

# LAKE OF THE WOODS COUNTY WETLAND CONSERVATION ORDINANCE OF 2002

## ARTICLE 1 TITLE AND PURPOSE

Section 1.1. Title

This Ordinance shall be known, cited and referred to as the Lake of the Woods County Wetland Conservation Ordinance of 2003. When referred to herein, it shall be known as “this Ordinance.”

Section 1.2. Purpose.

This Ordinance is adopted for the purpose of:

- (A) Adopting, pursuant to the local wetland plan, certain alternative standards that shall apply to determinations by the governing body in its capacity as the local government unit for the state Wetland Conservation Act program;
- (B) Adopting the state wetland conservation act program by reference as part of the governing body’s official controls to provide an additional means for enforcement of the requirements of the state wetland conservation act program;
- (C) Adopting administrative procedures for performance of the governing body’s responsibilities as the local government unit for the state wetland conservation act program that shall apply in addition to the administrative procedures set forth in the Wetland Conservation Act and Wetland Conservation Act Rules; and
- (D) Adopting as part of the governing body’s official controls additional local requirements for the conservation of wetlands that provide more flexibility than the requirements of the state wetland conservation act program.

**ARTICLE 2**  
**DEFINITIONS**

Section 2.1. Definitions.

(A) Incorporation by reference.

Terms used in this Ordinance which are defined in the Wetland Conservation Act or the Wetland Conservation Act Rules shall have the meanings given there, unless otherwise defined in this Ordinance.

(B) Additional Definitions

For purposes of this Ordinance, the following terms shall have the following meanings:

Board of Water and Soil Resources - “Board of Water and Soil Resources” means the Minnesota Board of Water and Soil Resources.

Building Setback - The minimum horizontal distance between a structure, sewage treatment system, or other facility, and the OHW, sewage treatment system, top of a bluff, road, highway, property line or other facility, as defined by the Lake of the Woods County Shoreland Ordinance.

De minimis - Amount of wetland filling or draining allowed without replacement as a part of an approved project.

Diversity (Wetland Type) - A condition of a variety of wetland types/communities found at a given location that provide for multiple functional values.

Governing Body - “Governing body” means the County of Lake of the Woods.

Governing Body’s Official Controls - “Governing body’s official controls” means the official controls adopted by the governing body which are set forth in \_\_\_\_\_.

Habitat Management Plan - A written plan outlining comprehensive land management practices to be undertaken to substantially improve (a) species’ habitat.

LGU - Local Government Unit

Local wetland plan - “Local wetland plan” means the local comprehensive wetland protection and management plan adopted by the governing body on \_\_\_\_\_, 2003 and approved by the Board of Water and Soil

Resources, which is on file in the offices of the governing body and the SWCD.

Local comprehensive wetland protection and management plan - “Local comprehensive wetland protection and management plan” means a plan adopted and approved in accordance with Minn. Stat. § 103G.2243 and Minn. R. 8420.0650.

Major Watersheds - Major watersheds as referenced as “watersheds” in WCA Rules.

Minor Watershed - Each of the approximately 5,600 minor watershed units delineated on the state watershed boundaries map prepared pursuant to the requirements of Laws of Minnesota 1977, chapter 455, section 33, subdivision 7, paragraph (a) and the accompanying data base, and the revisions of that data base.

MnRAM - Minnesota Routine Assessment Method (for Evaluating Wetland Functions) – A State-recognized wetland functional capacity assessment methodology.

Ordinary High Water Level (OHWL) – The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Protected Water – Those waters of the State identified as public waters or wetlands under Minnesota Statutes 105.37 Subd. 14 or 15, or 105.391 Subd. 1.

Re-establishing Native Vegetation – Allowing native vegetation to regenerate itself on degraded or disturbed wetlands through natural re-establishment or planting of a native seed mix appropriate for the region.

Restoring Native Vegetation for Water Quality Enhancement – Replacing native vegetation on upland adjacent to Lake of the Woods, rivers, streams, and wetlands; and ditch segments identified by the SWCD. This shall include the control of noxious weeds.

Shoreland Protection – Protecting eroding shoreland from continued erosion by implementing an approved erosion control plan consisting of riprap and/or restoration of native vegetation.

Shoreland (Wetland) Protection Zone - That area for which the Lake of the Woods County Shoreland Ordinance applies.

State wetland conservation act program - “State wetland conservation act program” means the program for the conservation of wetlands pursuant to the Wetland Conservation Act and the Wetland Conservation Act Rules, subject to alternative standards adopted by a local government unit under an approved local comprehensive wetland protection and management plan.

TEP (Technical Evaluation Panel) – A panel of at least three persons: a technical professional employee of the BWSR, a technical, professional employee of the SWCD, and a technical professional with expertise in wetland management appointed by the LGU. The TEP may also include a technical professional employee of the DNR and/or additional expertise as per Minn. R. 8420.0240.

Wetland Banking - A process for wetland replacement, where wetland credits are deposited or withdrawn into a ~~local~~ State account.

Wetland Conservation Act - “Wetland Conservation Act” means 1991 Minn. Laws ch. 354, as amended by 1993 Minn. Laws ch. 627, 1996 Minn. Laws ch. 462, and by any subsequent amendments.

Wetland Conservation Act Rules - “Wetland Conservation Act Rules” means the rules adopted by the Board of Water and Soil Resources to implement the Wetland Conservation Act, Minn. R. ch. 8420 (1995), as amended by 20 Minn. Reg. 2629 (June 10, 1996), and by any subsequent amendments.

Wetland Functional Value Replacement Fund – A dedicated fund, administered by the SWCD, to be used for in-county projects that replace wetland-related functions.

Wetland Preservation - A wetland value replacement strategy that permanently protects rare or highly valued wetlands, upland, or upland buffer from future impact.

Wetland Replacement Ratios – The ratio of replacement wetland to impacted wetland. For example, a 2:1 ratio shall be interpreted to mean that for every unit of wetland impacted, two units of wetland will be created or restored.

**ARTICLE 3**  
**STATE WETLAND CONSERVATION ACT PROGRAM**

Section 3.1. Introduction.

The governing body serves as the local government unit for the implementation of the state wetland conservation act program. The state Wetland Conservation Act program requires persons proposing to impact wetlands by draining, filling and in some cases, excavating, to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of equal function and value. As the local government unit for the state wetland conservation act program, the governing body is responsible for approving replacement plans and making other determinations specified by the Wetland Conservation Act and the Wetland Conservation Act Rules. This Article 3 pertains to determinations by the governing body in its capacity as the local government unit for the state wetland conservation act program.

Section 3.2. State Standards.

The Wetland Conservation Act of 1991, as amended, shall be adopted by reference. The governing body, in fulfillment of its responsibilities as the local government unit shall implement the Wetland Conservation Act and Wetland Conservation Act Rules, except as expressly provided in Section 3.3 of this Ordinance pertaining to alternative standards.

Section 3.3. Findings in Support of Alternative Standards.

Pursuant to Minn. Stat. § 103G.2243, subd. 2 and Minn. R. 8420.0650, subp. 2, a local government unit which has adopted an approved comprehensive wetland protection and management plan may vary certain standards that would otherwise apply to local government unit determinations under the Wetland Conservation Act and the Wetland Conservation Act Rules. The analysis conducted for the Lake of the Woods County Wetland Plan and this resulting ordinance found that altering standards in accordance with 8420 subpart 0650 of WCA was found reasonable and prudent. (See Lake of the Woods County Wetland Plan)

Section 3.4 Alternative Standards.

In accordance with the local wetland plan, the following alternative standards shall apply to determinations made by the governing body in its capacity as local government unit for the state wetland conservation act program:

Section 3.41 Classification of wetlands.

1. Authority for alternative standard. Minn. Stat. § 103G.2243, subd. 2(1) and Minn. R. 8420.0650, subp. 2(A) provide that a local government

unit which has adopted an approved comprehensive wetland protection and management plan may provide for classification of wetlands in the plan area based upon an inventory of wetlands, an assessment of the wetland functions, and the resulting public value of the wetlands.

2. Alternative Standard. Wetlands shall be classified for purposes of the application of the alternative standards in Section 3.3 of this Ordinance as follows:

A wetland score is calculated by adding the value-weighted individual wetland functional assessment ratings. The functional assessment rating sheet is attached – Exhibit A. The wetland function value weights are found in Exhibit B.

**Category 1 Wetlands** are defined as those have a total score greater than 15.

**Category 2 Wetlands** are defined as those having a total score of 11 or greater and 15 or less.

**Category 3 Wetlands** are defined as those having a score of less than 11.

#### Section 3.42 Sequencing.

1. Authority for alternative standard. Minn. Stat. § 103G.2243, subd. 2(2) and Minn. R. 8420.0650, subp. 2(B) provide that a local government unit which has adopted an approved comprehensive wetland protection and management plan may vary the application of the sequencing standards in Minn. Stat. § 103G.222, subd. 1(b) for projects based on the classification of wetlands and criteria set forth in the plan.
2. Alternative standard. The application of the sequencing standards in Minn. Stat. § 103G.222, subd. 1(b) shall be varied for the previously identified wetland categories as follows:

**Category 1 Wetlands:** A written analysis of alternatives shall be provided for all non-exempt impacts. This analysis shall identify 2 alternatives, one of which may be the no-build option.

**Category 2 Wetlands:** The landowner shall complete a Sequencing Findings of Fact sheet.

**Category 3 Wetlands:** On-site sequencing will be used; no written analysis of alternatives is required.

Section 3.421 Sequencing flexibility

Regulations stated in Section 3.42 shall not be meant to prohibit sequencing flexibility that is identified in Minnesota Statute 8420.0520 subpart 7a.

Section 3.43 Replacement.

1. Authority for alternative standard. Minn. Stat. § 103G.2243, subd. 2(3) and Minn. R. 8420.0650, subp. 2(C) provide that a local government unit which has adopted an approved comprehensive wetland protection and management plan may vary the replacement standards of Minn. Stat. § 103G.222, subd. 1(f)-(g), based on the classification of wetlands and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan.
2. Alternative standard. The replacement standards in Minn. Stat. § 103G.222, subd. 1(f)-(g) shall be varied as follows:

**Category 1 Wetland Impacts:**

Wetland replacement ratio is:

- 1:1 when replaced with a category 1 wetland
- 2:1 when replaced with a category 2 wetland
- 4:1 when replaced with a category 3 wetland

The use of wetland bank credits in the county is allowed at the ratios cited above. Use of wetland bank credits outside the county shall be allowed using Wetland Conservation Act replacement ratios, with an additional contribution to the County Wetland Functional Value Replacement Fund at a rate set by the County Board by formal resolution.

**Category 2 Wetland Impacts:**

Wetland replacement ratio is:

- 1/2:1 when replaced with a category 1 wetland
- 1:1 when replaced with a category 2 wetland
- 2:1 when replaced with a category 3 wetland

The use of wetland bank credits in the county is allowed at the ratios cited above. Use of wetland bank credits outside the county shall be allowed using Wetland Conservation Act replacement ratios, with an additional contribution to the County Wetland Functional Value Replacement Fund at a rate set by the County Board by formal resolution.

**Category 3 Wetland Impacts:**

Wetland replacement ratio is:

- 1/4:1 when replaced with a category 1 wetland
- 1/2:1 when replaced with a category 2 wetland
- 1:1 when replaced with a category 3 wetland

The use of wetland bank credits in the County is allowed at the ratios cited above. Use of wetland bank credits outside the county shall be allowed using Wetland Conservation Act replacement ratios, with an additional contribution to the County Wetland Functional Value Replacement Fund at a rate set by the County Board by formal resolution.

Section 3.431 Location of Replacement Activities.

All Wetland Replacement Activities cited in the above section shall be conducted within Lake of the Woods County, with the exception of wetland banking, which may be used outside the county per the requirements found in other sections of this ordinance.

Section 3.44 Replacement credits.

1. Authority for alternative standard. Minn. Stat. § 103G.2243, subd. 2(4) and Minn. R. 8420.0650, subp. 2(D) provide that a local government unit in a greater than 80 percent area which has adopted an approved comprehensive wetland protection and management plan may allow replacement credit, based on the classification of wetlands and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres.
2. Alternative standard. The following activities, intended to increase and/or replace the public value of wetlands and increase the public values of adjacent uplands, can be used as wetland replacement.

**Category 1 Wetland Impacts:**

A. Removing impacts and re-establishing native vegetation in disturbed wetlands can be used for replacement at a 4:1 ratio within the County.

B. Creating buffer strips to protect and enhance water quality and/or creating shoreline wildlife habitat by restoring native vegetation within the Shoreland Wetland Protection Zone can be used for replacement at a 4:1 ratio.

C. Implementing erosion control activities in shoreland areas to improve water quality and fisheries habitat can be used for replacement at a ratio of .1 linear feet of shoreline protected for every 1 sq. ft. of wetland impacted.

D. Contributing to a county-designed Wetland Functional Value Replacement Fund can be used for replacement. Amounts and priorities of use will be recommended by the TEP and set by formal resolution of the County Board.

E. Agreeing to a permanent conservation easement on selected rare or high valued wetlands, upland, or upland buffer in areas with at least a moderate potential for future development or degradation. The appropriateness and scale of the easement must be approved by the LGU and TEP.

**Category 2 Wetland Impacts:**

A. Removing impacts and re-establishing native vegetation in disturbed wetlands can be used for replacement at a 2:1 ratio within the County.

B. Creating buffer strips to protect water quality and/or creating shoreline wildlife habitat by restoring native vegetation within the Shoreland Wetland Protection Zone can be used for replacement at a 2:1 ratio.

C. Improving wildlife habitat on disturbed type 1, 2, 6 and aspen – dominated Type 7 wetlands can be used for replacement by developing and implementing a habitat management plan. This plan can be used for replacement credit at a 2:1 ratio within the same major watershed as the affected wetland. The habitat management plan shall be approved by the local Soil and Water Conservation District, with review and comment sought from applicable local, state, and federal staff.

D. Implementing erosion control activities in shoreland areas to improve water quality and fisheries habitat can be used for replacement at a ratio of .1 linear feet of shoreline protected for every 1 sq. ft. of wetland impact.

E. Contributing to a county-designed Wetland Functional Value Replacement Fund can be used for replacement. Amounts and priorities of use will be recommended by the TEP and set by formal resolution of the County Board.

F. Agreeing to a permanent conservation easement on selected rare or high valued wetlands, upland, or upland buffer in areas with at least a moderate potential for future development or degradation. The appropriateness and scale of the easement must be approved by the LGU and TEP.

### **Category 3 Wetland Impacts:**

- A. Removing impacts and re-establishing native vegetation in disturbed wetlands can be used for replacement at a 1:1 ratio within the County.
- B. Creating buffer strips to protect water quality and/or creating shoreline wildlife habitat by restoring native vegetation within the Shoreland Wetland Protection Zone can be used for replacement at a 1:1 ratio.
- C. Improving wildlife habitat on disturbed type 1, 2, 6 and aspen – dominated Type 7 wetlands can be used for replacement by developing and implementing a habitat management plan. This plan can be used for replacement credit at a 1:1 ratio within the same major watershed as the affected wetland. The habitat management plan shall be approved by the local Soil and Water Conservation District, with review and comment sought from applicable local, state, and federal staff.
- D. Implementing erosion control activities in shoreland areas to improve water quality and fisheries habitat can be used for replacement at a ratio of .1 linear feet of shoreline protected for every 1 sq. ft. of wetland impact.
- E. Contributing to a county-designed Wetland Functional Value Replacement Fund, at a rate recommended by the TEP and set by the County Board by formal resolution, can be used for replacement.
- F. Agreeing to a permanent conservation easement on selected rare or high valued wetlands, upland, or upland buffer in areas with at least a moderate potential for future development or degradation. The appropriateness and scale of the easement must be approved by the LGU and TEP.

#### Section 3.441 Location of Replacement Credit Activities.

All Replacement Credit Activities discussed in the above section shall be conducted within Lake of the Woods County.

#### Section 3.442 Shoreline Protection Criteria.

1. Other Shoreland Protection Activity Requirements. In addition to the Shoreland Protection activity requirements listed in other sections, the following requirements must be met:
  - A. Where shoreland protection activities are approved as a replacement activity, all shoreland erosion problems on a parcel must be addressed; and
  - B. Shoreland protection design plans shall be reviewed by the TEP.

Section 3.45 Expansion of Exemptions.

1. Authority for alternative standard. Minn. Stat. § 103G.2243, subd. 2(5) and Minn. R. 8420.0650, subp. 2(E) provide that a local government unit in a greater than 80 percent area which has adopted an approved comprehensive wetland protection and management plan may, based on the classification of wetlands and criteria set forth in the plan, expand the application of the exemptions in Minn. Stat. § 103G.2241, subd. 1(a)(4), to also include nonagricultural land, provided there is no net loss of wetland values.
2. Alternative standard. The exemptions in Minn. Stat. § 103G.2241, subd. 1(a)(4) shall be as follows:

**Category 1 Wetlands:** 400 square foot de minimis within shoreland area, and 10,000 square feet outside of the shoreland area, except for those wetlands that are required to have a lesser de minimis.

**Category 2 and 3 Wetlands:** 400 square foot de minimis within shoreland area, and 10,000 square feet outside of the shoreland area, except for those wetlands that are required to have a lesser de minimis.

Agricultural exemptions for types 1, 2, & 6 wetlands are extended to non-agricultural lands, except for bottomland hardwood wetlands and wetlands in the shoreland wetland protection zone.

Section 3.46. Standards adjustment.

Changes may be made in the standards applied to a specific wetland impact if the functions of the wetland are being performed at a level significantly different from what would be expected of a typical wetland of similar type, size, and location.

Section 3.461 Method to be Used to Determine Adjustment.

If, after conducting an initial site visit, it appears that the wetland functions of the wetland are being performed at a level significantly different from what would be expected of a typical wetland of similar type, size, and location, the TEP or LGU staff may determine that a functional wetland analysis be completed, using MNRAM or another state-approved method. The purpose of the analysis will be to determine the functional performance level of the wetland in question.

Section 3.462 Adjustment Allowed.

If the TEP or LGU staff determines that the functions of the wetland in question are being performed at a substantially different level than the functions of the

typical wetland of similar type and location, the staff shall be authorized to alter the wetland replacement standards that apply.

If the functions of the wetland in question are being performed at a substantially higher level, staff shall apply the standards of the next higher category.

If the functions of the wetland in question are being performed at a substantially lower level, staff shall apply the standards of the next lower category

Sec. 3.4621 Adjustment Limits.

The replacement standards shall not be decreased for Category 3 Wetlands, nor increased for Category 1 wetlands.

Section 3.5 Administrative Procedures. The Wetland Conservation Act and the Wetland Conservation Act Rules establish certain administrative procedures that apply to exemption, no-loss, replacement plan, and banking determinations by the governing body in its capacity as the local government unit for the state wetland conservation act program. The governing body adopts the following administrative procedures for performance of its responsibilities as the local government unit for the state wetland conservation act program that shall apply in addition to the administrative procedures set forth in the Wetland Conservation Act and Wetland Conservation Act Rules.

Section 3.51 Local Appeal of Staff Interpretations.

The landowner or his/her authorized agent whose wetland is the subject of the application of this ordinance may appeal staff interpretations of the ordinance or staff judgments made in administering this ordinance. Appeals will be heard by the governing body under procedures established by the governing body, or by a separate appeals board established by the governing body.

Section 3.6. Appeals of Exemption, No-loss, Replacement Plan, and Banking Determinations. Exemption, no-loss, replacement plan, and banking determinations made by the governing body in its capacity as the LGU for the state wetland conservation act program may be appealed to BWSR pursuant to and in accordance with Minn. Stat. § 103G.2242, subd. 9 and Minn. R. 8420.0250.

Section 3.7 Judicial Review.

The application of the additional local requirements in Article 3 of this Ordinance by the governing body is subject to judicial review, pursuant to Minnesota statutes Chapter 394, to the District Court in which the subject property is located within thirty (30) days after receipt of a written notice made by the governing body.

Section 3.8. Enforcement.

The state wetland conservation act program is enforceable pursuant to and in accordance with Minn. Stat. § 103G.2372 and Minn. R. 8420.0290. In order to

provide an additional means for the enforcement of the requirements of the state wetland conservation act program, the Wetland Conservation Act and the Wetland Conservation Act Rules, subject to the alternative standards set forth in Section 3.4 of this Ordinance, are hereby incorporated by reference as a part of the governing body's official controls.

Violations of the Wetland Conservation Act and the Wetland Conservation Act Rules, subject to the alternative standards set forth in Section 3.4 of this Ordinance, shall be deemed to be violations of the governing body's official controls and may be enforced by the governing body in the same manner as any other violations of the governing body's official controls. Such enforcement of the governing body's official controls shall be in addition to enforcement under Minn. Stat. § 103G.2372 and Minn. R. 8420.0290 and shall not be deemed to amend, supersede, preempt, or otherwise alter enforcement under Minn. Stat. § 103G.2372 and Minn. R. 8420.0290.

Section 3.9 Review of Wetland Plan and Ordinance.

In accordance with the no net loss requirement of the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175; Laws 1994, chapter 627; and Laws 1996, chapter 462, and Minnesota Rule 8420.0100, a review of the Lake of the Woods County Wetland Plan and Wetland Conservation Ordinance of 2003 shall be conducted within 5 years of adoption, and at least once every 5 years thereafter. The first review will be conducted by an inter-agency technical team consisting of, at a minimum, representatives from Lake of the Woods County, BWSR, MnDNR, and the Lake of the Woods SWCD.

If this review reveals that the no net loss goal is not being met, recommendations on revision of relevant parts of the plan and ordinance shall be made to the County Board to bring each into compliance with the Wetland Conservation Act.