundaries, including a scaled certificate of survey with the coordinates of the approximate wetland center and sample locations.

(b) The property and a minimum of 50 feet of land abutting the property, as it existed prior to the proposed land alteration.

(c) The proposed ground elevation contours at two foot intervals on the property when the land alteration is complete.

(d) Pre- and post-drainage areas for all existing and all proposed wetlands.

(e) Photographic reference points and proposed transect or sampling locations for wetland replacement or wetland banking plans.

(f) Survey data in a digital shapefile or other file format compatible with ArcGIS software.

(6) Wetland type of all existing and proposed wetlands, including a comparison to the Eggers and Reed “Wetland Plant Community Types” document.

(7) Recent color aerial photographs of the proposed impact area.

(8) A list of dominant or abundant vegetation in each stratum, utilizing the “50/20 rule”.

(9) Requests for approval of wetland replacement plan applications shall be accompanied by a fee and cash escrow as set forth in City Code. Cost of city time and materials expended in reviewing and processing wetland applications shall be charged against the cash escrow.

(L) *Additional Permit Requirements.*

(1) All permit holders must comply with all relevant National Pollutant Discharge Elimination System (NPDES) requirements and City stormwater management requirements to minimize direct impacts due to erosion and construction practices and to safeguard wildlife habitat.

(2) All permit holders must provide to the City a letter of credit in the amount of the estimated costs of altering or replacing the wetland as determined by the City. The letter of credit may be reduced if the city approves the work completed under the permit.

(3) All permit holders shall conduct a monitoring program in accordance with the requirements of the Minnesota Rules Chapter 8420. On an annual basis, the permit holder shall submit a monitoring report prepared by a certified wetland professional to the City for review that contains the following:

(a) As-built plans (first year only) to a minimum scale of one inch equals 50 feet showing existing ground elevation contours at two-foot intervals. As-built information shall also be submitted in digital shapefile or other file format compatible with ArcGIS software.

(b) Brief description of the wetland and buffer areas, including location, size, vegetative and hydrologic monitoring reports, current wetland types and desired wetland types.

(c) A comparison of proposed versus actual wetland types with the wetland and replacement wetland areas.

(d) Map of the plant communities within the wetland, replacement wetland and buffer areas included in the wetland replacement plan.

(e) Monthly color photographs from photographic reference points from April to October.

(f) All information required by Minnesota Rules 8420 for wetland replacement reporting.

(4) Wetland Monitoring Reports must be submitted by November 1 each monitoring year. If the City does not receive the report by such date, the City will charge the applicant for cost incurred by the City, including staff time, to collect the information needed to complete the monitoring report.

(5) The annual monitoring report shall be required until the site meets the intent of the permit as determined by the City. At the end of the monitoring period, the City will release the letter of credit if the permit holder demonstrates that the functions and values of the impacted wetland have been replaced. Where feasible, the city shall require the permit holder to satisfy long-term management requirements.

(J) *Expiration of Permits.* Unless otherwise specified by City, wetland permits shall expire three (3) years from date of approval if the work authorized by the permit is not completed. The permit shall be considered void unless a petition for a time extension has been granted by the City Council. The extension request shall be submitted in writing at least 30 days prior to expiration of the permit and shall state facts showing a good faith effort to complete work permitted under the original approval. The City Council may renew a void permit at its discretion. If the City Council does not renew the permit, the holder of the void permit may make original application for a new permit.

(Prior Code, § 9-21-8) (Ord. 535, passed 9-4-2001; Ord. 720, passed 5-20-2013; Ord. 734, passed 04-07-2014) Penalty, see § 152.999

§ 152.408 BLUFFLAND OVERLAY DISTRICT STANDARDS.

(A) It is the intent of this subchapter to preserve significant landforms such as river and stream valleys and bluffs and other steep areas in their natural state. In furtherance of this intent, the placement of structures upon land having a vertical slope in excess of 33-1/3% shall be prohibited. Removal of natural vegetation and alterations to the existing land contour in areas over 33-1/3% shall also be prohibited.

(B) A setback of 40 feet shall be required along the Minnesota River bluff from the point at which the gradient reaches 33-1/3%.

(C) A setback of 25 feet shall be required along the Credit River bluff and the bluff areas adjacent to other wetlands within the community from the point at which the natural gradient is 33-1/3%.

(D) Within planned unit development districts, setbacks may be modified further with consideration given to construction methods that will preserve the natural features and prevent erosion as well as considerations related to building height. If a building exceeding three stories in height is proposed, the setback from the established bluff line shall be increased so that the setback is not less than one-half the height of the building.

(E) The City Engineer must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures or other improvements on steep slopes. When determined necessary, conditions may be attached to issued permits to prevent erosion and to preserve existing vegetation screening of vehicles, structures and other facilities as viewed from the surface of public waters.

(F) A minimum setback of 50 feet is required for ponds, infiltration areas and individual sewage treatment systems (ISTS) from the point at which the natural gradient is 33-1/3%.

(G) No new discharge points are allowed on any bluff face where the natural gradient is 33-1/3% or steeper.
(Prior Code, § 9-21-9) (Ord. 535, passed 9-4-2001; Ord. 636, passed 10-15-2007) Penalty, see § 152.999