

Lower Rum River Watershed Management Organization Wetland Protection Standards

Date of Adoption by LRRWMO

Effective Date

Rationale and Overview

Wetlands serve a variety of beneficial functions. Wetlands within the Lower Rum River Watershed Management Organization (LRRWMO) maintain water quality, recharge groundwater, provide wildlife habitat, control rates and volumes of stormwater discharge, reduce flooding, provide open space, and contribute to the area's desirable aesthetics. The roles of greatest interest to the LRRWMO include protecting water quality in downstream recreational waterbodies, groundwater recharge, and wildlife habitat. Major land use changes during development can have a detrimental effect on these functions. Therefore, regulating wetlands and the land uses around them are in the public interest. Applying these standards during major land use changes is in line with other local and state regulatory systems.

The LRRWMO Wetland Protection Standards apply only to projects disturbing more than one acre. They focus on the area within 16 feet of the wetland boundary. This area must be protected from disturbance and erosion during the construction process. After construction, restrictions within this area are similar to restrictions cities impose within drainage and utility easements. This area is usually within the drainage and utility easement so in most cases this imposes no new restrictions after construction.

These wetland standards also require that vegetation establishment at the conclusion of construction use native plant seeding in certain common spaces (outlots, city owned property, etc.) near wetlands and developed ponding areas (stormwater management areas). Vegetation establishment is already required by cities; the LRRWMO is requiring the use of native plants in certain areas because of the benefits to water quality and wildlife. It applies only to common spaces that are disturbed during the construction process. The extent of native plant seeding should follow the guidance in these wetland protection standards. Native plant seeding is not required in all areas. There are no restrictions on modifying or removing it at a later date.

These standards were developed by a Technical Advisory Committee including representation from each LRRWMO community, MN Department of Natural Resources, MN Pollution Control Agency, MN Board of Water and Soil Resources, Metropolitan Council, US Army Corps of Engineers, MN Department of Transportation, Anoka Conservation District, Anoka County Environmental Services, and the Builder's Association of the Twin Cities. These standards will be implemented through the LRRWMO permitting process and each LRRWMO city must adopt standards at least as protective.

Comment [t1]: HIMMER: We may still want to clarify this with the Board – what did they mean by wildlife habitat?
SCHURBON – Agreed, overall. But seems irrelevant for the wetland standards at this point. As written, these standards are pretty weak on wildlife habitat. There's pretty much only one direction they could go from here, and the cities have made it clear they don't want to go more rigorous/protective/onerous.

Comment [t2]: HIMMER -This will have to be discussed with the member communities & Board, as currently each City may allow something different and ordinances & policies will need to change for some.
SCHURBON – Exactly. The word "similar" is key.

Wetland Definition

For the purpose of these standards, wetlands:

- Are defined in MN Statutes section 103G.005, subdivision 19.
- Include public waters wetlands defined in MN Statutes section 103G.005, subdivision 15a.
- Do not include any areas created for the purpose of stormwater management.

Wetland Delineation

~~Projects with potential wetland impacts, as determined by the local government unit (LGU) administering WCA, are required to delineate all wetland boundaries, or portions thereof within the project area. Projects triggering these standards must delineate any wetlands, or portions of wetlands, within the project area.~~ Wetland delineations shall be conducted using methodology approved by the MN Wetland Conservation Act (1987 US Army Corps of Engineers Wetland Delineation Manual, along with any regional supplements, or other methodology approved by WCA in the future).

Comment [TW3]: SCHURBON - I think the sentence you inserted is from the stormwater standards – consistency is good, but the TAC specifically told me to change it.

Administration

These wetland protection standards will be administered by both the LRRWMO and member cities. The LRRWMO will apply these standards to their permitting program. Each city must adopt standards at least as protective as the LRRWMO standards in their local water plan and/or ordinances, and implement them.

Applicability

LRRWMO Wetland Protection Standards apply to:

- Projects that disturb/alter one acre or more, or are part of a common plan of development or sale that disturbs/alters one acre or more.

The following are exempt:

- Road reconstruction.
- Utility construction/reconstruction within road right-of-way.
- Agricultural operations >300 feet from the Rum River and not creating additional impervious surfaces.
- Gardens.
- Pole setting.
- Emergency activities immediately necessary for the protection of life, property, or natural resources.
- Whenever the LRRWMO Board determines the proposed project is not likely to impair attainment of the purpose and intent of these standards.

Comment [t4]: HIMMER - Are we going to administer this similar to the stormwater standards; projects will not be held to a higher adopted standard if the project specifics haven't changed but the wetland standards do?
SCHURBON – OK, I'll add this.

Projects exempt from LRRWMO Wetland Protection Standards must still comply with any applicable local, state, or federal requirements.

Note that projects involving wetland excavation, if disturbing/altering one acre or more, are subject to these standards.

Comment [t5]: HIMMER - If excavations or filling of wetlands is taking place wouldn't that be a WCA issue? Obviously construction buffers can't be put in place if impacts to the wetlands are occurring.
SCHURBON – Certain impact to wetlands, including some filling and certain excavation can occur under WCA.

Definitions:

A common plan of development or sale is defined as a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land disturbing activities may occur.

Project area is defined as the parcel(s) to which the permit would apply or the area encompassed by the common plan of development, whichever is greater.

Land disturbance is defined as activity that results in a change or alteration in the existing ground cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Road milling/overlay, demolition, and routine vegetation management activities will not be considered land disturbance.

Permit Application Materials

Any project to which these standards are applicable must submit a completed LRRWMO permit application and all materials requested within that application. LRRWMO permit materials are available on the LRRWMO website. Permits from other entities, such as the city, US Army Corps of Engineers, MN DNR, MN Pollution Control Agency, or others may also be necessary.

Permit Process and Reviews

Projects may require approvals/permits from both the LRRWMO and the city. The LRRWMO permit application must be submitted to the LRRWMO, not the city. LRRWMO permit materials are available on the LRRWMO website. Questions can be directed to the LRRWMO representative or city staff liaison to the LRRWMO for the city where the project will occur. These contacts are listed on the LRRWMO website with the permitting materials. The city and LRRWMO will coordinate their permit reviews; duplication in the review process will be minimized by a review checklist that all reviewers use.

Stormwater Discharge into Wetlands

Stormwater discharge into wetlands must comply with LRRWMO Stormwater Standards.

Temporary Wetland Protections During Construction

Areas within 16 feet of a wetland boundary must be protected from land grading and other disturbance during the construction process. The purpose is to prevent construction impacts to the wetland, such as erosion and vegetation removal. The area temporarily protected during construction:

- Must be no less than 16 feet wide from the wetland boundary.
- Must be present where ever land disturbance is occurring within 100 feet up-gradient of the wetland boundary.
- Must not be graded or disturbed.
- Must be demarcated by a properly installed heavy duty silt fence. Fiber logs or other continuous temporary erosion measures may be used if approved by the LRRWMO and/or the City. All erosion control measures must be installed and inspected prior to initiating any site disturbance activities. These materials must be in place throughout the construction process, including land grading and building.
- May be accomplished by installation of erosion control around the perimeter of land disturbance used to satisfy LRRWMO, city, or state erosion control rules provided it is consistent with the other specifications listed in this section.
- May be encroached upon for:
 - Activities associated with planting native vegetation or management to favor native vegetation. Encroachment for establishing turf grass is not allowed.

Comment [t6]: HIMMER - We may need to rethink this a little, as when builders are preparing for landscaping installation they typically remove the silt fence (and accumulated sediment) so they have a nice match point to the adjacent land. It seems strange that we would require them to landscape only to the construction buffer, and once that is established the silt fence can then be removed & they can then disturb (if they choose). My guess is that when they are installing the landscaping they will not want to accomplish it in 2 phases, but rather landscape everything to the limits they would like. Homeowners usually pay the builder to perform final landscaping, and if they want their entire yard sodded are they really going to have to wait and do it on their own when the builder's "construction work" is completed & established?
SCHURBON – Perhaps we can get more feedback on this as the councils and LR Bd review this. A couple things from TAC discussions that apply to this – (a) delineation is inherently imprecise, so 16 ft serves as a protective margin of error, (b) one goal is to start off the homeowner with the wetland edge ecologically intact, then they get to decide- may builders would disturb to the edge as their default.

Comment [t7]: See 5 above

- The installation of stormwater conveyances, such as outfalls, or grading necessary for hydrologic safeguards, such as emergency overflows.

If portions of a wetland are to be lawfully filled or drained during the construction process through a MN Wetland Conservation Act permit, the area of wetland protections shall be placed at that new wetland boundary. In this case it does not make sense to place the silt fence 16 feet from the **new-old** wetland boundary, because this would be within the area that is being filled or drained. Instead, the protections should be placed at the new wetland boundary. This applies only to the portion of the wetland edge where lawful wetland impact will occur during the construction process.

The provisions listed above apply until construction (including grading and building) is complete, the site is stabilized, and vegetation has been established in the project area.

Comment [t8]: See 5 above

Native Plant Seeding in Common Spaces at the Conclusion of Construction

Within common spaces, areas adjacent to wetlands that are disturbed through the construction process, **and ponding areas (stormwater management areas)** should be seeded with a MN Board of Water and Soil Resources (BWSR) native seed mix, **or approved equal**, which matches site conditions. Common spaces include outlots, areas transferred to city ownership, homeowners association common space, and similar. This seeding should be done as part of site stabilization following construction. Site preparation and seeding should be consistent with BWSR guidance.

Comment [TW9]: SCHURBON - BWSR and MNDOT have approved a dizzying array of mixes for many conditions. Most nurseries mix specifically for this. The only reason someone would try to use something else is if they were trying to get around the intent of the approved mixes (stability, diversity, local ecotype, etc).

The extent of seeding around wetlands shall be reviewed by the LRRWMO Board and determined on a case by case basis. Decision making will be based on the following guidance:

- All areas that will be idle for one year or more and are within 100 feet of a wetland boundary should be seeded with the native plant mix.
- Seeding all areas that will be idle for one year or more, even if more distant from the wetland, is encouraged for wildlife benefits, lower long-term maintenance, and aesthetics. Native plant seeding adjacent to stormwater management areas is also **encouraged**.
- Areas where the city or land manager plans an active land use inconsistent with unmowed vegetation can be excluded from the native plant seeding requirement. For example, if an area is planned to be developed into a playground within one year, native plant seeding need not occur.
- **Seeding should only occur within the 16 foot wide area around the wetland that was left undisturbed during construction if it is dominated by invasive or noxious weeds. In all other cases this area should remain undisturbed.**

Comment [t10]: HIMMER - Encouraged or required?
SCHURBON – encouraged.

Comment [t11]: SCHURBON - Are we now requiring native seed if the area is dominated by invasives?
SCHURBON – NO. This is “guidance” to be considered on a “case by case basis.”

Comment [t12]: Here’s where each City may have different allowances within D&U esmts. & will probably be the biggest issue associated with these rules.

Comment [t13]: Are currently allowed in D&U esmts in Ramsey as long as they do not impede/alter drainage patterns.
SCHURBON – As Berkowitz said – there may be some minor changes each city make need to make.

Comment [t14]: See 11 above

Comment [t15]: Are currently not permitted (unless structural), so how do we make sure they’re not constructed in esmts. (knee walls, landscape beds, etc.)?
SCHURBON- The same could be said for fertilizing or yard waste disposal. As Full said, this comes often just comes down to making residents aware, as is good practice to make them aware of all things related to the DU easement. Then enforce when receive citizen complaints. No need to patrol.

The LRRWMO does not require this native plant seeding to be maintained. Native plants are favored in areas near wetlands and on idle lands because of their benefits to wildlife and water quality. However if the desired use or landscaping of the area changes, the vegetation may be replaced without any restrictions or penalties imposed by the LRRWMO.

These provisions do not apply to private properties; they only apply to common spaces.

Wetland Protections After Construction

Following construction, site stabilization, and vegetation establishment **certain activities shall be prohibited within 16 feet of the wetland edge.** Activities prohibited include:

- Structures, including **fences**.
- **Paving**, except projects with a public purpose such as public trails.
- **Retaining walls**.

- Filling, dumping, or yard waste disposal.
- **Fertilization.**
- Septic systems.

Comment [t16]: How do you enforce/prove whether this is occurring? What if the member community is already restricting certain types of fertilizers Citywide?

If portions of a wetland have been lawfully impacted (filled, drained, etc) during the construction process through a MN Wetland Conservation Act permit, the 16 foot area of wetland protections shall be measured from the new, post-impact wetland boundary.

Relationship to Drainage and Utility Easement

The LRRWMO wetland protections after construction are similar to restrictions cities impose within drainage and utility easements. In most cases the drainage and utility easement (defined by the 100 year flood elevation) extends more than 16 feet from the wetland boundary, so in most cases **these** LRRWMO wetland protections **standards** impose no **new restrictions** after construction.

Comment [t17]: This temporary construction buffer should not be construed as one step in the ultimate goal of permanent vegetative buffers. When the next generation plan comes forward there shouldn't be any requirement to include permanent buffers (unless enacted by State statutes). I don't want to hear the argument that we now have the easements and restrictions in place, so therefore this isn't an additional taking. **NO CREEP IN SUBSEQUENT PLANS!**

Occasionally a wetland boundary may be outside of the drainage and utility easement. The 16 foot wide area of LRRWMO wetland protections would be outside of the normal drainage and utility easement. In these cases, the drainage and utility easement should be expanded to encompass the area within 16 feet from the wetland edge.

Comment [t18]: See 10 above

Variations

A variance may be granted in the following circumstances:

- For public road projects whenever the road right of way does not provide sufficient space to implement the wetland protections.
- Whenever the permitting authority determines substitute activities will be used that will provide the same level of protection.
- **Other factors**, as determined by the permitting authority.

Comment [t19]: See 5 above. Is there a way we can work that concern in here?

Performance Surety

A performance surety **may-will** be collected to ensure the proper execution of wetland protection measures. The surety may be used to correct any deficiencies. Performance sureties shall be collected by the city, except in cases of wetland mitigation when the LRRWMO will collect the surety. Any surety shall be returned at completion of the construction process and proper execution of wetland protection measures.

Comment [t20]: I'm guessing at the City level this will be in the form of a grading/erosion control security under a building permit and/or development agreement.

The performance surety will be waived for public projects.

LRRWMO TO DO LIST:

- Update the LRRWMO permit application, as necessary, to incorporate these wetland standards.
- Develop permit review checklist

CITY TO DO LIST:

- Update ordinances and other control measures for consistency with these standards.
- Include wetland standards in the permit review checklist that is being prepared for all LRRWMO/City permit reviews.
- Update development agreements to ensure the appropriate surety's are collected.