

59. WETLAND CONSERVATION

59.01. Purpose. This ordinance is adopted to implement the Wetland Conservation Act of 1991, (Minn. Laws 1991 chapter 354, as amended by Laws 1993, chapter 175, and as hereafter amended (“WCA”)), and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minn. Rules chapter 8420, as amended); and to protect the biological diversity, and water quality and water quantity benefits of wetlands and related features particularly in areas of the City with significant groundwater discharge, interflow and recharge characteristics. (3789, 9/19/06)

59.02. Definitions and Map. Subdivision 1. Incorporation by Reference. This ordinance incorporates by reference the WCA and Minnesota Rules Chapter 8420. Except as provided in Subdivisions 2 through 6, terms used in this ordinance which are defined in the Act or the Rules have the meanings given there.

Subd. 2. Decorah Edge. The term “Decorah Edge” shall include the area:

- A. in which the Decorah, Platteville or Glenwood formation is the first-encountered bedrock according to the “Bedrock Geology: Steele, Dodge, Olmsted and Winona Counties” data plat produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation, reliable well logs or more precise mapping;
- B. having a depth to bedrock of less than twenty-five feet according to the “Depth to Bedrock: Steele, Dodge, Olmsted and Winona Counties” data plat produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation, reliable well logs or more precise mapping; and,
- C. for which there are contiguous adjacent areas with the Cummingsville or higher (Stewartville or Prosser) formations as the first encountered bedrock. An area for which the first encountered bedrock is the Decorah Shale, Platteville Limestone, or Glenwood Shale that is separated from the Cummingsville or higher formations by a topographic saddle and is at a higher elevation than the saddle, is also excluded from the Decorah Edge. For purpose of this subdivision, the term “saddle” shall mean a ridge between two peaks or summits.

Subd. 3. Groundwater Supported Wetland. The term “groundwater

supported wetland” shall include a wetland area that is saturated predominately by ground water, including wetlands in the vicinity of springs or seeps. Such wetlands may be associated with highly organic peat-like soils such as Haverhill and Palms soils.

Subd. 4. Edge Support Area. The term “Edge Support Area” shall include non-wetland areas with features associated with perched groundwater tables, groundwater discharges or groundwater water supported wetlands located in the Decorah Edge, including:

- A. Haverhill (474B), Root (471) and Palms (528B) soils;
- B. Areas where the seasonal groundwater table is within five feet of the surface and slopes are under 18%, including Shullsburg (312B or 312 C), Littleton (477B), and similar soils;
- C. Areas with slopes over 18% within 50 feet of groundwater supported wetlands or Haverhill (474B), Palms (528B), Shullsburg (312B or 312C), Littleton (477B) or similar soils;
- D. Areas within 50 feet of springs;
- E. Areas within 50 feet of seeps;
- F. Areas of hydric soils in and adjacent to drainage ways draining groundwater supported wetlands;
- G. Areas within 50 feet of a perennial or ephemeral stream in the Decorah Edge; and,
- H. Areas of hydric soils buried by sedimentation adjacent to groundwater supported wetlands or in proximity to and at the same approximate elevation as groundwater supported wetlands.

Subd. 5. Minor Watershed. The term “minor watershed” shall mean a minor watershed as defined and mapped by the Minnesota Department of Natural Resources Division of Waters in 1999, as revised, and distributed by the Land Management Information Center.

Subd. 6. Wellhead Protection Emergency Response Area. The term “wellhead protection emergency response area” shall mean the area surrounding a public water supply well with a time of travel equal to or less than

one year based on the delineation criteria and methodology contained in Minnesota Rules 4720.5100 – 4720.5590.

Subd. 7. Map. The Planning Department shall maintain maps showing the approximate location and extent of the Decorah Edge. The maps will include those areas of the County within the boundary of the Decorah Edge as defined herein, plus, for the bedrock geology map only, an adjacent area determined based on half the distance of the reported accuracy of the source map. [In the case of the MGS bedrock geology map cited above, the reported accuracy is 100 meters or 330 feet, resulting in an added dimension of 50 meters or 165 feet.] The dimension of the adjacent area shall reflect the accuracy of the source maps, and is not intended as a buffer area. Where detailed site investigation identifies more accurate information as to the location and extent of the Decorah, Platteville, or Glenwood formations and areas of associated groundwater movements in adjacent portions of the Cummingsville and St. Peter formations, the detailed site information shall apply. The Planning Department shall maintain copies of the most current maps and update the maps from time to time as more reliable information becomes available.

(3789, 9/19/06)

59.03. Local Government Unit. The Rochester Common Council shall be the local government unit for the purposes of the Wetland Conservation Act and Minn. Rules ch. 8420.

59.04 Technical Evaluation Panel. A technical evaluation panel of three persons is hereby recognized and authorized to participate in wetland determinations as follows: make technical determinations concerning questions of public values, location, size, and type for replacement plans; to assist in making wetland size and type determinations as part of exemption and no-loss determinations; to answer technical questions or participate in monitoring of replacement wetlands, and to participate in the monitoring of banked wetlands. A member of the Planning Department staff who is a technical professional with expertise in water resources management is hereby appointed to the technical evaluation panel to participate with the appointed persons from the Board of Water and Soil Resources and from the soil and water conservation district within Olmsted County.

59.05. Scope. Subdivision 1. This ordinance regulates the excavating, hydrologic alteration, draining and filling of wetlands, parts of wetlands and Edge Support Areas within the City of Rochester.

Subd. 2. In the event that an inconsistency exists between the provisions of state law, the Rules and this chapter, the provision that provides the most wetland protection shall apply.

Subd. 3. Wetlands in General. Except as provided in the exemption and no-loss determination sections hereinafter described, wetlands

within the City of Rochester may not be excavated, drained or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value.

Subd. 4. Field Investigation. The Zoning Administrator shall rely on the most current published soil survey, unless supplemented by a first order soil survey or corrected by on-site investigation, as a guide to identifying areas to be investigated for wetlands and Edge Support Areas.
(3789, 9/19/06)

59.06 Areas Provided Special Protection. Subdivision 1. Except as provided in sections 59.07, 59.08 or subdivisions 2, 3 or 4 of this section, groundwater supported wetlands and Edge Support Areas may not be excavated, altered hydrologically, drained or filled wholly or partially. Development activities must be carried out in such a way as to maintain groundwater flow to or from a wetland, and to protect the quality, functions and values of the wetland as determined by the MnRAM method.

Subd. 2. All areas of buildable lots identified either in plats or general development plans (excluding outlots) are exempt from the special protection provided to Edge Support Areas if:

- A. Prior to October 1, 2006, the City Engineer and the Zoning Administrator approved the interim or final grading plan for part or all of the lots; or
- B. Prior to October 1, 2006, the lot was part of an approved final plat.

Subd. 3. All areas of buildable lots shall be exempt from the special protection provided to groundwater supported wetlands if the lot is included in a development for which a replacement plan addressing the groundwater supported wetland has been approved prior to October 1, 2006.

Subd. 4. Subdivision 1 shall not apply if the process described in section 59.09 is followed with the resulting determination that there exists one of the following findings:

- A. The development activity involves the construction of local collectors or higher order streets, where the Council has found in its approval of a general development plan that:

- (1) The traffic service standards of Section 61.526 cannot be met without providing for the street in question;
 - (2) The street in question is designated as a primary collector or higher order street, or the area served is designated as in need of a local collector in the ROCOG Long Range Transportation Plan; and,
 - (3) The proposed alignment causes the least disruption to groundwater discharge interflow and recharge characteristics in comparison with suitable and practical alternative alignments; or
- B. The development activity involves the modification, realignment or other improvement of an existing public road by a road authority; or
- C. The development activity involves the construction of other infrastructure of a regional nature, such as regional trails, major power lines, regional stormwater ponds, water mains or sewer interceptors, where the Council has determined that the proposed alignment causes the least disruption to groundwater discharge, interflow and recharge characteristics in comparison with suitable and practical alternative alignments; or
- D. The development activity involves the construction of park facilities in general development plans or subdivisions approved prior to October 1, 2006.
- E. The development activity involves the construction of a new road in a development that is needed to provide secondary access to a residential area that would otherwise result in more than 50 homes relying on a single access, where the Council has determined that the platted alignment causes the least disruption to groundwater discharge, interflow and recharge characteristics, in comparison with suitable and practical alternative alignments and where the requirement for secondary access has not been waived; or
- F. The development activity involves the alteration of groundwater supported wetlands in conjunction with

restoration or enhancement projects that are in accordance with section 59.09. Enhanced or restored groundwater supported wetlands must be of at least equal function and value as determined by the MnRAM Assessment Method located in the same geologic setting (fill or bedrock-dominated), and in the same minor watershed.

(3789, 9/19/06)

59.07. Exemptions. A landowner may claim exemption from the provisions of the WCA and this Chapter if the property to be drained, filled, hydrologically altered, or excavated meets the exemption criteria contained in Minn. Rules part 8420.0120, which applies to wetlands. Any Edge Support Area associated with an exempted groundwater supported wetland shall also be exempted. Exemption determinations under Minn. Rules part 8420.0210 shall be made by the zoning administrator. A landowner intending to excavate, hydrologically alter, drain or fill a wetland without replacement, claiming exemption, shall make application to the zoning administrator before beginning excavation, draining or filling activities for determination whether or not the activity is exempt. The zoning administrator may seek the advice of the technical evaluation panel on questions of wetland size and type. The administrator's decision is final unless appealed to the common council within 30 days after written notice of the zoning administrator's determination is mailed to the applicant. An exemption certificate shall be provided the landowner upon the zoning administrator's or common council's determination that the activity qualifies for exemption. The authority granted by the certificate shall be stayed during the time an appeal is pending before the Board of Water and Soil Resources. (3789, 9/19/06)

59.08. No-Loss. Subdivision 1. A landowner unsure if proposed work will result in a loss of wetlands may apply for a no-loss determination. No-loss determinations under Minn. Rules part 8420.0220 shall be made by the zoning administrator. The zoning administrator should seek the advice of the technical evaluation panel on questions of wetland delineation and type. The administrator's decision is final unless appealed to the common council within 30 days after written notice of the zoning administrator's determination is mailed to the applicant.

Subd. 2. A no-loss certificate shall be provided the landowner upon the zoning administrator's or common council's determination that:

- A. The work will not drain or fill a wetland;
- B. Water level management activities will not result in the conversion of a wetland to another land use;

- C. The activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention and are not part of a compensatory wetland mitigation program; or
- D. The activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

Subd. 3. The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for this determination. The authority granted by the certificate shall be stayed during the time an appeal is pending before the Board of Water and Soil Resources. (3789, 9/19/06)

59.09. Sequencing and Replacement Plan Decisions. Subdivision 1. A landowner intending to drain or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the common council except that if the amount of wetland to be drained or filled is less than one-tenth of an acre, the sequencing determination under Minn. Rules part 8420.0520 shall be made by the zoning administrator. Replacement plans intended to mitigate activities within the City of Rochester must involve the replacement or rehabilitation of properties located within Olmsted County.

Subd. 2. Sequencing and replacement plan decisions under Minn. Rules parts 8420.0230 and 8420.0520 - .0550 and decisions regarding exceptions under Section 59.06, subd. 2 shall be made pursuant to the following procedures:

- A. Application for wetland replacement plans must be submitted to the zoning administrator.
- B. The zoning administrator shall, within ten days, transmit a copy of the application and invitation to comment to the following: Board of Water and Soil Resources for publication in the Environmental Quality Report; members of the public who have requested a copy; the soil and water conservation district; the watershed district or water management organization, if one; the county board; mayors of cities within the watershed; and the commissioners of agriculture and natural resources. The planning staff shall also publish notice of the application in a local general circulation newspaper in the city within the same 10 day period.
- C. The zoning administrator shall, within 20 days of receipt of the

application, schedule a public hearing before the common council to consider the application. The hearing shall be established not earlier than 30 days after the later of the giving of notice, publication of the notice of application in the Environmental Quality Report, or publication in the local general circulation newspaper. Prior to said hearing the zoning administrator shall prepare a report recommending approval, approval with conditions, or disapproval of the proposed replacement plan. The report shall contain all referral comments and any additional information provided by the applicant.

- D. The common council shall act upon the application not earlier than 30 days, nor later than 60 days, after the later of the giving of notice, publication of the notice of application in the Environmental Quality Report, or publication in the local general circulation newspaper. The common council may approve, approve with conditions, or disapprove the replacement plan application.
- E. The common council must base its decisions on the replacement standards in Minn. Rules parts 8420.0500 to 8420.0630, and on the technical determinations of the technical evaluation panel concerning the public values, location, size, and type of the wetland being altered.
- F. The decision of the common council shall be mailed to all parties listed in subdivision 2 (b) and to the applicant. The mailing to the applicant shall be by registered mail and must advise that the decision is not effective for 30 days, and is stayed if appeal is made to the Board of Water and Soil Resources.

(3789, 9/19/06)

59.10. Monitoring. The zoning administrator shall assure that the replacement plan monitoring and enforcement requirements of Minn. Rules parts 8420.0600 - .0630 and 8420.0750, subp. 2A are fulfilled. The zoning administrator may request the technical review panel to assist in answering technical questions concerning the replacement plan and to assist in monitoring the replacement wetland. (3789, 9/19/06)

59.105 Fees. The common council shall by resolution adopt a schedule of fees applicable to no-net loss determinations, exemption determinations, replacement plan determinations, and banking plan determinations. The amount of the fees shall not exceed the reasonable value of the functions undertaken by the LGU.

59.11 Wetland Banking. Subdivision 1. Wetlands may be restored or created within the City of Rochester for purposes of deposit in the wetland bank in accordance with Minn. Rules parts 8420.0700 - .0760. The zoning administrator is responsible for approving bank plans, certifying deposits, and the monitoring of banked wetlands and enforcement under the rules

Subd. 2. Only wetland credits from wetlands restored or created within Olmsted County may be used when the draining or filling of a wetland within the City is to be done without replacement. An application to the City Council must be made for a sequencing determination pursuant to Minn. Rules part 8420.0520 prior to use of the wetland credits maintained in the wetland bank. The city council shall seek assistance from the Technical Evaluation Panel and the zoning administrator prior to approval. (3789, 9/19/06)

59.12 Fees. The common council shall by resolution adopt a schedule of fees applicable to no-net loss determinations, exemption determinations, replacement plan determinations, and banking plan determinations. The amount of the fees shall not exceed the reasonable value of the functions undertaken by the LGU. (3789, 9/19/06)

59.13 Appeals and Exceptions. Decisions made under this ordinance by the zoning administrator may be appealed to the Common Council. Except for decisions related to Edge Support Areas, decisions of the Common Council may be appealed to the Board of Water and Soil Resources (BWSR) under Minn. Rules part 8420.0250 after final determination by the Common Council. Requests for exceptions to provisions of this ordinance related to Edge Support Areas (in which the applicant contends that the ordinance should not be applied to the property in question, in whole or in part) shall be heard by the City Council at the time of general development plan review, or at the time of wetland delineation, if a general development plan is not required. Applicants may seek exceptions to restrictions on disturbance of Edge Support Areas on the basis of public safety concerns, other overriding public interest, unreasonable hardship, or constraints that deny a reasonable use of the property. (3789, 9/19/06)

59.14 Limitations. Decisions under this ordinance must not be made until after receiving the determination of the technical evaluation panel regarding wetland public values, location, size, and/or type if the decision-maker, the landowner, or a member of the technical panel asks for such determinations. This requirement does not apply to wetlands for which such data is included in an approved comprehensive wetland management plan per Minn. Rules part 8420.0240. (3789, 9/19/06)

59.15. High Priority Areas. The City of Rochester is designated a high priority area under Minnesota Rules. Decisions regarding sequencing, replacement plans, and banking shall particularly favor preservation, restoration, and creation of wetlands in high priority areas as identified in water management plans pursuant to Minn. Rules part 8420.0350.

59.16. Delegation. The City of Rochester may by joint powers agreement delegate to the soil and water conservation district under Minn. Stat. §§ 471.59 and 103C.331, subdivision 19, the authority to administer all or any part of this ordinance.

(2921, 12/21/93; 2930, 3/7/94; 3035, 5/20/96; 3789, 9/19/06)