

CHAPTER 3700, WETLAND CONSERVATION ORDINANCE

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CHAPTER 3700, WETLAND CONSERVATION ORDINANCE

3701. PURPOSE

This ordinance is adopted by Olmsted County to implement the Wetland Conservation Act of 1991, codified in Chapters 103F and 103G of the Minnesota Statutes, and as hereafter amended), and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minn. Rules chapter 8420, as amended).

3702. INCORPORATION BY REFERENCE

This ordinance incorporates by reference the Wetland Conservation Act and the Minnesota Rules Chapter 8420, each as amended from time to time. Terms used in this ordinance which are defined in the Act or the Rules have the meanings given there. In the event that an inconsistency exists between the provisions of state law, the Rules, and this ordinance, the provision which provides the most wetland protection shall apply.

This Ordinance is a supplement to existing State and Federal Wetland statutes, rules and regulations. Nothing in this Ordinance waives or exempts provisions of the Minnesota Wetland Conservation Act, Minnesota Rules Chapter 8420 or Section 404 of the Clean Water Act. The areas protected under this ordinance include areas where evidence of either hydrophytic vegetation, hydric soils or wetland hydrology may be absent during field investigations. Areas that are not wetlands in accordance with Minnesota Rules Chapter 8420 may include candidates for wetland restoration or mitigation credits if restored to wetland status in accordance with Minnesota Rules 8420.

3703. LOCAL GOVERNMENTAL UNIT

The Olmsted County Board of Commissioners shall be the local government unit (LGU) for unincorporated areas of Olmsted County for the purposes of the Wetland Conservation Act and Minn. Rules Ch.8420.

3704. DELEGATION

The Olmsted County Board of Commissioners has by joint powers agreement delegated to the Olmsted Soil and Water Conservation District under Minn. Stat. Sections 471.59 and 103C.331, subd. 19, the authority to administer the provisions of this ordinance regulated by Minn. Rule 8420.

3705. SCOPE

This ordinance regulates the wetland impact, as defined in Minn. Rule-8420, and the disturbance of Edge Support areas, within those areas of Olmsted County over which Olmsted County is permitted to act as LGU. It is part of the official controls of Olmsted County. Except as provided in the Rules, wetlands within Olmsted County may not be impacted wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value. Conflicts with other official controls must be resolved in favor of providing the most wetland protection.

3706. DECORAH EDGE

- 6.1. The "Decorah Edge" is defined as the area
 - 6.1.1. 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 plate produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation or more precise mapping; and
 - 6.1.2. having a depth to bedrock of less than twenty-five feet according to the "Depth to Bedrock: Steele, Dodge, Olmsted and Winona Counties" data plate produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation, reliable well logs, or more precise mapping; and
 - 6.1.3. for which there are contiguous adjacent areas with the Cummingsville or higher formations as the first encountered bedrock.
- 6.2. 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.
- 6.3. The term "Edge Support Area" shall include non-wetland areas with features associated with perched groundwater tables or groundwater supported slope wetlands located in the Decorah Edge, including
 - 6.3.1. Haverhill (474B), Root (471), and Palms (528B) soils;
 - 6.3.2. areas where the seasonal groundwater table is within five feet of the surface and slopes are under 18%, including Shullsburg (312B and 312C), Littleton (477B only), and similar soils;
 - 6.3.3. areas within 50 feet adjacent to and upgradient of Haverhill (474B), Palms (528B), Root (471), Shullsburg (312B or 312C), Littleton (477B), or similar soils with slopes over 18%;
 - 6.3.4. areas within 50 feet of springs;

- 6.3.5. areas within 50 feet of seeps;
- 6.3.6. areas of hydric soils in and adjacent to drainageways draining groundwater supported slope wetlands;
- 6.3.7. areas within 50 feet of a perennial or ephemeral stream in the Decorah Edge; or
- 6.3.8. areas of hydric soil buried by sedimentation.

Areas of the Decorah Edge that do not meet any of the criteria listed in Sections 6.3.1 through 6.3.8 are not Edge Support Areas and are not required to be protected from disturbance under this subsection of the ordinance.

6.3.9 For the purposes of this section of the ordinance some terms are defined in the following manner.

- a. Drainageway: a ditch, swale or similar shallow depression that receives overland flow of water that connects to larger water bodies.
- b. Ephemeral Stream: A channel that has flowing water only during and for a short duration after precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round so has no baseflow component.
- c. Seep: Location where groundwater flows to the surface through porous material, small pores, cracks, or interstices and forms pools or surface water flow.
- d. Spring: A water resource formed when the side of a hill, a valley bottom, or other excavation intersects a flowing body of groundwater at or below the local water table, below which the subsurface material is saturated with water.

6.4. Edge Support Area Protection: Except as provided below, activities carried out in Decorah Edge sites shall protect Edge Support Areas from disturbance and shall provide for their management through conservation easements or equivalent mechanisms.

6.5. Exceptions: The following circumstances are exempt from the requirement to protect Edge Support Areas from disturbance:

- 6.5.1. Construction of a local collector or higher order street and related infrastructure on an alignment approved by the Road Authority; or construction of a local public road and related infrastructure by a Road Authority.
- 6.5.2. Construction of public utilities of a regional nature, such as major power lines, water mains, and sewer interceptors, where the approval authority has determined that the proposed alignment is the least disruptive available option.
- 6.5.3. With the approval of a Road Authority, the modification, realignment, or other improvement of an existing public road and related infrastructure.
- 6.5.4. Activities meeting the criteria provided in the exemption and no-loss determination sections described in Section 9.2.
- 6.5.5. 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 platting authority has determined that the platted alignment is the least disruptive available and feasible option.

- 6.5.6. Development of a permitted use on a lot of record existing at the time of enactment of these provisions.
- 6.5.7. Creation of a lot by metes and bounds lot splits in the A-1 and A-2 Districts.
- 6.5.8. Agricultural uses in any district.

3707 . GROUNDWATER SUPPORTED SLOPE WETLANDS

- 7.1 A groundwater supported slope wetland is a wetland that is saturated predominantly 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 (474B) and Palms (528B) soils. Except as provided below, groundwater supported slope wetlands may not be excavated, drained or filled wholly or partially. Development activities must be carried out in such a way as to maintain groundwater flow to and from a groundwater supported slope wetland and to protect the exceptional function and values of the wetland, as determined by the MnRAM or other assessment method acceptable to the MN Board of Water and Soil Resources.
- 7.2 Exceptions:
 - 7.2.1 Construction of a local collector or higher order street and related infrastructure on an alignment approved by the Road Authority; or construction of a local public road and related infrastructure by a Road Authority.
 - 7.2.2 With the approval of a Road Authority, the modification, realignment, or other improvement of an existing public road and related infrastructure.
 - 7.2.3 Construction of public utilities of a regional nature, such as major power lines, water mains, and sewer interceptors, where the approval authority has determined that the proposed alignment is the least disruptive available option.
 - 7.2.4 Activities meeting the criteria provided in the exemption and no-loss determination sections described in Section 9.3.
 - 7.2.5 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 platting authority has determined that the platted alignment is the least disruptive available and feasible option.
- 7.3 In any case where disturbance of a groundwater supported slope wetland is authorized for a new local road or other infrastructure, the responsible party shall minimize the area of disturbance and shall replace the function and value, as determined in accordance with MnRAM or other assessment method acceptable to the MN Board of Water and Soils Resources, of the disturbed wetland by restoration of a damaged groundwater supported slope wetland in the same_subwatershed and the same geologic setting (till plain or bedrock dominated setting), if possible.

3708. HIGH PRIORITY AREAS

- 7.1. 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. Rule 8420.0835.
- 7.2. Except as provided in the exemption and no-loss determination sections described in Section 9.3, areas of the Decorah Edge are considered high priority areas within which development activities must be carried out in such a way as to maintain groundwater flow to and from Edge Support Areas and Groundwater Supported Slope Wetlands, and to protect the functions and values of the wetland, as determined by the MnRAM or other assessment method acceptable to the MN Board of Water and Soil Resources.

3709. PROCEDURES

- 9.1 Administration. The Olmsted Soil and Water Conservation District shall administer the provisions of this ordinance that are regulated by Minn. Rule-8420 on behalf of the Olmsted County Board of Commissioners pursuant to Section 4 of this ordinance. In the event either party rescinds the joint powers agreement, authority to administer this ordinance shall be determined by the Olmsted County Board of Commissioners. The Rochester-Olmsted Planning Department shall administer the provisions of this ordinance that address the Decorah Edge, except as provided for in Section 9.8.2.
- 9.2 Field Investigation. The Olmsted Soil and Water Conservation District and Rochester-Olmsted Planning Department shall rely on the most current published soil survey, unless supplemented by a first order soil survey, National Wetlands Inventory, and other relevant data sources and by on-site investigation, as a guide to identifying areas to be investigated for wetlands and Edge Support Areas.
- 9.3 Exemption and no-loss determinations. Exemption and no-loss determinations under Minn. Rule parts 8420.0315 and .0320 shall be made by the Olmsted Soil and Water Conservation District. The Olmsted Soil and Water Conservation District should seek the advice of the technical evaluation panel on questions of wetland delineation and type. The Olmsted Soil and Water Conservation District decision is final unless appealed under the provisions provided herein.
- 9.4 Sequencing and replacement decisions. Sequencing and replacement plan decisions under Minn. Rule part 8420.0500-.0544 shall be made following the notice

requirements of part 8420.0325-0330, and the time requirements of part 8420.0255. Sequencing and replacement decisions for public road reconstruction shall be made following the notice and time requirements of part 8420.0544.

9.5 Review of General Development Plans. As a staff referral to the platting authority, the Olmsted Soil and Water Conservation District shall review general development plans required for development in the Decorah Edge for consistency with this ordinance and shall submit findings to the platting authority.

9.6 Monitoring. The Olmsted Soil and Water Conservation District shall assure that the replacement plan monitoring and enforcement requirements of Minn. Rule parts 8420.0820.-.0900 are fulfilled.

9.7 Wetland banking. Wetlands may be restored or created within Olmsted County for purposes of deposit in the wetland bank in accordance with Minn. Rules parts 8420.0700-.0820. The Olmsted Soil and Water Conservation District is responsible for approving bank plans, certifying deposits, and monitoring of banked wetlands and enforcement under the rules.

9.8 Appeals and Exceptions.

9.8.1. Except as provided below, administrative decisions made under this ordinance may be appealed to the Olmsted Soil and Water Conservation District (SWCD) Board. Decisions of the SWCD Board related to wetlands may be appealed to the Board of Water and Soil Resources (BWSR) under Minn. Rule part 8420.0905. (Note: 8420.0905 allows no appeal after 30 days from the date a notice of a decision is sent.)

9.8.2. Appeals of administrative decisions related to issues of delineation and identification of Edge Support Areas shall first be heard by the Olmsted Soil and Water Conservation District Board.

9.8.3. Requests for exceptions to provisions of this ordinance related to Edge Support Areas shall be heard by the Olmsted County Board of Commissioners. 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. An application for an appeal or

request for an exception must be filed by the applicant no later than 30 days after a notice is sent on a decision by the LGU.

- 9.8.4. Referral to Expert Panel: Prior to action by an appeals body, appeals shall be referred for their comment and recommendation to the Technical Evaluation Panel (TEP) or, in the event that BWSR staff and other state agency representatives on the TEP decline to advise the Board on matters that do not involve Minnesota Wetland Rules, another panel made up of
- a technical professional, as the term is used in Minnesota Rules 8420.0240, with no interest in the property being considered, who is knowledgeable and trained in applying methodologies of the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al., 1979 edition) and applicable supplemental updates;
 - the Planning Department wetland specialist; and
 - the Soil and Water Conservation District wetland specialist.

At its option, an affected township may appoint a technical expert to serve on the expert panel while the panel considers a proposed development in the area under its jurisdiction. An affected township may also appoint a non-technical representative as an ex-officio, non-voting member of the panel.

- 9.8.5. Further Appeal: The appellant may appeal a decision by the Olmsted Soil and Water Conservation District Board related to Edge Support Areas to the Olmsted County Board of Commissioners.

- 9.9. Hearing procedures: Except where Minn. Rule 8420.0905 specifies a contrary time or procedure, appeals and exceptions shall be heard at a public hearing for which published notice has been provided in accordance with Minnesota Statutes 394.26.

3710 TECHNICAL EVALUATION PANEL

Technical Evaluation Panel. Persons to be appointed to the Technical Evaluation Panel must comply with the requirements of Minn. Rule 8420.0240. A person from the Planning Department that is a technical professional with expertise in water resources

management is hereby appointed to the technical evaluation panel. An affected township may also appoint a non-technical representative as an ex-officio, non-voting member of the panel.

The technical evaluation panel, if requested to do so by the local government unit, the landowner, or a member of the panel must make technical findings and recommendations regarding applications, the scope of Minn. Rule 8420.0240, Subp. C and the Wetland Conservation Act, the applicability of exemption and no-loss standards, wetland functions and the resulting public value, direct and indirect impacts, possible violations of Minn. Rule 8420 and the Wetland Conservation Act, enforcement matters under part 8420.0900, comprehensive wetland protection and management plans and implementing rules and ordinances and other technical issues related to implementation of Minn. Rule 8420. The panel must review applications for replacement of public road projects submitted according to Minn. Rule 8420.0544, banking projects according to Minn. Rule 8420.0700 to 8420.0820, and replacement wetland monitoring as provided in Minn. Rule 8420.0810 to 8420.0820.

OLMSTED COUNTY BOARD OF COMMISSIONERS

BY: _____

Judy Ohly, Chairperson

EFFECTIVE DATE:

ATTEST: _____

Richard G. Devlin

Clerk-Administrator

CONTACT THE OLMSTED COUNTY SOIL AND WATER CONSERVATION DISTRICT FOR CURRENT WETLAND CONSERVATION FEE SCHEDULE