

8420.0526 ACTIONS ELIGIBLE FOR CREDIT.**Subpart 1. Scope.**

A. The actions in this part are eligible for replacement credit as determined by the local government unit in parts 8420.0500 to 8420.0820. Sufficient information to determine eligibility and credit must be provided to the local government unit as part of a replacement or banking plan application.

B. This part identifies the amount of credit allowed for each action, however, the actual amount may be less as determined by the local government unit. When the local government unit allows less replacement credit than the amounts described in this part, the local government unit must provide justification for the lower credit allocation.

C. Subparts 3 to 7 require the incorporation of buffer areas meeting the minimum requirements described in part 8420.0522, subpart 6.

D. Modification or conversion of nondegraded wetlands from one wetland type to another by damming, diking, impounding, or excavating does not constitute replacement credit. Restoration of wetlands drained or filled in violation of this chapter is not eligible for replacement credit. Wetlands impacted under an exemption may not be restored for replacement credit for ten years after the impact.

Subp. 2. Upland buffer areas.

A. Up to ten percent of the buffer area is eligible for replacement credit for establishment or preservation of nonnative vegetation and up to 25 percent of the buffer area is eligible for replacement credit for establishment or preservation of native, noninvasive vegetation. Establishing upland buffer around existing high value wetlands adjacent to the replacement wetland is eligible for replacement credit only when the minimum widths provided in part 8420.0522, subpart 6, are maintained and the maximum buffer area under item B is not exceeded.

B. The area of buffer for which replacement credit is granted under item A must not exceed the area of the replacement wetland.

C. For buffer areas of native, noninvasive vegetation, the local government unit may increase the amount of credit to a maximum of 50 percent if the technical evaluation panel finds that additional buffer will improve replacement wetland sustainability and provide significant functional benefits. Buffers add to replacement wetland sustainability and provide significant functional benefits when they:

(1) extend upstream in the watershed, provide slope and soil stability, and otherwise protect and improve water quality;

(2) protect valuable native plant communities or habitats that could otherwise be lost or degraded;

(3) provide important habitat connections; or

(4) otherwise substantially improve important wetland functions based on a functional assessment and consideration of current and future adjacent land use.

Subp. 3. **Restoration of completely drained or filled wetland areas.** Restoration of both the natural hydrology regime and native, noninvasive vegetation on wetlands that have been completely drained or filled is eligible for replacement credit in an amount up to 100 percent of the wetland area hydrologically and vegetatively restored. To be eligible for replacement credit, the vegetation establishment and management plan must set a goal of restoring the historic native plant community typical of the wetland being restored, or other plant community when the technical evaluation panel determines that establishment of the historic native plant community is not ecologically feasible.

Subp. 4. **Restoration of partially drained or filled wetland areas.** Restoration of both the natural hydrology regime and native, noninvasive vegetation of wetlands that have been degraded by prior drainage, filling, or a diversion of the natural watershed is eligible for replacement credit as follows:

A. any wetland area substantially degraded by partial drainage or fill 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 equivalent payments in at least ten of the last 20 years before the date of application, is eligible for replacement credit in a percentage equivalent to the percent of the time the wetland area was annually seeded, in rotation, or set aside during the prior 20-year period; and

B. all other wetland areas substantially degraded by partial drainage or fill are eligible for replacement credit of up to 50 percent of the wetland area restored.

Subp. 5. **Vegetative restoration of farmed wetlands.** Reestablishment of permanent native, noninvasive vegetative cover on farmed wetland areas that have not been affected by prior drainage or filling is eligible for replacement credit for:

A. up to 50 percent of the area restored for wetland areas that were planted with annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes, or were required to be set aside to receive price supports or equivalent payments in at least ten of the last 20 years before the date of application for a replacement or bank plan; or

B. up to 90 percent of the area restored for wetland areas in bank service areas 2, 3, and 4 in a percentage equivalent to the percent of time the wetland areas were planted with annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes, or were required to be set aside to receive price supports or equivalent payments during the 20-year period prior to the date of application for a replacement or bank plan.

Subp. 6. **Protection of wetlands previously restored via conservation easements.** Permanently protecting wetlands previously restored or created for conservation purposes

under a contract or easement, when the contract or easement has expired and gives the landowner the right to drain or fill the wetland upon termination, is eligible for replacement credit where the area receiving credit meets the replacement wetland construction standards of part 8420.0528. The maximum replacement credit is 75 percent of the area created or restored under the conservation contract or easement. Alternatively, credit may be allocated according to the other subparts in this part as applied prior to initiation of the contract or easement, when the applicant can document eligible credit yield to the satisfaction of the local government unit.

Subp. 7. Wetland creations.

A. A wetland created in an upland area is eligible for replacement credit in an amount up to 75 percent of the total wetland area created.

B. A wetland created due to mineral extraction activities is eligible for replacement credit under this subpart only for those areas actively mined within ten years prior to the application for credit.

C. A wetland created as part of a water quality treatment system is eligible for replacement credit under this subpart only if the wetland area receiving credit is a functioning wetland designed for a maximum 24-inch rise in water level for the ten-year critical storm event and treatment of runoff is provided before discharge into the replacement wetland area according to part 8420.0528, subpart 2, item G. Any portions of water quality treatment systems allowed for replacement are not eligible for the exemptions in part 8420.0420 and are subject to the replacement requirements under parts 8420.0500 to 8420.0544 and the monitoring requirements under parts 8420.0800 to 8420.0820.

Subp. 8. Restoration and protection of exceptional natural resource value.

A. Restoration and protection of calcareous fens, white cedar swamps, floodplain or riparian wetlands and upland buffers, habitat corridors with other important resources, wetlands adjacent to designated trout waters or other actions that restore and protect wetlands and adjacent areas are eligible for replacement credit when the action improves or directly contributes to the function and sustainability of an exceptional natural resource. For purposes of this subpart, exceptional natural resources are:

- (1) habitat for state-listed endangered or threatened species;
- (2) rare native plant communities;
- (3) special fish and wildlife resources, such as fish passage and spawning areas, colonial water bird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, and wildlife travel corridors;
- (4) sensitive surface waters; or

(5) other resources determined to be exceptional by the technical evaluation panel based on the value relative to other resources in the watershed or a board-approved plan.

B. Project eligibility and the allocation of credit under this subpart is determined by the local government unit with concurrence of the technical evaluation panel based on the qualification of the resource as exceptional, the actions proposed, and the resulting contribution to the value and sustainability of the exceptional resource. Areas receiving credit must be protected by a permanent conservation easement, in a format prescribed by the board, that is granted to and accepted by the state.

Subp. 9. **Preservation of wetlands owned by the state or a local unit of government.** In greater than 80 percent areas, up to 12.5 percent of wetland areas and adjacent buffer owned by the state or a local unit of government and protected by a permanent conservation easement is eligible for replacement credit. The easement must be in a format prescribed by the board and granted to and accepted by the board after approval of the replacement or banking plan application. Replacement credit for wetland preservation may only be granted after considering replacement as provided under subparts 3 to 8. To be eligible for credit under this subpart, the technical evaluation panel must determine that there is a high probability the wetland will be degraded or impacted and the wetland:

- A. contains or benefits an exceptional resource identified in subpart 8;
- B. is of a type or function that is rare, difficult to replace, or of high value to the watershed;
- C. contains a rare or declining plant community; or
- D. is of a type that is not likely to regenerate, such as northern white cedar.

Subp. 10. **Replacement credit conversion.**

A. Replacement plans and banking plans approved after August 10, 2009, must determine replacement credit according to subparts 2 to 9. Public value credit that has been deposited in the state wetland bank or approved as part of a banking plan application before August 10, 2009, must be converted as follows:

(1) up to 100 percent replacement credit for existing public value credit derived from activities within wetlands; and

(2) up to 90 percent replacement credit for existing public value credit derived from upland buffers.

B. Previously approved public value credit must be converted according to this subpart on August 10, 2009, for deposited credits and at the time of deposit for future deposits resulting from a previously approved banking plan.

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