

## CHAPTER 103F

## PROTECTION OF WATER RESOURCES

103F.215	Model ordinance as county ordinance.	103F.615	Limitation on certain public projects.
103F.369	Comprehensive land use plan.	103F.616	Soil conservation practices.
103F.515	Conservation reserve program.	103F.761	Public agency coordination.
103F.516	Permanent wetlands preserve.	103F.901	Definitions.
103F.535	Reservation of marginal land and wetlands.	103F.902	Local planning and approval.
103F.612	Wetland preservation areas.	103F.903	Wetland establishment and restoration cost-share program.
103F.613	Duration of wetland preservation area.	103F.904	Wetland establishment.
103F.614	Eminent domain actions.	103F.905	Rules.

**103F.215 MODEL ORDINANCE AS COUNTY ORDINANCE.**

Subdivision 1. **County ordinance failing to meet standards.** The commissioner shall adapt the model ordinance to a county if, after notice and hearing as provided in section 103G.311, the commissioner finds that a county has adopted a shoreland conservation ordinance that fails to meet the minimum standards established under section 103F.211.

*[For text of subs 2 to 4, see M.S.1990]*

**History:** 1991 c 199 art 1 s 17

**103F.369 COMPREHENSIVE LAND USE PLAN.**

*[For text of subd 1, see M.S.1990]*

Subd. 2. **Plan provides minimum standards.** The standards set forth in the plan are the minimum standards which may be adopted by the board and by the counties for the protection and enhancement of the natural, scientific, historical, recreational and cultural values of the Mississippi River and related shoreland areas subject to the plan. Except for forest management, fish and wildlife habitat improvement, a veterans cemetery that complies with subdivision 5, and open space recreational uses as defined in the plan, state or county lands within the boundaries established by the plan may not be offered for public sale or lease. The board with the agreement, expressed by resolution adopted after public hearing, of the county boards of Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison counties may amend the plan in any way that does not reduce the minimum standards set forth in the plan approved on February 12, 1981.

*[For text of subs 3 and 4, see M.S.1990]*

Subd. 5. **Veterans cemetery.** A veterans cemetery may be located within the boundaries established by the plan if a site plan approved by the county zoning authority addresses each of the following items:

- (1) the name of the cemetery;
- (2) a legal description of the property affected;
- (3) names and addresses of applicant, owner, surveyor, and designer of the plan;
- (4) graphic scale;
- (5) an arrow depicting north on the plan;
- (6) date of preparation of the plan;
- (7) total acreage of property;
- (8) square footage for each proposed site;
- (9) existing soil conditions, depth of water table, and topographic contours;
- (10) roads and proposed roads showing right-of-way widths;
- (11) proposed location and type of on-site sanitary treatment facilities and domestic water supply;

- (12) accessory facilities, existing or to be constructed, by type and location;
- (13) all streams, creeks, ponds, wetlands, and swamps;
- (14) burial only on site with no embalming or other related activities on site;
- (15) no placement of graves or accessory facilities within the designated flood plain; and
- (16) each burial must be in a vault or an appropriate liner as determined by the board.

**History:** 1991 c 158 s 1,2

### 103F.515 CONSERVATION RESERVE PROGRAM.

*[For text of subd 1, see M.S.1990]*

**Subd. 2. Eligible land.** (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c).

(b) Land is eligible if the land:

- (1) is marginal agricultural land;
- (2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;
- (3) consists of a drained wetland;
- (4) is land that with a windbreak would be beneficial to resource protection;
- (5) is land in a sensitive groundwater area;
- (6) is cropland adjacent to public waters;
- (7) is cropland or noncropland adjacent to restored wetlands to the extent of up to four acres of cropland or one acre of noncropland for each acre of wetland restored;
- (8) is a woodlot on agricultural land;
- (9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or
- (10) is land on a hillside used for pasture.

(c) Eligible land under paragraph (a) must:

- (1) have been owned by the landowner on January 1, 1985, or be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;

(2) be at least five acres in size, except for a windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

(3) not be set aside, enrolled or diverted under another federal or state government program; and

(4) have been in agricultural crop production for at least two years during the period 1981 to 1985 except drained wetlands, woodlots, abandoned building sites, or land on a hillside used for pasture.

(d) The enrolled land of a landowner may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average farm size determined by the United States Department of Agriculture, Census of Agriculture.

(e) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

(f) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 103F.505.

*[For text of subds 3 to 9, see M.S.1990]*

**History:** 1991 c 354 art 10 s 3

**103F.516 PERMANENT WETLANDS PRESERVE.**

Subdivision 1. **Easements.** Upon application by a landowner, the board may acquire permanent easements on land containing type 1, 2, or 3 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Subd. 2. **Nature of property rights acquired.** (a) The nature of property rights acquired in an easement under this section must be consistent with the provisions of section 103F.515, subdivision 4.

(b) A permanent easement may include four adjacent upland acres of land for each acre of wetland included.

(c) The easement must require that the landowner control noxious weeds in accordance with sections 18.171 to 18.317.

(d) The permanent easement must be conveyed to the state in recordable form free of any prior title, lien, or encumbrance and must provide for a right of entry by the state for inspection and correction of violations.

Subd. 3. **Payment.** (a) Payment for the conservation easement may be made in ten equal annual payments or, at the option of the land owner, in a lump sum at:

(1) 50 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application for wetlands located outside of the metropolitan counties, as defined in section 473.121, subdivision 4, and wetlands located on agricultural lands within a metropolitan county; or

(2) for wetlands located on nonagricultural land within the metropolitan county, 20 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application.

(b) Payment for adjacent upland acreage of cropped and noncropped land under subdivision 2, paragraph (b), must be made at 90 percent and 60 percent, respectively, of the township average equalized market value of agricultural land as established by the commissioner of revenue at the time of easement application.

Subd. 4. **Enforcement and corrections.** Enforcement of the permanent easement and violation corrections is governed by section 103F.515, subdivisions 8 and 9.

Subd. 5. **Available funds.** A property owner eligible for payments under this section must receive payments to the extent that funds are available. If funds are not available and payments are not made, restrictions on the use of the property owner's wetlands are terminated under this section.

**History:** 1991 c 354 art 3 s 1

**103F.535 RESERVATION OF MARGINAL LAND AND WETLANDS.**

Subdivision 1. **Reservation of marginal land and wetlands.** (a) Notwithstanding any other law, marginal land and wetlands are withdrawn from sale by the state unless use of the marginal land or wetland is restricted by a conservation easement as provided in this section.

(b) This section does not apply to transfers of land by the board of water and soil resources to correct errors in legal descriptions under section 103F.515, subdivision 8, or to transfers by the commissioner of natural resources for:

(1) land that is currently in nonagricultural commercial use if a conservation easement would interfere with the commercial use;

(2) land in platted subdivisions;

(3) conveyances of land to correct errors in legal descriptions under section 84.0273;

(4) exchanges of nonagricultural land with the federal government, or exchanges of Class A, Class B, and Class C nonagricultural land with local units of government under sections 94.342, 94.343, 94.344, and 94.349;

(5) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10; and

(6) land not needed for trail purposes that is sold to adjacent property owners and lease holders under section 85.015, subdivision 1, paragraph (b).

(c) This section does not apply to transfers of land by the commissioner of administration or transportation or by the Minnesota housing finance agency, or to transfers of tax-forfeited land under chapter 282 if:

(1) the land is in platted subdivisions; or

(2) the conveyance is a transfer to correct errors in legal descriptions.

(d) This section does not apply to transfers of land by the commissioner of administration or by the Minnesota housing finance agency for:

(1) land that is currently in nonagricultural commercial use if a conservation easement would interfere with the commercial use; or

(2) land transferred to political subdivisions for public purposes under sections 84.027, subdivision 10, and 94.10.

*[For text of subs 2 to 4, see M.S.1990]*

**History:** 1991 c 214 s 5

## WETLAND PRESERVATION AREAS

### 103F.612 WETLAND PRESERVATION AREAS.

Subdivision 1. **Definition.** For purposes of sections 103F.612 to 103F.616, "wetland" has the meaning given in section 103G.005, subdivision 19.

Subd. 2. **Application.** (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil resources. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application must contain at least the following information and other information the board of soil and water resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-1/2 feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

(2) parcel identification numbers where designated by the county auditor;

(3) name and address of the owner;

(4) a witnessed signature of the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources; and

(5) a statement that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

(c) The upland strip required in paragraph (b), clause (1), must be planted with permanent vegetation other than a noxious weed.

(d) For registered property, the owner shall submit the owner's duplicate certificate of title with the application.

Subd. 3. **Review and notice.** Upon receipt of an application, the county shall determine if all material required by subdivision 2 has been submitted and, if so, shall determine that the application is complete. The term "date of application" means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, the regional development commission, where applicable, the board of water and soil resources, and the soil and water conser-

vation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county.

**Subd. 4. Recording.** Within five days of the date of application, the county shall forward the application to the county recorder, with the owner's duplicate certificate of title in the case of registered property. The county recorder shall record the restrictive covenant and return it to the applicant. In the case of registered property, the recorder shall memorialize the restrictive covenant upon the certificate of title and the owner's duplicate certificate of title. The recorder shall notify the county that the covenant has been recorded or memorialized.

**Subd. 5. Commencement of wetland preservation area.** The wetland is a wetland preservation area commencing 30 days from the date the county determines the application is complete under subdivision 3.

**Subd. 6. Fee.** The county may require an application fee, not to exceed \$50.

**Subd. 7. Maps.** The board of water and soil resources shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

**History:** 1991 c 354 art 4 s 1

### 103F.613 DURATION OF WETLAND PRESERVATION AREA.

**Subdivision 1. General.** A wetland preservation area continues in existence until the owner initiates expiration as provided in this section. The date of expiration must be at least eight years from the date of notice under this section.

**Subd. 2. Termination by owner.** The owner may initiate expiration of a wetland preservation area by notifying the county on a form prepared by the board of water and soil resources and made available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.

**Subd. 3. Notice and recording; termination.** When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording and shall notify the regional development commission, where applicable, the board of water and soil resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. For registered property, the county recorder shall cancel the restrictive covenant upon the certificate of title and the owner's duplicate certificate of title on the effective date of the expiration.

**Subd. 4. Early expiration.** A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4.035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

**History:** 1991 c 354 art 4 s 2

### 103F.614 EMINENT DOMAIN ACTIONS.

**Subdivision 1. Applicability.** An agency of the state, a public benefit corporation, a local government, or any other entity with the power of eminent domain under chapter 117, except a public utility as defined in section 216B.02, a municipal electric or gas utility, a municipal power agency, a cooperative electric association organized under chapter 308A, or a pipeline operating under the authority of the Natural Gas Act, United States Code, title 15, sections 717 to 717z, shall follow the procedures in this section before:

(1) acquiring land or an easement in land with a total area over ten acres within a wetland preservation area; or

(2) advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use, that require an acquisition of land or an easement in a wetland preservation area.

**Subd. 2. Notice of intent.** At least 60 days before an action described in subdivision 1, notice of intent must be filed with the environmental quality board containing information and in the manner and form required by the environmental quality board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within a wetland preservation area.

**Subd. 3. Review and order.** The environmental quality board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of wetlands and the relationship to local and regional comprehensive plans. If the environmental quality board finds that the proposed action might have an unreasonable effect on a wetland preservation area, the environmental quality board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

**Subd. 4. Public hearing.** During the additional 60 days, the environmental quality board shall hold a public hearing concerning the proposed action at a place within the affected wetland preservation area or easily accessible to the wetland preservation area. Notice of the hearing must be published in a newspaper having a general circulation within the area. Individual written notice must be given to the local governments with jurisdiction over the wetland preservation area, the agency, corporation or government proposing to take the action, the owner of land in the wetland preservation area, and any public agency having the power of review or approval of the action.

**Subd. 5. Joint review.** The review process required in this section may be conducted jointly with any other environmental impact review by the environmental quality board.

**Subd. 6. Suspension of action.** The environmental quality board may suspend an eminent domain action for up to one year if it determines that the action is contrary to wetland preservation and that there are feasible and prudent alternatives that may have a less negative impact on the wetland preservation area.

**Subd. 7. Termination of wetland preservation area.** The benefits and limitations of a wetland preservation area, including the restrictive covenant for the portion of the wetland preservation area taken, end on the date title and possession of the property is obtained.

**Subd. 8. Action by attorney general.** The environmental quality board may request the attorney general to bring an action to enjoin an agency, corporation, or government from violating this section.

**Subd. 9. Exception.** This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

**History:** 1991 c 354 art 4 s 3

### 103F.615 LIMITATION ON CERTAIN PUBLIC PROJECTS.

**Subdivision 1. Projects and assessments prohibited; exception.** Notwithstanding any other law, construction projects for public sanitary sewer systems, public water systems, and new public drainage systems are prohibited in wetland preservation areas. New connections between land or buildings in a wetland preservation area and public projects are prohibited. Land in a wetland preservation area may not be assessed for public projects built in the vicinity of the wetland preservation area.

**Subd. 2. Exception; owner option.** Subdivision 1 does not apply to public projects if the owner of the wetland preservation area elects to use and benefit from a public project.

**History:** 1991 c 354 art 4 s 4

**103F.616 SOIL CONSERVATION PRACTICES.**

An owner of a wetland preservation area shall manage the area and surrounding upland areas with sound soil conservation practices that prevent excessive soil loss according to the model ordinance adopted by the board of water and soil resources. The model ordinance and soil loss provisions under sections 103F.401 to 103F.455 relating to soil loss apply to all upland areas within a wetland preservation area and to surrounding upland areas. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practicable extent.

*History: 1991 c 354 art 4 s 5*

**103F.761 PUBLIC AGENCY COORDINATION.**

Subdivision 1. **Project coordination team; membership.** The commissioner shall establish and chair a project coordination team made up of representatives of the pollution control agency, department of natural resources, board of water and soil resources, department of agriculture, department of health, Minnesota extension service, University of Minnesota agricultural experiment stations, United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Agricultural Stabilization and Conservation Service, United States Department of Agriculture Soil Conservation Service, metropolitan council, Association of Minnesota Counties, League of Minnesota Cities, Minnesota Association of Townships, and other agencies as the commissioner may determine.

*[For text of subd 2, see M.S.1990]*

*History: 1991 c 345 art 2 s 15*

**WETLAND ESTABLISHMENT AND RESTORATION PROGRAM****103F.901 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 103F.901 to 103F.905.

Subd. 2. **Board.** "Board" means the board of water and soil resources.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 4. **Comprehensive local water plan.** "Comprehensive local water plan" has the meaning given in section 103B.3363, subdivision 3.

Subd. 5. **Local unit of government.** "Local unit of government" means a county board, joint county board, watershed management organization, or watershed district.

Subd. 6. **Watershed district.** "Watershed district" means a district established under chapter 103D.

Subd. 7. **Watershed management organization.** "Watershed management organization" has the meaning given in section 103B.205, subdivision 13.

Subd. 8. **Wetland.** "Wetland" has the meaning given in section 103G.005, subdivision 19.

*History: 1991 c 354 art 5 s 1*

**103F.902 LOCAL PLANNING AND APPROVAL.**

Subdivision 1. **Application.** A willing landowner may apply, on forms provided by the board, to a local unit of government for the establishment or restoration of a wetland on property owned by the landowner in an area that is:

- (1) designated by the board as a high priority wetland region; and
- (2) identified as a high priority wetland area in the local unit of government's comprehensive local water plan.

Subd. 2. **Notice and preliminary hearing.** (a) Within 30 days after receiving an

application, the local unit of government shall hold a public hearing. At least ten days before the hearing, the local unit of government shall give notice of the hearing to the applicant and publish notice in an official newspaper of general circulation in the county.

(b) At the hearing, the local unit of government shall describe the application and hear comments from interested persons regarding the application and the planned establishment or restoration project.

Subd. 3. **Preliminary approval.** Within 30 days of the public hearing, the local unit of government must give preliminary approval or disapproval of the application.

Subd. 4. **Survey report.** After preliminary approval, the local unit of government shall direct and pay the costs of a soil and water conservation engineer to conduct a survey of the property where the wetland restoration or establishment project is proposed to be located. The engineer must file a report, including a map of the proposed wetland, that describes the effects of the proposed wetland on:

- (1) the hydrology in the area;
- (2) property of persons other than the applicant;
- (3) groundwater recharge;
- (4) flooding;
- (5) fish and wildlife habitat;
- (6) water quality; and
- (7) other characteristics as determined by the local unit of government.

Subd. 5. **Notice and final hearing.** Within 30 days of receiving the completed survey, the local unit of government shall hold a public hearing on the proposed project. At least ten days before the hearing, the local unit of government shall notify the landowner and the commissioner and provide public notice of the hearing and the availability of the survey report in an official newspaper of general circulation in the county. The commissioner may provide comment on the proposed wetland.

Subd. 6. **Final local approval.** Within 30 days of the public hearing, the local unit of government shall notify the applicant and the commissioner of the final approval or disapproval of the proposed wetland.

*History: 1991 c 354 art 5 s 2*

### **103F.903 WETLAND ESTABLISHMENT AND RESTORATION COST-SHARE PROGRAM.**

Subdivision 1. **Application.** A local unit of government shall apply to the board to receive cost-share funding for a proposed wetland restoration project that receives final local approval under section 103F.902. The application must include a copy of the survey report and any comments received on the proposed wetland. Within 30 days of receiving an application, the board shall notify the local unit of government on whether the application and survey report are complete.

Subd. 2. **Cost-share.** The board may provide up to the lesser of \$20,000 or 50 percent of the cost of a wetland establishment or restoration project, including engineering costs, establishment or restoration costs, and compensation costs.

Subd. 3. **Conservation easement.** In exchange for cost-share financing under subdivision 2, the board shall acquire a permanent conservation easement, as defined in section 84C.01, paragraph (1). The easement agreement must contain the conditions listed in section 103F.515, subdivision 4.

Subd. 4. **Priorities.** In reviewing requests from local units of government under this section, the board must give priority to applications based on the public value of the proposed wetland. The public value of the wetland must include the value of the wetland for:

- (1) water quality;
- (2) flood protection;

- (3) recreation including fish and wildlife habitat;
- (4) groundwater recharge; and
- (5) other public uses.

**History:** 1991 c 354 art 5 s 3

#### **103F.904 WETLAND ESTABLISHMENT.**

Subdivision 1. **Establishment order.** After receiving approval of cost-share funding from the board, the local unit of government shall order the establishment or restoration of the wetland. The local unit of government shall pay all costs of establishing or restoring the wetland including the compensation required under subdivision 2.

Subd. 2. **Compensation.** In exchange for the permanent conservation easement on an established or restored wetland, the local unit of government shall pay the applicant the amount required under section 103F.515, subdivision 6, for a permanent conservation easement.

**History:** 1991 c 354 art 5 s 4

#### **103F.905 RULES.**

The board may adopt rules to implement sections 103F.901 to 103F.904.

**History:** 1991 c 354 art 5 s 5