

**ORDINANCE AMENDING THE SUBDIVISION ORDINANCE OF THE
VILLAGE OF OSWEGO WITH CREATION OF
STREAM AND WETLAND PROTECTION ORDINANCE**

WHEREAS, the Village Board of the Village of Oswego has decided to adopt a Stream and Wetland Protection Ordinance, which is designed to promote the health, safety and general welfare of the present and future residents of the Village of Oswego and downstream drainage areas by providing for the protection, preservation, proper maintenance and use of Village water courses, lakes, ponds, floodplains and wetland areas within the Village of Oswego; and

NOW, THEREFORE, BE IT ORDAINED by the Village President and Board of Trustees of the Village of Oswego, Kendall County, Illinois as follows:

SECTION 1: That Subdivision and Development Ordinance of the Village of Oswego is hereby amended by adding the Section entitled STREAM AND WETLAND PROTECTION ORDINANCE, the text of which shall read as follows:

STREAM AND WETLAND PROTECTION ORDINANCE

STREAM AND WETLAND PROTECTION ORDINANCE

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Sec. 1.00 Authority

The Stream and Wetland Protection Ordinance is adopted by the Village of Oswego, Illinois, under the authority of the Illinois Compiled Statutes Chapter 65, Paragraphs 13-13-1 et. seq.

Sec. 2.00 Short Title

This ordinance shall be known and may be cited as the Village of Oswego Stream and Wetland Protection Ordinance.

Sec. 3.00 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety and general welfare of the present and future residents of the Village of Oswego and downstream drainage areas by providing for the protection, preservation, proper maintenance, and use of the Village of Oswego watercourses, lakes, ponds, floodplain and wetland areas. The ordinance is more specifically adopted:

- a. to prevent flood damage by preserving storm and flood water storage capacity;
- b. to maintain the normal hydrologic balance of streams, floodplains, ponds, lakes, wetlands, and groundwater by storing and providing for infiltration of wet-period runoff in floodplains and wetlands, and releasing it slowly to the stream to maintain in-stream flow;
- c. to manage storm water runoff and maintain natural runoff conveyance systems, and minimize the need for major storm sewer construction and drainageway modification;
- d. to improve water quality, both by filtering and storing sediments and attached pollutants, nutrients, and organic compounds before they drain into streams or wetlands, and by maintaining the natural pollutant-assimilating capabilities of streams, floodplains and wetlands;
- e. to protect shorelines and stream banks from soil erosion, using natural means and materials wherever possible;
- f. to protect fish spawning, breeding, nursery and feeding grounds;
- g. to protect wildlife habitat;
- h. to preserve areas of special recreational, scenic, or scientific interest, including natural areas and habitats of endangered species;
- i. to maintain and enhance the aesthetic qualities of developing areas; and

- j. to encourage the continued economic growth and high quality of life of the Village of Oswego which depends in part on an adequate quality of water, a pleasing natural environment, and recreational opportunities in proximity to the Village of Oswego.

In order to achieve the purpose and intent of this ordinance, the Village of Oswego hereby requires any proposed development activity within the Village to obtain a Development Permit as approved by the governing body of the Village of Oswego. See Section 5.00.

Sec. 4.00 Definitions

- a. "Armoring" is a form of channel modification that involves the placement of materials (concrete, riprap, bulkheads, etc.) within a stream channel or along a shore line to protect property above streams, lakes and ponds from erosion and wave damage caused by wave action and stream flow.
- b. "Bulkhead" means a retaining wall that protects property along water.
- c. "Channel" means a natural or artificial watercourse of perceptible extent that periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. It has a definite bed and banks that serve to contain the water.
- d. "Channel modification" or "Channelization" means to alter a watercourse by changing the physical dimension or materials of the channel. Channel modification includes damming, riprapping (or other armoring), widening, deepening, straightening, relocating, lining and significant removal of bottom or woody vegetation. Channel modification does not include the clearing of debris or trash from the watercourse. Channelization is a severe form of channel modification involving a significant change in the channel cross-section and typically involving relocation of the existing channel (e.g. straightening).
- e. "Control structure" means a structure designed to control the rate of storm water runoff that passes through the structure, given a specific upstream and downstream water surface elevation.
- f. "Culvert" means a structure designed to carry drainage water or small streams below barriers such as roads, driveways, or railway embankments.
- g. "Depressional Area" means any area which is lower in elevation on all sides than surrounding properties (i.e. does not drain freely), or whose drainage is severely limited such as by a restrictive culvert. A depressional area will fill with water on occasion when runoff into it exceeds the rate of infiltration into underlying soil or exceeds the discharge through its controlled outlet. Large depressional areas may provide significant storm water or floodplain storage. The minimum volume for a depressional area to be regulated by this ordinance is 0.25 acre-feet.

- h. "Development" means the carrying out of any building, agricultural, or mining operation, or the making of any change in the use or appearance of land, and the dividing of land into two or more parcels. The following activities or uses shall be taken, for the purposes of this ordinance, to involve development as defined herein:
1. Any construction, reconstruction, or alteration of a structure to occupy more or less ground area, or the on-site preparation for same;
 2. any change in the intensity of use of land, such as an increase in the number of dwelling units on land, or a material increase in the site coverage of businesses, manufacturing establishments, offices, and dwelling units, including mobile homes, campers, and recreational vehicles, on land;
 3. any agricultural use of land including, but not limited to, the use of land in horticulture, floriculture, forestry, dairy, livestock, poultry, bee keeping, pisciculture, and all forms of farm products and farm production;
 4. the commencement of drilling, except to obtain soil samples, or the commencement of mining, filling, excavation, dredging, grading or other alterations of the topography;
 5. Demolition of a structure or redevelopment of a site;
 6. clearing of land as an adjunct of construction for agricultural, private residential, commercial or industrial use;
 7. deposit of refuse, solid or liquid waste, or fill on a parcel of land, or the storage of materials;
 8. construction, excavation, or fill operations relating to the creation or modification of any road, street, parking facility or any drainage canal, or to the installation of utilities or any other grading activity that alters the existing topography;
 9. construction or erection of dams, levees, walls, fences, bridges or culverts; and
 10. any other activity that might change the direction, height, or velocity of flood or surface waters.
- i. "Erosion" means the general process whereby soils are moved by flowing water or wave action.

- j. "Filtered view" means the maintenance or establishment of woody vegetation of sufficient density to screen developments from a stream or wet land, to provide for streambank stabilization and erosion control, to serve as an aid to infiltration of surface runoff, and to provide cover to shade the water. The vegetation need not be so dense as to completely block the view. Filtered view means no clear cutting.
- k. "Floodplain" means that land adjacent to a body of water with ground surface elevations at or below the 100-year frequency flood elevation.
- l. "Floodway" means that portion of the floodplain (sometimes referred to as the base floodplain or Special Flood Hazard Area) required to store and convey the base flood. The floodway is the 100-year floodway as designated and regulated by the Illinois Department of Transportation /Division of Water Resources. The remainder of the floodplain that is outside the regulatory floodway is referred to as the flood fringe or floodway fringe.
- m. "Hydraulic characteristics" means the features of a watercourse that determine its water conveyance capacity. These features include but are not limited to: size and configuration of the cross-section of the watercourse and floodway; texture and roughness of materials along the watercourse; alignment of watercourse; gradient of watercourse; amount and type of vegetation within the watercourse; and size, configuration, and other characteristics of structures within the watercourse. In low-lying area the characteristics of the overbank area also determine water conveyance capacity.
- n. "Lot" means an area of land, with defined boundaries, that is designated in official assessor's records as being one parcel.
- o. "Lake or pond" means any inland waterbody, fed by spring or surface water flow.
- p. "Natural" in reference to watercourses means those stream channels, grassed waterways and swales formed by the existing surface topography of the earth prior to changes made by unnatural causes. A natural stream tends to follow a meandering path; its floodplain is not constrained by levees; the area near the bank has not been cleared, mowed or cultivated; the stream flows over soil and geologic materials typical of the area with no alteration of the course or cross-section of the stream caused by filling or excavating.
- q. "Ordinary High Water Mark" (OHWM) means the point on the bank or shore up to which the presence and action of surface water is so continuous so as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.
- r. "Qualified Wetland Professional" means 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.

- s. "Registered professional engineer" means a professional engineer registered under the provisions of "The Illinois Professional Engineering Act" and any act amendatory thereof.
- t. "Retention/detention facility" means a facility that provides for storage of storm water runoff and controlled release of this runoff during and after a flood or storm.
- u. "Runoff" means the portion of precipitation on the land that is not absorbed by the soil or plant material and which runs off the land.
- v. "Sedimentation" means the processes that deposit soils, debris, and other materials either on other ground surfaces or in water bodies or watercourses.
- w. "Setback" means the horizontal distance between any portion of a structure or any development activity and the ordinary high water mark of a perennial or intermittent stream, the ordinary high water mark of a lake or pond, or the edge of a wetland, measured from the structure's or development's closest point to the ordinary high water mark, or edge.
- x. "Stream" means a body of running water flowing continuously or intermittently in a channel on or below the surface of the ground. 7.5 minute topographic maps of the U.S. Geological Survey are one reference for identifying perennial and intermittent streams. For purposes of this ordinance, the term "stream" does not include storm sewers.
- y. "Structure" means anything that is constructed, erected or moved to or from any premise which is located above, on, or below the ground including, but not limited to roads, signs, billboards, and mobile homes. Temporary recreational facilities including, but not limited to, tents, camper trailers, and recreation vehicles are not considered structures when used less than 180 days per year and located landward of the minimum setback provided as a natural vegetation strip.
- z. "Vegetation" means all plant growth, especially trees, shrubs, mosses, and grasses.
- aa. "Watercourse" means any river, stream, creek, brook, branch, natural or artificial depression, ponded area, slough, gulch, draw, ditch, channel, conduit, culvert, swale, grass waterway, gully, ravine, wash, or natural or man-made drainageway, which has a definite channel, bed and banks, in or into which storm water runoff and floodwater flow either regularly or intermittently.
- bb. "Wetland" means those transitional lands between terrestrial and aquatic system where the water table is usually at or near the surface or the land is covered by

shallow water. Classification of areas as wetlands shall follow the "Classification of Wetlands and Deepwater Habitats of the United States" as published by the U.S. Fish and Wildlife Service (FWS/OBS-79/31).

Sec. 5.00 Development Permit

To ensure that proposed development activity can be carried out in a manner which is compatible and harmonious with the natural amenities of the Stream and Wetland Protection Ordinance and with surrounding land uses, a request for a Development Permit for such development activity must be submitted for approval by the Village of Oswego.

No development permit shall be issued unless the Village of Oswego finds that:

- a. the development will not detrimentally affect or destroy natural features such as ponds, streams, wetlands, and forested areas, nor impair their natural functions, but will preserve and incorporate such features into the development's site;
- b. the location of natural features and the site's topography have been considered in the designing and siting of all physical improvements;
- c. adequate assurances have been received that the clearing of the site of topsoil, trees, and other natural features will not occur before the commencement of building operations; only those areas approved for the placement of physical improvements may be cleared;
- d. the development will not reduce the natural retention storage capacity of any watercourse, nor increase the magnitude and volume of flooding at other locations; and that in addition, the development will not increase stream velocities; and
- e. the soil and subsoil conditions are suitable for excavation and site preparation, and the drainage is designed to prevent erosion and environmentally deleterious surface runoff.

There shall be no development, including the immediate or future clearing or removal of natural ground cover and/or trees, within the Village for any purpose, unless a development permit is granted subject to the provisions of this ordinance.

Dumping, filling, mining, excavating, dredging, or transferring of any earth material within the Village is prohibited unless a development permit is granted.

No ponds or impoundments shall be created nor other alterations or improvements shall be allowed in the Village for recreational uses, storm water management, flood control, agricultural uses or as scenic features unless a development permit is granted.

Sec. 5.01 Application for Permit

An application for a development permit, shall be made by the owner of the property, or his/her authorized agent, to the Village of Oswego, on a form furnished for that purpose. Each application shall bear the name(s) and address(es) of the owner or developer of the site and of, any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee of \$750.00. Each application shall include certification that any land clearing, construction, or development involving the movement of earth shall be in accordance with the plans approved upon issuance of the permit.

Sec. 5.02 Submissions

Each application for a development permit shall be accompanied by the following information as specified in the ordinance sections cited:

General, Provisions:

Site Development Plan	Sec. 6.04,
Geologic and Soil Report	Sec. 6.05,
Drainage Control Plan	Sec. 6.06,
Site Grading & Excavation Plan	Sec. 6.07,
Landscape Plan	Sec. 6.08,

Justification for Watercourse Relocation and Minor Modifications:

Stream "Modification/Relocation Plan	Sec. 7.02,
Channel and Bank Armoring	Sec. 7.03,
Culverts	Sec. 7.04,
On-Stream Impoundments	Sec. 7.05,
Impact Assessment	Sec. 8.00

(at option of the Village of Oswego)

Where a proposed development activity is less than ten (10) acres in area, the permit issuing agency, upon recommendation of the Village of Oswego Engineer, may waive or simplify any or all of the submission requirements (Sec. 6.04-6.08) provided that the person responsible for any such development shall implement necessary protection measures to satisfy the purpose and intent set forth in Section 3.00 of this ordinance. (See Sec. 11.01, Variances)

Sec. 5.03 Bonds

The applicant may be required to file with the Village of Oswego a faithful performance bond or bonds, letter of credit, or other improvement security satisfactory to the Village Attorney, in an amount deemed sufficient by the Village of Oswego to cover all costs of

improvements, landscaping, or maintenance of improvements and landscaping, for such period as specified by the Village of Oswego, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

Sec. 5.04 Review and Approval

Each application for a development permit shall be reviewed and acted upon according to the procedures set forth in the Village Subdivision and Development Ordinance.

1. No development permit shall be issued for an intended development site unless:
 - a. the development, including but not limited to subdivisions and planned unit developments, has been approved by the Village of Oswego where applicable; or
 - b. such Permit is accompanied by or combined with a valid building permit issued by the Village of Oswego; or
 - c. the proposed development is coordinated with any overall development program previously approved by the Village of Oswego for the area in which the site is situated.
2. Failure of the Village of Oswego to act on an original or revised application within forty-five days of receipt shall authorize the applicant to proceed in accordance with the plans as filed, unless such time is extended by agreement between the Village of Oswego and the applicant. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Village of Oswego.

Sec. 5.05 Permit Exceptions

The Provisions of this ordinance shall not apply to:

- a. emergency work necessary to preserve life or property; when emergency work is performed under this section, the person performing it shall report the pertinent facts relating to the work to the Village of Oswego Building Inspector and Village Engineer within ten (10) days after commencement of the work and shall thereafter obtain a development permit and shall perform such work as may be determined by the Village of Oswego to be reasonably necessary to correct any impairment to the watercourse, lake, pond, floodplain or wetland (in terms of the purposes of this ordinance Section 3.00 a-j);
- b. work consisting of the operation, repair, or maintenance of any lawful use of land existing on the date of adoption of this ordinance, or on land wherein the Village has, prior to the effective date of this Ordinance, granted the necessary zoning or development permit to construct, maintain

or operate the use petitioned for, prior to the effective date of this Ordinance;

- c. lands adjacent to farm ditches if:
 - 1. such lands are not adjacent to a natural stream or river; or
 - 2. those parts of such drainage ditches adjacent to such lands were not streams before ditching; or
 - 3. such lands are maintained in agricultural uses without buildings and structures.

Where farm ditches are found to contribute to adverse environmental impacts or hazards to persons or property, the Village of Oswego may require these farm ditches to adhere to the ordinance. The Village of Oswego may also require that linings, bulkheads, dikes and culverts be removed to mitigate hazards, or that other mitigative measures be taken, such as the maintenance of a natural vegetation buffer strip;

- d. roadside drainage ditches and other channels as recommended by the Village of Oswego Engineer.

Sec. 5.06 Effect on Other Permits

The granting of a development permit under the provisions herein shall in no way affect the owner's responsibility to obtain the approval required by any other statute, ordinance, or regulation of any state agency or subdivision thereof, or to meet other Village of Oswego ordinances and regulations. Where state and/or federal permits are required, a development permit will not be issued until they are obtained.

Sec. 6.00 General Provisions: Area Affected

This ordinance applies to development in or near streams, lakes, ponds and wetlands within the Village of Oswego. Streams, lakes, and ponds (including intermittent streams) are those which are shown on the United States Department of the Interior Geological Survey (USGS) 7.5 minute quadrangle maps and those additional streams, lakes, and ponds located in the Village of Oswego as defined by the Village's Official Zoning Map, latest edition. A copy of the zoning map is on file at the Village of Oswego.

If new drainage courses, lakes, ponds or wetlands are created as part of a development, the requirements for setbacks and uses within setbacks, and the criteria for watercourse relocation and minor modification shall apply.

Sec. 6.01 Wetland Delineation and Mitigation

Wetlands shall be determined by a wetland delineation conducted in accordance with the 1987 Manual. Wetlands are those designated in the U.S. Fish and Wildlife Service/Illinois Department of Conservation wetland inventory, areas deemed wetlands by the Army Corp of Engineers, areas delineated as wetlands by a qualified wetland professional, wetlands identified by the Natural Resources Conservation Service (NRCS) and those additional wetlands delineated on maps adopted as part of this ordinance. The quality of the wetlands shall be evaluated based on Floristic Quality Index (FQI). Delineations shall only be conducted between April 1 and November 1. However, non-growing season delineations may be considered for sites with apparent plant community monocultures or low floristic diversity potential. The Enforcement Officer reserves the right to require additional sampling during the growing season prior to issuing a permit. The wetland delineation should extend beyond the limits of the site being developed by at least 50' to include off-site properties/wetlands.

Wetlands being preserved during development will need to be reviewed 2 years after development is complete. The wetland's FQI should not decrease by more than 2 points compared with the wetland's pre-development FQI. Mitigation is required for any wetland impacts greater than or equal to 0.25 acres.

- a. Wetlands with a FQI less than 7 require a 1.5:1 mitigation for wetland being developed;
- b. Wetlands with a FQI between 7 and 16 require a 2:1 mitigation for wetland being developed; or
- c. Wetlands with a FQI greater than 16 require a 3:1 mitigation for wetland being developed.

Sec. 6.02 Stream and Wetland Protection Ordinance Applicability

The procedures, standards and requirements contained in this ordinance shall apply to all lots within wetlands and streams, and all lots lying wholly or in part:

- a. within the Special Flood Hazard Area (SFHA) designated by the Federal Emergency Management Agency (FEMA); or
- b. within 25 feet of the ordinary high water mark (OHWM) of a perennial stream or intermittent stream, the ordinary high water mark of a lake or pond, or the edge of a wetland (see section 6.01); or
- c. within depressional areas as designated through site topography, USGS quad maps and FEMA maps.

The boundary comprises the same area as the Village Zoning Map. Additional areas may be approved from time to time and be delineated on the Zoning Map.

Sec. 6.03 Minimum Setback of Development Activity from Streams, Lakes, Ponds, and Wetlands

Absolutely no development activity (except as provided below) may occur within the minimum setback which is defined as 25 feet from the ordinary high water mark of streams, lakes and ponds, or the edge of wetlands, or within a depression area. In no case shall the setback be less than the boundary of the 100-year floodway as defined by FEMA. These setback requirements do not apply to a stream in a culvert unless the stream is taken out of the culvert as part of development activity. If a culvert functions as a low-flow culvert, where water is intended to periodically flow over it, the setback requirements apply.

The following development activities may be permitted, subject to issuance of a development permit, within the minimum setback areas only if, as a practical matter, they cannot be located outside the setback area. Such development activities will only be approved based upon a report, prepared by a qualified wetland professional, which demonstrates that they will not adversely affect water quality; destroy, damage or disrupt significant habitat area; adversely affect drainage and/or storm water retention capabilities; adversely affect flood conveyance and storage; lead to unstable earth conditions, create erosion hazards, or be materially detrimental to any other property in the area of the subject property or to the Village of Oswego as a whole, including the loss of open space or scenic vistas:

- a. minor improvements such as walkways, benches, comfort stations, informational displays, directional signs, foot bridges, observation decks, and docks;
- b. the maintenance, repair, replacement, and reconstruction of existing highways and bridges, electrical transmission and telecommunication lines, poles, and towers; and
- c. the establishment and development of public and private parks and recreation areas, outdoor education areas, historic natural and scientific areas, game refuges, fish and wildlife improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps.

Review of the proposed development activity within the minimum setback area will consider the following:

- a. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches, or the development of park shelters or similar structures is allowed. The development and maintenance of roads, parking lots and other impervious surfaces necessary for permitted uses are allowed only on a very limited basis, and where no alternate location outside of the setback area is available.
- b. Land surface modification within the minimum setback shall be permitted for the development of storm water drainage swales between the developed area of the

site (including a storm water detention facility on the site) and a stream, lake or pond, or wetland. Detention basins within the setback are generally discouraged, unless it can be shown that resultant modifications will not impair water quality, habitat, or flood storage functions.

- c. No filling or excavating within wetlands is permitted except to install piers for the limited development of walkways and observation decks. Walkways and observation decks should avoid high quality wetland areas, and should not adversely affect natural areas designated in the Illinois Natural Areas Inventory or the habitat of rare or endangered species.
- d. Wetland area occupied by the development of decks and walkways must be mitigated by an equal area of wetland habitat improvement.
- e. Modification of wetlands for purposes of storm water management and/or development may be permitted where the quality of the wetland is improved and total wetland acreage is increased (see section 6.01). When such modification is permitted, wetlands shall be protected from the effects of increased storm water runoff by measures such as detention or sedimentation basins, vegetated swales and buffer strips, and sediment and erosion control measures on adjacent developments. The direct entry of storm sewers into wetlands shall be avoided. Environmental impact analysis of wetland modification may be required in accordance with Section 8.00 of this ordinance.

An applicant for a development permit (See Section 5.00) must stabilize areas left exposed after land surface modification with vegetation normally associated with that stream or wetland. The Planting of native riparian vegetation is recommended as the preferred stabilization measure. Other techniques should be used only when and where vegetation fails to control erosion. The preferred alternative is riprap, using natural rock materials where practicable. These should be installed on eroding bank areas in a manner that provides interstitial space for vegetative growth and habitat for acroinvertebrates and other stream organisms. Lining of the stream channel bottom is not permitted.

The applicant shall minimize access to the applicant's proposed development activity within all or part of the Village where such access could adversely affect the stream, lake, pond, wetland, or related environmentally sensitive areas.

Sec. 6.04 Site Development Plan

A site development plan must be prepared for any proposed development within, or partly within, the Village and must indicate:

- a. dimension and area of parcel, showing also the vicinity of the site in sufficient detail to enable easy location, in the field, of the site for which the development permit is sought, and including the boundary line, underlying zoning, a legend, a scale, and a north arrow. (This requirement may be satisfied by the submission of a separate vicinity map.);

- b. location of any existing and proposed structures;
- c. location of existing or proposed on-site sewage systems or private water supply systems;
- d. location of any perennial or intermittent stream, lake or pond, and its ordinary high water mark;
- e. location and landward limit of all wetlands;
- f. location of setback lines as defined in this ordinance;
- g. location of the 100-year floodway/floodplain;
- h. location of existing or future access roads;
- i. specifications and dimensions of stream, wetland or other water areas proposed for alterations;
- j. cross-sections and calculations indicating any changes in flood storage volumes; and
- k. such other information as reasonably requested by the Village of Oswego.

The applicant shall present evidence, prepared by a qualified wetland professional and registered professional engineer that demonstrates the proposed development activity will not endanger health and safety, including danger from the obstruction or diversion of flood flow. The applicant shall also show, by submitting appropriate calculations and resource inventories, that the proposed development activity will not substantially reduce natural floodwater storage capacity, destroy valuable habitat for aquatic or other flora and fauna, adversely affect water quality or ground water resources, increase storm water runoff velocity so that water levels on other lands are substantially raised or the danger from flooding increased, or adversely impact any other natural stream, floodplain, or wetland functions, and is otherwise consistent with the intent of this ordinance.

Sec. 6.05 Geologic and Soil Characteristics/Geologic and Soil Report

The site proposed for development shall be investigated to determine the soil and geologic characteristics, including soil erosion potential. A report, prepared by a licensed professional engineer, geoscientist, or soil scientist experienced in the practice of geologic and soil mechanics, shall be submitted with every application for land development within the Village. This report shall include a description of soil type and stability of surface and subsurface conditions. Any area that the investigation indicates as being subject to geologic or soil hazards shall not be subjected to development, unless the engineer or soil scientist can demonstrate conclusively that these hazards can be overcome.

Sec. 7.00 Watercourse Relocation and Minor Modifications (including Channelization and Relocation)

Watercourse relocation or modification is generally not permitted because these activities are not usually consistent with the purposes of this ordinance. Under certain circumstances, relocation and minor modification may be permitted through a development permit when certain problems can be mitigated by relocation and/or minor modification, specifically when:

- a. off -site hydrologic conditions are causing erosion, flooding and related problems; or
- b. on-site soil and geologic conditions are resulting in unstable conditions that pose hazards to life, health, and existing structures or property; or
- c. the quality of previously modified or relocated streams can be improved through restoration; or
- d. officially adopted storm water management plans call for placement of detention or retention facilities in a stream; or
- e. public utilities, including sanitary sewers, pipelines, and roadways require stream crossing or relocation where there are not practical alternatives.

Modification of watercourses as a convenience for site design purposes is not encouraged.

Sec. 7.01 Conditions and Restrictions for Permitting Stream and Wetland Modification

Stream and wetland modification, when permitted, is subject to the following conditions and restrictions:

- a. water quality, habitat and other natural functions must be significantly improved by the modification; no significant habitat area may be destroyed. An area greater than one-fourth (1/4) of an acre shall be considered significant habitat. See section 6.01 for further mitigation requirements;
- b. the amount of flow, velocity, and water surface elevation of a stream is not to be increased or decreased as the stream enters or leaves a subject property, unless this reflects an improvement over previous conditions in terms of reduced flooding, reduced erosion, or enhanced low-flow conditions;
- c. prior to diverting water into a new channel, a qualified wetland professional or registered professional engineer approved by the Village of Oswego shall inspect the stream modification, and issue a written report to the Village of Oswego that the modified stream complies with the requirements in Section 7.02.

Sec. 7.02 Required Content of Stream Modification, Relocation Plan

Stream relocation may be permitted in accordance with stream relocation plan that provides for:

- a. the creation of a natural meander pattern, pools, riffles, and substrate;
- b. the formation of gentle side slopes (at least four feet horizontally per one foot vertically), including installation of erosion control features;
- c. the utilization of natural materials wherever possible;
- d. the planting of vegetation normally associated with streams, including primarily native riparian vegetation;
- e. the creation of spawning and nesting areas wherever appropriate;
- f. the re-establishment of the fish population wherever appropriate;
- g. the restoration of water flow characteristics compatible with fish habitat areas, wherever appropriate;
- h. the filling and revegetation of the prior channel;
- i. a proposed phasing plan, specifying time of year for all project phases;
- j. plans for sediment and erosion control; and
- k. establishment of a low-flow channel which reflects the conditions of a natural stream.

Sec. 7.03 Criteria for Permitting Armoring of Channels and Banks

Armoring in the form of bulkheads, riprap or other materials or devices is not permitted except in accordance with the following:

- a. significant erosion cannot be prevented in any other way and the use of vegetation and gradual bank slopes has not sufficiently stabilized the shoreline or bank;
- b. the bulkhead or other device is not placed within a wetland, or between a wetland and a lake or pond;
- c. the bulkhead, riprap or other device will minimize the transmittal of wave energy or currents to other properties; and

- d. the change in the horizontal or vertical, configuration of the land must be kept to a minimum where permission to install bulkheads or other armoring devices is requested as part of the development permit application documentation and certification pertaining to the items above must be submitted.

Sec. 7.04 Criteria for Permitting the Use of Culverts

Culverts are not permitted in streams except in accordance with the following:

- a. where a culvert is necessary for creating access to a property; use of culverts as a convenience, in order to facilitate general site design, is not to be considered;
- b. the culvert must allow passage of fish inhabiting the stream, and accommodate the 50-year flood event without increasing upstream flooding, except where a restricting culvert is desirable as part of an overall storm and floodwater management plan;
- c. the culvert must be maintained free of debris and sediment to allow free passage of water, and if applicable, fish; and
- d. the stream bottom should not be significantly widened for the placement of a culvert as this increases siltation; if multiple culverts must be installed, one culvert should be at the level of the bottom of the stream and the others at or above normal water elevation.

Sec. 7.05 Criteria for Permitting On-Stream Impoundments

Impoundment of streams is not permitted except in accordance with the following:

- a. the impoundment is determined to be in the public interest by providing regional storm water detention, flood control, or public recreation;
- b. the impoundment will not prevent the upstream migration of indigenous fish species;
- c. a non-point source control plan has been implemented in the upstream watershed to control the effects of sediment runoff as well as minimize the input of nutrients, oil and grease, metals, and other pollutants;
- d. impoundments without permanent low-flow pools are preferred except where a permanent pool is necessary to achieve the intended benefits of the impoundment (e.g. recreation or water quality mitigation); and
- e. impoundment design shall include gradual bank slopes, appropriate bank stabilization measures, and a pre-sedimentation basin.

Sec. 8.00 Impact Assessment

The Village of Oswego may ask an applicant to submit a report prepared by a qualified wetland professional, which will be reviewed by the Village of Oswego and their Engineer, in order to assess the potential impact of proposed development on a lake, stream or wetland and associated environmentally sensitive areas, including loss of flood storage potential, loss of habitat, changes in species diversity and quantity, impacts on water quality, increases in human intrusion, and impacts on associated streams, lakes, ponds, wetlands or downstream areas.

Sec. 9.00 Stream Maintenance Easement

The applicant shall grant an access easement for stream maintenance purposes to the Village of Oswego. The easement shall be adjacent to the stream and at least twenty-five feet (25') wide and parallel to the stream bank. The easement shall be traversable by maintenance vehicles.

Sec. 10.00 Nonconforming Uses (See Chapter 5 of the Village of Oswego's Zoning Ordinance)

Sec. 11.00 Board of Appeals (See Chapter 13 of the Village of Oswego's Zoning Ordinance)

Sec. 11.01 Variations (See Chapter 13 of the Village of Oswego's Zoning Ordinance)

Sec. 11.02 Appeals (See Chapter 13 of the Village of Oswego's Zoning Ordinance)

Sec. 12.00 Bonds

The Village of Oswego may require the posting of a bond or surety to ensure compliance with any aspect of this ordinance.

Sec. 13.00 Liability

Prior to issuance of a construction permit, the applicant shall enter into an agreement with the Village of Oswego which runs with the property, in a form acceptable to the Village of Oswego attorney, indemnifying the Village of Oswego for any damage resulting from development activity on the subject property which is related to the physical condition of the stream or wetland.

Sec. 14.00 Separability

Every section, provision, or part of this ordinance is declared separable from every other section, provision, or part; and if any section, provision, or part thereof shall be held invalid, it shall not affect any other section, provision, or part.

Sec. 15.00 Enforcement

Authority for administration of this ordinance resides with the Village of Oswego Building Inspector.

Sec. 15.01 Stop-Work Order; Revocation of Permit

In the event any person holding a development permit pursuant to this ordinance violates the terms of the permit, or carries on site development in such a manner so as to materially and adversely affect the health, welfare, or safety of persons residing or working in the neighborhood of the development site, or so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Village of Oswego may suspend or revoke the special use permit.

1. Suspension of a permit shall be by a written stop-work order issued by the Village of Oswego Building Inspector and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited, and shall state the conditions under which work may be resumed. A stop-work order shall remain in effect until the next regularly scheduled meeting of the Board of Appeals, at which the conditions of subparagraph 2 below can be met.
2. No development permit shall be permanently suspended or revoked until a hearing is held by the Board of Appeals. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:
 - a. the grounds for complaint or reasons for suspension or revocation, in clear and concise language; and
 - b. the time when and place where such hearing will be held.

Such notice shall be served on the permittee at least five (5) days prior to the date set for the hearing. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his/her behalf. At the conclusion of the hearing the Board of Appeals shall determine whether the permit shall be suspended or revoked.

Sec. 15.02 Violations and Penalties

No person shall undertake or continue any development activity contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not less than \$100.00 and not more than \$1,000.00 for each offense. In addition to any other penalty authorized by this

section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to restore the site to the condition existing prior to commission of the violation, or to bear the expense of such restoration.

Sec. 16.00 Effective Date

This ordinance shall be in full force and effect from and after its passage and publication. The effective date is January 15, 2008.

SECTION 2: That any ordinances or parts of any ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3: That if any part or parts of this ordinance are declared invalid or illegal by a court of competent jurisdiction, then such ruling shall not effect the remaining portion or portions of this ordinance, and said portion or portions shall remain in full force and effect.

SECTION 4: This ordinance shall become effective immediately after its passage and approval by the Village Board of the Village of Oswego.

Passed this 15th day of January, 2008.

TONY GILES	<u>AYE</u>	DAVID SCHLAKER	<u>AYE</u>
TERRY MICHELS	<u>AYE</u>	JUDY SOLLINGER	<u>AYE</u>
BRADEN ROCK	<u>AYE</u>	LORI WEST	<u>AYE</u>

APPROVED by me, Brian LeClercq, as Village President of the Village of Oswego, Kendall County, Illinois this 15th day of January, 2008.


BRIAN LeCLERCQ, VILLAGE PRESIDENT

ATTEST:


Jeanne L. Hoch, Village Clerk