

CHAPTER 8420

BOARD OF WATER AND SOIL RESOURCES

WETLAND CONSERVATION

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8420.0100 PURPOSE.

This chapter implements the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175; Laws 1994, chapter 627, Laws 1996, chapter 462, and Laws 2000, chapter 382. This chapter shall be interpreted to implement the purpose of the act, which is to

[For text of items A to D, see M'R]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: 25 SR 152

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0102 INTRODUCTION.

The Wetland Conservation Act achieves the purpose in part 8420 0100 by requiring persons proposing to impact a wetland by draining, excavating, or filling to first, attempt to avoid the impact, second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of equal function and value. The provisions of the Wetland Conservation Act related to excavation only apply in the permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands. As specified in greater detail in part 8420 0122, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. The Wetland Conservation Act became effective on January 1, 1992, and this chapter and portions of Minnesota Statutes, chapters 103A, 103B, 103E, 103F, and 103G, govern its implementation. The public is encouraged to contact their local government unit or soil and water conservation district for general information on wetlands and the interpretation of this chapter. This part is for general introductory information only. The other parts of this chapter shall control over this part.

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

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8420.0103 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

The public values of wetlands must be based upon the functions of wetlands, including.

[For text of items A to G, see M.R.]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: 25 SR 152

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8420.0105 SCOPE.

Wetlands must not be drained, excavated, or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands. This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. This chapter does not prevent control of noxious weeds if the control does not drain or fill the wetland. This chapter regulates excavation in the permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands or if excavation results in wholly or partially draining or filling wetlands

This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section 103G 005, subdivisions 15 and 15a, which have been inventoried by the commissioner of natural resources according to Minnesota Statutes, section 103G 201, except that

A for projects affecting public waters wetlands, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit shall make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption determinations, or

B for projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss or exemption determination if a public waters work permit is required and the commissioner includes the provisions of chapter 8420 in the public waters work permit

This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

This chapter does not apply to peat mining as defined in Minnesota Statutes, section 93 461, which is subject to the permit to mine and reclamation requirements of Minnesota Statutes, sections 93 44 to 93.51, and the rules of the commissioner adopted under those sections

This chapter does not require state agencies to obtain local government unit approvals. However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter

In addition to the provisions of this chapter, governmental decisions on draining, excavating, 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

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

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8420.0110 DEFINITIONS.

[For text of subs 1 to 1b, see M.R.]

Subp. 2. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175, Laws 1994, chapter 627; Laws 1996, chapter 462, and Laws 2000, chapter 382.

Subp. 3. **Activity.** "Activity" means draining or filling a wetland wholly or partially, or excavating in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

[For text of subs 4 to 10, see M.R.]

Subp. 10a. **Contractor.** "Contractor" means an individual, business, or other organization providing a product or service to a landowner or the landowner's agent.

[For text of subp 11, see M.R.]

Subp. 12. **Day or days.** "Day" or "days" means working days when used in a time period of 15 days or less and calendar days when used in a time period greater than 15 days. The day of the event shall not be used in counting any period of time.

Subp. 13a. **Degraded wetland.** "Degraded wetland" means a wetland that provides minimal wetland function and value due to human activities such as drainage, diversion of watershed, filling, excavating, pollutant runoff, and vegetative or adjacent upland manipulation.

[For text of subs 14 to 16, see M.R.]

Subp. 17. **Excavation.** "Excavation" means the displacement or removal of substrate, sediment, or other materials by any method.

[For text of subs 18 to 22, see M.R.]

Subp. 23. **Impact.** "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling, or by excavating in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

Subp. 24. **Impacted wetland.** "Impacted wetland" means a wetland that has been drained, excavated, or filled, partially or wholly, and is subject to replacement.

[For text of subs 25 and 28, see M.R.]

Subp. 29. **Landowner.** "Landowner" means a person or entity having the rights necessary to drain, excavate, or fill a wetland, or to establish and maintain a replacement or banked wetland. Typically, the landowner is a fee title owner or a holder of an easement, license, lease, or rental agreement providing the necessary rights. The right must not be limited by a lien or other encumbrance that could override the obligations assumed with the replacement or banking of a wetland.

[For text of subs 29a to 31, see M.R.]

Subp. 31a. **Minor watershed.** "Minor watershed" means one of the 5,600 minor watersheds established by the Minnesota Department of Natural Resources for the "1979 Watershed Mapping Project" pursuant to Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a), and updated in 1995. This data is available on the Internet at <http://del.dnr.state.mn.us>

Subp. 31b. **New wetland credit or NWC.** "New wetland credit" or "NWC" means wetland replacement credit that can be used for any portion of wetland replacement.

Subp. 31c. **Native vegetation.** "Native vegetation" means plant species that are indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity.

Subp. 32. **Nondegraded wetland.** "Nondegraded wetland" means a wetland that has not been degraded.

Subp. 32a. **Noninvasive vegetation.** "Noninvasive vegetation" means plant species that do not typically invade, or rapidly colonize existing, stable plant communities.

Subp. 32b. **On-site.** "On-site" means within or directly adjacent to a project.

[For text of subs 33 to 37, see MR]

Subp 37a. **Public value credit or PVC.** "Public value credit" or "PVC" means wetland replacement credit that can only be used for the portion of wetland replacement required above a 1:1 ratio.

[For text of subp 38, see MR]

Subp 39 **Public waters wetlands.** "Public waters wetlands" means types 3, 4, and 5 wetlands, as defined in part 6115 0170, as adopted at 25 SR 143.

Subp 39a **Public waters.** "Public waters" means public waters of the state as defined in part 6115 0170 as adopted at 25 SR 143.

[For text of subp 40, see MR]

Subp 41 **Restoration.** "Restoration" means reestablishment of an area that was historically wetlands or remains as a degraded wetland.

[For text of subs 42 to 46, see MR]

Subp 47a **State wetland banking system, wetland bank, or bank.** "State wetland banking system," "wetland bank," or "bank" means a system of identifying wetlands restored or created for replacement credit, providing for, and facilitating and tracking the exchange of wetland banking credits for projects that require replacement plans or wetland mitigation required by other local, state, or federal authorities.

[For text of subs 48 and 49, see MR]

Subp 50 **Watershed.** "Watershed" means the 81 major watershed units delineated by the map "State of Minnesota Watershed Boundaries - 1979" as produced by the Minnesota Department of Natural Resources, Office of Planning and Research, Water Policy Planning Program, with funding from the Legislative Commission on Minnesota Resources. This map is available on the Internet at <http://www.dnr.state.mn.us/waters>.

[For text of subp 51, see MR]

Subp. 51a. **Wetland banking credits.** "Wetland banking credits" means acres or parts of acres of restored or created wetland or adjacent upland buffer described by type and topographic setting, or areas as described in part 8420.0540, subpart 2, that have been approved for deposit in the wetland bank.

Subp. 52. **Wetlands, a wetland, the wetland, or wetland area.**

[For text of items A and B, see MR]

C Wetlands does not include public waters wetlands and public waters unless reclassified as wetlands by the commissioner under Minnesota Statutes, section 103G.201.

[For text of item D, see MR]

[For text of subs 53 to 54a, see MR]

Statutory Authority: *MS s 14 386, L. 2000 c 382 s 20*

History: *25 SR 152*

NOTE: The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002.

8420.0112 INCORPORATION BY REFERENCE.

This chapter incorporates by reference the following documents

[For text of item A, see MR.]

B United States Army Corps of Engineers. Wetland Delineation Manual (January 1987) including updates, supplementary guidance, and replacements, if any.

[For text of items C to E, see MR.]

F Minnesota Routine Assessment Methodology for Evaluating Wetland Functions (Board of Water and Soil Resources, Version 2.0 - September 1998).

[For text of items G to K, see MR.]

L Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective, Anderson and Craig, 1984

M. Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982)

N. Native Vegetation in Restored and Created Wetlands, Minnesota Board of Water and Soil Resources (draft version July 2000).

O 1979 Watershed Mapping Project, Minnesota Department of Natural Resources pursuant to Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a), and updated in 1995 This data is available in electronic form on the Internet from the Minnesota Department of Natural Resources at [http //deli.dnr.state.mn.us](http://deli.dnr.state.mn.us)

These documents are available through the state law library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. None of the documents are subject to frequent change .

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0115 SCOPE OF EXEMPTION STANDARDS.

When considering if a drain, excavation, or fill activity qualifies for an exemption listed in a specified clause of Minnesota Statutes, section 103G.2241, the exemption standards in part 8420.0122 apply

Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

An activity is 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

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, excavation, or filling.

Wetlands cannot be partially drained, excavated, 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 Exemptions may not be combined on a wetland that is impacted by a project.

Present and future owners of wetlands drained or filled without replacement under an exemption in part 8420.0122, subparts 1 and 2, item B, can make no use of the wetland area after it is drained, excavated, 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 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 county recorder for the county in which the project is located. 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 name of 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 8420.0122 shall ensure that:

[For text of items A to C, see MR]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0122 EXEMPTION STANDARDS.**Subpart 1. Agricultural activities.**

A replacement plan for wetlands is not required for:

[For text of items A to G, see MR.]

H. agricultural activities in a wetland that is on agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act of 1996, and is subject to United States Code, title 16, sections 3821 to 3823, or subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, sections 103A 202 and 103B 3355, and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency. Land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program. This exemption may be applied to agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act of 1996 as long as wetlands are not drained, excavated, or filled beyond what is

(1) allowed under the other exemptions in this part,

(2) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed, or

(3) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions. Documentation from the United States Department of Agriculture must be used as evidence to support this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption

Subp. 2 Drainage.

[For text of items A and B, see MR.]

C. A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems by a public drainage authority pursuant to Minnesota Statutes, chapter 103E

D. A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

For items C and D, the landowner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or sworn affidavits

E. A replacement plan is not required for draining, excavating, or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if

[For text of subitems (1) to (3), see MR.]

[For text of item F, see MR.]

G. Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve program established under Minnesota Statutes, section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subp. 3. Federal approvals. A replacement plan for wetlands is not required for activities described in items A and B

A. Activities exempted from federal regulation under United States Code, title 33, section 1344(f), as in effect on January 1, 1991.

The local government unit may 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

B. Activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and that have been approved by the Board of Water and Soil Resources, the Department of Agriculture, and the Pollution Control Agency

[For text of subp 4, see MR]

Subp 5 **Incidental wetlands.** A replacement plan for wetlands is not required for activities in wetland areas created or reestablished solely as a result of

[For text of items A to C, see MR]

D. any combination of items 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 before the culvert became plugged.

Wetland areas may be drained, excavated, or filled if the landowner can show that the wetland was created or reestablished solely by actions, the purpose of which was not to create or reestablish the wetland

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 exempt

[For text of subps 6 to 8, see MR]

Subp. 9 **De minimis.**

A Except as provided in items B and C, a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands:

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a greater than 80 percent area,

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a 50 to 80 percent area,

(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a less than 50 percent area,

[For text of subitems (4) and (5), see MR]

[For text of items B and C, see MR]

D This exemption may not be combined with another exemption on a project in this part.

Subp. 10. **Wildlife habitat.** A replacement plan for wetlands is not required for

A excavation or the associated deposition of spoil within a wetland for a wildlife habitat improvement project, if

(1) the area of deposition, and excavation if within the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion,

[For text of subitems (2) and (3), see MR.]

B. duck blinds

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

The local government unit responsible for making exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans shall be determined according to items A to E.

[For text of items A to C, see MR.]

D In those cases where an activity will occur on state land, the local government unit shall be the state agency with administrative responsibility for that land

E. A local government unit must provide knowledgeable and trained staff to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in part 8420.0260, or take other appropriate legal action to assure compliance

The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to E

Notwithstanding items A to E, the Department of Natural Resources shall be the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0210 EXEMPTION DETERMINATIONS.

A landowner intending to drain or fill a wetland without replacement, claiming exemption under part 8420.0122, may contact the local government unit before beginning draining 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 in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

An exemption may apply whether or not the local government unit has made an exemption determination. If the landowner requests an exemption determination, then the local government unit must make one

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed. The local government unit may evaluate evidence for an exemption without making a determination

The local government unit may place the decision authority for exemption determinations with the zoning administrator, or establish other procedures it considers appropriate

The local government unit decision shall be based on the exemptions standards in part 8420.0122. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner

of natural resources, and individual members of the public who request a copy within ten days of the decision.

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0220 NO-LOSS DETERMINATIONS.

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must 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 local government unit may evaluate evidence for a no-loss claim without making a determination.

The local government unit may place the decision authority for no-loss determinations with the zoning administrator, or establish other procedures it considers appropriate. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten days of the decision.

The local government unit shall make a no-loss determination if the landowner requests, if the project is consistent with part 8420.0520, subpart 5, or if either:

A. the work will not drain, excavate, or fill a wetland, except for removal of debris such as trees, logs, stumps, recently eroded materials, and trash provided such removal does not alter the original cross-section of the 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,

D. the activity is being conducted as part of an approved replacement or banking plan or is conducted or authorized by public agencies for the purpose of wetland restoration, fish and wildlife habitat restoration, or repair and maintenance of earthen containment structures; or

E. the activity is limited to excavation and removal of deposited sediment in constructed stormwater management basins or to excavation and removal of contaminated substrate, the excavated area is stabilized so as to prevent water quality degradation, and the excavation is limited to the minimum dimensions necessary for achieving the desired purpose.

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History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0225 WETLAND BOUNDARY OR TYPE DETERMINATIONS.

A. A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.

B. A local government unit that receives an application under item A may seek the advice of the technical evaluation panel and, if necessary, expand the technical evaluation panel. The local government unit may delegate the decision authority for wetland boundary or type determinations with the zoning administrator, or establish other procedures it considers appropriate.

C. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. Within ten calendar days of the decision, the local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy.

D. The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

Statutory Authority: *MS s 14.386; L 2000 c 382 s 20*

History: *25 SR 152*

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8420.0230 REPLACEMENT PLAN DETERMINATIONS.

Subpart 1 **Application.** 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 local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and Minnesota Statutes, section 103G 2372.

Within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must mail a summary of the application, which includes information to identify the applicant and the location and scope of the project, to members of the technical evaluation panel, the commissioner of natural resources, and individual members of the public who have requested a copy. The project notification must state when the comment period ends.

Within ten days of receipt of an application for approval of a replacement plan for an activity affecting 10,000 square feet or more of wetland, the local government unit must mail a copy of the application and an invitation to submit comments to members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources and individual members of the public who request a copy. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The project notification must state when the comment period ends.

An application for approval of a replacement plan includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

[For text of subitems (1) and (2), see MR]

[For text of subp 2, see MR]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

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8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

For each local government unit, there is a technical evaluation panel of three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in water resources management appointed by the local government unit. For projects affecting public waters or public

waters wetlands or affecting wetlands adjacent to the public waters or public waters wetlands, the technical evaluation panel shall also include a technical professional employee of the Department of Natural Resources. For purposes of this part, "adjacent" means within the shoreland wetland protection zone or 1,000 feet, whichever is less. One member selected by the local government unit shall act as the contact person and coordinator for the panel. Two members of the panel must be knowledgeable and trained in applying methodologies of the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al., 1979 edition), including updates, supplementary guidance or replacements of these methods provided by the board. The panel shall also be knowledgeable and trained in evaluation of wetland functions and the resulting public values. The technical evaluation panel may invite additional wetland experts to help the panel in its work.

The panel shall make technical findings and recommendations on questions of wetland functions and the resulting public values, location, size, and type for replacement plans, exemption, no-loss, and wetland boundary or type determinations avoidance and minimization requests, and for comprehensive wetland protection and management plans if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans exemption, no-loss, wetland banking, and wetland boundary and type proposals and recommend to the local government unit either approval, approval with changes or conditions, or rejection. The local government unit must consider and include the recommendation of the technical evaluation panel in its approval or denial of a plan or determination. The panel shall make no findings or recommendations without at least one member having made an on-site inspection. Panel findings and recommendations must be documented and endorsed by a majority of the members.

Applicants for exemption, no-loss, wetland boundary, wetland type, replacement plan, and banking determinations must reasonably cooperate in providing technical evaluation panels and local government units and agents and employees with access to proposed project sites for investigation, testing, and monitoring. If an applicant refuses to allow access, the local government unit may deny an application.

If the local government unit has a comprehensive wetland protection and management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations without calling the technical evaluation panel.

If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 to 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 to 8420.0760.

Statutory Authority: *MS s:14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0250 APPEALS.

Subpart 1. Appeal of replacement plan, public road project notifications, banking plan, exemption, no-loss, and wetland boundary or type decisions. The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, exemption, no-loss, or wetland boundary or type request becomes final if not appealed to the board within 15 days after the date on which the decision is mailed to those required to receive notice of the decision. This subpart applies to these determinations which are made for public road project notifications and for comprehensive wetland protection and management plans.

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 petition and payment of a nonrefundable filing fee of \$200 to the board with evidence that a copy of the petition has been mailed to the local government unit. The nonrefundable filing fee is not required for appeals petitioned by state agencies. Subsequent to receipt of a petition, the local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500 per appeal. The amount posted must be returned to the petitioner unless there is a finding under subpart 3 that the appeal is meritless, trivial, or brought solely for the purposes of delay. The local government unit shall then mail a copy of the petition to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

Subp 3 **Board appeal procedures.** Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director shall decide whether to grant the petition and hear the appeal. The board or its dispute resolution committee or executive director shall grant the petition unless the appeal is deemed meritless, trivial, or brought solely for the purposes of delay, that the petitioner has not exhausted all local administrative remedies, or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit. The board, its dispute resolution committee, or its executive director may remand the appealed decision back to the local government if the petitioner has not exhausted all local administrative remedies such as a local government unit public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate.

The appeal will be heard by the dispute resolution committee and decided by the board within 60 days after granting the petition. Parties to the appeal are the appellant, the landowner, the local government unit, and in the case of replacement plan appeals, all those required to receive notice of the local government unit decision.

The board or its dispute resolution committee or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

Upon appeal, the local government unit shall 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 shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit 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 or its dispute resolution committee will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter, and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board or its dispute resolution committee will reverse the decision, amend it, or remand it with instructions for further proceedings.

[For text of subs 4 and 5, see MR]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: 25 SR 152

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

A By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge, in writing, to the board that it is assuming its responsibilities

under this chapter and the act Local government units from which an affirmative response is not received will be given written notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, wetland boundary, wetland type, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon written agreement by the local government unit that it will assume its duties under this chapter and the act If at the end of the initial 60-day moratorium a written agreement has not been made for the local government unit to apply the law, the board can extend the moratorium until the local government unit agrees to apply the law

B If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, public road project notice reviews, wetland boundary, wetland type, or banking determinations, or if the local government unit does not have knowledgeable and trained staff, the board shall notify the local government unit in writing of its concerns The local government unit must respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's response, or none is received, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter The board may invite comments from other local governments or state and federal agencies If the board determines at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision The notice shall explain the reason for the action

If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0290 ENFORCEMENT PROCEDURES.

Subpart 1 **Enforcement authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders

Subp 2 **Cease and desist orders.** Cease and desist orders may be issued when the enforcement authority has probable cause that a drain, excavation, or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination under parts 8420.0210 and 8420.0220 and is being or has been conducted without prior approval of a replacement plan by a local government unit under part 8420.0230

A cease and desist order must not be issued if the landowner has a valid exemption, no-loss, or replacement plan determination from the local government unit or completed a public road project notification, that has not been remanded or reversed on appeal under provisions of part 8420.0250, or has sufficient evidence to support an exemption

The enforcement authority shall advise the landowner that the landowner's written application, if any, for an exemption, no-loss, or replacement plan determination, should be made immediately to the local government unit and that whatever drain, excavation, or fill work has been done may require restoration if the application for exemption, no-loss, or replacement plan determination is denied or reversed on appeal.

The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.

If an application for an exemption, no-loss, or replacement plan determination is triggered by a cease and desist order, the local government unit shall make the determination in accordance with parts 8420.0210 to 8420.0230.

In cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board.

If the determination is that the activity is exempt or results in no-loss of wetland, the decision maker shall request that the enforcement authority rescind the cease and desist order, pending the outcome of any appeal, and notify the soil and water conservation district, the enforcement authority, and the landowner.

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

Subp 3 Restoration and replacement orders. The enforcement authority shall issue a restoration order or replacement order when:

A. the drain, excavation, or fill has already been completed when discovered, or after a cease and desist order has been issued, and the landowner does not apply for an exemption, replacement plan, or no-loss determination within three weeks, or

B. the local government unit grants the application but it is reversed on appeal; or

C. the local government unit denies the application.

Promptly upon being informed of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition. Restoration shall be ordered unless the soil and water conservation district person, with the concurrence of the technical evaluation panel and the enforcement authority, 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.

A restoration order must specify a date by which the landowner must 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.

The restoration order will be rescinded if the landowner obtains an after-the-fact replacement plan, or an exemption or no-loss determination from the local government unit.

A replacement order must specify a date by which the landowner must submit a replacement plan to the local government unit and a subsequent date by which the landowner must replace the wetland according to the approved replacement plan and obtain a certificate of satisfactory replacement from the soil and water conservation district.

If the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, determines that restoration will not restore all the loss caused by the drain, excavation, or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration. The order must direct the landowner to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland as ordered.

Each cease and desist, restoration, and replacement order shall state 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, with the concurrence of the technical evaluation panel and the enforcement authority, shall 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 subpart 4 and parts 8420.0500 to 8420.0630.

Subp 4 **After-the-fact replacement.** If a landowner seeks approval of a replacement plan after the proposed project has already affected the wetland, the local government unit may require the landowner to replace the impacted wetland at a ratio not to exceed twice the replacement ratio otherwise required.

Subp 5 **Misdemeanor.** A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred

Subp 6 **Contractor's responsibility when work drains or fills wetlands.**

A An agent or employee of someone other than the landowner may not drain or fill a wetland, wholly or partially, unless the agent or employee has:

(1) obtained a signed statement from the landowner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required, and

(2) mailed a copy of the statement to the local government unit with jurisdiction over the wetland

B Work in violation of this part is a misdemeanor

C The board shall develop a form to be distributed to contractors' associations, local government units, and soil and water conservation districts to comply with this part. The form must include:

(1) a listing of the activities for which a replacement plan is required,

(2) a description of the penalties for violating Minnesota Statutes, sections 103G 2212 to 103G 237,

(3) the telephone number to call for information on the responsible local government unit;

(4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and

(5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it

Statutory Authority: *MS s 14 386; L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0300 MINING.

Wetlands may not be drained, excavated, or filled as part of a project for which a permit to mine is required by Minnesota Statutes, section 93 481, except as approved by the commissioner. Draining, excavating, or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.0122.

[For text of item A, see MR.]

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

(1) no draining, excavating, or filling activities shall be conducted within wetlands for which these activities were approved but not initiated before July 1, 1993, until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan shall meet the same principles and standards for replacing wetlands under parts 8420 0500 to 8420.0630,

[For text of subitems (2) and (3), see MR.]

[For text of items C to E, see MR.]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0350 HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. **High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the less than 50 percent areas, which are those listed in part 8420 0540, subpart 5, item B.

In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

Subp 2. High priority areas.

[For text of items A to C, see MR]

D The board will review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in subpart 1 become high priority regions with board approval

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0505 PREVIOUSLY APPROVED REPLACEMENT PLANS.

Replacement plan, exemption, public road project notification, wetland boundary, wetland type, and no-loss determinations may be completed under the laws, rules, conditions, and guidelines in effect when they were approved

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0510 PROCEDURES.

Subpart 1 **Generally.** No person shall drain or fill a wetland, wholly or partially, or excavate in the temporarily or permanently flooded areas of type 3, 4, or 5 wetlands without first having a wetland replacement plan or other determination made by the governing body of the local government unit, or the lead local government unit if so designated by the board, consistent with parts 8420 0122 to 8420 0290, and provided that the activity is not prohibited under the special considerations provisions in part 8420 0540, subpart 9

[For text of subps 2 and 3, see MR.]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0520 SEQUENCING.

[For text of subps 1 and 2, see M.R.]

Subp 3 Determination of impact avoidance.

[For text of items A and B, see MR]

C. Alternatives analysis

[For text of subitem (1), see MR]

(2) The local government unit shall determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall 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. For projects proposing impacts to the permanently and semipermanently flooded areas

of type 3, 4, or 5 wetlands, the local government unit shall also determine that there are no environmentally preferable alternatives that would avoid the impact. The local government unit shall consider the following in evaluating alternatives as applicable:

[For text of units (a) to (e), see MR]

[For text of subitem (3), see MR]

Subp. 4 Determination of impact minimization.

A. The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the local government unit must consider

[For text of subitems (1) to (6), see M.R.]

(7) 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;
- (c) confine impacts to the fringe or periphery of the wetland, and
- (d) otherwise minimize impacts

[For text of item B, see MR]

[For text of subs 5 to 9, see MR]

Statutory Authority: *MS s 14.386, L 2000, c 382 s 20*

History: 25 SR 152

NOTE: The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0530 REPLACEMENT PLAN COMPONENTS.

On an application form provided by the local government unit, and with needed attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B, subitem (1), and D, do not apply, instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E.

[For text of item A, see MR]

B. either:

- (1) a signed statement confirming that the wetland acres and values will be replaced before or concurrent with the actual draining or filling of a wetland, or
- (2) an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland replacement;

C. for the impacted wetland:

[For text of subitems (1) to (6), see M.R.]

(7) 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 shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse,

(8) a map, photograph, or written description of the land use of the immediate watershed;

(9) the nature of the proposed project, its areal extent, and the impact on the wetland must be described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable,

(10) 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 replace-

ment plan. The contract or agreement must contain an acknowledgment of the covenant provisions in item D, subitem (6), 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,

(11) a list of all other local, state, and federal permits and approvals required for the activity, and

(12) other information considered necessary by the local government unit for evaluation of the activity,

D. for the replacement wetland, item C, subitems (1) to (8) and (10) to (12), and:

[For text of subitems (1) to (10), see MR]

(11) a plan for monitoring the success of the replacement plan in meeting the project goal in subitem (1), and as specified in parts 8420.0610 and 8420.0620,

(12) evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in Minnesota Statutes, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection,

(13) evidence that any drainage or property rights potentially detrimental to the replacement wetland have been acquired, subordinated, or otherwise eliminated;

(14) a five-year vegetation management plan, including seeding rates, seed mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species such as reed canary grass and purple loosestrife, and

(15) other information considered necessary for evaluation of the project by the local government unit.

[For text of item E, see MR]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

[For text of subpart 1, see MR.]

Subp 2 Type of replacement.

[For text of item A, see MR]

B Modification or conversion of nondegraded wetlands from one wetland type to another, for example by impoundment of additional water or excavation, does not constitute replacement credit.

[For text of item C, see MR]

D. The actions and areas in subitems (1) to (8) are eligible for replacement credit or wetland banking credit as determined by the local government unit in parts 8420.0500 to 8420.0760

(1) Restoration of the natural hydrology regime and vegetation on completely drained or filled wetlands and wetlands created in upland areas may receive new wetland credit in an amount not to exceed 100 percent of the total wetland area hydrologically restored

(2) Restoration of the natural hydrology regime and vegetation of jurisdictional wetlands that have been degraded by prior drainage, diversion of the natural watershed, or filling may:

(a) in a less than 80 percent area, receive public value credit in an amount up to 50 percent of the degraded wetland area, and

(b) in a greater than 80 percent area, receive new wetland credit in an amount not to exceed 25 percent of the total wetland area hydrologically restored

(3) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports 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. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored.

(4) Reestablishment of permanent native, noninvasive vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last 20 years prior to the date of application for a replacement plan or bank plan in accordance with one of the following:

(a) if the wetland was annually seeded, in rotation, or set aside for six or more of the last 20 years, the wetland is eligible for public value credit not to exceed 50 percent of the wetland area; or

(b) if the wetland was annually seeded, in rotation, or set aside for ten or more years of the last 20 years, the wetland is eligible for new wetland credit based on the percent of the time the wetland area was annually seeded, in rotation, or set aside during the 20-year period.

(5) Buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent and contiguous to replacement wetlands and adjacent existing wetlands, provided that the upland buffer has a minimum width of 165 feet and the buffer vegetative establishment or preservation plan must be approved by the technical evaluation panel. Replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used as public value credits for replacement above a 1.1 ratio.

(6) Wetland areas restored for conservation purposes under terminated easements or contracts are eligible for up to 75 percent of new wetland credit and adjacent upland buffer areas reestablished to permanent native, noninvasive vegetative cover are eligible for public value credit above a 1.1 ratio in an amount not to exceed 25 percent of the restored wetland area.

(7) Reestablishment and maintenance of permanent native, noninvasive vegetation cover on a wetland that is dominated by invasive or exotic species may receive public value credit. Replacement credit may not exceed 25 percent of the total wetland area vegetatively restored and the vegetative restoration and maintenance plan must be approved by the technical evaluation panel. The technical evaluation panel may require a monitoring period in excess of 12 months after the vegetative restoration is completed before approving the site for replacement credit.

(8) Wetland areas established in nonwetland areas due to mineral extraction activities may receive new wetland credits if all of the following criteria are met:

(a) application for replacement credit is made within ten years after the last day that extraction activities have taken place;

(b) the United States Army Corps of Engineers has approved the use of the area for wetland replacement,

(c) a wetland establishment and management plan have been approved by the technical evaluation panel and implemented by the landowner or authorized,

(d) the wetland area meets the criteria in part 8420.0550, and

(e) if the land is not state owned, a conservation easement in favor of the state has been accepted by the state and recorded in the county recorder's office, or if the land is state owned, covenants and restrictions are recorded that identify that the wetland area is a replacement wetland subject to the provisions of this chapter.

E. The local government unit may allow constructed storm water treatment basins for replacement credit provided.

(1) the local governmental unit has adopted, implemented, and funded a storm water management plan that provides for the removal of sediments whenever the phosphorus removal efficiency drops below 50 percent efficiency based on actual water quality monitoring data, calibrated modeling, or physical measurement of the pond volume,

(2) the basins are constructed in nonwetland areas that are directly tributary to public waters, wetlands, or other waters of the state that are not storm water treatment ponds; and

(3) the basins are associated with an ongoing or proposed project that will impact a wetland

F Credits under item E are determined according to subitems (1) to (4)

(1) Public value credit may be allowed for up to 75 percent of the normal pool area of an isolated one-cell, wet detention basin or the upper cell of a two-cell system provided the basin is designed and constructed to retain at least 60 percent of the phosphorus loading expected in the runoff from a one-year, 24-hour storm based on the fully developed watershed tributary to the basin.

(2) Public value credit may be allowed for up to 75 percent of the one-year design pool area of a storm water infiltration area that also has an established native, noninvasive vegetative cover.

(3) New wetland credit may be allowed for up to 100 percent of the normal pool area of the downstream cell of a two-cell, wet detention system provided.

(a) the two cells are completely separated by a barrier for up to the ten-year critical event;

(b) the upstream basin meets the criteria in subitem (1),

(c) the downstream cell is designed for a maximum 24-inch rise in water level for the ten-year critical storm event,

(d) the standards in part 8420.0550 are followed; and

(e) the design goal is a palustrine emergent wetland for the downstream cell

(4) Buffer areas installed adjacent to two-celled systems that are consistent with this subpart may be allowed for public value credit in an amount up to 75 percent of the acreage of the downstream cell of a two-cell system, provided the buffer is applied only to the downstream cell, is no narrower than 16.5 feet at any one location, and is adjacent to the entire periphery of the downstream cell.

G Storm water detention basins for replacement are not eligible for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630

Subp. 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 or other security acceptable to the local government unit is submitted to the local government unit 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 local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation. The exceptions contained in subpart 5 do not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996

Subp. 4. Wetland replacement siting.

A. Siting wetland replacement must follow this priority order:

(1) on site or in the same minor watershed as the affected wetland,

(2) in the same watershed as the affected wetland,

(3) in the same county as the affected wetland;

- (4) in an adjacent watershed or county to the affected wetland, and
 (5) statewide, for:

(a) wetlands affected in greater than 80 percent areas, and

(b) public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven-county metropolitan area must be replaced in the affected county or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county

B The exemption in item A, subitem (5), does not apply to replacement completed using wetlands banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996

C When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in item A, the applicant may seek opportunities at the next level:

D For the purposes of this subpart, "reasonable, practicable, and environmental beneficial replacement opportunities" are opportunities that

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration,

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity,

(3) do not adversely affect other habitat types of ecological communities that are important in maintaining the overall biological diversity of the area, and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes

E Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas

Subp 5. Replacement for public transportation projects.

A Wetlands impacted by public transportation projects may be replaced statewide, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven-county metropolitan area by public roads must be replaced in the affected county, or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county

[For text of item B, see MR]

C For projects involving draining, excavating, or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase wetland banking credits if available from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c) Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than \$400 per acre

[For text of subitems (1) to (3), see MR]

D. A replacement plan for wetlands is not required for individual projects that result in the filling, excavating, or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes This item only applies to authorities for public transportation projects that.

(1) minimize the amount of wetland filling, excavating, or draining associated with the project and consider mitigating important site-specific wetland functions on site;

(2) except as provided in subitem (3), submit project-specific reports and any changes or addendums to the board, the technical evaluation panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands to be filled or drained by the project, or convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year, and

(3) for minor and emergency maintenance work impacting less than 10,000 square feet, submit project-specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled, excavated, or drained

[For text of item E, see MR]

F Those required to receive notice of public transportation projects may appeal minimization, delineation, and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of part 8420.0250.

G Changes to wetland impacts proposed in item D shall be reported to the board by the end of the calendar year in which the change is finalized

H Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace the wetlands and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained, excavated, or filled by local government public transportation projects on existing roads. Replacement of the wetlands must occur in critical rural and urban watersheds

I. Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this item. This item does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

Subp 5a Presettlement wetland acres and areas.

A For purposes of this part, the following counties are greater than 80 percent areas: Aitkin, Beltrami, Carlton, Cass; Clearwater, Cook, Crow Wing, Hubbard, Isanti, Itasca, Kanabec, Koochiching, Lake, Lake of the Woods, Mille Lacs, Pme, St. Louis, and Wadena

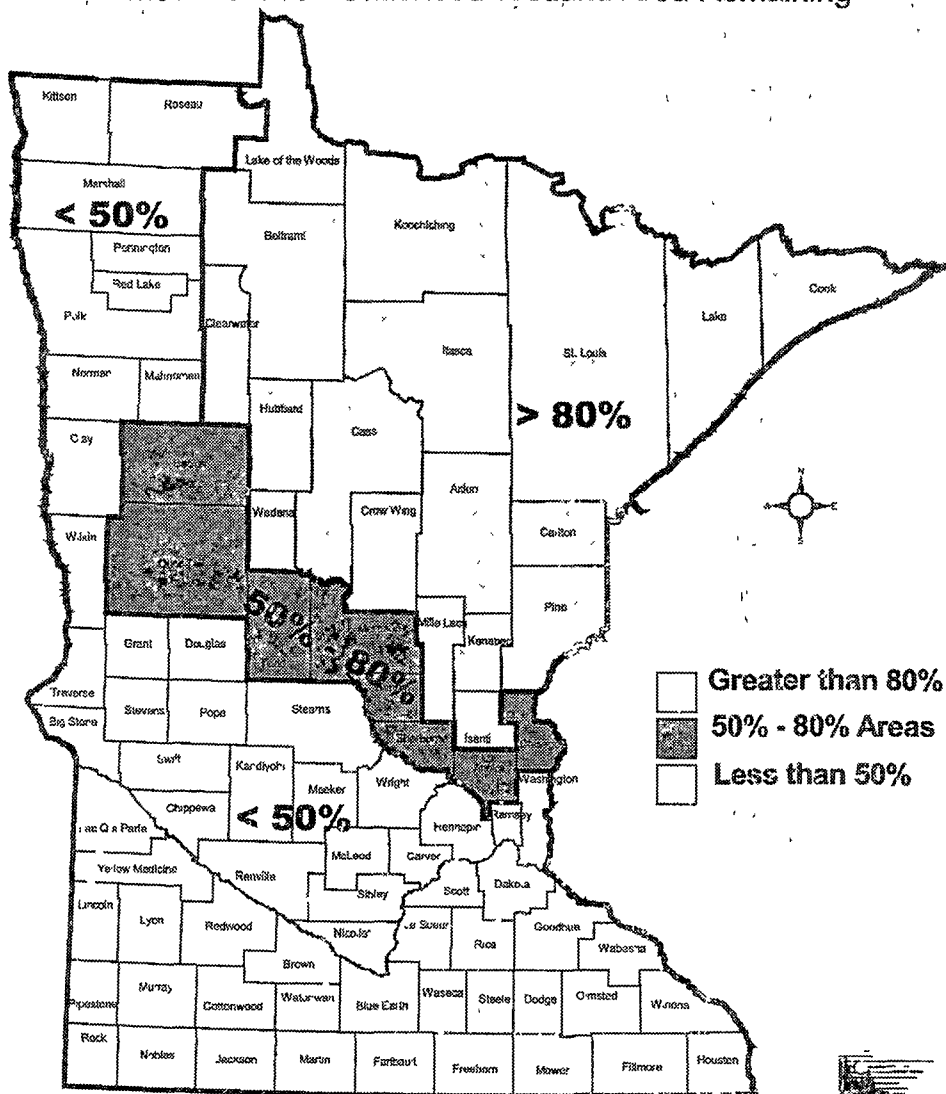
[For text of item B, see MR]

C For purposes of this part, the following counties are 50 to 80 percent areas: Anoka, Becker, Benton, Chisago, Morrison, Otter Tail, Sherburne, and Todd

WETLAND AREAS

Figure 1

Minnesota Wetland Conservation Act
 Amount of Pre - Statehood Wetland Area Remaining



[For text of subps 6 to 9, see MR]

Subp 10. Evaluation of wetland functions and values.

[For text of item A, see MR]

B Wetland types wetlands classification equivalency chart. For purposes of this part, the following table serves as a key for using Table 2 (item D, subitem (1)) and

Table 4 (part 8420 0550, subpart 3) and as a wetland classification equivalency chart for the wetland classification developed by the United States Fish and Wildlife Service (Cowardin et al. 1979), and the approximate wetland type from the United States Fish and Wildlife Service Circular No 39 (1971 edition)

Table 1. Wetland Classification Equivalency Chart The Cowardin classification includes system, subsystem, class, subclass, and/or water regime The Circular 39 wetland type is approximated.

Cowardin System	Circular 39
L1 (all)	5*
L2ABF	4
L2ABG	5
L2ABH	5
L2EMA	5
L2EMB	5
L2EMF	4
L2EMG	4
L2EMH	5
L2RS	5
L2UB	5
L2US	4
PABF	4
PABG	4
PABH	5
PEMA	1
PEMB	2, 8
PEMC	3
PEMD	3
PEME	2
PEMF	3
PEMG	4
PEMH	4
PEMJ	1
PEMU	3
PEMW	1
PEMY	3
PEMZ	4
PFOA	1L,*
PFO1B	7
PFO2B	7
PFO4B	7
PFO5B	7
PFO6B	7
PFO7B	7
PFOC	7
PFOD	7
PFOF	7
PFOJ	1L**
PFOU	1L**
PFOV	1L**
PFOY	7
PLB	8
PRB (all)	5
PSSA	6
PSS1B	6
PSS2B	8

PSS3B	8
PSS4B	8
PSS5B	6
PSS6B	6
PSS7B	8
PSSC	6
PSSD	6
PSSF	6
PSSG	6
PSSH	6
PSSJ	6
PSSW	6
PSSY	6
PSSZ	6
PSSU	6
PUBB	3
PUBF	4
PUBG	5
PUBH	5
PUS (all)	3

R1	R2***
R2 (all)	R2***
R3 (all)	R3***
R4 (all)	R4***
R5	R4***

* Circular No. 39 does not classify deep water as a wetland type, but for purposes of this table, these areas can be approximated as a type 5.

** 1L wetlands by Circular No 39 are Type 1 Bottomland Hardwoods.

*** No equivalent Circular No 39 does not address riverine wetlands.

“K” water regimes are often municipal/industrial water facilities

NOTE In the case of wetland identified using the Cowardin system with both numerator and denominator wetland types, the numerator type is considered the dominant wetland type, with the exception that the denominator wetland type is to be used when the numerator wetland type vegetation is dead

STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979
(81 MAJOR WATERSHED UNITS)

Figure 2

[For map, see MR]

LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

- 1 Lake Superior (north)
- 2 Lake Superior (south)
- 3 St. Louis River
- 4 Cloquet River
- 5 Nemadji River
- 7 Mississippi River (Headwaters, Lake Winnibigoshish)
- 8 Leech Lake River
- 9 Mississippi River (Grand Rapids)
- 10 Mississippi River (Brainerd)
- 11 Pine River
- 12 Crow Wing River

- 13 Redeye River (Leaf River)
- 14 Long Prairie River
- 15 Mississippi River (Sartell)
- 16 Sauk River
- 17 Mississippi River (St. Cloud)
- 18 North Fork Crow River
- 19 South Fork Crow River
- 20 Mississippi River (Metro)
- 21 Rum River
- 22 Minnesota River (Headwaters)
- 23 Pomme de Terre River
- 24 Lac qui Parle River
- 25 Minnesota River (Granite Falls)
- 26 Chippewa River
- 27 Redwood River
- 28 Minnesota River (Mankato)
- 29 Cottonwood River
- 30 Blue Earth River
- 31 Watonwan River
- 32 Le Sueur River
- 33 Minnesota River (Shakopee)
- 34 St. Croix River (Upper)
- 35 Kettle River
- 36 Snake River
- 37 St. Croix River (Stillwater)
- 38 Mississippi River (Red Wing) and Lake Pepin
- 39 Cannon River
- 40 Mississippi River (Winona)
- 41 Zumbro River
- 42 Mississippi River (La Crescent)
- 43 Root River
- 44 Mississippi River (Reno)
- 46 Upper Iowa River
- 47 Wapsipimcan River (Headwaters)
- 48 Cedar River
- 49 Shell Rock River
- 50 Winnebago River (Lime Creek)
- 51 West Fork des Moines River (Headwaters)
- 52 West Fork des Moines River (Lower)
- 53 East Fork des Moines River
- 54 Bois de Sioux River
- 55 Mustinka River
- 56 Otter Tail River
- 57 Red River of the North (Headwaters)
- 58 Buffalo River
- 59 Marsh River
- 60 Wild Rice River
- 61 Sandhill River
- 62 Upper and Lower Red Lake
- 63 Red Lake River
- 65 Thief River
- 66 Clearwater River
- 67 Grand Marais Creek (Red River of the North)
- 68 Snake River
- 69 Tamarack River (Red River of the North)
- 70 Two River
- 71 Roseau River
- 72 Rainy River (Headwaters)

- 73 Vermillion River
- 74 Rainy River (Rainy Lake)
- 75 Rainy River (Manitou)
- 76 Little Fork River
- 77 Big Fork River
- 78 Rapid River
- 79 Rainy River (Baudette)
- 80 Lake of the Woods
- 81 Big Sioux River (Medary Creek)
- 82 Big Sioux River (Pipestone)
- 83 Rock River
- 84 Little Sioux River

C Replacement ratios for in-kind replacement When wetland functions lost as a result of drainage, excavation, or filling are replaced by a restored or created wetland of the same type, within the same county, or in the same watershed, the replacement shall be considered to be in-kind and the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland For impacted wetlands on agricultural land, or in greater than 80 percent areas, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted For less than 80 percent areas and for impacted wetlands on nonagricultural land, the minimum replacement ratio is 2:1, requiring two times the impacted area be replaced

D. Out-of-kind replacement ratios. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type and in a different county than the impacted wetland, and if the replacement wetland is in a different watershed than the impacted wetland, the replacement shall be considered to be out-of-kind and the local government unit shall use the replacement ratios in Table 2 to determine the amount of replacement wetland needed to replace the lost wetland values.

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical evaluation panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be impacted shall be determined The sum of the replacement for each wetland type shall be the resultant acreage requirement.

Table 2

Replacement Type	Impact Location	
	>80% Area or Ag Land	<80% Area and Non-Ag Land
In-Kind (same wetland type or same watershed or same county)	1:1	2:1
Out-of-Kind direct replacement	1.5:1	2.5:1
Out-of-Kind banking	1.25:1	2.25:1

*See Table 1 of item B for wetland classification equivalency.

The topographic setting characteristics of a replacement wetland and an impacted wetland shall be described as topographic, shoreland, riverine, floodplain, flow-through, tributary, and isolated

E Determining impacts of partial drainage In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined as follows.

The area impacted by partially draining a wetland is determined in two parts. The wetland area where the hydrology is totally removed must be replaced in its entirety. The area that is partially drained must be replaced in an amount that is at least 50 percent of the acreage of the remaining wetland area or determined by an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board.

F Alternative Evaluation Methodologies. The local government unit may evaluate the replacement plan using a scientifically accepted methodology that evaluates all wetland functions specified in Minnesota Statutes, section 103B.3355, for both the impacted and replacement wetlands. Such alternative methodologies must be approved by the board, in consultation with the commissioners of natural resources and agriculture, and local government units. Currently acceptable alternative methodologies include: "Minnesota Routine Assessment Methodology for Evaluating Wetland Functions" (Board of Water and Soil Resources, Version 2.0 - September 1998), "Minnesota Wetland Evaluation Methodology (for the North Central United States)" (United States Army Corps of Engineers, September 1988); The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP-DE-3, August 1993), Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993), and Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991). Other methodologies may be used following board approval and publication in the Environmental Quality Board Monitor.

When using alternative evaluation methodologies to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in subpart 6, except as provided for in part 8420.0650, subpart 2. When using an alternative evaluation methodology to evaluate a wetland replacement plan, the replacement wetland must be projected to have an equal or greater functional level than the impacted wetland for each of the functions listed in part 8420.0103, unless the technical evaluation panel determines that the overall functional level for each of the functions will be maintained within the local government unit's jurisdiction.

G Special cases or appeals. For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using a board-approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in subpart 6.

H. Adequacy decision. A replacement plan that fails to meet the requirements in items A to G must be considered inadequate in replacing lost functions and values and shall not be approved by the local government unit. A replacement plan that has been considered by the local government unit and not approved may be revised and resubmitted for consideration by the local government unit. As required by part 8420.0250, the decision of a local government unit to approve, approve with conditions, or not approve a replacement plan becomes final if not appealed to the board within 15 days after the date on which the decision is mailed to those required to receive notice of the decision. Within 30 days of completing construction of a replacement wetland, the notice specified in part 8420.0530, item D, subitem (6), must be recorded and proof of recording provided to the local government unit.

Statutory Authority: *MS s 14 386; L 2000 c 382 s 20*

History: *25 SR 152*

NOTE: The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002.

8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.*[For text of subpart 1, see M.R.]*

Subp. 2. **Plan contents.** A comprehensive wetland protection and management plan may

A provide for classification of wetlands in the plan area based on

(1) an inventory of wetlands in the plan area,

(2) an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board, and

(3) the resulting public values,

B. vary application of the sequencing standards in part 8420.0540, subpart 6, for projects based on the classification and criteria set forth in the plan;

C vary the replacement standards of part 8420.0540, subpart 6, based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as

*[For text of subitems (1) and (2), see M.R.]**[For text of item D, see M.R.]*

E. in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in part 8420.0122, subpart 1, item D, to also include nonagricultural land, provided there is no net loss of wetland values

[For text of subp 3, see M.R.]

Subp. 4. **Effective date; replacement decisions.**

[For text of item A, see M.R.]

B. After the effective date of the plan, a local government unit shall make replacement and other determinations consistent with the plan.

[For text of subps 5 and 6, see M.R.]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0720 PRINCIPLES OF WETLAND BANKING.*[For text of subpart 1, see M.R.]*

Subp. 2. **Sequencing prerequisite.** The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520 and that the owner of the account agrees to the withdrawal of wetland banking credits from the account.

Subp. 3. **Geographic limitations.** Wetland banking is allowed for any impact subject to the requirements of part 8420.0540, subpart 4.

[For text of subp 4, see M.R.]

Subp 5 **Ineligible wetlands.** Wetlands that are drained or filled under an exemption in part 8420.0122 and subsequently restored are not eligible for deposit in the wetland bank. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in the statewide wetlands bank

[For text of subps 6 and 7, see M.R.]

Subp 8. **Deed recording.** For wetlands proposed for deposit, a deed covenant in a format provided by the board or a conservation easement granted to and accepted by

the state must be recorded that provides for perpetual preservation of the banked wetland's functions.

[For text of subp 9, see M.R.]

Statutory Authority: *MS s 14 386; L 2000 c 382 s 20.*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.

Subp 2 **Deposit prerequisites.** To be deposited into the wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. The method of certification by local government units is optional, but wetland banking credits may not be deposited into the bank within that local government units jurisdiction without certification. If a local government unit elects to certify wetlands for the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable.

Subp. 3. *[Repealed, 25 SR 152]*

Statutory Authority: *MS s 14 386; L 2000 c 382 s 20*

History: *25 SR 152*

NOTE The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002

8420.0740 PROCEDURES.

Subpart 1. Deposits and credits.

A. Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with the restoration of previously drained or filled wetlands. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in the wetlands bank.

[For text of items B to D, see M.R.]

E. There is no maximum wetland acreage eligible for deposit in the wetland bank. The local government unit, upon recommendation of the technical evaluation panel, must identify the acreage that will receive credit.

[For text of items F and G, see M.R.]

H. In cases where a wetland is proposed to be restored or created solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the depositor must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D.

A copy of the bank plan shall be mailed to members of the technical evaluation panel, members of the public who have requested a copy, the commissioner of natural resources, the district office of the United States Army Corps of Engineers, and the

watershed district or watershed management organization if there is one. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and approve, modify, or reject the banking plan. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner within ten days of the decision. A summary of the government unit decision must be mailed within ten days of the decision to those required to receive notice of the application. Approval of the plan shall be considered official acknowledgment that the wetland is designated for replacement.

[For text of item I, see MR]

J. The proposed wetland must be restored or created within two years of approval or the bank plan must be resubmitted for consideration. Upon approval, the depositor shall restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications and the vegetation management plan have been followed. Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

[For text of item K, see MR]

L. The local government unit shall consider the recommendations of the technical evaluation panel and comments from those required to receive a copy of the banking plan prior to developing findings and approving wetland banking credits. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0720, subpart 8, and submit proof of the recording to the local government unit for the wetlands to be deposited. If the depositor chooses not to proceed with the deposit, the depositor may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor may request the board to deposit any or all eligible and approved credits into the bank or may amend the bank plan and resubmit the plan to the local government unit for approval and board certification. After five years, any activity in the wetland is subject to this chapter.

M. To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the depositor or by local government unit in which the wetland is located:

- (1) name, address, and telephone number of the depositor;
- (2) a complete copy of the bank plan, application and supporting documents, and a survey or accurate map of the land area that will be subject to restrictions,
- (3) a copy of the deed for the property containing the wetland,

[For text of subitems (4) and (5), see MR]

[For text of items N to P, see MR]

Subp 2 Withdrawals.

[For text of item A, see MR]

B. Wetland bank credits may be used to mitigate wetland losses authorized by local government units, or other local, state, and federal regulatory authorities provided the impacted wetland is within the state and the credit withdrawal procedures of this chapter are followed.

[For text of items C and D, see MR]

E. The applicant may then contact, negotiate, and purchase the required wetland banking credits from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a wetland banking credit withdrawal form developed by the board, and include the wetland banking credit withdrawal form as part of the wetland replacement plan.

transmitted to the local government unit. The wetland banking credit withdrawal form will include information indicating the wetland type by acres for withdrawal, location of banked wetland, and the topographic setting characteristics and, if applicable, the new wetland credits and public value credits of the banked wetland.

[For text of item F, see M.R.]

G. On approval of the applicant's wetland replacement plan using wetland banking credits as wetland replacement, the local government unit shall notify the board to debit the appropriate banked wetland by type and acreage. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the account holder and the applicant. No sale, withdrawal, transfer, or use of wetland credits is valid until the board debits a wetland bank account. Wetland credits may only be used once.

H. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland banking credits as replacement and the applicant has received notice of withdrawal of the wetland banking credits from the board or local government unit.

I. An individual, corporation, local government unit, a state or federal agency, or other organization may buy and hold wetland banking credits from account holders in the bank for later use or resale. Transfer of wetland banking credits must be accomplished through use of a board wetland banking credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a wetland banking credit transfer form, and evidence that a conservation easement granted to and accepted by the state has been recorded. The board will notify both account holders on transfer of the wetland banking credits.

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE: The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002.

8420.0750 AUDITING AND MONITORING.

Subpart 1. Annual report and audit.

[For text of items A to C, see M.R.]

D. A wetland bank status report shall be prepared as part of the report required by Minnesota Statutes, section 103G 2373, and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the departments of natural resources and agriculture, and on request.

[For text of subp 2, see M.R.]

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE: The amendments to this part adopted at 25 SR 152 are effective for two years and expire on July 31, 2002.

8420.1070 ENFORCEMENT PROCEDURES.

Enforcement procedures shall be conducted consistent with the provisions of Minnesota Statutes, sections 103G 141 and 103G 2372.

Statutory Authority: *MS s 14 386, L 2000 c 382 s 20*

History: *25 SR 152*

NOTE: This part is effective for two years and expires on July 31, 2002.