

8420.0420 EXEMPTION STANDARDS.**Subpart 1. Scope.**

A. An impact is exempt from replacement if it qualifies for any one of the listed exemptions. An impact is not disqualified when it is indicated as not exempt under a different exemption. Persons proposing to conduct an exempt activity may contact the local government unit to verify eligibility for an exemption and to evaluate alternatives to avoid or minimize wetland impacts. When the total amount of impact exceeds the amount allowed under the applicable exemption, the impact is not exempt and the entire amount of impact must be replaced.

B. No exemptions apply to:

- (1) calcareous fens as identified by the commissioner;
- (2) wetlands that have been deposited in the state wetland bank;
- (3) wetlands that have previously received replacement credit as a result of an approved replacement or banking plan; or

(4) wetlands that were partially impacted, so that the remainder would be eligible for an exemption, when the exemption would not have been applicable before the impact. Impacts to any such wetlands are subject to the replacement requirements of this chapter or, for calcareous fens, part 8420.0935.

C. Exemptions may not be combined on a project.

D. Present and future owners of wetlands impacted without replacement under an exemption for agricultural activities in subpart 2 or drainage in subpart 3 must make no use of the wetland area after it is impacted, other than as agricultural land or other use specified in subpart 2, for at least ten years after the impact unless it is first replaced according to Minnesota Statutes, section 103G.222. Except for land in public ownership, at the time of impact, the local government unit may require the landowner to record a notice of these restrictions in the office of the county recorder for the county in which the project is located if the local government unit determines the wetland area impacted is at risk of conversion to a nonagricultural use or use other than that specified in subpart 2 within ten years, based on the zoning classification, proximity to a municipality or full-service road, or other criteria as determined by the local government unit. In making a decision under this item, the local government unit must review the applicable comprehensive plan, if one exists, when evaluating the risk of conversion to a nonagricultural use and monitor and enforce the prohibition on using the area impacted for a nonagricultural purpose for at least ten years. 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 restrictions expire, the name of the local government

that approved the exemption, if an exemption occurred, the signatures of all owners, and an acknowledgment.

Subp. 2. **Agricultural activities.** A replacement plan is not required for:

A. impacts resulting from agricultural activities in a wetland that was planted with annually seeded crops or was in a crop rotation seeding of pasture grass or legumes in six of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs, United States Department of Agriculture records, or other applicable documentation may be used as evidence for this exemption. Impacts eligible for this exemption must be to type 1 or 2 wetlands;

B. impacts resulting from agricultural activities in a type 1 wetland on agricultural pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands, and impacts resulting from agricultural activities in a type 2 or 6 wetland that is less than two acres in size and located on agricultural pasture land that remains in the same use;

C. impacts resulting from soil and water conservation projects that are certified by soil and water conservation district technical staff after review by the technical evaluation panel, if the project minimizes adverse effects on the hydrologic and biologic characteristics of the wetland. For purposes of this item, examples of soil and water conservation projects include those identified in the State Cost Share Program Manual, available from the board or soil and water conservation districts, and federally funded demonstration, research, and cost share programs and projects;

D. filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage;

E. impacts resulting from aquaculture activities, including pond excavation and construction and maintenance of associated access roads and dikes, authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

F. impacts resulting from wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or

G. impacts resulting from agricultural activities that are subject to 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, the commissioners of natural resources and agriculture, and the Pollution Control Agency. An exemption under this item is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and

published in the State Register. The conditions and standards take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. Upon taking effect, this exemption only applies to impacts on agricultural land annually enrolled in the federal Farm Program that are not 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 as supported by documentation from the United States Department of Agriculture, which must be included as evidence to support this exemption.

If the impact would result in loss of eligibility, the landowner cannot qualify for the exemption.

Subp. 3. Drainage.

A. For the purposes of this subpart, "public drainage system" means a drainage system as defined in Minnesota Statutes, section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

B. A replacement plan is not required for:

(1) impacts resulting from maintenance or repair of existing public drainage systems conducted or authorized by a public drainage authority under Minnesota Statutes, chapter 103E, when the maintenance or repair does not drain type 3, 4, or 5 wetlands that have existed for more than 25 years before the proposed impact; or

(2) impacts resulting from maintenance or repair of existing drainage systems other than public drainage systems, when the maintenance or repair does not drain wetlands that have existed for more than 25 years before the proposed impact.

For projects proposed under this item, the landowner must provide documentation that the wetlands to be partially or completely impacted by the maintenance or repair 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 drainage system maintenance records.

C. A replacement plan is not required for:

(1) draining a wetland on agricultural land when the wetland was:

(a) planted with annually seeded crops before July 5, except for crops that are normally planted after this date, in eight out of the ten most recent years before the impact;

(b) in a crop rotation seeding of pasture grass, cover crop, or legumes or was fallow for a crop production purpose in eight out of the ten most recent years before the impact; or

(c) enrolled in a state or federal land conservation program and met the requirements of unit (a) or (b) before enrollment;

(2) draining type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(a) during the 20-year period that ended January 1, 1992:

i. there was an expenditure made from the drainage system account for the public drainage system;

ii. the public drainage system was repaired or maintained as approved by the drainage authority; or

iii. no repair or maintenance of the public drainage system was required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the public drainage authority; and

(b) the wetlands are not drained for conversion to:

i. platted lots;

ii. planned unit, commercial, or industrial developments; or

iii. any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow family members to establish an additional residence on the same 40 acres.

If wetlands drained under this subitem are converted to prohibited uses during the ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section 103G.222.

Documentation such as aerial photographs, United States Department of Agriculture records, or other applicable documentation may be used as evidence for the exemption under this item.

D. For projects completed under this subpart, spoil must be placed and stabilized in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch or contributing to the degradation of downstream water quality.

E. A public drainage authority may, as part of a repair, install control structures, realign a ditch, construct dikes along a ditch, or make other modifications as necessary to prevent drainage of a wetland.

F. Wetlands and public waters of all types that could 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 must give priority to acquisition of easements on type 3, 4, or 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. 4. **Federal approvals.** A replacement plan is not required for impacts authorized under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by the board, the Department of Agriculture, the Department of Natural Resources, and the Pollution Control Agency. This exemption is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and published in the State Register. The exemption takes effect 30 days after publication and remains in effect unless superseded by subsequent statute, rule, or notice in the State Register.

Subp. 5. **Restored wetlands.** A replacement plan is not required for:

A. draining a wetland that was restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland to preproject hydrologic conditions. The landowner must provide a contract or easement conveyance demonstrating that the landowner or a predecessor restored or created the wetland for conservation purposes but retained the right to subsequently drain the restored or created wetland to the conditions that existed before restoration or creation; or

B. impacts to a wetland that was restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner, if the wetland has not been used for wetland replacement or deposited in the state wetland bank. For purposes of this item, assistance by public agencies does not include consultation on project design or advice on the project's relationship to state or federal programs. The landowner must provide a contract, billing statements, or other evidence sufficient to demonstrate that the landowner or a predecessor restored or created the wetland without any assistance or financing from public agencies or private entities other than the landowner or predecessor. The landowner must also provide sufficient information to determine that the area was not wetland before restoration or creation activity.

Subp. 6. Utilities.

A. A replacement plan is not required for impacts resulting from:

(1) installation, maintenance, repair, or replacement of utility lines, including pipelines, if:

(a) the impacts have been avoided and minimized to the extent possible; and

(b) the proposed project significantly modifies or alters less than one-half acre of wetlands; or

(2) repair or updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations. This exemption does not apply if the wetland impacts are the result of the treatment system being expanded to accommodate increased use.

B. For maintenance, repair, and replacement, a local government unit may issue a seasonal or annual exemption approval or the utility may proceed without local government unit approval if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any impacts must be addressed with the local government unit after the emergency work has been completed.

Subp. 7. Forestry. The exemption under this subpart is for roads and crossings solely constructed, and primarily used, for the purpose of providing access for the conduct of silvicultural activities. A replacement plan is not required for impacts resulting from construction of forest roads and crossings so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not include, or result in, the access becoming a dike, drainage ditch, or tile line; impacts are avoided wherever possible; and there is no drainage of the wetland or public waters.

Subp. 8. De minimis.

A. Except as provided in items B and C, a replacement plan is not required for projects that impact up to the following amounts of wetlands:

(1) in a greater than 80 percent area:

(a) 10,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone;

(b) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. This amount may be increased to 1,000 square feet by the local government unit if the wetland is isolated and determined to have no direct surficial connection to the public water;

(c) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance; or

(d) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance;

(2) in a 50 to 80 percent area:

(a) 5,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and outside of the 11-county metropolitan area;

(b) 2,500 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;

(c) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;

(d) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or

(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance; or

(3) in a less than 50 percent area:

(a) 2,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland protection zone and outside the 11-county metropolitan area;

(b) 1,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;

(c) 400 square feet of type 1, 2, or 6 wetland outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;

(d) 100 square feet of type 3, 4, 5, 7, or 8 wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or

(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance.

B. The amounts listed in item A may not be combined on a project.

C. The exemption under this subpart no longer applies to a landowner's portion of a wetland when the proposed project impact area and the cumulative area of the landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:

- (1) the applicable area listed in item A, if the landowner owns the entire wetland;
- (2) five percent of the landowner's portion of the wetland; or
- (3) 400 square feet.

D. Property may not be divided to increase the amounts listed in item A or to gain an exemption.

E. For purposes of this subpart, for wetlands greater than 40 acres, the wetland type may be determined to be the wetland type with the deepest water regime within the wetland and within 300 feet of the impact.

F. For purposes of this subpart, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

Subp. 9. **Wildlife habitat.** A replacement plan is not required for:

A. excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat improvement, if:

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

(2) the project does not have an adverse effect on any species designated as endangered or threatened under state or federal law; and

(3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district or technical evaluation panel using Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000, or similar criteria approved by the board; or

B. duck blinds.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Published Electronically: *August 26, 2009*