
LOCAL AND REGIONAL LAWS

Note: Numerous state laws affecting wetlands are administered by local governments.

METROPOLITAN SURFACE WATER MANAGEMENT ACT (Minn. Stat. § 103B.201 to 103B.251 and Minn. R. 8410)

The overall framework for water management (including wetlands) at the local level can be found in two acts passed by the Minnesota Legislature in the 1980s, the Metropolitan Surface Water Management Act and the Comprehensive Local Water Management Act. Regional water planning based upon watersheds, is mandated in a separate statute. In addition to state mandates, local governments may establish their own regulations to further protect land and water resources.

The Metropolitan Surface Water Management Act was enacted in 1982 to require planning for surface water management throughout the metropolitan area and set up a governmental framework to achieve it.

The Act caused the formation of 46 watershed management organizations (WMOs), of which ten were existing watershed districts and 36 were created by joint power agreements between cities and townships. The WMOs must formulate and adopt comprehensive plans to manage water resources. After adopting a watershed plan, cities and towns within the watershed must prepare local water management plans consistent with the WMO plan and implement the plans through land use controls.

Recent amendments to the Act require that the water management plans contain strict wetland protections, consistent with the Wetlands Conservation Act and conforming to rules adopted by the Board of Water and Soil Resources (BWSR). BWSR adopted Minn. R. 8410 (effective August 1, 1992) which will guide development of revised water management plans containing wetland protections.

Citizens can use a water management plan as a basis to challenge planned development and wetland alterations that do not conform to the plan. Contact your city hall or town manager to find out which watershed management organization has jurisdiction in your area. Citizens are also encouraged to seek appointments to advisory committees which most water management organizations use to help establish policies carried out in their watershed plans.

COMPREHENSIVE LOCAL WATER MANAGEMENT ACT (Minn. Stat. § 110B, recodified as 103B.301-103B.355)

The Comprehensive Local Water Management Act is similar to the Metropolitan Watershed Management Act (see discussion above) but operates in Greater Minnesota. The Act is implemented by counties which must formulate comprehensive water management plans. A water management plan can be used as a basis for challenging planned developments or wetland alterations that are not in conformance with the plan.

WATERSHED PLANS AND REGULATIONS (Minn. Stat. 103D and local watershed legislation)

Watershed plans and regulations are implemented by watershed districts. Watershed districts are special purpose local units of government whose boundaries follow those of a natural watershed. A watershed is an area of land in which all water drains into one outlet. There are 41 watershed districts in Minnesota.

Watershed districts are established under the authority of the Minnesota Watershed Act, Minn. Stat. § 103D. The Act empowers districts to regulate activities affecting water resources, develop long-range plans, acquire property rights, construct and finance improvement projects, and adopt water management rules. They may develop and maintain detailed surveys and hydrological data that can be helpful in opposing alterations of wetlands.

The focus of each watershed district, including its interest in wetlands, varies depending on the specific water issues in the district. A few watershed districts, such as the Valley Branch Watershed District, have adopted regulations for wetland protection.

Each watershed district is governed by a board of managers appointed by the board of county commissioners. Watershed district meetings are open to the public. Violations of district regulations can be enforced through the civil or criminal process.

Contact the state Board of Water and Soil Resources to determine the jurisdiction of a particular watershed district. Then contact the applicable watershed district directly for more information about its rules and regulations and scheduled meetings. The Board of Water and Soil Resources can be reached at (612) 296-3767.

SHORELAND AND FLOODPLAIN ORDINANCES (Minn. Stat. § 103F.201 to 103F.221 and Minn. Stat. § 103F.101 to 103F.165; and local ordinances)

Purpose: Shoreland and floodplain ordinances set standards to guide development in shoreland and floodplain areas for the purpose of preserving and enhancing water and land resources, and reducing flood damage. The Minnesota shoreland and floodplain management statutes and rules set minimum standards that local governments must incorporate in their ordinances.

Waterbodies Covered: Local ordinances define shorelands and floodplains, though with some differences. In general, shorelands apply to the shores of public waters, which do not nearly include wetlands. Floodplains are those lands adjoining a watercourse that are prone to flood. Local ordinances may adopt official maps that specify floodplain and shoreland boundaries, but citizens (including developers) often have the right to contest the designated boundaries.

Activities Regulated: Shoreland management ordinances cover a wide variety of activities, including grading, filling, removal of natural vegetation, placement of structures, lot sizes, and

setbacks. Floodplain management ordinances limit development to structures of a type that will suffer little from flood damage.

Responsible Agencies: Counties and cities are required to adopt and enforce shoreland and floodplain management ordinances. The Department of Natural Resources may have some review and approval authority. Contact local planning commissions, building codes officials, or city engineers for more information.

Decision Making Criteria: Shoreland and floodplain ordinances contain a variety of decision-making criteria, some mandatory and others discretionary. According to the state's minimum guidelines for shoreland regulation, grading and filling in any type 2 through 8 wetlands must be evaluated by local officials in terms of the impact on storage of surface runoff, fish and wildlife habitat, sediment and pollutant trapping and retention, and other factors. Lots that are created through subdivision in shoreland areas should be suitable for their proposed use with minimal alteration, and local governments should consider the existence of wetlands in their suitability analysis.

Public Role: Citizens should contact directly the local officials responsible for issuing permits for alterations or construction in shoreland and floodplain areas. Often, appeal of a local official's decision to a planning commission or city council is possible. Public hearings may be required, prior to issuance of a permit, for variances from the generally permitted land uses.

Enforcement: Alteration of a floodplain or shoreland in violation of a local ordinance or permit may be halted by the local government through legal action, and restoration may be required. The responsible party may be prosecuted criminally for a misdemeanor. Usually, a city or county zoning officer or building codes officer will bring a suspected violation to the attention of the city or county attorney who is responsible for prosecution. However, any citizen can bring a suspected violation to the attention of a building codes officer or city or county attorney as well.

DRAINAGE CODE (Minn. Stat. § 103E)

Purpose: Drainage laws were first written in Minnesota in the early 1990's. Their purpose was to establish drainage systems (often known as drainage ditches) in order to convert wet areas to other uses, primarily agricultural. The current drainage code provides a process for the construction, improvement, and repair of drainage systems. Although often referred to as "public" drainage systems, the systems are actually implemented and paid for by private landowners with public oversight.

Waterbodies Covered: The drainage code provides a procedure to construct and maintain drainage systems. It does not designate specific bodies of water or wetlands as protected waterbodies. However, drainage proponents still must adhere to federal, state, and local laws that protect wetlands.

Activities Regulated: The drainage code applies when a group of landowners decide that they

want to establish a new drainage ditch, or repair or improve an existing one. The landowners must petition the drainage authority and conduct an engineering study. All landowners impacted by the drainage ditch are assessed a portion of the cost for construction, improvement, or repair.

Responsible Agencies: Authority for public drainage is in the hands of each county, unless a drainage system is located in and delegated to the authority of a watershed district. (See discussion of watershed districts on page 19). The Association of Minnesota Counties (AMC) developed a publication called *Understanding Minnesota Public Drainage Law: An Overview for Decision-makers* describing procedures to be followed by counties and watershed districts. Copies can be obtained by calling AMC at (651)224-3344. The state Department of Natural Resources has published the *Minnesota Public Drainage Manual* for the purpose of increasing uniformity and promoting consideration of state and federal laws protecting wetlands. The DNR Division of Waters advises counties on local implementation of the drainage code.

Decision Making Criteria: The drainage authority must consider feasibility of the drainage system, cost, public benefit and utility, and environmental and land use criteria. The Minnesota Public Drainage Manual recommends early consideration of environmental issues, before the preliminary hearing. The drainage authority specifically must consider alternative measures to conserve, allocate, and use the water; the effect on water quality; and fish and wildlife resources affected by the proposed drainage project.

Public Role: Public notices of some types of proposed drainage projects may be published in local newspapers and notices posted at county or watershed district offices. Citizens may also contact the drainage authority and ask to receive notices by mail. A preliminary public hearing is held after an engineer makes a preliminary report. After the engineer's final report, a final hearing will be held, the primary purpose of which is to allocate costs. Appeals may be taken to state court.

Enforcement: It is a misdemeanor to use a public drainage system without authorization, obstruct a drainage system, or alter an engineer's markings and stakes. The county attorney is responsible for prosecution.

MUNICIPAL and COUNTY ZONING ORDINANCES

Zoning ordinances regulate land use. Typically, zoning districts include blocks of land designated for residential, commercial, industrial, agricultural, and open-space uses. Zoning ordinances are locally adopted and vary widely, but can be used effectively to prevent certain types of development in regulated areas. Variances from regulated land uses typically require a public hearing. Contact your local planning commission, zoning official, or town manager for more information.

STORMWATER AND WASTEWATER ORDINANCES

Local stormwater ordinances may provide some protection to wetlands by limiting stormwater runoff from new developments. Wastewater ordinances may prohibit the discharge of wastewater into watercourses, including wetlands. Runoff and wastewater can adversely affect the ecological and hydrological characteristics of wetlands. Contact your local building codes official, planning commission, or town manager for information on local ordinances.

Sometimes wetlands ordinances (see below) and water management plans (see page 18) specifically regulate stormwater runoff and design controls as well.

WETLANDS ORDINANCES and PLANS

Some municipalities and counties have adopted ordinances that specifically protect wetlands and limit development in wetlands. These ordinances sometimes contain more restrictive limitations than the statutes and ordinances discussed above.

Typically, a wetlands ordinance will designate protected wetlands, usually by a map, although these designations can be contested. The ordinance may establish minimum lot sizes within wetland areas and required setbacks for buildings and septic systems. Some activities may be wholly prohibited in the wetlands (for example, disposal of waste materials), while others are generally allowed (for example, residential lawns). Generally, permits can be applied for to conduct a variety of activities that alter wetlands (for example, dredging or filling) under conditions set forth in the ordinance. Public notice and hearing may be required for the issuance of such permits.

Some ordinances require replacement of destroyed wetlands.

To determine whether your locality has a wetland ordinance, contact the local planning commission, building codes official, zoning official, or town manager. Contact the Board of Water and Soil Resources at (651)296-3767 for information on communities that have developed wetland ordinances.