

**SECTION 11.07:
WETLAND BUFFER ORDINANCE**

11.07. Wetland Buffer Ordinance

1.0 Council Findings, Purpose, and Means.

- A. Findings.** The City Council finds that wetlands within the City, as part of the natural ecosystem, are critical to the present and future health, safety, and general welfare of the land, wildlife, and people within the City; that these wetlands conserve surface waters, provide floodwater retention and improve water quality for our lakes and streams. Further, these wetlands improve subsoil moisture and serve to recharge the large aquifers critical to the community.

The council recognizes that wetland health is directly related to the surrounding upland characteristics. Natural vegetation around wetlands is integral to maintaining the water quality and ecological functions these resources provide. Vegetative buffers reduce sedimentation to these water features and aid in the stabilization of the soils preventing erosion. They have also been shown to moderate water level fluctuations during storm events and they provide essential wildlife habitat.

The council recognizes that wetlands and their natural functions, if properly maintained, provide important ecological, educational, and recreational assets as well as enhancing property values and conserving the natural beauty of the landscape.

The council recognizes that wetland protection and mitigation requirements are provided for according to the Wetland Conservation Act as administered by Valley Branch Watershed District and Rice Creek Watershed District. Further protections may be afforded under Section 404 of the Clean Water Act as administered by the United States Corps of Engineers.

- B. Purpose.** The purpose of this Section is to preserve wetlands in a natural state, provide retention and sedimentation control areas for surface waters; to regulate the use of adjacent areas to protect their natural functions; to prevent or minimize soil erosion, sedimentation or eutrophication; to prevent loss of aquatic organisms, wildlife and vegetation; to protect surface and ground water supplies from the danger of drought, pollution or mismanagement; to secure safety from local flooding; to reduce the financial burdens associated with occupancy or use of areas subject to periodic flooding; to enhance and preserve water quality and natural drainage way as opposed to underground conveyance systems.
- C. Means.** The City intends to implement this Section through the following means:

1. Specify and enforce development regulations that will ensure protection of designated wetland, the adjoining buffers and their functions.
2. Establish a management classification system to provide means for reasonable use of land while maintaining basic functions and values of wetlands and the adjoining upland buffer areas.

2.0 General Provisions and Definitions.

- A. Statutory Authorization.** The City of Mahtomedi has authority under *Minnesota Statutes Chapter 462* to regulate development of wetlands. This Ordinance, as well as *Chapter 103 of Minnesota Statutes* and *Section 404 of the Federal Clean Water Act* also regulates the development of wetlands.
- B. Scope.** The required wetland buffer shall overlay the established zoning district so that any parcel of land requiring a buffer shall also lie in one or more of the established zoning districts. Lands requiring a buffer shall be subject to the requirements established by other applicable ordinances and regulations of the City. Within each wetland and the accompanying buffer, all uses shall be permitted in accordance with the regulations for the underlying zoning district, provided that such uses must also satisfy the additional requirements of this Ordinance and all state and federal regulations.

Wetland buffers established by this Ordinance apply to all wetlands found to meet the jurisdictional criteria as defined in *Subdivision 2.0, H: Definitions* below.

- C. Responsibility.** Compliance with the conditions or the provisions of this Ordinance shall not relieve any person from any responsibility otherwise imposed by law for damages to person or party, nor shall the compliance with these requirements hereunder serve to impose any liability on the municipality or its officers or employees for injury or damage to persons or property. Approval issued pursuant to this Ordinance shall not relieve the applicant of the responsibility of complying with any other requirement established by law, regulations or ordinance.
- D. Severability.** If any part of this Ordinance is held to be unconstitutional or invalid by a court of jurisdiction, the remainder of the Ordinance shall not be affected thereby.
- E. Enforcement.** Any violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions established by connection with grants of variances) shall constitute a misdemeanor and shall be punishable by law. Any person, who in violation of this Ordinance, alters, changes or modified any wetland shall restore them to the original condition or reimburse the City for the cost of restoration.
- F. Greater Restrictions.** It is not the intent of this Section to repeal or abrogate any existing easement, covenant or deed restrictions; however, where this Section imposes greater restrictions, the provisions of this Section shall prevail.
- G. Non – conforming Structures and / or Parcels.** Any structure situated on an existing parcel of record, as of the date of enactment of this Ordinance, that does not meet the requirements of this Ordinance shall be considered a legal non – conforming use. The non – conforming use may not be expanded or rebuilt without following the provisions of this Section.
- H. Definitions.** (Terms not defined in this Section shall have the meaning customarily assigned to them as a matter of general usage).

A

Alteration. Any change or modification of land, water, vegetation or existing structure in a wetland or wetland buffer.

B

Buffer Averaging. Practice of allowing a variable width wetland buffer around the wetland where the total wetland buffer area is equal to or greater than the wetland buffer area coincidental to the required wetland buffer for the management classification. The wetland buffer width shall never be less than the minimum wetland buffer for the Management Classification applicable to the wetland.

D

Development. The construction, installation, or alteration of any structure; the extraction, filling, clearing, or other alteration of land or vegetation; the change of cross section of any water body or watercourse; the subdivision of land per the Municipal Code.

I

Invasive Species. Species, as defined and listed by the Minnesota Department of Natural Resources – Ecological Services in accordance with *Minnesota Rule 6216.0250*.

L

Lot Area. The total horizontal area within the lot lines of the lot less that area of the lot which is below the ordinary high water level of an adjacent lake or the total horizontal area within the lot lines of the lot less that area of the lot within wetlands as determined by the City Engineer.

M

MNRAM. The Minnesota Routine Assessment Method for Evaluating Wetland Functions – Version 3.0 or the currently accepted version. A qualitative method developed by the Minnesota Interagency Wetland Group.

Management Classification. A relative classification scheme rating wetland functions and values based upon MNRAM which determines what uses and protections will be afforded to a wetland.

Minimum Wetland Buffer. An area immediately adjoining and / or surrounding a wetland that is to remain undisturbed at all times during the construction of the property. In addition, under no circumstances shall the wetland buffer be any less than the minimum buffer for the appropriate management classification.

N

Native Vegetation. Species indigenous to an area.

Noxious Weeds. An annual, biennial, or perennial plant that the Commissioner of Agriculture designates to be injurious to public health, the environment, public roads, crops, livestock, or other property as defined in the draft version of the ‘*New Minnesota Noxious Weeds Law*’ *Minnesota Statutes Chapter 18, Section 18.75 to 18.88*. These shall include all noxious plants listed by the Minnesota Department of Agriculture – Noxious Weeds Program.

U

Unmaintained. As it pertains to this rule it means no mowing, grading construction of permanent structures, or disturbances of the soils or vegetation except as needed to establish native vegetation.

V

Variance. A procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations.

W

Wetland. Any wetland as defined by *Minnesota Statutes, Section 103G.005, Subdivision 19*; and any public waters wetland as defined under *Minnesota Statutes, Section 103.G.005, Subdivision 15a, or 103G.201*, as shown on the public water inventory maps. Generally speaking, those areas inundated or saturated for a sufficient duration to support hydrophytic vegetation and hydric soils.

Wetland Drainage Areas. That area tributary to the wetland.

Wetland Buffer. The area adjacent to the wetland consisting of natural, non – invasive, permanently undisturbed, vegetated ground cover adjoining and / or surrounding a wetland. The wetland buffer is to be measured from the delineated wetland boundary.

3.0 Wetland Management Classification.

A. Regulations. Except as provided in Subsection 4.4, no alterations or development of any kind shall be allowed within the wetland buffer without first having submitted and received approval from the City for a site plan (see *Section 11.01, Subdivision 8.11: Site Plan*) or preliminary plat (see *Section 11.02, Subdivision 7 (A): Preliminary Plat*).

B. Modifications, Elimination. A wetland Management Classification may be modified or eliminated by a simple majority vote of a quorum of the City Council after notice and a public hearing as delineated in the zoning amendment procedures set forth in the City's Zoning Code.

Wetland Management Classification may not be modified unless it can be shown that the original MNRAM designation is in error or the conditions have changed by activities or circumstances that are not in violation of this Ordinance, the *Wetland Conservation Act*, or *Section 404 of the Clean Water Act*. When originating, modifying or removing a wetland, the Council shall use the criteria and methods outlined in the *1987 United States Army Corp of Engineers Wetland Delineation Manual ('87 corps Manual)*.

C. Variance. An application for variance from the wetland buffer requirements contained herein shall be processed after notice as delineated in the variance procedures set forth in the City's Zoning Code. In addition to normal notice requirements of the variance process contained in the City's Zoning Code, written notice of the wetland buffer variance along with a description of the scope of proposed project shall be submitted to the relevant watershed district (Valley Branch or Rice Creek Watershed District).

Prior to granting a variance from this Ordinance, the City Council must find that the variance:

1. Will not result in any detriment to surface or groundwater resources which provide aquifer recharge.
2. Will not increase the financial burdens on the community by increasing overflow of water onto other areas.
3. Is consistent with City's land use plan and planning objectives and will not increase or cause danger to life or property.
4. Is consistent with the objectives of encouraging land use compatible with the preservation of the natural land forms, existing trees, native vegetation and wetlands within the City.
5. Will not include development of land and water areas essential to the storage of surface water.
6. Will not result in any development within the minimum allowable buffer.

D. Density and Setback Standards. Notwithstanding the provisions of the density tables of the City Zoning Code, all lots which contain a wetland or are within seventy – five (75) feet of a wetland must conform to the following requirements:

1. Minimum building setbacks. Minimum building setbacks shall conform to the management classification applicable to the wetland. No structure shall be allowed within the minimum buffer area.
2. Minimum septic and soils absorption system setback. The minimum septic and soils absorption system setback shall be one hundred (100) feet from the wetland boundary.
3. Lowest floor elevation. The lowest floor elevation shall be three (3) feet above the wetland boundary and two (2) feet above the elevation for the critical one hundred (100) year frequency 24 – hour duration flood level event.

4.0 Wetland Buffer Standards.

A. General.

1. Except as provided in *Subdivision 4.0, D: Activities / Exemptions Not Requiring Council Approval*, no alterations or development of any kind shall be allowed within a wetland buffer without first having submitted a preliminary plat or site plan for review and approval from the City.
2. The applicant shall have the burden of establishing that the proposed use or activity complies with the purposes, intent and other provisions of this Ordinance.
3. The granting of preliminary plat or site plan approval does not abrogate the applicant's need to obtain permits required by other local, state or federal agencies.

B. Performance Standards. Prior to preliminary plat or site plan approval, the City Council must find that the following conditions will apply within the Wetland Buffer:

1. Any alteration shall minimize the impact on vegetation and shall not reduce the existing wildlife habitat value of a wetland buffer.
2. Any alteration shall not have a significantly adverse effect upon the ecological and hydrological characteristics of the wetland buffer; in particular, destruction of existing trees, upland vegetation and hydrophytic vegetation.
3. Erosion control measures shall be put in place on all lots with wetland buffers prior to disturbance of soil, including building permits, shall contain provisions which specify temporary as well as permanent erosion control measures.
4. Any alteration shall not cause a decrease in water quality of the wetland.
5. Only fill free of chemical pollutants and organic waste may be used.
6. All on – land or in – ground sewage disposal systems shall meet the criteria set out in *Minnesota Rule 6, MCAR 4.8040, "Individual Sewage Treatment System Standard"*.
7. Stormwater runoff from a development may be directed to a wetland only when substantially free of sediment, debris and chemical pollutants and in compliance with the City's Municipal Separate Stormsewer permit and applicable Minnesota Pollution Control Agency Construction Activity permit.
8. Stormwater ponds may be placed within the wetland buffer provided the following conditions are met:
 - a. No practicable alternative pond location is available.
 - b. The pond is planted with native hydrophytic vegetation consistent with the adjacent wetland and the 2003 (or most current version) Minnesota Pollution Control Agency publication *Plants for Stormwater Design*.
 - c. Side slopes are 5:1 or shallower above the normal water level (NWL) where disturbed by grading activity.
 - d. The sum of the distance between the wetland boundary and the buffer edge less that portion below the normal water level of the pond is at least equal to the minimum buffer allowed.
 - e. Where site characteristics allow, discharge to the wetland should employ overland conveyance through a vegetated swale or saddle as opposed to a pipe outfall.

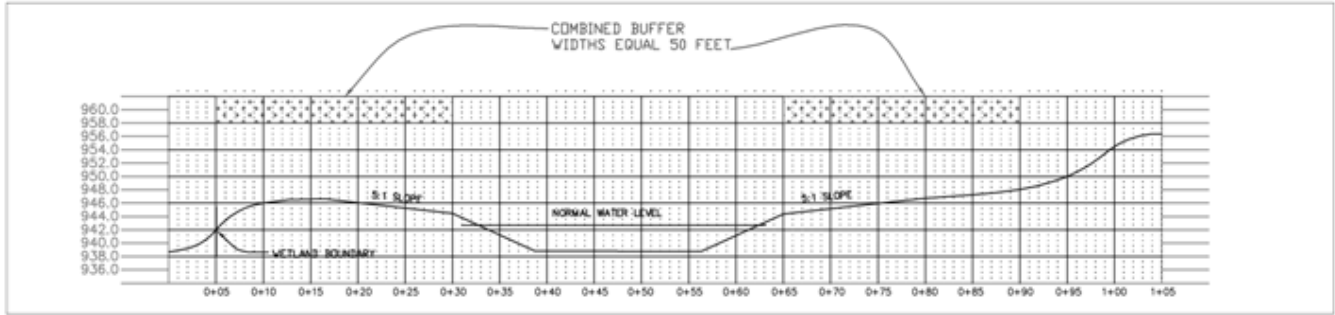


Figure 4.0 –A: Vertical Profile of Stormwater Pond within Wetland Buffer

9. All necessary approvals shall be obtained from applicable local, state and federal agencies.
10. The width of a wetland buffer may be reduced the minimum allowable wetland buffer for the wetland management classification of the wetland (*see Table 4.0-1: Performance Standards for Management Classifications*) as determined through a MNRAM evaluation so long as the overall wetland buffer area is equal to the wetland buffer area coincidental to the average wetland buffer width for the wetland management classification.

C. Activities Requiring Council Approval. The following activities shall not be allowed within a wetland buffer without first having submitted a preliminary plat or site plan to the City for review and approval:

1. Activities which alter or remove soils or vegetation, including but not limited to clearing, digging, dredging, draining or filling except as provided by *Subdivision 4.0, D: Activities / Exemptions Not Requiring Council Approval*.
2. Alterations of any embankment, ponding area, or ponding capacity.
3. Disposal or storage of man – made materials or equipment.
4. Disposal or storage or waste materials including, but not limited to, yard waste and demolition debris.
5. Alterations performed during the breeding season of waterfowl or fish spawning season unless it is determined by the City that these elements are not present.
6. Installation of essential services, i.e. roads, sanitary sewer, etc.
7. Construction or alteration of any building and or any structure or impervious installation, such as a gazebo or patio.

D. Activities / Exemptions Not Requiring Council Approval. The following activities may be undertaken within the Wetland Buffer without Council approval:

1. Maintenance of yards which existed prior to the adoption of this Ordinance with the provision that no additional vegetation be removed mowed or altered.
2. New planting and pruning of native shrubs and trees.
3. Removal of trees, limbs, brush, branches, that are dead, diseased, or pose safety hazards.
4. Non – chemical removal of state certified noxious weeds also within the wetland.
5. Construction or installation of any structure or pervious material within the Wetland Buffer, such as a fence or birdhouse, which would not generate stormwater runoff exceeding natural conditions or result in the removal of native vegetation over an area not greater than ten (10) square feet.

6. Emergency work to preserve life or property; repairs or maintenance of any lawful use of land existing on the date of adoption of this Ordinance.
7. Any activity within a Wetland Buffer contiguous with a wetland with a surface area equal to or less than the area of wetland impact allowed without replacement as *de minimis* under the Wetland Conservation Act.

E. Submittal, Issuance of Approval. The following materials shall be submitted to the City by the owner or owners of the property and shall be filed with the City Administrator or other Authorized Agent. All applications shall be accompanied by the prescribed administrative fee unless waived by the City Administrator, and shall include the following information:

1. Required Submittals. The following shall be submitted with a preliminary plat or site plan submittal:
 - a. A narrative describing the proposed alterations.
 - b. Name and address of the developer and / or property owner.
 - c. Legal description of the site with map showing the location, existing structure and proposed alteration.
 - d. A topographic map and soil survey as required by the City's subdivision ordinance.
 - e. Information on existing drainage and vegetation within the site and tributary to the site.
 - f. Time schedule for commencement and completion of the project.
 - g. The applicant shall determine whether any wetlands exist on the subject property. The boundary of these wetlands shall be delineated according to the practices described in the *US Army Corps of Engineers 1987 Wetland Delineation Manual*, except as stated in 6.2 paragraph 6, and the applicant shall provide the following documentation with their preliminary plat or site plan submittal:
 - (1) A map showing the delineated wetland boundary.
 - (2) A wetland delineation report describing the methodology and conclusions.
 - (3) Species composition and percent area cover of the existing wetland buffer area.
 - (4) An electronic copy of the delineated wetland boundary and wetland buffer location in AutoCAD or ArcMap format on Washington County Coordinates may be required in addition to items 1-3 above.
 - h. The applicant shall not be required to delineate wetlands on adjoining properties but must provide a good faith estimate of the wetland boundary based upon all practicably obtainable information, including but not limited to National Wetland Inventory Map, Minnesota Department of Natural Resources Public Water Inventory, aerial photography, Washington County Soil Survey, and previously performed wetland delineations, for those wetlands located within one hundred (100) feet of the subject property.
 - i. A MNRAM 3.0 or equivalent if one has not already been performed or approved by the City. This MNRAM shall be performed by a qualified wetland professional or ecologist.
 - j. Other engineering data and information as may be required in the Subdivision Section of the City Ordinance or by the City Administrator or other Authorized Agent.
 - k. A detailed vegetation management plan including seed mix composition, schedule of planting and maintenance and performance standards.

1. The applicant is strongly encouraged to participate in a pre – application meeting with the Rice Creek Watershed District or Valley Branch Watershed District, whichever body has administrative responsibility for the Wetland Conservation Act.
2. When a wetland buffer is required, the applicant shall, as a condition of the preliminary plat or site plan approval submits the following:
 - a. A drainage and utility easement for protection of approved wetland buffer including a description of the wetland and buffer boundaries and prohibited activities within the buffer as set forth in *Subdivision 4.0, C: Activities Requiring Council Approval* of this Section;
 - b. Assurance, in writing, that the approved easement will be filed with Washington County for record and documentation thereof will be provided to the City.
 - c. A drawing showing monumentation at each lot line where it intersects the wetland buffer with a maximum spacing of two hundred (200) feet of wetland edge. The proposed monumentation shall be submitted to the City for review and approval.
3. Application Review Process:
 - a. Review. The City Administrator or other Authorized Agent shall forward copies of an application for alteration or development within a wetland buffer (as may be approved) pursuant to this *Subdivision 4.0*) to the Planning Commission and / or the City Council for review upon receipt of all necessary information. The City Administrator shall also forward copies of available application materials for alteration or development within a wetland buffer (as may be approved pursuant to this *Subdivision 4.0*) to the Planning Commission for the Planning Commission’s review and recommendation regarding associated preliminary plats / minor subdivisions and / or regarding associated site plans required by the City’s Zoning Code. The City Council may complete a review and process (i.e. approve or deny) an application for alteration or development within a wetland buffer (as may be approved pursuant to this *Subdivision 4.0*) without the Planning Commission’s review and recommendations.
 - b. Notices. A notice describing the property and the request (as may be approved pursuant to this *Subdivision 4.0*) must be mailed to the property owners within one hundred (100) feet of the impacted wetland at least five (5) days before the initial Planning Commission or City Council meeting at which time the request is to be considered. Failure of the property owners to receive the notice shall not invalidate the proceedings.

F. Wetland Buffers. Permanently vegetated buffers, free of noxious weeds or invasive plants, shall be established around all wetlands according to the management classification as determined by the performance of a MNRAM and *Table 4.0-1: Performance Standards for Management Classifications* and as measured from the delineated wetland boundary.

G. Standards. The following standards apply to development on all lands within the City of Mahtomedi that contain or abut a wetland.

1. In the event that vegetation has been disturbed, the area shall be seeded with native BWSR or MNDOT seed mix or other plantings approved by the City and have at least seventy percent (70%) cover by area prior to removal of erosion control measures.
2. For any parcel created or redeveloped after the effective date of this rule, a wetland buffer shall be established and maintained around the perimeter of all wetlands. Wetland buffers shall be comprised of native vegetation free of noxious weeds or invasive plants.
3. Wetland buffers shall be comprised of native vegetation free of noxious weeds or invasive plants.

4. The wetland buffer provision shall not apply to any legal non – conforming use as defined in *Subdivision 2.0, G: Non-conforming Structures and / or Parcels*. The City strongly encourages the establishment of wetland buffers even when not required.
5. The width of wetland buffers shall be determined based upon the findings of MNRAM version 3.0 or equivalent as shown in *Table 4.0 -1: Performance Standards for Management Classifications*. Those wetlands for which the City has performed a MNRAM, that MNRAM is to be used for the purposes of Wetland Management Classification.
6. In the event that a MNRAM has not been performed by the City, a MNRAM must be performed by a qualified wetland professional, at the applicants expense, within the growing season or as approved by the City, and provide the results with their preliminary plat or site plan submittal for City review and concurrence. The applicant is encouraged to retain the services of a wetland professional whom has successfully completed the Wetland Delineation Certification Program administered by the University of Minnesota.
7. Each wetland shall be placed into the appropriate Management Classification based upon the highest rated Functional Index Group for the wetland as shown in *Table 4.0 – 1: Performance Standards for Management Classifications*.
8. The width of a wetland buffer may be reduced to the minimum allowable wetland buffer for the wetland management classification of the wetland as determined through a MNRAM evaluation so long as the overall wetland buffer area is equal to the wetland buffer area coincidental to the average wetland buffer width for the wetland management classification (see *Figure 4.0-B: Wetland Buffer Averaging and Monument Placement* and *Table 4.0-1: Performance Standards for Management Classifications*).

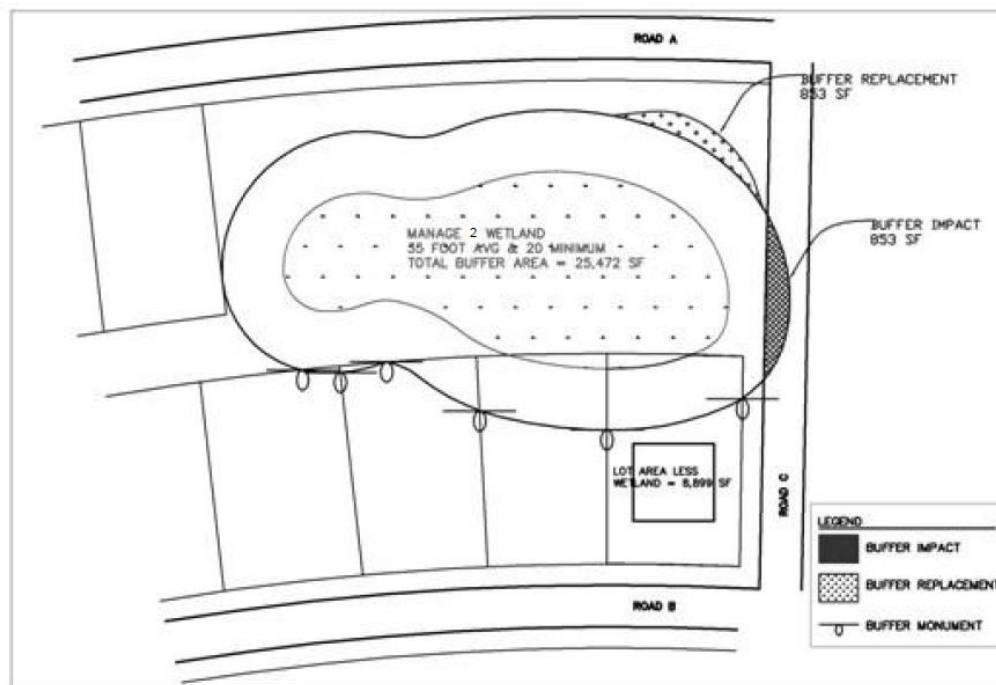


Figure 4.0-B: Wetland Buffer Averaging and Monument Placement

9. Buffer requirements shall comply with *Table 4.0-1: Performance Standards for Management Classifications*.

Table 4.0-1: Management Classifications and Buffer Widths		
Management Classification	Management Strategy	Buffer Requirement
Preserve	Maintain wetlands existing functions and values. Makes considerable effort to avoid all impacts.	75 foot average buffer width 50 foot minimum buffer width
Manage 1	Maintain wetlands existing functions and values. Make considerable effort to avoid all impacts.	50 foot average buffer width 30 foot minimum buffer width
Manage 2	Maintain wetland footprint and seek to improve biological diversity / integrity. Improve other function when possible.	35 foot average buffer width 20 foot minimum buffer width
Manage 3	Consider for restoration or enhancement.	25 foot average buffer width 16.5 foot minimum buffer width

H. Restrictions. Land use within a wetland buffer shall be subject to the following restrictions:

1. Wetland buffer vegetation shall not be cropped, cultivated, hayed, mowed, fertilized, subject to the placement of mulch or yard waste or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, such as actions to address disease or invasive and noxious species.
2. Wetland buffers may be temporarily disturbed for the placement or maintenance of buried utilities when permitted by the City.
3. No new structure or hardcover may be placed within a wetland buffer except as listed in *Subdivision 4.0, D: Activities / Exemptions Not Requiring Council Approval*.
4. No fill, debris or other materials may be placed within the wetland buffer except as listed in *Subdivision 4.0, D: Activities / Exemptions Not Requiring Council Approval*.

I. Replacement Criteria. Wetland sequencing and replacement shall be consistent with the *Wetland Conservation Act and Section 404 of the Clean Water Act* as administered by the Valley Branch Watershed District, the Rice Creek Watershed District and the United States Army Corp of Engineers.

1. A buffer shall be established around all replacement wetlands consistent with that required for a Manage 1.