

## **Chapter 28** **Migratory Bird Production Area**

### **Part 1** **General Provisions**

#### **23-28-101 Title.**

This chapter is known as the "Migratory Bird Production Area."

Enacted by Chapter 273, 2009 General Session

#### **23-28-102 Definitions.**

As used in this chapter:

- (1) "Migratory bird" is as defined in 16 U.S.C. Sec. 715j.
- (2) "Migratory bird production area" means an area of land that is:
  - (a) created under this chapter; and
  - (b) used according to the description in Subsections 23-28-201(1)(b)(iii)(A) through (B).

Enacted by Chapter 273, 2009 General Session

### **Part 2** **Migratory Bird Production Area**

#### **23-28-201 Creation of a migratory bird production area.**

- (1)
  - (a) On or before July 1, 2010, an owner or owners of at least 500 contiguous acres of land in an unincorporated area may dedicate the land as a migratory bird production area by filing a notice of dedication with the county recorder of the county in which the land is located.
  - (b) The notice of dedication shall contain:
    - (i) the legal description of the land included within the migratory bird production area;
    - (ii) the name of the owner or owners of the land included within the migratory bird production area; and
    - (iii) an affidavit signed by each landowner that all of the land, except as provided by Subsection (2), within the migratory bird production area is:
      - (A) actively managed for migratory bird:
        - (I) production;
        - (II) habitat; or
        - (III) hunting; and
      - (B) used for a purpose compatible with the purposes described in Subsection (1)(b)(iii)(A).
  - (c) A person who files a notice of dedication under this section shall give a copy of the notice of dedication within 10 days of its filing to the legislative body of the county in which the migratory bird production area is located.
- (2)
  - (a) The notice of dedication may designate land, the amount of which is less than 1% of the total acreage within a migratory bird production area, upon which the landowner may build a structure described in Subsection 23-28-302(1)(b).

- (b)
  - (i) An owner may build or maintain a road, dike, or water control structure within the migratory bird production area.
  - (ii) A road, dike, or water control structure is not considered a structure for purposes of Subsection (2)(a).
- (3)
  - (a) Within 30 days of the day on which the county legislative body receives a copy of the notice of dedication under Subsection (1)(c), the county legislative body may bring an action in district court to cancel or revise a migratory bird production area on the basis that an affidavit filed as part of the notice of dedication under Subsection (1)(b)(iii) is inaccurate.
  - (b) In bringing the action, the county legislative body shall specify the portion of the migratory bird production area and the affidavit subject to the action.
  - (c) In an action brought under this Subsection (3), the person who files an affidavit described in Subsection (3)(a) has the burden to prove by a preponderance of the evidence that the affidavit is accurate.
  - (d) If the court cancels or revises a migratory bird production area, the person who filed the original notice of dedication shall file a revision notice with the county recorder reflecting the court's order.

Enacted by Chapter 273, 2009 General Session

**23-28-202 Removing property from a migratory bird production area.**

- (1) A landowner may file a revision notice with the county recorder of the county in which the migratory bird production area is located to remove land from a migratory bird production area.
- (2) The revision notice shall contain:
  - (a) a legal description of the land removed from the migratory bird production area; and
  - (b) the name of the owner or owners of the land removed from the migratory bird production area.
- (3) A person who files a revision notice under this section shall give a copy of the revision notice within 10 days of its filing to the legislative body of the county in which the migratory bird production area is located.
- (4) If removing land from a migratory bird production area results in a migratory bird production area of less than 300 contiguous acres:
  - (a) the migratory bird production area ceases to exist; and
  - (b) the landowner shall:
    - (i) notify each landowner within the former migratory bird production area; and
    - (ii) file the revision notice required by this section for the entire migratory bird production area.

Amended by Chapter 218, 2010 General Session

**Part 3  
Protections**

**23-28-301 Farmland Assessment Act.**

- (1) Creation of a migratory bird production area does not impair the ability of land within the migratory bird production area to qualify for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act.
- (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, is determined exclusively by the provisions of that act, notwithstanding the land's location within a migratory bird production area.

Enacted by Chapter 273, 2009 General Session

**23-28-302 Limitations on local regulations.**

- (1)
  - (a) A county within which a migratory bird production area is located shall encourage the continuity, development, and viability of the migratory bird production area.
  - (b) A structure or improvement historically or customarily used in conjunction with a migratory bird production area is considered a permitted use under the county's zoning law, ordinance, or regulation.
- (2) A county within which a migratory bird production area is located may not:
  - (a) enact a law, ordinance, or regulation that unreasonably restricts an activity normally associated with the migratory bird production area;
  - (b) change the zoning designation of, or a zoning regulation applying to land within a migratory bird production area unless the county receives written approval for the change from all the landowners within the migratory bird production area; or
  - (c) enact a law, ordinance, or regulation concerning the use, operation, or discharge of a firearm that is more restrictive than state law, except as provided by Subsection 23-14-1(3)(b).

Enacted by Chapter 273, 2009 General Session

**23-28-303 Nuisances.**

- (1)
  - (a) A county shall exclude the activities described in Subsection (1)(b) from the definition of public nuisance in a county law or ordinance regulating a public nuisance.
  - (b) An activity or occurrence normally associated with a migratory bird production area is not a nuisance, including:
    - (i) hunting;
    - (ii) discharging a firearm;
    - (iii) improving habitat;
    - (iv) trapping;
    - (v) eradicating weeds;
    - (vi) discing;
    - (vii) planting;
    - (viii) impounding water;
    - (ix) raising a bird or other domestic animal;
    - (x) grazing;
    - (xi) an activity conducted in the normal course of an agricultural operation as defined in Section 78B-6-1101; and
    - (xii) an odor.
- (2) In a civil action for nuisance or a criminal action for public nuisance under Section 76-10-803, it is a complete defense if the action is:

- (a) normally associated with a migratory bird production area;
  - (b) conducted within a migratory bird production area; and
  - (c) not in violation of any federal or state law.
- (3) An owner of a new development located in whole or in part within 1,000 feet of a migratory bird production area shall provide the following notice on any plat filed with the county recorder:

**"Migratory Bird Production Area**

This property is located in the vicinity of an established migratory bird production area in which hunting and activities related to the management and operation of land for the benefit of migratory birds have been afforded the highest priority use status. It can be anticipated that these uses and activities may now or in the future be conducted on land within the migratory bird production area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience that may result from activities normally associated with a migratory bird production area."

Enacted by Chapter 273, 2009 General Session

**23-28-304 Annexation restrictions.**

A municipality may annex real property within a migratory bird production area as provided by Title 10, Chapter 2, Part 4, Annexation.

Enacted by Chapter 273, 2009 General Session

**23-28-305 Application of Water Quality Act.**

A migratory bird production area is subject to Title 19, Chapter 5, Water Quality Act.

Enacted by Chapter 273, 2009 General Session