CHAPTER 73

W, WETLANDS OVERLAY DISTRICT

SECTION

73.01: Purpose
73.02: Scope
73.03: District Application
73.04: Permitted Uses
73.05: Conditional Uses
73.06: Exemption Determinations
73.07: No-Loss Determinations
73.08: Replacement Plan Determinations
73.09: Technical Evaluation Panel and Procedures
73.10: Appeal of City of Clear Lake Decisions
73.11: Compensation
73.12: Enforcement Procedures
73.13: Mining
73.14: Standards and Procedures for Evaluating Wetland Replacement Plans
73.15: Standards and Criteria for State Wetland Banking
73.16: Calcareous Fens

73.01: **PURPOSE:** The purpose and intent of this Chapter is to insure that the wetland resources within the City of Clear Lake are protected and conserved. Wetland resources serve to provide food, shelter and habitat for fish and wildlife, store surface runoff and reduce flooding damages, replenish subsurface water supplies, provide outdoor recreation areas and enhance the natural beauty and biodiversity of landscapes within the City. This Chapter incorporates by reference the Wetland Conservation Act of 1991, Laws of Minnesota 1991, chapter 354, as amended by Laws 1993, chapter 175 and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minnesota Rules Chapter 8420, as amended) whose purpose is to:

A. Achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;

B. Increase the quantity, quality and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;

C. Avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of wetlands; and

D. Replace wetland values where avoidance of activity is not feasible and prudent.

These purposes being consistent with the City's desire to preserve areas containing low lands, marshes, wetlands, drainage areas, water bodies and waterways which are essential to the health, safety and general welfare of the City's residents.

73.02: **SCOPE:** Wetlands must not be drained or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value. This Chapter, along with the above mentioned references, shall be utilized by the City to insure the protection of the City's wetland resources.

In addition to the provisions of this Chapter, City decisions on draining and filling of wetlands are subject to Minnesota Statutes, Chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

73.03: DISTRICT APPLICATION:

A. All wetlands within the City of Clear Lake are hereby designated as part of the Clear Lake Wetlands Overlay District, and the requirements set forth in this Chapter shall govern development and other activities within these districts.

B. The Clear Lake Wetlands Overlay District shall be applied to and superimposed as an overlay upon all zoning districts as contained herein as existing or amended by the text of this Chapter. The regulations and requirements imposed by the Clear Lake Wetlands Overlay District shall be in addition to those established for districts which jointly apply. Under the joint application of districts, the more restrictive requirements shall apply.

C. The boundaries of wetlands within the City may be changed by the City Council, Department of Natural Resources, or Army Corps of Engineers, whatever applicable, when it can be demonstrated by registered site survey and topographic work, and hydrologic analysis performed by registered engineer or land surveyor that the established boundaries are incorrect.

73.04: PERMITTED USES: Permitted uses within a wetland, and as described in this Ordinance, are subject to guidelines established by the Minnesota Department of Natural Resources and the United States Army Corps of Engineers. Uses within a wetland which are not prohibited by this Chapter are:

A. The use of the bed of the wetlands for pasture or cropland during dry period if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands.

B. The filling of a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

C. The control of noxious weeds if the control does not drain or fill the wetland.

D. Excavation in wetlands if done in a manner such that the wetlands are not drained or filled.

73.05: **CONDITIONAL USES**: Permitting for conditional uses in the W District shall be based upon procedures set forth in and regulated by Chapter 4 of the City Zoning Ordinance. Conditional use permits shall be subject to the elevation criteria as set forth in Section 4.02.E of the City Zoning Ordinance. Subject to other more restrictive limitations which may be imposed by this Ordinance, the uses listed in part B may be allowed in wetlands by conditional use permit subject to the following:

A. A wetland may not be drained or filled, wholly or partially, unless either the activity meets the exemption criteria stated in part B or unless it is replaced under an approved replacement plan meeting the criteria of Section 73.14.C.

A wetland activity will be considered exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

These exemptions do not apply to calcareous fens as identified by the commissioner of the Department of Natural Resources.

No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage or filling.

Nonexempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact.

Present and future owners of wetlands drained or filled without replacement under an exemption in part B, subparts 1, 2, 4, 7, 8 and 23, can make no use of the wetland area after it is drained or filled, other than as agricultural land, for ten years after the draining or filling, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). Also, for ten years the

wetland may not be restored for replacement credit. At the time of draining or filling, the landowner shall record a notice of these restrictions in the office of the Sherburne County recorder. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the ten-year period expires, the City of Clear Lake as the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

A person conducting an activity in a wetland under an exemption in part B shall ensure that:

1. Appropriate erosion control measures are taken to prevent sedimentation of the water;

2. The activity does not block fish activity in a watercourse; and

3. The activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

B. A request for an exemption shall be required of a perspective applicant on a form provided by the City of Clear Lake. Exemptions which qualify for City of Clear Lake review are as follows:

1. Activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991.

   Documentation, such as Agricultural Stabilization and Conservation Service aerial photographs, Agricultural Stabilization and Conservation Service form 578 or equivalent, United States Department of Agriculture records, or affidavit of landowner is required to accompany the application for exemption and be furnished by the applicant.

   Set aside land used for this exemption must be wetland Types 1 and 2.

2. Activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States code, title 16, section 3831, that:

   a. Was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or

payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

b. Has not been restored with assistance from a public or private wetland restoration program.

Federal documentation that the wetland is or has been enrolled in the federal conservation reserve program is required to accompany the application for exemption and be furnished by the applicant. The landowner must also meet the same requirements of subpart 2 for the exemption stated in Minnesota Statutes, section 103G.2241, subdivision 1, clause (1), except that the years required are at least six of the ten years preceding the year of enrollment in the conservation reserve program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland.

3. Activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained. This exemption allows maintenance which fills wetlands that have been in existence for more than 20 years when the wetlands are located within the right-of-way acreage of the ditch or within a one rod width on either side of the top of the ditch, whichever is greater, and the filling is limited to the side casting of spoil materials resulting from the maintenance and the spoil deposition area is permanently seeded into grass after maintenance activities are completed.

The owner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 20 years.

Aerial photographs from two years of normal or wetter than normal water level conditions showing no wetlands are one form of acceptable documentation. If aerial photographs are unavailable, a sworn affidavit may be submitted. Otherwise, the landowner must show that the maintenance will not reduce the wetland from what it was 20 years ago or more.

This exemption includes lowering the elevation of previously placed tile when made necessary by land subsidence provided the lowering does not drain wetlands.

4. Activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office

prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985.

The wetland landowner must provide Agricultural Stabilization and Conservation Service documents confirming that the county agricultural stabilization and conservation service office determined before September 19, 1988, that drainage had begun before December 23, 1985 and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review.

5. Activities exempted from federal regulation under United States Code, title 33, section 1344(f).

   The City of Clear Lake shall certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

   This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

6. Activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26).

   This exemption is for nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 25 issued under Code of Federal Regulations, title 33, section 330.5. The City of Clear Lake shall certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

   To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required.

7. Activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands.

   The wetland landowner must provide the same proofs required by the first paragraph of exemption 1, for lands abutting at least 50 percent of the wetland's boundary. The City of Clear Lake may seek the advice of the technical panel as to whether the wetland is a type 1 wetland not of the bottomland hardwood type.

   The type of the wetland will be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, the type of the wetland can be determined from the Cowardin (et al. 1979) classification system: PEM1A, PEMA, PEMJ, and PEM1J may be considered to be a type 1 wetland.

   This exemption applies if the wetland is all type 1 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

8. Activities in a type 2 wetland that is two acres in size or less located on agricultural land.

   The wetland landowner must provide the same material as required from the landowner by exemption 7. The City of Clear Lake may seek the advice of the technical panel as to whether the wetland is a type 2 wetland, two acres or less in size.

   The wetland size is the area within its boundary. The boundary must be determined according to the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The type of the wetland must be determined according to United State Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, type can be determined from the Cowardin (et al. 1979) classification system: PEM1B and PEMB may be considered to be a type 2 wetland.

   This exemption applies if the wetland is a type 2 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

9. Activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

The wetland landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland.

10. Activities in a wetland created solely as a result of:

    a. Beaver dam construction;
    b. Blockage of culverts through roadways maintained by a public or private entity;
    c. Actions by public entities that were taken for a purpose other than creating the wetland; or
    d. Any combination of a. to c.

    Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or the culvert became plugged.

    Wetlands may be drained or filled if the landowner can show that the wetland was created solely by actions the purpose of which was not to create the wetland and were approved, permitted, funded, or overseen by a public entity.

    Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process that may, over time, take on wetland characteristics, are also exempted.

11. Placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, or natural or manufactured gas, electricity, telephone, or radio service or communications if:

    a. The impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

    b. The proposed project significantly modifies or alters less than one-half acre of wetlands.

For new placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized and that the entire project will, cumulatively, drain or fill less than one-half acre of wetland.

For maintenance, repair, and replacement, the City of Clear Lake may issue a seasonal or annual exemption certification or the utility may proceed without City of Clear Lake certification if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the City of Clear Lake after the emergency work has been completed.

12. Activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland.

    This exemption is for maintenance, but not expansion, of the rights-of-way in which utilities are located. Spill remediation is not routine maintenance.

    The City of Clear Lake may issue a seasonal or annual exemption certification or the utility may proceed if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the City of Clear Lake after the emergency work has been completed.

13. Alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way. This exemption includes construction activities.

14. Temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters.

    This exemption is for temporary-use roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

15. Permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters.

This exemption is the same as exemption 14 except that it is for permanent forest roads which are roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

16. Activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland outside of the existing right-of-way.

    This exemption does not prevent repairing washouts or adding material to the driving surface provided the road's occupancy of the wetland outside of the existing right-of-way does not increase.

17. Emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland.

    This exemption applies to public works other than roads, such as buildings and bridges.

18. Normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland.

    This exemption applies to private structures, such as buildings and road crossings.

19. Duck blinds. This exemption allows floating duck blinds and blinds on poles or pilings. This exemption does not allow fill other than poles or pilings.

20. Aquiculture activities including pond excavation and associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including buildings.

21. Wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344.

    Documentation demonstrating that the exemption applies may include showing possession of a United States Army Corps of Engineers permit for the project.

22. Normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices.

    This exemption does not allow diking, ditching, tiling or filling, or other control practices that would result in the conversion of wetlands.

23. Activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program.

    Documentation such as a written statement from the local Agricultural Stabilization and Conservation Service office that the proposed activity would not result in loss of eligibility for benefits under the farm program may be used as evidence for this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption by withdrawing from the program.

24. Development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. Plat approval must be preliminary as approved by the City of Clear Lake.

    Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

    For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

25. Activities that result in the draining or filling of less than 400 square feet of wetlands.

This exemption applies if the total wetland loss by draining and filling will be less than 400 square feet per year per landowner, and the cumulative impact by all persons on a wetland over time without replacement after January 1, 1992, does not exceed five percent of the wetland's area.

73.06: EXEMPTION DETERMINATIONS. A landowner intending to drain or fill a wetland without replacement, claiming exemption, must apply for a conditional use permit from the City of Clear Lake before beginning drainage or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions contained herein and Minnesota Statutes, section 103G.2372. The City of Clear Lake will keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

The City of Clear Lake will offer exemption certificates as part of the wetland program within their jurisdiction.

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed.

The City of Clear Lake will place the decision authority for exemption applications with the City's engineer.

The City engineer's decision shall be based on the exemptions standards in Chapter 73.05. If the decision requires a finding of wetland size or type, the City's engineer may seek the advice of the technical panel.

A landowner draining or filling a wetland under an exemption shall ensure that appropriate erosion control measures are taken to prevent sedimentation of the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

73.07: **NO-LOSS DETERMINATIONS**. A landowner unsure if proposed work will result in a loss of wetland may apply by conditional use permit application to the City of Clear Lake for a determination. A landowner who does not request a determination may be subject to the enforcement provisions contained herein and Minnesota Statutes, section 103G.2372. The City of Clear Lake will keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim.

The City of Clear Lake will place the decision authority for no-loss applications with the City's engineer.

The City's engineer shall issue a no-loss certificate if the landowner requests and if either:

A. The work will not drain or fill a wetland;

B. Water level management activities will not result in the conversion of a wetland to another land use;

C. The activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program; or

D. The activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

73.08: REPLACEMENT PLAN DETERMINATIONS: A landowner intending to drain or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the City of Clear Lake before beginning draining or filling the wetland. A person who does not do so is subject to the enforcement provisions in Section 73.12 and Minnesota Statutes, section 103G.2372. An application for approval of a replacement plan may be obtained from the City of Clear Lake.

The City of Clear Lake will, within ten days of receipt of the application, mail a copy of the application and an invitation to submit comments to:

A. The Board of Water and Resources, who will subsequently publish the application in the Environmental Quality Board Monitor.
B. Members of the public who have requested a copy.
C. The Soil and Water Conservation District.
D. The watershed district or water management organization, if there is one.
E. The Sherburne County board of water and soil resources.
F. Mayors of the cities within the watershed.
G. The commissioners of agriculture and natural resources.

At the same time, the City of Clear Lake will publish notice of the application with an invitation to comment in a general circulation newspaper in the area affected.

The City of Clear Lake will not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice, publication in the Environmental Quality Board Monitor, when required, or publication in the newspaper, whichever is later. The

City of Clear Lake decision will not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, when required, and mailed to the same list specified above for notice of the application and to the applicant. The mailing to the applicant will be by registered mail and will advise that the decision is not effective for 30 days, and is stayed if it is appealed.

Publication in the Environmental Quality Board Monitor of replacement plan applications and decisions will be performed, except for the fill activities described in the next paragraph, when the City of Clear Lake will publish a general notice in the Environmental Quality Board Monitor that it will not be publishing notice of such individual activities, but will instead provide mailed notice of each project to anyone asking to be put on the City of Clear Lake's mailing list for such projects. This notice will be published not less often than once every year. The notice will advise how persons may submit their names and addresses to be put on the mailing list.

Projects eligible for this form of Environmental Quality Board Monitor notice are all those which will fill less than one-tenth acre of wetland; and all those which will fill less than one-quarter acre of wetland, and result from a private road fill or the construction or expansion of a single-family dwelling unit or a farm building when the project cannot be modified so as to avoid the fill.

The City of Clear Lake's decision shall be based on the replacement standards contained in this Ordinance and on the technical determination of the technical evaluation panel concerning the public values, location, size, and type of the wetland being altered. The City of Clear Lake will consider the recommendation of the technical evaluation panel to approve, modify, or reject the proposed replacement plan.

For wetland replacement plans involving both the City of Clear Lake and one or more other local government units, approval of all local government units involved must be obtained before the project may proceed.

73.09: TECHNICAL EVALUATION PANEL AND PROCEDURES. The City of Clear Lake will form, by resolution, a technical evaluation panel consisting of three persons:

A. A technical professional employee of the Board of Water and Soil Resources.

B. A technical professional employee of the Sherburne County Soil and Water Conservation District.

C. A technical professional with expertise in water resources management appointed by the City of Clear Lake.

The member appointed by the City of Clear Lake will act as the contact person and coordinator for the panel. Two members of the technical review panel will be

knowledgeable and trained in applying methodologies of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989), and evaluation of public values. The technical evaluation panel reserves the right to invite additional wetland experts to help the panel in its work.

The panel will make technical determinations on questions of public values, location, size, and type for replacement plans if requested to do so by the City of Clear Lake, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans and recommend to the City of Clear Lake either approval, approval with changes or conditions, or rejection. The panel will make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

The panel, or one of its members when so authorized by all of the members, may assist the City of Clear Lake in making wetland size and type determinations when asked to do so by the City of Clear Lake as part of making an exemption or no-loss determination.

If requested by the City of Clear Lake, the landowner, or a member of the technical evaluation panel, the panel will answer technical questions or participate in the monitoring of replacement wetlands and will similarly participate in the monitoring of banked wetlands.

73.10: APPEAL OF CITY OF CLEAR LAKE DECISIONS.

A. Appeal of replacement plan decisions: The decision of the City of Clear Lake to approve, approve with conditions, or reject a replacement plan, becomes final if not appealed to the Board of Water and Soils Resources within 30 days after the date on which the decision is mailed to those required to receive notice of the decision.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing of the notice of appeal to the Board of Water and Soils Resources with an affidavit that a copy of the notice of appeal has been mailed to the City of Clear Lake. The City of Clear Lake shall then mail a copy of the notice of the appeal to all those to whom it was required by this Ordinance to mail a copy of the notice of decision.

B. Appeal of exemption and no-loss determinations:

1. An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all City of Clear Lake administrative appeal options.

2. Those required to receive notice of replacement plan decisions as provided for in Section 73.08 may petition the board to hear an appeal from an exemption or no-loss determination. The board will grant the petition unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board will also give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the City of Clear Lake or landowner or petitioner, and the consequences of the delay.

3. The determination of the City of Clear Lake on the exemption or no-loss application is final unless an appeal or petition is mailed to the board within 30 days after the decision is mailed to the landowner. The appeal or petition must be accompanied by an affidavit that a copy has been sent to the City of Clear Lake and to the landowner if it is a petition.

C. Board of Soil and Water Resources Procedures: The appeal will be decided by the board within 60 days after receiving the notice of appeal and affidavit or granting the petition. Parties to the appeal will be the appellant, the City of Clear Lake and in the case of replacement plan appeals, all those required to receive notice of the City of Clear Lake's decision.

Upon appeal, the City of Clear Lake will forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing will be given by the board to the parties. The parties may present written and oral argument. When the City of Clear Lake has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record. Otherwise, it may take additional evidence, or remand the matter.

The board will affirm the City of Clear Lake's decision if the City of Clear Lake's findings of fact are not clearly erroneous; if the City of Clear Lake correctly applied the law to the facts, including this Ordinance; and if the City of Clear Lake made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

73.11: COMPENSATION. Replacement plan applicants who have completed the City of Clear Lake process and the Board of Water and Soil Resources appeal process and the plan has not been approved as submitted, may apply to the Board of Water and Soil Resources for compensation under Minnesota Statutes, section 103G.237.

73.12: ENFORCEMENT PROCEDURES.

A. Enforcing Authorities: The commissioner of the Department of Natural Resources, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

B. Cease and Desist Orders: Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination and is being or has been conducted without prior approval of a replacement plan by the City of Clear Lake.

A cease and desist order will not be issued if the landowner has a valid certificate of exemption or no-loss from the City of Clear Lake or has evidence to support an exemption. Otherwise:

1. The enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;

2. The order may be withheld to give the landowner time to produce the evidence required by the City of Clear Lake to the enforcement authority of qualification for an exemption or no-loss determination; or

3. A cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority may exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.

The enforcement authority will advise the landowner that the landowner's application, if any, for an exemption or no-loss determination, should be made immediately to the City of Clear Lake and that whatever drain and fill work the landowner has done may require restoration according to a restoration plan designed by the soil and water conservation district, if the application for exemption or no-loss determination is denied.

The enforcement authority issuing a cease and desist order will submit copies to the soil and water conservation district, City of Clear Lake, and department.

If an application for an exemption or no-loss determination is triggered by a cease and desist order, the City of Clear Lake or the technical evaluation panel will make a decision within three weeks from the date of application. The City of Clear Lake or the technical evaluation panel will review evidence of exemption or no-loss produced by the landowner, inspect the site if necessary, and determine:

1. If the area in question is a wetland; and

2. If the activity qualifies for an exemption or no-loss determination.

In cases where the cease and desist order has been issued to the City of Clear Lake, the determination of exemption or no-loss will be made by the Board of Soil and Water Resources.

If the decision is that the activity is exempt or results in a no-loss determination, the decision maker will issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the department, and the landowner.

If the application is denied, the decision-maker shall immediately notify the soil and water conservation district, the department, the enforcement authority, and the landowner.

C. Restoration and replacement orders. The enforcement authority will issue a restoration order or replacement order when the drain or fill has already been completed when discovered, or after a cease and deist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the City of Clear Lake denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the City of Clear Lake for restoring the site to its prealtered condition, unless the soil and water conservation district person concludes that restoration is impossible. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner.

The restoration order will specify a date by which the landowner must either:

1. Restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or

2. Submit a replacement plan to the City of Clear Lake.

The order will state that it will be canceled when the landowner obtains a certificate of exemption or no-loss from the City of Clear Lake or a certificate that restoration has been completed according to an approved restoration plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order.

If the soil and water conservation district determines that restoration will not restore all the loss caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, as determined by the soil and water conservation district. The order will direct the landowner to obtain replacement plan approval from the City of Clear Lake. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order will tell the landowner that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district will determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan process in this Ordinance unless the court orders otherwise.

73.13: **MINING**: Wetlands may not be drained or filled as part of a project for which a permit to mine is required by Minnesota Statutes, Section 93.481 or by this Orinance. Draining or filling of wetlands created by pits, stockpiles or tailing basins by actions whose purpose was not to create the wetland may be exempt. The landowner must contact the City of Clear Lake to verify this exemption.

73.14: **STANDARDS AND PROCEDURES FOR EVALUATING WETLAND REPLACEMENT PLANS**:

A. Procedures:

1. General: No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the City Council of the City of Clear Lake consistent with this Ordinance and provided that the activity is not prohibited under the special considerations provisions in Section 73.14.D.9.

2. Preapplication conference and site visit. Before preparation of a wetland value replacement plan, the landowner must meet with the City of Clear Lake for a preapplication conference and site visit. A landowner may submit the sequencing information required in Section 73.14.B and request a determination of compliance with the sequencing requirements from the City of Clear Lake before preparing a replacement plan.

3. Evaluation. Technical questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel. Wetland boundaries must be determined using the methodologies in the federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989).

   Wetland type must be identified according to Cowardin, et al. 1979, Classification of Wetlands and Deepwater Habitats of the United States and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical evaluation panel will provide its determinations to the City of Clear Lake for consideration.

B. Sequencing:

1. Requirement. Except for wetlands located in cultivated fields that are subject to Section 73.14.B.8, and calcareous fens that are subject to Section 73.14.B.9, the City of Clear Lake will not consider or approve a wetland replacement plan unless the City of Clear Lake finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order or priority:

   a. avoids direct or indirect impacts to the wetland that may destroy or diminish the wetland under the criteria in Section 73.14.B.3;

   b. minimizes the impact to the wetland by limiting the degree or magnitude of the wetland activity and its implementation under the criteria in Section 73.14.B.4;

   c. rectifies the impact by repairing, rehabilitating, or restoring the affected wetland under the criteria in Section 73.14.B.6;

   d. reduces or eliminates the impact to the wetland over time by preservation and maintenance operations under the criteria in Section 73.14.B.6; and

   e. replaces unavoidable impacts to the wetland by restoring or creating substitute wetland areas having equal or greater public value as provided for in this Ordinance.

2. Application options. An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the City of Clear Lake before preparing a replacement plan. The City of Clear Lake may request additional information needed to make a determination. For projects impacting wetland areas less than 0.1 acres, the City of Clear Lake

may provide an on-site sequencing determination without written documentation from the applicant.

3. Determination of impact avoidance.

   a. Avoidance will be required when indicated by special considerations as stated in this Ordinance.

   b. Wetland dependence determination:

      (i) Based on information provided by the applicant, the City of Clear Lake will determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features, functions, or values are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.

      (ii) A project that has been determined by the City of Clear Lake to be wetland dependent is exempt from the analysis of avoidance alternatives in Section 73.14.B.3.c.

   c. Alternative analysis:

      (i) The applicant shall provide the City of Clear Lake with documentation describing at least two alternatives in addition to the proposed project, one of which may be the no-build alternative, that would avoid impacts to wetlands. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the City of Clear Lake as good faith efforts, or the City of Clear Lake will require the applicant to redraft them for reconsideration.

      (ii) The City of Clear Lake will determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative will be considered feasible and prudent if it is capable of being done from an engineering point of view, is in accordance with accepted engineering standards and practices, is consistent with reasonable requirements of the public health, safety, and welfare, is an environmentally preferable alternative based on a review of social, economic, and environmental impacts, and would create no truly unusual problems. The City of Clear Lake will consider the following in evaluating alternatives as applicable:

(a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site will not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;

(b) the general suitability of alternate sites considered by the applicant;

(c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

(d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including request for conditional use permits, variances, or planned unit developments; and

(e) the physical, economic and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.

(iii) If the City of Clear Lake determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it will deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the City of Clear Lake will evaluate the replacement plan for compliance with Sections 73.14.B.4 to 73.14.B.6.

4. Determination of impact minimization.

a. The applicant shall demonstrate to the City of Clear Lake satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the City of Clear Lake will consider:

(i) the spatial requirements of the project;

(ii) the location of existing structural or natural features that may dictate the placement or configuration of the project;

(iii) the purpose of the project and how the purpose relates to placement, configuration, or density;

(iv) the sensitivity of the site design to the natural features of the site, including topography, hydrology and existing vegetation;

(v) the value, function, and spatial distribution of the wetlands on the site;

(vi) individual and cumulative impacts; and

(vii) an applicant's efforts to:

(a) modify the size, scope, configuration, or density of the project;

(b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and

(c) otherwise minimize impacts.

b. If the City of Clear Lake finds that an applicant has not complied with the requirements to minimize wetland impacts, the City of Clear Lake will list, in writing, its objections to the project. If, within 30 days, the applicant does not withdraw the project proposal or indicate intent to submit an amended project proposal satisfying the City of Clear Lake's objections, the statement of objections shall constitute a denial.

5. Determination of impact rectification. Temporary impacts to a wetland must be rectified by repairing, rehabilitating, or restoring the affected wetland.

a. Activities may qualify for a no-loss determination in Section 73.07 by meeting all of the following conditions:

(i) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, and hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject functions and values are restored;

(ii) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity; and

(ii) the party responsible for the activity provides a performance bond to the City of Clear Lake for an amount sufficient to cover the estimated cost to restore the wetland to preproject conditions. The City of Clear Lake will return the performance bond to the responsible party upon a determination by the City of Clear Lake that the conditions in this item and item b. have been met.

b. An applicant shall be granted a no-loss determination under the criteria in item a. once in a ten-year period for a particular site within a wetland, except that repairs to the original project shall be allowed under the no-loss determination, if the City of Clear Lake determines the request to be necessary and reasonable.

c. Wetland impacts that do not qualify for a no-loss determination according to the criteria in item a. are subject to replacement under the criteria in Section 73.14.C to I.

6. Determination of reduction or elimination of impacts over time. After an activity is completed, further wetland impacts from the draining or filling must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions and values. The City of Clear Lake will require applicants to implement best management practices to protect wetland functions and values.

7. Unavoidable impacts. Unavoidable wetland impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be replaced according to Section 73.14.B to I.

8. Wetlands on cultivated fields. If the wetland is located on a cultivated field, replacement must be accomplished through restoration without regard to the priority order in Section 73.14.B.1. A wetland drained or filled under this provision must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for Sherburne County.

9. Calcareous fens. Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any action, unless the commissioner, under an approved management plan, decides some alteration is necessary, as provided in this Ordinance.

C. Replacement Plan Components:

On an application form provided by the City of Clear Lake and with needed attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in Section 73.15, items 2 and 4 do not apply; instead the applicant shall submit the credit transfer form prescribed in Section 73.15.E.2.e:

1. Organizational information, including the following:

   a. the post office address of the applicant;

   b. for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;

   c. managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;

2. Either an affidavit confirming that the wetland values will be replaced before or concurrent with the actual draining or filling of a wetland or an irrevocable bank letter of credit to guarantee the successful completion of the wetland value replacement;

3. For the impacted wetland:

   a. a recent aerial photograph or accurate map of the impacted wetland area;

   b. the location of the wetland, including the county, watershed name or number, and public land survey coordinate of approximate wetland center;

   c. the size of the wetland, in acres or square feet;

   d. the type of wetland using United States Fish and Wildlife Service Circular No. 39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979);

   e. a list of the dominant vegetation in the impacted wetland area, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattails, and 30 percent sedge;

f. a soils map of the site showing soil type and substrate, where available;

g. the size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;

h. the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;

i. a map, photograph, or written description of the land use of the immediate watershed within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;

j. the nature of the proposed project, its areal extent, and the impact on the wetland must be shown in sufficient detail to allow the City of Clear Lake to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in Section 73.14.B if applicable;

k. evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgement of the covenant provisions in Section 73.14.C.4.f by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan;

l. a list of all other local, state, and federal permits and approvals required for the activity; and

m. other information considered necessary by the City of Clear Lake for evaluation of the activity;

4. For the replacement wetland item Section 73.14.C.3, subitems a. to i. and k. to m., and:

a. an explanation of the size and type of wetland that will result from successful completion of the replacement plan;

b. scale drawings showing plan and profile views of the replacement wetland and fixed photo-reference points for monitoring purposes. Photo-reference points should include views of any control structures and enough additional points to adequately depict the entire project;

c. how the replacement wetland shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;

d. for created wetlands only, additional soils information sufficient to determine the capability of the site to produce and maintain wetland characteristics;

e. a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;

f. a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:

(i) the location of the replacement wetland;
(ii) that the wetland is subject to the act;
(iii) that the fee title owner is responsible for the costs of repairs or reconstruction, if necessary, or for replacement costs;
(iv) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;
(v) that costs of title review and document recording is the responsibility of the fee title owner; and
(vi) that the City of Clear Lake or board can require necessary repairs or reconstruction work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;

g. a statement that the replacement wetland was not previously restored or created under a prior approved replacement plan;

h. a statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;

i. a statement that the replacement wetland was not restored with financial assistance from public conservation programs;

j. a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the City of Clear Lake in writing that the restored wetland may be considered for replacement;

k. a plan for monitoring the success of the replacement plan in meeting the project goal of Section 73.16.D.1, and as specified in this Ordinance; and

l. other information considered necessary for evaluation of the project by the City of Clear Lake.

5. The applicant must provide information known to the applicant or readily available concerning the special considerations criteria in Section 73.14.O.9.

D. Replacement Plan Evaluation Criteria:

1. Sequencing. Prior to the City of Clear Lake considering or approving a replacement plan, the applicant must have exhausted all possibilities to avoid and minimize adverse wetland impacts according to sequencing in Section 73.14.B.

   The applicant must demonstrate to the City of Clear Lake that the replacement plan complies with Sections 73.14. D, and 73.14.E.

2. Type of replacement. The order of preference for the method of replacement, from most preferred to least preferred, is project-specific restoration, project-specific creation, then wetland banking. Modification or conversion of nondegraded wetlands from one wetland type to another, for example by impoundment of additional water, does not constitute adequate replacement.

   Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

3. Timing of replacement. Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an

irrevocable bank letter of credit is submitted to the City of Clear Lake to guarantee successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the City of Clear Lake of the information required in Section 73.14.C and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation.

4. Location of replacement wetlands. Replacement wetlands must be located within the same watershed or county as the impacted wetlands.

5. Statewide replacement for public transportation projects. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system or under this Ordinance.

6. Size of replacement wetlands. Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. For a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values. A review by the City of Clear Lake will determine the actual required replacement ratios. Future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the Sherburne County recorder.

7. Carbon balance. When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally invading vegetation established within three growing seasons.

8. Ecological consistency. Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.

9. Special considerations. The factors in items a. to i., when identified as being applicable to an impact site or a replacement site, will be considered by the City of Clear Lake in the review of replacement plans.

a. Federal or state-listed endangered species. A replacement plan for activities that involve sites where federal or state-listed endangered species are known to be present will not be approved if it is determined that the proposed activities will constitute a taking of those listed species under Minnesota Statutes, section 84.0895. Limited information on the presence of listed species at a particular site is available from the department's natural heritage program. Activities that involve taking listed species are subject to Minnesota Statutes, section 84.0895.

b. Rare natural communities. A replacement plan for activities that involve the modification of a rare natural community as determined by the department's natural heritage program will not be approved if the City of Clear Lake determines that the proposed activities will permanently adversely affect the natural community.

c. Special fish and wildlife resources. A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource will not be approved. These activities include, but are not limited to:

(i) fish passage and spawning areas;
(ii) colonial waterbird nesting colonies;
(iii) migratory waterfowl concentration areas;
(iv) deer wintering areas; and/or
(v) wildlife travel corridors.

Activities involving streams must not block fish passage unless approved by the department.

d. Archaeological or historic sites. A replacement plan for activities that involve the modification of known archaeological or historical sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, will not be approved if the City of Clear Lake determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.

e. Groundwater sensitivity. A replacement plan for activities will not be approved if the City of Clear Lake determines the activities would have a significant adverse impact on groundwater quality. The publication "Criteria and Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.

f. Sensitive surface waters. A replacement plan will not be approved if the City of Clear Lake determines the activities will have a significant adverse impact on the water quality of outstanding resource value waters or on trout waters designated by the commissioner.

g. Education or research use. Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.

h. Waste disposal sites. The City of Clear Lake will evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

i. Consistency with other plans. The City of Clear Lake will consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

10. Evaluation of wetland functions and values.

a. Evaluation options. Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. A replacement wetland should replace the same combination of functions and values provided by the impacted wetland. The evaluation of wetlands shall be performed in accordance with part 8420.540 of the Board of Water and Soil Resources Wetland Conservation Act Rules (August, 1993).

E. Wetland Replacement Standards:

1. General requirements. The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.

2. Specific requirements. The standards in items a. to h. shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.

a. Water control structures must be constructed using specifications provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the department dam safety regulations.

b. Best management practices must be established and maintained adjacent to the entire perimeter of all replacement wetlands.

c. For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the soil and water conservation district, in coordination with the department. If the replacement wetland is seeded or planted, the seed or planting stock should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purpose loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

d. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

e. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland.

f. The bottom contours of created types 3, 4, and 5 wetlands shall be undulating, rather than flat, to provide a variety of water depths.

g. Sideslopes of created wetlands and buffer strip must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred.

h. Created wetlands shall have an irregular edge to create points and bays.

F. Monitoring: The purpose of wetland value replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.

G. Duration of Monitoring: Monitoring shall be by means of an annual report as specified in Section 73.14-H and shall continue for five years following completion of the wetland replacement project. Through written notification to the applicant, the City of Clear Lake may extend the required monitoring period for not more than

an additional five-year period if, at the end of the initial five-year period, the goal of the replacement plan has not been achieved, but may be achieved with more time.

H. Monitoring Annual Report:

1. Purpose. The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in 2. The applicant shall submit the annual report to the City of Clear Lake on a date determined by the City of Clear Lake until the applicant has fulfilled all of the requirements of the City of Clear Lake.

2. Report content. The annual report shall include the following information and other site-specific information identified by the City of Clear Lake:

(a) A description of the project location, size, current wetland type (Cowardin classification), and desired wetland type (goal);

(b) A comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes;

(c) Hydrology measurements: seasonal water level elevations during the period April through October (msl or referenced to a known bench mark);

(d) A list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattail, and 30 percent sedge; and

(e) Color photographs of the project area taken anytime during the period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly.

I. Monitoring Determinations by the City of Clear Lake. The City of Clear Lake:

1. Will inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the City of Clear Lake certifies that the construction specifications have been met, the City of Clear Lake will so advise the applicant and return any bond or other security that the applicant had provided;

2. May order corrective action at any time during the required monitoring period if it determines that the goal of the approved replacement plan will not be met, and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the City of Clear Lake which describes in detail the corrective measures to be taken to achieve the goal of replacing lost wetland functions and values;

3. Shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the City of Clear Lake will order corrective action and extend the monitoring period; and

4. Will require one or more of the following actions if during the monitoring period the City of Clear Lake finds that the goal of the replacement plan will not be met:

   (a) Order the applicant to prepare and implement a new replacement plan;

   (b) Issue a cease and desist order on the draining and filling activity if it has not been completed;

   (c) Order restoration of the impacted wetland;

   (d) Obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland values;

   (e) Ask the district court to order the applicant to fulfill the replacement plan; or

   (f) Other actions that the City of Clear Lake determines necessary to achieve the goal of the replacement plan.

73.15: STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

A. Purpose: The purpose of this section is to provide City of Clear Lake standards for procedures related to a state wetland banking system as provided for in parts 8420.0700 to 8420.0760. The City of Clear Lake is responsible for approving bank plans, certifying deposits, and monitoring of banked wetlands and enforcement under the rules.

73.16: CALCAREOUS FENS:

A. General. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner. No exemptions shall be granted for any drain or fill activities which affect calcareous fens.

CHAPTER 74

FP, FLOODPLAIN OVERLAY DISTRICT

SECTION

74.01: Statutory Authorization, Findings of Fact, and Purpose
74.02: Warning and Disclaimer of Liability
74.03: District Application
74.04: General Provisions
74.05: Establishment of Zoning Districts
74.06: "FW", Floodway District
74.07: "FF", Flood Fringe District
74.08: Subdivisions
74.09: Public Utilities, Roadways, Roads and Bridges
74.10: Manufactured Homes and Manufactured Home Parks
74.11: Administration
74.12: Amendments and Variances
74.13: Conditional Uses
74.14: Non-Conforming Uses
74.15: Penalties for Violation
74.16: Amendments

74.01: STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSE:

A. Statutory Authorization: This Section is established pursuant to Minnesota Statutes Chapter 103F and 462, as may be amended.

B. Findings of Fact:

1. The flood hazard areas of the City of Clear Lake, Minnesota are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. Methods Used to Analyze Flood Hazards. This Chapter is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

C. Statement of Purpose: It is the purpose of this District to promote the public health, safety, and general welfare and to minimize those losses described in Section 74.1.B.1 by provisions contained herein.

74.02: WARNING AND DISCLAIMER OF LIABILITY: This Ordinance does not imply that areas outside the "FP", Floodplain Overlay District boundaries or land uses allowed within this District will be free from flooding or flood damages. This section shall not create liability on the part of the City of Clear Lake or any officer or employee thereof for any flood damages which result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

74.03: DISTRICT APPLICATION: The "FP", Floodplain Overlay District shall be applied to and superimposed as an overlay upon all districts as existing or amended by the text and map of this Ordinance. The regulations and requirements imposed by the "FP", Floodplain Overlay District shall be in addition to those established by all other districts of this Ordinance. The "FP", Floodplain Overlay District shall be established based upon the specific information contained in the Flood Boundary, Floodway, and Flood Insurance Rate Maps and the Flood Insurance Study for the City of Clear Lake. All aforementioned official road maps and documents are hereby adopted by reference and declared to be an integral part of this Ordinance.

74.04: GENERAL PROVISIONS:

A. Lands to Which the Section Applies: This District shall apply to all lands within the jurisdiction of the City of Clear Lake shown on the official Zoning Map and/or the attachments thereto as being located within the boundaries of the 100 year regional flood specified as the Floodway or Flood Fringe Districts.

B. Establishment of Official Zoning Map: The official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Ordinance. The attached material shall include the Flood Boundary and the current Floodway Map and Flood Insurance Rate Map. The official Zoning Map shall be on file in the office of the Zoning Administrator.

1. Regulatory Flood Protection Elevation. The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the 100 year regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

C. Rules for Interpretation of District Boundaries: The boundaries of the Floodplain Overlay District shall be determined by scaling distances on the official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official Zoning Map, as for example, where there appears to be a conflict between a mapped boundary and actual field conditions, the City Engineer shall make the necessary interpretation. The person contesting the location of the district boundary shall be given a reasonable opportunity to present a case and to submit technical evidence if so desired, pursuant to Chapter 8 of this Ordinance.

74.05: ESTABLISHMENT OF ZONING DISTRICTS:

A. Floodplain Subdistricts: The area within a floodplain district is further divided into two districts.

1. Floodway District. Includes the channel of a river or stream and those portions of the adjoining floodplain which are required to carry and discharge the regional flood. The Floodway District shall include those areas designated as floodway on the Flood Boundary and Floodway Map.

2. Flood Fringe District. Includes the area outside of the floodway, but subject to inundation by the 100 year regional floods. The Flood Fringe District shall include those areas designated as floodway fringe on the Flood Boundary and Floodway Map.

74.06: "FW". FLOODWAY DISTRICT:

A. The permitted uses shall be subject to other more restrictive limitations which may be imposed by this Ordinance. The following are permitted uses within the FP-FW District:

1. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and crop harvesting, but not including animal feedlots.

2. Industrial-commercial loading areas, parking areas, and airport landing strips.

3. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4. Residential lawns, gardens, parking areas, and play areas.

B. Standards for FW Floodway Permitted Uses:

1. The use shall have a low flood damage potential.

2. The use shall be permissible in the underlying zoning district if one exists.

3. The use shall not obstruct flood flows or increase flood elevations and shall not involve permanent or temporary structures, fill, obstructions, excavations or storage of materials or equipment.

C. Permitted Accessory Uses: None

D. Conditional Uses: An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Chapter 4 and Sections 74.13 of this Ordinance and subject to other more restrictive limitations which may be imposed by this Ordinance, the following uses may be allowed as a conditional use permit in the FP-FW District:

1. Structures accessory to the uses listed in Section 74.06.A above, and the uses listed in Section 74.06.D.2-8 below.

2. Extraction and storage of sand, gravel, and other materials.

3. Marinas, boat rentals, docks, piers, wharves, and water control structures.

4. Railroads, streets, bridges, utility transmission lines, and pipelines.

5. Storage yards for equipment, machinery, or materials.

6. Placement of fill.

7. Structural works for flood control such as levees, dikes and flood walls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10 year frequency flood event.

E. Standards for Floodway Conditional Uses: No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses shall be allowed as a conditional use which, acting alone or in combination with existing or anticipated future uses, adversely affect the capacity of the floodway, or increases flood heights. Consideration of the effects of a proposed use shall be based upon the reasonable assumption that there will

be an equal degree of encroachment extending for a significant reach on both sides of the stream. All conditional use applications shall be accompanied by a floodway impact statement drafted by a registered engineer. The City Engineer shall be responsible for submitting the proposal and application to the Department of Natural Resources and any other governmental unit having jurisdiction over the area for review and comment.

1. Fill:

   a. Fill, dredge spoil and all other similar materials deposited or stored in the floodplain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

   b. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

   c. As an alternative, and consistent with Section 74.06.E.1.b immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100 year or regional flood but only after the governing body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the Sherburne County Recorder.

F. Accessory Structure:

1. Accessory structures shall not be designed for human habitation.

2. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters.

   a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow.

   b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

3. Accessory structures shall be elevated on fill or structurally dry flood-proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood

proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structure must meet the following additional standards, as appropriate:

a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and

b. Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly floodproofed.

G. Storage of Material and Equipment: The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life, is prohibited.

Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily movable from the are within the time available after flood warning.

H. Garbage and Solid Waste Disposal: No conditional use permits for garbage and waste disposal sites shall be issued for floodway areas. There shall be no further encroachment upon the floodway at existing sites.

I. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statutes 1976, Chapter 103A, B, E, F, G and I. Community-wide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway.

A levee, dike or flood wall constructed in the floodway shall not cause an increase to the 100 year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

74.07: "FF', FLOOD FRINGE DISTRICT:

A. The permitted uses shall be subject to other more restrictive limitations which may be imposed by this Ordinance. The following shall be permitted uses within the FP-FF District:

1. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and crop harvesting.

2. Industrial-commercial loading areas, parking areas, and airport landing strips.

3. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4. Residential lawns, gardens, parking areas, and play areas.

B. The conditional uses shall be subject to other more restrictive limitations which may be imposed by this Ordinance. The following are conditional uses which may be allowed within the FP-FF District:

1. Any structure that is not elevated on fill or flood proofed in accordance with Section 74.07.B shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Chapter 4 and Sections 74.07.C and 74.13 of this Ordinance.

a. Residential Uses. Residences shall be constructed on fill with the first floor or basement floor at or above the regulatory flood protection elevation. The finished fill elevation shall be no more than one foot below the regulatory flood protection elevation for the particular area and shall extend at such elevation at least fifteen (15) feet beyond the limits of any structure or building erected thereon.

b. Non-Residential Structures. Commercial, manufacturing, and industrial structures shall ordinarily be elevated on fill so that their first floor (including basement) is above the Regulatory Flood Protection Elevation, but may in special circumstances, be flood proofed in accordance with the State Building Code. Structures that are not elevated to above the Regulatory Flood Protection Elevation shall be flood proofed to FP-1 or FP-2 classification as defined by the State Building Code. Structures flood proofed to FP-3 or FP-4 classification shall not be permitted.

C. Standards for Flood Fringe Uses:

1. The use shall have a low flood damage potential.

2. The use shall be permissible in the underlying zoning district if one exists.

3. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

4. Residential Uses. Residences that do not have vehicular access at or above an elevation not more than two feet below the Regulatory Flood Protection Elevation shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board shall specify limitations on the period of use or occupancy of the residence.

5. Business Uses. Commercial structures generally must be constructed on fill with no first floor or basement floor below the flood protection elevation. Accessory land uses, such as yards, railroads tracks, and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted, in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the regional flood.

6. Manufacturing and Industrial Uses. Manufacturing and industrial buildings, structures and appurtenant works shall be protected to the flood protection elevation. Measures shall be taken to minimize interference with normal plant operations especially for streams having protracted flood durations. Certain necessary land uses such as yards and parking lots may be at lower elevations subject to requirements set out in paragraph 5 above. In considering permit applications, the City Engineer shall give due consideration to needs of an industry whose business requires that it be located in floodplain areas.

7. Waste Treatment and Waste Disposal.

    a. No new construction, addition, or modification to existing waste treatment facilities shall be permitted within the flood fringe unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with, and approved by the Minnesota Pollution Control Agency. The emergency plans and procedures must provide for measures to prevent introduction of any pollutant or toxic material into the flood waters.

b. There shall be no disposal of garbage or solid waste materials within flood fringe areas except upon issuance of a conditional use permit at sites approved by the Minnesota Pollution Control Agency and subject to the requirements of Section 4 of this Ordinance.

8. Flood Control Works. Establishment of flood control works shall be subject to the provisions of Minnesota Statutes 1976, c. 103G and Section 4 of this Ordinance.

a. The minimum height and design of any dikes, levees, flood walls, or similar structural works shall be based upon the flood profile of the regional flood defined between the structures subject to the following:

(1) For urban areas, the minimum height and design of structure works shall be at least three feet above the elevation of the regional flood or at the elevation of the standard project flood, whichever is greater.

(2) Modifications and additions to existing structural works shall assure that the work will provide a means of deceasing the flood damage potential in the area. Any existing structural work which potentially threatens public health or safety shall be modified or reconstructed in order to meet the standards contained herein within a period of one year of the effective date of this Ordinance.

b. Flood protection elevations and floodway limits which reflect proposed measures for flood control shall not be effective until such measures are constructed and operative unless the proposed measures will increase flood heights, in which event, the regulatory flood protection elevations and floodplain limits shall reflect the anticipated increases.

c. Detailed plans shall be submitted to the City Engineer for any new developments placed on the floodplain landward from the dikes and levees. The plans must provide for ponding areas or other measures to protect against flooding from internal drainage.

9. Fill for Construction. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100 year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi structure or multi lot

developments. These standards shall be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

10. Structural Flood Proofing Standards. Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above grade and not a structure's basement or lowest floor if A. the enclosed area is above grade on at least one side of the structure; B. is designed to internally flood and is constructed with flood resistant materials; and C. is used solely for parking of vehicles, building access or storage. The above noted alternative elevation methods are subject to the following additional standards:

    a. Design and Certification. The structure's design and as built condition shall be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

    b. Specific Standards for Above Grade, Enclosed Areas. Above grade, fully enclosed areas such as crawl spaces or tuck under garages shall be designed to internally flood and the design plans must stipulate:

        (1) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

        (2) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

c. Basements, as defined in Chapter 2 of this Ordinance, shall be subject to the following:

(1) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.

(2) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Section 74.07.C.10.d of this Ordinance.

d. All areas of non-residential structures, including basements to be placed below the Regulatory Flood Protection Elevation, shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

11. When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, land fills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan shall be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan shall clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100 year or regional flood event. The plan shall be prepared and certified by a registered professional engineering or other qualified individual acceptable to the governing body. The plan may incorporate alternative procedures for removal of the material from the floodplain if adequate flood warning time exists.

12. Storage of Materials and Equipment.

a. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

b. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the governing body.

74.08: SUBDIVISIONS:

A. Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All subdivisions shall be in compliance with the provisions of the Clear Lake Subdivision Ordinance. All lots within the floodplain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of the Subdivision Ordinance and have road access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

B. Removal of Special Flood Hazard Area Designation: FEMA has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100 year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi structure or multi lot developments. These standards shall be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

74.09: PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES:

A. Public Utilities: All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain shall be flood proofed in accordance with the State Building Code or elevated to above the Regulatory Flood Protection Elevation.

B. Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the Floodway District shall comply with Section 74.06 of this Ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

C. On-Site Sewage Treatment and Water Supply Systems: Where public utilities are not provided:

1. On-site water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

2. New or replacement on-site sewage treatment systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current state wide standards for on-site sewage treatment systems shall be determined to be in compliance with this Ordinance.

74.10: MANUFACTURED HOMES AND MANUFACTURED HOME PARKS:

A. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 74.08 of this Ordinance and other applicable provisions of this Ordinance.

B. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in the A1-30, AH and AE on the City's FIRM Map will be treated as a new structure and may be placed only if elevated in compliance with Section 74.07.B.1.a of this Ordinance.

1. All manufactured homes shall be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement shall be in addition to applicable state or local anchoring requirements for resisting wind forces.

74.11: ADMINISTRATION:

A. Zoning Administrator: The Zoning Administrator shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance, the Zoning Administrator shall notify the person responsible for such violation in accordance wit the procedures stated in Section 74.15 of this Ordinance.

B. Floodplain Use Permit Requirements:

1. Permit Required. A floodplain use permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure or land; prior to the change or extension of a non-conforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.

C. Application and Fee. A floodplain use permit shall be applied for from the Zoning Administrator. Said application shall be made in duplicate and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel. An application fee as established by City Council resolution shall be charged for each use permit and shall not be refunded.

D. Determination. Within ten (10) days after the application for a floodplain use permit, the City Engineer shall determine whether the change, modification, or alteration conforms to the requirements of all applicable City and State regulations and ordinances. This time limit for determination of acceptability shall be automatically extended should referral to, or permit from, another governmental jurisdiction be required. The applicant shall be advised in writing of the City Engineer's determination and findings and if acceptable, a floodplain use permit shall be granted.

E. Security.

1. Upon approval of a floodplain use permit, the City shall be provided with financial security prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall guarantee conformance and compliance with the conditions of the use permit and the codes and ordinances of the City.

2. The financial security shall be in the amount of the City Engineer's and/or City Building Official's estimated costs of labor and materials for the proposed improvements or development.

3. The City shall hold the security until completion of the proposed improvements or development at which time a certificate of occupancy indicating compliance with the floodplain use permit and codes and ordinances of the City may be issued by the City Building Official and said security released. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures

shall be certified by a registered professional engineer or registered architect.

F. Compliance. No new structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this Section and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway, Flood Fringe, and General Floodplain Districts, all uses not listed as permitted uses or conditional uses in Sections 74.06 and 74.07, respectively, shall be prohibited. In addition, a caution is provided here that:

1. New manufactured homes and replacement manufactured homes are subject to the general provisions of this Ordinance and specifically Section 74.10 of this Ordinance.

2. Modifications, additions, structural alterations or repair after damage to existing non-conforming structures and non-conforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically, Section 74.15 of this Ordinance.

3. As built elevations for elevated or flood proofed structures shall be certified by ground surveys and flood proofing techniques shall be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Section 74.11 of this Ordinance.

G. Certificate of Zoning Compliance for a New, Altered, or Non-Conforming Use: It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.

H. Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance: Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Chapter 10 of this Ordinance.

I. Certification: The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the

provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

J. Record of First Floor Elevation: The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator shall also maintain a record of the elevation to which structures or and alterations additions to structures are flood proofed.

74.12: AMENDMENTS AND VARIANCES:

A. In addition to the procedures and requirements for amendments and variances as established in Chapter 5 of this Ordinance, the Commissioner of Natural Resources shall be given at minimum a ten (10) day notice of any public hearing, and a review and written report must be obtained from the Minnesota Department of Natural Resources and any other governmental body or commission having jurisdiction for such changes, additions or modifications affecting a "FP", Floodplain Overlay District. The Commissioner of Natural Resources shall be advised in writing of all decisions made regarding variances and amendments.

B. No variance or amendment shall have the effect of allowing a prohibited use within a FP District, permit a lesser degree of flood protection than the established flood protection elevation, and/or permit standards lower than those required under applicable state law.

C. Flood Insurance Notice and Record Keeping: The Zoning Administrator shall notify the applicant for a variance that:

1. The issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance. Construction below the 100 year or regional flood level increases risks to life and property.

2. Such notification shall be maintained with a record of all variance actions. The City shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biannual report submitted to the Administrator of the National Flood Insurance Program.

74.13: CONDITIONAL USES: Requires a conditional use permit based upon procedures set forth in and regulated by Chapter 4 of this Ordinance. In addition, the City Engineer shall determine whether the proposed conditional use location is within a floodway or flood fringe area. Upon such determination, the applicable conditions,

provisions and restrictions shall be imposed. The Commissioner of Natural Resources shall be given at minimum ten (10) days notice of the required public hearing and shall be advised in writing of decisions made concerning any conditional use.

A. Procedures and Standards for Evaluating Proposed Conditional Uses:

1. Information Required. Subject to other requirements which may be imposed by this Ordinance, upon receipt of an application for a conditional use permit for a use within the Floodplain District, the applicant shall be required to furnish such of the following information as is deemed necessary for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is in the Floodway or the Flood Fringe.

   a. A typical valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.

   b. Plan (surface view) at a scale deemed acceptable to the City showing the nature, locations, dimensions, and elevation of the lot, contours of the ground, fill; storage of materials; flood proofing measures; the arrangement of all proposed and existing structures on the site; locations and elevations of streets; existing and proposed utilities septic tanks or water wells; existing land uses and vegetation upstream and downstream; soil type, and the relationship of the above to the location of the channel.

   c. Profile showing the slope of the bottom of the channel or flow line of the stream for at least five hundred (500) feet in either direction from the proposed development.

2. Supplementary Considerations. In acting upon the conditional use application, the governing body shall consider all relevant factors specified in Chapter 4 of this Ordinance in addition to:

   a. The danger to life and property due to increased flood heights or velocities caused by encroachments.

   b. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts, or other hydraulic structures.

   c. The water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

e. The importance of the services provided by the proposed facility to the community.

f. The requirements of the facility for a waterfront location.

g. The availability of alternative locations not subject to flooding for the proposed use.

h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

j. The safety of access to the property in times of flood for ordinary and emergency vehicles.

k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

l. Such other factors which are relevant to the purposes of this Ordinance.

B. Conditions Attached to Conditional Use Permits: Upon consideration of the factors listed above and the purposes of this Ordinance, the governing body may attach such conditions to the granting of conditional use permits, as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

1. Modification of waste treatment and water supply facilities.

2. Limitations on period of use, occupancy, and operation.

3. Limitation of operational controls, sureties, and deed restrictions.

4. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

5. Flood proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing

measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

74.14: NON-CONFORMING USES:

A. Reference: Non-Conforming Buildings, Structures and Uses - Chapter 15 of this Ordinance.

74.15: PENALTIES FOR VIOLATION:

A. Reference: Enforcement and Penalties - Chapter 10 of this Ordinance.

74.16: AMENDMENTS:

A. The floodplain designation on the official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the floodplain. Special exceptions to this rule may be allowed by the Commissioner of Natural Resources if determined that, through other measures, lands are adequately protected for the intended use.

B. All amendments to this Ordinance, including amendments to the official Zoning Map, shall be submitted to and approved by the Commission of Natural Resources prior to adoption. Changes in the official Zoning Map shall meet the FEMA's Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources shall be given ten (10) days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the Chapter amendment or technical study under consideration.

PASSED this 7th day of June 1999.

CITY OF CLEAR LAKE

William Kiffmeyer, Mayor