

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
WETLANDS PROTECTION AND MANAGEMENT ORDINANCE
ORDINANCE #03/06

Adopted by Resolution #1165/06 of the Fond du Lac Reservation Business Committee on
June 15, 2006.

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CHAPTER 1
AUTHORITY, PURPOSE & SCOPE

SECTION 101 AUTHORITY

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq., Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and Sections 404 and 518 of the Clean Water Act, 33 U.S.C. §§ 1341 and 1378.

SECTION 102 FINDINGS AND PURPOSE

The Fond du Lac Reservation Business Committee recognizes that wetlands are fragile natural resources with significant development constraints due to flooding, erosion, and soil limitations. In their natural state, wetlands provide important tribal and public benefits and ecological functions. They provide habitat areas for fish, wildlife, and vegetation, water quality maintenance and pollution control, flood control, shoreline erosion control, natural resource education, scientific study, open space, recreation opportunities, environmental niches, and most importantly the traditional, cultural, and spiritual aspects of our heritage. Previous construction, land development, and other direct and indirect impacts have displaced, polluted, or degraded many wetlands. Piecemeal or cumulative losses are a continuing threat to the remaining wetlands. Damaging or destroying wetlands threatens public safety and the general welfare of the Band. Preservation of wetlands in their natural condition is necessary to maintain the hydrologic, economic, recreational, subsistence, cultural, spiritual, and aesthetic assets for current and future residents of the Fond du Lac Reservation ("Reservation"). It is therefore determined that the promulgation of standards in the protection, conservation, and management of wetlands are in the best interests of the Fond du Lac Band, and of all residents of the Fond du Lac Reservation. The purpose of this Ordinance is to ensure maximum protection for wetlands by discouraging development activities in wetlands and those activities as adjacent upland sites that may adversely affect wetlands. This Ordinance is enacted with the intent of providing a reasonable balance between the rights of the individual property owner to the free use of his/her property and the rights of present and future generations. Therefore, this Ordinance recognizes the rights of owners of property in or near wetlands to use their property for reasonable purposes consistent with other regulations and controls, provided that such use, in the judgment of the

appropriate agencies or officials of the Fond du Lac Reservation, does not result in a loss of or impairment to the wetland system, both on and off site, or the functions which the wetlands have found to fulfill within the boundaries of the Fond du Lac Reservation.

SECTION 103 DELEGATION AND SCOPE

The Office of Water Protection (OWP) for the Fond du Lac Band of Lake Superior Chippewa, operating within the Fond du Lac Resource Management Division (Resource Management), shall be responsible for the application, processing, and review of Wetland Activity Permits as provided under Section 302 [Prohibited Activities] of this Ordinance and the notification, processing and review of Exemption Certificates as provided under Section 303 [Exempt Activities]. This Ordinance shall apply to all owners of real property within the boundaries of the Reservation regardless of Tribal affiliation.

SECTION 104 RESERVATION OF RIGHTS

The Fond du Lac Band reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

**CHAPTER 2
DEFINITIONS & INCORPORATIONS BY REFERENCE**

SECTION 201 DEFINITIONS

For the purposes of this Ordinance, certain words and terms are hereby defined. Terms that are not defined here shall be construed in accordance with the Clean Water Act (33 U.S.C. § 1251 et seq.). Terms and abbreviations used herein, which are neither defined by this Ordinance nor by the Clean Water Act, shall be construed in accordance with the context and professional usage. Where ambiguity exists, words or phrases shall be interpreted so as to give this Ordinance its most reasonable application in carrying out its regulatory purpose.

- a. **“Activity”** means any use, operation, development or action caused by any person, including, but not limited to, constructing, operating, or maintaining any use or development; erecting buildings or other structures; depositing or removing material; dredging; ditching; land balancing; deep ripping; draining or diverting water; pumping or discharging of surface water; grading; vegetative clearing or excavation, mining or drilling operation.

- b. **“Adaptive Management”** means the development of a management strategy that anticipates the challenges associated with likely future impacts to the aquatic resource functions of the compensatory mitigation site; it acknowledges the risk and uncertainty of compensatory mitigation projects and allows modification of those projects to optimize performance; the process will provide guidance on the selection of appropriate remedial measures that will ensure the continued adequate provision of aquatic resource function and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and identification of measures to rectify those problems.
- c. **“Applicant”** means the owner of record of affected property and/or his or her agents, designees or assigns applying for a permit pursuant to this Ordinance.
- d. **“Band”** means the Fond du Lac Band of Lake Superior Chippewa.
- e. **“Buffer”** means an upland and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, and lake systems from disturbances associated with adjacent land uses.
- f. **“Compensatory Mitigation”** means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances, preservation of aquatic resources for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization had been achieved.
- g. **“Compensatory Mitigation Project”** means a restoration, establishment, enhancement, and/or preservation activity implemented by the permittee as a requirement of a Wetland Activity Permit (i.e., first-party mitigation), or by a third party (i.e., a mitigation bank).
- h. **“Credit”** means a unit of measure (e.g., a functional or area measure) representing the accrual or attainment of aquatic functions at a compensatory mitigation site; the measure of function is based on the aquatic resources restored, established, enhanced, or preserved.
- i. **“Days”** means calendar days.
- j. **“Debit”** means a unit of measure (e.g., functional or area measure) representing the loss of aquatic functions at an impact or project site; the measure of function is based on the aquatic resources impacted by the authorized activity.
- k. **“Discharge”** means to place, fill or dump.
- l. **“Development”** means any artificial change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

- m. **“Emergency Repair”** means the immediate and necessary repair of an existing damaged structure, to prevent further damage, or that may cause damage to adjacent property, or injury.
- n. **“Enhancement”** means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s); enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s); enhancement does not result in a gain in aquatic resource area.
- o. **“Establishment”** means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland or deepwater site; establishment results in a gain in aquatic resource area; establishment is often referred to as creation.
- p. **“Fill”** means soil, sand, gravel, clay, peat, debris and refuse waste of any kind, or any material which displaces soil or water or reduces water retention potential, and untreated storm water that results in sedimentation within a wetland.
- q. **“Free of Contamination”** means that soil or materials brought to a site for use in the wetland or in the buffer zone of a wetland, shall be free of toxic materials in toxic amounts and be non-polluting. Such certification may be made of the applicant to the satisfaction of the staff of Resource Management. The staff of Resource Management shall determine whether there is sufficient reason to require a test for contamination of fill material.
- r. **“Functions”** mean the physical, chemical, and biological processes that occur in aquatic resources and other ecosystems.
- s. **“Hydric Soil”** shall mean organic or mineral soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.
- t. **“Hydrophytic Vegetation”** shall mean macrophytic plant life growing in water or on a substrate that is at least periodically deficient of oxygen as a result of excessive water content.
- u. **“Impact”** means adverse effect.
- v. **“In-kind”** means a resource type that is structurally and/or functionally similar to the impacted resource type.
- w. **“Interagency Review Team (IRT)”** means an interagency group of Federal, Tribal, State, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the U.S. Army Corps of Engineers and/or the Office of Water Protection on the establishment and management of a mitigation bank.

- x. **“Lake”** means an area of permanent open water which is at least 6.5 feet or greater in depth during its ordinary level.
- y. **“Management Wetlands”** means wetlands that have a high or medium functioning capacity as determined using the Recommended Wetland Management Classification System developed by the Minnesota Board of Water and Soil Resources.
- z. **“Mitigation Bank”** means a site, or suite of sites, where aquatic resources such as wetlands or streams are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for authorized impacts to similar resources; third-party mitigation banks generally sell compensatory mitigation credits to permittees whose obligation to provide mitigation is then transferred to the mitigation bank sponsor; the operation and use of a mitigation bank are governed by a mitigation banking instrument.
- aa. **“Mitigation Banking Instrument”** means the legal document for the establishment, operation, and use of a mitigation bank.
- bb. **“Notification”** means where notice is required pursuant to this Ordinance, written notice sent by first class mail shall be sufficient notice for all purposes hereunder.
- cc. **“Office of Water Protection”** means the Office of Water Protection within the Environmental Program of the Resource Management Division of the Fond du Lac Band of Lake Superior Chippewa.
- dd. **“Off-site”** means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to or near the parcel containing the impact site.
- ee. **“On-site”** means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to or near the impact site.
- ff. **“Out-of-Kind”** means a resource type that is structurally and/or functionally different that the impacted resource type.
- gg. **“Owner”** means any person, agency, company, corporation, government, or organization who has dominion over, control of, or title to, wetland properties.
- hh. **“Performance Standards”** means observable or measurable attributes that are used to determine if a compensatory mitigation project meets its objectives.
- ii. **“Preservation”** means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources; this term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms; preservation does not result in a gain of aquatic resource area or functions.

- jj. **“Priority Wetlands”** means wetlands that have the highest functioning capacity as determined using the Recommended Wetland Management Classification System developed by the Minnesota Board of Water and Soil Resources.
- kk. **“Project”** means the single and complete project which includes all the activities required to accomplish the project purpose. For “phased” projects, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.
- ll. **“Re-establishment”** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource; re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.
- mm. **“Reference Aquatic Resource”** means aquatic resources that represent the range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.
- nn. **“Rehabilitation”** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource; rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.
- oo. **“Reservation”** means the Fond du Lac Indian Reservation, as established by the Treaty of LaPointe of September 30, 1854, 10 Stat. 1109, and as extended by the Secretary of the Interior in accordance with Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465..
- pp. **“Reservation Business Committee”** means the duly elected governing body of the Fond du Lac Band of Lake Superior Chippewa.
- qq. **“Resource Management”** means the Fond du Lac Division of Resource Management of the Fond du Lac Band of Lake Superior Chippewa.
- rr. **“Restoration”** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource; for the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories of re-establishment and rehabilitation.
- ss. **“Restoration Wetlands”** means wetlands that have a medium or low functioning capacity as determined using the Recommended Wetland Management Classification System developed by the Minnesota Board of Water and Soil Resources.
- tt. **“Riparian Area”** means lands that are adjacent to a waterbody; riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands; riparian areas

are adjacent to streams and lakes and provide a variety of ecological functions and services and help improve or maintain local water quality.

- uu. **“Runoff”** means the surface discharge of precipitation, including snowmelt, to a wetland, watercourse, drainage-way, swale, or depression.
- vv. **“Services”** means the benefits that human populations receive from functions that occur in aquatic resources and other ecosystems.
- ww. **“Sponsor”** means any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.
- xx. **“Tribal Court”** means the Fond du Lac Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.
- yy. **“Values”** means the utility or satisfaction that humans derive from aquatic resource services; values can be described in monetary terms or in qualitative terms, although many of the values associated with aquatic resources cannot be easily monetized; values can be either use values (e.g., recreational enjoyment) or non-use values (e.g., stewardship, biodiversity).
- zz. **“Watercourse”** means any river, stream, creek, branch, reach, tributary, drainage, ditch, or culvert pipe, which allows for the flow of water from one point to another.
- aaa. **“Wetlands”** means those areas that are comprised of hydric soils and are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation. Wetlands include, but are not limited to, shallow and deep marshes, wet meadows, swamps, bogs, and forested wetlands.

SECTION 202 INCORPORATION BY REFERENCE

The following documents are hereby incorporated by reference as part of this Ordinance, including any subsequent updates, addenda, or derivations related to them, as approved by the Office of Water Protection:

- a. Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition).
- b. National Wetland Inventory Maps (United States Fish and Wildlife Service).
- c. United States Army Corps of Engineers Wetland Delineation Manual (January 1987).
- d. Minnesota Routine Assessment Method for Evaluating Wetland Functions (Minnesota Board of Water and Soil Resources).

- e. Recommended Wetland Management Classification System (Minnesota Board of Water and Soil Resources).
- f. National List of Plant Species that Occur in Wetlands (Reed, 1988).
- g. Native Vegetation in Restored and Created Wetlands (Shaw, 2000).
- h. Wetland Plants and Plant Communities of Minnesota & Wisconsin (Eggers and Reed, second edition).
- i. Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers (Minnesota Forest Resources Council, 2005).
- j. Field Indicators of Hydric Soils in the United States (United States Department of Agriculture, Natural Resources Conservation Service).
- k. Field Manual on Sediment and Erosion Control Best Management Practices for Contractors and Inspectors (Fifield, 2002).
- l. A Guide to Forest Habitat Types of the Fond du Lac Indian Reservation (Kotar and Burger, 2005).
- m. Erosion Control Handbook (Minnesota Department of Transportation).
- n. Protecting Natural Wetlands: A Guide to Stormwater Best Management Practices (United States Environmental Protection Agency, 1996).
- o. Fond du Lac Reservation Joint Comprehensive Wetland Protection and Management Plan, adopted by Resolution # 1021/06 of the Fond du Lac Reservation Business Committee on February 2, 2006.
- p. Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended; adopted by Resolution # 1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001.
- q. Fond du Lac Band of Lake Superior Chippewa Water Quality Certification Standards Ordinance # 01/06; adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006.
- r. Munsell Soil Color Charts (Munsell, 1994).

CHAPTER 3
GENERAL PROVISIONS

SECTION 301 GENERAL PROVISIONS

- a. Any action by any owner of real property within the Fond du Lac Reservation which would impact wetlands by altering the course, current, and/or cross section of the wetland shall be subject to the provisions of Section 304 [Sequencing] of this Ordinance and to obtain a valid permit from Resource Management, unless the proposed activity is Exempted as outlined in Section 303 [Exempt Activities] of this Ordinance.

- b. Activities occurring on the Reservation shall not threaten Tribal or public safety or cause nuisances by:
 - 1. Restricting flood flows, destroying flood storage areas, or destroying storm barriers, thereby raising flood heights or velocities on other land and increasing flood damages.

 - 2. Causing water pollution through any means, including location of wastewater disposal systems, including septic systems, in hydric soils; application of pesticides, and herbicides; disposal of solid wastes or storm water runoff at inappropriate sites; or the creation of unstable fills.

 - 3. Increasing erosion; or increasing runoff of sediment and storm water.

- c. In addition, it is the intent of this Ordinance that activities in or affecting wetlands do not destroy natural wetland functions important to the general welfare by:
 - 1. Decreasing breeding, spawning, nesting, wintering, feeding, or other critical habitat for any fish or wildlife, including rare, threatened, and endangered plant and animal species and commercially and recreationally important wildlife.

 - 2. Interfering with the exchange of nutrients needed by fish and other forms of wildlife.

 - 3. Decreasing groundwater recharge.

 - 4. Destroying sites needed for education and scientific research.

 - 5. Interfering with Tribal rights for hunting, fishing, trapping, ricing, gathering, and cultural and ceremonial/spiritual uses.

6. Interfering with other activities such as boating, hiking, birdwatching, photography, and camping.
 7. Destroying aesthetic and property values.
- d. This Ordinance stipulates that if after all steps in Section 304 [Sequencing] have been followed, and impacts to wetlands would still occur as a result of a proposed activity, the applicant submit an Application for Wetland Activity Permit to the Office of Water Protection. Therefore, it is advisable that the applicant contact the Office of Water Protection early in the planning process.

SECTION 302 PROHIBITED ACTIVITIES

It shall be unlawful for any person to perform any of the actions specified under this Section within the Fond du Lac Reservation unless and until a Wetland Activity Permit is obtained from the Resource Management Division pursuant to this Ordinance. A Wetland Activity Permit is required for an activity in a wetland, or within a designated buffer zone of a wetland, unless specifically exempted under this Section 303 of this Ordinance.

- a. Discharge, or allow to be discharged, any fill material or structures into any watercourse or within or upon any wetland.
- b. Remove, or allow to be removed, any soil from any watercourse or from any wetland.
- c. Remove, or allow to be removed, any vegetation, including trees, from wetlands, if such removal would adversely affect the nutrient cycling, sediment trapping, flood retention, or any other hydrologic functions of such wetlands.
- d. Dredge, fill, deep rip, or land balance a watercourse or wetland.
- e. Create, enlarge, diminish, or alter a lake, pond, watercourse, or wetland;
- f. Construct, operate or maintain any development in or upon a watercourse or wetland.
- g. Erect or build any structure including, but not limited to, buildings, roadways, driveways, bridges, dams, driving of piles, placement of obstructions, paving, utilities, or private poles or towers in or upon watercourses or wetlands.
- h. Construct, extend or enlarge any pipe, culvert, or open or closed drainage facility which discharges silt, sediment, organic, or inorganic materials, chemicals, fertilizers, flammable liquids or other pollutants to any lake, watercourse or wetland, except through a retention area, settling basin, or treatment facility designated to control and eliminate the pollutant.
- i. Construct, enlarge, extend or connect any private or public sewage or waste treatment plant discharge to any lake, stream, river, pond, watercourse, or wetland except in

accordance with the requirements of the Band, State of Minnesota and/or the United States, to the extent that such entities have jurisdiction.

- j. Drain, or cause to be drained, any water from a watercourse or wetland.
- k. Application of chemicals, including pesticides and herbicides into a wetland or watercourse, including ditches, or to areas that may have a hydrologic connection to a wetland or watercourse.

SECTION 303 EXEMPT ACTIVITIES

Notwithstanding the prohibited activities identified in Section 302 of this Ordinance, the activities identified in this Section are permitted within watercourses and wetlands without a Wetland Activity Permit, unless otherwise prohibited by other applicable law. There are two types of activities which are exempt from the permit requirements of Section 302: non-reporting activities and notification. However, these activities are not exempted from the requirement of avoidance and minimization as outlined in Section 304(a)&(b).

- a. Non-reporting Exempted Activities: These activities do not require any notification to Resource Management:
 - 1. Fishing, swimming, boating, canoeing, hiking, horseback riding, birdwatching, or other similar recreational activities which do not require extensive alteration of wetland vegetation or grading of soils.
 - 2. The harvesting of wild crops, such as ferns, wild rice, berries, tree fruits, boughs, plants for medicinal or ceremonial/spiritual purposes, or seeds in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require alteration of the wetland by changing existing wetland water conditions or sources, tilling of soil, or planting of crops, and is not otherwise illegal;
 - 3. Grazing and/or watering of animals.
 - 4. The continued production of agricultural crops on lands that have been in agricultural use prior to the effective date of this Ordinance; new conversions of wetlands for agricultural use is not exempted under this Ordinance.
 - 5. Installation for noncommercial use of temporary seasonal docks, rafts, diving platforms, and other recreational devices customarily used for residential or public park purposes.
- b. Notification Exempt Activities: These activities require notification to Resource Management either ten (10) days prior to, or within three (3) days after the commencement of the activity. The notification shall be in writing and shall contain the name, address and phone number of the owner, the location of the activity, the intended amount of wetlands the activity will impact, the purpose of the activity, a

description of the activity, and the type of exemption being requested. Exemptions requiring prior notification are not valid unless, and until, an Exemption Certificate has been issued by Resource Management.

1. Maintenance or repair of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized; maintenance or repair does not include the addition of extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road; notification of planned maintenance or repair is required at least ten (10) days prior to the commencement of the activity; notification of emergency repair is required within three (3) days after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant.
2. Maintenance or repair of lawfully located structures and facilities used in the service of the public to provide electric, gas, water, telephone, telegraph, telecommunication, or other services, provided that the work is conducted utilizing best management practices; notification of planned maintenance or repair is required at least ten (10) days prior to the commencement of the activity; notification of emergency repair is required within three (3) days after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant.
3. Limited ditching, tiling, dredging, excavation, or filling done solely for the purpose of maintaining or repairing existing drainage of irrigation systems or existing access roads necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration, or loss of wetlands not previously subject to the commencement of work to be conducted in wetlands under this exemption; notification of planned maintenance or repair is required at least ten (10) days prior to the commencement of the activity; notification of emergency repair is required within three (3) days after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant.
4. Excavation or filling of no more than fifty (50) cubic yards of material if necessary for the maintenance or repair of bridges and other existing structures, provided that such structures allow for the unobstructed flow of water and preserve the natural contour of the wetland; notification of planned maintenance or repair is required at least ten (10) days prior to the commencement of the activity; notification of emergency repair is required within three (3) days after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant.
5. Forestry practices including the thinning and harvesting of timber provided the activity limits the impact on the hydrologic and biologic characteristics of the wetland, the activity does not result in the construction of dikes, drainage

ditches, tile lines, or buildings, filling is avoided whenever possible, and there is no drainage of any watercourse or wetland; notification of the forestry practice is required at least ten (10) days prior to the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant and to the operator (if different than the applicant); for Fond du Lac timber sales, the Exemption Certificate will be issued by Resource Management to the Fond du Lac Forestry Program, only.

6. Maintenance or repair of watercourses or wetlands when such operations are organized or sponsored by Resource Management or other resource management agencies and are specifically intended to preserve or restore natural resources; notification of planned maintenance or repair is required at least ten (10) days prior to the commencement of the activity; notification of emergency repair is required within three (3) days after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant; such activities shall include, but not limited to:
 - (a) Removal of materials which may cause diverted flows and bank erosion, including the removal of trees, brush, and debris;
 - (b) Bank stabilization projects which require minimal disturbance of existing conditions;
 - (c) Wildlife and aquatic habitat projects, and beaver dam removal;
7. Oil and hazardous materials containment and clean-up of any spill of oil and/or hazardous materials that has occurred in and/or adjacent to wetlands; this exemption only applies to activities required for the containment and clean-up of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan; notification of oil and hazardous materials containment and clean-up is required within three (3) day after the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant. The Office of Water Protection may impose conditions on the exemption, including full restoration to the impacted wetland after the activities have been completed.
8. A one-time de minimus exemption not to exceed 400 square feet in size; property owners are still required to avoid or minimize impacts to wetlands whenever possible; this exemption does not apply to those property owners who have already used the 400 square feet exemption allowed by the United States Army Corps of Engineers or the 10,000 square feet "de minimus" exemption allowed through the Minnesota Wetland Conservation Act; notification is required at least ten (10) days prior to the commencement of the activity; an Exemption Certificate will be issued by Resource Management to the applicant.

SECTION 304

SEQUENCING

The Fond du Lac Resource Management Division may not consider or approve a Wetland Activity Permit unless and until Resource Management staff have determined that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order of priority:

- a. Applicants have avoided direct impacts to wetlands by conducting an alternatives analysis and by limiting the degree or magnitude of the activity and its implementation; avoidance is required when it has been determined that Federal-, State-, or Tribal-listed endangered or threatened species, or cultural resources are applicable to an impact site or a mitigation site; based upon information provided by the applicant Resource Management will determine if the proposed activity is wetland dependent; an activity is wetland dependent if wetland features, functions, or values are essential to fulfill the basic purpose of the activity; a wetland present at the site of the proposed activity does not make that activity wetland dependent; an activity that has been determined to be wetland dependent is not exempted, but still requires an alternatives analysis to determine the least impacting location for the proposed activity;
- b. Applicants have minimized unavoidable impacts to the wetland by limiting the degree or magnitude of the wetland activity and its implementation; the applicant shall demonstrate to Resource Management that the proposed activity will minimize impacts to wetlands; in reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the Office of Water Protection will consider the following:
 1. The spatial requirements of the proposed activity;
 2. The location of existing structural or natural features that may dictate the placement or configuration of the proposed activity;
 3. The purpose of the proposed activity and how the purpose relates to placement, configuration, or density;
 4. The sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;
 5. The values, functions, and spatial distribution of the wetlands on the site;
 6. Individual and cumulative impacts to the wetland and adjacent water resources; and
 7. The applicant's efforts to modify the size, scope, configuration, or density of the proposed activity, remove or accommodate site constraints including zoning, infrastructure, access, or natural features, confine impacts to the fringe or periphery of the wetland, and otherwise minimize impacts to wetlands.
- c. Applicants replace unavoidable losses to wetlands through Compensatory Wetland Mitigation by restoration, creation, or banking, or by a combination of restoration, creation, banking, preservation, buffers, or enhancement; this Compensatory Wetland Mitigation must replace the lost functions and values of the wetland in equal or greater capacity.

SECTION 305

WETLAND ACTIVITY PERMIT CATEGORIES

To facilitate the processing of Wetland Activity Permits, particularly in regards to activities that will impact a minimal amount of wetlands, three (3) categories of Wetland Activity Permits will be available, provided the proposed activity meets the guidelines for the category desired as follows:

- a. The General Wetland Activity Permit (G-WAP) may authorize the maintenance of existing structures and fills that impact not more than 0.33 acres of wetlands, except wetlands within 300 feet of a wild rice lake or wetland as defined in the Fond du Lac Water Quality Standards; maintenance activities that do not meet these conditions are eligible for evaluation under the Letter of Permission Wetland Activity Permit.
- b. The Letter of Permission Wetland Activity Permit (LOP-WAP) may authorize activities that impact less than two (2) acres of wetlands for a single and complete project, provided the activity is conducted in compliance with all permit conditions and utilizes best management practices.
- c. The Standard Wetland Activity Permit (S-WAP) may authorize activities that impact two (2) acres or more of wetlands for a single and complete project, provided the project is conducted in compliance with all permit conditions and utilizes best management practices.

SECTION 306

WETLAND ACTIVITY PERMIT GENERAL CONDITIONS

The following General Conditions shall apply to all Wetland Activity Permits:

- a. Permits issued will be valid for a period of two (2) years from the date of issue; if additional time is necessary for the completion of the authorized activity, the applicant can request an extension, in writing, from Resource Management at least 30 days before a General Wetland Activity Permit or Letter of Permission Wetland Activity Permit expires, or 90 days before a Standard Wetland Activity Permit expires.
- b. The authorized activity must be maintained in good condition and in conformance with the terms and conditions of the permit; the applicant will not be relieved of this requirement if said applicant abandons the permitted activity, although the applicant can make a good faith transfer to a third party, provided such transfer is in compliance with General Condition d. of this Section; should the applicant wish to cease to maintain the authorized activity or should the applicant desire to abandon it without a good faith transfer, the applicant must obtain a modification of the issued permit from Resource Management, which may require restoration of the area.
- c. If any previously unknown historic or archeological remains are encountered while accomplishing the activity authorized by the permit, the applicant must stop all activity and notify Resource Management immediately; Resource Management will then initiate Federal/Tribal/State coordination required to determine if the remains

warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

- d. If the applicant or landowner chooses to sell the property associated with the authorized permit, the applicant must submit an Application for Wetland Activity Permit Transfer, complete with the signature of the new owner, to Resource Management to validate the transfer of responsibility for the authorized permit.
- e. A Clean Water Act Section 401 Tribal Water Quality Certification from Resource Management is required for Wetland Activity Permits.
- f. The applicant must allow representatives from Resource Management and other applicable agencies such as the Environmental Protection Agency (EPA), United States Army Corps of Engineers (USACE), Minnesota Board of Water and Soil Resources (BWSR), St. Louis County, Carlton County, City of Cloquet, and Carlton and South St. Louis Soil and Water Conservation Districts (SWCD) to inspect the authorized activity at any time deemed necessary to ensure that the activity is being or has been accomplished in accordance with the terms and conditions of the permit.
- g. The applicant must comply with all Special Conditions that may also be imposed on the issued permit to address specific situations, projects, activities, or sites that may require specific conditions to ensure the authorized activity conforms with the protection and management intent of this Ordinance.

SECTION 307 APPLICATION FOR A WETLAND ACTIVITY PERMIT

Application for a Wetland Activity Permit must be submitted to the Fond du Lac Resource Management Division, Office of Water Protection. Applicant can either submit a signed copy of the Application for Department of Army Permit (USACE Engineering Form 4345) or the Minnesota Local/State/Federal Application Forms for Water/Wetland Projects (BWSR Form NA-026620-03B) Part I. Either of these applications can be obtained from the Office of Water Protection. Copies of all other documentation listed on either the forms or instructions must also be submitted. In addition to the application form and other documentation, the applicant must also include the following documents:

- a. A Wetland Delineation Report for activities requiring a Standard Wetland Activity Permit; activities eligible for a General Wetland Activity Permit or Letter of Permission Wetland Activity Permit may also require a Wetland Delineation Report if requested by Resource Management; wetland delineations must be performed utilizing the United States Army Corps of Engineers Wetland Delineation Manual (USACE Technical Publication Y87), or equivalent as developed by the USACE;
- b. A recent aerial photograph or accurate map showing the location and extent of the proposed wetland activity;
- c. A description of the alternatives analysis and sequencing as described in Section 304 (Sequencing) of this Ordinance.

- d. A Compensatory Wetland Mitigation Plan as described in Section 310 (Compensatory Wetland Mitigation) of this Ordinance.
- e. Additional documentation as requested on an individual basis by Resource Management.

SECTION 308 WETLAND ACTIVITY PERMIT APPLICATION
PROCESSING

Upon the receipt of the application the following process shall be conducted:

- a. **Administrative Review:** The Fond du Lac Resource Management Division, Office of Water Protection shall review the application for completeness and accuracy. An application will only be considered complete if (1) all applicable information has been provided in a legible manner on the application forms; (2) copies of all additional documentation listed on the applications or instructions have been submitted; (3) all documentation as listed in Section 307 (Application for a Wetland Activity Permit)(a)-(e) have been submitted; and (4) the Wetland Delineation, if required or requested, has been field verified by Resource Management staff. If the application is deemed to be incomplete and/or inaccurate, it will be returned to the applicant or the additional information will be requested from the applicant; this Administrative Review will occur within ten (10) days of the receipt of the application. If the application is deemed to be complete and accurate, the request for a Wetland Activity Permit shall be issued in a Public Notice for a 30-day comment period for General Wetland Activity Permits and Letter of Permission Wetland Activity Permits, and a 60-day comment period for Standard Wetland Activity Permits. Public Notices will be sent to all who request to be on the Public Notice List; contact the Office of Water Protection to be listed. All comments received by the OWP will be sent to the applicant for a satisfactory response. A Public Meeting may be required for Standard Wetland Activity Permit applications if one of the following criteria is met:
 - 1. Any member of the Fond du Lac Reservation Business Committee requests such a meeting.
 - 2. Resource Management deems the activity to be of such a scope or impact as to warrant extra public comment.
 - 3. A petition signed by at least 15 residents of the Reservation requesting such a meeting.

If a Public Meeting is scheduled, a second Public Notice announcing the Public Meeting will be sent to all who received the original Public Notice of the application. In addition, notice of the Public Meeting will be published in a local newspaper and posted at each of the Fond du Lac Community Centers. The Public Meeting will be held in the Fond du Lac Community Center located closest to the site of the proposed activity no less than 15 days after the Public Notice is printed in the local newspaper.

- b. Technical Review: During the 30-day or 60-day comment period, the Office of Water Protection will conduct a technical review to evaluate whether the proposed activity is in compliance with applicable federal regulations, the Fond du Lac Water Quality Standards, and the evaluation criteria as described in Section 304 (Sequencing). This review and evaluation includes the Compensatory Wetland Mitigation Plan. In addition, the OWP will consult with the U.S. Fish & Wildlife Service regarding applicable provisions of the Endangered Species Act, and consult with both the Fond du Lac Cultural Resources Office and the State Historical Preservation Office (SHPO) regarding cultural and historical property impacts.
- c. Recommendation and Decision: After both the Technical Review and the 30-day or 60-day comment period and response(s) have been completed, the Office of Water Protection will make a recommendation to the Director of the Resource Management Division regarding the permit request. The Director will then issue one of three (3) possible decisions: (1) Grant the Permit with General Conditions; (2) Grant the Permit with General and Special Conditions; or (3) Deny the Permit. Once the Director has made a decision, the applicant will be issued a paper copy of the permit complete with the conditions. The decision shall be issued within 60 days from when the application is deemed complete and accurate for a General Wetland Activity Permit or Letter of Permission Wetland Activity Permit and within 120 days for a Standard Wetland Activity Permit. The period of time the applicant takes to respond satisfactorily to Public Notice comments or for any additional information requested by Resource Management, including modification to the applicant's Compensatory Wetland Mitigation Plan, will not be included in the 60-day and 120-day periods. Therefore, it is in the applicant's best interest to respond to Resource Management requests in a timely manner. Any time needed to notice and conduct a Public Meeting will also not be included. The Director's decision will be made in reliance on the information provided by the applicant. However, Resource Management may reevaluate its decision on the permit at any time the circumstances warrant. Such a reevaluation may result in a determination that it is appropriate to use the Enforcement procedures as described in Section 401 [Enforcement] of this Ordinance. Circumstances that could require a reevaluation include, but are not limited to, the following:
1. Applicant fails to comply with the terms and conditions of the permit;
 2. Information provided by the applicant in support of the permit application proves to have been false, misleading, incomplete, or inaccurate; or
 3. Significant new information surfaces that Resource Management did not consider in reaching its original decision.

SECTION 309 APPEALS OF PERMIT DECISIONS

An applicant may appeal the Director's decision utilizing the following process:

- a. A Notice of Appeal is sent to the Office of Water Protection, in writing, by the applicant within ten (10) days of receiving the permit decision.

- b. Upon receiving a Notice of Appeal from the applicant, the Office of Water Protection shall present the applicant's file to the Environmental Program Manager for procedural and technical review.
- c. After the Environmental Program Manager's review is complete, the appeal will be presented to the Fond du Lac Reservation Business Committee (RBC) for the final decision. The RBC's decision is binding.

SECTION 310 COMPENSATORY WETLAND MITIGATION

Compensatory Wetland Mitigation shall be used to offset wetland losses as a result of authorized activities. As required in Section 307 (Application for a Wetland Activity Permit), a Compensatory Wetland Mitigation Plan is required to be submitted by the applicant at the time of application. Numerous factors will determine the extent and nature of this plan as follows:

- a. Compensatory Wetland Mitigation Ratios: A minimum compensatory wetland mitigation ratio of 1:1 will be used for all authorized activities on the Reservation. However, this ratio may increase above this minimum, based on the following factors:
 - 1. Whether the mitigation activity will occur before or concurrent with the permitted activity;
 - 2. Whether the mitigation activity is located on-site or off-site of the permitted activity;
 - 3. Whether the mitigation wetland type will be the same wetland type as the impacted wetland; and
 - 4. Whether the impacted wetland is classified as a Priority Wetland, Management Wetland or a Restoration Wetland, or the impact is a Violation as described in Chapter 4 (Enforcement) of this Ordinance.

Resource Management will use the Fond du Lac Compensatory Wetland Mitigation Ratios found in Table 4 of the Fond du Lac Joint Comprehensive Wetland Protection and Management Plan, or as amended by Resource Management to reflect necessary updates to the mitigation ratios used by the St. Paul District of the United States Army Corps of Engineers.

- b. Compensatory Wetland Mitigation Types: Resource Management will accept the following types of mitigation, although not all of these can be used separately as explained for each type, ranked in descending order of priority:
 - 1. Wetland Restoration: this method of compensatory wetland mitigation is the preferred method and may be used to satisfy all mitigation requirements.
 - 2. Wetland Creation: this method of compensatory wetland mitigation may be used to satisfy all mitigation requirements.

3. **Wetland Enhancement:** this method of compensatory wetland mitigation may only be used to satisfy the mitigation requirement above the 1:1 minimum; wetland restoration and/or creation and/or banking must be used to satisfy the 1:1 minimum; this method may only be used to satisfy less than 50% of the total mitigation required.
 4. **Wetland Preservation:** this method of compensatory wetland mitigation will only be accepted if the proposed preservation wetland is under a demonstrable threat of development, assuming that said development would be authorized by a Wetland Activity Permit if such an application were to be submitted to Resource Management. In addition, the proposed preservation wetland must be performing physical and biological functions, and must be important to the region. This method may only be used to satisfy the mitigation requirement above the 1:1 minimum; wetland restoration and/or creation and/or banking must be used to satisfy the 1:1 minimum; this method may only be used to satisfy less than 50% of the total mitigation required and will only be given at an 8:1 (12.5%) credit.
 5. **Wetland Buffer:** this is not considered to be a method of Compensatory Wetland Mitigation. However, because wetlands benefit from natural upland buffers, a 4:1 (25%) credit may be given for upland buffers established and maintained as part of a Compensatory Wetland Mitigation Plan, but may only be used to satisfy the mitigation requirement above the 1:1 minimum; this method may only be used to satisfy less than 50 % of the total mitigation required.
 6. **Wetland Banking:** this method of compensatory wetland mitigation may be used to satisfy all mitigation requirements for a General Wetland Activity Permit or Letter of Permission Wetland Activity Permit. For Standard Wetland Activity Permits, this method may be used to satisfy all mitigation requirements, but may only be used if the applicant demonstrates that all on-Reservation mitigation options have been pursued and rejected. Resource Management keeps a list of potential on-Reservation wetland restoration sites.
- c. **Compensatory Wetland Mitigation Plan:** As stated in Section 307 (Application for a Wetland Activity Permit), a Compensatory Wetland Mitigation Plan is required at the time of application. A copy of the Minnesota Local/State/Federal Application Forms for Water/Wetland Projects (BWSR Form NA-026620-03B) Part II – Replacement Plan Supplement, plus all additional documentation as listed in the Instructions will be acceptable. If Part II is not utilized the submitted plan must include the following information:
1. A description of how the mitigation will be accomplished, including the type(s) of mitigation and the proposed percentages of each type if a combination of types is being proposed. The location(s) of where the proposed mitigation will be cited. If banking is proposed, the name, address and phone

number of the wetland bank provider, and a description of the wetland types and types of wetland banking credits proposed to be purchased;

2. A description of the wetland restoration, creation, and/or enhancement construction being proposed, including any buffers. This description shall include details of how the construction will be implemented, including method(s) of construction, the size, type and specifications of any outlet structures, the elevations of the proposed wetland, the best management practices to be utilized during and after construction to prevent erosion and sedimentation, the proposed timetable for implementing the project, and a vegetation management plan that includes the control of invasive species; and
 3. A description of the wetland type(s) using wetland types as described in Wetland Plants and Plant Communities of Minnesota & Wisconsin intended to be restored, created, or enhanced as part of the mitigation.
- d. Compensatory Wetland Mitigation Monitoring: All Compensatory Wetland Mitigation performed on the Fond du Lac Reservation must be monitored by the applicant and/or his/her designated agent for a period of at least five (5) years, to be determined by the Office of Water Protection and specifically stated in a Compensatory Wetland Mitigation Monitoring Plan. The Plan will include ecological performance standards that will be used to assess whether the mitigation is achieving its objectives. Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. Performance standards should be based on attributes that are objective, verifiable, and can be measured with a reasonable amount of effort. Performance standards may be based on variables or measures of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management. This Plan will be developed by the applicant in consultation with the Office of Water Protection.

**CHAPTER 4
ENFORCEMENT**

SECTION 401 ENFORCEMENT PROCEDURES

The OWP shall seek to achieve voluntary compliance with all applicable sections of this Ordinance whenever possible. However, in the event that voluntary compliance cannot be achieved, the procedures set forth below shall be utilized. Tribal Conservation Officers and other authorized peace officers may issue Cease and Desist Orders, Restoration Orders, or Compensatory Wetland Mitigation Orders as described below:

- a. Cease and Desist Orders (CDO) may be issued when the Office of Water Protection or the enforcement authority has probable cause that a prohibited wetland activity is being or has been conducted as defined under Chapter 3 of this Ordinance. The CDO shall be accompanied by a copy of this Ordinance and shall advise the owner that the owner may submit a written request for an Exemption Certificate, if eligible, or that an Application for Wetland Activity Permit, should be made immediately to the Office of Water Protection, and that whatever drain, excavation, or fill work that has been conducted may require restoration if the exemption request or application is denied or reversed on appeal. The enforcement authority issuing a CDO shall promptly submit copies to the Office of Water Protection. If upon a request for an Exemption Certificate the determination is made to issue a valid Exemption Certificate, or a Wetland Activity Permit is issued, the Office of Water Protection shall request that the enforcement authority rescind the CDO and notify the owner. If the request for an Exemption Certificate is denied, the owner has the option to submit an Application for Wetland Activity Permit. If the Application for Wetland Activity Permit is denied, the CDO will stand and the enforcement authority and owner will be notified.

- b. Restoration Orders (RO) shall be written by the Office of Water Protection with input from Resource Management staff. The RO shall explain the steps the owner must take to restore the effected area to as near a natural state as is possible. The RO shall include a date by which the owner must have all steps of the RO completed. The owner may request additional time, in writing, from the Office of Water Protection, if necessary. Restoration Orders shall be issued by the enforcement authority to the owner when:
 1. A request for an Exemption Certificate is denied and the owner fails to submit an Application for Wetland Activity Permit within 15 days after the denial;
 2. An Application for Wetland Activity Permit is denied;
 3. A Wetland Activity Permit is issued but it is reversed on appeal;

4. The owner fails to submit either a request for an Exemption Certificate or a Application for Wetland Activity Permit within 21 days after the CDO is issued by the enforcement authority.
- c. Compensatory Wetland Mitigation Orders (CWMO) shall be issued by the enforcement authority when the Office of Water Protection determines that restoration will not restore all of the lost wetland functions and values from the activity. In this case, a Restoration Order may still be issued in combination with a CWMO to restore some wetland loss, while the CWMO replaces the remaining loss. However, only a CWMO will be issued if the Office of Water Protection determines that the impacts as a result of the activity are too extensive or damaging to adequately restore the wetland.
- d. The terms and conditions of Restoration Orders and Compensatory Wetland Mitigation Orders may be appealed, in writing, by the owner to Resource Management within ten (10) days of their issue. The Director of Resource Management shall review the appeal request and render a decision within 30 days of the request. The Director may stay the RO and/or the CWMO until the appeal is resolved.
- e. A violation of an order issued under this Chapter is a misdemeanor and must be prosecuted either through Tribal Court or by the United States Department of Justice (DOJ).

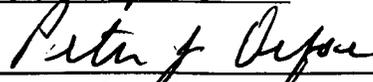
**CHAPTER 5
AMENDMENT OR REPEAL**

Section 501 AMENDMENT OR REPEAL

This Ordinance, and any provision herein, may be amended or repealed by resolution of the Reservation Business Committee. However, if any part of this Ordinance is repealed, it shall not affect any other part of this Ordinance in carrying out its intended purpose.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #03/06 was duly presented and adopted by Resolution #1165/06 by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on June 15, 2006 on the Fond du Lac Reservation.



Peter J. Defoe, Chairman



Kewin R. Dupuis, Sr., Secretary//Treasurer

TABLE 4 – FOND DU LAC COMPENSATORY WETLAND MITIGATION RATIOS

Type of Impact Site	Compensation Location	Type of Compensation	Compensation Process	Ratio
Priority Wetland	n/a	n/a	n/a	2.5:1.0
Management Wetland or Restoration Wetland	On-Site	In-Kind	In-Advance	1.0:1.0
			Not-In-Advance	1.25:1.0
		Out-of-Kind	In-Advance	1.25:1.0
			Not-In-Advance	1.5:1.0
	Off-Site	In-Kind	In-Advance	1.25:1.0
			Not-In-Advance	1.5:1.0
		Out-of-Kind	In-Advance	1.5:1.0
			Not-In-Advance	1.5:1.0
Violation	n/a	n/a	n/a	3.0:1.0