

STATE OF ILLINOIS     )  
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COUNTY OF KENDALL )

**ORDINANCE NO. 2008- 01**

**ORDINANCE AMENDING TITLE 8 OF THE CITY CODE OF  
THE UNITED CITY OF YORKVILLE,  
KENDALL COUNTY, ILLINOIS**

Whereas, the United City of Yorkville (the "City") has determined that the protection, preservation, replacement, maintenance and restoration of the Isolated Waters of Yorkville are important goals needed to protect fragile resources which provide many public benefits to the City's residents; and

Whereas, the City directed Conservation Design Forum to prepare Wetland Protection Regulations For Water Quality and Storm Water Management Benefits for review by the City Engineer and the City Council; and

Whereas, after months of review, discussion and comment, the City is prepared to adopt and implement the Wetland Protection Regulations For Water Quality and Storm Water Management Benefits and all Appendixes attached thereto, dated January 1, 2008.

Now therefore be it Ordained by the Mayor and City Council of the United City of Yorkville, Kendall County, as follows:

Section 1. The City Code of the United City of Yorkville is hereby amended in adding the following new Chapter to Title 8:

Chapter 16  
WETLAND PROTECTION AND WATER  
QUALITY AND STORM WATER MANAGEMENT BENEFITS

16-1-1: Purpose: Preservation of the remaining Isolated Waters of Yorkville and Waters of the United States, in a natural condition, is necessary to maintain hydrological, economic, recreational, and aesthetic natural resource values for existing and future residents and therefore it is a long-term goal of net gain of Isolated Waters of Yorkville and Waters of the United States to be accomplished through the mitigation requirements of regulations providing for protection and management of these resources.

16-1-2: Regulations Adopted: The United City of Yorkville Wetland Protection Regulation For Water Quality and Storm Water Management Benefits, dated January 1, 2008, hereinafter referred to as “Wetland Regulations”, copies of which are on file with the City Clerk are hereby adopted.

16-1-3: Permit Required: No person, firm, corporation, governmental agency or organized district shall commence any development or construction on any lot or parcel of land without obtaining a permit therefore, if required by the Wetland Regulations.

16-1-4: Enforcement: It shall be the duty of the City Administrator to enforce the provision of this title and the City Administrator or such other person as may be designated by the City Council may order work stopped whenever any development or construction is being done in violation of this title.

Section 2. This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

ROBYN SUTCLIFF yg  
ARDEN JOE PLOCHER yg  
GARY GOLINSKI yg  
ROSE SPEARS yg

JOSEPH BESCO yg  
WALLY WERDERICH yg  
MARTY MUNNS -  
JASON LESLIE -

Approved by me, as Mayor of the United City of Yorkville, Kendall County,  
Illinois, this 7 day of January, A.D. 2008.

Valerie Burd  
MAYOR

Passed by the City Council of the United City of Yorkville, Kendall County,  
Illinois this 7 day of January, A.D. 2008.

ATTEST:  
Gregory M. Schenk  
CITY CLERK

Prepared by:  
Kathleen Field Orr  
City Attorney  
United City of Yorkville  
800 Game Farm Road  
Yorkville, Illinois 60560

**UNITED CITY OF YORKVILLE**  
**WETLAND PROTECTION REGULATION**  
**FOR**  
**WATER QUALITY AND STORMWATER**  
**MANAGEMENT BENEFITS**

**THE UNITED CITY OF YORKVILLE**

January 1, 2008

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**Article 1**  
**Authority and Purpose**

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### **Section 1.1 Statutory Authority**

These regulations are enacted pursuant to the police powers granted to this City by The Illinois Municipal Code.

### **Section 1.2 Findings**

The United City of Yorkville finds that Isolated Waters of Yorkville and Waters of the U.S. for the Fox River, Aux Sable, Blackberry Creek, and Rob Roy watersheds including their tributaries, are indispensable and fragile resources that provide many public benefits including maintenance of surface and groundwater quality through nutrient cycling and sediment trapping as well as flood and storm water runoff control through temporary water storage, slow release, and groundwater recharge. In addition, Isolated Waters of Yorkville provide open space; passive outdoor recreation opportunities; fish and wildlife habitat for many forms of wildlife including migratory waterfowl, and rare, threatened or endangered wildlife and plant species; and pollution treatment via biological and chemical oxidation processes.

Preservation of the remaining Isolated Waters of Yorkville and Waters of the U.S. in a natural condition shall be and is necessary to maintain hydrological, economic, recreational, and aesthetic natural resource values for existing and future residents of the United City of Yorkville, and therefore the City Council declares a policy of no net loss of Isolated Waters of Yorkville and Waters of the U.S. Furthermore the City Council declares a long-term goal of net gain of Isolated Waters of Yorkville and Waters of the U.S. to be accomplished through mitigation these regulations.

### **Section 1.3 Objectives**

The principal objective of these regulations is the protection, preservation, replacement, proper maintenance, restoration, and use in accordance with the character, adaptability, and stability of the Isolated Waters of Yorkville in order to prevent their pollution or contamination; minimize their disturbance, and prevent damage from erosion, siltation, and flooding. Other objectives of these regulations include:

- Preserve and enhance the natural hydrologic and hydraulic functions and natural characteristics of watercourses and wetlands to protect water quality, aquatic habitats, provide recreational and aesthetic benefits, and enhance community and economic development.
- Maintain and enhance the special aquatic resources of the City.
- Protect environmentally sensitive areas from deterioration or destruction by private and public actions.
- Protect and improve surface water quality and promote best management practices of surface water runoff prior to entering lakes, ponds, wetlands, streams, and rivers.
- Require planning for development to carry out water resource management including the protection of natural areas such as remnant woodland and prairie habitats, wetlands, waterways, steep topography, and highly erodible soils, in order to reduce potential impacts, or creation of unstable conditions that may promote erosion and degradation of ground and surface water quality.
- Coordination of and support for the enforcement of applicable federal, state, and county statutes, ordinances, and regulations pertaining to Waters of the U.S., floodplain regulations, and soil erosion and sediment control.
- Establishment of standards and procedures for the review and regulation of the use of Isolated Waters of Yorkville.
- A procedure for appealing decisions.



**Article 2**  
**Definitions**

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## Section 2.1 Definition of Terms

Terms not specifically defined shall have the meaning customarily assigned to them.

**Agricultural land** is land predominantly used for agricultural purposes.

**Applicant** is any person, firm, or governmental agency who submits an application for a permit under these regulations and shall be responsible for meeting and complying with all conditions and standards of these regulations.

**BMP or best management practices** is a measure used to control the adverse stormwater related effects of development, and includes structural devices (e.g., swales, filter strips, infiltration trenches, level spreaders, and site runoff storage basins designed to remove pollutants), reduce runoff rates and volumes, and protect aquatic habitats. In addition, nonstructural approaches used to prevent contamination of runoff include planning and design practices that reduce impervious areas, provide comprehensive site planning, and implement buffer zones, setback requirements, easements, and critical areas. Other nonstructural approaches include public education and maintenance programs.

**Buffer** is an area of predominantly vegetated land adjacent to Isolated Waters of Yorkville and Waters of the U.S. that are to be left as open space for the purpose of providing stabilization, reduction of contaminants, and eliminate or minimize impacts to such areas. For all new development, buffer areas shall consist of deep-rooted native vegetation unless otherwise approved by the Staff.

**Category I wetland impact** means wetland impacts to Isolated Waters of Yorkville that are less than or equal to one (1) acre and does not impact high quality aquatic resources.

**Category II wetland impact** means wetland impacts to Isolated Waters of Yorkville that are greater than one (1) acre and does not impact high quality aquatic resources.

**Category III wetland impact** means wetland impacts to roadside drainage ditches or manmade stormwater management facilities that meet the definition of Isolated Waters of Yorkville.

**Category IV wetland impact** means wetland impacts for the restoration, creation, and enhancement of Isolated Waters of Yorkville provided that there are net gains in aquatic resource function.

**Category V wetland impact** means wetland impacts to high quality aquatic resources as defined in these regulations.

**Category VI wetland impact** means wetland impacts to farmed wetland.

**Channel** is any river, stream, creek, brook, branch, natural or artificial depression, ponded area, flowage, slough, ditch, conduit, culvert, gully, ravine, wash, or natural or manmade drainageway that has a definite bed and bank or shoreline, in or into which surface, groundwater, effluent, or industrial discharges flow either perennially or intermittently.

**Channel modification** is alteration of a channel by changing the physical dimensions or materials of its bed or banks, and includes damming, riprapping (or other armoring), widening, deepening, straightening, relocating, lining, and significant removal of bottom or woody rooted vegetation, but does not include the clearing of debris or removal of trash or dredging to previously documented thalweg elevations and sideslopes.

**City** is the United City of Yorkville.

**Developer** is a person, firm, or institution who creates or causes a development. The developer of any said development that is under the these regulations shall be responsible for meeting and complying with all conditions and standards of these regulations.

**Development** is any manmade change to the land and includes –

- A. the construction, reconstruction, repair, or replacement of a building or any addition to a building;
- B. the installation of utilities, construction of roads, bridges or similar projects;
- C. the construction or erection of levees, walls, fences, dams, or culverts;
- D. drilling or mining activities;
- E. the clearing of land as an adjunct of construction;
- F. channel modifications, filling, dredging, grading, excavating, paving, or other nonagricultural alterations of the ground surface;
- G. any direct or indirect wetland impacts including the removal of vegetation to the extent such that the wetland would no longer meet the criteria of supporting a dominance of hydrophytic vegetation as defined in the *1987 Wetlands Delineation Manual* except that which would be considered appropriate for management purposes;
- H. any other activity of man that might change the direction, height, or velocity of flood or surface water, including the extensive removal of vegetation;
- I. the storage of materials and the deposit of solid or liquid waste; and
- J. the installation of a manufactured home on a site, the preparation of a site for a manufactured home, or the installation of a recreational vehicle on a site for more than 180 days.

Development does not include maintenance of existing buildings and facilities such as resurfacing of roadways when the road elevation is not significantly increased or gardening, plowing, and similar agriculture practices that do not involve filling, grading, or construction of levees. Nor does development include agricultural uses, maintenance of existing drainage systems for the limited purpose of maintaining cultivated areas and crop production or for any agricultural uses or improvements undertaken pursuant to a written NRCS conservation plan.

**Ecological restoration** is the re-establishment of a natural area or plant community via associated management practices such as prescribed burns, weed control, selective clearing, reintroduction of native plant species, etc.

**Endangered species** See Threatened and Endangered species.

**Ephemeral stream** is a stream whose bed elevation does not intersect with the groundwater table and carries flow only during and immediately after a runoff producing rainfall event.

**Ephemeral wetland** is a temporary wetland or shallow mudflat that supports a unique ecosystem. This also includes temporary and intermittent wetlands.

**Erosion** is the process whereby soil is removed by flowing water, wave action, or wind.

**Farmed wetland** means wetlands that are identified by the NRCS in a Certified Wetland Determination as currently farmed, or have been farmed within 5 years previous to the permit application date, as defined in 7 CFR Part 12 (61 FR 47025).

**Fen** is a wetland community that occurs in areas where glacial formations are such that carbonate-rich ground water discharges at a constant rate along the slopes of kames, eskers, moraines, river bluffs, dunes, or in flats associated with these formations.

**Floristic inventory** is a record of all existing vegetation within a defined project area. This includes all woody (trees and shrubs) as well as herbaceous plants, i.e., wildflowers and grasses.

**Floristic Quality Assessment (FQA)** refers to a method of assessing landscapes based upon the existing vegetation. A useful method for determining the floristic quality of an area is through an analysis of the conservatism and diversity of species appearing in a plant inventory. Refer to floristic quality index and Mean C for further definition of terms.

**Floristic Quality Index (FQI)** is a statistic derived by multiplying Mean C by the square root of the number of species inventoried. This parameter is correlated to the diversity and conservatism of native plant species present within a plant community as defined in *Plants of the Chicago Region*, 4<sup>th</sup> Ed. (Swink and Wilhelm, 1994).

**Forested wetland** is an area dominated by wetland plants that have a predominance of woody vegetation with periodic flooding. Two types of forested wetlands exist as defined by the Illinois Department of Natural Resources. The most common are areas adjacent to rivers and swamps with silver maple, sycamore, and cottonwood as predominant species and rotting logs littering the forest floor. Drier forested wetlands experience occasional flooding with oaks, elms and hickory as predominant species with a variety of annual and perennial plants that cover the forest floor.

**Functional assessment** is an assessment of a wetland's flood storage, water quality, wildlife habitat, and other beneficial functions.

**Groundwater** is that water that is located within soil or rock below the surface of the earth.

**High Quality Aquatic Resources (HQAR)** means aquatic areas considered to be regionally critical due to their uniqueness, scarcity, and/or value, and other wetlands considered to perform functions important to the public interest, as defined in 33 CFR Part 320.4(b) (2). These resources include ephemeral pools, fens, forested wetlands, sedge meadows, seeps, streams rated Class A or B in the Illinois Biological Stream Characterization study, streamside marshes, wet prairies, wetlands that support Federal or Illinois endangered or threatened species, and wetlands with a native floristic quality index (FQI) of 25 or greater and a native Mean C value of 3.2 or greater.

**Hydric Soils** are formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper horizon of the soil.

**Hydrology** is the science of the behavior of water that includes its dynamics, composition, and distribution in the atmosphere, on the surface of the earth, and underground.

**Hydrologically disturbed** is an area where the land surface has been cleared, grubbed, compacted, or otherwise modified to alter stormwater runoff, volumes, rates, flow direction, or inundation duration.

**Index of Biotic Integrity (IBI)** is a biological stream characterization rating system that assesses the quality of a stream from the sum of 12 metrics based on fish population composition, quality, and abundance. The IBI value can range from 12 to 60 (low to high rating).

**Isolated Waters of Yorkville** means all wetlands; waterbodies such as ponds, lakes, streams, - including ephemeral and intermittent streams, and roadside ditches (that meet the criteria of wetland habitat as defined in the USACE 1987 *Wetlands Delineation Manual* and with a drainage area greater than 20-acres); farmed wetlands; and detention basins (that meet the criteria of wetland habitat); and are not under U.S. Army Corps of Engineers jurisdiction and are located within the limits of the United City of Yorkville or with any area under consideration for annexation into the United City of Yorkville.

- A. The limits of Isolated Waters of Yorkville extend to the ordinary high water mark or the delineated wetland boundary.

- B. Compensatory wetland mitigation created to meet these regulations or Section 404 of the Clean Water Act is not excluded.

**Intermittent stream** is a stream whose bed intersects the groundwater table for only a portion of the year on average or any stream that flows continuously for at least one month out of the year, but not the entire year.

**Lake** is a body of water two or more acres in size that retains water throughout the year.

**Linear Waters of the U.S.** means wetlands along creeks, streams, rivers, ponds, lakes, or impoundments that are hydraulically connected to jurisdictional Waters of the U.S.

**Mean C** is the average coefficient of conservatism for a site. The concept of “conservatism” refers to the fundamental character of native plant species to display varying degrees of tolerance to disturbance, as well as varying degrees of fidelity to specific habitat integrity. As a result, each native species can be assigned a *coefficient of conservatism* (C value) ranging from 0 to 10, “weedy to conservative,” reflecting its disposition within a defined geographic region.

**Mitigation** is the measures that are taken to eliminate or minimize negative direct or indirect impacts caused from development activities, such as impact to Isolated Waters of Yorkville, by replacement of the resource.

**Native Mean Wetness** is the wetness value (W) designated to each species. This value defines the estimated probability of each species occurring in a wetland. Plants are designated as *Obligate Wetland* (OBL=-5), *Facultative Wetland* (FACW=-3), *Facultative* (FAC=0), *Facultative Upland* (FACU=3), and *Obligate Upland* (UPL=5).

**Natural area** is a landscape with a sufficient level of intact habitat structure and plant species composition to resemble a pre-settlement landscape, e.g., prairie, oak savanna, and other landscapes native to Kendall County.

**NRCS** is the United States Department of Agriculture, Natural Resources Conservation Service.

**Open Space** refers to undeveloped land that is protected from development by legislation or land that is to remain undeveloped for preservation purposes.

**Pond** is a body of water less than two acres in size that retains a normal water level year-round.

**Qualified professional** is a person trained in one or more of the disciplines of biology, geology, soil science, engineering, or hydrology whose training and experience ensure a competent analysis and assessment of stream, lake, pond, and wetland conditions and impacts.

**Relative Importance Value (RIV)**. The RIV for each species is calculated by summing relative frequency and relative cover and dividing by 2. The RIV is calculated from data collected during the transect inventory.

**Roadside ditches** are drainage ditches created for the purpose of providing roadway drainage.

**Runoff** is the water derived from melting snow or rain falling within a tributary drainage basin that exceeds the infiltration capacity of the soils for that basin.

**Seep** is a wetland, herbaceous or wooded, with saturated soil or inundation resulting from the diffuse flow of groundwater to the surface stratum.

**Site** is all of the land contemplated to be part of a coordinated development of one or more parcels.

**Staff** is the person designated by the City Administrator of the United City of Yorkville to administer and enforce these regulations.

**Threatened and endangered species** for Kendall County as defined in the Illinois Natural Heritage Database.

**USACE** is the United States Army Corps of Engineers.

**Valid wetland delineation** means an on-site wetland delineation that is conducted in accordance with the 1987 U.S. Army Corps of Engineers *Wetlands Delineation Manual* within three years of the initial permit application date.

**Watershed** is the land area above a given point that contributes stormwater to that point.

**Waters of the U.S.** is a term that refers to those water bodies and wetland areas that are under the U.S. Army Corps of Engineers jurisdiction.

**Wetland** is land that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, under normal conditions, a prevalence of vegetation adapted for life in saturated soil conditions (known as hydrophytic vegetation). A wetland is identified based upon the three attributes: 1) hydrology, 2) soils, and 3) vegetation as mandated by the USACE 1987 *Wetlands Delineation Manual* methodology.

**Wetland impact** is the direct or indirect loss of Isolated Waters of Yorkville that results from implementation of a proposed activity. This includes Isolated Waters of Yorkville that are adversely affected by flooding, excavation, dredging, fill, drainage, hydrological disturbance, vegetation removal (other than for maintenance or restoration purposes), that results from implementation of a development activity or dumping, or non-permitted discharge of chemicals or other pollutants into Isolated Waters of Yorkville.

**Article 3**  
**Wetland Protection Standards and Permit Provisions**

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### Section 3.1 General Standards

These regulations are for the region of the United City of Yorkville and based on the ecological characteristics of this region.

#### Section 3.1.1 Buffer Requirements

1. Buffer areas shall be required for all areas defined as either Isolated Waters of Yorkville or Waters of the U.S. except for areas that meet a Category III definition. Isolated Waters of Yorkville are under the jurisdictional authority of the United City of Yorkville and these regulations and are defined in Section 2.1 of these regulations. Waters of the U.S. as defined in Section 2.1 of these regulations refers to areas that are under the jurisdictional authority and regulated by the United States Army Corps of Engineers (USACE).
2. Buffer areas are divided into two types, linear buffers and water body buffers. The following buffer requirements shall be met for all proposed development projects and provided for all wetlands except for areas meeting the definition of a Category III wetland (roadside ditches and manmade stormwater management facility, refer to Section 2.1). For areas under the jurisdiction of the USACE, the most stringent buffer requirements shall apply.
  - 1) Linear buffers shall be designated along both sides of the channel. The buffer width shall be determined as follows:
    - a. All channels except those determined to be High Quality Aquatic Resource (HQAR) shall be provided a minimum buffer of 30 feet. Also, five (5) additional feet of buffer shall be provided for each percent of buffer slope towards the channel that is greater than 10% up to a maximum of a 100-foot buffer. For example, a 30-foot buffer with a 20% slope will require an additional 50 feet of buffer for a total buffer width of 80 feet. The buffer slope shall be calculated as the average slope from the landward edge of the buffer to the top of bank of the channel or highest point in elevation immediately adjacent to the "waters", be it natural or artificial.
    - b. Streams rated Class A or B in the Illinois Biological Stream Characterization study or with an Index of Biotic Integrity (IBI) greater than 40 shall have a minimum buffer width of 100 feet on each side of the channel. (Initial IBI based on IEPA Illinois Water Quality Report. A site-specific IBI assessment may override this report)
    - c. For streambank stabilization projects, those projects that involve a change in land use shall apply the minimum 30 foot buffer and up to a maximum of 100 foot buffer criteria. If the project does not involve a change in land use, then a 10 foot buffer shall be required adjacent to all streambank stabilization work.
  - 2) Buffers shall encompass all wetlands greater than ¼ acre and determined not to be a high quality aquatic resource (HQAR). The buffer width shall be determined as follows:
    - a. For all wetlands with a total surface area greater than one quarter (1/4) acre with floristic quality values of native Mean C < 2.8 and/or native FQI < 20, and determined not to be a HQAR, a minimum buffer width of 30 feet shall be established. Also, five (5) additional feet of buffer shall be required for each percent of buffer slope towards the wetland that is greater than 10% up to a maximum of a 100 foot buffer.
    - b. For all wetlands with a total surface area greater than one quarter (1/4) acre with floristic quality values of native Mean C ≥ 2.8 and native FQI ≥ 20, and determined not to be a HQAR, a minimum buffer width of 50 feet shall be established. Also, five (5) additional feet of buffer shall be required for each percent of buffer slope towards the wetland that is

greater than 10% up to a maximum of a 100 foot buffer. (Refer to Section 3.1.1 2(1)a for example of calculating additional buffer based on average slope towards the wetland)

- c. For all wetlands regardless of size that meet the definition of a HQAR (ephemeral pools, fens, forested wetlands, sedge meadows, seeps, streamside marshes, wet prairies, wetlands supporting Federal or Illinois endangered or threatened species, and wetlands with a native floristic quality index (FQI) of 25 or greater and a native Mean C value of 3.2 or greater), shall have a minimum buffer width of 100 feet.
3. Buffer areas for all linear Isolated Waters of Yorkville or Waters of the U.S., shall extend from the top of bank. The buffer area for non-linear Isolated Waters of Yorkville or Waters of the U.S., except wetlands, shall extend from waters edge at normal water level. The buffer area for wetlands shall extend from the edge of the approved delineated wetland boundary. A site may contain buffer that originates from Isolated Waters of Yorkville or Waters of the U.S. on another property.
  4. Buffer averaging shall be permitted, at the discretion of the Staff, but at no time shall the buffer width at any given point be less than 50% of the required width, and provided that the total buffer area required is achieved. A reduction of buffer width shall not occur for any portion where the adjacent landscape has a slope towards the wetland, equal to or greater than 3:1; except if an existing barrier, e.g. earthen berm, is in place that slows and/or contains the surface water runoff toward the wetland. In such case, the existing barrier shall remain in place and be incorporated into the design. The barrier shall be maintained as part of the required buffer area.
  5. The requirement of buffers is strictly for preservation measures of wetlands and shall not constitute enhancement measures of existing wetlands for any mitigation requirements of said development.
  6. Buffers shall be established using appropriate deep-rooted vegetation, protected from direct and indirect disturbance, and shall be appropriately managed and maintained according to an approved plan as provided under Section 3.2.4. Buffers shall typically consist of native vegetation unless otherwise approved by Staff.
  7. If a buffer area is disturbed by permitted activities during construction, the buffer area shall be stabilized following the provisions of the United City of Yorkville's Soil Erosion and Sediment Control Ordinance and planted with appropriate vegetation as stated above.
  8. Access through buffer areas shall be provided, when necessary, for maintenance purposes. Unless otherwise dedicated for a public purpose or to a public entity, buffer areas shall remain private property and shall not be generally accessible for the public.
  9. Preservation of buffer areas shall be provided by deed or plat restrictions. Only public or quasi-public property, e.g. municipal, common Homeowners Association (HOA) lot lines shall be allowed within the limits of the buffer areas.
  10. Features of a stormwater management system approved by Staff may be allowed within the buffer area provided it is a naturalized detention basin that consists of a natural design shape as well as native plant communities, or other naturalized stormwater management feature and provided there is no direct discharge to the wetland habitat. A stormwater management feature shall be located, at a minimum, fifteen (15) feet from the edge of wetland, or top of bank for linear buffers. Discharge from the stormwater management feature shall be directed to the outside edge of the required buffer width to allow the full width of the buffer to be used for energy dissipation and water quality protection. Staff shall review and approve, as appropriate, well-designed stormwater management systems within the buffer area on a project by project basis.
  11. Stormwater discharges that enter a buffer shall have appropriate energy dissipation measures to prevent erosion and scour. These can include, but are not limited to; level spreaders, riprap, drop catch basins (plunge pools), or other measures as deemed appropriate by Staff.

12. All buffer areas shall be maintained free from development including disturbance of soil, dumping or filling, erection of structures, and placement of impervious surfaces except as follows:
- 1) A buffer area may be used for passive recreation (e.g., bird watching, walking, jogging, bicycling, and picnicking) and it may contain pedestrian or bicycle trails, provided that the created path is no wider than ten (10) feet. Paths or trails, excluding a mowed grass path, shall be located, at a minimum, fifteen (15) feet from the edge of wetland or stream. If the path leads to a wetland, it must be designed to prevent erosion.
  - 2) Paved surfaces including trails may not occupy more than 15% of the total width of the required buffer. If a paved path or trail width is greater than 15% of the buffer width, then the path width shall be added to the overall buffer width. (For example, an eight (8) foot paved trail is being installed within a 30-foot buffer. The paved trail width is greater than 15% of the buffer width (approximately 27%). Therefore, an additional eight (8) feet – the width of the path – shall be added to the overall required buffer width for a total buffer width of 38 feet). Where grass “mow strips” are desired adjacent to paths they shall be no wider than two (2) feet on each side of the path. An eight (8) foot high clearance zone must be provided, no plant material can overhang the path within this area.
  - 3) Limestone paths, as pervious surfacing, do not require additional buffer width but still require a two (2) foot clear zone on each side of the path. Limestone paths cannot be located near a habitat that can be affected by a potential change in soil pH. The path shall not erode into the natural area. Special precautions to eliminate this may require subdrainage, edging, compaction, etc.
  - 4) Utility maintenance and maintenance of drainage facilities and drainage easements shall be allowed provided the maintenance activity meets all other federal, state, and local regulations.

### Section 3.1.2 Wetland Hydrology Protection

1. Any development that may reasonably be expected to impact the recharge zone of a fen, seep, or other groundwater-driven wetland with vegetation characteristic of these habitats requires a higher level of protection. Due to the uniqueness and fragility of these habitats, the developer of any proposed development within potential recharge zones shall to the extent possible identify, maintain, and protect said recharge zones. Staff shall evaluate and determine if additional documentation is required on a case by case basis.

### Section 3.1.3 Stormwater Management within Isolated Waters of Yorkville

1. Stormwater management facilities shall only be allowed in areas that meet the definition of farmed wetlands or Isolated Waters of Yorkville that contain at a minimum, vegetative cover of  $\geq 75\%$  of one or more of the following species.
  - Reed Canary Grass (*Phalaris arundinacea*).
  - Purple Loosestrife (*Lythrum salicaria*).
  - Common Reed (*Phragmites australis*).
  - European or Common Buckthorn (*Rhamnus cathartica*).
  - Canada Thistle (*Cirsium arvensis*).
  - Narrow-leaved cattail (*Typha angustifolia*).
  - Sandbar willow (*Salix interior*).
- 1) The stormwater management facility shall be designed as a naturalized wetland basin that contains native vegetation communities and does not exceed a 4-foot bounce for the 100-year, 24-hour storm event. Mitigation credit for designed permanent open water area(s) shall not be granted for more than 20% of the overall required mitigation acreage. At the discretion of Staff, however, greater than 20% up to a maximum 50% mitigation credit for open water may be

applied for mitigation designs that create interspersion of open water with emergent wetland habitat. The area of the basin as measured between the contours corresponding to one (1) foot above NWL and two (2) feet below NWL shall be at least equal to the remaining impacted wetland acreage. The designed naturalized basin shall demonstrate an overall environmental improvement.

- 2) A naturalized buffer that contains appropriate native vegetation shall be provided, at a minimum, up to the High Water Level (HWL).
  - 3) A three (3) year management and monitoring plan shall be provided for the naturalized stormwater management facility. The management/monitoring plan shall include performance standards, which identify percent of seeded/planted species to be alive and apparent; vegetative cover of native, non-weedy species; and floristic quality for each monitoring year, monitoring methods, prescribed maintenance activities for the 3-year period, and long-term management provisions.
2. Staff may waive mitigation requirements for wetland impacts from the development of stormwater management facilities within wetland habitat if the designed naturalized wetland basin meets the above criteria. If the proposed stormwater management facility does not meet the above criteria, the mitigation requirements of Article 4 of these regulations shall apply.

#### **Section 3.1.4 Discharge to Isolated Waters of Yorkville or Waters of the U.S.**

1. There shall be no direct discharge of stormwater runoff to Isolated Waters of Yorkville or Waters of the U.S. without pre-treatment. Accepted methods of pre-treatment include, but are not limited to created wetland detention basins, naturalized swales, biofiltration practices, and other measures that filter and/or detain runoff. It must be demonstrated that the proposed pre-treatment measure will remove a minimum of 80% total suspended solids (TSS) and prevent increases in water level fluctuations up to and including the 2-year event within the wetland. All discharges shall be to the wetland buffer. Pre-treatment measures may be located within the buffer with approval from the Staff. Appropriate energy dissipation measures, such as level spreaders, shall be provided to prevent erosion and scour.

#### **Section 3.1.5 Protection of Isolated Waters of Yorkville During Development**

1. All Isolated Waters of Yorkville designated for preservation shall be protected during development such that a FQI calculated two years after the commencement of development shall not be more than five (5) points less than the originally calculated FQI. The re-evaluation of all preserved wetlands shall be completed during a similar stage of the growing season as was conducted for the original assessment ( $\pm 30$  days). If final build out of all lots contiguous to Isolated Waters of Yorkville has not occurred, the re-evaluation of all preserved wetlands shall be repeated each year until completion of development. If there is a decrease in the FQI value for two consecutive years, and/or a  $> 5$  point drop in the FQI value from the original value, a wetland impact to Isolated Waters of Yorkville shall be assumed, and the mitigation requirements of Article 4 of these regulations shall apply.
2. The initial re-evaluation data shall be submitted to Staff during the second year after commencement of the development. All subsequent re-evaluation data shall be provided to Staff on an annual basis until final build out of the development has occurred.

#### **Section 3.1.6 Maintenance of Stormwater Management Facilities**

Dredging of stormwater management facilities that meet the definition of Isolated Waters of Yorkville for the purpose of periodic maintenance shall be allowed without the issuance of a Wetland Protection Permit given that the dredging activity will only re-establish the original design depths and measures shall be taken to preserve any wetland fringe and/or buffer (if applicable). If any disturbance to the wetland fringe is unavoidable, then the wetland fringe shall be restored with appropriate native vegetation. Dredging frequency

shall allow the habitat to be re-established. All applicable federal, state, and other local regulations and ordinances shall be met, and Staff shall approve maintenance activities prior to commencement of the activity. All spoils must be properly disposed of whether off site or on site.

### **Section 3.2 Wetland Permit Provisions**

#### **Section 3.2.1 Applicability**

1. No person, firm, corporation, governmental agency, or organized district shall commence any development regulated by the City on any lot or parcel of land without first submittal of applicable items presented in 3.2.2 and 3.2.4 and receipt of applicable permit.
2. No lot lines shall occur in created, restored, enhanced, or preserved Isolated Waters of Yorkville or Waters of the U.S. and their associated buffer areas.

#### **Section 3.2.2 Wetland Determination Requirements**

1. Development projects near water courses, depressional areas, wetlands or Waters of the U.S. identified on National Wetlands Inventory (NWI) map, Natural Resource Conservation Service wetland map, or as requested by the City shall provide a letter of findings from a qualified professional that identifies all Isolated Waters of Yorkville, Waters of the U.S., and natural areas on or within 100 feet of the project site. Identification of each of these areas shall include a floristic inventory and floristic quality assessment (FQA) data. Offsite wetlands or Waters of the U.S., within 100 feet of project site shall be assessed for vegetative quality and size to the extent feasible. If applicant demonstrates that access to offsite property was not obtainable, the Staff may waive the requirement for surveying of offsite wetland boundaries. If no wetlands are identified within the limits of the site or within 100 feet of the site, then a wetland determination letter of findings shall be submitted that contains a brief description of the plant communities present on site and a copy of the Natural Resources Information (NRI) Report prepared by the County Soil and Water Conservation District for the site. If Isolated Waters of Yorkville or Waters of the U.S. are identified within the limits of the site or within 100 feet of the site, a Wetland Permit Submittal following Section 3.2.4 shall be required. The survey shall be completed by an individual or firm carrying the Certified Wetland Professional in training credentials or Certified Professional Wetland Scientist, or other qualified professional as approved in writing by the City Planner.

#### **Section 3.2.3 Pre-Submittal Meeting**

1. It is recommended that the applicant schedule a pre-submittal meeting with Staff to review the proposed project, discuss submittal requirements and questions the applicant may have.
2. If the proposed development contains a HQAR, a pre-submittal meeting with Staff is mandatory.

#### **Section 3.2.4 Wetland Permit Submittal Requirements**

Appendix A contains the Wetland Permit Application and Permit Submittal Flowchart. Appendix B contains the Wetland Permit Submittal Checklist for use with the permit submittal requirements. With the filing of a Wetland Permit Application, the applicant and owner (if not the applicant) grants permission to Staff and his/her designees to access said property to assess site conditions for the review and assessment of the wetland permit submittal. The Wetland Permit Submittal shall provide the following:

1. A wetland delineation report as specified in Section 3.2.5.
2. A narrative report and Site Plan that demonstrates compliance with the provisions of Sections 3.1.1 through 3.1.5 of these regulations and specifies prescribed management activities, long-term management provisions and funding mechanism, and the long-term responsible party as presented in Article 5 of these regulations for the buffer area(s).

3. USACE statement of jurisdictional determination that identifies Waters of the U.S. and Isolated Waters of Yorkville for all wetlands on the development site. A copy of the letter shall be provided to Staff.
4. For proposed impacts only to Waters of the U.S. the following requirements shall be followed:
  - 1) Completion of the Wetland Permit Application as provided in Appendix A of these regulations.
  - 2) Provide a copy of the USACE permit submittal for the proposed development or a letter from the USACE that states the proposed development does not require USACE authorization. Upon receipt of any USACE, Illinois Environmental Protection Agency (IEPA), and/or Illinois Department of Natural Resources Office of Water Resources (OWR) authorizations, the applicant shall provide a copy(s) to Staff.
  - 3) All wetland impacts that occur in the City's jurisdiction shall be mitigated for within the same watershed as the impact(s) at the mitigation ratio specified by the USACE for that development impact.
  - 4) Provide a Soil Erosion and Sediment Control Plan that demonstrates compliance with the City's Soil Erosion and Sediment Control Ordinance.
5. For proposed impacts only to Isolated Waters of Yorkville the following information shall be provided:
  - 1) Completion of the Wetland Permit Application as provided in Appendix A of these regulations.
  - 2) A statement on the permit category of impacts to be used for the development project. The categories are as follows:
    - a. Category I: Wetland impacts less than or equal to one (1) acre and does not impact a HQAR.
    - b. Category II: Wetland impacts greater than one (1) acre and does not impact a HQAR.
    - c. Category III: Roadside ditches and stormwater management facilities that meet the definition of Isolated Waters of Yorkville.
    - d. Category IV: Wetland impacts for the restoration, creation, and enhancement of Isolated Waters of Yorkville as approved by Staff, provided that there are net gains in aquatic resource function.
    - e. Category V: Wetland impacts that affect a HQAR.
    - f. Category VI: Wetland impacts to farmed wetlands.
  - 3) Documentation that the development is in compliance with the Illinois Department of Natural Resources' Endangered Species Consultation Program and the Illinois Natural Areas Preservation Act [520 ILCS 10/11 and 525 ILCS 30/17].
  - 4) Documentation that the development is in compliance with the U.S. Fish and Wildlife Service's consultation program under the Endangered Species Act.
  - 5) A statement on the occurrence of any HQAR on or within 100 feet of the development site.
  - 6) Mitigation plan (if applicable) that meets the requirements of Article 4 of these regulations.
  - 7) **For Category II or Category V impacts only:** A narrative of measures taken, in sequence, to avoid and minimize wetland impacts before mitigation is considered. Category II or Category V

impacts shall also require a detailed discussion of alternative analysis to avoid, minimize, and mitigate for wetland impacts to Isolated Waters of Yorkville.

- 8) **For Category III impacts only:** A narrative of the measures taken to mitigate for lost water quality functions, such as the implementation of BMPs. Approval of appropriate BMPs will be at the discretion of Staff.
  - 9) **For Category IV impacts only:** A narrative of the proposed plan that demonstrates net gains in aquatic resource functions.
  - 10) **For Category VI impacts only:** A narrative of mitigation measures that will provide an environmental benefit, e.g. improved habitat, water quality, etc.
  - 11) Soil erosion and sediment control measures following the City's Soil Erosion and Sediment Control Ordinance.
6. For proposed impacts to both Isolated Waters of Yorkville and Waters of the U.S., the wetland submittal shall include all applicable items within Section 3.2.4.

### **Section 3.2.5 Requirements for Wetland Delineation**

Before any development in or near Isolated Waters of Yorkville or Waters of the U.S., a wetland delineation that identifies the boundaries, location, function, and applicable floristic quality of all onsite Isolated Waters of Yorkville and Waters of the U.S. as well as a floristic inventory and FQA data of natural areas on the project site shall be submitted. The presence and limits of wetland areas shall be determined by a valid wetland delineation conducted in accordance with the 1987 USACE *Wetlands Delineation Manual*. Delineations for permitting purposes shall generally be performed only during the period beginning the 2<sup>nd</sup> week of March and ending the first week of December. At the discretion of Staff, the acceptable delineation period may be modified due to unusual weather or other conditions. Any presence of farmed wetlands shall be determined by the Natural Resource Conservation Service (NRCS).

For Isolated Waters of Yorkville and Waters of the U.S. within 100 feet of the development property for which an on-site delineation is not possible, then wetlands identified on a NWI map may be sufficient.

The following are minimum requirements for the Wetland Delineation Report:

1. A plan shall be submitted that shows the exact location of Isolated Waters of Yorkville and Waters of the U.S. within the development boundaries. The wetland boundary shall be flagged in the field and in order to determine buffer and any applicable wetland mitigation requirements, the wetland boundary shall be surveyed.
2. An aerial photograph with wetland and development boundaries delineated.
3. A copy of the following maps (most recent available) with the development boundary delineated:
  - 1) USGS topographic map.
  - 2) Kendall County soil survey map.
  - 3) NWI map.
  - 4) FEMA floodplain map.
4. Completed USACE data sheets with representative color photographs provided for each data point.
5. A description of each wetland habitat(s) that includes the following:
  - 1) FQA data that follows the methods provided in Swink, F. and G. Wilhelm's Plants of the Chicago Region (latest edition). In general, the floristic inventory shall be conducted between

May 15<sup>th</sup> and October 15<sup>th</sup>. At the discretion of Staff, the acceptable vegetation assessment period may be modified due to unusual weather or other conditions. Floristic assessments conducted outside this time period may require additional sampling during the growing season to satisfy this requirement.

- 2) Wildlife habitat assessment for each wetland that evaluates utilization of the wetland by wildlife, interspersed and structure of vegetative cover (number of plant communities, e.g., emergent marsh, wet prairie, seep, forested, etc., present within the wetland system), and ratio of vegetative cover to open water.
  - 3) Description of the present functions provided by each wetland.
6. For all farmed wetlands that are present within the project site, the NRCS Certified Wetland Determination Report shall be provided.

### **Section 3.2.6 Wetland Permit Conditions**

1. Staff shall attach any additional reasonable permit conditions considered necessary to ensure that the intent of the Wetland Protection Ordinance will be fulfilled, to avoid, minimize or mitigate damage or impairment to, encroachment in, or interference with natural resources and processes within the protected wetlands or watercourses, or to otherwise improve or maintain the water quality.
2. Any change in the size or scope of the development and that affects the criteria considered in approving the permit as determined by Staff or City Council as applicable, may require the filing of a new wetland permit submittal.
3. Any temporary, seasonal, or permanent operation that is discontinued for one (1) year shall be presumed to have been abandoned and the wetland permit automatically voided. Abandonment of the project may subject the permittee to forfeiture of the performance security.
4. Any permit granted under these regulations may be revoked or suspended by Staff or City Council, as applicable, after notice and an opportunity for a hearing, for any of the following causes:
  - 1) A violation of a condition of the permit.
  - 2) Misrepresentation or failure to fully disclose relevant facts in the application.
  - 3) A change in site condition(s) that requires a temporary or permanent change in the proposed activity.
5. A developer who has received a wetland permit under these regulations shall comply with the following in connection with any construction or other activity on the property for which the wetland permit has been issued:
  - 1) Comply with the City's Soil Erosion and Sediment Control Ordinance.
  - 2) Maintain clear delineation of the protected wetlands and wetland buffers during the on-going development activities.
6. The wetland permit shall remain effective for two (2) years. The granting authority upon request by the permittee may approve a maximum one (1) year extension.



**Article 4**  
**Wetland Impacts and Mitigation Requirements**

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#### **Section 4.1 Unmitigable Wetland Impacts**

1. Wetlands of any size identified as having a FQI greater than or equal to 35 or mean C value of 3.5 or greater shall not be impacted via flooding, excavation, dredging, fill, drainage, or other hydrological disturbance, vegetation removal (other than for maintenance or restoration purposes) as part of any development or dumping, or non-permitted discharge of chemicals or other pollutants. The FQI is solely based on the wetland vegetation. To determine the floristic value of the wetland, buffers and adjacent plant communities shall not be included in the calculation.

#### **Section 4.2 Wetland Mitigation Requirements**

##### **Section 4.2.1 General Mitigation Requirements**

1. Mitigation shall be required for all impacts, regardless of size to Category V wetlands.
2. Mitigation shall be required for wetland impacts greater than or equal to  $\frac{1}{4}$  (0.25) acre to Isolated Waters of Yorkville defined under Category I, Category II, and Category VI wetland impacts.
3. Mitigation shall provide for the replacement of the wetland habitat impacted due to development activities at the following ratios (creation acreage to wetland impact acreage):
  - 1) A minimum of 1.5:1 for wetland impacts under Category I or II that are not to a HQAR and are mitigated on-site
  - 2) A minimum of 1:1 for wetland impacts under Category VI and are mitigated on-site.
  - 3) A minimum of 10:1 for wetland impacts that are to a HQAR under Category V and are mitigated on-site
4. Wetland impacts covered under Category III will not require mitigation *per se*, but at a minimum, shall replace the water quality functions through BMP's as approved by Staff.
5. No mitigation is required for Category IV wetland impacts provided the restoration, creation, or enhancement contributes a net gain of aquatic resource function(s). Category IV wetland impacts, however, shall be required to provide all Wetland Permit Submittal Requirements, as applicable, following Section 3.2.4 of these regulations.
6. Wetland mitigation shall be designed wherever possible to restore wetland hydrology to historic hydric soils that have been drained or dewatered. Grading activities for wetland creation and/or restoration should be minimized.
7. Mitigated wetlands shall be designed to optimize hydrologic stability and native species diversity. Designed permanent open water area(s) shall not constitute more than 20% of the required mitigation acreage. At the discretion of Staff, however, greater than 20% up to a maximum 50% mitigation credit for open water may be applied for mitigation designs that create interspersed open water with emergent wetland habitat.
8. Any creation of wetlands for required mitigation shall take place only within areas that are not of a remnant plant community, wetlands, or other natural areas.
9. Enhancement within existing wetlands may be used as part of the mitigation credits, provided that at a minimum, wetland creation and/or restoration is at a 1:1 ratio, the mitigation creation/restoration is provided on-site, and the impacted wetland(s) does not meet the definition of HQAR. Mitigation credit for enhancement measures will be at a 0.25:1 ratio (0.25 acre credit for every 1.0 acre enhanced).

10. All wetland mitigation areas shall be buffered according to the requirements of Section 3.1.1. No buffer is required for that portion of a wetland mitigation area that is adjacent to an existing preserved wetland.
11. A five-year wetland mitigation irrevocable letter of credit in favor of the City or equivalent security for 110% of mitigation cost following the provisions of Article 10 of these regulations shall be submitted prior to receipt of the permit.
12. For those impacts that will have a total wetland impact of less than or equal to 1.0 acre and not affect a HQAR, the fee-in-lieu of mitigation option may be required by the City. Conditions under which the fee-in-lieu option may be required include, but are not limited to:
  - 1) There are no other on-site or immediately adjacent wetlands that could be expanded.
  - 2) The total size of the impacted wetland is 2.0 acres or less and due to development conditions, the long-term viability of the wetland is questionable.

In addition, the fee-in-lieu option may be used by the developer for wetland impacts; this will be at the discretion of Staff and City Council. Fees paid in lieu that are **not** required by Staff and City Council, shall be comparable to the cost of mitigation off-site, but within the same watershed as the wetland impact, including land costs. The mitigation rate shall be 1 ½ (1.5) times the on-site required mitigation acreage for calculation of the estimate of probable mitigation cost for non-HQAR sites. The mitigation rate shall be 3.0 times the on-site required mitigation acreage for calculation of the estimate of probable mitigation cost for HQAR sites. Fees paid in lieu that are required by City Council with Staff's recommendation shall be comparable to the cost of on-site mitigation, including land costs.

13. Wetland impacts occurring prior to issuance of a Wetland Permit shall presume the wetland disturbed was a HQAR and shall require mitigation at a minimum rate of 10:1.

#### **Section 4.2.2 Mitigation Hierarchy**

All mitigation shall occur within the limits of the City's jurisdiction. For the off-site mitigation purposes of these regulations, wetland mitigation shall occur within the same primary watershed (Aux Sable or Fox River) as the wetland impact, unless there is an available wetland mitigation bank within the sub-watershed corresponding to the impact (Blackberry, Rob Roy). Mitigation shall use the following hierarchy.

1. On-site wetland mitigation is preferred, but only if the applicant can document that the mitigation can expand the extent or improve the quality of other existing, undisturbed on-site or immediately adjacent wetlands or on-site mitigation will create or restore a wetland equal to or greater than 1.5 acres in size. On-site mitigation shall meet the requirements of Article 4 of these regulations.
2. Off-site wetland mitigation within the same primary watershed as the wetland impact or within an approved wetland mitigation bank located within the primary watershed when on-site mitigation is not feasible. Required mitigation acreage shall be the on-site required mitigation acreage. Off-site created or restored wetland mitigation shall meet the requirements of Article 4 of these regulations,
3. Mitigation as a fee-in-lieu payment option that is not required by the City. The mitigation rate shall be 1 ½ (1.5) times the on-site required mitigation acreage for calculation of the estimate of probable mitigation cost for non-HQAR sites, 3.0 times for HQAR sites.
4. Off-site wetland mitigation within the same primary watershed as the wetland impact and meets the requirements of Article 4 of these regulations or within an approved wetland mitigation bank located within the primary watershed. Required mitigation acreage shall be 1 ½ (1.5) times the on-site required mitigation acreage for non-HQAR sites, 3.0 times for HQAR sites.

5. Off-site wetland mitigation and outside the primary watershed of the wetland impact or within an approved wetland mitigation bank located outside the primary watershed shall require three (3) times the on-site required mitigation acreage and meet the requirements of Article 4 of these regulations.

### **Section 4.3 Wetland Mitigation Plan**

1. In addition to the requirements of Article 3, if wetland mitigation is required a wetland mitigation plan shall be submitted. Refer to Appendix C for the wetland mitigation plan checklist. At a minimum, the wetland mitigation plan shall contain the following.
  - 1) Narrative description of wetland impacts and proposed mitigation. Include a summary table with acreage for each existing wetland, proposed impact, and proposed mitigation.
  - 2) A narrative of the proposed plan that includes a description of the proposed hydrologic regime, planting plan, soils, and site geomorphology, where applicable.
  - 3) Provide a Wetland Mitigation Plan Graphic that depicts each wetland impact and all proposed wetland mitigation and limits of required wetland buffer areas and contains the planting plan for each proposed plant community, existing and proposed grades with 1-foot contour lines, protection measures for all preserved wetlands, and location of water level structures, BMPs (if applicable).
  - 4) Specifications for wetland mitigation, which includes but is not limited to the following:
    - a. Earthwork - rough and final grading, allowable compaction limits, treatment of compacted soils, and topsoil placement.
    - b. Compliance with the City's soil erosion and sediment control ordinance.
    - c. Water control structures, if applicable.
    - d. BMP design and implementation if proposed within wetland buffer area.
    - e. Seed/plant installation that includes seed/plant bed preparation; procurement, list of plant material by scientific and common name including seeding and planting rates for each designated plant community, initial maintenance requirements and warranty performance criteria, and any special planting provisions.
  - 5) Provide a proposed implementation schedule that includes site preparation, installation of soil erosion and sediment control measures, planting schedule, and post-planting maintenance and monitoring schedule that indicates approximate month and year for each of the proposed activities.
  - 6) Provide a maintenance and monitoring plan that identifies activities during the 5-year monitoring period and follows the requirements of Sections 4.4 and 4.5 of these regulations. Activities should include, but not limited to, control of undesirable plant species, herbivore control, trash removal, prescribed burn management, enhancement planting, bi-annual monitoring events, and any other necessary activities.
  - 7) All wetland mitigation shall include a plan for the long-term management and maintenance of the preserved wetlands, mitigation wetlands, and their associated buffers. This plan shall include a description of the sources of funding, and designation of the long-term responsible party that follows the provisions of Article 5 and as approved by Staff. In addition, the long-term management plan shall identify long-term management strategies that include but not limited to prescribed burn management for all applicable portions of the mitigation. If burn management is

not utilized, documentation shall be submitted that specifies the reasons why burn management will not be used and describes alternative management strategies that are known to be effective. Alternatives such as herbicide application or weed pulling shall be applied with Staff approval.

- 8) If the owner is different than the applicant, identify the owner of the site and provide a written assurance from the owner that the applicant has permission to use the site for mitigation.

#### Section 4.4 Wetland Mitigation Monitoring Protocol

1. Following the general USACE guidelines, a 5-year mitigation monitoring period shall be required to assess the success of the mitigation. The first monitoring year is considered the first full growing season after planting. In general, if the full mitigation plan including seeding/planting is completed by end of May in a particular year, that year can be considered the first monitoring year. If installation is not completed until later in the growing season, then the first monitoring year will be the next calendar year.
2. Provide a description of a monitoring protocol that meets the following provisions.

- 1) General Sampling Methods.

- a. Monitoring for every year of the required monitoring period shall include two (2) monitoring events: one in late spring (May – mid-June) and the second during the late summer period from mid-August to mid-October.

The purpose of the spring visit is a qualitative assessment of the mitigation site, accomplished through meander search methodology throughout the entire mitigation area, including the buffer area, and inventories of vegetation across the different plant communities/zones. Denote any site conditions where land management should be addressed (e.g., weed control, herbivory impacts, soil erosion, and sedimentation impacts). The spring site visit shall be documented in a field report as described in Section 4.6.

- b. The second monitoring event shall provide a more detailed qualitative assessment, and conduct quantitative sampling along transect lines and document site conditions with photographs that are taken at permanent photo stations.

The general inventory and FQA data shall be compiled and summarized in the annual monitoring report as described in Section 4.6

- 2) Transect Sampling Methods.

- a. Generally, at least one (1) transect line shall be established within each of the proposed wetland mitigation areas and within each plant community across the mitigation site, including one in the buffer area. Transect locations shall be documented so that sampling can be repeated year to year.
- b. A sufficient number of quadrants shall be sampled along each transect line to provide full representation of the plant community. In general, a minimum of ten (10) 0.25 square meter quadrants per transect is sufficient. Quadrant intervals and number will depend on the size and uniformity of the plant community.

The sampling procedure includes the recording of all plant species within the quadrant and the assignment of a cover value. For further detail of the sampling method refer to the “Monitoring Vegetation” chapter in The Tallgrass Restoration Handbook: for prairies, savannas, and woodlands (Packard, S. and Mutel, C. 2005).

From these data, the Mean C, FQI, and relative importance values (RIV) are generated and are to be compared with results of the previous monitoring events.

3) Additional Monitoring Parameters

In addition to the FQA method stated above, some projects may require additional monitoring parameters for the mitigation and/or preserved wetland(s) such as hydrology, wildlife, etc. The requirements of additional monitoring parameters shall be reviewed and required (if any) by Staff on a project by project basis.

4) Preliminary Wetland Delineation.

A preliminary wetland delineation of the mitigation wetland(s) boundary shall be conducted during the third (3<sup>rd</sup>) year of monitoring. The extent of developed wetland shall be based on the prevalence of hydrophytic vegetation. If the delineated wetland acreage deviates negatively, 10% or greater than the required mitigation acreage, the developer shall be required to prepare and submit a Remedial Action Plan to Staff. Refer to Section 4.7 Mitigation Requirements for Non-performing Wetlands.

5) Final Wetland Delineation.

A final wetland delineation of the mitigation wetland(s) boundary shall be conducted during the fifth (5<sup>th</sup>) monitoring year.

**Section 4.5 Wetland Mitigation Performance Standards**

1. Erosion Control – A biodegradable erosion blanket shall be used for areas up to the 2-year stage and a temporary cover crop shall be seeded within the wetland mitigation, which includes the buffer area above the 2-year stage, within seven (7) calendar days of completion of construction activities. If the developer is unable to comply with the 7-day requirement then the developer shall follow the City’s Soil Erosion and Sediment Control Ordinance. Any additional soil and erosion control measures shall be in accordance to the City’s Soil Erosion and Sediment Control Ordinance.

2. Floristic Quality Assessment

1) General Inventory

- a. By the end of the third full growing season, 30% of the seeded species and 90% of the plugged species should be present; and native Mean C and native FQI values shall be greater than or equal to 2.5 and 15, respectively, for each installed plant community.
- b. By the end of the fifth full growing season, 40% of the seeded species and 80% of the plugged species should be present. The native Mean C and FQI values shall be equal to or greater than 3.2 and 20, respectively, as measured for each plant community type that comprises the mitigation area, including the native plant community within the buffer area. The native Mean C and FQI values should increase each successive year after installation.
- c. By the end of the fifth full growing season, the native Mean W shall be less than or equal to zero (0) for each of the wetland communities.

Generally, prior to the fifth monitoring year, the FQA data presented in the annual report should reflect a positive trend in floristic metrics in order to be confident that the mitigation shall meet the stated performance standards in the fifth year. If the mean wetness coefficient is greater than zero (0), this is an indication that wetland conditions are not developing. If the native Mean C has not increased from the previous year’s monitoring

results, this is an indication that additional management activities may be required. It is in the permittee's best interest to take necessary measures early in the project in order to ensure compliance with the proposed wetland mitigation.

2) Transect Inventory.

- a. The RIV of total native plants should increase each successive year after installation.

Generally, at the transect level there should be a positive trend in the floristic metrics for the mitigation monitoring period. If such a trend is observed, one can conclude that for a particular plant community all reasonable measures have been taken to manage that area.

3. General Standards.

- 1) By the end of the third full growing season, there shall be no area, across the entire mitigation site, greater than 1 square meter that is devoid of vegetation, as measured by aerial coverage, unless specified in the approved mitigation plan. Overall aerial coverage must be 90%, and seedlings of at least 50% of all seed species found.
- 2) By the end of the fifth full growing season, there shall be no area, across the entire mitigation site, greater than 0.5 square meter that is devoid of vegetation, as measured by aerial coverage, unless specified in the approved mitigation plan. Overall aerial coverage must be 99%, and seedlings of at least 40% of all seed species found.
- 3) By the end of the fifth full growing season, none of the three most dominant plant species in any of the communities that comprise the mitigation site, which includes the buffer area, may be non-native or weedy species including, but not limited to, Reed Canary Grass, Common Reed, Kentucky Blue Grass, Purple Loosestrife, Narrow-leaved cattails, Sandbar Willow, Field Thistle, sweet clover, woody shrubs such as buckthorn, Eurasian honeysuckles, European High Bush Cranberry, and other non-native, weedy species.
- 4) By the end of the fifth full growing season, the proposed wetland acreage as depicted in the approved plan shall have been achieved. The extent, or deficiency of wetland acreage, that has not been achieved, is the extent to which the developer shall be liable. Refer to Section 4.7 Mitigation Requirements for Non-performing Wetlands
- 5) Should the developer choose to provide additional required mitigation credits via creation, restoration, or enhancement measures, the developer shall be required at a minimum, to maintain and monitor the creation, restoration, or enhancement wetland(s) for an additional three (3) years. Should the developer choose to provide enhancement measures, the developer shall provide baseline floristic data of the proposed enhancement wetland(s).
- 6) Additional Proposed Criteria – Depending upon the mitigation plan submitted there may be additional criteria required to supplement the above standards. These shall be evaluated on a project by project basis.

**Section 4.6 Post Construction Submittal Requirements**

1. Submit as-built conditions to Staff for review and approval as identified below.

- 1) Final Grading – **upon completion of final grading but before planting**, submit certified as-built plans with benchmarks that depict elevations in the mitigation area(s), including invert elevations of all water control structures. The normal water level elevation and resulting acreage of open water, if applicable, shall be specified. Provide a narrative explanation for any deviation from

the approved mitigation plan. If the grades are not within 0.2'± of the approved plan, the permittee may be responsible for taking necessary corrective measures.

- 2) Vegetation – submit a list of the actual species seeded and planted by scientific and common names for each community zone, including the quantity of each species installed (seed weight/acre, number of plugged plants/acre), dates of seeding and/or planting, source of stock, and the installation method(s). The vegetation as-built submittal shall include the Wetland Mitigation Plan graphic that demarks the limits of each community zone installed and identifies any revisions to the planting plan.

## 2. Monitoring Reports.

- 1) Field reports shall be prepared and submitted to Staff within four (4) weeks of the spring monitoring visit. The field report shall include a brief description of existing site conditions and proposed management activities that should be addressed during the present growing season.
- 2) Annual monitoring reports shall be prepared and submitted to Staff by December 30<sup>th</sup> of the monitoring year. The annual reports shall include the FQA data and discussion of FQA results, when applicable, discussion of adherence to the appropriate performance standards, narrative of the general site conditions, identification of management activities that occurred during the growing season, recommended management activities to occur over the successive 12-month period, and photographs from the established photo stations.

The first year monitoring report shall also include a description of the transect line locations as well as a graphic of the Wetland Mitigation Plan that denotes the location of all established transect lines and permanent photo stations.

Years 3 and 5 monitoring reports shall include the results of the surveyed wetland delineation including completed data forms and a graphic that depicts the location of data points.

## Section 4.7 Mitigation Requirements for Non-performing Wetlands

1. If the Preliminary Wetland Delineation, performed during the third monitoring year, determines that the delineated wetland acreage deviates negatively, 10% or greater than the required mitigation acreage, the developer shall be required to prepare and submit a Remedial Action Plan to Staff. The Remedial Action Plan shall address measures that will be undertaken to resolve the lack of wetland habitat. A Remedial Action Plan shall be submitted to Staff within sixty (60) days of submitting the preliminary wetland delineation findings. If the developer fails to comply with the provisions of this section, the City may draw upon the required performance security following the provisions of Article 10 of these regulations to remediate the mitigation site conditions.
2. If the Final Wetland Delineation, performed during the fifth monitoring year, determines that the delineated wetland acreage does not meet the required mitigation wetland acreage, Staff may require an extension of the 5-year monitoring period, payment of fee-in-lieu equivalent to the costs associated with the construction, planting, monitoring and maintenance of the wetland acreage that is lacking, or request other measures to meet the intention, requirements, and spirit of these regulations. Failure to meet the required wetland acreage shall be reviewed and measures required on a project by project basis.
3. In addition, if Staff or his/her agent determines that the wetland mitigation does not meet the Wetland Mitigation Requirements of Section 4.2 and the Wetland Mitigation Performance Standards of Section 4.5, the developer shall meet with Staff to determine the acceptable means by which the developer shall meet his/her wetland mitigation obligation(s). Based upon the review and decision of Staff and City Council, the developer may be required to:

- 1) Continue management and enhancement measures of the mitigation area(s) for a specified period beyond the 5-year monitoring for the improvement of vegetative quality and diversity in order to meet the required performance standards of these regulations.
  - 2) Provide additional mitigation credits through enhancement measures for other existing wetland(s).
  - 3) Provide funding into the fee-in-lieu program.
4. If Staff and City Council requests that the developer meet his/her mitigation requirements via payment in-lieu, Staff shall make an estimate of the probable cost of mitigating for the deficiency in performance. Staff shall have the right to draw on the performance security the amount of funds appropriate to remedy the wetland mitigation to meet the performance standards, conditions, and wetland protection standards of these regulations. The remainder of the performance security shall then be released. The amount withheld for remedy of the mitigation shall be deposited in the fund created under and expended in the manner described in Article II.

**Article 5**  
**Long-Term Maintenance Provisions**

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**Section 5.1 Long-term Maintenance**

1. Unless maintenance responsibility has been delegated to and accepted by another person under this section, the owner shall maintain that portion of the preserved and mitigation wetlands and their associated buffers. With the approval of the Staff the preserved and mitigation wetlands and their associated buffers may be:
  - 1) Dedicated or otherwise transferred to and accepted by the City or other public entity.
  - 2) Conveyed or otherwise transferred to and accepted by a homeowner's association, or similar entity, with the members being the owners of all lots or parcels comprising the development.
  - 3) Conveyed to a person or entity that specializes in conservation and protection of wetlands.

**Section 5.2 Transfer to City or Other Public Entity**

1. If any portion of the preserved and mitigation wetlands and their associated buffers is to be dedicated or otherwise transferred to the City or other public entity under Section 5.1.1, appropriate easements for ingress and egress and maintenance of such portions shall be reserved for the benefit of such entity on the final plat.

**Section 5.3 Transfer to Homeowner's or Similar Association**

1. If any portion of the preserved and mitigation wetlands and their associated buffers is to be conveyed or otherwise transferred to a homeowner's or similar association under Section 5.1.2 then:
  - 1) Appropriate easements for ingress and egress and maintenance of such portions shall be reserved for the benefit of such association and the City on the final plat.
  - 2) The association shall be duly incorporated and a copy of the Certificate of Incorporation, duly recorded, and bylaws and any amendment to either of them, shall be delivered to Staff.
  - 3) The bylaws of the association shall, at a minimum, contain the following:
    - a. A provision acknowledging and accepting the association's obligation to maintain those portions of the preserved and mitigation wetlands and their associated buffer areas conveyed or otherwise transferred to it under these regulations.
    - b. A mechanism for imposing an assessment upon the owners of all of the lots or parcels comprising the development that is sufficient, at a minimum, to provide for the maintenance of those portions of the preserved and mitigation wetlands and their associated buffers conveyed or otherwise transferred to it under these regulations, and the payment of all taxes levied thereon. A Special Service Area shall be established for the development area to provide an ongoing revenue source in the event that the homeowners association is not managing the wetland.
    - c. A provision adopting the plan of long-term maintenance set forth in the application for a wetland permit, with approved amendments.
    - d. A provision identifying the officer of the association responsible for carrying out the obligations imposed upon the association under these regulations.
    - e. A provision requiring the consent of the City to any amendment of the bylaws changing any of the provisions of the bylaws required by these regulations.
    - f. A provision requiring the consent of the City to the dissolution of the association.

- 4) Any conveyance or other instrument of transfer delivered under Section 5.1.2 shall include a covenant that imposes upon the association the obligations set forth in this section and the association's affirmative acceptance thereof.

**Section 5.4 Conveyance to a Person or Entity Specializing in Conservation**

1. If any portion of the preserved and mitigation wetlands and their associated buffers are to be conveyed to a person or entity under Section 5.1.3 then:
  - 1) Appropriate easements for ingress and egress and maintenance of such portions shall be reserved for the benefit of the City on the final plat.
  - 2) The final plat shall contain a legend imposing the maintenance obligations of this section upon the grantee and his successors in interest as a covenant running with the land and incorporating by reference the plan of long-term maintenance set forth in the application for a wetland permit, with approved amendments.
  - 3) The final plat shall contain a legend reserving the right of the City to enter upon the land to perform the maintenance required in this section if the owner does not do so and to place a lien against the land for the cost thereof.
  - 4) A Special Service Area shall be established for the development area to provide an ongoing revenue source in the event that the person or entity is not managing the wetland.
  - 5) Any conveyance delivered under Section 5.1.3, and any subsequent conveyance, shall include a covenant that imposes upon the grantee the obligations, restrictions and provisions set forth in this section and the grantee's affirmative acceptance thereof.

**Section 5.5 Incorporation of Maintenance Obligations in Wetland Permit**

1. The provisions of this section shall be incorporated by reference in the wetland permit and the developer's acceptance of the permit shall be deemed to be the developer's acceptance and assumption of the obligations imposed under this section. The developer shall record such obligations on the deed.

**Article 6**  
**Fees, Enforcement and Penalties**

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**Section 6.1 Fees and Application Review Times**

1. Applications for a wetland permit under these regulations shall be accompanied by a non-refundable administrative application fee in an amount of \$100. In addition, the developer shall provide a minimum review deposit in the amount of \$5,000 that will be drawn on for the hourly fee invoices of outside consultant(s) who may be retained by the United City of Yorkville in connection with the review of the application. In the event the review deposit is drawn down to less than \$1,000, the developer shall be required to provide an additional deposit to re-establish the deposit balance to \$5,000. In the event the cost of the services of the consultant(s) is less than the review deposit, the developer shall be refunded the balance. A denial of an application for a wetland permit shall not affect the developer's obligation to pay the review fee provided for in this Section.
2. Additional fees for wetland mitigation construction administration and review will be covered under the Administration Fee based on the approved estimate of costs.
3. Permit applications shall be approved or denied within 30 business days of a complete permit submittal; if written approval or denial of the permit has not been received within 30 business days, the permit application shall be assumed to be approved. The application review period begins once all submittal items are provided to Staff.

**Section 6.2 Enforcement**

1. One of the primary duties of Staff or his/her agent shall be the review of all wetland submittal applications and issuance of wetland permits for those projects that are in compliance with the provisions of these regulations. Staff shall be responsible for the administration and enforcement of these regulations.
2. Staff or his/her agent, officer, or employee shall have authority under these regulations to enter upon privately owned property for the purposes of inspecting any development activity to ensure the activity conforms with requirements, standards, and provisions of these regulations and/or the terms and conditions of an issued wetland permit.
3. If a wetland mitigation area is constructed as part of the wetland permit, Staff or his/her agent shall at a minimum perform the following inspections:
  - 1) After final grading and before seeding or plant installation.
  - 2) After seeding and plant installation.
  - 3) Annual inspections during the 5-year monitoring and maintenance period.

**Section 6.3 Penalties and Legal Actions**

1. Whenever Staff or his/her agent finds a violation of these regulations, or of any permit or order issued pursuant thereto, Staff or City Council, as applicable, may issue a stop-work order on all development activity on the subject property or on that portion of the activity that is in direct violation of the Ordinance or withhold issuance of a Certificate of Occupancy, permits or inspection until the provisions of these regulations, including any conditions attached to a wetland permit, have been fully met. Staff shall issue an order that (1) describes the violation (2) specifies the time period for remediation, and (3) requires compliance with these regulations prior to the completion of the activity in violation. Failure to obey a stop-work order shall constitute a violation of these regulations.
2. In the event a violation involving illegal alteration of an Isolated Waters of Yorkville as protected under these regulations, the City shall have the power to order complete restoration of the Isolated Waters of Yorkville by the person or agent responsible for the violation. If such responsible person or agent does not prepare and submit a restoration plan for review and approval by Staff within 30 days of notice of violation, the City shall have the authority to restore the affected Isolated Waters of Yorkville to their prior condition wherever possible, and the person or agent responsible for the original violation shall be held liable to the City for the cost of such restoration.

3. In addition to the rights and remedies herein provided to the City, any person violating any of the provisions of these regulations shall be subject to a fine in an amount not exceeding Seven Hundred and Fifty Dollars (\$750.00) for each offense. Each calendar day a violation continues to exist shall constitute a separate offense.

**Article 7**  
**General Provisions**

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**Section 7.1 Scope of Regulation**

1. These regulations applies to all new development as well as any dumping or non-permitted discharge of chemicals or other pollutants into Isolated Waters of Yorkville within the United City of Yorkville and all new development within an area under consideration for annexation into the United City of Yorkville. Any person undertaking a development having a wetland on the project site or a wetland within 100 feet of the project site shall obtain a wetland permit from Staff. This includes any new development on partially developed sites

**Section 7.2 Exemptions**

1. These regulations do not apply to:
  - 1) Development which has obtained preliminary or final plat approval within the past 12 months before the effective date of these regulations
  - 2) Wetland impacts that have occurred before the effective date of these regulations.

**Section 7.3 Severability**

1. The provisions of these regulations shall be severable in accordance with the following rules:
  - 1) If any court of competent jurisdiction shall adjudge any provision of these regulations to be invalid, such judgment shall not affect any other provision of these regulations.
  - 2) If any court of competent jurisdiction shall adjudge to be invalid the application of any provision of these regulations to a particular parcel of land or a particular development, such judgment shall not affect the application of said provision to any other land or development.

**Section 7.4 Abrogation and Greater Restrictions**

1. These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where these regulations and other ordinances, easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
2. When provisions of these regulations differ from any other applicable law, statute, ordinance, rule, or regulation, the more stringent provision shall apply.

**Section 7.5 Effective Date**

These regulations shall be in full force and effective from and after its passage, approval, and publication according to law. The effective date of these regulations is January 8, 2008.

**Article 8**  
**Variances and Appeals**

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### **Section 8.1           Variances**

1. The developer may apply to the City Council for a variance. The City Council shall have the authority to grant variances from these regulations, but only in compliance with the procedures set forth in Section 8.1.
2. The petition for a variance shall accompany or follow an application for a Wetland Permit and shall include all necessary submittal items.
3. Every variance petition filed pursuant to this Section 8.1 shall provide the following information:
  - 1) The specific feature or features of the proposed construction or development that require a variance.
  - 2) The specific provision(s) of these regulations from which a variance is sought and the precise extent of the variance therefrom.
  - 3) A statement of the characteristics of the development that prevent compliance with the provisions of these regulations.
  - 4) A statement that the variance requested is the minimum variance necessary to permit the development.
  - 5) A statement as to how the variance requested satisfies the standards set forth in Section 8.1.4 of these regulations.
4. The City Council may grant such petition for a variance only when it is consistent with the general purpose and intent of these regulations and when the development meets the majority (four or more) of the following conditions:
  - 1) The relief requested is the minimum necessary and there are no means other than the requested variance by which the alleged hardship can be avoided or remedied to a degree sufficient to permit the reasonable continuation of the development.
  - 2) Demonstration that failure to grant the variance would result in exceptional hardship to the developer. Economic hardship is not a valid reason to request a variance.
  - 3) The variance is not requested solely for the purpose of increasing the density of the development nor impervious areas on the site.
  - 4) The developer's circumstances are unique and do not represent a general condition or problem.
  - 5) The subject development is exceptional as compared to other developments subject to the same provision.
  - 6) Granting the variance shall not dramatically alter the essential character of the wetland area involved, including existing stream uses.
  - 7) The proposed development could not be constructed if it were limited to areas outside the Isolated Waters of Yorkville and required buffer areas.

### **Section 8.2           Variance Conditions**

1. A variance of less than or different from that requested may be granted when the record supports the developer's right to some relief, but not to the relief requested.

2. In granting a variance, the City Council may impose such specific conditions and limitations on the developer concerning any matter relating to the purposes and objectives of these regulations as may be necessary or appropriate.
3. Whenever any variance is granted subject to any condition to be met by the developer, upon meeting such condition, the developer shall file evidence to that effect with Staff.
4. A granted variance shall be issued as a “special use” permit and shall be valid for one (1) year from the date of issuance.

### **Section 8.3 Appeals**

1. A developer may appeal any decision of Staff to the City Council provided that no such appeal shall be taken until and unless the developer has requested a conference with Staff and not a subordinate of Staff, and either the conference has been held or Staff has not scheduled a conference within 30 days of the initial request.

**Article 9**  
**Administration**

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**Section 9.1 Responsibility for Administration**

1. Staff shall oversee the enforcement and administration of these regulations. In performing his/her duties, Staff may delegate routine responsibilities to any named designee.

**Section 9.2 Representative Capacity**

1. In all cases when any action is taken by Staff or his/her duly appointed designee, to enforce the provisions of these regulations, such action shall be taken in the name of the City, and neither Staff nor his/her designee, in so acting shall be rendered personally liable.

**Section 9.3 Service of Notice**

1. Unless otherwise provided herein, service of any notice or other instrument under these regulations may be made upon any person by:
  - 1) First class mail, postage prepaid, addressed to address then on file for such person, if any, or if none, to such person's last known address.
  - 2) Any method prescribed under the Illinois Code of Civil Procedure.

**Article 10**  
**Performance Security**

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### **Section 10.1 General Security Requirements**

1. To secure the performance of the developer's obligation to successfully complete any required wetland mitigation as part of the wetland permit, and to pay all costs, fees, and charges due under these regulations, and to fully and faithfully comply with all of the provisions of these regulations, the developer shall, prior to the issuance of a wetland permit post the security as provided in Section 10.2.
2. The developer shall bear the full cost and responsibility of obtaining and maintaining the security required by this Article.

### **Section 10.2 Wetland Mitigation and Naturalized Basin Performance Security**

1. A development performance security shall include the following.
  - 1) A schedule, agreed upon by the developer and Staff, for the completion of the wetland mitigation required by the permit.
  - 2) A statement of the estimated probable cost to install, monitor, and maintain the wetland mitigation area as required by the permit. The estimated probable costs shall be categorized by earthwork, including erosion and sediment control measures; landscape installation; and maintenance and monitoring costs. Such estimate is subject to approval by Staff.
  - 3) An irrevocable letter of credit in favor of the City or other such adequate security as Staff may approve, in an amount equal to 110% of the approved estimated probable cost to complete any required wetland mitigation.
  - 4) A statement signed by the developer granting Staff the right to draw on the security and the right to enter the development site to complete required work, in the event that work is not completed according to the work schedule or the mitigation area is not meeting the required performance standards and the developer has failed to implement management activities or remedial measures to address noncompliance issues.
2. Required 5 year wetland mitigation development security may be released based on the following mitigation milestones:
  - 1) 50% estimated probable costs for earthwork activities may be released following review and approval of certified final grading as-built plans.
  - 2) Remaining 50% estimated probable costs for earthwork activities and 50% estimated probable costs for landscape installation may be released following review and approval of the preliminary wetland delineation (conducted in the third year of monitoring) and compliance with the prescribed performance standards for 3<sup>rd</sup>-year monitoring requirements.
  - 3) Subsequent release of security shall be based on progress of mitigation and at the discretion of Staff. At no time, however, shall more than 50% of the remaining security be released prior to review and approval of the final wetland delineation (conducted in the fifth year of monitoring) and compliance with the prescribed performance standards for the 5<sup>th</sup>-year monitoring requirements.
3. Required 3-year naturalized wetland detention basin development security may be released based on the following milestones:
  - 1) 50% estimated probable costs for earthwork activities may be released following review and approval of certified final grading as-built plans.
  - 2) Remaining 50% estimated probable costs for earthwork activities and 50% estimated probable costs for landscape installation may be released following review and approval of the naturalized wetland basin establishment after two years of development and compliance with the prescribed performance standards for the 2<sup>nd</sup>-year monitoring requirements.
  - 3) Subsequent release of security shall be based on progress of naturalized wetland basin and at the discretion of Staff. At no time, however, shall more than 50% of the remaining security be

released prior to review and approval of the naturalized wetland basin after three years of development and compliance with the prescribed performance standards for the 3<sup>rd</sup>-year monitoring requirements.

4. Generally, at the end of the applicable monitoring period or upon an earlier request for the release of the performance security, Staff or his/her agent shall evaluate the wetland mitigation and/or naturalized wetland basin for compliance with the performance standards, conditions, and standards of these regulations. If Staff or his/her agent determines that the wetland mitigation meets the performance standards, conditions, and wetland protection standards of these regulations, he/she shall recommend release of the performance security.

### **Section 10.3 Performance Security**

1. Performance security posted pursuant to this Article shall be in a form satisfactory to Staff.
2. If the developer fails or refuses to fully meet any of its obligations under these regulations then the City may, at their discretion, draw on and retain all or any of the funds remaining in the performance security. The City thereafter shall have the right to take any action deemed reasonable and appropriate to mitigate the effects of such failure or refusal, and to reimburse the City from the proceeds of the performance security for all of its costs and expenses, including legal fees and administrative expenses, that resulted from or incurred as a result of the developer's failure or refusal to fully meet its obligations under these regulations. If the funds remaining in the performance security are insufficient to fully repay the City for all such costs and expenses, or after said payment to the City, the remaining cash reserve of the performance security is less than the amount that would otherwise be required to be maintained under this Article, the developer shall on demand by the City immediately deposit with the City such additional funds as the City determines are necessary to fully repay such costs and expenses, and to establish appropriate cash reserve as required under this Article.

**Article 11**  
**Fee-In-Lieu of Wetland Mitigation**

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**Section 11.1 Fee-in-lieu of Wetland Mitigation**

1. If fee-in-lieu of mitigation is required by the City, the applicant shall prepare a statement of the estimated probable cost to construct wetlands that includes costs associated with land acquisition, wetland construction, planting, and the 5-year monitoring and maintenance activities. The estimate of probable costs is subject to the approval of the City.
2. If fee-in-lieu of mitigation is **not** required by the City, the applicant's estimated probable cost shall be determined based on a mitigation ratio 1.5 times the on-site required mitigation acreage. The probable cost estimate shall include costs associated with land acquisition, wetland construction, planting, and the 5-year monitoring and maintenance activities. The estimate of probable costs is subject to the approval of the City.

**Section 11.2 Procedures and Use of Funds**

1. An applicant's statement of its intention to satisfy the wetland mitigation requirement by the payment of a fee-in-lieu of wetland mitigation shall be in writing and filed with the City along with the estimates described in Section 11.1.
2. Fees paid in lieu of wetland mitigation shall be deposited by the City in a separate fund created for such purpose.
3. Fees paid in lieu of wetland mitigation shall be expended to plan, design, restore, improve, acquire, or enhance Isolated Waters of Yorkville and/or Waters of the U.S. located within the City's jurisdiction.

APPENDIX A

WETLAND PERMIT APPLICATION AND PERMIT SUBMITTAL FLOWCHART

# UNITED CITY OF YORKVILLE WETLAND PERMIT APPLICATION

(For City use only) Date Application Received: _____	Date Permit Issued: _____
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Instructions: Applicant shall submit completed application, permit submittal checklist, permit submittal flowchart, mitigation plan checklist and all other applicable submittal items as required within the Wetland Ordinance to the Administrator. The wetland permit review process shall begin once a complete submittal has been provided.

Name & Address of Applicant: _____ _____ _____	Name & Address of Owner(s): _____ _____ _____	Name & Address of Developer: _____ _____ _____
Telephone No. during business hours: (    ) _____ (    ) _____ fax	Telephone No. during business hours: (    ) _____ (    ) _____ fax	

Describe the general intent of the proposed activity, its purpose and the proposed Category (I-VI) of impact.

Names, addresses and telephone numbers of all adjoining property owners within 250 feet of the development site.

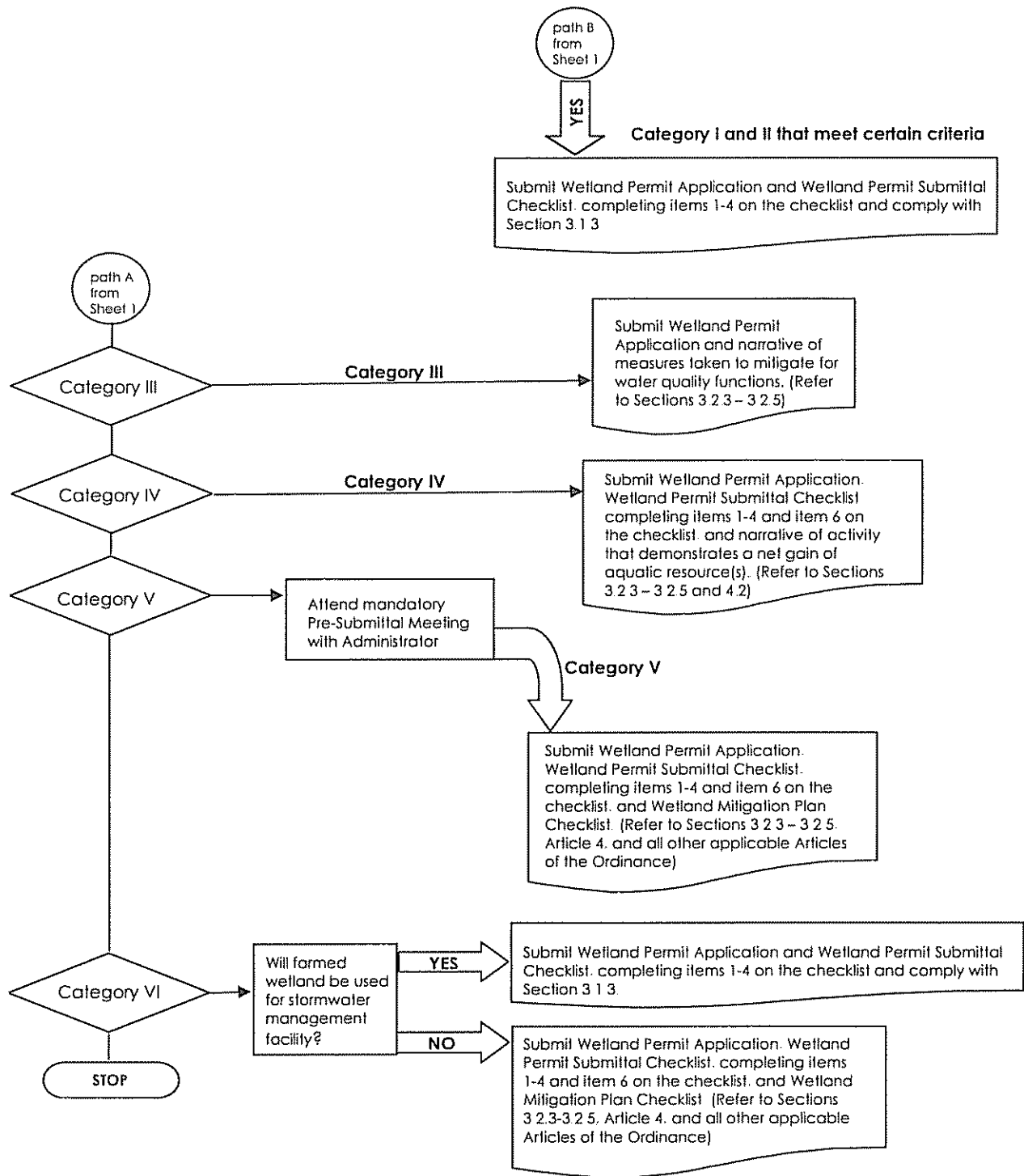
Location of activity: _____ Street, road or other descriptive location _____ City                      County                      State                      Zip Code _____ Name of waterbody within or adjacent to site (if applicable)	Legal Description: _____ 1/4      Sec      Twp      Range _____ Tax Assessor's Description (if known): _____ _____ Map No.    Subdiv. No.    Lot No.
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Is any portion of activity for which a wetland permit is sought now complete?      \_\_\_ No    \_\_\_ Yes, if yes explain:

I hereby certify that all information presented in this application is true and accurate to the best of my knowledge. I have read and understand the United City of Yorkville Wetland Protection Ordinance, and fully intend to comply with its provisions.

Signature of Developer	Date
Signature of Owner	Date





APPENDIX B

WETLAND PERMIT SUBMITTAL CHECKLIST

**United City of Yorkville**  
**WETLAND PERMIT SUBMITTAL CHECKLIST**

REQUIREMENT	ITEM REQUIRED (√)	ITEM PROVIDED (√)	IF NOT PROVIDED. EXPLANATION
1. Wetland Delineation Report that provides all information as required in Section 3.2.5 of the Ordinance.			
2. Narrative Report and Site Plan that demonstrates compliance of: a. Section 3.1.1 Buffer Requirements, including planting plan for buffer area(s). b. Section 3.1.2 Wetland Hydrology Protection c. Section 3.1.3 Stormwater Management within Isolated Waters of Yorkville (including buffer and 3-year management and monitoring plan) d. Section 3.1.4 Discharge to Isolated Water of Yorkville or Waters of the U.S. e. Section 3.1.5 Protection of Isolated Waters of Yorkville During Development			
4. USACE statement of jurisdictional determination for all wetlands on development site.			
5. For proposed <b>impacts to Waters of the U.S.</b> the following shall be provided: a. Completed United City of Yorkville Wetland Permit Application b. Provide USACE permit submittal for the proposed development or a letter from the USACE that states the proposed development does not require USACE authorization. c. Provide copies of all USACE, IEPA, and IDNR Office of Water Resources authorizations to the Administrator. d. Statement that all wetlands within the City's jurisdiction will be mitigated for within the same primary watershed as the impact(s) at the mitigation ratio specified by the USACE. e. Soil Erosion and Sediment Control Plan that demonstrates compliance with the City's Soil Erosion and Sediment Control Ordinance.			
6. For proposed <b>impacts to Isolated Waters of Yorkville</b> the following shall be provided: a. Completed United City of Yorkville Wetland Permit Application. b. Statement of Permit Category (Category I-VI) to be used for development impact(s) c. Documentation for compliance with Illinois Department of Natural Resources' Endangered Species Consultation Program and the Illinois Natural Areas Preservation Act.			

## WETLAND PERMIT SUBMITTAL CHECKLIST

REQUIREMENT	ITEM REQUIRED (√)	ITEM PROVIDED (√)	IF NOT PROVIDED, EXPLANATION
6. d. Documentation for compliance with U.S. Fish and Wildlife Service's Endangered Species Act.			
e. 1) Statement on the occurrence of High Quality Aquatic Resources on or within 100 feet of the development site			
2) Applicant has completed a Pre-Submittal meeting with the Administrator. if so, give date of meeting			
f. Mitigation Plan (if applicable) refer to Appendix C for Mitigation Plan checklist			
g. For <b>Category II or Category V impacts</b> provide the following:			
1) Narrative of measures taken, in sequence, to avoid and minimize wetland impacts before mitigation is considered.			
2) Detailed discussion of alternative analysis to avoid, minimize, and mitigate for wetland impacts			
h. For <b>Category III impacts</b> provide the following:			
1) Narrative of measures taken to mitigate for water quality functions			
i. For <b>Category IV impacts</b> provide the following:			
1) Narrative of proposed plan that demonstrates net gains in aquatic resource functions.			
j. For <b>Category VI impacts</b> provide the following:			
1) Narrative of mitigation measures that demonstrates an environmental benefit, e.g. improved habitat, water quality, etc.			

APPENDIX C

WETLAND MITIGATION PLAN CHECKLIST

## United City of Yorkville WETLAND MITIGATION PLAN CHECKLIST

REQUIREMENT	ITEM REQUIRED (√)	ITEM PROVIDED (√)	IF NOT PROVIDED, EXPLANATION
1. Narrative description of wetland impacts and proposed mitigation. Provide a summary table with acreage for each existing wetland, proposed impact, and proposed mitigation.			
2. Narrative of proposed mitigation plan that includes a description of the following parameters: a. <u>Hydrologic Conditions</u> – Identify source(s) of water, both on-site and off-site surface and groundwater. Describe and provide model results of the expected hydroperiod (at a minimum, 2-yr, 10-yr, and 100-yr, 24-hr storm events) that include frequency, duration, and elevation of inundation or saturation.  b. 1) <u>Planting Plan</u> – Describe each proposed plant community and approximate size. Provide a list of plant species for each community, including proposed cover crop. NOTE: All seed and plant material shall originate within 200 miles of site.  2) Planting narrative that describes the planting methods and planting schedule.  c. <u>Soil Characteristics</u> – Provide a soil profile of the proposed conditions. Identify soil conditions that will be present from 12 - 24 inches below the surface.  d. <u>Topography</u> – Submit existing and proposed grades with 1-foot contour lines and reference elevations.			
3. Specifications for wetland mitigation earthwork including final grading, allowable compaction limits, treatment of compacted soils, and topsoil placement; water control structures, if applicable; BMP design and implementation if proposed within wetland buffer area; plant and seed procurement, installation methods and schedule; and all other appropriate specifications for the wetland mitigation activities.			
4. Proposed implementation schedule that includes: a. Site preparation.  b. Installation of soil erosion and sediment control measures.  c. Planting schedule.			

## WETLAND MITIGATION PLAN CHECKLIST

REQUIREMENT	ITEM REQUIRED (√)	ITEM PROVIDED (√)	IF NOT PROVIDED, EXPLANATION
4. d. Post-planting maintenance and monitoring.			
5. Maintenance and Monitoring Plan that includes: a. Proposed monitoring protocol that follows Section 4.4 of the Ordinance.			
b. Specified performance standards that follows Section 4.5.			
c. Proposed annual maintenance activities to be performed during the 5-year monitoring period. Activities should include, but not be limited to control of undesirable plant species, herbivore control, burn management, enhancement planting.			
6. Provide a <b>Wetland Mitigation Plan Graphic</b> that contains the following information. a. A summary table with acreage for each existing wetland, proposed impact acreage, and proposed mitigation acreage.			
	b. Clearly identify proposed wetland impacts, wetland mitigation area(s) denoting creation vs. enhancement wetlands, and limits of required buffer areas.		
	c. Planting Plan that includes a complete list of plants by common and scientific name for each community type; quantities per species of seed, plugs, rootstock, transplants, or propagules; and specific planting zones.		
	d. Existing and proposed grades with 1-foot contour lines and reference elevations to bench marks.		
	e. Protection measures for all preserved Isolated Waters of Yorkville and Waters of the U.S.		
	f. Location of water level control structures, BMPs, etc.		
7. If off-site mitigation is proposed, the following maps shall be provided with the location of the mitigation site clearly marked: a. USGS topographic map. b. County soil survey. c. NWI map. d. NRCS swampbuster map (if applicable). e. Hydrologic Atlas. f. Aerial photograph(s).			

## WETLAND MITIGATION PLAN CHECKLIST

REQUIREMENT	ITEM REQUIRED (√)	ITEM PROVIDED (√)	IF NOT PROVIDED, EXPLANATION
7. g. Site photographs.			
8. Performance Security following the provisions of Article 10.			
9. If owner of the property is different then the applicant, provide written assurance from the owner that the applicant has permission to use the site for mitigation.			