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Register

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RULES

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Temporary Cost-Share Program Continued

State Grants for Development of Bikeways Continued

Public Transit Subsidy and Demonstration Grant Programs Continued

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VOLUME 2, NUMBER 46

MAY 22, 1978

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Issue Number	*Submission deadline for adopted and proposed rules and executive orders	*Submission deadline for official notices	Issue Date
47	May 15	May 22	May 30 (Tu)
48	May 22	May 30 (Tu)	June 5
49	May 30 (Tu)	June 5	June 12
50	June 5	June 12	June 19
51	June 12	June 19	June 26

*Deadline extensions may be possible at the editor's discretion; however, no extensions will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations. Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, (612) 296-8239.

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169	Providing for Assistance to Officials of Polk County, Minnesota (Emergency Executive Order)	43	1950
170	Providing for Assistance to Officials of St. Louis County, Minnesota (Emergency Executive Order)	45	1998

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources Enforcement Division Adopted Rule Relating to Snowmobiles

The proposed amendment to NR 57 E. 4. b. published at *State Register*, Volume 1, Number 44, p. 1597, May 9, 1977 (1 S.R. 1597) is adopted with the following changes:

NR 57 E. 4. b. Required equipment. No snowmobile manufactured on or after July 1, 1979 (~~date to be determined after public hearing~~) for sale in Minnesota except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on that A scale at 50 feet.

Waters Division Adopted Rules Containing Standards and Criteria for Granting Permits to Change the Course, Current or Cross Section of Public Waters

The proposed rules published at *State Register*, Volume

2, Number 5, p. 201, August 8, 1977 (2 S.R. 201), are adopted, with the following amendments:

Contents

NR 5020 General provisions.

- A. General policy.
- B. Scope.
- C. Jurisdiction.
- D. Definitions.
- E. Severability.

NR 5021 Filling into public waters.

- A. Policy.
- B. Beach sand blankets.
- C. Riprap shore protection.
- D. Other filling.

NR 5022 Excavation of public waters.

- A. Policy and general restrictions.
- B. Dredging of Public Waters.
- C. Inland excavations connected to public waters.
- D. Alterations of natural watercourses.

NR 5023 Structures in public waters.

- A. Policy and general requirements.
- B. Permanent docks.
- C. Wharves.
- D. Off-shore breakwaters, harbors and marinas.
- E. ~~Waterway Obstructions~~ Retaining walls.
- F. ~~Boat Launching Ramps~~ Other waterway obstructions.
- G. Boat launching ramps.
- H. Removal or abandonment.

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NR 5024 Water level controls and dam construction or reconstruction.

A. Policy.

B. Dam Construction or Reconstruction Permit requirements.

~~C. Water Level Controls.~~

NR 5025 Bridges and culverts, watermain and sewer crossings, intakes and outfalls.

A. Policy.

B. Bridges & Culverts Bridge and culvert installations.

C. Watermain and sewer crossings.

D. Intakes and outfalls.

NR 5026 ~~ADMINISTRATION~~ General administration.

A. Application for water resource permits.

B. Permit review.

C. Statutory requirements.

NR 5027-5029 Reserved for future use.

NR 5020 General provisions.

A. General policy. The purpose of these rules and regulations is to provide for the orderly and consistent review of water resource permit applications in order to conserve and utilize the water resources of the state in the best interest of the people of the state: its people. In accordance with the authority granted in the Laws of Minnesota 1976, Chapter 83, and in furtherance of the policies and requirements declared in Minnesota Statutes, Sections 105.38 and 105.42, the Commissioner of Natural Resources, hereinafter referred to as the Commissioner, hereby establishes standards and criteria governing the issuance, review, and denial of water resource permits for work in the beds of public waters. Pursuant to Minnesota Statutes 1976, Section 105.45 and Section 116D.04, the Commissioner shall be guided by the following general policies in deciding to issue or deny a water resource permit: In deciding whether to issue permits, the Department shall be guided by the policies and requirements declared in Minn. Stat. §§ 105.38, 105.42, and § 116D.04.

The proposed development must also be consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies including but not limited to shoreland management, flood plain management, water surface use management, boat and water safety, wild and scenic rivers management, water quality management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected vegetative species management.

1. No water resource permit shall be issued where the proposed action is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources, provided that there is a feasible and prudent alternative.

2. No water resource permit shall be issued unless and until the Commissioner has considered all of the following points:

a. ~~The environmental impact of the proposed project.~~

b. ~~Direct or indirect adverse environmental effects of the proposed project.~~

c. ~~The availability and feasibility of reasonable alternatives having a lesser degree of impact upon the water body.~~

d. ~~The environmental impact of predictable increased future development of an area due to the existence of the proposed project, if approved.~~

3. ~~The applicant must show that the proposed project is reasonable, practical and will adequately protect public safety and promote the public welfare.~~

4. The proposed development must be consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies including but not limited to shoreland management, floodplain management, water surface use management, boat and water safety, wild and scenic rivers management, fish and wildlife management, water quality management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected vegetative species management.

5. ~~No water resource permit shall be issued based on economic considerations alone.~~

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6. The issuance or denial of a water resource permit shall be based upon findings of fact made on substantial evidence.

B. Scope. To achieve the policies declared in NR 5020 (A) the Commissioner has these rules set forth minimum standards and criteria for the review, issuance, and denial of water resource permits in NR 5020-5029 which include: permits for proposed projects affecting public waters as detailed in the preceding table of contents.

1. Filling into public waters

- a. Beach sand blankets
- b. Riprap shore protection
- c. Other filling

2. Excavation of public waters

- a. Dredging of public waters
- b. Inland excavations connected to public waters
- c. Alterations of natural watercourses

3. Structures in public waters

- a. Permanent docks
- b. Wharves
- c. Offshore breakwaters, harbors, and marinas
- d. Retaining walls
- e. Waterway obstructions
- f. Boat launching ramps

4. Dam construction or reconstruction and water level controls

- a. Water level controls
- b. Dam construction or reconstruction

5. Bridges and culverts, watermain and sewer crossings, intakes and outfalls

- a. Bridge and culvert installations
- b. Watermain and sewer crossings
- c. Intake and outfalls

6. Administration

- a. Application for water resource permits
- b. Permit review

C. Jurisdiction. These standards and criteria governing the review, issuance and denial of water resource permits, as hereby adopted and established, pertain apply to any and all work which will cause or result in the alteration of the course, current or cross-section of public waters, except for the following: For the purpose of these standards and criteria, the beds of public waters shall include all portions of public waters located below the elevation of the ordinary high water mark.

1. Utility crossings of public waters which are regulated under Minn. Stat. § 84.415 and rules promulgated thereunder.

2. Destruction and control of aquatic vegetation which is regulated under Minn. Stat. § 98.48, subd. 9 and rules promulgated thereunder.

3. Changes in the course, current, or cross-section of public waters necessary for the mining of metallic and non-metallic minerals, sand and gravel, peat, coal, and marl. See Minn. Stat. § 105.64.

D. Definitions. For the purposes of these regulations rules, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

"Alteration" means any activity that will change or diminish the course, current, or cross-section of public waters, deepen, widen, straighten, or realign the channel of a watercourse, or enclose it for a substantial distance within a structure other than for a roadway, walkway trail crossing, or the like.

"Altered natural watercourse" means a former natural watercourse which has been affected by man made changes resulting in straightening, deepening, and widening of the original channel.

"Artificial watercourse" means a watercourse which has been artificially constructed by man where there was no previous watercourse.

"Beds of public waters" means all portions of public waters located below the ordinary high water mark.

"Breakwater" means an off-shore structure protecting a shore area, harbor, or marina from waves.

“Class I public watercourse” means a natural watercourse serving as the major drainage outlet or a major tributary of such an outlet, which is capable of serving a number of beneficial public purposes. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses are also included.

“Class II public watercourse” means a natural watercourse serving as a tributary of a Class I watercourse. Class II public watercourses are often perennial streams serving more than one beneficial public purpose.

“Class III public watercourse” means a smaller natural watercourse or an altered natural watercourse not constructed under Minn. Stat. ch. 106, (and which are tributary to other Class I, II, or III watercourses), and which may be an intermittent stream serving at least one beneficial public purpose.

“Class IV watercourse” means any artificial watercourse or altered natural watercourse constructed under the provisions of Minn. Stat. chs. 106 or 112 or prior laws, or as the result of private actions without any public drainage proceedings, (and which are tributary to a public drainage system).

“Commissioner” means the Commissioner of Natural Resources.

“Dam” means any artificial barrier or appurtenant works which does or may impound or divert water.

“Department” means the Department of Natural Resources.

“Dredge” means the removal of the sediment or other materials from the beds of public waters by means of hydraulic suction or mechanical excavation.

“Emergency spillway” means a spillway designed to convey water in excess of that impounded for flood control or other beneficial purposes.

“Fill” means any material placed or intended to be placed on the bed or bank of any public water.

“Filter” means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials. The purposes of the filter are to (1) prevent fine embankment material from being pulled through the riprap materials, (2) distribute the

weight of the overlying riprap to prevent settlement, and (3) to provide relief of hydrostatic pressures inside the embankment.

“Floodway” means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood.

“Harbor” means an area protected from waves which is intended for the mooring of watercraft, either inland or off-shore. Inland harbors generally include an entrance channel and an enlarged landward extension serving as a protective launching and mooring area for watercraft. An off-shore harbor may be protected by breakwaters.

“Hydraulic height” means the effective height of the dam with respect to the maximum storage capacity which is measured from the natural downstream toe of the barrier to the highest water constricting height of the dam.

“Inland boat slip” means an inland excavation generally having a uniform width which serves as a protective area for launching and mooring of a single watercraft.

“Inland excavation” means any excavation intended to extend the cross-section of public waters landward of the natural or pre-existing shoreline.

“Low-water ford type crossing” means a stream crossing which conforms to the natural cross-section of the stream and utilizes the placement of a suitable substrate to allow vehicular passage without confining the stream flow within culverts or other hydraulic enclosures.

“Maintenance excavation or ‘clean out’” means any excavation and removal of sediment accumulations from a previously constructed channel/harbor so as to restore the facility as nearly as practical to the dimensions of length, width, and depth which characterized the facility when originally constructed.

“Marina” means an area for the concentrated mooring of 5 or more watercraft wherein facilities are provided for any or all of the following ancillary services: boat storage, fueling, launching, mechanical repairs, sanitary pumpout, restaurant services, etc. either inland or off-shore. A marina may be constructed within an inland harbor. An off-shore marina would be located waterward of the ordinary high water mark.

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"Maximum," with respect to storage capacity or discharge, refers to the most severe design condition, including surcharge (floodwater storage).

"Mooring" means any containment of free-floating watercraft that provides a fixed fastening for the craft.

"Natural", with reference to watercourses, means in a state provided by nature without artificial straightening, deepening, or widening.

"Natural watercourse" means any watercourse in a state provided by nature without artificial straightening, deepening, or widening. See "watercourse" as hereinafter defined. natural channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods, water may leave the confining beds and banks but under low and normal flows, water is confined within the channel. A watercourse may be intermittent or perennial.

"Off-shore" means the area waterward of the ordinary high water mark of a public water.

"Ordinary high water mark" for purposes of these regulations means ~~a mark~~ an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. ~~For rivers and streams, For watercourses,~~ the ordinary high water mark shall be considered to be the elevation of the top of the bank of the channel as defined in NR 85(e). (Re: NR 85(c)). For reservoirs and flowages the ordinary high water mark shall be the operating elevation of the normal summer pool.

"Permanent dock" means any dock other than seasonal docks and wharves as hereinafter defined. ~~not specifically designed so that it may be removed from the lake or stream bed for maintenance, ice damage prevention, or storage. Docks employing supports which are driven into the lake or stream bed, or are constructed of rock and/or concrete shall be considered permanent structures so long as they are incapable of removal from the lake or stream bed by non-mechanized tools and equipment. For purposes of these regulations, wharves in industrial river front areas are not considered to be permanent docks.~~

"Public waters" means those waters of the State which serve one or more beneficial public purpose for such things as navigation, recreation, fish and wildlife habitat, nutrient and sediment entrapment, water supply, groundwater recharge, floodwater retention, and scientific and natural areas. The public character is not determined exclusively by the ownership of the underlying or surrounding land.

"Principal spillway" means a spillway designed to convey water from an impoundment at release rates established for the structure.

"Probable maximum flood" means the most severe flood with respect to peak flow that may be expected from a combination of the most critical meteorological and hydrological conditions that are reasonably possible on the drainage basin. The basis for estimating the discharge of such a flood shall be Hydrometeorological Report No. 33 of the U.S. Weather Bureau.

"Professional Engineer" means an engineer registered to practice in Minnesota.

"Public waters" means any waters of the state which serve a material beneficial public purpose as defined in Minn. Stat. § 105.37, subd. 6.

"Reconstruction" means the rebuilding or renovation of an existing ~~dam or other~~ structure, where the cost of such work will exceed 50 percent of the structures assessed value. replacement cost of a dam or 50 percent of the assessed value of other structures.

"Regional flood" ~~has the same meaning indicated in Minn. Reg. NR 85(e), that is means~~ the flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval; (Re: NR 85(c)).

"Retaining walls" means vertical or nearly-vertical alongshore structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet piling, poured concrete, concrete blocks, or other durable materials.

"Riprap shore protection" means coarse stones, boulders, cobbles, or artificially broken rock fragments or concrete or brick materials, laid loosely or within gabion baskets against the basal slope of the existing bank of a public water.

"Seasonal dock" means a dock so designed and constructed that it may be removed from the lake or stream bed on a seasonal basis. All components such as supports, decking, and footings must be capable of seasonal removal by non-mechanized means. tools and equipment.

"Spillway" means ~~an open or closed channel, or both,~~ available to discharge excess water from a reservoir.

"Standard project flood" ~~has the same meaning indicated in Minn. Reg. NR 85(e), that is means~~ the flood that

may be expected from the most severe combination of meteorological and hydrological conditions that is considered reasonably characteristic of the geographical area in which the drainage basin is located, excluding extremely rare combinations. Such floods are intended as practicable expressions of the degree of protection that should be sought in the design of flood control works ~~and other hydraulic structures~~, the failure of which might be disastrous. (Re: NR 85(c)).

“Structure” means any building, footing, foundation, slab, roof, boathouse, deck, wall, dam, or any other object permanently attached to the bed or bank of a public water- ~~and continuously maintained or intended to be maintained in a single location for a period of time greater than a single open water season in a manner connoting permanency.~~ These rules shall not pertain to floating structures such as houseboats, mooring and navigation bouys, swimming and diving platforms, water ski jumps, and watercraft, provided such floating structures are not permanently anchored by means of pilings, foundations, gabion baskets, or other materials which are not capable of removal by non-mechanical means.

“Structural height” means the overall vertical distance from the lowest point of construction to the top of the dam including the foundation or cutoff but excluding driven sheet piling primarily intended for cutoff purposes.

“Swellhead” means the difference between the head-water elevation necessary to pass the regional flood through the proposed structure and the tailwater elevation below the structure.

“Watercourse” means any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent; ~~and may include former natural watercourses altered by private actions other than those conducted under Minnesota Statutes, Chapter 106 or 112, or prior applicable laws.~~

“Watercraft” means any contrivance used or designed for navigation on water other than a duck boat during the duck hunting season, a rice boat during the harvest season, or a seaplane.

“Wharf” means a permanent structure constructed into navigable waters for the sole purpose of transferring

cargo to and from watercraft in an industrial or commercial enterprise.

E. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

NR 5021 Filling into public waters.

A. Policy. It is the policy of the Department of ~~Natural Resources to discourage~~ limit the placement of any fill material into public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife.

1. ~~The placement~~ Placement of fill materials into public water may in conformance with these rules shall be permitted in the following cases:

a. ~~Development of public and private beach areas along water bodies, wherever such development would be feasible and practical without contribution of excessive fill to the aquatic environment.~~

b. Protection of shoreline from continued erosion by placement of ~~natural rock~~ riprap materials. along the shore.

c. Recovery of shoreland lost by erosion or other natural forces which has occurred within the last five (5) years.

d. Limited filling to allow raising of previous development constructed at too low an elevation.

e. Provide ~~reasonable~~ navigational access from riparian properties, where such access cannot be gained by alternative means. ~~not requiring filling into public waters.~~

2. ~~The placement~~ Placement of fill materials into public waters shall not be permitted in the following cases:

a. To achieve vegetation control.

b. To create upland areas for development or subdivision.

c. To stabilize lake and stream beds which cannot support ~~sand, gravel or other~~ fill materials (e.g. excessive

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depths of muck, steep bank or bed slope, etc.) ~~or where previous fill materials have failed.~~

d. To stabilize areas of flowing water, active springs, or subject to substantial wave action, drift, sedimentation, or other disruptive forces.

e. ~~To gain access to navigable water depths where such access can be reasonably attained by alternative means.~~

f. ~~Where the proposed fill will be detrimental to significant fish and wildlife habitat, or protected vegetation.~~

B. Beach sand blankets.

1. Permitted uses: ~~A water resource~~ No permit shall not be required to install a beach sand blanket provided all of the following conditions are met: the conditions of NR 5021D are met and the sand and/or gravel layer does not exceed six (6) inches in thickness, 50 feet in width along the shoreline, and does not extend more than ten (10) feet waterward of the ordinary high water mark, provided local watershed district and county zoning officials are given at least seven (7) days notice.

a. ~~The sand and/or gravel layer does not exceed six (6) inches in thickness.~~

b. ~~The proposed blanket does not exceed fifty (50) feet in width along the shoreline or extend more than ten (10) feet beyond the ordinary high water mark, thereby exceeding 500 square feet in area.~~

e. ~~The proposed sand blanket is not placed in a fish spawning area posted by the Department of Natural Resources; Division of Fish and Wildlife.~~

d. ~~The sand blanket shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources; Division of Waters.~~

2. ~~Water resource permit. Permits: A water resource permit shall be required for any other beach sand blanket not meeting the above requirements and may be granted provided the following conditions are met: and shall be granted provided the conditions of NR 5021 D are met.~~

a. ~~The sand and/or gravel blanket does not extend more than fifty (50) feet beyond the ordinary high water mark or into water more than four (4) feet deep, whichever is less.~~

b. ~~The proposed area does not adversely affect fish and wildlife habitat, or rice or other protected vegetation.~~

C. Riprap shore protection.

1. General standards: The protection of shoreline from continued erosion by placement of natural rock riprap along the shore ~~may~~ shall be permitted provided the following general standards and the conditions of NR 5021 D are met:

a. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.

b. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.

c. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.

2. Permitted uses: ~~A water resources permit shall not be required for the installation of riprap shore protection materials provided the following conditions are met: Except along the shores of Lake Superior and officially designated trout streams, no permit shall be required where the riprap materials consist of natural rock and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1, and no materials are placed more than five (5) feet waterward of the ordinary high water mark.~~

a. ~~The riprap materials shall consist of natural rock.~~

b. ~~The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.~~

e. ~~The riprap shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources; Division of Waters.~~

d. ~~The riprap materials shall conform with the natural alignment of the shoreline, be placed with a minimum finished slope of 3:1, and no riprap or filter materials shall be placed more than five (5) feet beyond the ordinary high water mark.~~

3. ~~Water resource permits. Permits: A permit shall be required for any other riprap shore protection and shall be granted provided the conditions of NR 5021 C (1) and NR 5021 D are met.~~

a. ~~A water resource permit shall be required for any~~

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riprap shore protection which does not satisfy the above requirements:

b. A water resource permit shall be required for any riprap shore protection placed along Lake Superior (+6-1).

e. A water resource permit shall be required for any riprap shore protection placed along officially designated trout streams.

D. Other filling.

A water resource permit shall be required for all other filling into public waters and may shall be granted provided: the following conditions are met:

1. The project ~~must~~ is not be unduly detrimental to the public ~~values~~ purposes listed in Minn. Stat. § 105.37, subd. 9, including but not limited to fish and wildlife habitat, navigation, water supply and storm water retention, and the like. Filling of posted fish spawning areas is prohibited.

2. The fill ~~must~~ consists of clean inorganic material that is free of ~~inorganic and organic~~ pollutants and nutrients.

3. The existence of a stable, supporting foundation for all proposed fills in public waters ~~must be~~ is established by appropriate means, including soil boring data where deemed necessary by the Commissioner.

4. Where erosion protection is deemed necessary by the Commissioner, the site conditions and fill material ~~must be~~ are capable of being stabilized by an approved erosion control method (riprap, retaining wall, etc.) which is consistent with existing land uses on the affected public water.

NR 5022 Excavation of public waters.

A. Policy and general restrictions. It is the policy of the Department of Natural Resources to discourage the excavation of materials from the beds of public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife. Excavation shall be permitted provided the conditions of NR 5022 B, C, and D are met, except:

1. ~~The excavation of materials from the beds of public waters may be permitted in the following cases:~~

a. ~~Development of public and private beach areas along water bodies, wherever such development would be~~

~~feasible and practical without excessive disruption to the aquatic environment.~~

b. ~~Excavation and maintenance of navigation channels within public waters extensively used for commercial or recreational navigation.~~

e. ~~Excavation for lake improvement.~~

d. ~~Excavation for inland marinas or harbors where such development is feasible, practical, and intended to promote balanced public health, safety, and welfare.~~

e. ~~Alteration of natural watercourses where such work will have environmental, recreational and economic benefit.~~

1. Where it is intended to gain access to navigable water depths when such access can be reasonably attained by utilizing a temporary or permanent dock.

2. Where inland excavation is intended solely to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands.

3. Where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation.

2. ~~The excavation of materials from the beds of public waters shall not be permitted in the following cases:~~

a. ~~To gain access to navigable water depths where such access can be reasonably attained by utilizing a temporary or permanent dock.~~

b. ~~Where excavation is proposed on a water body that is perched on an impervious stratum, unless soil borings show that the proposed excavation will not rupture the impervious stratum.~~

e. ~~Where inland excavation of the beds of public waters is intended solely to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands.~~

d. ~~Where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation.~~

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B. Dredging OF PUBLIC WATERS

1. General standards: A water resource permit shall be required for all dredging of public waters, subject to the following general standards: The following general standards shall apply to the review of all applications for permits to dredge public waters:

a. The proposed dredging project must take into consideration be adequate in relation to appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of local drainage at the proposed project site;

(2) Type of sediment/soil strata and underground formations in the project vicinity;

(3) Life expectancy of the dredging with respect to bedload, (rivers and streams) and long-shore drift and siltation (lakes and reservoirs) patterns in the project vicinity; and

(4) Protection of the waterbody itself in terms of from increased seepage, pollution, and other hydrologic impacts.

b. Adequate and stable on-land spoil disposal sites located above the ordinary high water mark and outside of floodway districts must be available for containment of dredged spoils, and project plans must include provisions for sodding, seeding, or otherwise properly protecting these spoils. Dredge spoils may be placed below the ordinary high water mark only when the Department determines that one or more beneficial public purposes will be enhanced.

c. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives such as weed removal without dredging, beach sanding where acceptable, excavation above the bed of public water, less extensive dredging in another area of the public water, or management of an alternate water body for the intended purpose.

d. The dredging must be limited to the minimum dimensions necessary for achieving the desired purpose.

e. Where excavation is proposed on a water body that is perched on an impervious stratum, soil borings must show that the proposed excavation will not rupture the impervious stratum.

2. Water resource permit: Additional Specific Standards: The following categories of dredging projects may shall be permitted, subject to the general standards of NR 2022 (B) (+) above: following specific restrictions.

a. Dredging for beach Beach development: Permits for dredging the beds of public waters for beach development may be issued provided all of the following conditions are met:

(1) A beach sand blanket alone would The existing site conditions will not be expected to provide a suitable beach based upon the existing site conditions, using a sand blanket alone.

(2) The area to be dredged is shall be consistent with the general dimensions authorized for beach sanding- under NR 5021 B.

(3) The depth of dredging needed to reach a suitable beach stratum is shall not be excessive considering anticipated site maintenance, and desired water depths, and disposal problems.

b. Dredging within public Public waters serving commercial or recreational navigation: This category includes those public waters which are used as highways of commerce for interstate or intrastate navigation, recreational navigation, or access to existing boat harbors: Usually, one or more navigational channels are maintained through periodic dredging. Permits for dredging within public waters may be issued provided all of the following conditions are met:

(1) The dredging is shall be confined to the recognized navigational channel(s) in the area or the dimensions of the length, width, and depth, dimensions of the original boat harbor.

(2) The channel or harbor is shall not be maintained to a depth or width greater than the minimum necessary to allow reasonable navigational use by the anticipated watercraft, and

(3) All dredged spoils are deposited above the ordinary high water mark and outside the natural or regulatory floodway of the public water.

c. Dredging for the lake Lake improvement: Permits for dredging the beds of public waters for lake improvement purposes may be issued provided all of the following conditions are met:

(1) The dredging is shall be limited to the removal of accumulated sediment or rock debris where such materials constitute an impairment to the use of a common navigational corridor, or impede reasonable access, and the removal of these materials by non-mechanized methods is not practicable, or where it is intended to create open areas in aquatic vegetation to improve fish or wildlife habitat; or

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~~(2) The dredging is intended to create open areas in aquatic vegetation which will improve fish or wildlife habitat; or~~

(2) Large-scale lake dredging shall be permitted where:

(a) The proposed project is intended to achieve one or more of the following purposes:

(i) To improve navigation, swimming, and other recreational uses.

(ii) To reduce winter fish-kill potential.

(iii) Sediment removal to eliminate a source of nutrients and/or contaminants.

(b) A public need for the dredging has been established by local governmental resolution specifying the public interests to be enhanced.

(c) The proposed dredging is part of an overall lake restoration project based upon adequate background and field test data for which a comprehensive lake restoration plan is submitted at the time of application detailing all of the following:

(i) Objectives to be accomplished.

(ii) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions.

(iii) Location of spoil disposal sites.

(iv) Existing water quality data and provision for future water quality monitoring of both lake water and return water.

(v) A time-table which indicates yearly dredging areas and volumes of materials to be removed, plus the selected spoil disposal site(s) for any given dredging period.

(vi) A detailed description of proposed dredging equipment and discharge facilities, including the length of discharge pipe purchased or available for the project and the pumping characteristics of the dredging equipment.

~~(3) Large scale lake dredging is proposed with the intention of achieving one or more of the following purposes:~~

~~(a) Lake extension or deepening to improve navigation, swimming, and other recreational uses.~~

~~(b) Lake extension or deepening to reduce winter fish kill potential.~~

~~(c) Sediment removal to eliminate a source of nutrients and/or contaminants by exposing nutrient poor bottom sediments.~~

~~(4) Where large scale lake dredging is proposed, a public need for the dredging must be established by local governmental resolution. Such resolution shall specify the public interests to be enhanced by the dredging proposal;~~

~~(5) The DNR substantially concurs with the anticipated benefits;~~

~~(6) The proposed dredging must be part of an overall lake restoration project based upon adequate background and field test data for which a comprehensive lake restoration plan is submitted at the time of application for dredging permit; such plan detailing all of the following:~~

~~(a) The objectives to be accomplished by the dredging;~~

~~(b) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions;~~

~~(c) The location of spoil disposal sites having total storage capabilities for 110 percent of the total spoil to be dredged over the life of the dredging project without unmitigated filling of the wetlands or public waters. In some cases, limited filling of wetlands with dredged materials may be allowed provided that definite commitments are made by the responsible local governmental unit(s) for implementation of compensatory measures;~~

~~(d) Existing water quality data and provision for future water quality monitoring of both lake water and return water;~~

~~(e) A dredging time table which indicates yearly dredging areas and volumes of materials to be removed; plus the selected spoil disposal site(s) for any given dredging period; and~~

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(f) ~~A detailed description of proposed dredging equipment and discharge facilities, including the length of discharge pipe purchased or available for the project and the pumping characteristics of the dredging equipment.~~

C. Inland excavations connected to public waters.

1. General standards: A ~~water resource~~ permit shall be required for all excavations ~~of the beds of public waters~~ which extend the cross section of public waters landward of the ordinary high water mark; subject to the following restrictions: The following general standards shall apply to the review of all applications for permits to extend the cross section of public waters landward:

a. The applicant must establish either of the following:

(1) Where a private inland boat slip or harbor is proposed, the applicant's entire shoreline ~~must shall~~ be subject to wind and wave conditions of a magnitude occurring with an expected average frequency of at least once each year; so as to make or possess lakebed conditions which would preclude the use of a temporary or permanent dock; impracticable; or

(2) Where a commercial or public marina or harbor is proposed, there ~~must shall~~ be adequate existing demand in the area to support an inland marina or harbor without ~~adverse impact on the water body or its use and enjoyment by the public; creating user conflicts.~~

b. The ~~proposed~~ facility ~~must shall~~ be adequate in relation to appropriate engineering factors including but not limited to:

- (1) Adequate entrance openings;
- (2) Ample turning radius;
- (3) Adequate depth and size for the anticipated watercraft usage;
- (4) Adequate reduction of wave heights in mooring areas;
- (5) Proper harbor shape to reduce wave resonance;
- (6) Need for and feasibility of maintenance dredging;
- (7) Adequate height of perimeter wall;
- (8) Need for wave absorbers within the harbor;

(9) Bank stabilization by an appropriate erosion control measure; and

(10) Location of the mooring area of the harbor at an adequate distance from the shoreline for wave protection and to prevent breakthrough.

c. The ~~proposed~~ development plan ~~must shall~~ adequately reflect be adequate in relation to appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of stream flow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with stream flow or longshore drift;

(4) Type of soil strata and underground formations in the project vicinity; and

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts.

d. The mooring area of the harbor shall be compactly shaped in order to minimize the surface area excavated in relation to the number of mooring spaces to be provided.

e. No branch or connecting channels ~~will shall~~ be permitted extending laterally outward from authorized inland excavations.

~~f. Appropriate vegetative screening should be provided adjacent to all authorized inland excavations to minimize visual impacts from the water surface.~~

f. If practical, a "dogleg" shall be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.

g. Suitable onland disposal ~~must shall~~ be utilized for containment of excavated materials without erosion into public waters.

h. Unless specifically prohibited, the excavation shall not extend more than 200 feet inland from the public water.

2. ~~Water resource permit:~~ Additional Specific Requirements: The following types of inland excavation ~~may~~

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shall be permitted, subject to the general standards of NR 2022 ~~(C)(1)~~ above: following specific restrictions:

a. Private riparian boat slips for inland mooring purposes: ~~Permits for the construction of private inland boat slips for boat mooring purposes may be issued provided all the following conditions are met:~~

(1) ~~Watercraft size is~~ shall be sufficiently great that a temporary dock or other seasonal mooring structure cannot reasonably be utilized along the subject shoreline for mooring of the riparian owner's watercraft;

(2) ~~A temporary or permanent dock cannot reasonably be utilized due to adverse lakebed conditions;~~

(2) The width and length of the slip shall not exceed 150 percent of the width and length of the anticipated watercraft.

(3) ~~The top width of the slip does not exceed 150 percent of the width of the anticipated watercraft, and its length does not exceed 150 percent of the watercraft length.~~

(3) Authorized boat slips shall be oriented to maximize the degree of wave protection.

(4) ~~To the maximum possible extent, authorized boat slips should be oriented to minimize visual impact while maximizing the degree of wave protection.~~

b. Private inland harbors serving one or several more residential riparian lots: ~~Permits for private inland harbors serving one or more riparian properties may be issued provided all of the following conditions are met:~~

(1) ~~The proposed harbor would not extend more than 75 feet inland from the public water;~~

(1) The harbor shall be appropriately sized to provide a single mooring space for each riparian lot served; and

(2) ~~The harbor is appropriately sized to provide a single mooring space for each riparian lot served;~~

(2) If practical, the facility shall be located along the mutual boundary of properties to be served.

(3) ~~If practical and reasonable, the facility shall be located along the mutual boundary of properties to be served; and~~

(4) ~~If practical, a "dogleg" should be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.~~

c. Private inland harbors for proposed multi-family or cluster developments, or for residential planned unit developments: ~~Permits for private inland harbors for proposed multi-family or multi-lot developments may be issued provided all of the following conditions are met:~~

(1) ~~The proposed harbor would not extend more than 200 feet inland from the public water;~~

(1) The harbor shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot requirements of the local land use control authority;

(2) ~~The proposed harbor is appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority;~~

(2) The development plan shall be approved by the local governmental unit; and

(3) ~~The development plan is approved by the local governmental unit and provides for appropriate open space areas around the harbor periphery and along the shoreline in the harbor vicinity to control erosion, sedimentation and pollution and to minimize visual impacts from the water surface;~~

(3) The permit shall be of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbor for these lots.

(4) ~~The permit is of the title registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots.~~

(5) ~~A "dogleg" will be provided in the approach~~

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channel between the mooring area and the shoreline to minimize visual impact and promote wave dissipation.

d. Inland harbors for private resorts, campgrounds, or similar enterprises: ~~Permits for the construction of inland harbors to serve private resorts, campgrounds, and other recreational use enterprises may be issued provided all of the following conditions are met:~~

~~(1) The proposed harbor would not extend more than 200 feet inland from the public water;~~

(1) The harbor shall be sized to accommodate one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft; and

~~(2) The proposed harbor is sized to accommodate one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft; and~~

(2) The permit shall be of the title-registration type to assure harbor maintenance and usage in the event of future property sale or subdivision.

~~(3) The permit is of the title registration type to assure harbor maintenance and usage in the event of future property sale or subdivision.~~

~~(4) A dogleg will be provided in the approach channel to minimize visual impact from the water body and promote wave dissipation.~~

e. Public inland harbor projects: ~~This category includes any inland harbor project proposed by a public authority, which project is intended to promote overall public welfare. Public inland harbor permits may be issued provided all of the following conditions are met:~~

~~(1) A public need for the proposed inland harbor must shall be established by local governmental resolution following a public hearing, specifying public interests to be enhanced. Such resolution shall specify the public interests to be enhanced by the harbor construction proposal.~~

~~(2) The DNR substantially concurs with the anticipated benefits;~~

(2) The harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

~~(3) The harbor is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;~~

(3) The harbor shall be available for use by the general public.

~~(4) Project plans provide for an appropriate open space area around the harbor periphery and along the shoreline in the harbor vicinity to control erosion, sedimentation and other pollution, and to minimize visual impacts from the water surface;~~

(4) The harbor may extend more than 200 feet inland provided the plans minimize the total length by which the public water is proposed to be extended in keeping with the number of watercraft to be served and the topography.

~~(5) The harbor will be available for use by the general public;~~

~~(6) The plans minimize the total length by which the public water is proposed to be extended in keeping with the number of watercraft to be served and the topography;~~

~~(7) A "dogleg" will be provided in the approach channel to minimize visual impact from the waterbody and promote wave dissipation.~~

f. Inland marinas: ~~Inland marina projects may be authorized provided all of the following conditions are met:~~

~~(1) The proposed marina would not may extend more than 200 feet inland from the public water, where appropriate deed covenants will preclude any future subdivision of the tract upon which the marina is located.~~

~~(2) The area is shall be zoned specifically for commercial such use or local government has granted a conditional land use permit;~~

~~(3) The plans shall minimize the horizontal distance by which the public water is proposed to be extended width of the marina parallel to the shoreline consistent with the number of watercraft to be served and the site topography;~~

~~(4) The harbor is shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;~~

~~(5) The development plan approved by the local governmental unit provides for an appropriate open space area around the harbor periphery;~~

(5) The permit shall be of the title-registration type in the case of privately owned land to assure proper maintenance of the facility.

(6) The permit is of the title registration type in the case of privately owned land to assure proper maintenance of the facility; and

(7) A "dogleg" will be provided in the approach channel to minimize visual impact from the waterbody and promote wave dissipation.

g. Private inland boat slips for access to on-land boathouses: Permits for the construction of inland boat slips to facilitate access to on land boathouses on riparian property may be issued provided all of the following conditions are met:

(1) Under the circumstances of the proposed site, ~~Mechanical~~ mechanical systems such as rollers, winch and track systems, sliderails, etc., which are normally used to hoist watercraft out of the water, are must be impractical; under the circumstances of the specific site; and

(2) The proposed slip is shall be no more than 25 feet long; ~~contains a dogleg if feasible;~~ and is not wider than 150 percent of the width of the anticipated watercraft.

3. Special Considerations:

Authorized harbors shall be sized in accordance with the number and size of watercraft to be served. A generalized list of space requirements for various sized watercraft follows:

Length of watercraft (ft.)	Mooring and maneuvering space required per watercraft excluding entrance channel (sq. ft.)
12' or under	400
14'	600
16'	800
18'	1,000
20'	1,200
22'	1,400
24'	1,600
26'	1,800
28'	2,000
30'	2,200

D. Alterations of natural watercourses.

1. General standards: Except as noted in NR 5022 D

(2) A a water resource permit shall be required for any alteration of the course, current or cross section of a

natural watercourse; ~~except as noted in NR 2022 (D)(3)(b);~~ and shall be subject to the following requirements: The following hydraulic/hydrologic standards shall apply to the review and approval of all applications for permits to alter a natural watercourse:

a. The altered watercourse capacity ~~must~~ shall be sufficient to adequately convey normal runoff;

b. The altered watercourse bottom gradients ~~must~~ shall be such that normal low flow velocities are non-erosive; and the sideslopes shall be graded such that bank slumping is not a hazard. It may be necessary to ascertain soil and sub-soil types and characteristics in certain instances;

e. ~~The altered watercourse sideslopes must be graded such that bank slumping is not a hazard. Again it may be necessary to ascertain soil and sub-soil types and characteristics;~~

c. The outlet shall be adequate in that it:

(1) Sufficiently conveys the discharge waters from the area proposed for alterations.

(2) Does not produce substantial increases in downstream overbank flooding.

(3) Does not produce downstream erosion hazards as a result of the watercourse alterations.

d. The outlet must be adequate in that it:

(1) Sufficiently conveys the watercourse discharge waters from the area proposed for alterations;

(2) Does not produce substantial increases in downstream over bank flooding; and

(3) Does not produce downstream erosion hazards as a result of the proposed watercourse alterations.

d. To protect the altered watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourse, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this

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grassed strip shall be allowed until after July 31 of each year.

e. To protect the altered watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourses, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this grassed strip shall be allowed until after July 31 of each year.

e. Class I and Class II public watercourses: Alterations of Class I and Class II public watercourses may be permitted, provided the proposed project will enhance at least one of the beneficial public purposes identified in Minn. Stat. § 105.37, sub. 6, and does not cause undue detriment to all other beneficial public purposes presently served by the watercourse.

f. Class III public watercourses: Where the county board of commissioners has not assumed administrative responsibility pursuant to Minn. Stat. § 105.42, sub. 1.a., alterations of Class III public watercourses shall be permitted upon demonstration that the project accomplishes a reasonable objective and that no feasible and prudent alternatives are available.

2. Water resource permit: Exceptions:

a. Class I and Class II public watercourses: Alterations of Class I and Class II public watercourses may be permitted, provided the proposed project will enhance at least one of the beneficial public purposes identified in Minnesota Statutes 1976, Section 105.37, Sub. 6, without undue detriment to all other beneficial public purposes the watercourse presently serves. Mitigation measures shall be taken into consideration.

a. No permit shall be required to remove debris such as trees, logs, stumps, and trash deposited by flood waters, provided such debris removal does not alter the original alignment, slope, or cross section of the channel.

b. Class III public watercourses: Alterations of Class III public watercourses which have not previously been artificially altered may be permitted upon demonstration by the applicant that the proposed project accomplishes a reasonable objective and that no feasible and prudent alternatives requiring alteration of a natural watercourse are available.

b. No permit shall be required for the alteration of Class IV watercourses and of Class III watercourses where the County Board of Commissioners has assumed adminis-

trative responsibility pursuant to Minn. Stat. § 105.42, subd. 1.a., except in the following cases:

(1) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV or county administered Class III watercourse.

(2) Any diversion of water from a Class III or IV watercourse into a different watershed which is not a part of the same drainage basin.

(3) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(4) Construction of any dam 20 feet or more in structural height and/or impounding 50 acre-feet or more of water at maximum storage capacity.

c. Pursuant to Minn. Stat. § 105.42, subd. 1, no permit shall be required for Chapter 106 drainage projects which do not substantially affect public waters.

3. Special Considerations:

a. The following types of projects shall require a water resource permit for the alteration of a natural watercourse, and will be subject to special review and consideration by the Department of Natural Resources, Division of Waters:

(1) Project proposals which include the drainage of one or more bodies of public water, either wholly or partially;

(2) Projects proposed under the authority of Minnesota Statutes Chapter 106 or 112;

b. A water resource permit shall not be required for the alteration of Class IV watercourses and of Class III watercourses which have been previously altered, where the County Board of Commissioners has assumed administrative responsibility pursuant to Minnesota Statutes 1976, Section 105.42, subdivision 1a, except in the following cases:

(1) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse, or an unaltered Class III public watercourse, as a result of the change in the Class IV or altered Class III watercourse.

(2) Any diversion of water from a Class III or IV watercourse into a different watershed which is not a part of the same drainage basin.

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(3) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(4) Construction of any dam 25 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre feet or more of water at maximum storage capacity.

NR 5023 Structures in public waters.

A. Policy and general requirements. It is the policy of the Department of Natural Resources to discourage the waterward occupation of the beds and surface of public waters by off-shore navigational facilities, retaining walls and other structures in order to preserve the natural character of public waters and their shorelands, and provide a balance between the protection and utilization of public waters; Furthermore, it is the policy of the Department of Natural Resources and to encourage the removal of existing water obstructions which do not serve the public interest from the beds of public waters at the earliest practicable date.

1. The placement of structures on the bed and surface of in public waters may shall not be permitted in the following cases: where the structure:

a. Construction of a permanent dock where unusual physical conditions demonstrate the same form of seasonal dock cannot practically be used.

a. Is intended to gain access to navigable water depths where such access can be reasonably attained by alternative means.

b. Construction and maintenance of wharves of the minimum practical size in commercial/industrial districts where the sole purpose of the facility is the transfer of cargo to and from watercraft.

b. Will obstruct navigation and-or create a water safety hazard.

c. Construction of breakwaters, harbors and marinas where such structures are necessary to promote public health, safety and welfare, and encourage optimum navigational use of the water body.

c. Will be detrimental to significant fish and wildlife habitat, or protected vegetation. Construction is prohibited in posted fish spawning areas.

d. Construction of retaining walls where the use of natural rock riprap for shoreland erosion protection is not feasible or practical.

e. Construction, repair and relocation of other waterway obstructions where such structures benefit public health, safety and welfare, and do not interfere with public usage of the water body.

2. The placement of structures on the bed and surface of public waters shall not be permitted in the following cases:

2. Except for docks and boat ramps, all new structures shall have a title-registered permit (or public agency or local governmental unit accepts responsibility for future maintenance or removal).

a. To gain access to navigable water depths where such access can be reasonably attained by alternative means.

b. Where such structures will obstruct navigation and/or create a water safety hazard.

c. Where such structures are not technically feasible due to existing physical conditions.

d. Where such structures will be detrimental to significant fish and wildlife habitat, or protected vegetation.

B. Permanent docks.

1. Permitted uses: A water resource No permit shall not be required to construct or reconstruct a permanent dock provided all of the following conditions are met: on wood pilings where the site is subject to unusual physical conditions which would preclude the use of a seasonal dock, and the dock will not exceed 50 feet in length or extend to a depth greater than 4 feet, whichever is less.

a. The site must be subject to unusual physical conditions which would preclude the use of a seasonal dock.

b. The dock shall not exceed 50 feet in length or extend to a depth greater than 4 feet, whichever is less.

c. The dock shall be constructed on wood pilings in

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accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

d. The dock shall not be placed in a fish spawning area posted by the Department of Natural Resources, Division of Fish and Wildlife.

2. Water resource permit. Permits: A water resource permit shall be required for the construction or reconstruction of any other permanent dock not meeting the above requirements and may shall be granted and provided; the following conditions are met:

a. Permanent docks may be permitted under one or more of the following conditions:

a. Similarly situated permanent docks in the vicinity have not experienced maintenance difficulty or the use of a seasonal dock is precluded because:

(1) Where long Long fetches would subject seasonal docks to damaging storm wave conditions;

(2) Where bottom Bottom conditions such as bedrock or an extremely gradual off-shore slope would preclude the use of seasonal dock stringers;

(3) Where similarly situated permanent docks in the vicinity have not experienced maintenance difficulty;

(3) The number of users (private and/or public) are so great the seasonal docking equipment would not provide adequate stability.

(4) Where the number of users (private and/or public) are so great that seasonal docking equipment would not provide adequate stability.

b. Where a permanent dock is permitted the following order of preference for construction types shall be utilized:

b. Piling docks shall be used in all cases unless the depth to bedrock is too shallow to allow the driving of piles, in which case rock crib docks may be authorized.

(1) Piling docks should be used in all cases unless the depth to bedrock is too shallow to allow the driving of piles.

(2) Where shallow bedrock is encountered, rock crib docks may be authorized.

c. Permanent The docks, where permitted, shall ex-

tend lakeward only to a navigable depth, (generally considered to be no greater than 4 feet), at summer pool elevation.

C. Wharves.

1. General Standards: A water resource permit shall be required for the construction or reconstruction of all wharves, placed on the bed and surface of public waters. Wharves of the minimum practical size may be permitted in commercial/industrial districts for the sole purpose of facilitating the transfer of cargo to and from watercraft. Where a wharf is permitted, the The following order of preference for construction types shall be utilized:

a. Bulkheaded shoreline.

b. Inland slip with bulkheaded sidewalls.

c. Wharf projecting into public waters.

2. Water resource permit Permits: Wharves may shall be permitted provided all of the following conditions are met: the structure:

a. Where an alongshore retaining wall not encroaching into the water body or an inland excavated slip cannot practicably be utilized at the site for the transfer of cargo.

a. Is the only reasonable alternative for loading or unloading a specific cargo.

b. The applicant has shown that a wharf is the only reasonable and feasible alternative for loading or unloading a specific cargo.

b. Is consistent with local land use controls.

c. The primary land uses in the project vicinity are water oriented industrial and/or commercial uses consistent with local land use controls.

c. Dock does not extend further waterward than any existing wharves in the area or beyond any established harbor line, whichever is less.

d. The proposed wharf does not extend further waterward than any existing wharves in the area or beyond any established harbor line. The existence of a harbor line SHALL NOT convey to the riparian owner the absolute right to fill out thereto.

d. Size is the minimum practicable and the purpose is not to increase the amount of land available for waterfront development.

e. The size of the proposed wharf is the minimum

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practicable for the sole purpose of loading or unloading cargo and the purpose of a wharf is not to increase the amount of land available for waterfront development.

e. Plans prohibit buildings or shelters on the deck, other than superstructures needed for cargo handling.

~~f. No buildings or shelters such as storage facilities are proposed on the wharf deck; neither are other superstructures not needed for cargo handling proposed on the deck.~~

f. Dock is not an obstruction to flood flows or longshore drift and is adequately designed to resist the natural forces of ice, wind, and wave.

~~g. The proposed structure is not an obstruction to flood flows, longshore drift, or navigation utilizing the water body.~~

~~h. The structure is adequately designed to resist the natural forces of ice, wind, and wave.~~

~~i. Future maintenance or removal is assured by a title registered permit running with the land, except in the case of a publicly owned wharf.~~

D. Off-shore breakwaters, harbors and marinas.

1. General standards: A water resource permit shall be required for the construction or reconstruction of all off-shore breakwaters, harbors and marinas placed on the bed or surface of public waters, consistent with the requirements of NR 5023 A. Off shore breakwaters, harbors, or marinas ~~Such structures may~~ shall be permitted provided the following general conditions are met; and the additional listed specific conditions are met:

~~a. The applicant must establish all of the following:~~

a. Alternative dock or inland facilities are infeasible.

~~(1) Applicant's entire shoreline is subject to severe wind and wave conditions occurring with an average expected frequency of at least one each year;~~

~~(2) Alternative mooring and launching facilities such as a temporary or permanent dock, or an inland harbor are infeasible; and~~

~~(3) Geological site conditions such as steep banks or shallow bedrock preclude an inland excavation.~~

b. The ~~proposed~~ facility ~~must~~ shall be adequate in relation to appropriate engineering factors including but not limited to:

(1) Adequate entrance openings;
(2) Ample turning radius;
(3) Adequate depth and size for the anticipated watercraft usage;

(4) Adequate reduction of wave heights in mooring areas;

(5) Proper harbor shape to reduce wave resonance;

(6) Necessity for and feasibility of maintenance dredging;

(7) Adequate breakwater foundation conditions;

(8) Need for wave absorbers within the harbor;

(9) Adequate structural strength to withstand the pressures of wind, wave, and ice;

(10) Proper orientation of breakwaters to achieve maximum wave attenuation; without causing additional sedimentation or erosion problems; and

(11) Proper materials selection and placement ~~of~~ preclude transmission of wave energy into mooring areas while adequately resisting erosive forces.

c. The ~~proposed development~~ plan ~~must~~ shall be adequately reflect in relation to appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of streamflow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with streamflow or longshore drift;

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(4) Type of soil strata and underground formations in the project vicinity; and

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other hydrologic impacts.

d. The size and shape of ~~off-shore harbor/marina facilities will~~ shall be designed in a compact fashion so as to blend in with the surrounding shoreline while minimizing the surface area of public water occupied in relation to the number of watercraft to be served.

~~e. The facility must be so located and designed as not to interfere with local navigation presently utilizing the area.~~

e. The breakwaters shall not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and shall be faced with an adequate layer of natural rock riprap of appropriate size and gradation.

~~f. All breakwaters must be faced with an adequate thickness of natural rock riprap of appropriate size and gradation.~~

~~g. The thickness of the breakwaters shall not exceed the minimum necessary to withstand the anticipated forces consistent with maintenance requirements.~~

~~h. Permits for all such facilities authorized must be of the title registration type to assure future maintenance and to provide for removal of the authorized facilities from the public waters upon their abandonment, deterioration, or if the facility ceases to be utilized as a harbor or marina.~~

2. Water resource permit: Additional specific conditions: The following types of off-shore breakwaters, harbors and marinas may structures shall be permitted, subject to the general standards of NR 2203 ~~(D)(1)~~ above: listed specific conditions:

a. Private off-shore harbors serving several contiguous riparian lots: ~~The construction of private off shore harbors serving several riparian lots may be permitted in connection with existing or proposed crib docks provided all of the following conditions are met:~~

(1) The site shall meet the standards of NR 2202 ~~(B)(2)~~ 5022 A and B for a ~~rock crib type dock;~~ permanent dock.

(2) The breakwater is ~~located no further~~ waterward than would be the permissible length of a perma-

~~nent dock at the same location, in accordance with NR 2022 (B)(2); and shall minimize encroachment waterward of the ordinary high water mark.~~

(3) The total length of the breakwater parallel to shore is shall be appropriately sized to provide a single mooring space for each riparian lot served; ~~but in no case shall the breakwater length exceed 10 feet per riparian lot served.~~

~~(4) The permit is of the title registration type to assure facility maintenance and usage in the event of future property sale or transfer.~~

b. Private off-shore harbors for proposed multi-family or cluster developments or for residential planned unit developments: ~~The construction of private off-shore harbors for proposed multi-family or cluster developments may be permitted provided all of the following conditions are met:~~

(1) The proposed harbor is breakwater shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority; ~~;~~

(2) The development plans minimize the waterward encroachment of the facilities; and shall be approved by the local land use control authority.

(3) The development plan is approved by the local land use control authority and provides for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

~~(4) The permit is of the title registration type to assure facility maintenance and usage in the event of future property sale or transfer.~~

c. Private off-shore harbors for resorts, campgrounds, or similar enterprises: ~~The construction of offshore harbors to serve private resorts, campgrounds, and other recreational use enterprises may be permitted provided all of the following conditions are met:~~

(1) The proposed harbor is breakwater shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft;

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(2) The development plans minimize the waterward encroachment of the facilities; and shall be approved by the local land use control authority.

(3) The development plans approved by the local land use control authority provide for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

(4) The permit is of the title registration type to assure facility maintenance and usage in the event of future sale or transfer.

d. Public off-shore harbor projects: This category includes any off-shore harbor project proposed by a public authority, which is intended to promote overall public welfare. Public off-shore harbors may be permitted provided all of the following conditions are met:

(1) The local unit of government, ~~if not the applicant,~~ shall pass a resolution which specifies the public interests to be benefited by the proposal.

(2) The DNR substantially concurs with the anticipated benefits set forth in the application by the applicant;

(2) The harbor shall be appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

(3) The harbor is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;

(3) The harbor shall be available for use by the general public.

(4) The development plans provide for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

(4) The development plans shall minimize the waterward encroachment of the facilities.

(5) The harbor will be available for use by the general public; and

(6) The development plans minimize the waterward encroachment of the facilities.

e. Off-shore marinas: Off-shore marina projects may be permitted provided all of the following conditions are met:

(1) Where unusual physical conditions preclude the use of temporary or permanent docking facilities, or an inland harbor.

(1) The area shall be zoned for such use or local government has granted a land use permit.

(2) The area is zoned specifically for commercial use or local government has granted a conditional use permit;

(2) The proposed marina shall minimize encroachment waterward of the ordinary high water mark.

(3) The development plans minimize the waterward encroachment of the facilities;

(3) The marina shall be sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

(4) The marina shall be sized in accordance with NR 2202 ~~(C)(3)~~, consistent with the demand for mooring facilities in the area and the number of watercraft to be served; and

(5) The development plan is approved by the local governmental unit and provides for an appropriate open space area with proper plantings immediately adjacent to the off-shore marina.

(6) The permit is of the title registration type to assure maintenance and usage in the event of future property sale or transfer.

E. Retaining walls.

1. General standards: A water resource permit shall be required for the construction or reconstruction of all ~~along shore retaining walls placed on the bed or bank of public waters,~~ retaining walls and shall generally be discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap. ~~The construction of retaining walls for shore protection purposes shall generally be discouraged for the following reasons:~~

a. Their appearance is generally not consistent with the natural environment.

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b. Retaining walls are not technically feasible in many situations.

c. Their cost and maintenance is generally greater than required for the preferred method of controlling shoreline erosion — natural rock riprap.

2. Water resource permit. Permits: The issuance of water resource permits for along shore retaining walls may be considered provided shall be contingent on all of the following conditions: are met:

a. There are existing Existing or expected erosion problems, shall preclude the use of riprap shore protection, or there shall be a demonstrated need for direct shoreland docking.

b. The drawbacks of retaining walls have been explained to the applicant and he is willing to assume the inherent responsibilities.

b. Design shall be consistent with existing uses in the area. Examples are: riverfront commercial/industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies.

c. The design of the proposed facility is consistent with existing uses in the area. Examples are: riverfront commercial/industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies.

c. Adequate engineering studies shall be performed of foundation conditions, tiebacks, internal drainage, construction materials, and protection against flanking.

d. Adequate engineering studies have been performed of foundation conditions, tiebacks, internal drainage, materials of construction, and protection against flanking.

d. The facility shall not be an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body.

e. The facility is not an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body.

e. Encroachment below the ordinary high water mark shall be held to the absolute minimum necessary for construction.

f. Encroachment upon the water resource is held to the absolute minimum reasonably needed for construction.

g. A title registered permit running with the land is utilized, insuring continuing maintenance responsibility.

F. Other Waterway obstructions. A permit shall be required for the construction, reconstruction, relocation, removal and abandonment of all other off-shore structures, cables other than utility crossings, pilings or other facilities not covered by specific regulations:

1. General Standards: A water resource permit shall be required for the construction, reconstruction, relocation, removal and abandonment of all waterway obstructions, including boathouses, placed on the bed and surface of public waters. The removal of existing waterway obstructions shall be encouraged where such structures do not serve the public interest at the earliest practicable date. The construction of new waterway obstructions shall generally be discouraged in order to preserve and maintain public waters in a condition that is free of unreasonable obstructions which detract from the natural setting, and interfere with public navigation and use of the water resources of the state.

1. Repair: Permits for structural repair or modification (not including minor maintenance work such as re-roofing, painting, etc.) of structures shall be issued provided all of the following conditions are met:

a. Applicant shall demonstrate a need for such work.

b. Cost shall not exceed 50 percent of assessed value.

c. The degree of permanence of the structure shall not be materially increased by virtue of constructing a new foundation, replacing the majority of the structure above the foundation, etc.

d. The structure being repaired shall not be in violation of local land use or sanitary regulations.

e. Degree of obstruction or structure size shall not be increased.

2. Water resource permits: Permits for the construction, reconstruction, relocation, or removal of off-shore structures, cables other than utility crossings, pilings, permanent diving platforms, or other facilities not covered by

specific regulations may be issued for the following categories:

2. New structures: Permits for new publicly-sponsored or relocation of existing structures shall be issued where:

a. Repair of existing off-shore structures: Permits for structural repair or modification (not including minor maintenance work such as re-roofing, painting, etc.) of existing off-shore structures may be issued provided all of the following conditions are met:

a. Public need is documented and outweighs adverse environmental impact.

(1) The applicant has demonstrated a reasonable need for structural repair.

(2) The structure is not to be repaired or reconstructed in excess of 50 percent of its assessed value.

(3) The proposed repair is not substantial in the sense that the degree of permanence of the structure is not being materially increased by virtue of constructing a new foundation, replacing the majority of the structure above the foundation, etc.

(4) The structure being repaired is not in violation of local land use or sanitary regulations. For example, the structure may not contain or utilize non-conforming sanitary facilities.

(5) The degree of obstruction or structure size is not being increased.

(6) The proposed construction is of sound design and is not unnecessarily obtrusive or visually incompatible with the natural surroundings.

b. New off-shore structures: Permits for new publicly sponsored off-shore structures may be issued under all of the following conditions:

b. The site is adequately protected from the forces of ice and wave pressures.

(1) Public need for the facility is adequately documented and outweighs the environmental impact.

(2) The proposed structure does not create a water safety hazard or obstruct navigation.

(3) The proposed structure site is adequately protected from the forces of ice and wave pressures.

(4) The proposed construction is of sound design and is not unnecessarily obtrusive or visually incompatible with the natural surroundings.

(5) A governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal, if ordered by the Department of Natural Resources at a later date due to non use, deterioration, navigational hazards, or other conditions detrimental to the public interest.

e. Removal or abandonment of existing waterway obstructions: A water resource permit is required under the law for removal or abandonment of existing waterway obstructions such as boathouses, bridges, culverts, dams, pilings, piers and docks. However, when such is to be accomplished by simple hand tool methods, the requirement for a permit may be waived. Permits for the removal or abandonment of waterway obstructions may be issued under all of the following conditions:

c. The proposed construction is of sound design and is not unnecessarily obstructive or visually incompatible with the natural surroundings.

(1) The original cross section and bed conditions of the public water will be restored insofar as practicable.

(2) The structure will be completely removed from public waters, including any floating or pilings which may obstruct navigation.

(3) Adequate provisions are made to mitigate any side effects resulting from removal of the structure, such as restoration of wave or current forces perviously negated by the long standing existence of the structure now being served.

d. A governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal.

B. Boat launching ramps.

1. Permitted uses: A water resource No permit shall not be required to construct a boat launching ramp on the bed of public waters provided: all of the following conditions are met:

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a. The lake or stream bed at the proposed ramp site is capable of supporting a boat launching ramp without the use of pilings, dredging or other special site preparation.

b. The proposed ramp ~~does~~ shall not exceed 12 feet in width, and extend more than 10 feet beyond the ordinary high water mark or into water more than 4 feet in depth, whichever is less.

c. The proposed ramp ~~is~~ shall be constructed of gravel, natural rock, concrete, steel matting or other durable, non-organic material not exceeding 6 inches in thickness.

d. The proposed ramp ~~is not~~ placed in a fish spawning area posted by the Department of Natural Resources, Division of Fish and Wildlife.

e. The ramp shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

2. ~~Water resource permits.~~ Permits: A water resource permit shall be ~~required~~ granted for the construction or reconstruction of any ~~boat launching~~ other ramp placed on the bed of public water not meeting the above requirements and may be granted provided; all of the following conditions are met:

a. The applicant ~~has~~ shall demonstrated a need for such a launching facility;

b. The proposed ramp ~~will~~ shall be of the minimum dimensions necessary for reasonable launching of watercraft, and will be aesthetically consistent with the surroundings;

c. The proposed location of the launching ramp ~~does~~ shall not support significant local habitat for fish or wildlife or protected vegetation; obstruct flowing water.

d. The proposed ramp will not obstruct flowing water or present a hazard to navigation;

d. Construction shall not necessitate alteration of shoreland which could result in substantial erosion and sedimentation.

e. Construction of the proposed ramp will not necessitate significant alteration of a shoreland area which could result in substantial erosion and lake/stream sedimentation; and

f. The proposed construction will be consistent with public and private access plans for the water resource, including wild and scenic rivers, designated canoe trails, water surface use controls, shoreland management, etc.

H. Removal or abandonment. A permit is required for the removal or abandonment of all existing waterway obstructions including boathouses, bridges, culverts, pilings, piers and docks. However, when such work is to be accomplished by simple hand tool methods, the requirement for a permit may be waived. Permits shall be issued provided:

1. The original cross-section and bed conditions shall be restored insofar as practicable.

2. The structure shall be completely removed including any footings or pilings which obstruct navigation.

3. Adequate provisions shall be made to mitigate any side effects resulting from removal, such as restoration of wave or current forces.

NR 5024 Water level controls and dam construction or reconstruction.

A. Policy. It is the policy of the Department of Natural Resources to encourage the management of lake resources in order to maintain natural flow and water level conditions to the maximum feasible extent. Furthermore, it is the policy of the Department of Natural Resources and to encourage the construction of smaller upstream retarding dams and reservoirs for the conservation of water in natural water basins and watercourses, and artificial impoundments consistent with any overall plans for the affected watershed area, and/or river basin. The Department of Natural Resources shall oppose the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls, and it is not proposed solely to satisfy private interests. The construction or reconstruction of dams or changing the level of an existing structure may be permitted to:

†. The construction or reconstruction of dams and other water level controls or changing the level of an existing structure may be permitted in the following cases:

1. Control flood waters.

a. To control flood waters.

b. To maintain low flows.

e. To manage water quality, including the prevention and/or control of erosion and sedimentation.

- d. To improve water based recreation.
- e. To create, improve and maintain water supplies.
- f. To maintain aquatic habitat for fish and wildlife species.

2. The construction or reconstruction of dams and other water level controls or changing the level of an existing structure shall not be permitted where it is proposed to raise or lower water levels solely to satisfy private shoreline interests located near or below the elevation of the ordinary high water mark.

2. Maintain low flows.

3. Manage water quality, including the prevention and/or control of erosion and sedimentation.

4. Improve water-based recreation.

5. Create, improve, and maintain water supplies.

6. Maintain aquatic habitat for fish and wildlife species.

B. Water Level Controls Permit requirements. A permit shall be required for the construction, reconstruction, and abandonment of a dam or changing the level of an existing structure for the following projects:

1. General Standards: A water resource permit shall be required for the construction, reconstruction, and abandonment of all water level control structures or changing the level of an existing structure on public waters. Water level control projects may be permitted subject to the following general standards:

1. Permanent lake level control facilities shall be approved when the Commissioner initiates proceedings for the purpose of conserving or utilizing the water resources of the state and assumes responsibility for operation and future maintenance, or if:

a. Permanent lake level control facilities may be approved by permit provided all of the following conditions are met:

a. The ordinary high water mark and runoff elevation of the water body have been determined by a detailed

engineering survey, or by order of the Commissioner following a public hearing;

(1) The ordinary high water mark elevation and the runoff elevation of the water body have been determined by detailed engineering survey; and, if appropriate, by Order of the Commissioner of Natural Resources following a public hearing;

(2) The proposed control facilities are reasonably consistent with natural conditions. The term "reasonably consistent with natural conditions" shall mean that where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of man or animals, or by cataclysmic events, the proposed outlet is at essentially the same control elevation. Where no natural or artificial outlet exists such that the lake is for all practical purposes "landlocked", the term "reasonably consistent with natural conditions" shall mean that an artificial control elevation will not be more than 0.5-1.5 feet below the ordinary high water mark;

(3) The project is sponsored by a local governmental unit such as the town, city, county, lake improvement district, or watershed district consistent with an approved plan for management of excess waters within such jurisdiction;

(4) Substantial justification has been made of the need for the proposed permanent control facilities in terms of public and private interests and the available alternatives;

(5) The proposal is environmentally sound in terms of impacts on water quality, fish and game resources, and public use of the water body itself;

(6) The applicant has demonstrated project feasibility, including the impact on receiving waters and public uses thereof; through a detailed hydrologic study; and

(7) A detailed plan is developed for operation and control of the facilities including:

(a) Manner and time of operation;

(b) Frequency of maintenance; and

(c) Appropriate monitoring (water levels, water quality, etc.); and

(8) The local government unit sponsoring the

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project assumes responsibility for operation and future maintenance of project facilities.

b. Fish and Wildlife management proposals made pursuant to Minnesota Statutes 1976, Section 97.48, Subd. 11, or other appropriate authority may be approved provided all of the following conditions are met:

b. The proposed facilities shall be "reasonably consistent with natural conditions":

(1) The lake has been designated for wildlife management purposes by Commissioner's Order, if appropriate;

(1) Where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of man or animals, or cataclysmic events, the proposed outlet is at essentially the same control elevation;

(2) The appropriate management personnel have developed a specific water level management plan for the lake basin;

(2) Where no natural or artificial outlet exists and the lake is for all practical purposes "landlocked", the control elevation shall not be more than 1.5 feet below the ordinary high water mark;

(3) Any drawdown of the lake is only temporary and the management plans include a dam or other adequate permanent facility for restoration of water levels to natural conditions following periodic temporary drawdowns;

(4) Any channelization of a natural watercourse included in the plan is minimal and follows the guidelines specified in NR 2022 (D);

(5) The appropriate easements or fee title have been obtained by the responsible management personnel for the construction area and the periphery of the lakeshore; and

(6) The appropriate management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

e. For landlocked water basins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city, the following procedures may be used to establish water level controls:

c. The project is sponsored by a local governmental unit which assumes responsibility for operation and future

maintenance, except that title-registration type permits may be issued where the majority of the riparian owners sign the permit application;

(1) A municipal drainage plan for the affected tributary watershed is prepared for the city by a qualified engineer or hydrologist;

(2) Said drainage plan is approved by the affected watershed district, if any, in addition to the city;

(3) The city has a field survey made of the water basin after consultation with the Department of Natural Resources, including but not limited to:

(a) The elevation of the aquatic fringe;

(b) The elevation of the tree line and a description of the location, type and size of representative trees;

(c) Groundwater elevations, if appropriate; and

(d) Other information as requested by the regional office;

(4) City officials review the proposed water level control elevations and associated physical parameters with representatives of the Department of Natural Resources and submit a permit application.

(5) The city holds a public hearing on the proposal and provides a transcript of the proceedings to the regional office, except that when a representative of the regional office attends the local hearing, the provision of a transcript may be waived by the regional office.

(6) Based upon the application, plans, surveys, and evidence adduced at the public hearing, the Department of Natural Resources will approve (with appropriate conditions), modify, or reject the proposal.

d. Justification has been made of the need in terms of public and private interests and the available alternatives, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study; and

e. A detailed plan is developed for operation and control including:

(1) Manner and time of operation.

(2) Frequency of maintenance.

(3) Appropriate monitoring (water levels, water quality, etc.).

(4) Management of excess waters.

2. Fish and wildlife management proposals made pursuant to Minn. Stat. § 97.48, subd. 11, or other appropriate authority shall be approved where:

a. The public water has been designated for wildlife management purposes.

b. There is a specific water level management plan for the lake basin.

c. Any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns.

d. Any alteration of a natural watercourse included in the plan is minimal and follows the requirements specified in NR 5022 D.

e. Appropriate easements or fee title have been obtained for the construction area and the lakeshore.

f. Specified management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

3. Plans for landlocked water basins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city shall be approved where:

a. A municipal drainage plan for the affected tributary watershed is prepared by a qualified engineer or hydrologist and is approved by the affected watershed district, and the city.

b. The city has a field survey made of the water basin after consultation with the Department including but not limited to:

(1) The elevation of the aquatic fringe.

(2) The elevation of the tree line and a description of the location, type, and size of representative trees.

(3) Groundwater elevations, if appropriate.

(4) Other information as requested by the Department.

c. Control elevations and associated physical parameters are approved by the Department and the city.

d. The city holds a public hearing on the proposal and provides a transcript of the proceedings to the Department. (Provision of a transcript may be waived by the Department).

4. Other dam construction or reconstruction;

a. Permitted uses: No permit shall be required to construct, reconstruct or abandon a dam with a contributing watershed of 300 acres or less, provided:

(1) Structural height shall not exceed 20 feet.

(2) Storage capacity shall not exceed 50 acre feet.

(3) The land(s) occupied by the dam and its associated reservoir shall be in common ownership.

b. Permit: A permit shall be required for the construction, reconstruction and abandonment of all other dams and shall be issued provided:

(1) The need is established in terms of quantifiable benefits.

(2) New dams shall be adequate in relation to the following factors:

(a) The hydraulic capacity of the spillway(s) must be established by a competent technical study performed by a professional engineer or by a qualified engineer of the U.S. Soil Conservation Service or the U.S. Corps of Engineers and must be adequate:

(i) For the probable maximum flood, where failure may cause loss of human life, serious damage to homes, industrial and commercial buildings, important public utilities, main highways or railroads;

(ii) For the standard project flood, in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads,

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or cause interruption of use or service of relatively important public utilities;

(iii) For the regional flood, in rural or agricultural areas where failure may damage farm buildings, agricultural land, or township or county roads;

(iv) For such other floods as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in its risk category; and

(v) The estimation of the magnitude of the design flood must include the anticipated effects of the development of the tributary watershed area expected over the project life and the assessment of the risks involved must be based upon anticipated development in the flood plain.

(b) The Department may require preparation of an inundation map of the area which would be inundated in the event of dam failure for a structure with a height of 20 feet or more, or a maximum storage capacity of more than 50 acre feet. It shall be prepared by a professional engineer in accordance with technical criteria acceptable to the Department showing areas where human life would be endangered and areas subject to serious damage to homes, commercial and industrial buildings, public utilities, and transportation facilities. Where failure may endanger human life, the map shall include a feasibility report on flood plain evacuation, emergency warning systems, or other techniques to eliminate this risk Factor.

(c) An emergency spillway is installed unless the hydraulic capacity of the principal spillway is increased to the capacity that would be required for the combination of principal and emergency spillways.

(d) A mechanism for drawing down the water surface to facilitate repairs and maintenance work is installed.

(e) The height of all portions of the dam and associated dikes or other facilities not designed to withstand overtopping must include appropriate freeboard above the maximum storage capacity for wind and wave conditions and to provide a safety factor.

(f) Earthen emergency spillways and the upstream and downstream faces of earthen dams must be adequately ripped, sodded, or seeded to prevent erosion.

(g) The storage pool must provide adequate space to store sediment from upstream over the project life without detracting from the public purposes served.

(h) An adequate stilling basin or other means of controlling downstream erosion is installed.

(i) A stage-discharge curve must be developed for the watercourse immediately below the dam to ascertain whether or not the dam capacity is reduced due to backwater effects.

(j) Information as to the extent, configuration, and capacity of the reservoir at various pool stages is provided.

(3) The structural design shall be done by a professional engineer or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers and must include the following considerations:

(a) Gravity forces;

(b) Hydrostatic pressure;

(c) Uplift forces;

(d) Overturning moment;

(e) Resistance to sliding;

(f) Ice pressures;

(g) Earthquake forces;

(h) Slope stability including consolidation and pore pressures;

(i) Seepage collection or prevention;

(j) Foundation conditions including appropriate borings and determination of the strength of foundation materials;

(k) Specifications for materials of construction and their placement or installation;

(l) Adequate construction inspection to assure conformance with design assumptions; and

(m) Adequacy of the cofferdam, if any.

(4) Adequate assurances shall be made for future maintenance of new dams:

(a) For dams 20 or more feet in structural height or having a maximum storage capacity of 50 or more

acre-feet, permits will be issued only to governmental agencies, public utilities or corporations having authority to construct and maintain such projects, except that a title-registration type permit may be issued to the owner or owners of the private property upon which the proposed dam will be located if an authorized governmental sponsor assumes maintenance responsibility.

(b) For other dams, title-registration permits may be issued to the owner or owners of the private property upon which the dam will be located which shall run with the land and require breaching or removal if it ever falls into a state of disrepair or becomes unsafe.

(c) Periodic engineering inspections of authorized dams may be made by the Department or its designee.

C. DAM CONSTRUCTION OR RECONSTRUCTION

1. **General Standards:** A water resource permit shall be required for the construction, reconstruction and abandonment of all dams on public waters. The construction or reconstruction of dams may be permitted provided all of the following general conditions are met:

a. The need for the facility must be established in terms of quantifiable benefits to be provided;

b. Proposed new dams must be adequate in relation to the following hydrological factors:

(1) The hydraulic capacity of the spillway(s) of the dam must be established by a competent technical study performed by a registered professional engineer of the State of Minnesota or by a qualified engineer of the U.S. Soil Conservation Service or the U.S. Corps of Engineers;

(2) Where dam failure may cause loss of human life, serious damage to homes, industrial and commercial buildings, important public utilities, main highways, or railroads, the spillway(s) will be hydraulically adequate for the probable maximum flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for design of a structure in this risk category;

(3) For dams located in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads, or cause interruption of use or service of relatively important public utilities, the spillway(s) will be hydraulically adequate for the standard

project flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in this risk category;

(4) For dams located in rural or agricultural areas where failure may damage farm buildings, agricultural land, or township or county roads, the spillway(s) will be hydraulically adequate up to and including the regional flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in this risk category;

(5) In relation to the above points, the estimation of the magnitude of the design flood will include the anticipated effects of the development of the tributary watershed area expected over the project life; likewise, the selection of design flows will include an assessment of the risks involved based upon anticipated development in the floodplain below the proposed dam over the life of the proposed project.

(6) For dams having the following dimensions, the Department of Natural Resources may require preparation of an inundation map of the area below the dam which would be inundated in the event of dam failure:

(a) A hydraulic height of 25 or more feet; or

(b) A maximum storage capacity of more than 50 acre-feet; provided

(c) That dams less than 6 feet in hydraulic height or having a maximum storage capacity of less than 15 acre-feet are excluded.

(7) Where inundation maps are prepared, such will be prepared by a registered professional engineer of the State of Minnesota in accordance with technical criteria acceptable to the Department of Natural Resources. The study report will indicate those areas where human life would be endangered as well as areas subject to serious damage to homes, commercial and industrial buildings, public utilities, and transportation facilities. Where failure may endanger human life, the study will include a feasibility report on floodplain evacuation, emergency warning systems, or other techniques to eliminate this risk factor.

(8) The dam will be provided with both principal and emergency spillways, unless in lieu of an emergency spillway the hydraulic capacity of the principal spillway is

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increased to the capacity that would be required for the combination of principal and emergency spillways.

(9) A mechanism will be provided for drawing down the water surface to facilitate dam repairs and maintenance work within the reservoir;

(10) The height of all portions of the dam and any associated dikes or other facilities not designed to withstand overtopping will be provided with appropriate freeboard above the maximum storage capacity in anticipation of wind and wave conditions and to provide a safety factor;

(11) Earthen emergency spillways and the upstream and downstream faces of earthen dams will be adequately riprapped, sodded, or seeded to prevent erosion;

(12) The storage pool of the impoundment will provide adequate space to store the sediment yield from the upstream watershed over the project life without detracting from the public purposes served;

(13) An adequate stilling basin or other means of controlling downstream erosion is provided;

(14) A stage discharge curve is developed for the watercourse immediately below the dam to ascertain whether or not the dam capacity is reduced due to backwater effects; and

(15) Information as to the extent, configuration, and capacity of the reservoir at various pool stages must be provided.

e. Structural stability: The structural design of dams must be done by a registered professional engineer of the State of Minnesota or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers. The structural design of the dam must include the following considerations:

- (1) Gravity forces;
- (2) Hydrostatic pressure;
- (3) Uplift forces;
- (4) Overturning moment;
- (5) Resistance to sliding;
- (6) Ice pressures;
- (7) Earthquake forces;

(8) Slope stability including consolidation and pore pressures;

(9) Seepage collection or prevention;

(10) Foundation conditions including appropriate borings and determination of the strength of foundation materials;

(11) Specifications for materials of construction and their placement or installation;

(12) Adequate construction inspection to assure conformance with design assumptions; and

(13) Adequacy of the cofferdam, if any.

d. Maintenance: Adequate assurances must be made for future maintenance of new dams, as follows:

(1) For dams 25 or more feet in hydraulic height or having a maximum storage capacity of 50 or more acre-feet, permits will be issued only to governmental agencies, public utilities or corporations having authority to construct and maintain such projects. However, a title registration type permit for a dam of such size may be issued to the owner or owners of the private property upon which the proposed dam will be located if an authorized governmental sponsor assumes maintenance responsibility for the structure. Ordinarily this is accomplished through a title registered contractual agreement between the owner(s) and the governmental sponsor, such agreement running with the land.

(2) For dams less than 25 feet in hydraulic height and having a maximum storage capacity of less than 50 acre-feet, title registration permits may be issued to the owner or owners of the private property upon which the proposed dam will be located. Said permits shall run with the land and shall require breaching or removal of the authorized dam if it ever falls into a state of disrepair or becomes unsafe.

(3) To assure future maintenance, permits for dams controlling the water levels of public water basins may be issued only to local governmental units such as a township, city, county, lake improvement district, or watershed district, except when the entire shoreline of the water basin is owned by a single owner or a group of owners, all of whom unite to sign the permit application.

(4) Provision for periodic engineering inspections of authorized dams can be made by inclusion of a carefully considered permit condition, such as the following: "Permittee shall arrange for periodic safety inspections of the authorized dam after completion of construction by a professional engineer registered in Minnesota; said engineering inspections to be made with a frequency approved in writing by the Commissioner."

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NR 5025 Bridges and culverts, watermain and sewer crossings, intakes and outfalls.

A. Policy. It is the policy of the Department of Natural Resources to allow crossings of public waters, including the construction of water intake and sewer outfall structures in public waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety and welfare. Such crossings shall not be permitted where the project:

1. The crossing of public waters by roadways and other structures, and the construction of water intakes and sewer outfalls in public waters may be permitted in the following cases:

1. Will obstruct navigation or create a water safety hazard.

a. ~~To construct, reconstruct or relocate public and private roadway crossings including bridges, culverts, foot-bridges and walkways, on public waters.~~

b. ~~To place temporary bridges and other roadway crossings on public waters.~~

c. ~~To construct, reconstruct or relocate watermain, storm sewer and sanitary sewer crossings on public waters.~~

d. ~~To construct, reconstruct or relocate water intake, storm sewer outfall and sanitary sewer outfall structures in public waters.~~

2. The crossing of public waters by roadways and other structures, and the construction of water intakes and sewer outfalls in public waters shall not be permitted in the following cases:

2. Will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream.

a. ~~Where such structures will obstruct navigation or create a water safety hazard.~~

b. ~~Where such structures will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream.~~

c. ~~Where the proposed project would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance/exit conditions.~~

d. ~~Where it is proposed to enclose natural watercourses within culverts or other confined structures.~~

e. ~~Where such structures will be detrimental to water quality, and/or significant fish and wildlife habitat, or protected vegetation.~~

3. Would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance/exit conditions, except where a separate permit is obtained pursuant to NR 5022 D.

4. Will be detrimental to water quality, and/or significant fish and wildlife habitat, or protected vegetation.

Abandonment or removal of all crossings and structures governed by this section shall require a permit pursuant to NR 5023 H.

B. Bridge and culvert installations.

1. Permitted uses: ~~A water resource~~ No permit shall not be required to construct a low-water ford type crossing on a public watercourse or place a temporary bridge over public waters provided all of the following conditions are met:

a. ~~The stream bed at the proposed crossing site is capable of supporting a low water~~ Low-water ford type crossings: without the use of pilings, culverts, dredging or other special site preparation.

(1) The stream bed is capable of supporting the crossing without the use of pilings, culverts, dredging or other special site preparation.

(2) The water depth does not exceed 2 feet under normal summer flow conditions.

(3) The crossing conforms to the natural cross-section of the stream channel and does not reduce or restrict normal low-water flows.

(4) The original stream bank at the site does not exceed 4 feet in height.

(5) The crossing is constructed of gravel, natural rock, concrete, steel matting or other durable, inorganic material not exceeding one (1) foot in thickness.

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(6) The approach is graded to a finished slope not steeper than 5:1, and all graded banks are seeded or mulched to prevent erosion and sedimentation.

(7) The crossing is not placed on an officially designated trout stream, or on a federal wild, scenic or recreational river.

~~b. The water depth at the proposed crossing site does not exceed 2 feet under normal low flow conditions.~~

b. Temporary bridges:

(1) The stream bank is capable of supporting the bridge without the use of foundations, pilings, culverts, excavation or other special site preparation.

(2) Nothing is placed in the bed of the stream.

(3) The bridge is designed and constructed so that it can be removed for maintenance and flood damage prevention.

(4) The bridge is firmly anchored at one end and so constructed as to swing away in order to allow flood waters to pass.

(5) The lowest portion of the bridge shall be at least 3 feet above normal summer streamflow.

~~e. The proposed crossing conforms to the natural cross section of the stream channel and does not reduce or restrict normal low water flows.~~

~~d. The original stream bank at the proposed crossing site does not exceed 4 feet in height.~~

~~e. The proposed crossing is constructed of gravel, natural rock, concrete, steel matting or other durable, inorganic material not exceeding 6 inches in thickness.~~

~~f. The approach to the proposed crossing shall be graded to a finished slope not exceeding 5:1, and all graded banks shall be seeded or mulched to prevent erosion and sedimentation.~~

~~g. The proposed crossing shall not be placed on an officially designated trout stream, or on a State or federal wild, scenic or recreational river.~~

~~h. The crossing shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.~~

2. Water Resource Permit: A water resource permit shall be required for the construction, reconstruction or relocation of all other bridges, culverts, footbridges, walkways and other roadway crossings on public waters, except a low water ford type crossing as noted above, or other crossings over public waters. Public and private roadway related water crossings may Except as noted below in NR 5025 relating to sewer and watermain crossings, crossings shall be permitted provided all of the following criteria are met:

a. Hydraulic adequacy: The hydraulic capacity of the proposed structure must ordinarily be established by a competent technical study. ~~The Drainage Manual of the Minnesota Highway Department outlines methodology which is frequently used in this state; engineering manuals of federal agencies such as the SCS, Corps of Engineers, Department of Transportation, etc., may provide other methodologies which could be applied to specific problems with reasonable accuracy. In any event, the~~ The sizing of proposed hydraulic structures shall not be based solely on the size of existing upstream and downstream structures, is not acceptable, particularly in urban and urban fringe areas. If a state or federal flood plain information study exists for the area, or a U.S. Geological Survey stream gaging station is located nearby on the same stream, the hydraulics of the proposed bridge/culvert design must be consistent with ~~this~~ these data. If the acquisition of a ~~technical hydraulic~~ technical hydraulic study by the applicant would cause undue hardship and would be unreasonable under the circumstances, the ~~Regional Hydrologist Department~~ Regional Hydrologist Department may waive the requirement for such a study ~~based upon conformance with all of the following:~~ if:

(1) ~~He~~ It has performed a rough hydraulic study based upon available information and reasonable assumptions;

(2) ~~He~~ It has made a field investigation of the project site; and

(3) The project is located in a rural area and will not cause flood-related damages or problems for upstream or downstream interests.

b. Flood Plain Management Standards: New crossings and replacements of existing crossings must comply with local flood plain management ordinances and with provisions of NR 87 (d)(1).

~~(1) No crossing can encroach upon a community designated floodway.~~

(1) New crossings:

(a) No approach fill for a crossing can encroach upon a community designated floodway.

(b) Where a floodway has not been designated or where a flood plain management ordinance has not been adopted, increases in flood stage in the regional flood of up to .5 foot shall be permitted if they will not materially increase flood damage potential. Additional increases may be permitted if:

(i) A field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream.

(ii) Any increases in flood stage are reflected in the flood plain boundaries and flood protection elevation adopted in the local flood plain management ordinance.

~~(2) Where a floodway has not been designated or where a flood plain management ordinance has not been adopted, increases in flood stage in the regional flood of up to .5 foot shall ordinarily be permitted. Additional increases may be permitted if:~~

(2) Replacement of existing crossings:

~~(a) A field investigation and other available data indicate that no significant increased in flood damage potential would occur upstream from the crossing or that the proposed structure would reduce flood damage potential downstream.~~

(a) If the existing crossing has a swellhead of .05 feet or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings (NR 5025 B.2.b. (1) above).

~~(b) The local government unit is notified in writing of the effect of the proposed crossing and that any increases in flood stage must be reflected in the flood plain boundaries and flood protection elevation adopted in the local flood plain management ordinance.~~

(b) If the existing crossing has a swellhead of more than 0.5 feet for the regional flood, stage increases up to the existing swellhead may be allowed provided field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in (i) and (ii) of NR 5025 B.2.(b)(1)(b) above.

~~(e) The applicant notifies effected landowners~~

~~in writing of the increases in flood potential that would be caused by the proposed crossing.~~

~~(3) If increases in flood stages caused by waterway crossings will materially increase flood damage potential, increases in flood stage of less than 0.5 feet may be required.~~

(3) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall be no lower than two feet below the flood protection elevation as defined in NR 87(e) unless it can be shown that alternative routes or access can be provided during the regional flood.

~~(4) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall ordinarily be no lower than two feet below the flood protection elevation as defined in NR 87(e) unless it can be shown that alternative routes or access can be provided during the regional flood.~~

~~c. Fish and wildlife habitat: The proposed bridge/culvert structure shall provide for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value.~~

~~d. Navigation: A proposed bridge culvert The structure will not obstruct public navigation. if the water body is a wild, scenic, or recreational river or a designated canoe or boating route or is otherwise utilized by the public for navigation. Bridges For bridges, having their soffits at least three feet above the calculated 50-year flood stage, in keeping with Federal Highway Administration standards, will ordinarily satisfy navigational clearance requirements. For culverts, three feet of clearance above the ordinary high water mark will ordinarily satisfy navigational requirements. Navigational problems associated with bridge/culvert proposals should be resolved with Parks and Recreation personnel.~~

~~e. Recreational land trails system: Any roadway crossing project proposed near an existing or proposed segment of the state land trails system should be consistent therewith. Any conflicts should be resolved with Parks and Recreation personnel.~~

f. Footbridges and walkways:

(1) Footbridges over Over watercourses: should

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be designed to cause negligible backwater effects during floods. They should be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice and debris. The approaches to footbridges should not be raised above the adjacent flood plain lands.

(a) Should be designed to cause negligible backwater effects during floods.

(b) Should be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice and debris.

(c) Approaches should not be raised above the adjacent flood plain lands.

(2) Permits for construction of new New walkways across a lakebed or portion thereof such as any portion of a lakebed to provide access to an island will be prohibited. Permits for reconstruction of existing walkways will be issued only if:

(a) The walkway provides the only existing access to the island.

(b) There is existing development thereon.

(c) The design will provide for any public navigational needs and is consistent with the natural surroundings.

(3) Permits for reconstruction of previously existing walkways across a lakebed or portion thereof to provide access to an island will be issued only if the walkway provides the only existing access to the island, there is existing development thereon, and the walkway design will provide for any public navigational needs and is consistent with the natural surroundings.

g. Temporary bridge crossings may be approved provided the bridges are securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice and debris. Provisional dates for installation and removal of such crossings may be required.

C. Watermain and sewer crossings. A permit shall be required for the construction, reconstruction or relocation of all watermain and sewer crossings. They shall be issued provided:

1. General Standards: A water resource permit shall be required for the construction, reconstruction or relocation of all watermain, storm sewer and sanitary sewer crossings on public waters. Watermain, storm sewer and sanitary sewer

crossings on public waters may be permitted provided all of the following criteria are met:

1. No site condition will cause frequent future disruption of the beds.

a. Watermain and storm sewer crossings: Watermain and storm sewer crossings of public waters may be permitted provided all of the following conditions are met:

(1) The project site must not be subject to conditions which are anticipated to cause unusual or severe maintenance problems requiring frequent future disruption of the beds of public waters.

(2) No other alignment alternative is possible which would eliminate the crossing. Route alignments must be selected with due regard for the preservation of lakes, streams, wetlands, recreation lands and other natural areas.

(3) The minimum depth of cover over pipe must be two feet.

(4) The bed and banks must be restored as nearly as practicable to the original cross section, alignment and grade.

(5) The banks and surrounding shoreland (usually within 50 feet of the water) must be revegetated by seeding and/or sodding.

(6) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.

b. Sanitary sewer and force main crossings: Permits for sanitary sewer and force main crossings may be issued provided all of the following conditions are met:

(1) All of the conditions in NR 5025 (c) (1) (a) above, plus

(2) Pipe and pipe bedding/support specification (at the crossing site) must be submitted to the Department of Natural Resources for review and approval.

(3) Project design and construction plans and specifications must be prepared by a registered professional engineer licensed in the State of Minnesota.

2. No alignment alternative is possible which would eliminate the crossing. The selection of an alignment shall consider the preservation of lakes, streams, wetlands, recreation lands and other natural areas.

3. Minimum depth of cover is two feet.

4. Bed and banks must be restored as nearly as practicable to the original cross-section, alignment and grade.

5. Banks must be revegetated by seeding and/or sodding.

6. The project must be designed by a professional engineer.

7. Pipe and pipe bedding/support specifications for sanitary sewer and force main crossings shall be submitted to the Department for approval. Construction plans and specifications shall be prepared by a professional engineer.

D. Intakes and outfalls.

~~1. General Standards: A water resource permit shall be required for the construction, reconstruction or relocation of all water intake, storm sewer and sanitary outfall structures placed in public waters. The following general standards shall apply to the review of all applications to construct water intake, storm sewer and sanitary sewer outfall structures in public waters:~~

1. Permitted Uses: No permit shall be required to maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch which has been functioning within the previous five (5) years if such work does not alter the original course, current, or cross-section of the public waters.

~~a. Special attention must be given to methods of screening any authorized water intake or sewer outfall structure as much as possible from view from the surface of the public water through the use of existing vegetation and/or new plantings.~~

~~b. The project must not be unduly detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and the like.~~

~~c. The project size must not be subject to conditions which are anticipated to cause unusual or severe maintenance problems requiring frequent future disruption of the beds of public waters.~~

2. Water resource permit. Permits: A permit shall be required for the construction, reconstruction or relocation of all other water intake and sewer outfall structures placed in public waters. It shall be issued where:

a. Water intake structures: Water intake structures may be permitted provided all of the following conditions are met:

a. Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the public water through the use of existing vegetation and/or new plantings.

~~(1) Adequate precautions must be planned for during and after construction to prevent silt, soil and other suspended particles from being discharged into public waters.~~

~~(2) Adjacent to the intake structure, the banks and bed of the public water must be protected from erosion and scour by placement of suitable riprap shore protection where appropriate or where recommended by DNR review authority.~~

~~(3) The banks and surrounding shoreland (usually within 50 feet of the water) must be revegetated by seeding and/or sodding.~~

~~(4) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.~~

~~(5) All necessary intake channel dredging or excavation must be detailed in the structure application and on the design plans.~~

~~(6) A water appropriation permit must be obtained from DNR prior to operation of the intake structure.~~

~~b. Storm and sanitary sewer outfall structures: Storm and sanitary sewer outfall structures may be permitted provided all of the following conditions are met:~~

b. The project is not detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply and storm water retention.

~~(1) Adequate precautions must be planned for during and after construction to prevent silt, soil and other suspended particles from being discharged into public waters.~~

~~(2) Structure design must incorporate a stilling basin, surge basin, energy dissipator or other device(s) to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows.~~

~~(3) Sewer line and outfall structure design must, where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment (and possible future removal) of sand, silt, debris and organic matter.~~

~~(4) Storm sewer system design must maximize use of natural and/or artificial ponding areas to provide water~~

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retention and storage for the reduction of peak flows into public waters.

(5) Adjacent to the outfall structure, the banks and bed of the public water must be protected from erosion, scour, undercutting, gulying and tree loss by placement of suitable riprap shore protection.

(6) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.

(7) Where feasible, a storm or sanitary sewer outfall structure should outlet below the water level of the receiving water to aid concealment and reduce scour and erosion.

c. No site conditions will require frequent future disruption of the beds of public waters.

d. Adequate precautions must be planned during and after construction to prevent silt, soil and other suspended particles from being discharged into public waters.

e. Adjacent to the intake structure, the banks and bed of the public water must be protected from erosion and scour by placement of suitable riprap shore protection.

f. The banks must be revegetated by seeding and/or sodding.

g. The structure must be designed by a professional engineer.

h. Intake structures:

(1) Dredging or excavation must be detailed in the application and on design plans.

(2) A water appropriation permit must be obtained from DNR prior to operation.

i. Outfall structure design shall:

(1) Where necessary, incorporate a stilling-basin, surge-basin, energy dissipator or other device(s) to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows.

(2) Where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment (and possible future removal) of sand, silt, debris and organic matter.

(3) Where feasible, maximize use of natural and/or artificial ponding areas to provide water retention and storage for the reduction of peak flows into public waters.

NR 5026 General administration.

A. Application for water resource permits. All applications for a water resource permit to alter the course, current

or cross-section of public waters, or to construct, repair or abandon a dam on public waters pursuant to NR 5020 to 5025 shall be made on forms prepared by the Department of Natural Resources regional office for the area in which the proposed project is located.

1. Who may apply: All applications for water resource permits shall be submitted by the riparian owner of the land(s) on which a project governed by these standards is proposed, ~~except: Applications for water resource permits may be submitted by persons or parties other than the riparian owner only under the following conditions:~~

a. A governmental agency, public utility or corporation authorized by law to conduct the contemplated type of project may apply if the easements or other property rights acquired or to be acquired are fully described in the application.

b. A holder of appropriate property rights such as a lease or easement may apply provided that the application is countersigned by the property owner. In such case, the application must be and accompanied by a copy of the lease or other agreement between the parties. A permit may be issued for the term of the lease only, subject to cancellation prior to the termination date of the lease or agreement should this if the agreement be is cancelled.

c. In the case A prospective lessee of state-owned lands, the prospective lessee may apply for a permit in his own name after he has requested a lease from the departmental official responsible for the affected lands. Both the lease request and the permit application will be processed concurrently with appropriate coordination. If both are approved, they are to terminate on the same date.

d. Applications for dams will be accepted only from governmental agencies, public utilities or corporations having authority to sponsor such facilities if the structural height of the structure is more than 25 feet or the maximum storage capacity of the impoundment is more than 50 acre-feet or both. An application for such a structure may be accepted from the private landowner if an authorized governmental agency sponsors the project and assumes maintenance responsibility for the structure to the satisfaction of the Department of Natural Resources.

e. Applications for lake level control structures are ordinarily accepted only from governmental units authorized to construct and maintain these facilities by Minnesota Statutes 1976, Section 378.34 and 459.20.

2. Information required: Pursuant to Minn. Stat. 1976 § 105.44, subd. 4, an application for a water resource permit shall be considered complete when all of the following criteria have been met:

a. The application It includes all of the information

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required for departmental review as specified in the appropriate section(s) of these standards.

b. ~~The application~~ It is accompanied by appropriate photographs, maps, sketches, drawings or other plans which adequately describe the proposed project.

c. ~~The application~~ It includes a brief statement regarding the following points:

(1) Anticipated changes in water and related land resources;

(2) Unavoidable ~~but~~ anticipated detrimental effects ~~of on~~ the natural environment;

(3) Alternatives to the proposed action;

(4) ~~All application and field inspection fees have been paid.~~

d. Applications fees have been paid. Note that final permits cannot be issued until any field inspection fees are paid.

e. Proof of service of a copy of the application and accompanying documents on the mayor of the city or the secretary of the board of the district is included with the application if the project is within or affects a city, watershed district, or soil and water conservation district.

3. Fees: All applications for ~~water resource permits~~ shall be accompanied by an application fee as required by NR 5000 (e) (1). An additional fee may be charged for field inspections conducted by Department personnel in the course of reviewing a ~~permit application. Fees charged for field inspections shall be subject to the provision of NR 5000 (g) (1)-(5). An application for a water resource permit shall not be considered to be complete until all fees have been paid.~~

B. Permit review.

All applications for a ~~water resource permit to alter the course, current or cross-section of public waters, or to construct, repair or abandon a dam on public waters shall be reviewed and evaluated by the Department of Natural Resources in view of the standards and criteria set forth herein.~~

1. Field inspection: ~~In order to fully evaluate a proposed project requiring a water resource permit the~~ The Department of Natural Resources may conduct field investigations to determine the a project's nature, and scope of the proposed project and the impact it will have on water and

~~related land resources. The Regional Hydrologist Department shall determine which applications must be investigated in the field, and such such field inspections shall be made in a timely fashion, and shall be coordinated with personnel from the following Department programs: enforcement, fisheries, forestry, lands, parks & recreation, soil conservation, and wildlife.~~

2. Coordination with other agencies: Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards and criteria of other federal, state, regional or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of public waters. The issuance of a ~~water resource~~ permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The Department of ~~Natural Resources~~ shall coordinate the review of ~~applications for water resource permits~~ with other units of government having jurisdiction in such matters. ~~Such coordination shall include, but is not limited to, the following governmental units:~~

a. ~~United States Army, Corps of Engineers~~

b. ~~Minnesota Pollution Control Agency~~

c. ~~Minnesota Department of Health~~

d. ~~Minnesota Department of Transportation~~

e. ~~Watershed Districts~~

f. ~~County and Municipal Planning and Zoning Authorities~~

g. ~~Soil and Water Conservation Districts~~

3. Procedure upon decision: The Commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minn. Stat. § 105.44, sub. 3 within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before a referee appointed by the independent State Hearing Examiners Office in accordance with Minn. Stat. ch. 15, and §§ 105.44 and 105.45.

C. Statutory requirements. Further provisions for the administration of these rules are found in Minn. Stat. ch. 105,

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NR 5026

including but not limited to §§ 105.44 through 105.463, 105.541, and 105.55.

Soil and Water Conservation Board

Continuance of Temporary Rules for the Cost-share Program

The temporary rules for the cost-share program proposed on November 14, 1977 (2 S.R. 970) and adopted on December 6, 1978 (2 S.R. 1457) are continued an additional 90 days. They shall expire 180 days from February 6, 1978, or on the effective date of permanent rules for the cost-share program, whichever date comes first.

Vernon F. Reinert
Executive Director

May 4, 1978

Department of Transportation Administration Division

Notice and Order of Extension of Adopted Temporary Rules Relating to Establishing a Program of State Grants for the Development of Local Bicycle Trails (Bikeways)

Laws of 1977, ch. 421, § 5, subd. 2, authorizes the Commissioner of Transportation to establish by rule pursuant to Minn. Stat. § 15.0412 (1977 Supp.) procedures for the administration of grants to units of government as de-

finied in § 2 of the act for the betterment of public land and improvements needed for local bicycle trails.

Please be advised that the temporary rules published at *State Register*, Volume 2, Number 27, p. 1360, January 9, 1978 (2 S.R. 1360), and adopted on February 22, 1978 and promulgated at *State Register*, Volume 2, Number 41, p. 1894, April 17, 1978 (2 S.R. 1894), are continued in effect through and including August 20, 1978.

Extension authority is Minn. Stat. § 15.0412 (1977 Supp.).

Jim Harrington
Commissioner

Notice of Extension of Adopted Temporary Rules Governing Implementation of Public Transit Subsidy and Demonstration Grant Programs

The temporary rules published at *State Register*, Volume 2, Number 24, p. 1200, December 19, 1977 (2 S.R. 1200) and extended by publication at *State Register*, Volume 2, Number 33, p. 1515, February 20, 1978 (2 S.R. 1515), are continued in effect until permanent rules are adopted pursuant to Minn. Stat. ch. 15 or until July 1, 1978, whichever occurs first.

Extension authority is Laws of 1977, ch. 454, § 25.

Jim Harrington
Commissioner

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration Building Code Division

Proposed Adoption by Reference of the 1978 Edition of the National Electrical Code as Approved by the American National Standards Institute (ANSI C1-1978) to Amend SBC 8601

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 408, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota on June 22, 1978, commencing at 1:30 p.m., and continuing until all persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 16.86 (1976 and 1977 Supp.).

All interested or affected persons or representatives of groups or organizations will have an opportunity to participate, by submitting either oral or written data, statements,

or arguments. Written materials may be submitted by mail to Peter Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota either before the hearing or within 5 to 20 days after the close of the hearing, as determined by the hearing examiner.

The commissioner proposes to adopt rules which would amend SBC 8601 by adopting the 1978 edition of the National Electrical Code (1978 NEC). With certain modifications, the proposed rules are essentially the same as the 1975 edition of the National Electrical Code which is presently a portion of the State Building Code.

A copy of the proposed rules (1978 NEC) is available and may be obtained by writing to the State Board of Electricity, 1954 University Avenue, St. Paul, Minnesota 55104, (612) 645-7703, for \$6.50; or may be reviewed at the Building Code Division offices, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota. A copy of the "Preprint" of the Proposed Amendments for the 1978 NEC (NFPA No. 70-PR78) is available for review at the Building Code Division offices. The "1978 National Electrical Code Changes" are available upon written request from either the State Board of Electricity or the Building Code Division offices. Copies of all of the above-mentioned documents will be available for review at the time of hearing.

A Statement of Need explaining the need for and reasonableness of the proposed rules and a Statement of Evidence outlining the testimony the department will be introducing at the hearing will be filed with the Office of the Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communication or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Richard L. Brubacher
Commissioner

May 5, 1978

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PROPOSED RULES

5 MCAR § 5.001

Minnesota State Arts Board (MSAB)

Proposed Rules Governing the Receiving and Reviewing of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Capitol, Room 15, on June 23 and 26, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The MSAB expects that 50 persons including members of the Arts Board, agency staff, and members of the public will attend.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, hearing examiner, 1745 University Avenue, St. Paul, Minnesota 55104 (612) 296-8112, either before the hearing or within 5 days after the close of the hearing.

The rules proposed by the Minnesota State Arts Board will amend the adopted rules MSAB 1-8 governing the receiving and reviewing of requests for and distribution of grants, loans and other forms of assistance.

The proposed rules are attached hereto. Additional copies of the proposed rules are now available and one additional free copy may be obtained by writing to the Minnesota State Arts Board, 314 Clifton Avenue, Minneapolis, Minnesota 55403. Additional copies will also be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 139.10, subs. (e) and (f) (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250

per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone number (612) 296-5615.

May 5, 1978

Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

Contents

Rule

(5 MCAR 5)

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~~MSAB 7:~~ § 5.009 Responsibilities of grantee

~~MSAB 8:~~ § 5.010 Advisory committees

Rules as Proposed

~~MSAB 1:~~ § 5.001 **Authority for the rules** These rules are adopted pursuant to Minn. Stat. § 139.10, subs. (e) and (f) (Supp. 1977).

~~MSAB 2:~~ § 5.002 **Purpose of the rules.** The purpose of these rules is to set forth procedures and standards to be

PROPOSED RULES

followed by the Board in receiving and reviewing requests for and distribution of grants, loans and other forms of assistance.

MSAB 3: § 5.003 Whom the rules govern.

A. These Rules govern the Board; advisory committees; regional arts councils; and all individuals, ~~sponsoring~~ organizations, departments, and agencies of the state and political subdivisions who wish to receive grants, loans or other forms of assistance, including applicants of regional arts councils.

B. Regional Arts Councils receiving block grants from the Board are required to follow Board rules pertaining to eligibility requirements and general standards in distributing local/regional arts development grants, loans and other forms of assistance which utilize Board funds.

MSAB 4: § 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens selected and convened by the Board to review and recommend on policy and distribution of forms of assistance offered by the Board.

(MSAB 4.B. through O. are incorporated into 5 MCAR §§ 5.004 and 5.007.)

B. "Block Grant" means grants to regional arts councils for the purpose of providing program services and regrants for local/regional arts development.

C. "Board" means the Minnesota State Arts Board.

D. "Certified audit report" means a document prepared and signed by a Certified Public Accountant showing the total fiscal activity of a project or program.

E. "Local" means program or service distribution and organizational impact within a specific municipality or county.

F. "Local/regional arts development" means programs or projects which are for the development or enhancement of local or regional artists or art resources.

G. "Multi-regional" means program or service distribution and organizational impact over more than one of the state's official development regions.

5 MCAR § 5.005

H. "Other forms of assistance" means publications or staff consultation or workshops with individuals or groups who have developed or are interested in developing projects or programs in the arts but need advice on matters such as, but not limited to, budgeting, administration, production and technology.

I. "Program information" means a document(s) issued annually describing programs and services of the Board which includes instructions, deadlines, and other aids for the applicant seeking Board assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria themselves. Any actions taken by the Board, its staff and advisory committees must be clearly based on the standards in rule form. Explanations of actions requested by applicants must be offered in the context of the standards in rule form.

J. "Regional" means program or service distribution and organizational impact within the geographic area served by a regional arts task force or regional arts council. Formal combinations of two or more development regions under one regional arts task force or regional arts council will be regarded as one region for this purpose.

K. "Regional arts council" means an organization or a group designated by the Board to make final decisions on block grant funds granted to them for grants-making and program services to the region the arts council represents for local/regional arts development.

L. "Regional arts task force" means an advisory committee of the Board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

M. "State-wide" means program or service distribution and organizational impact throughout most or all of the development regions of the state.

MSAB 5: § 5.005 Requests for information. All requests for information ~~concerning the grant application process may be made at to the offices of the Board in person, by phone or letter.~~ Upon such a request, the Board will provide ~~a copy of these rules, an official application form, a copy of the current guidelines and any other information which may be helpful appropriate information.~~

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PROPOSED RULES

5 MCAR § 5.005

§ 5.006 Eligibility requirements for individuals, organizations, governmental units and schools applying for grant assistance.

A. Arts Board assistance is available to individuals, non-profit, tax-exempt organizations, schools and governmental units and departments and agencies of the state.

B. Local/regional arts development assistance is available to non-profit, tax-exempt organizations or units of government, including schools. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts resources.

C. Arts Board grants assistance is available to the following individual applicants:

1. Artists who directly produce new works of art such as, but not limited to, playwrights, composers, librettists, creative prose writers, independent filmmakers, video artists, visual artists, craftspeople, choreographers, poets, fiction writers, conceptual artists and artists working in multi-media fields.

2. Arts teachers, only if the teacher is pursuing professional development as an artist, not as a teacher.

3. Individual artists, who have received an MSAB Fellowship grant, cannot apply for another Fellowship grant until two fiscal years after the receipt of the Fellowship grant.

4. Students, those who are pursuing either full-time or part-time a performance or academic degree in their creative field, may not apply for Fellowships, but may apply for Project or Works in Progress grants.

5. Individual artists, who have received a Project or Works in Progress grant, cannot apply for another Project or Works in Progress grant until one fiscal year after the receipt of the Project or Works in Progress grant.

D. Production grants assistance and Sponsor grants assistance are not available to schools if the project submitted is limited in access to, or only serves those attending school, including the staff.

E. Grants assistance for general operations (Subsidy) is only available to arts producing, exhibiting or educational (non-academic i.e., do not offer curricular programs) organizations.

1. Organizations may apply for general operations (Subsidy) grants only if:

a. State-wide or multi-region impact is demonstrated by program dissemination, public participation or artistic leadership.

b. The organization has been in existence in its current form two full years prior to applying.

c. The organization has a certified audit of its accounts for the previous two years.

d. The organization has a commitment to professional management — at least one full-time paid management (not clerical) position for 12 months per year, or equivalent volunteer personnel. Documentation would include job description, time allocation and budget commitment, if applicable.

2. Organizations which receive grants for general operations (subsidy) are eligible to apply for project grants only if:

a. The application is for a special project, clearly identified as something that would not or could not take place without a grant.

b. The project clearly demonstrates that it is a one-time project. A pilot for contemplated future operation is eligible if a specific plan for absorbing it into on-going operations is presented with the application.

c. No overhead or on-going organizational costs be included as part of the project budget.

d. The grant from the MSAB would be matched at least 50-50 with funds from other sources, clearly identified for the project itself. No general budget funds of the applicant organization would be eligible as match.

F. Regional arts councils are eligible to apply only for block grants for the purpose of local/regional arts development.

G. The Board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the Board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

PROPOSED RULES

5 MCAR § 5.007

2. All pilot assistance categories will be specifically described as such in MSAB program information.

(Language from MSAB 4 and MSAB 6 are incorporated into 5 MCAR § 5.007.)

MSAB 6: § 5.007 Grant application and review procedure. Procedure for obtaining grants, loans and other forms of assistance.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them:

1. "Applicant" means (a) any Minnesota resident who submits an application for a grant, loan or other form of assistance, or (b) any organization, department or agency of the state or political subdivision on whose behalf an application for a grant, or loan is submitted.

2. "Authorizing official" means a person, empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or an individual artist who signs the grant application.

3. "Fiscal agent" means any non-profit, tax-exempt organization or governmental unit which applies to the Board on behalf of an organization or individual not meeting the non-profit, tax-exempt requirements, but qualifying in all other ways. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

4. "Grant" means an allocation of funds to an applicant which are to be used for the purpose(s) described in the application which are not repaid.

5. "Grant contract" means the notification letter signed by an authorizing official of an organization or an individual artist.

6. "Grantee" means an applicant whose application is approved for funding by the Board.

7. "Loans" means monies given to an applicant which are to be repaid to the Board according to the conditions specified in the loan contract.

8. "Matching funds" means share of the financial

support for a project or program raised by grantee from sources other than MSAB. The sources for matching funds may be one or more of the following:

a. Cash. Applicant must be able to prove availability of cash matching funds by bank statements, or other indication of cash on hand.

b. In kind. Items such as materials, labor and space, etc. which can be given a dollar value. Applicant must be able to prove that in kind match is committed to the project program.

c. Revenue. Anticipated receipts from sale of tickets or products.

d. Other grants. Grants received by other grant-making agencies, public or private.

9. "Notification letter" means the letter notifying an applicant of approval or rejection of his the application.

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for the implementation of the project or program for which the application is made.

B. All applications for grants and loans must be made on official application forms available at the offices of the Board. Requests for other forms of assistance may be made directly to the Board at its offices.

C. A copy of these rules and appropriate program information will be provided to all applicants and to others upon request.

D. All applications must be made by the deadlines set by the Board in the current program information.

E. All applications submitted by individual artists to the Board for grants must include examples of works of art of the artist submitting. These examples will be specified in current program information of the Board.

F. All applications of an organization, political subdivision or agency or department of the state must name a project director.

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PROPOSED RULES

5 MCAR § 5.007

G. The staff will review all applications for accuracy and completeness. The Board may convene advisory committee meetings for purposes of reviewing grant applications.

H. Applicants will be notified by mail of the receipts of their applications and the need, if any, for changes or supplementary material. Failure by an applicant to provide this information may result in a rejection or deferral of the application.

I. The advisory committee will submit its recommendations to the Board along with a statement explaining its reasons for recommending acceptance or rejection of the application.

J. Advisory committees, when reviewing applications under the standards listed, shall make one of the following recommendations to the Board:

1. Recommend approval of full requested amount.

a. Individual artist recommendations can only be for the full requested amount.

2. Recommend approval at less than full requested amount.

3. Recommend rejection.

4. Table, pending receipt of additional information, or modifications.

K. The Board shall give considerable weight to the recommendations of the advisory committees.

L. The Board may request comments and recommendations from the staff on all aspects of applications.

M. The Board may request a revised budget and/or project description before taking final action on grant applications.

N. The Board shall make all final decisions as to approval or rejection of grant applications, loan applications or requests for other forms of assistance.

O. If the Board approves a grant which is smaller or greater than the amount requested the applicant will be notified by mail, and will be required to submit a revised budget before a notification letter will be sent.

P. All applicants will receive a notification letter of ac-

ceptance or rejection within 45 days of final review of the application by the Board, except when a revised budget is necessary. In that case, applicants will receive a grant notification letter within 30 days of the receipt of the revised budget by the Board.

Q. Supplementary materials will not be returned unless requested.

R. The Board will not assume responsibility for any loss or damage to materials submitted with applications.

S. The procedure for review of a block grant application developed by a regional arts council is as follows:

1. Each regional arts council shall develop an annual plan to be submitted by an annually announced date, determined by the Board. Regional arts task forces wishing to become regional arts councils must also submit an annual plan.

2. The annual plan will include:

a. Statement of goals established by the regional arts council. This shall be periodically reviewed and updated by the regional arts council.

b. Needs assessment which will be carried out in a manner which ensures input from the arts community and the general public. This needs assessment will be updated at intervals determined and announced by the Board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program services offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the Board at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan which includes a description of program services, if any.

e. Program information which will describe grants and other forms of assistance available, the methods for applying for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying grant recipients, and the responsibilities of the grantees.

f. Organizational structure and membership must include bylaws, an identification of the arts experience and

PROPOSED RULES

background requirements for the members of the regional arts council, a description of rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members. When applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the regional arts council and a fiscal agent or the tax-exemption letter for non-profit organizations will be included.

g. General description of all programs and services provided with or independent of Arts Board funds; budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

h. Procedures embodied in the regional arts council's internal decision-making processes pertaining to arts matters. Application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts according to MCAR 5.007 S. 2.f.

3. All regional arts council annual plans shall be reviewed by a regional arts development advisory committee of the Board.

4. A representative of the regional arts council shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the Board staff, or the Board.

5. The Regional Arts Development advisory committee shall submit its recommendations to the Board for final review.

6. The Board shall approve, defer or reject annual plans submitted by the regional arts councils.

7. After the Board review, but prior to final action, the regional arts council shall have at least 30 days to make any revisions in the plan required by the Board.

8. The Board will award only one regional block grant in each region during a fiscal year.

9. Copies of the Board approved regional arts council annual plan will be available for distribution to the public by the regional arts council.

5 MCAR § 5.007

10. Each regional arts council shall submit an annual fiscal report and evaluation by 60 days, after the end of the Board's fiscal year which shall include:

a. Total fiscal statement, not an audit, for the year in which the annual plan was in effect.

b. Review of the relationship between the proposed annual plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

T. Any applicant for a grant, loan or other form of assistance who believes that the established grant review procedures have not been followed may appeal the decision of the Board, to the Board. If the appeal to the Board is not resolved to the satisfaction of the applicant, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat. § 15.0418-.0422.

§ 5.008 Standards for requests for grants, loans and other forms of assistance.

A. The Board and advisory committees and regional arts councils in reviewing applications on a competitive basis will consider the following factors in order of priority:

1. For organizations.

a. Merit and artistic quality of project or program in the case of project applications. In the case of service programs and projects the merit and quality of that service to the arts will be reviewed.

b. The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of personnel, marketing and publicity efforts and previous successful efforts.

c. Applicants must demonstrate demand or need for the project or program.

d. In the sponsor assistance category the matching funds required of an applicant should show evidence of such match from the participants or beneficiaries of the project or program, or the reason why such match cannot be obtained should be included.

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PROPOSED RULES

5 MCAR § 5.007

2. For individual artists.

a. The quality of the creative work submitted by the artist.

b. The ability of the artist to accomplish the project or plan described in the application.

c. The relationship of the application to the artist's career goals.

B. Applications for general support (subsidy grants) will be reviewed on the following standards with the first standard listed as top priority, and the remaining five of lower priority, but not differentiated among each other. These standards shall be demonstrated using the indicators specified in program information and through the application form.

1. Artistic excellence and leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others — setting standards. Recognition and impact in state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel.

2. Financial position/condition, including need.

a. Total fiscal condition — assets and liabilities (review of audits).

b. Operational plan and budget for fiscal year of grant. Longer range plans and budget would enhance review of one-year plan.

c. Projections of all income sources including

MSAB; relative changes in all categories with justifications and plans for achievements.

d. Building ownership and operations as factors in financial activity.

e. Programmatic activities of importance which are regarded as most financially vulnerable or least remunerative; amounts of costs and projected levels of effort.

f. Relationship of projected earnings to earning capacity — potential for growth of earnings.

g. Special financial conditions or considerations of short-range nature, i.e., other special fund-raising, change of leadership, location, building program, etc.

h. Ability to sustain short-term financial short-fall.

3. Fiscal responsibility and management.

a. Board membership and responsibilities.

b. Staff qualifications and achievements; levels of compensation; methods of recruitment; standards for recruitment.

c. Job descriptions and role relationships of Board and staff.

d. Comparison of previous program and financial projections with achievements.

e. Budgeting and controlling functions; financial planning.

f. Long-range fiscal stability; endowment or capital assets.

4. Commitment to education.

a. Of its regular public/market; percentage of effort to education as opposed to public programming.

b. Funds expected for education vs. earned income from educational programs.

c. In collaboration with schools and colleges; services in schools; services to students at arts organization's headquarters; services to educators.

5. Extension to broad audiences/public; formats and marketing.

PROPOSED RULES

5 MCAR § 5.009

- a. Touring.
 - b. Publications.
 - c. Recordings, films, broadcasting.
 - d. Marketing efforts — types; financial commitments to marketing.
 - e. Special and non-traditional programming.
6. Size and distribution of audience/public.
- a. Numbers served, by program type, if possible.
 - b. Numbers of subscribers and/or regular members; enumeration of individuals served.
 - c. Numbers of persons served divided by those served in headquarters facilities and those served away from home (tour).
 - d. Indications of audience/public demographics, if available.
 - e. Special efforts for economically disadvantaged.
- C. Other forms of assistance will be available on a case by case basis dependent upon the nature of the request, and the availability of Board resources in response to the request.
- D. Regional arts council annual plans submitted to the Board will be reviewed on the following standards:
1. Consistency with Board legislation and rules.
 2. Community participation in the planning process.
 3. Equitability, fiscal accountability and accessibility to the grants process and other forms of assistance.
 4. Consistency in the relationship among the regional arts council's goals, needs assessment and work plans.
 5. Demonstrated ability of the region to carry out its plan.

6. Evidence that decisions on artistic merit, applicant ability and need for the project or program are made only by citizen committees appointed for their expertise and experience in the arts according to MCAR 5.007. S. 2.f.

E. Applications for grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program.

2. Funds are requested for capital improvements or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects completed prior to the application deadline.

4. Funds are requested to pay fees for touring costs, performances or exhibitions by student organizations or schools.

F. The Board may allocate grant funds on a first-come, first-served basis during each fiscal year.

G. The Board may give priority to one form of assistance over others during a fiscal year.

MSAB 7: § 5.009 Responsibilities of grantee.

A. Grantee or authorizing official must sign ~~or~~ and return to the Board, within 30 days from date of mailing, one copy of the ~~grant~~ notification letter, if notification is of grant approval. No action required on notification of rejection.

B. Grantee must acknowledge assistance by the Board on all written materials relating to the project or program such as programs, news releases and posters ~~etc.~~ Grantee must use the acknowledgement statement as found in the notification letter. Grantees of regional arts councils must also use the Board acknowledgement statement on all materials relating to the project or program.

C. Grantee must notify the Board in writing if the program or project is changed ~~in any way~~; ~~at any time~~ from the way in which it was described in the grant application.

D. Grantee must permit the Board a reasonable opportu-

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PROPOSED RULES

5 MCAR § 5.009

nity to view the project or program at any time for purposes of evaluation.

D. Grantee must comply with all Federal regulations specified in the grant notification letter.

E. Grantee must submit, upon request by the Board, may be required to submit a certified audit report at any time during the project or after completion of the project of the organization or of a project funded by the Board.

F. A grant contract may be terminated at any time upon the written request of the grantee, but such termination shall not necessarily relieve the grantee of its responsibilities as set forth in the grant contract.

G. A grant contract may be terminated by the Board at any time upon the failure of the grantee to comply with one or more of the conditions of the grant contract. Such termination shall be effective upon receipt of written notice by the grantee.

H. A grant contract may be terminated at any time by mutual written agreement of the Board and grantee.

I. A grant commitment to a grantee may be rescinded by the Board if one of the following conditions exists:

1. The grantee does not return the signed notification letter, within 30 days of the date of the Board letter.

2. The grantee does not return a revised budget and/or project description within 45 days of the date of the notification of Board action by letter.

3. The grantee does not request the grant amount within 30 days of the date of the grant notification letter.

J. Grantee must submit a final report, within 30 days of the completed project or program, to be completed by grantee or authorizing official on forms provided by the Board.

K. The Board may require that regional arts councils, which have not committed all of their grant funds by April 15 of a given fiscal year, return the uncommitted grant funds to the Board by May 1 of the same fiscal year.

MSAB 8: § 5.010 Advisory committees.

A. The Board shall may appoint advisory committees in each of the following areas of the arts to review grant applications and provide recommendations on policy issues. The

Board shall may appoint advisory committees in each of the following areas of the arts, to review applications in these areas:

1- architecture

2- dance

3- music

4- literature

5- theatre

6- visual arts

7- special projects

8- film/video

9- regional arts task force

general operating support (subsidy), individual artist assistance, production assistance, sponsor assistance, regional arts development and also regional arts task forces.

B. The Board may appoint advisory committees in additional areas of the arts or discontinue the advisory committees in any of the above listed areas as it deems necessary.

C. The Board will appoint an advisory committee to review applications for subsidy grants.

C. D. Members of each advisory committee shall be individuals with special have expertise and/or experience in that a particular area of the arts, arts support or administration. Committee members will be selected by the Board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and consumers of arts forms. At least one of the regional arts development panel from each region will be appointed from nominees of the designated regional arts task force or arts council. The remaining members will be selected from among the previously listed groups through the open nominations process.

D. E. Appointments to advisory committees shall be made by majority vote of the Board. Members shall serve at the pleasure of the Board for three year terms. One-third of the terms of the members of each committee shall expire each year.

E. F. At least sixty days prior to expiration of terms of advisory committee members, the Board will publish and post notice of such openings. Nominations will be actively

PROPOSED RULES

solicited and accepted by the Board. Nominations ~~should~~ must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts ~~generally and in the particular area of the arts of the advisory committee on which the advisory committee on which the nominee will serve.~~

F. G. Advisory committees will, insofar as reasonably possible, be geographically balanced. However, the regional arts development panel shall have two members from each of the regions represented by a regional arts council or regional arts task force.

G. I. Members of the advisory committees and regional arts task forces shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 5.059, subd. 3, except that they shall not be eligible for the per diem.

H. ~~The Board and advisory committees, in reviewing ap-~~

5 MCAR § 5.010

~~lications, will consider the following factors generally as well as specific factors or conditions set by guidelines:~~

~~1. Merit and quality of project generally. Of necessity this must be a subjective recommendation by committee members.~~

~~2. Technical skills of applicant or ability of applicant to retain individual with the necessary technical skills.~~

~~3. If matching funds are required of an applicant, whether applicant has obtained those funds from local community or region. Support from local community or region is highly desirable.~~

~~4. Demand or need for project. Applicants may include market studies, surveys, endorsements, etc.~~

A member vacancy which occurs on any advisory committee prior to the expiration of a member's term may be filled, at the discretion of the Board.

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PROPOSED RULES

Sec. Stat. 4001

**Office of the Secretary of State
Election Division**

**Proposed Temporary Rule Governing Content of Voter's Certificate on
Back of Absentee Ballot Return Envelope**

Notice is hereby given that a proposed temporary rule, Sec. Stat. 4001, is promulgated by the Office of the Secretary of State pursuant to Minn. Stat. § 15.0412, subd. 5 (1976), as amended by Laws of 1977, ch. 443, subd. 2. Statutory authority to adopt the proposed temporary rule is contained in Laws of 1978, ch. 714, subd. 29.

The proposed temporary rule of the secretary of state governing the content of the voter's certificate on the back of the absentee ballot return envelope, if adopted, would require that persons registering to vote and voting by absentee ballot provide proof of residence as required of election day registrants.

All interested or affected persons have the opportunity to participate for 20 days following publication of this proposed temporary rule by submitting written comments to Steven Lindroth, Election Division, Office of the Secretary of State, Room 180 State Office Building, St. Paul, MN 55155.

Joan Anderson Growe
Secretary of State

May 5, 1978

**Temporary Rule as Proposed
Sec. Stat. 4001**

VOTER'S CERTIFICATE

County of _____

State of _____

I do swear that I am a citizen of the United States; that I am an eligible voter; that I am an actual resident of the election precinct indicated by my address in my application; that I do not intend to abandon my residence in said precinct prior to the election date; that at said time I will be a qualified voter in said precinct.

(signed)

(Voter)

Subscribed and sworn to before me this _____ day of _____

A.D. _____, and I hereby certify that the affiant exhibited the enclosed ballots to me unmarked; that he then in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballots and enclosed and sealed the same in the ballot envelope; or that he was physically incapacitated from marking his ballots and that at his request I marked the ballots for him; that the affiant was not solicited or advised by me for or against any candidate or measure; that if the affiant registered to vote by enclosing a voter registration card in the return envelope then he provided one of the following proofs of residence:

Minnesota Driver's License or receipt therefore: Number _____

Minnesota Identification Card or receipt therefore: Number _____

PROPOSED RULES

Sec. Stat. 4001

(Voters Certificate, cont.)

A current registration indicating a previous address within the same precinct.

A notice mailed by the county auditor indicating an insufficiently completed voter registration card.

A student's valid address on one of the following:

- (a) a student identification card; Number _____
- (b) a student fee statement; Number _____
- (c) or, a student registration card. Number _____

A preregistered voter of the precinct willing to certify to the residency of the voter wishing to register.

(Attesting witness)

(Official title or address where witness is registered voter or address of residence from which the witness voted if he resides where there was no permanent registration.)

(Here write name of office or official character of attesting witness, such as notary public, postmaster, etc., or that the witness is an eligible voter in the absentee's county, who has voted within the last four years.)

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OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Economic Security Division of Vocational Rehabilitation

Notice of Availability of Contracts for Medical, Psychiatric, and Psychological Services

The Minnesota Department of Economic Security, Division of Vocational Rehabilitation, is seeking individuals to provide medical, psychiatric, and psychological services under contract as follows:

A. Vocational Rehabilitation Client Services.

1. This section is seeking to employ individuals under contract who will meet with local staff of the section in order to provide them with advice, consultation, and training on medical and psychiatric or psychological aspects affecting the Vocational Rehabilitation process for specific clients and for the agency, in general.

2. This section will be seeking at least one medical and one psychiatric or psychological contractor in each of the following locations: Bemidji, Brainerd, Duluth, Fergus Falls, Mankato, Minneapolis, Rochester, St. Cloud, St. Paul, Virginia, Willmar, Worthington.

3. All individuals will be paid at a rate of \$35.00 per hour. Most contracts will require an average of two to four hours per week.

4. Inquiries and formal expressions of interest should be directed to:

Marvin O. Spears
Director of Client Services
Division of Vocational Rehabilitation
Third Floor, Space Center
444 Lafayette Road
Saint Paul, Minnesota 55101

B. Social Security Disability Determination Services.

1. This section is seeking to employ individuals under contract who will advise and consult with the disability examiner staff and others on medical and psychological aspects of disability determination for specific claimants including the nature and severity of disease processes, appropriate medical development and case documentation, and assessment of the claimants residual level of functioning. The contractor will also be required to certify the determination of disability as required by the Social Security Administration.

2. This section will be seeking one certified psychologist and eighteen medical contractors. All services will be utilized in Saint Paul.

3. All individuals will be paid at a rate of \$30.00 per hour. Contracts will vary from four to twenty hours per week.

4. Inquiries and formal expressions of interest should be directed to:

Irene Pierson
Assistant Director for Medical Services
Disability Determination Section
Division of Vocational Rehabilitation
Suite 460, Metro Square
Seventh and Robert Streets
Saint Paul, Minnesota 55101

All expressions of interest must be submitted to the persons named above by June 12, 1978. Contractors will be selected from individuals expressing interest based on qualifications and appropriate experience. Documentation concerning these will be requested, if needed.

Notice of Availability of Contract for Medical Dictating Services

The Department of Economic Security, Division of Vocational Rehabilitation, Disability Determination Services, located at 460 Metro Square, Saint Paul, Minnesota 55101, is seeking the professional and technical services of a contractor to receive by telephone, transcribe, and deliver medical reports dictated by consulting and treating physicians. The telephone line is to be used exclusively by DDS. Dictation

OFFICIAL NOTICES

recording equipment is provided by the contractor. Compensation is \$.08 a line based on a 10-12 word line. Contract will begin July 1, 1978 and is not expected to exceed \$25,000. Any queries must be received before June 12, 1978. Address inquiries to:

Irene Pierson
Assistant Director for Medical Services
Disability Determination Section
460 Metro Square
Saint Paul, Minnesota 55101

Notice of Availability of Contract for Mobile Medical Services

The Department of Economic Security, Division of Vocational Rehabilitation, Disability Determination Services located at 460 Metro Square, Saint Paul, Minnesota 55101 is seeking services of a contractor to provide qualified physicians in certain specialties (psychiatry, neurology, orthopedics, and internal medicine) to travel to six (6) Minnesota cities (Brainerd, Bemidji, Crookston, Moorhead, St. Cloud, Rochester) to perform consultative examinations and provide written reports of these examinations. Compensation is based on a rate of \$260.00 for a four (4) hour block of time. Total contract is not expected to exceed \$45,000. Reimbursement for mileage according to the State regulations is provided. Any inquiries must be received before June 12, 1978. Address inquiries to:

Irene Pierson
Assistant Director for Medical Services
Disability Determination Section
460 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Department of Corrections Minnesota State Prison — Stillwater

Notice of Request for Proposals for Professional Management of Food Service Activities

Notice is hereby given to request proposals for the professional management of our Food Service Activity at an annual cost not to exceed \$250,000. This proposal shall include all personnel to operate the service. These proposals must be submitted by 4:30 p.m., June 15, 1978, to Fred Holbeck, Associate Warden of Administration, Minnesota

State Prison, Stillwater, Minnesota 55082. Please contact Mr. Holbeck at 612-439-1910, ext. 337 if interested.

Office of Hearing Examiners Notice of Request for Proposals for Hearing Examiners and Court Reporters

The Minnesota Office of Hearing Examiners will be contracting with qualified attorneys and court reporters for the fiscal year beginning July 1, 1978, and ending on June 30, 1979. Attorneys must be admitted to practice law in the State of Minnesota at the time they apply. Remuneration for contractual Hearing Examiners is \$18.75 per hour not to exceed \$150.00 per day. Court reporter fees are based on a bid. Persons desiring to submit Proposals to the office should notify Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 296-8100. All persons inquiring will be sent a Request for Proposal which will give more specifics. The final submission date for Proposals is June 9, 1978.

Department of Administration Procurement Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Governing the Implementation of Legislation Granting Purchasing Preference to American Made Goods

Notice is hereby given that the Department of Administration, Procurement Division, is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing purchasing preference for American made goods established pursuant to Act of March 28, 1978, Chapter 583, 2 Minn. Sess. Law Serv. 259-260 (to be codified as Minn. Stat. § 16.073).

Any interested person may submit data or views on this subject in writing or orally by June 9, 1978, to:

OFFICIAL NOTICES

V. S. Bruce, Director
Procurement Division
Department of Administration
50 Sherburne Avenue
St. Paul, Minnesota 55155
(612) 296-2600

Any written material received by the agency shall become part of the hearing record.

Department of Education Special and Compensatory Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules for the Minnesota School for the Deaf and the Minnesota Braille and Sight-saving School

The Department of Education is drafting rules to implement Minn. Stat. § 128A.02, subd. 2 (1977), which permits the State Board of Education to promulgate rules regarding the operation of the Minnesota School for the Deaf and the Minnesota Braille and Sight-Saving School and the individuals in attendance; and to implement Minn. Stat. § 128A.02, subd. 6 (1978) which requires that the rules of the State Board of Education establish procedures for the admission and discharge of hearing impaired and vision impaired students at the School for the Deaf and the Braille and Sight-Saving School respectively. The rules shall include procedures for decisions on a child's program at the state school; evaluation of the child's progress; and appropriate procedural safeguards for children and their parents.

The Department invites interested persons or groups to provide information, comment, and advice on the subject in writing or orally to Will Antell, Assistant Commissioner of Education, Minnesota State Department of Education, 802 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record.

Instruction Division

Notice of Intent to Solicit Outside Opinion Regarding Community Education Rules Change

The Department of Education is proposing revisions in EDU 682 and 687, in an effort to strengthen Community Education in Minnesota. Minn. Stat. ch. 121.86 permits the State Director of Community Education to prepare and submit to the State Board of Education recommended rules defining program areas, reimbursement procedures, and any other requirements relevant to the promotion, implementation, and operation of community school programs throughout the state.

The Department invites interested persons or groups to provide information, comment, and advice on the subject, in writing or orally to Ms. Von Valletta, Deputy Commissioner of Education, 713 Capitol Square Building, 550 Cedar St., St. Paul, MN 55101, or Lawrence Erie, 680 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Written statements will be made part of the public hearing record.

All materials to be considered in the original draft should be submitted by June 15, 1978.

Special Services Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Relating to Equality of Educational Opportunity and School Desegregation

The Department is drafting amendments to its rules relating to equality of educational opportunity and school desegregation, Chapter 31, EDU 621 C. and EDU 625 A., which set the standard for determining school segregation.

The Department invites interested persons or groups to provide information, comments, and advice on the subject in writing or orally to Archie L. Holmes, Supervisor, Equal Educational Opportunities Section, Minnesota State Department of Education, 630 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Written statements will be made a part of the public hearing record.

Department of Health Health Facilities Division

Notice of Intent to Solicit Outside Opinions Concerning Proposed Amendment of Rules Governing Certificates of Need for Health Care Facilities

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (Supp. 1977), that the Commissioner of Health is conducting a thorough review and evaluation of the Certificate of Need rules, 10 MCAR §§ 1.201-1.210 (SPA 201-210), in order to determine which amendments or revisions are needed and appropriate. These rules were promulgated pursuant to the Minnesota Certificate of Need Act, Minn. Stat. §§ 145.71 to 145.83 (1976). The authority to promulgate rules under the Act was transferred from the State Planning Agency to the Commissioner of Health in Laws of 1978, ch. 793, § 95.

All interested parties desiring to submit data, views, opinions, comments or other related information concerning the amendment or revision of the Certificate of Need rules should write to or telephone Kent E. Peterson, Chief, Planning & Resources Control Section, Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, telephone (612) 296-5365. Evidence submitted for consideration should be pertinent to the matter at hand. Written material received by the Department of Health will become part of the hearing record.

Any materials submitted will be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules will be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedure Act.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be di-

rected to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Warren R. Lawson, M.D.
Commissioner of Health

May 2, 1978

Community Health Services Division

Notice of Special Grants Available for Health Services for Migrant Agricultural Workers

May 15, 1978

To: Interested Parties

From: Warren R. Lawson, M.D.
Commissioner of Health

Amount, Purpose and Eligibility

I am pleased to announce the availability of \$75,000 additional State Funds (for a total of \$150,000 — see Notice of Availability of 4-26-78) to be awarded by the Minnesota Department of Health through extension of existing special grants or new grants to establish, operate or subsidize clinic facilities and services, including mobile clinics, to furnish health services for migrant agricultural workers and their families in areas of the state in which significant numbers of migrant workers are located. These grants are available to cities, counties, groups of cities or counties, or nonprofit corporations.

Effect of Grant Rules

These grants are subject to provisions of Minnesota Department of Health Rules 7 MCAR §§ 1.451-1.460.

How to Apply for Funds

Applications for funds to extend previously approved grants must include a revised budget and program descriptions which indicate proposed use of additional funds. Applications for new grants must include a complete application as required by Minn. Stat. § 145.92. Application materials are available upon request from the Commissioner of Health.

Five copies of the completed applications must be submitted to the Commissioner of Health by June 20, 1978; letters

OFFICIAL NOTICES

of intent should be submitted prior to that date. Applications will be considered for approval of funding in accordance with provisions of Department of Health Rules, 7 MCAR §§ 1.451-1.460. The Commissioner will act on these applications within sixty days of receipt.

Duration of Funding

Funds of grants for these purposes are available through June 30, 1979.

Emergency Medical Services Section

Contested Case Hearing on Filing of Application for Licensure of Land Emergency Ambulance Service

Notice is hereby given that on January 17, 1978, North Memorial Medical Center — Rogers filed application with Warren R. Lawson, M.D., Commissioner of Health, for a license to operate a land emergency ambulance service with a base of operation in Rogers, Minnesota. This notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: The Commissioner may grant or deny the license 30 days after notice of the filing has been fully published. If the commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the commissioner may grant or deny the requested license based upon the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo. Any objections to this service, pursuant to Minn. Stat. § 144.802 (Supp. 1977) may be made in writing to Warren R. Lawson, M.D., within the time period outlined by statute.

Notice is hereby further given that the Commissioner of Health has determined that a contested case hearing shall be held to determine whether the public convenience and necessity require the above-referenced proposed ambulance service. This proceeding has been initiated pursuant to and in satisfaction of the requirements of Minn. Stat. § 144.802 and pursuant to the Administrative Procedure Act and the Rules for Contested Cases of the Office of Hearing Examiners, Minn. Rules HE 201-222.

1. It is ordered and notice is hereby given that a hearing will be held on this matter at North Memorial Medical Center, Robbinsdale, Minnesota 55422, on June 20, 1978 commencing at 10:00 a.m. All interested persons are hereby urged to attend. Failure to do so may affect your rights in this matter. The issues to be determined are whether the public convenience and necessity require the above-referenced proposed ambulance service and whether or not an Ambulance Service license should be granted to this Service.

2. Mr. Harry Crump, Minnesota Office of Hearing Examiners, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 (telephone: 612/296-8111) will preside at this hearing.

3. Any party will be given the opportunity to be heard orally, to present witnesses and to submit evidence, written data, statements or arguments in these proceedings. The hearing and the decision will be controlled by the Administrative Procedure Act and the Rules of the Minnesota Office of Hearing Examiners, Minn. Rule HE 201-222. The Commissioner of Health will request that the Chief Hearing Examiner assign a court reporter to transcribe the testimony taken at the hearing.

4. The Hearing Examiner may hear testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, but no person shall become, or be deemed to have become, a party by reason of such participation.

5. All parties are hereby informed of their right to be represented by counsel in these proceedings.

6. William G. Miller, Special Assistant Attorney General, 232 Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440 (telephone: 612/296-5500), or Lois Des Parte, Section of Emergency Medical Services, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440 (telephone: 612/296-5281), may be contacted for further information on this matter, for discovery pursuant to Minn. Rule HE 214, or for an explanation of the process by which one can intervene as a party in this matter.

Ethical Practices Board Advisory Opinion #44

Approved by the Ethical Practices Board on May 4, 1978.

Issued to:

Rolfe A. Worden
4344 IDS Center
Minneapolis, Minnesota 55402

OFFICIAL NOTICES

Eldon J. Spencer, Jr.
1200 National City Bank Building
Minneapolis, Minnesota 55402

Summary

44. A contribution to a political party by an individual, political committee or political fund is not a contribution to a candidate, even though the political party makes a transfer of funds from accumulated contributions of individual contributors. A contribution earmarked through a political party is a contribution to the candidate.

The full text of the opinion is available upon request from the office of State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5148.

Advisory Opinion #48

Approved by the Ethical Practices Board on May 4, 1978.

Issued to:

Representatives Michael George and
Jerry Knickerbocker
House of Representatives
State Capitol
St. Paul, Minnesota 55155

Summary

48. Expenses paid personally by an officeholder or the principal campaign committee of the officeholder for hosting an Open House in the House Chambers after adjournment sine die of the legislature in an election year for the office held are campaign expenditures and shall be reported and disclosed as required by Minn. Stat. ch. 10A.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5148.

Advisory Opinion #49

Approved by the Ethical Practices Board on May 4, 1978.

Issued to:

David Beauchamp
1211 - 25 Avenue South
Moorhead, Minnesota 56560

(CITE 2 S.R. 2105)

Summary

49. A public official is not required to disclose dividends from securities as a source of compensation.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5148.

Advisory Opinion #50

Approved by the Ethical Practices Board on May 4, 1978.

Issued to:

E. I. Malone
Commissioner
Department of Labor & Industry
5th Floor
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55155

Summary

50. All judges of workers' compensation must file statements of economic interest.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5148.

Advisory Opinion #51

Approved by the Ethical Practices Board on May 4, 1978.

Issued to:

Larry Schwartz
National Order Systems, Inc.
145 West 58th Street
New York, New York 10019

Summary

51. A candidate or treasurer of a political committee or political fund registered and reporting to the Ethical Practices Board may approve and authorize the use of television commercials wherein listeners and viewers are urged to contribute to the candidate by use of credit cards.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5148.

**Department of
Transportation
Administration Division
Notice of Application and
Opportunity for Hearing
Regarding Petition of Chicago
and North Western
Transportation Co. for
Authority to Retire and Remove
Track Located at Kasota,
Minnesota**

Notice is hereby given that the Chicago and North Western Transportation Company with offices at 4200 IDS Center, 80 - South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 (1977 Supp.) and § 218.041, subd. 3. (10) (1977 Supp.) to retire and remove track No. 194, including turnout, located at Kasota, Minnesota. The petition recites among other matters that: "The subject track is no longer needed for rail transportation service, and constitutes a continuing and burdensome maintenance expense. The track is not used at the present time, and there is no present prospect that the subject track will be needed in the future. The track and turnout have been removed for at least 12 years. Kasota Stone Quarries Corporation was the only industry contracted to use this trackage and they are no longer in business."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before June 12, 1978. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner

will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to Minn. Reg. HE 210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

Jim Harrington
Commissioner

May 1978.

**Department of Commerce
Banking Division
Bulletin No. 1914: Maximum Lawful
Rate of Interest for Mortgages
for the Month of June, 1978**

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to Minn. Stat. § 47.20, subd. 4, the Conventional Home Loan Assistance and Protection Act, hereby determines that the maximum lawful rate of interest for home mortgages for the month of June, 1978, is nine and three-quarters (9.75) percent.

Robert A. Mampel
Commissioner of Banks

May 10, 1978

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

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