

**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; and Laws 1996, chapter 462. 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 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

**8420.0102 INTRODUCTION.**

The Wetland Conservation Act achieves the purpose in part 8420.0100 by requiring persons proposing to impact a wetland by draining 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. 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 103B 101; 103B 3355, 103G 2242*

**History:** *22 SR 1877*

**8420.0103 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.**

The public values of wetlands must be based upon the functions of wetlands for

A. water quality, including filtering of pollutants to surface and groundwater, utilization of nutrients that would otherwise pollute public waters, trapping of sediments, shoreline protection, and utilization of the wetland as a recharge area for groundwater,

B. flood water and storm water retention, including the potential for flooding in the watershed, the value of property subject to flooding, and the reduction in potential flooding by the wetland,

C public recreation and education, including hunting and fishing areas, wildlife viewing areas, and nature areas,

D commercial uses, including wild rice and cranberry growing and harvesting and aquaculture,

E. fish, wildlife, and native plant habitats;

F low-flow augmentation, and

G other public uses

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### 8420.0105 SCOPE.

Wetlands must not be drained 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 does not prevent excavation in wetlands if done in a manner such that the wetlands are not wholly or partially drained or filled.

This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section 103G 005, subdivisions 15 and 18, which have been inventoried by the commissioner of natural resources according to Minnesota Statutes, section 103G 201. 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 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 103B.101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### 8420.0110 DEFINITIONS.

*[For text of subpart 1, see M R ]*

**Subp 1a 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 1b Account holder.** "Account holder," in the state wetland banking system, is a person, corporation, government agency, or organization that is the owner of credits.

**Subp 2 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 by Laws 1993, chapter 175; Laws 1994, chapter 627, and Laws 1996, chapter 462.

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

Subp 4 **Agricultural land.** "Agricultural land" means land used for horticultural, row, close grown, pasture, and hayland crops, growing nursery stocks; animal feedlots, farmyards, associated building sites, and public and private drainage systems and field roads located on any of these lands

Subp 5. [Repealed, 22 SR 1877]

Subp 5a. **Applicant.** "Applicant" is a person, corporation, government agency, or organization that makes an application to withdraw wetland banking credits from the wetland bank

*[For text of subps 6 to 12, see M R.]*

Subp. 13 [Repealed, 22 SR 1877]

*[For text of subps 14 to 18, see M R]*

Subp 18a **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

*[For text of subps 19 and 20, see M R]*

Subp 20a **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.

Subp 20b **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 prior to January 1, 1991.

*[For text of subps 21 to 24, see M R.]*

Subp. 25 **Infrastructure.** "Infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, and 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 26 [Repealed, 22 SR 1877]

Subp. 27 [Repealed, 22 SR 1877]

*[For text of subps 28 and 29, see M R]*

Subp. 29a **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

*[For text of subps 30 and 31, see M R]*

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

*[For text of subp 32, see M.R.]*

Subp 33 **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 prior to January 1, 1991

*[For text of subp 34, see M R]*

Subp. 34a. **Presettlement wetland.** "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858

Subp 35 **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

*[For text of subps 36 and 37, see M R.]*

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 requiring greater than a 1:1 ratio

Subp. 38 **Public value of wetlands.** "Public value of wetlands" means the public benefit and use of wetlands as determined based upon an assessment of the wetland functions listed in part 8420 0103.

Subp 39 **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No 39 (1971 edition), that were inventoried by the Department of Natural Resources as public waters under Minnesota Statutes, section 103G 201 .

Subp. 40 **Replacement wetland.** "Replacement wetland" means a wetland restored or created or an area designated in part 8420 0540, subpart 2, items D and E, to replace area or public values lost at an impacted wetland

*[For text of subps 41 to 44, see M R ]*

Subp 44a **Shoreland wetland.** "Shoreland wetland" means a wetland located in the shoreland wetland protection zone

Subp. 44b **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 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; and

B For local government units that do not have a shoreland management ordinance approved under Minnesota Statutes, sections 103F 201 to 103F 221, "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 45 **Silviculture.** "Silviculture" means the management of forest trees

*[For text of subp 46, see M R ]*

Subp 47 [Repealed, 22 SR 1877]

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

*[For text of subps 48 to 51, see M R ]*

Subp 51a **Wetland banking credits.** "Wetland banking credits" means acres or parts of acres of restored or created wetland 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 to C, see M R ]*

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 United States Fish and Wildlife Service Circular No 39 (1971 edition). The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type

*[For text of subps 53 and 54, see M R.]*

Subp 54a **Wetland type.** "Wetland type" means a wetland type classified according to Wetlands of the United States, United States Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subpart

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, and in which 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-leaved 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 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 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.

**Statutory Authority:** *MS s 103B 101, 103B 3355; 103G 2242*

**History:** 22 SR 1877

#### **8420.0112 INCORPORATION BY REFERENCE.**

This chapter incorporates by reference the following documents:

A Wetlands of the United States (United States Fish and Wildlife Service Circular No. 39, 1971 edition).

B United States Army Corps of Engineers Wetland Delineation Manual (January 1987).

C Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition)

D. Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota (Minnesota Department of Natural Resources, 1991).

E United States Geological Survey Hydrologic Unit Map for Minnesota (1974)

F Minnesota Routine Assessment Methodology for Evaluating Wetland Functions (Board of Water and Soil Resources, Version 1.0 – May 1996)

G Minnesota Wetland Evaluation Methodology for the North Central United States (United States Army Corps of Engineers, September 1988)

H 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)

I Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993).

J Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991).

K. National Wetland Inventory maps (United States Fish and Wildlife Service)

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

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 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

### 8420.0115 SCOPE OF EXEMPTION STANDARDS.

When considering if a drain 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 or filling

Nonexempt wetlands cannot be partially drained 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

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 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

A. appropriate erosion control measures are taken to prevent sedimentation of the water,

B the activity does not block fish activity in a watercourse, and

C the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

**8420.0120** [Repealed, 22 SR 1877]

**8420.0122 EXEMPTION STANDARDS.**

Subpart 1 **Agricultural activities.**

A replacement plan for wetlands is not required for.

A activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support 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. Documentation, such as aerial photographs, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption. Set aside land used for this exemption must be wetland types 1 and 2;

B activities in a wetland that is or has been enrolled in the federal Conservation Reserve Program under United States Code, title 16, section 3831, that.

(1) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(2) has not been restored with assistance from a public or private wetland restoration program

Federal documentation that the wetland is or has been enrolled in the federal Conservation Reserve Program may be used as evidence for this exemption. The landowner must also meet the same requirements of item A, except that the years required are at least six of the ten years preceding the year of enrollment in the federal Conservation Reserve Program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland,

C activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county USDA office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985. The landowner must provide United States Department of Agriculture documents confirming that the county USDA office determined before September 19, 1988, that drainage had begun before December 23, 1985, and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review,

D (1) activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land,

(2) this exemption may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetlands other than types 1, 2, and 6 are not drained or filled,

(3) the exemption in subitem (2) is subject to the size limits included in subitem (1),

E 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 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,

G normal agricultural practices to control noxious or secondary weeds as defined by rule of the commissioner of agriculture, in accordance with applicable requirements under state and federal law, including established best management practices, and

H agricultural activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program. The federal Food, Agricultural, Conservation, and Trade Act of 1990 has been replaced with the federal Agriculture Improvement and Reform Act of 1996. This exemption may be applied to agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act as long as wetlands are not drained or filled beyond what would have been allowed under the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3281, subsection (a), clauses (1) to (3), as amended, subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991. Documentation from the United States Department of Agriculture may be used as evidence to support this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption by withdrawing from the program.

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

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

(a) there was an expenditure made from the drainage system account for the public drainage system,

(b) the public drainage system was repaired or maintained as approved by the drainage authority, or

(c) 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

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

(a) platted lots,

(b) planned unit, commercial, or industrial developments; or

(c) any development with more than one residential unit per 40 acres.

If wetlands drained under this item are converted to uses prohibited under subitem (2) during the ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section 103G 222.

C A replacement plan is not required for draining 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.

D A replacement plan is not required for draining 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 or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that re-



ceived final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if

- (1) the approval remains valid,
- (2) the project remains active, and
- (3) no additional drainage will occur beyond that originally approved

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

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 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

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, and conducted in accordance with, an applicable general 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, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991

This exemption is for the following nationwide permits as they existed on January 1, 1991, and includes the associated regional conditions: 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25, issued under Code of Federal Regulations, title 33, section 330.5. The local government unit may certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required.

Subp 4 **Wetland restoration.** A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland

The landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland

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

- A. beaver dam construction,
- B. blockage of culverts through roadways maintained by a public or private entity,
- C. actions by public or private entities that were taken for a purpose other than creating the wetland, or
- 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 materi-

als 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

Wetlands may be drained or filled if the landowner can show that the wetland was created solely by actions, the purpose of which was not to create 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.

**Subp 6. Utilities; public works.** A replacement plan for wetlands is not required for:

A. placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if

(1) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible, and

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

B activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

C. alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way,

D emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland,

E normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland, or

F repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations

For new placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized

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

**Subp 7 Forestry.** A replacement plan for wetlands is not required for

A temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland, the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or

B permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland, the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible, and there is no drainage of the wetland or public waters

This exemption is for roads constructed for the primary purpose of providing access for the conduct of silvicultural activities

**Subp 8. Approved development.** A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. As used in this subpart, "infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets,

culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan

Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

**Subp. 9 De minimis.**

A Except as provided in items B to D, a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, regardless of the total amount of wetlands filled as part of a project:

(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 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 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 in a less than 50 percent area,

(4) 400 square feet of wetland types not listed in subitems (1) to (3) outside of shoreland wetland protection zones in all counties; or

(5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland wetland protection zone in areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this subitem, the local shoreland ordinance applies.

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

C This exemption no longer applies to a landowner's portion of a wetland when the cumulative area of the landowner's portion drained 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 Persons proposing to conduct an activity under this subpart shall contact the board at a toll-free telephone number to be provided for information on minimizing wetland impacts. Failure of the person to call does not constitute a violation of this subpart.

E 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 deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if

(1) the area of deposition 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,

(2) the project does not have an adverse impact 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

B duck blnds

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### **8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.**

The local government unit responsible for making exemption and no-loss determinations and approving replacement plans shall be determined according to items A to C

*[For text of items A and B, see M.R.]*

C. If the activity in a wetland is located in two jurisdictions, the local government unit shall be the one exercising zoning authority over the project or if both have zoning authority, the one in which most of the wetland loss will occur. If no zoning permits are required, the local government unit shall be the one in which most of the wetland loss will occur. If an activity will affect wetlands in more than one local government unit, the board will coordinate the project review to ensure consistency and consensus among the local government units involved.

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

Notwithstanding items A to C, 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.

**Statutory Authority:** *MS s 103B.101, 103B 3355; 103G 2242*

**History:** 22 SR 1877

#### **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.

Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies whether or not the local government unit chooses to issue certificates of exemption. If the wetland qualifies for an exemption, and the landowner requests a certificate of exemption, then the local government unit must issue 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 place the decision authority for exemption applications 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 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### **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 determina-

tion 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 place the decision authority for no-loss applications 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 within ten days of the decision.

The local government unit shall issue a no-loss certificate if the landowner requests and if either:

- A the work will not drain or fill a 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, or
- 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 and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### **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

- (1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan, or
- (2) the wetland area to be drained or filled under the revised replacement plan is located more than 500 feet from the area to be drained or filled under the original replacement plan.

**Subp 2 Decision.** The local government unit decision shall be based on the replacement standards in parts 8420 0500 to 8420 0630, and on the technical evaluation panel's de-

termination, if there is one, concerning the wetland function and resulting public values, location, size, and type of the wetland being altered. 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 shall consider and include the technical evaluation panel's recommendation, if there is one, to approve, modify, or reject the proposed replacement plan. 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.

For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.

As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G.2242*

**History:** *22 SR 1877*

#### **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. 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 Deep-water Habitats of the United States" (Cowardin, et al, 1979 edition), and 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 determinations on questions of wetland functions and the resulting public values, location, size, and type for replacement plans, exemption and no-loss requests, 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 and recommend to the local government unit either approval, approval with changes or conditions, or rejection. The panel shall make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

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 in place of the technical evaluation panel.

The panel, or one of its members when so authorized by all of the members, may assist the local government unit in making wetland size and type determinations when asked to do so by the local government unit as part of making an exemption or no-loss determination.

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 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### **8420.0250 APPEALS.**

**Subpart 1. Appeal of replacement plan, banking plan, exemption, and no-loss decisions.** The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, exemption, or no-loss 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

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. 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 2. [Repealed, 22 SR 1877]

**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 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.

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 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 will reverse the decision, amend it, or remand it with instructions for further proceedings.

**Subp. 4 County or watershed reclassification.**

**A** A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.

**B** One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens

shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board or provide a reason why the petition is denied.

Subp. 5 **Metropolitan area public transportation project replacement.** Disputes about restoration opportunities for wetland replacement sites for public transportation projects in the seven-county metropolitan area (1) in a county as required in part 8420.0540, subpart 5, (2) using created wetlands, or (3) using wetland banking credits may be appealed to the board's committee for dispute resolution.

**Statutory Authority:** *MS s 103B.101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge 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 notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon 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 an 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.

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, or banking determinations, the board shall notify the local government unit of its concerns. If not satisfied with the local government unit's response, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. If it is determined at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action within 60 days. 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 take appropriate legal action to ensure compliance.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0268 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

Subpart 1 **Intervention.** At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G 237, or 103G 2372, or rules adopted by the board to implement these sections, the state, through the attorney general, shall intervene in the action on behalf of the local government unit and shall thereafter be considered a defendant in the action. A local government unit making a request under this subpart shall provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

Subp 2 **Liability of state for certain costs.** The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

Subp 3 **Definition.** For purposes of this part, "compensation action" means an action in which the plaintiff seeks compensation for taking private property under the state or federal constitution.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G.2242*

**History:** 22 SR 1877



**8420.0290 ENFORCEMENT PROCEDURES.**

*[For text of subpart 1, see M R.]*

**Subp 2. Cease and desist orders.** Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain 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 certificate of exemption or no-loss from the local government unit, or has evidence to support an exemption. Otherwise

A the enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity,

B the order may be withheld to give the landowner time to produce the evidence required by part 8420 0122 to the enforcement authority of qualification for an exemption or no-loss determination; or

C. a cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority shall exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.

The enforcement authority shall advise the landowner that the landowner's application, if any, for an exemption or no-loss determination, should be made immediately to the local government unit and that whatever drain and fill work the landowner has done may require restoration according to a restoration plan designed by the soil and water conservation district, if the application for exemption or no-loss determination is denied.

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 or no-loss determination is triggered by a cease and desist order, the local government unit or the technical evaluation panel shall make a decision within three weeks from the date of the application. The local government unit or technical evaluation panel shall review evidence of exemption or no-loss produced by the landowner, inspect the site if necessary, and determine

(1) if the area in question is a wetland, and

(2) if the activity qualifies for an exemption or no-loss determination under parts 8420 0210 and 8420 0220.

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 decision is that the activity is exempt or results in a no-loss determination, the decision maker shall issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the Department of Natural Resources, 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 the drain or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the local government unit denies the application.

Promptly upon being informed by the enforcement authority 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, 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

The restoration order must specify a date by which the landowner must either

A 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, or

B submit a replacement plan to the local government unit

The order shall state that it will be canceled when the landowner obtains a certificate of exemption or no-loss from the local government unit, or a certificate that replacement has been completed according to an approved replacement plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order.

If the soil and water conservation district, with the concurrence of the technical panel and the enforcement authority, determines that restoration will not restore all the loss caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, as determined by the soil and water conservation district with the concurrence of the technical panel and the enforcement authority. 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 in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order shall tell the landowner 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 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 parts 8420 0500 to 8420 0630 unless the court orders otherwise

**Subp. 4 After-the-fact replacement.** If a landowner seeks approval of a replacement plan after the proposed project has already impacted 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

**Statutory Authority:** *MS s 103B 101, 103B.3355, 103G.2242*

**History:** 22 SR 1877

#### 8420.0300 MINING.

Wetlands may not be drained 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 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 items A to E, see M R ]*

**Statutory Authority:** *MS s 103B 101, 103B.3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0350 HIGH PRIORITY REGIONS AND AREAS.

*[For text of subpart 1, see M.R.]*

##### Subp 2 High priority areas.

*[For text of items A and B, see M R ]*

C In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider at least the landscape characteristics in subitems (1) to (11)

*[For text of subitems (1) to (9), see M R ]*

(10) Public ownership Wetlands in watersheds with a high proportion of land in public ownership are likely to have high value for public recreation. These watersheds may be considered as high priority preservation and restoration areas.

*[For text of subitem (11), see M R.]*

*[For text of item D, see M R.]*

**Statutory Authority:** *MS s 103B.101; 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0400 WETLAND PRESERVATION AREAS.

*[For text of subpart 1, see M R.]*

**Subp. 2 Landowner application for wetland preservation area.** A landowner may apply to the county, if the county chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a strip of upland 16 5 feet wide around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland.

The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

**Subp. 3 County review of application.** The county may accept the application if the wetland is in a high priority region and high priority area, if it includes the 16 5 foot strip, and is accompanied by the proper covenant.

The county may limit or reject additional upland proposed to be included according to standards the county establishes.

The county may reject the application if the application does not qualify, or send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county may approve it and mark the date of approval on the application. The county shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Within five days of approval of the application, the county shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland preservation area. The county shall also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

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

**Subp. 5. Commencement of wetland preservation area.** The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subpart 3.

**Subp. 6. Fee.** The county may require an application fee to defray administrative costs of the program.

**Subp. 7. Maps.** The county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0505 PREVIOUSLY APPROVED REPLACEMENT PLANS.

Replacement plans may be completed under the laws, rules, conditions, and guidelines in effect when they were approved.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** 22 SR 1877

#### 8420.0510 PROCEDURES.

**Subpart 1. Generally.** No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the governing body of the lo-

cal 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 subp 2, see M R ]*

Subp 3 **Evaluation.** As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering the act. Wetland boundaries must be determined using the methodologies in the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). Wetland type must be identified according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979) and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical evaluation panel shall provide its determinations to the local government unit for consideration.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### 8420.0520 SEQUENCING.

Subpart 1 **Requirement.** Except for wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9, the local government unit may not consider or approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order of priority

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

E replaces unavoidable impacts to the wetland by restoring or, if wetland restoration opportunities are not reasonably available, creating substitute wetland areas having equal or greater public value as provided for in parts 8420 0530 to 8420 0760.

Subp. 2 **Application options.** An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the local government unit before preparing a replacement plan. The local government unit may request additional information needed to make a determination. For projects impacting wetland areas less than 10,000 square feet more than the de minimis amount listed in part 8420 0122, subpart 9, item A, the local government unit may provide an on-site sequencing determination without written documentation from the applicant.

Subp 3 **Determination of impact avoidance.**

*[For text of items A and B, see M R.]*

C. Alternatives analysis:

(1) The applicant shall provide the local government unit with documentation describing at least two alternatives in addition to the proposed project, one of which may be the no-build alternative, that would avoid impacts to wetlands, except that for repair or rehabilitation projects on existing infrastructure only one alternative is required. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the local government unit as good faith efforts, or the local government unit may require the applicant to redraft them for reconsideration.

*[For text of subitems (2) and (3), see M R ]*

*[For text of subs 4 to 7, see M R ]*

Subp. 7a **Sequencing flexibility.**

A Sequencing flexibility cannot be implemented unless alternatives have been considered and unless the proposed replacement wetland is certain to provide equal or greater functions and public values as determined based on a functional assessment reviewed by the technical evaluation panel using a methodology approved by the board. The project sponsor must provide the necessary information and the local government unit must document the application of sequencing flexibility in the replacement plan approval.

B Flexibility in application of the sequencing steps may be applied, subject to the conditions in item A, as determined by the local government unit if

(1) the wetland to be impacted has been degraded to the point where replacement of it would result in a certain gain in function and public value,

(2) preservation of a wetland would result in severe degradation of the wetland's ability to function and provide public values, for example, because of surrounding land uses and the wetland's ability to function and provide public values cannot reasonably be maintained through other land use controls or mechanisms,

(3) the only feasible and prudent upland site available for wetland replacement or development has greater ecosystem function and public value than the wetland. Although this is a rare circumstance since there will usually be several options for siting the replacement wetland or development, it may be appropriate if the project sponsor:

(a) demonstrates impact minimization to the wetland,

(b) agrees to perpetually preserve the designated upland site; and

(c) completely replaces the impacted wetland's functions and public values,

(4) alternatives are demonstrably cost prohibitive such that the only available alternatives would make the projected cost substantially greater than the costs normally associated with similar projects, or

(5) the wetland is a site where human health and safety is a factor

*[For text of subs 8 and 9, see MR ]*

**Statutory Authority:** *MS § 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### **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 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 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 an irrevocable bank letter of credit or other security acceptable to the local government unit to guarantee the successful completion of the wetland value replacement;

C for the impacted wetland

(1) a recent aerial photograph or accurate map of the impacted wetland area,

(2) the location of the wetland, including the county, watershed name or number, and the quarter section public land survey coordinate of the wetland,

(3) the size of the wetland, in acres or square feet,

(4) the type of wetland using United States Fish and Wildlife Service Circular No. 39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979),

(5) a list of the dominant vegetation in the impacted wetland area,

(6) a soils map of the site showing soil type and substrate, where available,

(7) the estimated size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey,

(8) 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,

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

(10) 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,

*[For text of subitems 11 to 13, see M R ]*

D for the replacement wetland, item C, subitems (1) to (9) and (11) to (13), and

*[For text of subitems (1) to (10), see M.R ]*

(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, and

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

*[For text of item E, see M R ]*

**Statutory Authority:** *MS s 103B 101, 103B 3355; 103G 2242*

**History:** *22 SR 1877*

#### **8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.**

*[For text of subpart 1, see M R ]*

##### **Subp. 2 Type of replacement.**

A The order of preference for the method of replacement, from most preferred to least preferred, is restoration, then creation

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

C Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling

D. The following actions are eligible for replacement credit or wetland banking credit as determined by the local government unit in parts 8420 0500 to 8420 0760

(1) 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,

(2) buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and 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;

(3) wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for new wetland credit and adjacent upland buffer areas reestablished to permanent 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, and

(4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds may not exceed 75 percent of the treatment pond area and may only be used for public value credit above a 1:1 ratio

E The local government unit may allow constructed storm water detention basins for new wetland credit if the basin conforms to the following specifications

(1) the basin design uses a two-cell system in which the upstream cell has a 24-hour retention time for a two-year storm event,

(2) the downstream cell is designed for a maximum 12-inch rise in water level for a ten-year storm event;

(3) the standards in part 8420 0550 are followed, and

(4) the design goal is a palustrine emergent wetland

Only the downstream cell can be counted for new wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water detention basins allowed for replacement are not eligible for the exemptions in part 8420 0122 and are subject to parts 8420 0500 to 8420 0630

Storm water management basins constructed for the primary purpose of controlling or treating storm water runoff from impervious surfaces or developed areas, not conforming to the specifications in subitems (1) to (4), are not considered wetlands

**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 responsible government unit is submitted to the responsible 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 Location of replacement wetlands.** Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that greater than 80 percent areas may accomplish replacement in less than 50 percent areas. When environmentally preferable, replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

**Subp 5. Replacement for public transportation projects.**

A Wetlands impacted by public transportation projects may be replaced state-wide, 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 highways 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 board must maintain a public list of restoration opportunities within the seven-county metropolitan area. The list will be maintained for informational purposes only. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for in parts 8420.0700 to 8420 0760

C For projects involving draining 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:

(1) the cost to the state to establish the credits,

(2) the average estimated market value of agricultural land in the township where the road project is located, as determined by the commissioner of revenue; or

(3) the average value of the land in the immediate vicinity of the road project as determined by the county assessor

Public transportation authorities in a less than 80 percent area may purchase wetland banking credits from the state at the state's cost to establish wetland banking credits

D. A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road neces-

sary, 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 or draining associated with the project and consider mitigating important site-specific wetland functions on site, and

(2) submit annual reports by January 15 to the board and members of the public requesting a copy that indicate the location, amount, and type of wetlands that have been filled or drained during the previous year and a projection of the location, amount, and type of wetlands to be filled or drained during the upcoming year.

E. The technical evaluation panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel.

F. Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace the wetlands drained or filled by public transportation projects on existing roads. Replacement of the wetlands must occur in critical rural and urban watersheds.

G. 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; Itasca; Kanabec; Koochiching, Lake; Lake of the Woods, Mille Lacs, Pine, and St. Louis.

B. For purposes of this part, the following counties are less than 50 percent areas: Big Stone, Blue Earth, Brown, Carver, Chippewa; Clay, Cottonwood, Dakota; Dodge; Douglas; Faribault; Fillmore, Freeborn, Goodhue, Grant; Hennepin, Houston; Jackson; Kandiyohi, Kittson, Lac Qui Parle, Le Sueur; Lincoln; Lyon, Mahnomen; Marshall, Martin, McLeod, Meeker; Mower, Murray; Nicollet, Nobles, Norman, Olmsted, Pennington, Pipestone; Polk, Pope; Ramsey, Red Lake; Redwood, Renville, Rice, Rock, Roseau; Scott; Sibley, Stearns, Steele, Stevens, Swift; Traverse, Wabasha, Waseca, Washington, Watonwan; Wilkin, Winona; Wright, and Yellow Medicine.

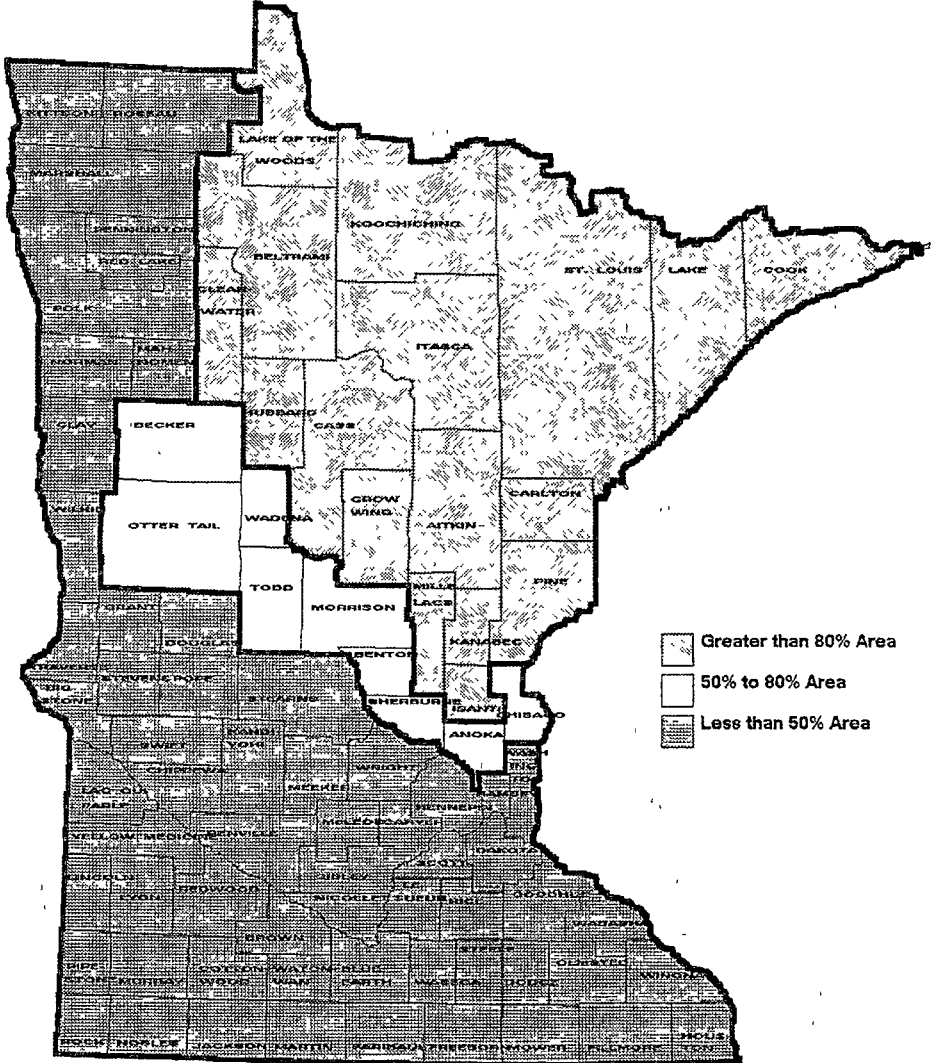
C. For purposes of this part, the following counties are 50 to 80 percent areas: Anoka; Becker, Benton, Chisago; Morrison, Otter Tail, Sherburne, Todd, and Wadena.



WETLAND AREAS

Figure 1

Minnesota Wetland Conservation Act: Wetland Areas



**Subp 6 Size of replacement wetlands.** Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. Except in greater than 80 percent areas, for a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, or in greater than 80 percent areas, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values in subpart 10.

Except in greater than 80 percent areas, future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the county recorder in which the project is located.

*[For text of subs 7 and 8, see MR.]*

**Subp 9 Special considerations.** The factors in items A to I, when identified as being applicable to an impact site or a replacement site, must be considered by the local government unit in the review of replacement plans.

**A. Federal or state-listed endangered species.** A replacement plan for activities that involve sites where species listed in parts 6134.0200 to 6134.0400 are known to be present will not be approved if it is determined that the proposed activities will constitute a taking of those listed species under Minnesota Statutes, section 84.0895. Limited information on the presence of listed species at a particular site is available from the Department of Natural Resources' natural heritage program. Activities that involve taking listed species are subject to Minnesota Statutes, section 84.0895.

**B. Rare natural communities.** A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program will not be approved if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

**C. Special fish and wildlife resources.** A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource will not be approved. These activities include, but are not limited to

- (1) fish passage and spawning areas,
- (2) colonial waterbird nesting colonies,
- (3) migratory waterfowl concentration areas,
- (4) deer wintering areas, and/or
- (5) wildlife travel corridors

Activities involving streams must not block fish passage unless approved by the Department of Natural Resources.

*[For text of items D to I, see MR.]*

**Subp 10 Evaluation of wetland functions and values.**

**A. Evaluation options.** Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. When environmentally preferable, a replacement wetland should replace the same combination of functions and values provided by the impacted wetland. Replacement of wetland functions and values may occur at more than one location. The wetland type index system in items D and E uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement. The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in Minnesota Statutes, section 103B.3355, with a scientifically accepted methodology in items G and H.

**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

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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
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	8
PFO4B	8
PFO5B	7
PFO6B	7
PFO7B	8
PFOC	7
PFOD	7
PFOF	7
PFOJ	1L**
PFOU	1L**
PFOW	1L**
PFOY	7
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	4
PUBF	4

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100

PUBG	5
PUBH	5
PUS (all)	1
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

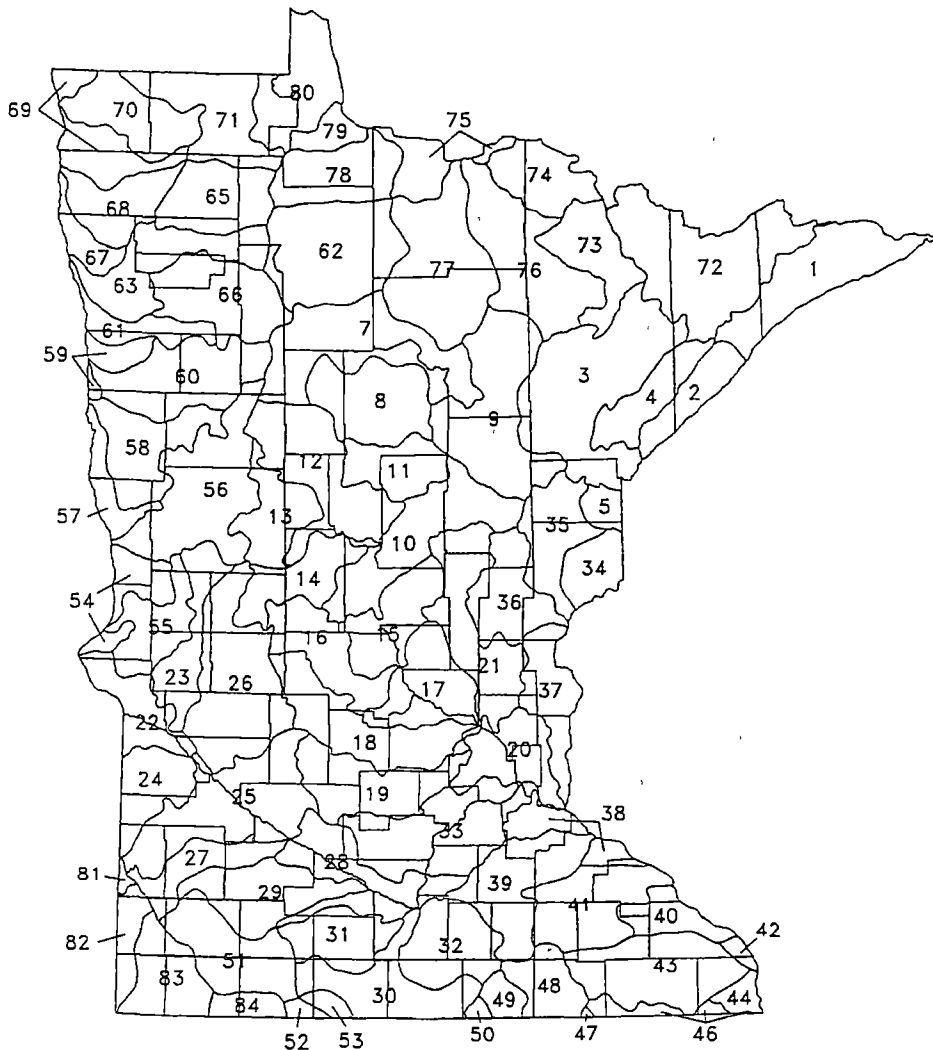
\*\*\* No equivalent Circular No 39 does not address riverine wetlands

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

NOTE In the case of wetland identified using the Cowardm 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



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 (Nevo)
- 46 Upper Iowa River
- 47 Wapsipinicon 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 or filling are replaced by restoring a wetland of the same type, and having the same topographic setting, in the same watershed and with the same topographic setting ratio as described in item D, subitem (2), and related definitions, 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 counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted Except for counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, 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 or in a different topographic setting than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics 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 this subpart to determine the amount of replacement wetland needed to replace the lost wetland values.

(1) Wetland type ratio. Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table in this part, to be applied as specified in subitem (4). The wetland type ratio table incorporates an evaluation of public values as specified in Minnesota Statutes, section 103B.3355, for the purposes of comparison among wetland types.

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 converted to nonwetland shall be determined The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio.

Table 2. Wetland type ratio values for use in determining wetland replacement ratios for out-of-kind replacement Circular No. 39 wetland types include Type 1 (seasonally flooded basin or flat), Type 1L (bottomland hardwoods), Type 2 (wet meadow), Type 3 (shallow marsh), Type 4 (deep marsh), Type 5 (shallow open water), Type 6 (shrub swamp), Type 7 (wooded swamp), Type 8 (bog), R2 (lower perennial river), R3 (upper perennial river), and R4 (intermittent river)

Impacted Wetland	Replacement Wetland					
	1	1L	2	3	4	5
1	1.0	1.5	1.0	1.0	1.0	1.5
1L	3.0	1.0	1.5	1.0	1.0	1.5
2	1.0	1.5	1.0	1.0	1.0	1.5
3	3.0	1.5	1.5	1.0	1.0	1.5
4	3.0	1.5	1.5	1.0	1.0	1.5

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## 8420.0540 WETLAND CONSERVATION

5	3.0	1.5	1.5	1.0	1.0	1.0
6	2.0	1.5	1.0	1.0	1.0	1.5
7	2.0	1.5	1.0	1.0	1.0	1.5
8	1.0	1.0	1.0	1.0	1.0	1.5
R2	3.0	1.5	1.5	1.0	1.0	1.0
R3	3.0	1.5	1.5	1.0	1.0	1.0
R4	2.0	1.5	1.5	1.0	1.0	1.0

Impacted Wetland	Replacement Wetland					
	6	7	8	R2	R3	R4
1	2.0	1.0	1.5	3.0	1.5	3.0
1L	2.0	1.5	3.0	2.0	1.5	2.0
2	2.0	1.0	2.0	3.0	1.5	3.0
3	3.0	1.5	3.0	3.0	1.5	3.0
4	3.0	1.5	3.0	3.0	1.5	3.0
5	3.0	1.5	3.0	2.0	1.0	2.0
6	1.0	1.0	2.0	2.0	1.5	2.0
7	2.0	1.0	2.0	3.0	1.5	3.0
8	2.0	1.0	1.0	2.0	1.5	2.0
R2	3.0	1.5	3.0	1.0	1.0	1.5
R3	3.0	1.5	3.0	2.0	1.0	2.0
R4	3.0	1.5	2.0	1.0	1.0	1.0

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

(2) Topographic setting ratio If the topographic setting characteristics of a replacement wetland differ from those of the impacted wetland, the following ratios shall be applied, as specified in subitem (4).

The topographic setting ratio does not apply when replacement for impacts within a greater than 80 percent area is accomplished in a less than 50 percent area or to wetland replacement projects conducted by the board for public transportation projects on existing roads

Table 3 Topographic Setting Ratios.

Impacted Wetland	Replacement Wetland		
	Shoreland	Riverine	Floodplain
Shoreland	0	0.2	0.4
Riverine	0	0	0.2
Floodplain	0	0	0
Flow-Through	0	0	0
Tributary	0	0	0
Isolated	0	0	0

Impacted Wetland	Replacement Wetland		
	Flow-Through	Tributary	Isolated
Shoreland	0.6	0.8	1.0
Riverine	0.4	0.6	0.8
Floodplain	0.2	0.4	0.6



Flow-Through	0	0 2	0 4
Tributary	0	0	0 2
Isolated	0	0	0

(3) Local public value ratio A local government unit may by ordinance establish additional local public value ratios to address wetland conservation or preservation issues of local concern. These ratios must have a minimum value of zero and should be based on wetland management objectives of a local water management plan adopted under Minnesota Statutes, chapter 103B or 103D. The local public value ratios must be applied as specified in subitem (4).

(4) Application of replacement ratios The required replacement ratio for out-of-kind replacement shall be the sum of the wetland type ratio plus the topographic setting ratio plus the local public value ratio. When this ratio is less than the minimum in-kind ratio of 1:1 for wetlands on agricultural land or in greater than 80 percent areas, or 2:1 for wetlands on nonagricultural lands in less than 80 percent areas, the minimum in-kind ratio shall be the required replacement ratio.

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 50 percent of the acreage of the remaining wetland area.

Calculation of partial drainage is explained by the following example:

Partial drainage of a ten-acre Type 3 (PEMC) wetland to a five-acre Type 1 (PEMA) wetland would require replacing five acres of Type 3 wetland plus 2.5 acres of Type 3 wetland for a total of 7.5 acres of Type 3 acres of replacement wetland.

F. Determining credit for restoration of partially drained wetlands

The determination of acres credited for fully restoring the hydrology of a wetland that has been partially, but demonstrably, affected by drainage, is in two parts. The first is the new wetland credit (NWC) caused by the restoration, for example, if the prerestoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres. The second credit is for the change in value of the prerestoration wetland acres. This is the public value credit (PVC) and is equal to 50 percent of the acreage of the prerestoration wetland.

The credit for increase in new acres can be used in its entirety. The public value credit can only be used for that portion of wetland replacement requiring greater than a 1:1 ratio.

Calculation of partial restoration credits is explained by the following example:

A partially drained five-acre Type 1 (PEMA) wetland is to be restored to its former state, which would be a ten-acre Type 3 (PEMC) wetland.

New Wetland Credit = five acres of Type 3 (PEMC) wetland

Public Value Credit = 2.5 acres of Type 3 (PEMC) wetland (50 percent of five acres of prerestoration acreage)

G. 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 1.0 - May 1996), "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.

**H 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. Further, the topographic setting ratio in item D, subitem (2), and the local public value ratio, if any, in item D, subitem (3), must also be considered when using a board-approved methodology.

**I Adequacy decision** A replacement plan that fails to meet the requirements in items A to H 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. Before construction of the replacement wetland may proceed, 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 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### **8420.0550 WETLAND REPLACEMENT STANDARDS.**

**Subpart 1. General requirements.** The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.

Table 4, in subpart 3, provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination.

**Subp 2 Specific requirements.** The standards in items A to H shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.

**A** Water control structures must be constructed using specifications provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the Department of Natural Resources dam safety regulations.

*[For text of item B, see M R.]*

**C** For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal in part 8420.0530, item D, subitem (1), is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the technical evaluation panel. If the replacement wetland is seeded or planted, the seed or planting stock

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should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

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

Subp 3 **Table 4.** Physical characteristics of wetlands referencing the wetland classification equivalency chart found in part 8420.0540, subpart 10, item B.

WETLAND TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
<b>FORESTED</b>				
(T1)	INTMTNT	—	TREES	SOMETIMES
(T7)	SATUR'D	≥ 3:1	TREES	YES
(T7)	6" - 3'	≥ 5:1	TREES	YES
<b>SCRUB-SHRUB</b>				
(T6)	INTMTNT	—	SHRUBS	YES
(T6)	SATUR'D	≥ 3:1	SHRUBS	YES
(T8)	SATUR'D	≥ 3:1	SHRUBS	SOMETIMES
(T6)	SAT-INT	—	SHRUBS	YES
<b>EMERGENT</b>				
(T1)	INTMTNT	—	HERB/EMERG	YES
(T2)	SATUR'D	≥ 3:1	HERB/EMERG	YES
(T3)	6" - 2'	≥ 5:1	HERB/EMERG	YES
(T4)	2' - 4'	≥ 10:1	HERB/EMERG	YES
<b>DEEP MARSH</b>				
(T5)	4' - 6'	≥ 15:1	AQUATIC BED	YES
(T5)	4' - 6'	≥ 15:1	ALGAE/FLOATG	YES
<b>LAKES</b>				
(T5)	≥ 6'	≥ 25:1	ALGAE/FLOATG	YES
(T5)	≤ 6'	≥ 25:1	HERB	YES
<b>RIVERINE</b>				
R2	≥ 2'	—	ALGAE, SUB	FLOWAGE
R3	6" - 2'	—	ALGAE, SUB	FLOWAGE
R4	INTMTNT	—	RIPARIAN	FLOWAGE

\* INTMTNT = Intermittent or temporarily flooded, SATUR'D = Saturated in the rooting zone

\*\* HERB = Herbaceous, EMERG = Emergent, SUB = Submergent, FLOATG = Floating-leaved

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G.2242*

**History:** *22 SR 1877*

**8420.0610 DURATION OF MONITORING.**

Monitoring shall be by means of an annual report as specified in part 8420.0620 and shall continue for five years following completion of the wetland replacement project, or until the technical evaluation panel deems the replacement wetland to be fully functional. Through written notification to the applicant, the local government unit may extend the required monitoring period for not more than an additional five-year period if the goal of the replacement plan has not been achieved, but may be achieved with more time.

**Statutory Authority:** *MS s 103B.101, 103B 3355; 103G.2242*

**History:** *22 SR 1877*

**8420.0620 MONITORING ANNUAL REPORT.**

Subpart 1 **Purpose.** The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in subpart 2. The applicant shall submit the annual report to the local government unit where the replacement wetland is located on a date determined by the local government unit until the applicant has fulfilled all of the requirements of the local government unit. The local government unit, at its discretion, may prepare the annual report for the applicant.

Subp 2 **Report content.** The annual report shall include the following information and other site-specific information identified by the local government unit.

*[For text of items A and B, see M R.]*

C hydrology measurements at least three seasonal water level elevations during the period April through October (msl or referenced to a known bench mark),

*[For text of items D and E, see M R.]*

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

**8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.****Subpart 1. General requirements; notice and participation.**

A. As an alternative to the rules adopted under Minnesota Statutes, section 103G.2242, subdivision 1, and the public value criteria established or approved under Minnesota Statutes, section 103B 3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the Pollution Control Agency, local government units, and local citizens to actively participate in the development of the plan, and

(2) the plan is implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city, Minnesota Statutes, chapter 366, for a town, and by rules adopted under Minnesota Statutes, chapter 103D, for a watershed district, and Minnesota Statutes, chapter 103B, for a watershed management organization

B An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan

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 Minnesota Statutes, section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section, and

(3) the resulting public values,

B vary application of the sequencing standards in Minnesota Statutes, section 103G 222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan,

C. vary the replacement standards of Minnesota Statutes, section 103G.222, subdivision 1, paragraphs (f) and (g), 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

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(1) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, and

(2) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in part 8420.0540, subpart 2;

D in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres, and

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 Minnesota Statutes, section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values

### Subp. 3 Board review and approval; mediation; judicial review.

A The plan is deemed approved 60 days after the local government unit submits the final plan to the board, unless the board disagrees with the plan as provided in item D

B The board may not disapprove a plan if the board determines the plan meets the requirements of this part

C In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules

D If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government unit of the plan deficiencies and suggested changes. The board shall include in the response to the local government unit the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government unit has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government unit may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government unit

E If, after the hearing, the board and local government unit disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved

F The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this part

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

A. The plan becomes effective as provided in subpart 3, items D to F, and after adoption of the plan into the official controls of the local government unit

B After the effective date of the plan, a local government unit shall make replacement decisions consistent with the plan

Subp. 5. **Plan amendments.** Amendments to the plan become effective upon completion of the same process required for the original plan

Subp. 6. **Water planning processes apply.** Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the water plan processes under Minnesota Statutes, sections 103B.231 and 103B.311

**Statutory Authority:** *MS s 103B.101, 103B.335, 103G.2242*

**History:** 22 SR 1877

**8420.0710** [Repealed, 22 SR 1877]

**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, that the project would otherwise be allowed if adequate replacement could be secured by the applicant, that project-specific replacement is not reasonable or desirable, 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, however, wetland impacts should be replaced in a location that either most closely resembles lost functions and public values at the impact site or in a location that maximizes important wetland functions and public values

**Subp 4 Eligible wetlands.** 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

**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 a statewide wetlands bank.

*[For text of subp 6, see M.R.]*

**Subp 7 Wetland banking credit transfers.** Wetland banking credits may be transferred to another account holder providing the fee title or easement is transferred also, and providing all the remaining wetland banking credit for a wetland remains in one account. Wetland banking credits may be withdrawn by an applicant and partial withdrawals are allowed. The account holder is responsible for the success of the wetland until completion of monitoring. After completion of monitoring, the fee title owner or easement or license holder and anyone who has contracted with the owner is responsible for maintaining the wetland and replacing it according to this chapter if the wetland is subsequently drained or filled, by structural failure, or otherwise

*[For text of subp 8, see M.R.]*

**Subp 9 Qualification.** A wetland cannot be deposited for wetland banking credit that cannot, under parts 8420 0500 to 8420 0630, be used for replacement

**Statutory Authority:** *MS s 103B 101, 103B 3355; 103G.2242*

**History:** *22 SR 1877*

**8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.**

*[For text of subp 1, see M.R.]*

**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 unit's 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 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.

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

**Statutory Authority:** *MS s 103B 101, 103B.3355; 103G 2242*

**History:** *22 SR 1877*

**8420.0740 PROCEDURES:**

**Subpart 1. Deposits and credits.**

*[For text of items A 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. As an incentive to encourage the deposit of small wetlands, the local government unit shall assign wetland banking credit to wetland acreage as follows:

Wetland Acreage	Wetland Banking Credit
0 to 10 acres	100 percent
over 10 acres	90 percent

The local government unit may modify the credit given, up to a maximum of 100 percent, if agreed to by the technical evaluation panel.

F. The initial deposit of wetland banking credits must be done by the fee title owner or easement or license holder of the wetland

*[For text of item 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, and members of 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, if affirmative, approve the plan and advise the depositor of the wetland banking credits likely to be accepted into the wetland bank. Approval of the plan shall be considered official acknowledgment that the wetland is designated for replacement.

I. In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to item H.

*[For text of item J, see M.R.]*

K. No sooner than six months after construction has been completed and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands, the depositor shall contact the local government unit to request a final determination of wetland bank acceptability and approved quantities of wetland banking credits for deposit. The technical evaluation panel shall ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized.

Based on a site visit, the technical evaluation panel will determine the size and type of wetland as well as topographic setting characteristics and, if applicable, the new wetland credits and public value credits resulting from the to be deposited wetland. The technical evaluation panel will provide the information to the local government unit.

L. The local government unit shall notify the depositor of its findings as to the suitability of the wetland and approved wetland banking credits. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0530, item D, subitem (6), 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 certifi-

cation for deposit into the bank or may amend the bank plan and submit the plan to the local government unit for approval and subsequent 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 local government unit in which the wetland is located:

- (1) name, address, and telephone number of the depositor,
  - (2) location of the wetland, including legal description, public land survey coordinates, county, and watershed,
  - (3) a copy of the deed for the property containing the wetland with the required covenant recorded,
  - (4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type and topographic setting characteristics and, if applicable, the new wetland credits and public value credits, and
  - (5) certification that the wetland is approved for deposit into the bank
- [For text of items N to P, see M R ]*

#### Subp 2 Withdrawals.

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

B The use of the wetland bank is allowed.

*[For text of item C, see M R ]*

D The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:

- (1) account holder, name, address, and telephone number,
- (2) available wetlands, wetland acres by type and topographic setting characteristics, and, if applicable, the new wetland credits and public value credits,
- (3) location, section, township, range, county, and watershed

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 notarized 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.

F. The local government unit must circulate the applicant's wetland replacement plan and the wetland banking credit withdrawal form to identify specific wetland banking credits as the applicable replacement wetland, using the public comment and review process in part 8420.0230 and to the local government unit whose jurisdiction covers the location of the wetland banking credits. The local government unit must contact the board to verify that replacement credits indicated on the wetland banking credit withdrawal form are available before final approval of wetland bank withdrawals.

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.

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.

I. An individual, corporation, local government unit, 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 required organization information. The board will notify both account holders on transfer of the wetland banking credits. An account transfer must be accompanied by transfer of the fee title or easement. A wetland banking credit for a wetland may not be split between accounts. Wetland banking credits may also be transferred between banks approved by the board.

**Statutory Authority:** *MS s 103B 101; 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### **8420.0750 AUDITING AND MONITORING.**

##### **Subpart 1. Annual report and audit.**

A The board will develop wetland bank deposit, withdrawal, and credit transfer and withdrawal forms and distribute them to local government units indicating a desire to certify restored wetland banking credits for deposit in the wetland bank.

B The wetland bank data file maintained by the board will contain at least the following information:

(1) wetland acres by type, topographic setting characteristics, restoration or creation date, and bank acceptance date, fee owner, location by (public land survey coordinates, local government unit, county, and watershed of the banked wetland), and

(2) previous withdrawals against each banked wetland by impact wetland (wetland acres by type, topographic setting characteristics, and, if applicable, the new wetland credits and public value credits, date of wetland impact), ownership (fee owner, address, telephone number) and location (public land survey coordinates, local government unit, county, and watershed of the impacted wetland)

C The board may periodically inspect wetland bank records and correspondence maintained by a local government unit to determine compliance with this part.

D An annual wetland bank report shall be prepared 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 MR ]*

**Statutory Authority:** *MS s 103B 101, 103B 3355; 103G 2242*

**History:** *22 SR 1877*

#### **8420.1010 PURPOSE.**

The purpose of parts 8420.1010 to 8420.1060 is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by Minnesota Statutes, section 103G.223. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

Part 8420.0122 does not apply to calcareous fens.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*

#### **8420.1040 MANAGEMENT PLANS.**

Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner. The commissioner will provide technical assistance to landowners or project sponsors in the development of management plans.

**Statutory Authority:** *MS s 103B 101, 103B 3355, 103G 2242*

**History:** *22 SR 1877*