

**Ordinance 290  
Wetlands District**

**290.01 Findings, Intent, and Incorporation by Reference**

**Definitions**

*City:* is the City of Braham, or City designated county and state agencies.

*Wetland(s):* Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have three (3) of the following attributes:

- (a) A predominance of hydric soils.
- (b) Inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.
- (c) Under normal circumstances, support a prevalence of such vegetation.

*Wetland Buffer Strips:* An area of vegetated ground cover abutting a wetland that, either in its natural condition or through intervention, has the characteristics identified in Section 290.01 Subd 5 of this Chapter. This includes areas identified as drainage/utility easements and/or Flood Zones as identified in Ordinance 262.

Subd. 1. The City has determined that wetlands serve to maintain water quality by filtering water that is discharged into ground water aquifers and by retaining inorganic sediments, toxicants, and nutrients. They also retain and reduce the discharge of phosphorus and transform nutrients from their inorganic to organic forms, thereby, protecting streams and water bodies from eutrophication and contamination. Wetlands also store runoff and reduce the velocity of and magnitude of flood peaks. In addition, some wetlands receive the upward discharge of ground water. These wetlands tend to support more stable biological communities since their water temperatures and water levels tend to be more stable.

Subd. 2. Wetland vegetation also reduces the energy of waves, currents, and other erosive forces and serves to prevent the erosion of shoreline areas. In addition, aquatic vegetation provides food, shelter, and special habitat for wildlife. All of these wetland characteristics provide valuable recreation and education resources.

Subd. 3. The City has also found that wetlands vary significantly in the degree that they have been altered. Wetlands within the City exhibit great variations in their floral diversity, quality of wildlife and fishery habitat, degree of fluctuation in response to storms, the extent to which their shorelines have been altered or eroded, and their relative value in protecting water quality. Therefore, the City has determined that it is

necessary and beneficial to classify wetlands based upon their functions and values. The City has also found that it is in the best interest of the general health and welfare of the City to achieve no net loss of wetlands within the community.

Subd. 4. The City recognizes that a substantial amount of wetland degradation results from sedimentation and nutrient loading related to construction projects. Therefore, the City finds it necessary to require extraordinary measures to prevent such construction-related degradation.

Subd. 5. In addition to having regulations that affect the physical impacts within wetland areas the City also finds that it is necessary to regulate the use of lands surrounding wetlands. Wetland buffer strips (as defined by Section 290.01), are necessary and beneficial to maintaining the health of wetlands. These strips of land surrounding wetlands protect their shorelines from erosion, while serving to filter sediment, chemicals and other nutrients before storm water discharges into the wetland. Wetland buffer strips are also beneficial in providing habitat for wildlife.

Subd. 6. This Section hereby incorporates by reference the Wetlands Conservation Act of 1991 [Minn. Stat. 103G.221 et seq. (herein after referred to as the WCA)] and any future amendments adopted by the legislature. Any activities exempted from the provisions of the WCA are also exempted from the requirements of this Section, insofar as they relate to the WCA. All wetlands, as defined in Section 290.01 of this Chapter, including those governed by the Department of Natural Resources, are covered by the provisions of this Section. Also, there are circumstances under which the strict enforcement of these regulations may be unreasonable, and in circumstances that meet the established criteria, departures from the strict application of these standards may be permitted.

Subd. 7. It is the intent of this Section to avoid the alteration and destruction of wetlands. When wetlands are altered or destroyed, mitigation must be provided to recreate the functions and values of the lost wetland, in accordance with the wetland replacement plan requirements outlined in subsection 290.11 of this Chapter.

## **290.02 Purpose and Implementation**

Subd. 1. Through the adoption and enforcement of this Section, the City shall promote the general health, safety, and welfare of its residents by both conserving and protecting wetlands and requiring sound management practices and mitigation as provided for in the WCA when development occurs in the vicinity of wetlands. Through the implementation of this Section, the City seeks to accomplish the following purposes:

(a) To satisfy the requirements of the WCA as it may be amended and, thereby achieve no net loss of wetlands within the City.

- (b) To balance the needs 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 developable land within the City;
- (c) To preserve the natural character of the landscape through the maintenance of wetland ecosystems.
- (d) To promote water quality by maintaining the ability of wetlands to recharge ground water and receive the discharge of ground water, to retain sediment and toxicants and filter and strip nutrients from surface water runoff before it discharges into community lakes and streams, thus avoiding the contamination and eutrophication of these water features; and
- (e) To provide wildlife habitat and thereby support the maintenance of diversity of both plant and animal species within the City.

Subd. 2. To accomplish these purposes, the City or County will:

- (a) Maintain an inventory of all wetlands within the City/County.
- (b) Maintain a system of classification for wetlands within the City and classify the City's wetlands based upon their relative values related to floral diversity, wildlife habitat, water quality protection, fishery habitat, flood storage, shoreline protection, and aesthetic, recreational and education benefits.
- (c) Prepare and maintain a comprehensive set of official maps identifying the location and classification of all wetlands within the City.
- (d) Establish wetland regulations that are coordinated with flood plain and shoreland protection regulations.
- (e) Require sound management practices to protect, conserve, maintain, enhance, and improve the quality of wetlands within the community.
- (f) Enforce standards for the alteration of wetlands when alteration is allowed, including standards and procedures for the mitigation of the loss of wetland areas and their functions and values, when alteration or destruction occurs.
- (g) Obtain protective easements over or acquire fee title to wetlands as appropriate.
- (h) Develop and maintain a program to educate the public about the numerous benefits and features that wetlands provide and the adverse effects of improperly managed urban development on wetlands.

### **290.03 General Provisions**

Subd. 1. Identification and Delineation of Wetlands.

- (a) This Section shall apply to all land containing wetlands and land within the buffer strip and setback areas required by this Section. 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. These wetland protection regulations shall not be construed to allow anything otherwise prohibited in the zoning district where the wetland area is located.

(b) A wetland is land that meets the definition of "wetlands" as set forth in Section 290.01 of this Chapter. Wetlands shall be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and regional supplements if available. Wetlands have been or will be identified and the wetland classification as maintained by the county as evidence of the location and classification of a wetland. The presence or absence of a wetland on the official maps does not represent a definitive determination as to whether a wetland covered by this Section is or is not present. Wetlands that are identified during site specific delineation activities but do not appear on the official wetland maps are still subject to the provisions of this Section. It will be the responsibility of 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. It will be the responsibility of the property owner to pay for all the city's fees associated with delineation, including but not limited to technical fees, engineering costs and legal fees. If an applicant questions whether a wetland exists or disputes its classification, the applicant shall have the burden to supply detailed information for review supporting the applicant's assertion, including but not limited to, topographic, hydrologic, floristic and soil data deemed necessary by the City to determine the jurisdictional status of the wetland, its exact boundary and its classification. Wetland delineations supplied by applicants shall be certified by a qualified wetland delineator. Wetland delineators must satisfy any certification requirements that may be established by the U.S. Army Corps of Engineers or the Minnesota Board of Water and Soil Resources.

(c) Only that portion of a property within the boundaries of a wetland and its required buffer strip and setback shall be subject to the provisions of this Section.

(d) This Section establishes wetland classifications as defined in Section 290.01 of this Chapter.

#### **290.04. - General Standards.**

The following standards apply to all lands containing or abutting a wetland:

Subd. 1. Septic and soil absorption systems must be set back per state statute.

Subd. 2. The lowest ground floor elevation shall be two feet above the 100-Year flood elevation.

Subd. 3. Structures intended to provide access across a wetland shall be prohibited unless a permit is obtained in conformance with State Regulations.

Subd. 4. The MPCA's Best Management Practices and Minnesota Storm Water Manual, as applicable, shall be followed to avoid erosion and sedimentation during the construction process.

Commented [AG1]: Cade or Darrick, do you know the statute number?

Subd. 5. Before the City issues a building permit for a lot with a required wetland buffer strip, the lot owner shall install the wetland buffer monumentation required by Section 290.07 of this Chapter.

Subd. 6. Wetlands and their required buffer strips, as required by Section 290.05, shall be kept free of impervious surfaces excluding public roads and trails, and of any structures and features, including but not limited to fences and play equipment.

Subd. 7. Wetlands and their required buffer strips, as required by Section 290.05, shall not be used for filling or dumping.

Subd. 8. Wetlands and their required buffer strips, as required by Section 290.05, shall not be used for outside storage of household or personal items, lawn equipment, furniture, firewood, parts, yard waste, and the like.

Subd. 9. In cases where a site is not subject to the wetland buffer strips and setbacks required by Section 290.05, buildings, swimming pools, patios, decks, retaining walls, drive aisles, and parking lots shall not be located in the wetland.

#### **290.05. - Wetland Buffer Strips and Setbacks.**

Subd. 1. All lots of record created after January 3, 1991 and all properties with development or redevelopment projects received after [August 1, 2020] that would result in one acre or more of soil disturbance or that would result in one acre or more of additional impervious surface coverage to a developed site, shall provide and maintain a wetland buffer strip and structure setback abutting all wetlands.

Subd. 2. Buffer strip vegetation shall be established and maintained in accordance with the requirements of this Section. Except for removal of noxious weeds and nuisance or dead vegetation, wetland buffer strips shall not be disturbed, cut (mowed) or cultivated, without prior approval of a buffer restoration / management plan by the City. Buffer strips shall be identified within each lot by permanent monumentation approved by the City.

Subd. 3. For roadways that must be aligned either adjacent to or across wetlands and are subject to WCA replacement requirements, additional wetland filling to create a buffer strip shall not be required. Public trails that are intended to serve an interpretive function may also be exempted from the buffer strip requirement. All other roadways and trails shall meet the buffer strip standards established by this Section.

Subd. 4. If the area of the buffer strip has a preconstruction slope of 12 percent or greater, the buffer strip shall be at the applicable maximum width for the wetland

**Commented [AG2]:** Darrick/Cade. Please verify this information in 290.05. Do we need exceptional, high, medium and low or does the county use a numbering system we should use instead? Again, this is Plymouth and we are not sure of the proper language. Is there a spot we should add "you can build up to, but not in to drainage/utility easements?"

classification. The use of a meandering buffer strip to maintain a natural appearance is encouraged but not required in areas of flat topography.

Subd. 5. The required structure setback shall apply to all structures except those identified in Section 290.055 and roadways, driveways, parking lots, trails, and their related retaining walls and fences.

Subd. 6. Wetland buffer strips not required by this Section may be voluntarily created in conformance with the requirements of this Section concurrent with approval of a site plan, or in the absence of a site plan, upon approval of the City.

#### **290.055. - Encroachments Allowed into Required Setback and Buffer Strip Areas.**

Subd. 1. Fences may be located within a required structure setback area provided they are designed, constructed, and maintained so as to not obstruct the flow of storm water.

Subd. 2. Water quality ponds may encroach into required wetland buffer strip areas, provided that the amount of buffer strip encroached upon does not exceed 50 percent of the total area required for such ponding, and provided that the amount of buffer strip encroached upon does not exceed 50 percent of the total area required for buffering. These limitations may be exceeded where two-cell water quality ponding is provided.

#### **290.07 - Monumentation Required.**

A permanent wetland buffer monument shall be installed and maintained at each lot line where it crosses a wetland buffer strip, and where needed to indicate the contour of the buffer strip, with a maximum spacing of 100 feet.

#### **290.08 - Buffer Strip Vegetation Performance Standards.**

Subd. 1. Where acceptable natural vegetation exists in buffer strip areas, such vegetation shall be retained. A buffer strip has acceptable natural vegetation if it:

- (a) has a continuous, dense layer of perennial grasses that have been uncultivated or unbroken for at least five consecutive years, or
- (b) has an overstory of trees or shrubs with at least 80 percent canopy closure that have been uncultivated or unbroken for at least five consecutive years, or
- (c) contains a mixture of the plant communities described in (a) and (b) above, that have been uncultivated or unbroken for at least five consecutive years.

Subd. 2. Notwithstanding the performance standards outlined in Subd. 1 above, the City may determine existing buffer strip vegetation to be unacceptable if:

- (a) it is composed of undesirable plant species (including but not limited to reed canary grass, common buckthorn, purple loosestrife, leafy spurge or noxious weeds), or

- (b) it is lacking a layer of organic thatch or duff, or
- (c) has topography that tends to channelize the flow of surface runoff, or
- (d) for some other reason it is unlikely to retain nutrients and sediment.

Subd. 3. Where buffer strip areas, or a portion thereof, are not vegetated or have been cultivated or otherwise disturbed within five years of the permit application, such areas shall be re-planted and maintained according to each of the following standards:

- (a) The soil in wetland buffer strips shall be amended, as necessary, to ensure that the soil has an organic content of not less than ten percent and not more than 35 percent.
- (b) Buffer strips shall be planted with a Board of Water and Soil Resources (BWSR) approved seed mix containing 100 percent perennial native plant species, except for a one-time planting of an annual nurse or cover crop such as oats or rye.
- (c) The annual nurse or cover crop shall be applied at a rate of 20 pounds per acre.
- (d) Native shrubs may be substituted for forbs. Such shrubs may be bare root seedlings and shall be planted at a rate of 60 plants per acre. Shrubs shall be distributed to provide a natural appearance and shall not be planted in rows.
- (e) Any ground cover or shrub plantings installed in buffer strip areas are independent of landscaping requirements set forth elsewhere in the City Code and City policy.
- (f) Native prairie grasses and forbs shall be planted by a qualified contractor.
- (g) No fertilizer shall be used in establishing new buffer strips, except on highly disturbed sites when deemed necessary to establish acceptable buffer strip vegetation and then limited to amounts indicated by an accredited soil testing laboratory.
- (h) All seeded areas shall have a two-inch thick application of compost (Mn/DOT Grade 2 Section 3890) or be mulched immediately with clean straw at a rate of one and one-half tons per acre. Mulch shall be anchored with a disk or tackifier.
- (i) Buffer strips (both natural and created), shall be protected by silt fence during construction and the fence shall remain in place until the area crop is established.

Subd. 4. During the first five years after initial planting, the developer shall submit to the City an annual report documenting the progress for establishment of the buffer strip. The report shall include a map of the buffer strip location, a description of compliance with the performance standards, a description of activities completed within the past year, a description of activities planned for the upcoming year, a map of plant communities within the buffer strip boundary including square footage estimates of the areas of native plantings and invasive or non-native vegetation, and other information as may be requested by the City of Plymouth. Until such time as the buffer strip is accepted by the City, the developer shall be required to replant any buffer strip vegetation that does not survive. After the City has accepted the buffer strip, if the condition of the buffer strip area changes through natural processes not caused by the property owner, the owner shall not be required to re-establish the buffer strip area to meet the standards established in this subdivision.

#### **290.10 - Variances.**

Subd. 1. Requests for variances shall be made in accordance with the procedures and requirements set forth in Ordinance 199.

Subd. 2. Variances shall only be granted when the standards and criteria set forth in Ordinance 199, Section 20 have been met. Variances shall not be granted which would circumvent the intent and purposes of this subdivision.

#### 290.11. - Wetland Replacement Plans.

Subd. 1. Wetland replacement plan applications shall be submitted, reviewed, and considered in accordance with Minnesota Rules, Chapter 8420.

Subd. 2. Requests for approval of a wetland replacement plan application shall be submitted to the City. Cost of city time and materials expended in reviewing and processing the wetland replacement plan shall be charged against the cash escrow and credited to the city (applies to development projects). If, at any time, the balance in the cash escrow is depleted to less than ten percent of the originally required cash escrow amount, the applicant shall deposit additional funds in the cash escrow account as determined by the city. Any balance remaining in the cash escrow account upon completion of the review process shall be returned to the applicant after all claims and charges thereto have been deducted. City public works projects are exempt from the fee/escrow requirement.

Adopted by City Council 7/7/2020

Commented [AG3]: MARSHALL, ordinance number regarding variance.

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