



MEMORANDUM

Comfort Lake-Forest Lake Watershed District

Date: April 25, 2023
To: CLFLWD Board of Managers
From: Mike Kinney, District Administrator
Subject: City of Forest Lake Wetland Banking Ordinance



District Wide

Background

2022 Moratorium on Wetland Banks

The City of Forest Lake placed a moratorium on wetland banks within the City on June 13, 2022, based on discussion and direction from the Council at its April 25, 2022, meeting, and information provided in an April 25th memo on wetland banks written by Interim Zoning Administrator Nathan Fuerst. The information in that memo was repeated by Mr. Fuerst and Community Development Director Abbi Wittman in their joint June 13th memo to council. Both memos state that “wetland banks are created by taking areas of high ground and converting them into wetlands.” The memos addressed a concern that wetland banks take “quality, buildable land and render it unusable” for city development.

The moratorium was initiated after City staff received information that approximately 200 acres within an area identified for future city development might be sold for the purpose of creating a wetland bank. The exact location has not been shared, but it is in the SW quadrant of the city, west of Highway 61, and south of Headwaters Parkway. It has been farmed for “at least a generation,” and it has been identified for road and residential development. It is located in Rice Creek Watershed District.

The moratorium (City Ordinance 709) directed staff to study the topic and make a recommendation within one year. The Forest Lake Times ran an article on the moratorium on May 2, 2022. The city memos and Forest Lake Times article contained some misstatements with respect to wetland banking.

CLFLWD staff had conversations with multiple stakeholders on the topic over the last year, including staff at the Board of Water and Soil Resources (BWSR). Ben Meyer, BWSR Wetland Specialist, and Jay Riggs, Washington Conservation District Manager, offered to present to the City Council, but this did not happen.



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2023 Proposed Ordinance on Wetland Banks

In April, City staff told CLFLWD and RCWD staff that they had developed the ordinance for review by the planning commission and the council, and it would be in upcoming packets. City staff indicated that the ordinance was not a complete ban on wetland banks. The Forest Lake Times ran another article on the issue on April 17, 2023.

City of Forest Lake Ordinance No. 724 is scheduled to be reviewed by the City's planning commission at its April 26, 2023, meeting and public hearing. It is also scheduled to be considered by the City Council at the May 22, 2023, meeting and public hearing.

On April 20, 2023, Mr. Meyer with BWSR submitted comments via email to the City to add clarity to the proposed ordinance update and offered again to meet with city staff and/or elected officials on the topic. This email was shared with the CLFLWD Board.

Mr. Meyer noted that the ordinance does not specifically name the State's Wetland Conservation Act (WCA) as the overall state regulatory authority, per State Statute 103 and MN Rule 8420. He found that much of the language was pulled from the Federal Mitigation Rule and didn't apply to WCA or Minnesota's implementation of wetland banking. Mr. Meyer's comments were non-substantive edits and didn't express objection to the actual ordinance. He also didn't reference MN Rules 8420.0705, subp. 2A, which allows a local government unit to limit the establishment of wetland banks (by rule or ordinance) if that limitation is based on a comprehensive local water or wetland protection and management plan approved by BWSR. CLFLWD staff have contacted Mr. Meyer for additional information on how BWSR implements this requirement and whether the City's proposed ordinance rests on such a plan.

On April 21, 2023, Abbi Wittman emailed District Administrator Mike Kinney, RCWD Administrator Nick Tomczik, and Washington Conservation District Manager Jay Riggs and provided the materials being distributed to the City's planning commission. Ms. Wittman acknowledges BWSR's comments in the materials and suggests that the commission either strike the allowance of banks within the Conservancy zoning district (and thus prohibit wetland banking everywhere within the City) or direct staff to better align the ordinance with state statute prior to the City Council's May 22nd public hearing. An interpretation of Ms. Wittman's April 20, 2023, memo to the planning commission is that City staff support the recommendation to prohibit wetland banking within the city limits.

Ms. Wittman told CLFLWD staff that the ban would (likely) not affect CLFLWD, because of the lack of land identified or targeted in this wetland bank ban.



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On April 26, 2023, Mr. Meyer with BWSR submitted additional comments to the City via email. His email was sent at 9:18pm and after the City's Planning Commission meeting. He informed the City that the proposed draft ordinance may be in conflict with MN Rule 8420.0705 Subp. 2. "Specifically, an ordinance prohibiting wetland banks would have no legal standing within those areas where RCWD is the WCA administrator, since rule states that only the LGU may limit the establishment of banks." Regarding parts of the City that are within CLFLWD, the City would need to have a board (BWSR) approved local water or wetland protection plan. Mr. Meyer was not aware that the City had one of these plans in place, but one would be needed for the city, as LGU, to pass a rule or ordinance limiting banks.

Mr. Meyer suggested that there may be other more appropriate zoning codes that could be in place to limit/prevent banks, but BWSR's opinion is that the current ordinance would have no legal merit based on WCA Rule. He informed the City that he had consulted with his supervisor and they were seeking additional guidance from other staff, including BWSR's legal counsel, to further clarify the rule and standing.

Summary of Proposed Ordinance

The draft ordinance is enclosed with this memo. The ordinance may be summarized as follows:

- 1) The Wetland Mitigation Bank definition notes that the purpose of such banking is to "mitigate the unavoidable impacts to aquatic resources caused by development, redevelopment or similar project."
- 2) The ordinance defines "Wetland Mitigation Bank" as "[t]he establishment, restoration, enhancement or (in certain circumstances) preservation of wetlands, stream, or other aquatic resource to be sold in exchange for compensation, as permitted under state and local wetland regulation, to mitigate the unavoidable impacts to aquatic resources caused by development, redevelopment or similar project." Key here is "to be sold in exchange for compensation." The ordinance as written would not constrain wetland establishment, restoration or enhancement that the District or others would perform without the intent to sell created wetland credits.
- 3) The ordinance also clarifies: "Nothing in this Section shall be construed to prohibit on-site Wetland Mitigation that is required for part of a development or redevelopment that is located on property within the City limits."
- 4) A Wetland Mitigation Bank is only allowed a) within a Conservancy zoning district and b) when approved by the city council as a conditional use. A property owner may ask the city council to rezone a potential wetland bank site to Conservancy to allow a bank, but the council would have wide latitude to deny such a request.



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Implications of Potential Wetland Bank Ban

The ordinance has potential effects on both watershed districts and the community.

- a) How does the ordinance affect District interests and the District's ability to achieve its Watershed Management Plan (WMP) goals?
- The ordinance does not necessarily prevent the District from achieving its goals, but it would remove one of the tools in the toolbox. Wetland banking is one of multiple methods identified to achieve several goals in the WMP; particularly the wetland and floodplain goals. These goals generally entail restoring/enhancing 400+ acres of wetland for varying benefits (water quality, flood retention, wildlife habitat), and creating 99 acre-feet of added flood storage to the watershed.
 - In 2019, the District worked with Emmons & Olivier Resources to prioritize potential wetland bank sites within the CLFLWD. Staff reached out to landowners on the list, but none were interested in restoring the wetland on their property.
 - Four of the 18 priority sites that were identified through this study are located within the City of Forest Lake.
 - One site is located within the conservancy district (east of Forest Lake's west basin) and has a priority ranking of "lowest".
 - Three of these sites are located just *outside* of the conservancy district (south of Shields Lake) and have priority rankings of "medium", "low", and "lowest". In other words, three of the District's priority wetland bank sites would be outlawed by the ban, but these sites are not high priority.
 - The 14 other sites identified, and the highest priority sites are mostly located in the Bone Lake Management District, where agriculture is most prominent. There is one high priority site located in the Comfort Lake Management District within Wyoming city limits (the District has already been in contact with this landowner, but the landowner wanted to keep farming instead of restoring the drained wetland).
 - The District has made progress toward its floodplain and wetland goals through other projects. For example, the Sunrise River/Highway 61 Wetland Enhancement Project on District property will result in phosphorus and sediment reductions and constitute progress toward the District's wetland restoration and flood storage creation goals. The District has a long history of working with private landowners and local communities to implement capital improvement projects, which will result in multiple benefits beyond the water quality improvements.
- b) How might the ordinance affect the resource?



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- Wetland banking is a form of green infrastructure, which is a method of achieving both civic and environmental benefits. Wetlands serve as natural filters and protect water quality in our lakes. Wetlands also provide needed flood storage on the landscape and mitigate flooding in developed parts of the community.
- Banning wetland bank creation in the City would not necessarily ban the purchase of bank *credits* for projects within city limits. This means that developers in the City of Forest Lake could still purchase wetland bank credits to offset wetland damage done by their development, but those credits will physically be located elsewhere in the Bank Service Area (same hydrologic system but outside of the City).
 - For wetland benefits to be realized in city limits, developments must perform wetland mitigation onsite. This is the preferred route.
- Forest Lake taxpayers have already made a significant investment in their water quality and flood retention in the form of publicly funded projects by the CLFLWD and City of Forest Lake. Wetland banking is one way to build landscape resiliency and ensure those benefits continue to be realized in the long-term. CLFLWD has partnered with the City on multiple projects that create flood storage and/or improve water quality (e.g., Bixby Park Wetland Restoration, 3rd Lake Pond Wetland Treatment Basin, Shields Shoreline Restoration, Hilo Lane Iron Enhanced Sand Filter, Enhanced Street Sweeping Program).

Recommended Next Steps

Staff recommends that the District submit written communication to City Councilman and CLFLWD Liaison Leif Erickson with copies sent to City staff that requests the Planning Commission and the City to take more time to review the science, planning requirements, partner comments, and other issues associated with this decision; this would include an extension of the moratorium to allow for the additional review. In the letter, the District should offer to facilitate or participate in discussions or information sharing between City staff and regional wetland and water resource professionals.

Staff would continue to engage with BWSR to understand their position on the planning requirement and share the District's perspective on the importance of maintaining larger scale wetland restoration opportunities within distinct hydrologic systems.

Attached:

- City of Forest Lake Memo Re: Wetland Banking Discussion
- City of Forest Lake Draft Ordinance No. 724



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Comfort Lake-Forest Lake Watershed District

- Map of City and Watershed District Boundaries
- City Zoning Map (Conservancy District shown in teal)
- April 26th CLFLWD Letter to Forest Lake Planning Commission

Links to More Information:

- [May 2, 2022, FL Times News Article](#)
- [June 23, 2022, FL Times News Article](#)
- [April 17, 2023 FL Times News Article](#)

Note: City staff have stated that there may be some misrepresentations within these articles.

Date: April 20, 2023

To: Chair Girard and Planning Commissioners

From: Abbi Wittman, Community Development Director

Re: Wetland Banking Discussion

Applicant: City of Forest Lake

Owner: N/A

Location, Base Zoning District, Future Land Use Designation: Citywide

Neighborhood Meeting Date: N/A

60/120-Day Deadline: N/A

Introduction

On June 13, 2022 the City Council enacted a one-year moratorium on wetland banking within the City. The purpose of the moratorium was to give the City time to determine if wetland banking was permitted in the City and, if not, whether or not the City would like to allow for banking. Subsequently, if the City were to allow for wetland banking, the City must decide where and under what conditions wetland banking would be allowed. The moratorium expires on June 13, 2023.

In Planning Commission and City Council public meetings through February and March of this year, direction was provided to staff which led to the drafting of the enclosed ordinance in consultation with legal counsel. As written, wetland banking would only be permissible in the Conservation zoning district by wetland enhancement. The driving factors for this determination have been:

- The cumulative land areas of the non-overlapping National Wetlands (non-delineated) Inventory and the Public Waters Inventory in the City is greater than 35%.
- It is likely the total wet area of the City is more significant given delineated wetlands are often larger than the National Wetland Inventory and many of the wetland areas within the community require a restrictive upland buffer.
- Using remaining agricultural or undeveloped lands, or a portion thereof, for the creation of new wetland acres may have a significant impact on how the city develops in the future.
- Wetland banks are placed in a conservation easement in perpetuity and land areas with conservation easements on them generally have little to no taxable value, thereby not

contributing to the tax base (despite needing some public services – such as emergency services and road access for future maintenance).

- Given the City has delineated the Conservancy zoning district areas to “provide special regulatory protection for those areas that contain valuable natural resources or other similar resources; to foster, preserve, and promote sensitive development; to preserve areas that are not suitable for intensive agricultural production or development due to wetlands, woodlands, steep slopes, scenic views, bedrock formations, and/or other physical features of unique natural and biological characteristics,” wetland banks in those areas would be in keeping with that zoning district’s purpose.

Since the release of the enclosed ordinance, staff has received comments from the Minnesota Board of Water and Soil Resources (BWSR) who have noted: the ordinance does not reference the Wetland Conservation Act (WCA) as the overall state regulatory authority; *Purpose* section statements may wish to be reworded; and reference to Federal Mitigation Rule is not pertinent to the WCA.

Regulatory Framework and Staff Analysis

City Code Section 153.037 indicates “the Planning Commission recommendation and City Council decision on any zoning amendment, whether text or map amendment, is a matter of legislative discretion that is not controlled by any particular standard. However, in making their recommendation and decision, the Planning Commission and City Council shall consider the following standards...”

Comprehensive Plan

- The consistency of the proposed amendment with the Comprehensive Plan.
- Whether the proposed amendment provides a more workable way to achieve the intent and purposes of this [Zoning Code] chapter and the Comprehensive Plan.

The Zoning Ordinance Text Amendment is not in conflict with the Comprehensive Plan. The Comprehensive Plan sets forth goals and objectives which promote the preservation of natural resources and the development of land. This Zoning Ordinance Text Amendment not only furthers, but also helps balance, both natural resource and land development goals and objectives.

Zoning Code

- The consistency of the proposed amendment with the intent and general regulations of this [Zoning Code] chapter.
- The extent to which the proposed amendment is consistent with the overall structure and organization of this [Zoning Code] chapter.
- Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, or reflects a change in policy.
- The extent to which the proposed amendment creates nonconformities.

If adopted, the enclosed ordinance is consistent with the intent and general regulations of the Zoning Code and provides greater clarification of where wetland banking is permissible within the City. One wetland bank, Fairview Farms, would become legal, non-conforming and be permitted in perpetuity.

General Public Benefit

- That the proposed amendment will benefit the residents of the City as a whole, and not just the applicant, property owner(s), neighbors of any property under consideration, or other special interest groups, and the extent to which the proposed use would be in the public interest.
- The relative gain to the public, as compared to the hardship imposed upon the applicant.

The proposed amendment will benefit the City as a whole, balancing differing special interests while allowing individual property owners within the Conservancy zoning district the opportunity to wetland bank.

Findings

As determined in this report, the proposed amendment conforms to the Comprehensive Plan by supporting and furthering both land development and natural resource goals of the community. Additionally, it is not in conflict with the Zoning Code as it will help provide greater clarity as to where the City would like to allow wetland banking in the future. Lastly, there are benefits to the general public when the City balances competing goals and objectives.

Recommendation

Staff would first recommend the Planning Commission hold a public hearing on the matter. After all comments have been received, staff recommends the Commission discuss and take action on the matter.

BWSR has advised there are some inconsistencies with the City's proposed ordinance and the state allowances for wetland crediting (given state law does not follow federal mitigation rule definitions). Essentially, wetland restoration is a permitted activity which may be credited but wetland preservation is not. Where wetland preservation results in increased wetland value, wetland restoration can also result in an increase in wetland acres. Given this, staff would – again – recommend the City consider prohibiting wetland banking within the City limits. If the Commission is favorable this approach, the Commission should:

- **Move to recommend the City Council approve the draft Ordinance, an Ordinance Enacting Title XV, Land Usage, Chapter 153, Section 309, Wetland Banks and**

Amending Title XV, Land Usage, Chapter 153, Section 316, Conservancy (C) District but remove the allowance of wetland banks within the Conservancy zoning district.

If the Commission would like to allow wetland banking within the Conservancy zoning district, the Commission should:

- **Move to direct staff to better align Ordinance 724 with MN Rule 8420.0526; and recommend the City Council approve the modified Ordinance 724, an Ordinance Enacting Title XV, Land Usage, Chapter 153, Section 309, Wetland Banks and Amending Title XV, Land Usage, Chapter 153, Section 316, Conservancy (C) District.**

Attachments: Ordinance No. 724

**CITY OF FOREST LAKE
WASHINGTON COUNTY, MINNESOTA
ORDINANCE NO. 724**

**AN ORDINANCE ENACTING TITLE XV, LAND USAGE,
CHAPTER 153, SECTION 309, WETLAND BANKS AND AMENDING TITLE XV,
LAND USAGE, CHAPTER 153, SECTION 316, CONSERVANCY (C) DISTRICT**

THE CITY COUNCIL OF THE CITY OF FOREST LAKE ORDAINS AS FOLLOWS:

Section 1. Enactment. Title XV, Chapter 153, Section 153.309, of the Forest Lake City Code is hereby enacted as follows:

§ 153.309 WETLAND BANKS.

(A) *Purpose.* The purpose of this section is to protect the limited land resources that exist within the City. The City limits includes a significant amount of land that is considered wetland by local and federal authorities and is therefore generally unavailable for development purposes; the remaining supply of land available for development is limited. It is critical for the future growth, sustainability and economic development of the City, that this limited supply of developable land be protected.

(B) *Definitions.*

WETLAND: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. *WETLANDS* must:

1. Have a predominance of hydric soils;
2. Be inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
3. Under normal circumstances, support a prevalence of hydrophytic vegetation.

WETLAND ENHANCEMENT: Activities conducted within existing wetlands that heighten, intensify, or improve one or more wetland functions. Enhancement is often undertaken for a specific purpose such as to improve water quality, flood water retention or wildlife habitat. Enhancement results in a gain in wetland function, but does not result in a net gain in wetland acres.

WETLAND ESTABLISHMENT: The development of a wetland or other aquatic resource where a wetland did not previously exist through manipulation of the physical, chemical and/or biological characteristics of the site. Successful establishment results in a net gain in wetland acres and function.

WETLAND MITIGATION: The restoration, creation, or enhancement of wetlands to compensate for permitted wetland losses. Under Section 404 of the Clean Water Act, wetlands may be legally

destroyed, but their loss must be compensated for by the restoration, creation, or enhancement of other wetlands. This strategy should result in "no net loss" of wetlands and likely an increase in the total acreage of wetlands.

WETLAND MITIGATION BANK: The establishment, restoration, enhancement or (in certain circumstances) preservation of wetlands, stream, or other aquatic resource to be sold in exchange for compensation, as permitted under state and local wetland regulation, to mitigate the unavoidable impacts to aquatic resources caused by development, redevelopment or similar project.

WETLAND PRESERVATION: The permanent protection of ecologically important wetlands or other aquatic resources through the implementation of appropriate legal and physical mechanisms (i.e. conservation easements, title transfers). Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection or enhancement of the aquatic ecosystem. Preservation does not result in a net gain of wetland acres and may only be used in certain circumstances, including when the resources to be preserved contribute significantly to the ecological sustainability of the watershed.

WETLAND RESTORATION: Re-establishment or rehabilitation of a wetland or other aquatic resource with the goal of returning natural or historic functions and characteristics to a former or degraded wetland. Restoration may result in a gain in wetland function or wetland acres, or both.

(C) *Wetland Mitigation Banks.* Wetland Mitigation Banks created by Wetland Establishment, Wetland Preservation or Wetland Restoration, as defined in this Section, are prohibited within the City of Forest Lake. Wetland Mitigation Banks created by Wetland Enhancement, as defined in this Section, are permitted only in the Conservancy District.

(1) *Exception.* Nothing in this Section shall be construed to prohibit on-site Wetland Mitigation that is required for part of a development or redevelopment that is located on property within the City limits.

Section 2. Amendment. Title XV, Chapter 153, Section 153.316, of the Forest Lake City Code is hereby amended as follows:

§ 153.316 CONSERVANCY (C) DISTRICT.

(D) *Conditional uses.* Subject to applicable provisions of this chapter, the following are conditional uses in the C District (requires a conditional use permit based upon procedures set forth in and regulated by § 153.034.)

(1) *Principal uses.*

(a) Essential services, utility substation.

(b) Towers (see § 153.096).

(c) Wetland Mitigation Banks in accordance with Code Section 153.309.

Section 3. Summary Publication. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is

available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

This ordinance addresses wetland mitigation banks within the City limits.

Section 4. Effective Date. This Ordinance shall be in full force and effect upon its publication as provided by law.

Passed in regular session of the City Council on the 22nd day of May, 2023.

CITY OF FOREST LAKE

By: _____
Mara Bain
Its: Mayor

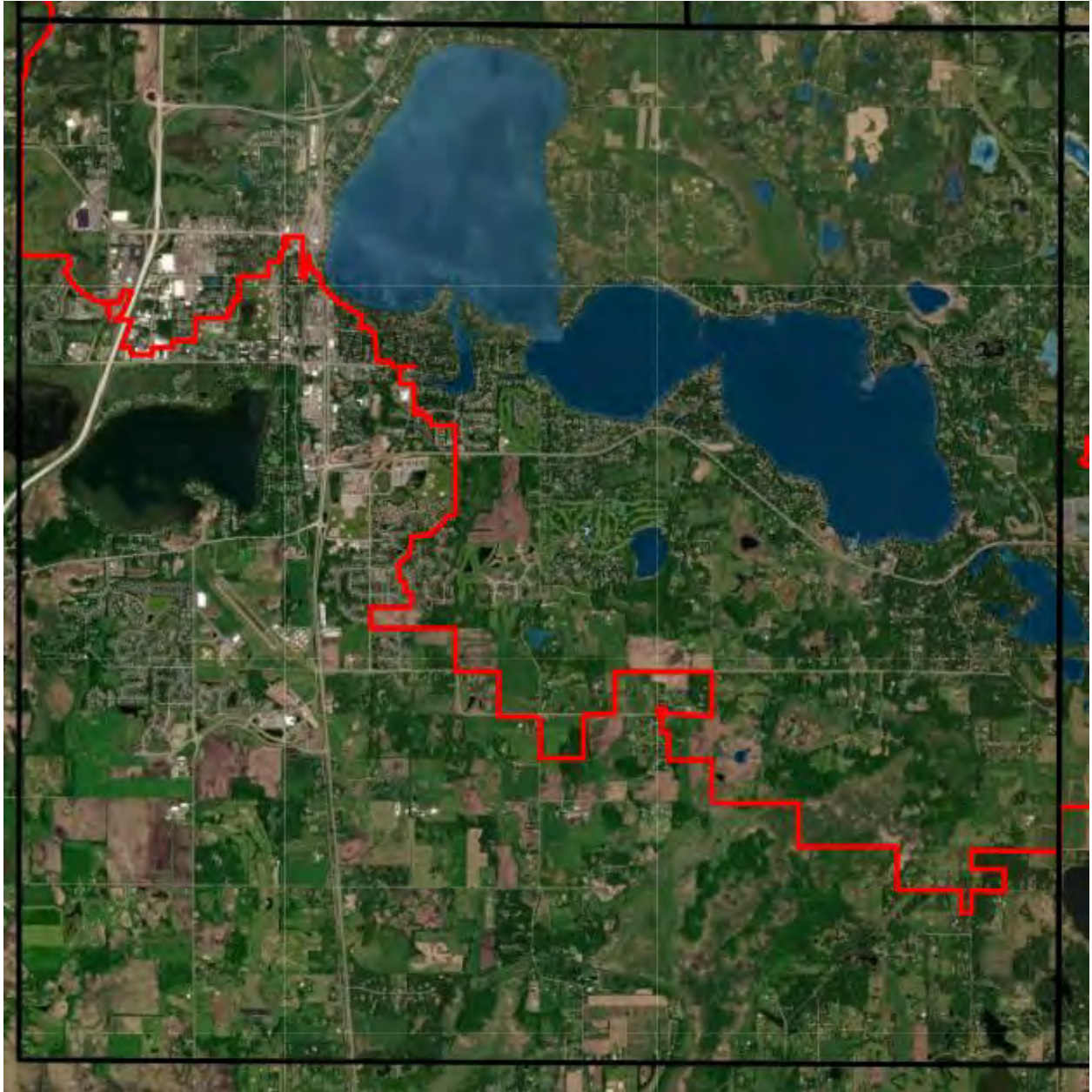
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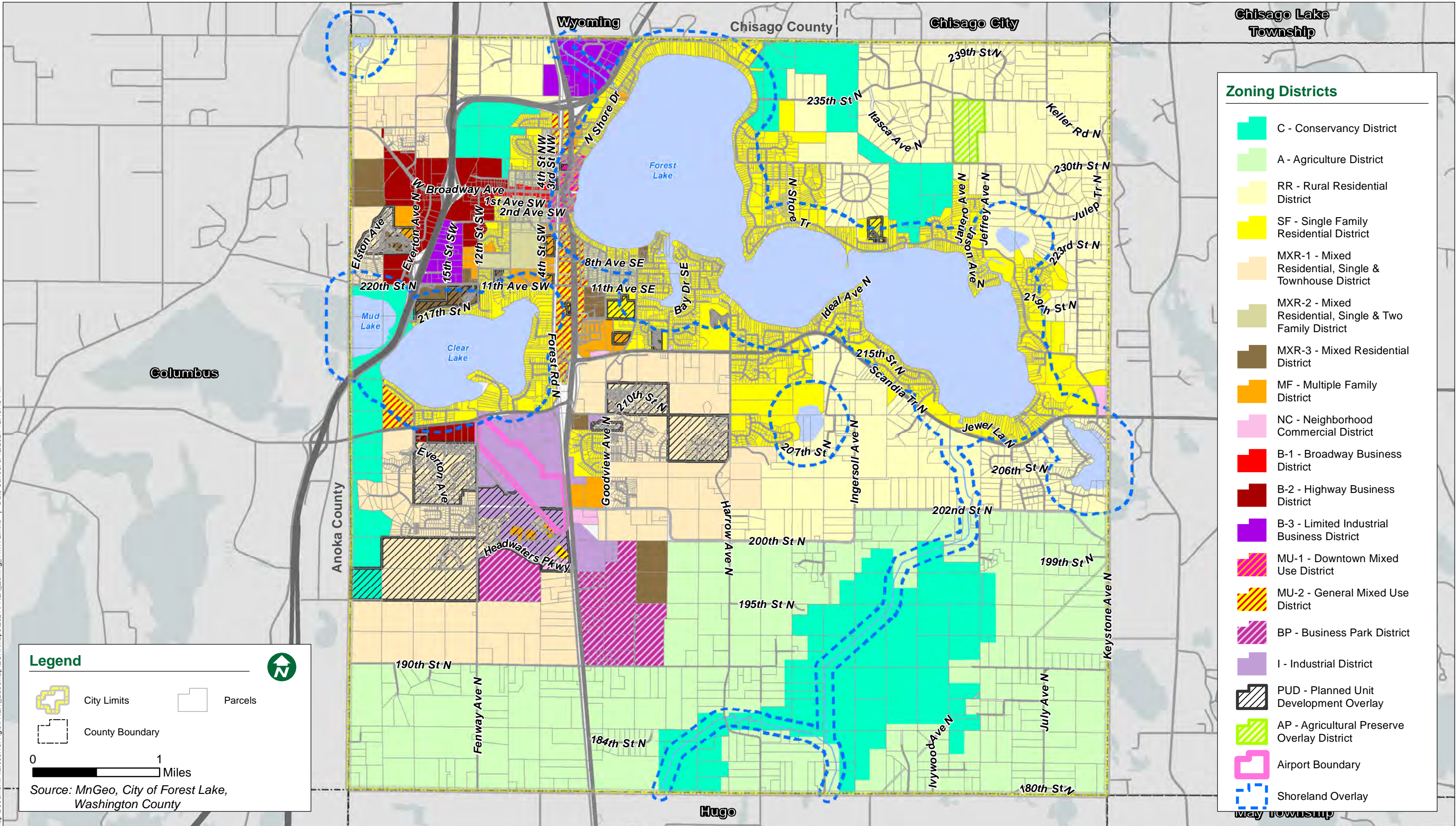
By: _____
Patrick G. Casey
Its: City Clerk

(Published in the *Forest Lake Times* on _____, 2023)

Political Boundaries

City of Forest Lake in black, watershed district in red






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CLFLWD
WATERSHED DISTRICT

651-395-5850 

info@clflwd.org 

www.clflwd.org 

44 Lake St. South, Suite A
Forest Lake, MN 55025 

April 26, 2023

To: Chair Girard and Planning Commission
City of Forest Lake
1408 Lake Street South
Forest Lake, MN 55025

RE: PROPOSED WETLAND BANKING ORDINANCE

Dear Chair Girard and Planning Commissioners,

The Comfort Lake-Forest Lake Watershed District (CLFLWD) has received the Notice of Pending Ordinance or Ordinance Revision regarding the above matter. CLFLWD staff have been aware of the moratorium and the potential for an ordinance potentially limiting the creation of wetland credit banks within the City but have not been involved in discussions leading up to the drafting of this ordinance language.

Since receiving the notice on April 14th, CLFLWD staff have been in touch with several local partners that are involved in wetland management and regulation. This includes the City of Forest Lake, Board of Soil and Water Resources, the Rice Creek Watershed District, and the Washington Conservation District. The CLFLWD recognizes that the City, as the land use and Wetland Conservation Act authority, has the prerogative to consider the proposed ordinance. However, the CLFLWD believes that dialogue regarding the need for and potential impacts of such an ordinance would be beneficial.

At a technical level, it appears that there are some differences in understanding regarding what types of land may be suitable for wetland restoration. Furthermore, the unusual step of creating an ordinance to discourage the restoration of a farmed or degraded wetland may undermine the regional function of wetlands for flood prevention and water quality. Across Minnesota and the Upper Midwest, the large historical decrease in wetland acres is linked to increased flooding.

For wetland acres within the CLFLWD, there are potential opportunities both to provide flood protection and to preserve or improve water quality in Forest Lake and other surface waters through the restoration of degraded or farmed wetland acreage. The District's efforts to date have always included a cost-benefit analysis to maximize the return on investment (ROI) to the taxpayers. The ability to recoup project costs by establishing and selling wetland bank credits generated by such projects is an important funding option. Prohibiting this project revenue alternative would impose greater project cost on local taxpayers and may make such beneficial projects infeasible.

Several years ago, the CLFLWD inventoried sites for potential larger-scale wetland restoration within the watershed. We would like to review this and other information with the City and our other partners, to ensure that the City is protecting its developable land without creating

Board of Managers

Steve Schmaltz, President · Christopher Loth, Vice President
Jackie Anderson, Treasurer · Douglas Toavs, Assistant Treasurer · Dave Bakke, Secretary

unanticipated and unnecessary obstacles to achieving our shared water quality, flood prevention and ecological health goals.

On behalf of the CLFLWD Board of Managers, I am requesting that the Planning Commission consider postponing this matter briefly to allow for a collaborative review of the need for the proposed ordinance, its potential unintended impacts, and whether it might be amended to avoid any such impacts.

Sincerely,

Steve Schmaltz, President
Comfort Lake-Forest Lake Watershed District