

**BELTRAMI COUNTY
WETLAND CONSERVATION ORDINANCE OF
2000**

**ARTICLE 1
TITLE AND PURPOSE**

Section 1.1. Title

This Ordinance shall be known, cited and referred to as the Beltrami County Wetland Conservation Ordinance of 2000. 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. (LC)

(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 Beltrami County Shoreland Ordinance.

Certificate of Exemption. Official document issued to a project proposer whose project is exempt from replacement per Mn Rule or Statute.

Deminimus. 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.

Disturbed Wetlands. Wetlands that have been influenced by human activity to such an extent that the wetland functioning has been at least moderately altered.

Governing Body. “Governing body” means the County of Beltrami.

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.

Land Dedicated to future Agricultural Use. Land that a landowner wishes to convert from non-agricultural to agricultural use, and land on which the landowner places a deed restriction agreeing to no other use of that land except for agricultural purposes for a period not less than ten years.

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 _____, 2000 and approved by the Board of Water and Soil Resources, which is on file in the offices of the governing body.

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 Mn Statutes 105.37 Subd. 14 or 15, or 105.391 Subd. 1.

Re-establishing Native Vegetation – Allowing native vegetation to regenerate itself with minimal human intervention.

Restoring Native Vegetation for Water Quality Enhancement – Replacing native vegetation through substantial human intervention that may include the removal of non-native plant species, and the seeding and/or planting of desirable native plant species.

Shoreland (Wetland) Protection Zone. That area for which the Beltrami 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 three persons: a technical professional employee of the BWSR, a technical, professional employee of the SWCD, and a technical professional with expertise in water resources management appointed by the LGU.

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 replaced.

Wetland Banking – A process for wetland replacement, where wetland credits are deposited or withdrawn into a local or 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.

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 or filling 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 Beltrami 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 Beltrami 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. (WF)

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:

Special Protection Category Wetlands

All wetlands between a protected water and the building setback distance associated with that body of water.

Category 1 Wetlands:

Mississippi, Leech Lake, Clearwater River and Red Lakes Watersheds; All wetland types 3, 4, & 5 beyond building setback distances. That part of types 1,2 and 6 wetlands connected to surface waters but beyond the building setback line. Types 7 & 8 wetlands beyond the building setback distance within the shoreland protection zone.

Thief River, Roseau and Rapid River Watersheds; All wetland types 3, 4, & 5 beyond building setback line.

Category 2 Wetlands:

Mississippi, Leech Lake and Clearwater River Watersheds; Isolated type 1, 2, & 6 wetlands beyond building setback distances. Wetland types 7 & 8 beyond the Shoreland Protection Zone.

Red Lake Watershed: Isolated type 1, 2, & 6 wetlands beyond building setback distances, and isolated and Flow-through wetland types 7 & 8 beyond building setback, except those now in agricultural use.

Thief River Watershed: Types 1,2 and 6 wetlands connected to surface waters. Types 7 & 8 within the shoreland protection zone.

Category 3 Wetlands:

Red Lake Watershed: Isolated type 1, 2, & 6 wetlands beyond building setback distances and in agricultural use, and isolated and Flow-through wetland types 7 & 8 beyond building setback distance and in agricultural use. In addition, the wetland types listed in Section 3.41, **Category 2 Wetlands** will be classed as Category 3 wetlands once they have been dedicated to future agricultural use.

Thief River Watershed: Isolated type 1,2, & 6 wetlands beyond building setback distance. Isolated and Flow-through wetland types 7 & 8 beyond the Shoreland Protection Zone.

Section 3.42 Sequencing. (WF)

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:

Special Protection Wetlands: A written analysis of alternatives shall be provided for all impacts. This analysis should identify 2 alternatives, one of which may be the no-build option.

Category 1 Wetlands: A written analysis of alternatives shall be provided for all impacts greater than 800 square feet. This analysis shall identify 2 alternatives, one of which may be the no-build option.

Category 2 Wetlands: A written analysis of alternatives shall be provided for all impacts greater than 1,000 square feet. This analysis shall identify 2 alternatives, one of which may be the no-build option.

Category 3 Wetlands: A written analysis of alternatives shall be provided for all non-agricultural impacts greater than 2 acres. This analysis should identify 2 alternatives, one of which may be the no-build option.

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. (WF)

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:

Special Protection Category Wetlands:

Wetland replacement ratios are:

- 1:1 when replaced with another special protection wetland on the same property
- 2:1 when replaced with a category 1 wetland on the same property beyond the building setback line, but within the shoreland protection zone
- 2:1 when replaced with a special protection wetland on the same water body
- 4:1 when replaced with a special protection wetland within the same minor watershed

The use of a wetland bank as replacement for filling or draining special protection wetlands is not allowed.

Category 1 Wetlands:

Wetland replacement ratio is:

- 1:1 when replaced with a special protection wetland
- 1:1 when replaced with a category 1 wetland
- 2:1 when replaced with a category 2 wetland

Wetland banking is allowed at the following ratios:

- 2:1 in the minor watershed where the impact occurred
- 6:1 elsewhere within Beltrami County

Category 3 wetlands can not be used to replace impacts in category 1 wetlands

Category 2 Wetlands:

Wetland replacement ratio is:

- 1/4:1 when replaced with a special protection wetland
- 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

Wetland banking is allowed at the following ratios:

- 2:1 in the minor watershed where the impact occurred
- 4:1 within Beltrami County

Category 3 Wetlands:

Wetland replacement ratio is:

- 1/16 :1 when replaced with a special protection wetland
- 1/8 :1 when replaced with a category 1 wetland
- 1/4:1 when replaced with a category 2 wetland
- 1/2:1 when replaced with a category 3 wetland

Wetland banking is allowed at the following ratios:

- 2:1 within Beltrami County

Section 3.431 Location of Replacement Activities. (LC)

All Replacement Activities shall be conducted within Beltrami County

Section 3.44 Replacement credits. (WF)

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.

Special Protection Category Wetlands:

Activities intended to replace the public value of wetlands and increase the public values of adjacent uplands cannot be used for wetland replacement credit in this category.

Category 1 Wetlands:

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

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 4:1 ratio.

Category 2 Wetlands:

A. Removing impacts and re-establishing native vegetation in disturbed wetlands can be used for replacement at a 1:1 ratio within the County and same major watershed as the affected wetland.

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, or 6 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.

Category 3 Wetlands:

A. Removing impacts and re-establishing native vegetation in disturbed wetlands can be used for replacement at a 1:1 ratio within the County and same major watershed as the affected wetland.

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, or 6 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.

Section 3.441 Location of Replacement Credit Activities. (LC)

All Replacement Credit Activities shall be conducted within Beltrami County.

Section 3.45 Expansion of Exemptions. (WF)

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:

Special Protection Wetlands: 400 square foot de minimus

Category 1 Wetlands: 400 square foot de minimus.

Category 2 Wetlands:

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

De minimus exemption in shoreland protection zone is expanded to 1,000 square feet in isolated wetlands beyond the building setback line, except for type 7 cedar and tamarack wetlands and wetlands connected to protected waters, which will have a 400 square foot de minimus exemption.

Category 3 Wetlands:

Agricultural exemptions for types 1, 2, & 6 wetlands less than two acres in size are extended to non-agricultural lands, except for bottomland hardwood wetlands.

Deminimus exemption in shoreland protection zone is expanded to 1,000 square feet in isolated wetlands beyond the building setback line, except for type 7 cedar and tamarack wetlands, which will have a 400 square foot de minimus.

Section 3.451. Certificate of Exemption (LC)

A property owner proposing to affect a special protection wetland must obtain a Certificate of Exemption from the LGU staff before proceeding with work that falls within the 400 square foot exemption that is allowed by this ordinance.

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 (WF)

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. (LC)

The replacement standards shall not be decreased for Category 3 Wetlands, nor increased for Special Protection 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 judgements made in administering this ordinance. Appeals will be heard by the governing body under procedures 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 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 Beltrami County Wetland Plan and Wetland Conservation Ordinance of 2000 shall be conducted within 2 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 Beltrami County, BWSR, MnPCA, MnDNR, U.S Fish and Wildlife Service and the U.S. Corps of Engineers.

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.

ADOPTED BY THE BELTRAMI COUNTY BOARD OF COMMISSIONERS THIS _____
DAY OF _____, 2000.

ATTEST: Greg Lewis, County Administrator

Steven K. Booth, Chairman
County Board of Commissioners