

**8420.0111 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Account or wetland bank account.** "Account" or "wetland bank account" means a record of wetland banking debits and credits established by an account holder within the state wetland banking system.

Subp. 3. **Account holder.** "Account holder," in the state wetland banking system, means a person, corporation, government agency, or organization that is the owner of credits.

Subp. 4. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended.

Subp. 5. **Activity.** "Activity" means any work or action conducted in or near a wetland that could potentially affect a wetland. An activity may or may not result in an impact.

Subp. 6. **Agricultural land.** "Agricultural land" means land used for horticultural, row, close grown, pasture, or hayland crops; growing nursery stocks; animal feedlots; farmyards; or associated building sites and public and private drainage systems and field roads located on any of these lands. Agricultural land must be used principally for the cultivation or production of plants or farm animals and includes former agricultural land that is presently enrolled in a conservation program under contract or easement.

Subp. 7. **Applicant.** "Applicant" means a person, corporation, government agency, or organization that submits an application.

Subp. 8. **Application.** "Application" means a formal request for a decision by a local government unit, made under this chapter and the act, for an exemption, no-loss, wetland boundary, wetland type, sequencing, replacement plan, or banking plan. The board shall provide forms to be used for applications.

Subp. 9. **Approve or approval.** "Approve" or "approval" means the formal authorization by a local government unit of an activity described in an application.

Subp. 10. **Aquaculture.** "Aquaculture" means cultivation of plants and animals in water for harvest, including hydroponics and raising fish in fish farms.

Subp. 11. **Banking credits.** "Banking credits" means replacement credits resulting from the actions in part 8420.0526 that have been certified and deposited in the wetland bank according to part 8420.0725.

Subp. 12. **Best management practices.** "Best management practices" means state-approved and published practices that are capable of preventing and minimizing degradation of surface water and groundwater.

Subp. 13. **Board.** "Board" means the Board of Water and Soil Resources under Minnesota Statutes, section 103B.101.

Subp. 14. **City.** "City" means a home rule charter or statutory city.

Subp. 15. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subp. 16. **Creation.** "Creation" means construction of wetlands in an area that was not wetlands in the past.

Subp. 17. **Day.** "Day" means a calendar day unless specified otherwise. The day of the event is not used in counting any time period.

Subp. 18. **Decision.** "Decision" means a formal action by the local government unit or delegated staff to approve, approve with conditions, or deny an application.

Subp. 19. **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.

Subp. 20. **Determination or determine.** "Determination" or "determine" refers to a technical finding by the technical evaluation panel or local government unit staff.

Subp. 21. **Ditch.** "Ditch" has the meaning given under Minnesota Statutes, section 103E.005, subdivision 8.

Subp. 22. **Drain or drainage.** "Drain" or "drainage" means any method for removing or diverting waters from wetlands. Methods include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 23. **Drainage system.** "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets.

Subp. 24. **Eligible.** "Eligible" means the maximum extent to which a local government unit or, when appropriate, delegated staff, can set the applicable parameter in the application of the Wetland Conservation Act and parts 8420.0100 to 8420.0935. The actual amount awarded is determined by the specific circumstances of each application, determined on a case-by-case basis, applying the standards set out in parts 8420.0100 to 8420.0935.

Subp. 25. **Excavation.** "Excavation" means the displacement or removal of substrate, sediment, or other materials by any method.

Subp. 26. **Fill.** "Fill" means any solid material added to or redeposited in a wetland that would alter the wetland's cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. Fill

does not include posts and pilings for linear projects such as bridges, elevated walkways, or powerline structures, or structures traditionally built on pilings such as docks and boathouses. Fill includes posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland's function and value, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, housing projects, and similar structures. Fill does not include slash or woody vegetation, if the slash or woody vegetation originated from vegetation growing in the wetland and does not impair the flow or circulation of water or the reach of the wetland.

Subp. 27. **50 to 80 percent area.** "50 to 80 percent area" means a county or watershed with at least 50 percent but less than 80 percent of the presettlement wetland acreage intact, as provided in part 8420.0117.

Subp. 28. **Greater than 80 percent area.** "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

- A. ten percent or more of the current total land area is wetland; or
- B. 50 percent or more of the current total land area is state or federal land.

Greater than 80 percent areas are provided in part 8420.0117.

Subp. 29. **Hayland.** "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years.

Subp. 30. **Hydric soils.** "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

Subp. 31. **Hydrophytic vegetation.** "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Subp. 32. **Impact.** "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or by excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, as defined in subpart 75, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland.

Subp. 33. **Impacted wetland.** "Impacted wetland" means a wetland that has been partially or wholly subjected to an impact.

Subp. 34. **Indirect impact.** "Indirect impact" means an impact that is the result of an activity that occurs outside of the wetland boundary.

Subp. 35. **Infrastructure.** "Infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, ditches, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement within the context of an approved development plan.

Subp. 36. **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.

Subp. 37. **Less than 50 percent area.** "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a greater than 80 percent area or 50 to 80 percent area, as provided in part 8420.0117.

Subp. 38. **Local government unit.** "Local government unit" means:

A. outside of the seven-county metropolitan area, a city council, county board of commissioners, or soil and water conservation district or their delegate;

B. in the seven-county metropolitan area, a city council, town board, watershed management organization as defined under Minnesota Statutes, section 103B.205, subdivision 13, or soil and water conservation district or their delegate; and

C. in those cases where an activity or replacement will occur on state land, the agency with administrative responsibility for the land.

Subp. 39. **Local water plan.** "Local water plan" means a watershed plan pursuant to Minnesota Statutes, sections 103B.201 to 103B.255; a comprehensive local water management plan pursuant to Minnesota Statutes, sections 103B.301 to 103B.355; or a watershed management plan pursuant to Minnesota Statutes, section 103D.401.

Subp. 40. **Major watershed.** "Major watershed" means the 81 major watershed units delineated by the map State of Minnesota Watershed Boundaries, 1979, incorporated by reference under part 8420.0112, item Q.

Subp. 41. **Mining.** "Mining" means the removal of peat and metallic minerals as provided in Minnesota Statutes, sections 93.461 and 93.481.

Subp. 42. **Minor watershed.** "Minor watershed" means one of the 5,600 minor watersheds delineated by the map State of Minnesota Watershed Boundaries, 1979, incorporated by reference under part 8420.0112, item Q.

Subp. 43. **Municipality.** "Municipality" has the meaning given in Minnesota Statutes, section 103G.005, subdivision 12.

Subp. 44. **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 and that are classified as native in the Minnesota Plant Database, incorporated by reference under part 8420.0112, item O.

Subp. 45. **Noninvasive vegetation.** "Noninvasive vegetation" means plant species that do not typically invade or rapidly colonize existing, stable plant communities.

Subp. 46. **Nonwetland.** "Nonwetland" means upland areas or previously converted areas that do not meet the criteria for classification as a jurisdictional wetland using the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and deepwater habitats identified using Classification of Wetlands and Deepwater Habitats of the United States. Both documents are incorporated by reference under part 8420.0112, items B and C.

Subp. 47. **On-site.** "On-site" means within or directly adjacent to a project.

Subp. 48. **Ordinance.** "Ordinance" means a body of regulations developed, approved, and implemented by a county, city, or township as authorized by Minnesota Statutes, chapters 394, 462, and 366, respectively.

Subp. 49. **Pasture.** "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years.

Subp. 50. **Peace officer.** "Peace officer" has the meaning given under Minnesota Statutes, section 626.84.

Subp. 51. **Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland.** "Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland" means the portion of a type 3, 4, or 5 wetland below the level where the water has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

Subp. 52. **Plant community.** "Plant community" means a wetland plant community classified according to Wetland Plants and Plant Communities of Minnesota & Wisconsin, incorporated by reference under part 8420.0112, item P.

Subp. 53. **Presettlement wetland.** "Presettlement wetland" means a wetland or public waters wetland that existed in Minnesota at the time of statehood in 1858.

Subp. 54. **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by a local government unit. As used in

this chapter, a project may not be split into components or phases for the purpose of gaining additional exemptions.

Subp. 55. **Project-specific.** "Project-specific" means the applicant for a replacement plan approval provides the replacement as part of the project, rather than attain the replacement from a wetland bank.

Subp. 56. **Public transportation project.** "Public transportation project" means a project conducted by a public agency involving transportation facilities open to the public.

Subp. 57. **Public value of wetlands.** "Public value of wetlands" means the importance and benefit to the public derived from the wetland functions listed in part 8420.0522, subpart 1.

Subp. 58. **Public waters wetlands.** "Public waters wetlands" has the meaning given under part 6115.0170.

Subp. 59. **Public waters.** "Public waters" has the meaning given under part 6115.0170.

Subp. 60. **Replacement wetland.** "Replacement wetland" means a wetland restored or created or an area designated in part 8420.0526, or the equivalent, to replace wetland area or the public value of wetland functions lost at an impacted wetland.

Subp. 61. **Responsible party.** "Responsible party" means an individual, business, or other organization causing draining, excavation, or filling of wetlands on the property of another, with or without the landowner's permission or approval.

Subp. 62. **Restoration.** "Restoration" means reestablishment of an area as wetlands that was historically wetlands and that is no longer wetlands or remains as a degraded wetland.

Subp. 63. **Rule.** "Rule" means a body of regulations developed, approved, and implemented by a watershed management organization as authorized under Minnesota Statutes, chapter 103D.

Subp. 64. **Shoreland or shoreland wetland protection zone.**

A. For local government units that have a shoreland management ordinance approved under Minnesota Statutes, sections 103F.201 to 103F.221, "shoreland" or "shoreland wetland protection zone" means:

(1) 1,000 feet from the ordinary high water level of a water basin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under Minnesota Statutes, section 103F.211, whichever is less; or

(2) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under Minnesota Statutes, section 103F.211, whichever is less.

B. For local government units that do not have a shoreland management ordinance approved under Minnesota Statutes, sections 103F.201 to 103F.221, "shoreland" or "shoreland wetland protection zone" means:

(1) 1,000 feet from the ordinary high water level of a water basin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(2) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under Minnesota Statutes, section 103G.201.

Subp. 65. **Silviculture.** "Silviculture" means management of forest trees.

Subp. 66. **Soil and water conservation district.** "Soil and water conservation district" means a legal subdivision of state government under Minnesota Statutes, chapter 103C.

Subp. 67. **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 and providing for, 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.

Subp. 68. **Structure.** "Structure" means any object erected or placed in, under, or over or anchored or attached to a wetland area.

Subp. 69. **Utility.** "Utility" means a sanitary sewer; a storm sewer; potable water distribution; or transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, petroleum products, electricity, telephone, or radio service or communications.

Subp. 70. **Watershed.** "Watershed" means a land area that drains to a common waterway, such as a stream, lake, estuary, or wetland.

Subp. 71. **Watershed management organization.** "Watershed management organization" has the meaning given under Minnesota Statutes, section 103B.205, subdivision 13.

Subp. 72. **Wetlands, a wetland, the wetland, or wetland area.**

A. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this subpart, wetlands must:

- (1) have a predominance of hydric soils;
- (2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances, support a prevalence of hydrophytic vegetation.

B. "A wetland" or "the wetland" means a distinct hydrologic feature with characteristics of item A, surrounded by nonwetland and including all contiguous wetland types, except those connected solely by riverine wetlands. "Wetland area" means a portion of a wetland or the wetland.

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

D. The wetland size is the area within its boundary. The boundary must be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). The wetland type must be determined according to Wetlands of the United States, (1971 edition). Both documents are incorporated by reference under part 8420.0112, items A and B. The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.

Subp. 73. **Wetlands in a cultivated field.** "Wetlands in a cultivated field" means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten years before January 1, 1991.

Subp. 74. **Wetlands located on agricultural land.** "Wetlands located on agricultural land" means a wetland where greater than 50 percent of its boundary abuts agricultural land.

Subp. 75. **Wetland type or type.** "Wetland type" or "type" means a wetland type classified according to Wetlands of the United States (1956 and 1971 editions), as summarized in this subpart. Classification of Wetlands and Deepwater Habitats of the United States is a separate, parallel wetland typing system that may be used to characterize components of a wetland. Both documents are incorporated by reference under part 8420.0112, items A and B.

A. "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in



overflow bottomlands along watercourses. In type 1 wetlands, vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

B. "Type 2 wetlands" are inland fresh meadows in which soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of the surface. Vegetation includes grasses, sedges, rushes, and various broad-leafed plants. Meadows may fill shallow basins, sloughs, or farmland sags or may border shallow marshes on the landward side.

C. "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

D. "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, water lilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs or may border open water in such depressions.

E. "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

F. "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during the growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp privet. This type occurs mostly along sluggish streams and occasionally on floodplains.

G. "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during the growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

H. "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath

shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

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