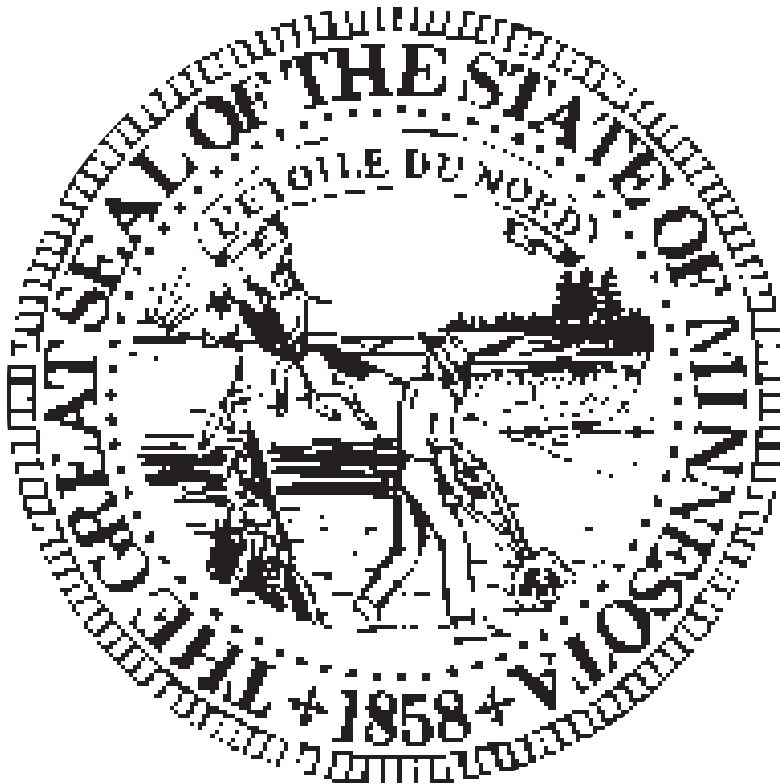


The Minnesota  
**State  
Register**

**Rules and Official Notices Edition**



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# State Register

## Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official and revenue notices, professional-technical-consulting contracts, non-state bids and public contracts and grants.

### Printing Schedule and Submission Deadlines

Vol. 22 Issue Number	PUBLISH DATE	Deadline for both Adopted and Proposed RULES	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts
# 28	Monday 12 January	Friday 26 December	Monday 5 January
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# 31	Monday 2 February	Friday 16 January	Monday 26 January

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### FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Contact: Senate Public Information Office (612) 296-0504  
Room 231 State Capitol, St. Paul, MN 55155

Contact: House Information Office (612) 296-2146  
Room 175 State Office Building, St. Paul, MN 55155

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# Minnesota Rules: Amendments and Additions

**NOTICE: How to Follow State Agency Rulemaking in the State Register**

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. The current 1995 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the most current edition of the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive; issue #26 cumulative for issues #1-26; issues #27-38 inclusive; issue #39, cumulative for issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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# Proposed Rules

## Comments on Planned Rules or Rule Amendments

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

## Rules to be Adopted After a Hearing

After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

## Rules to be Adopted Without a Hearing

Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

## Board of Water and Soil Resources

### Proposed Permanent Rules Relating to Wetlands

**DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing If 25 or More Requests for Hearing Are Received**

#### **Proposed Amendment to the Wetland Conservation Act (WCA); *Minnesota Rules*, Chapter 8420.**

**Introduction.** The Board of Water and Soil Resources (BWSR) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310. If, however, 25 or more persons submit a written request for a hearing on the rules within 30 days or by 4:30 p.m. on February 11, 1998, a public hearing will be held on February 25, 1998 from 7 p.m. to 10 p.m. in the Stearns County Historical Society Heritage Center, 235 So. 33rd Avenue (on Highway 15 just north of Interstate 94), St. Cloud, MN 56302 (phone #: 320-253-8424). To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after February 11, 1998 and before February 25, 1998.

**Agency Contact Person.** Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to the agency contact person. The agency contact person is: John Jaschke, MN BWSR, 1 West Water Street, Suite 200, St. Paul, MN 55107, phone (612) 297-3432, FAX: (612) 297-5615, e-mail: john.jaschke@bwsr.state.mn.us.

**Subject of Rules and Statutory Authority.** The proposed rules are an amendment to the Wetland Conservation Act (WCA) Rules. The BWSR is proposing a rule amendment that *will simply convert the existing exempt (“emergency”) rules developed to incorporate the 1996 legislative changes - and which expire on June 10, 1998 — into permanent rules without any change.* *Minnesota Statutes* sections 103B.101, Subd. 7, 103B.3355 and 103G.2242, Subd. 1 authorize the BWSR to adopt rules related to replacement of wetlands. A copy of the proposed rule is published in the *State Register* and a free copy of the proposed rule is available from the MN Board of Water and Soil Resources by contact Robyn Molina at 1 West Water Street, Suite 200, St. Paul, MN 55107, phone (612) 296-3767, FAX: (612) 297-5615, e-mail: robyn.molina@bwsr.state.mn.us. Since the proposed rule is identical to the current exempt (“emergency”) rules currently in use as *Minnesota Rules* Chapter 8420, copies of this rule are also available (for a small charge) at Minnesota’s Bookstore, 117 University Avenue, St. Paul, MN 55155. The phone numbers for Minnesota’s Bookstore are metro: (612) 297-3000, MN toll-free 1-800-657-3757, and TTY metro: (612) 282-5077, MN toll-free: 1-800-657-3706.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## Proposed Rules

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**Comments.** You have until 4:30 p.m. on Wednesday, February 11th, 1998 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on Wednesday, February 11th, 1998. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for February 25, 1998 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at 612-297-3432 after February 11, 1998 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Allan W. Klein is assigned to conduct the hearing. Judge Klein can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone 612/341-7609 and FAX 612/349-2665.

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or response period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may also be reviewed and copies obtained at the cost of reproduction from either the agency or the Office of Administrative Hearings.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the Campaign Finance and Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Disclosure Board at: First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 612/296-5148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure After a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and files them with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person listed above.

**Order.** I order that the rulemaking hearing be held at the date, time, and located listed above.

Dated: 24 December 1997

Ronald D. Harnack  
Executive Director, BWSR

#### **8420.0100 PURPOSE.**

This chapter implements the Wetland Conservation Act of 1991, *Laws of Minnesota 1991*, chapter 354, as amended by *Laws of 1993*, chapter 175; *Laws of 1994*, chapter 627; and *Laws of 1996*, chapter 462. This chapter shall be interpreted to implement the purpose of the act, which is to:

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

#### **8420.0102 INTRODUCTION.**

The Wetland Conservation Act achieves the purpose in part 8420.0100 by requiring persons proposing to impact a wetland by draining or filling to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of equal function and value. As specified in greater detail in part 8420.0122, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. The Wetland Conservation Act became effective on January 1, 1992, and this chapter and portions of *Minnesota Statutes*, chapters 103A, 103B, 103E, 103F, and 103G, govern its implementation. The public is encouraged to contact their local government unit or soil and water conservation district for general information on wetlands and the interpretation of this chapter. This part is for general introductory information only. The other parts of this chapter shall control over this part.

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

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

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

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

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

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

E. fish, wildlife, and native plant habitats;

F. low-flow augmentation; and

G. other public uses.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## Proposed Rules

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### 8420.0105 SCOPE.

~~After July 26, 1993, Wetlands must not be drained or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value; except that a local government unit may elect to operate under Article 7 of the act, Minnesota Statutes, section 103G.2369, after July 1, 1993, but not beyond December 31, 1993.~~

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands. This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. This chapter does not prevent control of noxious weeds if the control does not drain or fill the wetland. This chapter does not prevent excavation in wetlands if done in a manner such that the wetlands are not wholly or partially drained or filled.

This chapter does not apply to the public waters and public waters wetlands as defined in *Minnesota Statutes*, section 103G.005, subdivisions 15 and 18, which have been inventoried by the commissioner of natural resources according to *Minnesota Statutes*, section 103G.201. This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

This chapter does not apply to peat mining as defined in *Minnesota Statutes*, section 93.461, which is subject to the permit to mine and reclamation requirements of *Minnesota Statutes*, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

This chapter does not require state agencies to obtain local government unit approvals. However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter.

In addition to the provisions of this chapter, governmental decisions on draining and filling of wetlands are subject to *Minnesota Statutes*, chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

### 8420.0110 DEFINITIONS.

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

Subp. 1a. Account or wetland bank account. "Account" or "wetland bank account" means a record of wetland banking debits and credits established by an account holder within the state wetland banking system.

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

Subp. 2. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation Act of 1991, *Laws 1991*, chapter 354, as amended by *Laws 1993*, chapter 175; *Laws 1994*, chapter 627; and *Laws 1996*, chapter 462.

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

~~Subp. 4. **Agricultural land.** "Agricultural land," for use in part 8420.0120, subparts 7 and 8, means land devoted to the production of used for horticultural, row, close grown, introduced pasture, introduced and hayland crops; and; growing nursery stock.~~

~~For use in all other places in this chapter, agricultural land means land devoted to the production of horticultural, row, close grown, introduced pasture, and introduced hayland crops; and to the pasturing of livestock and dairy animals, growing nursery stock, and stocks; animal feedlots; and shall include contiguous land and buildings under the same ownership associated with the production of the above, for example; farmyards; associated building sites; and public and private drainage systems and field roads located on any of these lands.~~

Subp. 5. [See repealer.]

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

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

Subp. 13. [See repealer.]

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

Subp. 18a. 50 to 80 percent area. "50 to 80 percent area" means a county or watershed with at least 50 percent but less than 80 percent of the presettlement wetland acreage intact.

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



Subp. 20a. **Greater than 80 percent area.** “Greater than 80 percent area” means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

A. ten percent or more of the current total land area is wetland; or

B. 50 percent or more of the current total land area is state or federal land.

Subp. 20b. **Hayland.** “Hayland” means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years prior to January 1, 1991.

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

Subp. 25. **Infrastructure.** “Infrastructure” means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, and ditches, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement within the context of an approved development plan.

Subp. 26. [See repealer.]

Subp. 27. [See repealer.]

[For text of subs 28 and 29, see M.R.]

Subp. 29a. **Less than 50 percent area.** “Less than 50 percent area” means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a greater than 80 percent area or 50 to 80 percent area.

[For text of subs 30 and 31, see M.R.]

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

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

Subp. 33. **Pasture.** “Pasture” means ~~land used for grazing by domestic livestock~~ an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years prior to January 1, 1991.

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

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

Subp. 35. **Project.** “Project” means ~~an action or series of actions necessary to accomplish an ultimate purpose and that will cause a physical manipulation of the environment, directly or indirectly. Draining or filling of wetlands may be a component of a project~~ a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

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

Subp. 37a. **Public value credit or PVC.** “Public value credit” or “PVC” means wetland replacement credit that can only be used for the portion of wetland replacement requiring greater than a 1:1 ratio.

Subp. 38. **Public value of wetlands.** “Public value of wetlands” means the public benefit and use of wetlands ~~for water quality, floodwater retention, public recreation, commercial uses, and other public uses~~ as determined based upon an assessment of the wetland functions listed in part 8420.0103.

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

Subp. 40. **Replacement wetland.** “Replacement wetland” means a wetland restored or created or an area designated in part 8420.0540, subpart 2, items D and E, to replace area or public values lost at an impacted wetland.

[For text of subs 41 to 44, see M.R.]

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## Proposed Rules

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

Subp. 44b. **Shoreland wetland protection zone.**

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

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

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

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

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

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

Subp. 45. **Silviculture.** “Silviculture” means the scientific management of forest trees.

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

Subp. 47. [See repealer.]

Subp. 47a. **State wetland banking system, wetland bank, or bank.** “State wetland banking system,” “wetland bank,” or “bank” means a system of identifying wetlands restored or created for replacement credit, providing for, and facilitating and tracking the exchange of wetland banking credits for projects that require replacement plans.

[For text of subs 48 to 51, see M.R.]

Subp. 51a. **Wetland banking credits.** “Wetland banking credits” means acres or parts of acres of restored or created wetland by type and topographic setting, or areas as described in part 8420.0540, subpart 2, that have been approved for deposit in the wetland bank.

Subp. 52. **Wetlands, a wetland, the wetland, or wetland area.**

[For text of items A to C, see M.R.]

D. The wetland size is the area within its boundary. The boundary must be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). The wetland type must be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.

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

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

A. “Type 1 wetlands” are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

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

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

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

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

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

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

H. “Type 8 wetlands” are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

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

This ~~rule~~ chapter incorporates by reference the following documents:

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

B. ~~Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989)~~ United States Army Corps of Engineers Wetland Delineation Manual (January 1987).

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

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

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

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

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

H. The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP-DE-3, August 1993).

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

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

~~State of Minnesota Watershed Boundaries - 1979 (a map).~~

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

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

These documents are available through the ~~Minnetex interlibrary loan system~~ state law library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. None of the documents are subject to frequent change.

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## Proposed Rules

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### 8420.0115 SCOPE OF EXEMPTION STANDARDS.

When considering if a drain or fill activity qualifies for an exemption listed in a specified clause of *Minnesota Statutes*, section 103G.2241, ~~subdivision 1~~, the exemption standards in part ~~8420.0120~~ 8420.0122 apply.

Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

These exemptions do not apply to calcareous fens as identified by the commissioner.

No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage or filling.

Nonexempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact.

Present and future owners of wetlands drained or filled without replacement under an exemption in part ~~8420.0120~~ 8420.0122, subparts 1, ~~and 2~~, ~~item B, 4, 7, 8, and 23~~, can make no use of the wetland area after it is drained or filled, other than as agricultural land, for ten years after the draining or filling, unless it is first replaced under the requirements of *Minnesota Statutes*, section 103G.222, ~~paragraph (g)~~. Also, for ten years the wetland may not be restored for replacement credit. At the time of draining or filling, the landowner shall record a notice of these restrictions in the office of the county recorder for the county in which the project is located. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the ten-year period expires, the name of the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

A person conducting an activity in a wetland under an exemption in part ~~8420.0120~~ 8420.0122 shall ensure that:

- A. appropriate erosion control measures are taken to prevent sedimentation of the water;
- B. the activity does not block fish activity in a watercourse; and

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

### 8420.0122 EXEMPTION STANDARDS.

#### Subpart 1. Agricultural activities.

A replacement plan for wetlands is not required for:

A. activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under *United States Code*, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption. Set aside land used for this exemption must be wetland types 1 and 2;

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

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

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

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

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

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

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

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

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

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

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

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

#### Subp. 2. **Drainage.**

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

B. A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or type 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

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

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

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

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

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

(a) platted lots;

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

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

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

C. A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

D. A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

For items C and D, the landowner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or sworn affidavits.

E. A replacement plan is not required for draining or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:

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

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

G. Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under *Minnesota Statutes*, section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

**Subp. 3. Federal approvals.** A replacement plan for wetlands is not required for:

A. activities exempted from federal regulation under *United States Code*, title 33, section 1344(f), as in effect on January 1, 1991.

The local government unit may certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area;

B. activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, *United States Code*, title 33, section 1344, except the nationwide permit in *Code of Federal Regulations*, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991.

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

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

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

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

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

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

Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged.

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

Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process that may, over time, take on wetland characteristics, are also exempt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 9. **De minimis.**

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

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a greater than 80 percent area;

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area;

(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;

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

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

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

C. This exemption no longer applies to a landowner's portion of a wetland when the cumulative area of the landowner's portion drained or filled since January 1, 1992, is the greater of:

(1) the applicable area listed in item A, if the landowner owns the entire wetland;

(2) five percent of the landowner's portion of the wetland; or

(3) 400 square feet.

D. Persons proposing to conduct an activity under this subpart shall contact the board at a toll-free telephone number to be provided for information on minimizing wetland impacts. Failure of the person to call does not constitute a violation of this subpart.

E. This exemption may not be combined with another exemption on a project in this part.



Subp. 10. **Wildlife habitat.** A replacement plan for wetlands is not required for:

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

(1) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

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

(3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

B. duck blinds.

#### PROCEDURES

##### 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

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

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

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

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

Notwithstanding items A to C, the Department of Natural Resources shall be the approving authority for activities associated with projects requiring permits to mine under *Minnesota Statutes*, section 93.481.

##### 8420.0210 EXEMPTION DETERMINATIONS.

A landowner intending to drain or fill a wetland without replacement, claiming exemption under part ~~8420.0120~~ 8420.0122, may contact the local government unit before beginning draining or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and *Minnesota Statutes*, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies whether or not the local government unit chooses to issue certificates of exemption. If the wetland qualifies for an exemption, and the landowner requests a certificate of exemption, then the local government unit must issue one.

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed.

The local government unit may place the decision authority for exemption applications with the zoning administrator, or establish other procedures it considers appropriate.

The local government unit decision shall be based on the exemptions standards in part ~~8420.0120~~ 8420.0122. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten days of the decision.

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A landowner draining or filling a wetland under an exemption shall ensure that appropriate erosion control measures are taken to prevent sedimentation of the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under *Minnesota Statutes*, chapter 103H.

### 8420.0220 NO-LOSS DETERMINATIONS.

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and *Minnesota Statutes*, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim.

The local government unit may place the decision authority for no-loss applications with the zoning administrator, or establish other procedures it considers appropriate. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner within ten days of the decision.

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

- A. the work will not drain or fill a wetland;
- B. water level management activities will not result in the conversion of a wetland to another land use;
- C. the activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program; or
- D. the activity is being conducted as part of an approved replacement or banking plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

### 8420.0230 REPLACEMENT PLAN DETERMINATIONS.

**Subpart 1. Application.** A landowner intending to drain or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and *Minnesota Statutes*, section 103G.2372.

~~The local government unit may use its usual notice and comment procedures on the application for approval of a replacement plan if, within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must mail a summary of the application, which includes information to identify the applicant and the location and scope of the project, to members of the technical evaluation panel, the commissioner of natural resources, and individual members of the public who have requested a copy. The project notification must state when the comment period ends.~~

~~Within ten days of receipt of the an application for approval of a replacement plan for an activity affecting 10,000 square feet or more of wetland, the local government unit mails must mail a copy of the application and an invitation to submit comments to the board, which will publish it in the Environmental Quality Board Monitor; members of the public who have requested a copy; the soil and water conservation district members of the technical evaluation panel; the watershed district or water management organization, if there is one; the county board; mayors of cities within the watershed; and the commissioners commissioner of agriculture and natural resources and individual members of the public who request a copy. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The project notification must state when the comment period ends. At the same time, the local government unit shall publish notice of the application with an invitation for comment in a general circulation newspaper in the area affected.~~

~~The local government unit shall not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice; publication in the Environmental Quality Board Monitor, when required; or publication in the newspaper, whichever is later. The local government unit decision shall not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, when required; and mailed to the same list specified above for notice of the application; and to the applicant. The mailing to the applicant shall be by registered mail and must advise that the decision is not effective for 30 days, and is stayed if it is appealed.~~

~~Publication in the Environmental Quality Board Monitor of replacement plan applications and decisions is required, except for the fill activities described in the next paragraph, when the local government unit publishes a general notice in the Environmental Quality Board Monitor that it will not be publishing notice of such individual activities, but will instead provide mailed notice of~~

each project to anyone asking to be put on the local government unit's mailing list for such projects. This notice must be published not less often than once every year. The notice must advise how persons may submit their names and addresses to be put on the mailing list.

Projects eligible for this form of Environmental Quality Board Monitor notice are all those which will fill less than one-tenth acre of wetland; and all those which will fill less than one-quarter acre of wetland; and result from a private road fill or the construction or expansion of a single-family dwelling unit or a farm building when the project cannot be modified so as to avoid the fill.

An application for approval of a replacement plan includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

(1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or

(2) the wetland area to be drained or filled under the revised replacement plan is located more than 500 feet from the area to be drained or filled under the original replacement plan.

**Subp. 2. Decision.** The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the ~~technical determination of the~~ technical evaluation panel's determination, if there is one, concerning the wetland function and resulting public values, location, size, and type of the wetland being altered. The local government unit shall consider the recommendation of the technical evaluation panel to approve, modify, or reject the proposed replacement plan. ~~decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit shall consider and include the technical evaluation panel's recommendation, if there is one, to approve, modify, or reject the proposed replacement plan. The local government unit decision must be mailed to the landowner within ten days of the decision. A summary of the government unit decision must be mailed within ten days of the decision to those required to receive notice of the application.~~

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

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

#### **8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

For each local government unit, there is a technical evaluation panel of three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in water resources management appointed by the local government unit. One member selected by the local government unit shall act as the contact person and coordinator for the panel. Two members of the panel must be knowledgeable and trained in applying methodologies of the ~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989)~~ "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al., 1979 edition), and evaluation of wetland functions and the resulting public values. The technical evaluation panel may invite additional wetland experts to help the panel in its work.

The panel shall make technical determinations on questions of wetland functions and the resulting public values, location, size, and type for replacement plans, exemption and no-loss requests, avoidance and minimization requests, and for comprehensive wetland protection and management plans if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans and recommend to the local government unit either approval, approval with changes or conditions, or rejection. The panel shall make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

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If the local government unit has a comprehensive wetland protection and management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations in place of the technical evaluation panel.

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

If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 to 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 to 8420.0760.

### **8420.0250 APPEAL OF LOCAL GOVERNMENT UNIT DECISIONS APPEALS.**

Subpart 1. **Appeal of replacement plan, banking plan, exemption, and no-loss decisions.** The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, exemption, or no-loss request becomes final if not appealed to the board within ~~30~~ 15 days after the date on which the decision is mailed to those required to receive notice of the decision.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing of the ~~notice of appeal petition and payment of a nonrefundable filing fee of \$200~~ to the board with ~~an affidavit~~ evidence that a copy of the ~~notice of appeal petition~~ has been mailed to the local government unit. Subsequent to receipt of a petition, the local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500 per appeal. The amount posted must be returned to the petitioner unless there is a finding under subpart 3 that the appeal is meritless, trivial, or brought solely for the purposes of delay. The local government unit shall then mail a copy of the ~~notice of the appeal petition~~ to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

Subp. 2. [See repealer.]

Subp. 3. **Board appeal procedures.** Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director shall decide whether to grant the petition and hear the appeal. The board or its dispute resolution committee or executive director shall grant the petition unless the appeal is deemed meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

The appeal will be heard by the dispute resolution committee and decided by the board within 60 days after ~~receiving the notice of appeal and affidavit~~ or granting the petition. Parties to the appeal are the appellant, the landowner, the local government unit, and in the case of replacement plan appeals, all those required to receive notice of the local government unit decision.

Upon appeal, the local government unit shall forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record. Otherwise it may take additional evidence, or remand the matter.

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

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

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

B. One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board or provide a reason why the petition is denied.

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

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

~~The board shall send copies of this chapter to all local government units at least 60 days before July 1, 1993.~~ By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act. Local government units from which an affirmative response is not received will be given notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon agreement by the local government unit that it will assume its duties under this chapter and the act. If at the end of the initial 60-day moratorium an agreement has not been made for the local government unit to apply the law, the board can extend the moratorium until the local government unit agrees to apply the law.

If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, or banking determinations, the board shall notify the local government unit of its concerns. If not satisfied with the local government unit's response, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. If it is determined at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action within 60 days. The notice shall explain the reason for the action.

If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall take appropriate legal action to ensure compliance.

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

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

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

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

#### **8420.0290 ENFORCEMENT PROCEDURES.**

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

Subp. 2. Cease and desist orders. Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination under parts 8420.0210 and 8420.0220 and is being or has been conducted without prior approval of a replacement plan by a local government unit under part 8420.0230.

A cease and desist order must not be issued if the landowner has a valid certificate of exemption or no-loss from the local government unit, or has evidence to support an exemption. Otherwise:

- A. the enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;
- B. the order may be withheld to give the landowner time to produce the evidence required by part ~~8420.0120~~ 8420.0122 to the enforcement authority of qualification for an exemption or no-loss determination; or

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

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

The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.

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

- (1) if the area in question is a wetland; and
- (2) if the activity qualifies for an exemption or no-loss determination under parts 8420.0210 and 8420.0220.

In cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board.

If the decision is that the activity is exempt or results in a no-loss determination, the decision maker shall issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the Department of Natural Resources, and the landowner.

If the application is denied, the decision-maker shall immediately notify the soil and water conservation district, ~~the department,~~ the enforcement authority, and the landowner.

**Subp. 3. Restoration and replacement orders.** The enforcement authority shall issue a restoration order or replacement order when the drain or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the local government unit denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition, unless the soil and water conservation district person, with the concurrence of the technical evaluation panel and the enforcement authority, concludes that restoration is impossible. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner.

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

- A. restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or
- B. submit a replacement plan to the local government unit.

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

If the soil and water conservation district, with the concurrence of the technical panel and the enforcement authority, determines that restoration will not restore all the loss caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, as determined by the soil and water conservation district with the concurrence of the technical panel and the enforcement authority. The order must direct the landowner to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order shall tell the landowner that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district, with the concurrence of the technical panel and the enforcement authority, shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan process in parts 8420.0500 to 8420.0630 unless the court orders otherwise.

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

already impacted the wetland, the local government unit may require the landowner to replace the impacted wetland at a ratio not to exceed twice the replacement ratio otherwise required.

**8420.0300 MINING.**

Wetlands may not be drained or filled as part of a project for which a permit to mine is required by *Minnesota Statutes*, section 93.481, except as approved by the commissioner. Draining or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part ~~8420.0120, subpart 10~~ 8420.0122.

[For text of items A to E, see M.R.]

**8420.0350 HIGH PRIORITY REGIONS AND AREAS.**

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

**Subp. 2. High priority areas.**

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

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

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

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

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

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

**8420.0400 WETLAND PRESERVATION AREAS.**

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

**Subp. 2. Landowner application for wetland preservation area.** A landowner may apply to the county, if the county chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a strip of upland 16.5 feet wide around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland.

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

**Subp. 3. County review of application.** The county ~~shall~~ may accept the application if the wetland is in a high priority region and high priority area, if it includes the 16.5 foot strip, and is accompanied by the proper covenant.

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

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

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

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

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## Proposed Rules

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

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

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

### **8420.0505 INTERIM PREVIOUSLY APPROVED REPLACEMENT PLANS.**

Replacement plans approved under the interim guidelines in *Minnesota Statutes*, section 103G.2369, must be completed in entirety by June 30, 1995. If the replacement plan is not completed by June 30, 1995, replacement of the impacted wetland becomes subject to the process and provisions in parts 8420.0500 to 8420.0630. This does not apply to phased projects approved during the interim period. Phased projects may be completed under the laws, rules, conditions, and guidelines for which in effect when they were approved.

### **8420.0510 PROCEDURES.**

Subpart 1. **Generally.** No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the governing body of the local government unit, or the lead local government unit if so designated by the board, consistent with parts ~~8420.0120~~ 8420.0122 to 8420.0290, and provided that the activity is not prohibited under the special considerations provisions in part 8420.0540, subpart 9.

[For text of subp 2, see M.R.]

Subp. 3. **Evaluation.** As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering the act. Wetland boundaries must be determined using the methodologies in the ~~federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989)~~ United States Army Corps of Engineers Wetland Delineation Manual (January 1987). Wetland type must be identified according to ~~Cowardin, et al., 1979~~, Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979) and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical evaluation panel shall provide its determinations to the local government unit for consideration.

### **8420.0520 SEQUENCING.**

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

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

E. replaces unavoidable impacts to the wetland by restoring or, if wetland restoration opportunities are not reasonably available, creating substitute wetland areas having equal or greater public value as provided for in parts 8420.0530 to ~~8420.0630~~ 8420.0760.

Subp. 2. **Application options.** An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the local government unit before preparing a replacement plan. The local government unit may request additional information needed to make a determination. For projects impacting wetland areas less than ~~0.1 acres~~ 10,000 square feet more than the de minimis amount listed in part 8420.0122, subpart 9, item A, the local government unit may provide an on-site sequencing determination without written documentation from the applicant; ~~except for projects which are located in wetlands adjacent to and within 1,000 feet of outstanding resource value waters as defined in chapter 7050; trout streams as designated in Commissioner's Order Number 2294; and trout lakes as designated in Commissioner's Order Number 2230.~~

Subp. 3. **Determination of impact avoidance.**

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

C. Alternatives analysis:

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

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

[For text of subps 4 to 7, see M.R.]



Subp. 7a. **Sequencing flexibility.**

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

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

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

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

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

(a) demonstrates impact minimization to the wetland;

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

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

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

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

[For text of subs 8 and 9, see M.R.]

**8420.0530 REPLACEMENT PLAN COMPONENTS.**

On an application form provided by the local government unit, and with needed attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B and D do not apply; instead the applicant shall submit the wetland banking credit transfer withdrawal form prescribed in part 8420.0740, subpart 2, item E:

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

B. ~~either an affidavit~~ a signed statement confirming that the wetland acres and values will be replaced before or concurrent with the actual draining or filling of a wetland or an irrevocable bank letter of credit or other security acceptable to the local government unit to guarantee the successful completion of the wetland value replacement;

C. for the impacted wetland:

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

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

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

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

(5) a list of the dominant vegetation in the impacted wetland area, ~~including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattails, and 30 percent sedge;~~

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

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## Proposed Rules

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

(8) the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;

(9) a map, photograph, or written description of the land use of the immediate watershed ~~within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;~~

(10) the nature of the proposed project, its areal extent, and the impact on the wetland must be ~~shown~~ described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;

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

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

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

(11) a plan for monitoring the success of the replacement plan in meeting the project goal in subitem (1), and as specified in parts 8420.0610 and 8420.0620; ~~and~~

(12) evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in Minnesota Statutes, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection; and

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

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

### 8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

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

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

A. The order of preference for the method of replacement, from most preferred to least preferred, is ~~project-specific~~ restoration, ~~project-specific~~ then creation; then wetland banking.

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

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

D. The following actions are eligible for replacement credit or wetland banking credit as determined by the local government unit in parts 8420.0500 to 8420.0760:

(1) reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;

(2) buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used as public value credits for replacement above a 1:1 ratio;

(3) wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for new wetland credit and adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for public value credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area; and

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

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

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

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

(3) the standards in part 8420.0550 are followed; and

(4) the design goal is a palustrine emergent wetland.

Only the downstream cell can be counted for new wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water detention basins allowed for replacement are not eligible for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630.

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

Subp. 3. **Timing of replacement.** Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the responsible government unit is submitted to the responsible government unit to guarantee successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation. The exceptions contained in subpart 5 do not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

Subp. 4. **Location of replacement wetlands.** Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that ~~counties or watersheds in which greater than 80 percent or more of the presettlement acreage is intact areas~~ may accomplish replacement in ~~counties or watersheds in which less than 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded areas.~~ When environmentally preferable, replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

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

A. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules in parts 8420.0700 to 8420.0760, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven-county metropolitan area by public highways must be replaced in the affected county, or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county.

B. The board must maintain a public list of restoration opportunities within the seven-county metropolitan area. The list will be maintained for informational purposes only. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for in parts 8420.0700 to 8420.0760.

C. For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase wetland banking credits if available from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than \$400 per acre:

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

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

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

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

D. A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This item only applies to authorities for public transportation projects that:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on site; and

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

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

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

G. Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this item. This item does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

### Subp. 5a. Presettlement wetland acres and areas.

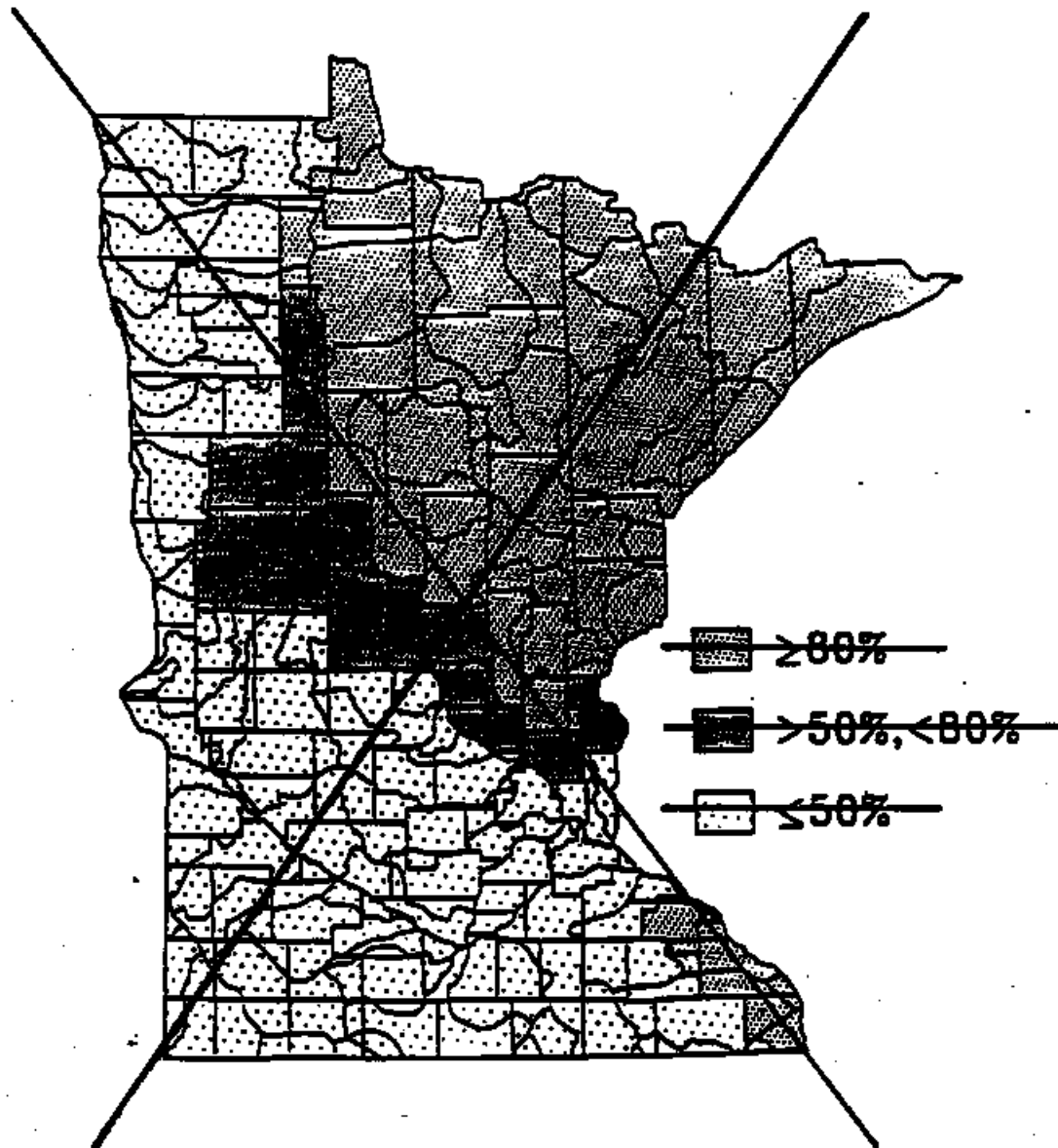
A. For purposes of this part, the following counties ~~have are greater than 80 percent or more of their presettlement wetland acreage intact~~ areas: Aitkin; Beltrami; Carlton; Cass; ~~Clearwater~~; Cook; Crow Wing; ~~Houston~~; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; and St. Louis; ~~Wabasha; and Winona.~~

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

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

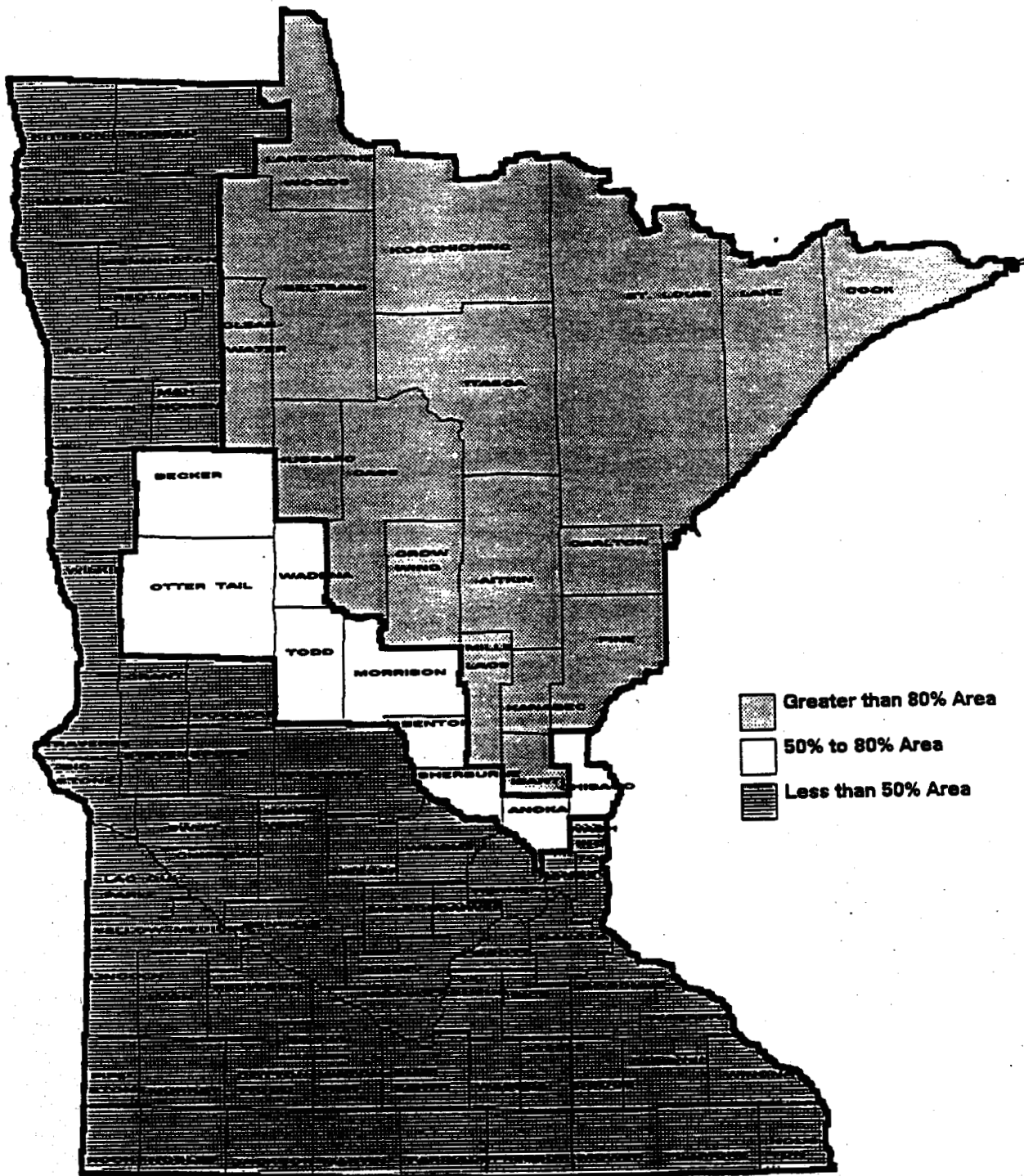
**REMAINING ACREAGE OF PRESETTLEMENT WETLANDS WETLAND AREAS**

Figure 1. Distribution of remaining acreage of presettlement wetlands by county with watersheds superimposed. Adapted from: Anderson and Craig, 1984.



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# Minnesota Wetland Conservation Act: Wetland Areas



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

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

[For text of subps 7 and 8, see M.R.]

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

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

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

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

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

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

[For text of items D to I, see M.R.]

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

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

B. Wetland types: wetlands classification equivalency chart. For purposes of this part, the following table serves as a key for using Table 2 (~~part 8420.0540, subpart 10~~, item D, subitem (1)) and Table 4 (part 8420.0550, subpart 3) and as a wetland classification equivalency chart for the wetland classification developed by the United States Fish and Wildlife Service (Cowardin et al. 1979), and the approximate wetland type from the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

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Table 1. Wetland Classification Equivalency Chart. The Cowardin classification includes system, subsystem, class, subclass, and/or water regime. The Circular 39 wetland type is approximated.

Cowardin System Class or Subsystem and Water Regime	Table 2 and 4 Row and Column Headings	Approximate Circular 39 Type
PEMA	PEA	1
PEMB	PEB	2
PEMC	PEC	3
PEMD	PEC	3
PEME	PEC	3
PEMF	PEF	4
PEMG	PEF	4
PEMH	PEF	4
PEMJ	PEA	1
PEMK	PEF	4
PEMW	PEA	1
PEMY	PEB	2
PEMZ	PEF	4
PEMU	PEF	4
PSSA	PSA	6
PSSB (except PSS3B)	PSB	6
PSS3B	PSX	8
PSSC	PSC	6
PSSD	PSC	6
PSSE	PSC	6
PSSF	PSC	6
PSSG	PSC	6
PSSH	PSC	6
PSSJ	PSA	6
PSSK	PSC	6
PSSW	PSA	6
PSSY	PSB	6
PSSZ	PSC	6
PSSU	PSC	6
PFOA	PFA	1
PFOB	PFB	7
PFOC	PFC	7
PFOD	PFC	7
PFOE	PFC	7
PFOF	PFC	7
PFOG	PFC	7
PFOH	PFC	7
PFOJ	PFA	1
PFOK	PFC	7
PFOW	PFA	1
PFOY	PFB	7
PFOZ	PFC	7
PFOU	PFC	7
PML (all)	PSX	8
PAB (all)	PA	5



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<del>PUB</del> (all)	<del>PU</del>	§
<del>PRB</del> (all)	<del>PU</del>	§
<del>POW</del> (all)	<del>PU</del>	§
<del>PUS</del> (all)	<del>PU</del>	§
<del>L1</del> (all)	<del>L1</del>	§*
<del>L2</del> (all)	<del>L2</del>	§
<del>R2</del> (all)	<del>R2</del>	**
<del>R3</del> (all)	<del>R3</del>	**
<del>R4</del> (all)	<del>R4</del>	**

Cowardin System

Circular 39

<u>L1</u> (all)	5*
<u>L2ABF</u>	4
<u>L2ABG</u>	5
<u>L2ABH</u>	5
<u>L2EMA</u>	5
<u>L2EMB</u>	5
<u>L2EMF</u>	4
<u>L2EMG</u>	4
<u>L2EMH</u>	5
<u>L2RS</u>	5
<u>L2UB</u>	5
<u>L2US</u>	4
<u>PABF</u>	4
<u>PABG</u>	4
<u>PABH</u>	5
<u>PEMA</u>	1
<u>PEMB</u>	2
<u>PEMC</u>	3
<u>PEMD</u>	3
<u>PEME</u>	2
<u>PEMF</u>	3
<u>PEMG</u>	4
<u>PEMH</u>	4
<u>PEMJ</u>	1
<u>PEMU</u>	3
<u>PEMW</u>	1
<u>PEMY</u>	3
<u>PEMZ</u>	4
<u>PFOA</u>	<u>11</u> **
<u>PFO1B</u>	7
<u>PFO2B</u>	8

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<u>PFO4B</u>	<u>8</u>
<u>PFO5B</u>	<u>7</u>
<u>PFO6B</u>	<u>7</u>
<u>PFO7B</u>	<u>8</u>
<u>PFOC</u>	<u>7</u>
<u>PFOD</u>	<u>7</u>
<u>PFOF</u>	<u>7</u>
<u>PFOJ</u>	<u>1L**</u>
<u>PFOU</u>	<u>1L**</u>
<u>PFOV</u>	<u>1L**</u>
<u>PFOY</u>	<u>7</u>
<u>PRB (all)</u>	<u>5</u>
<u>PSSA</u>	<u>6</u>
<u>PSS1B</u>	<u>6</u>
<u>PSS2B</u>	<u>8</u>
<u>PSS3B</u>	<u>8</u>
<u>PSS4B</u>	<u>8</u>
<u>PSS5B</u>	<u>6</u>
<u>PSS6B</u>	<u>6</u>
<u>PSS7B</u>	<u>8</u>
<u>PSSC</u>	<u>6</u>
<u>PSSD</u>	<u>6</u>
<u>PSSF</u>	<u>6</u>
<u>PSSG</u>	<u>6</u>
<u>PSSH</u>	<u>6</u>
<u>PSSJ</u>	<u>6</u>
<u>PSSW</u>	<u>6</u>
<u>PSSY</u>	<u>6</u>
<u>PSSZ</u>	<u>6</u>
<u>PSSU</u>	<u>6</u>
<u>PUBB</u>	<u>4</u>
<u>PUBF</u>	<u>4</u>
<u>PUBG</u>	<u>5</u>
<u>PUBH</u>	<u>5</u>
<u>PUS (all)</u>	<u>1</u>
<u>R1</u>	<u>R2***</u>
<u>R2 (all)</u>	<u>R2***</u>
<u>R3 (all)</u>	<u>R3***</u>
<u>R4 (all)</u>	<u>R4***</u>
<u>R5</u>	<u>R4***</u>

\* Circular No. 39 does not classify deep water as a wetland type, but for purposes of this table, these areas can be approximated as a type 5.

\*\* 1L wetlands by Circular No. 39 are Type 1 Bottomland Hardwoods.

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

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

NOTE: In the case of wetland identified using the Cowardin system with both numerator and denominator wetland types, the numerator type is considered the dominant wetland type, with the exception that the denominator wetland type is to be used when the numerator wetland type vegetation is dead.

~~Table 4, in part 8420.0550, provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination.~~

The local government unit may consider allowing constructed storm water detention basins for replacement credit if the basin conforms to the following specifications:

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

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

(c) the standards in part 8420.0550 are followed; and

(d) the design goal is a palustrine emergent wetland that meets all statutory definitions of a wetland, for example, soils, hydrology, and vegetation.

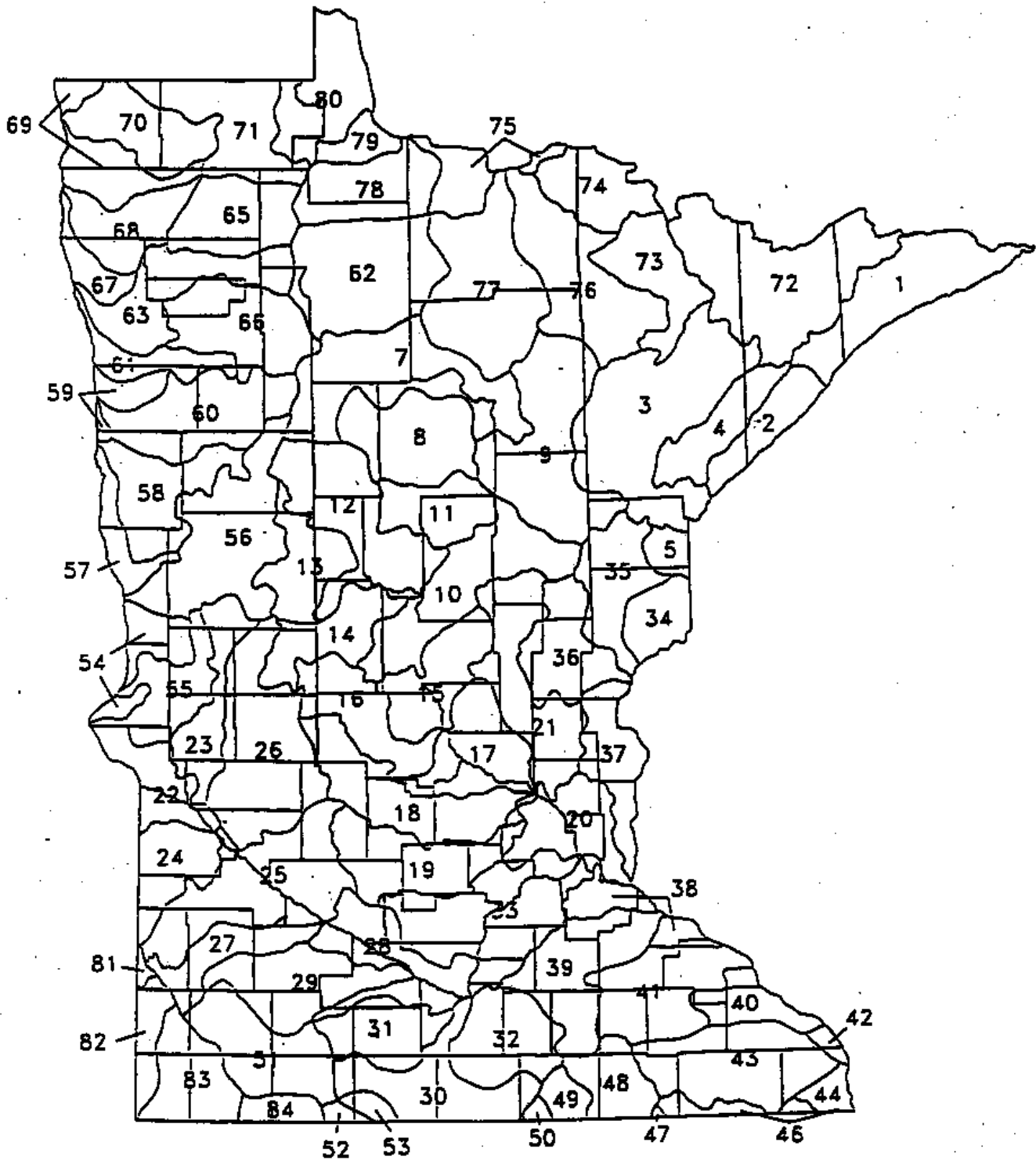
Only the downstream cell can be counted for wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water basins which allowed for replacement are not eligible for the exemption in part 8420.0120, subpart 10, and are subject to parts 8420.0500 to 8420.0630.

Stormwater management basins constructed for the primary purpose of controlling or treating stormwater runoff from impervious surfaces or developed areas, not conforming to the specifications in units (a) to (d), are not considered wetlands. These are therefore exempt from replacement plan requirements when constructed in nonwetlands, and also cannot be considered for credit as part of a replacement plan, regardless of their location.

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STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979  
(81 MAJOR WATERSHED UNITS)

Figure 2.



## LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

1	Lake Superior (north)	44	Mississippi River (Nevo)
2	Lake Superior (south)	46	Upper Iowa River
3	St. Louis River	47	Wapsipinican River (Headwaters)
4	Cloquet River	48	Cedar River
5	Nemadji River	49	Shell Rock River
7	Mississippi River (Headwaters, Lake Winnibigoshish)	50	Winnebago River (Lime Creek)
8	Leech Lake River	51	West Fork des Moines River (Headwaters)
9	Mississippi River (Grand Rapids)	52	West Fork des Moines River (Lower)
10	Mississippi River (Brainerd)	53	East Fork des Moines River
11	Pine River	54	Bols de Sioux River
12	Crow Wing River	55	Mustinka River
13	Redeye River (Leaf River)	56	Otter Tail River
14	Long Prairie River	57	Red River of the North (Headwaters)
15	Mississippi River (Sartell)	58	Buffalo River
16	Sauk River	59	Marsh River
17	Mississippi River (St. Cloud)	60	Wild Rice River
18	North Fork Crow River	61	Sandhill River
19	South Fork Crow River	62	Upper and Lower Red Lake
20	Mississippi River (Metro)	63	Red Lake River
21	Rum River	65	Thief River
22	Minnesota River (Headwaters)	66	Clearwater River
23	Pomme de Terre River	67	Grand Marais Creek (Red River of the North)
24	Lac qui Parle River	68	Snake River
25	Minnesota River (Granite Falls)	69	Tamarack River (Red River of the North)
26	Chippewa River	70	Two River
27	Redwood River	71	Roseau River
28	Minnesota River (Mankato)	72	Rainy River (Headwaters)
29	Cottonwood River	73	Vermillion River
30	Blue Earth River	74	Rainy River (Rainy Lake)
31	Watonwan River	75	Rainy River (Manitou)
32	Le Sueur River	76	Little Fork River
33	Minnesota River (Shakopee)	77	Big Fork River
34	St. Croix River (Upper)	78	Rapid River
35	Kettle River	79	Rainy River (Baudette)
36	Snake River	80	Lake of the Woods
37	St. Croix River (Stillwater)	81	Big Sioux River (Medary Creek)
38	Mississippi River (Red Wing) and Lake Pepin	82	Big Sioux River (Pipestone)
39	Cannon River	83	Rock River
40	Mississippi River (Winona)	84	Little Sioux River
41	Zumbro River		
42	Mississippi River (La Crescent)		
43	Root River		

## Proposed Rules

C. Replacement ratios for in-kind replacement. When wetland functions lost as a result of drainage or filling are replaced by restoring a wetland of the same type, and having the same topographic setting, in the same watershed and with the same ~~inlet and outlet characteristics~~ topographic setting ratio as described in item D, subitem (3) (2), and related definitions, the replacement shall be considered to be in-kind and the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland. For impacted wetlands on agricultural land, or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted. Except for counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, for impacted wetlands on nonagricultural land, the minimum replacement ratio is 2:1, requiring two times the impacted area be replaced.

D. Out-of-kind replacement ratios. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type or in a different topographic setting than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics than the impacted wetland, the replacement shall be considered to be out-of-kind and the local government unit shall use the replacement ratios in this subpart to determine the amount of replacement wetland needed to replace the lost wetland values.

(1) Wetland type ratio. Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table in this part, to be applied as specified in subitem (5) (4). The wetland type ratio table incorporates an evaluation of public values as specified in *Minnesota Statutes*, section 103B.3355, for the purposes of comparison among wetland types.

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical evaluation panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be converted to nonwetland shall be determined. The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type. The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio.

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

Wetland Type	Replacement Ratio											
	1	2	3	4	5	6	7	8	R2	R3	R4	Other
1	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
2	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
3	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
4	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
5	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
7	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
8	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
R2	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
R3	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
R4	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

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

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

\*See ~~text~~ Table 1 of subpart 10, item B, for wetland classification equivalency.

NOTE: Wetland types L1, L2, and R2 are generally not subject to this chapter and cannot be used for wetland replacement, but are included for possible future coordination purposes.

(2) Hydrologic unit ratio.

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## Proposed Rules

(a) Except as noted in unit (b), when a replacement wetland is located in a different hydrologic unit than the impacted wetland, as indicated by the United States Geological Survey Hydrologic Unit Map for Minnesota (Figure 2), the following ratios must be applied, as specified in subitem (5):

Location of sites	Replacement ratio
Within same watershed	0.0
Different watershed	0.1
Different accounting unit	0.3
Different subregion	0.5
Different region	1.0

(b) The hydrologic unit ratio does not apply when replacement for impacts within counties or watersheds having 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which 50 percent or more of the presettlement acreage has been drained or filled.

(3) ~~Inlet and outlet characteristics~~ (2) Topographic setting ratio. If the ~~inlet and outlet topographic setting~~ characteristics of a replacement wetland differ from those of the impacted wetland, the following ratios shall be applied, as specified in subitem (5) (4).

~~The inlet and outlet characteristics~~ The topographic setting ratio does not apply when replacement for impacts within counties or watersheds having a greater than 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which area is accomplished in a less than 50 percent area or more of the presettlement acreage has been drained or filled to wetland replacement projects conducted by the board for public transportation projects on existing roads.

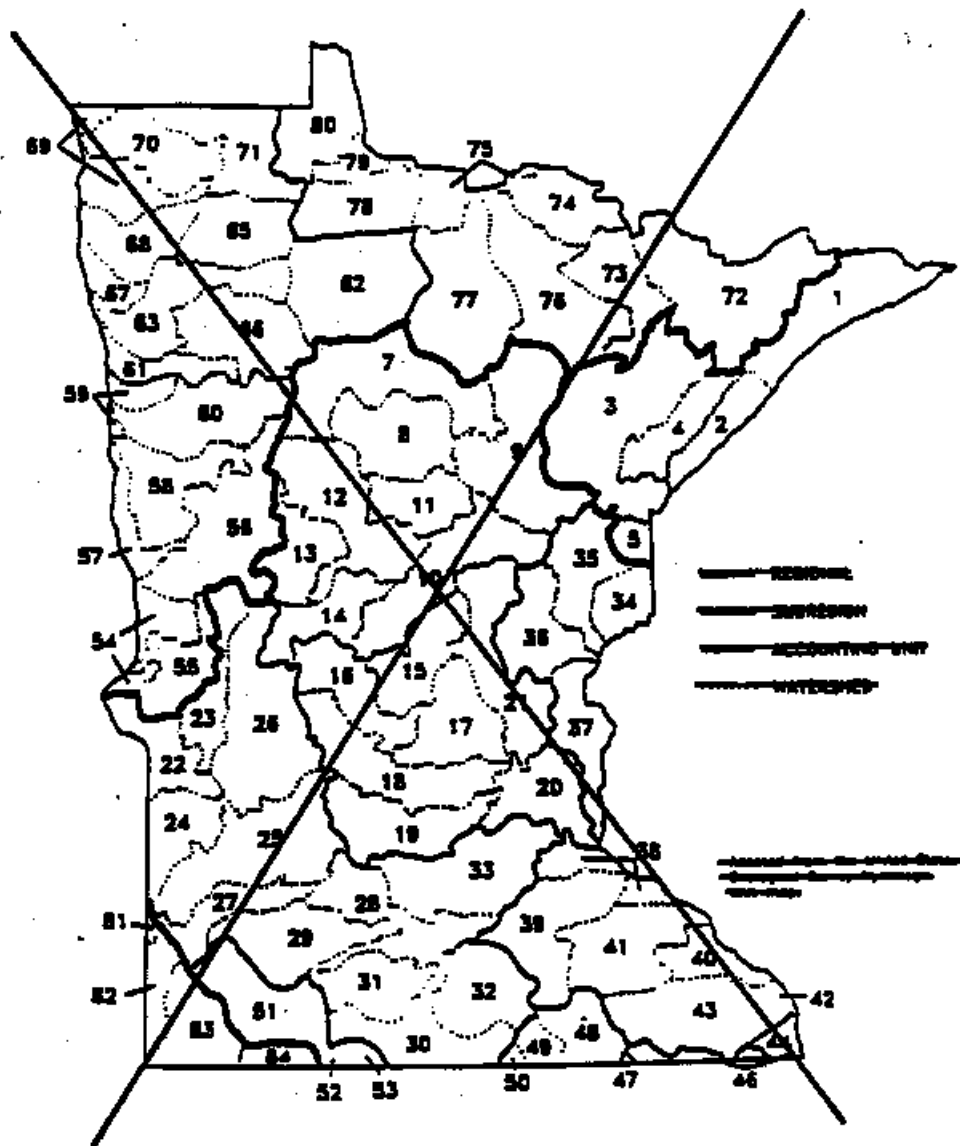
Table 3. ~~Inlet and Outlet Characteristics~~.

Impact Wetland	Replacement Wetland	Flow-Through	Tributary	Floodplain	Isolated
Riverine	0.0	0.2	0.4	0.6	1.0
Flow-Through	0.2	0.0	0.4	0.6	0.8
Tributary	0.4	0.2	0.0	0.2	0.4
Floodplain	0.6	0.6	0.2	0.0	0.2
Isolated	1.0	0.8	0.4	0.2	0.0



HYDROLOGIC UNITS

Figure 2:



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STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979  
(81 MAJOR WATERSHED UNITS)

Figure 3-

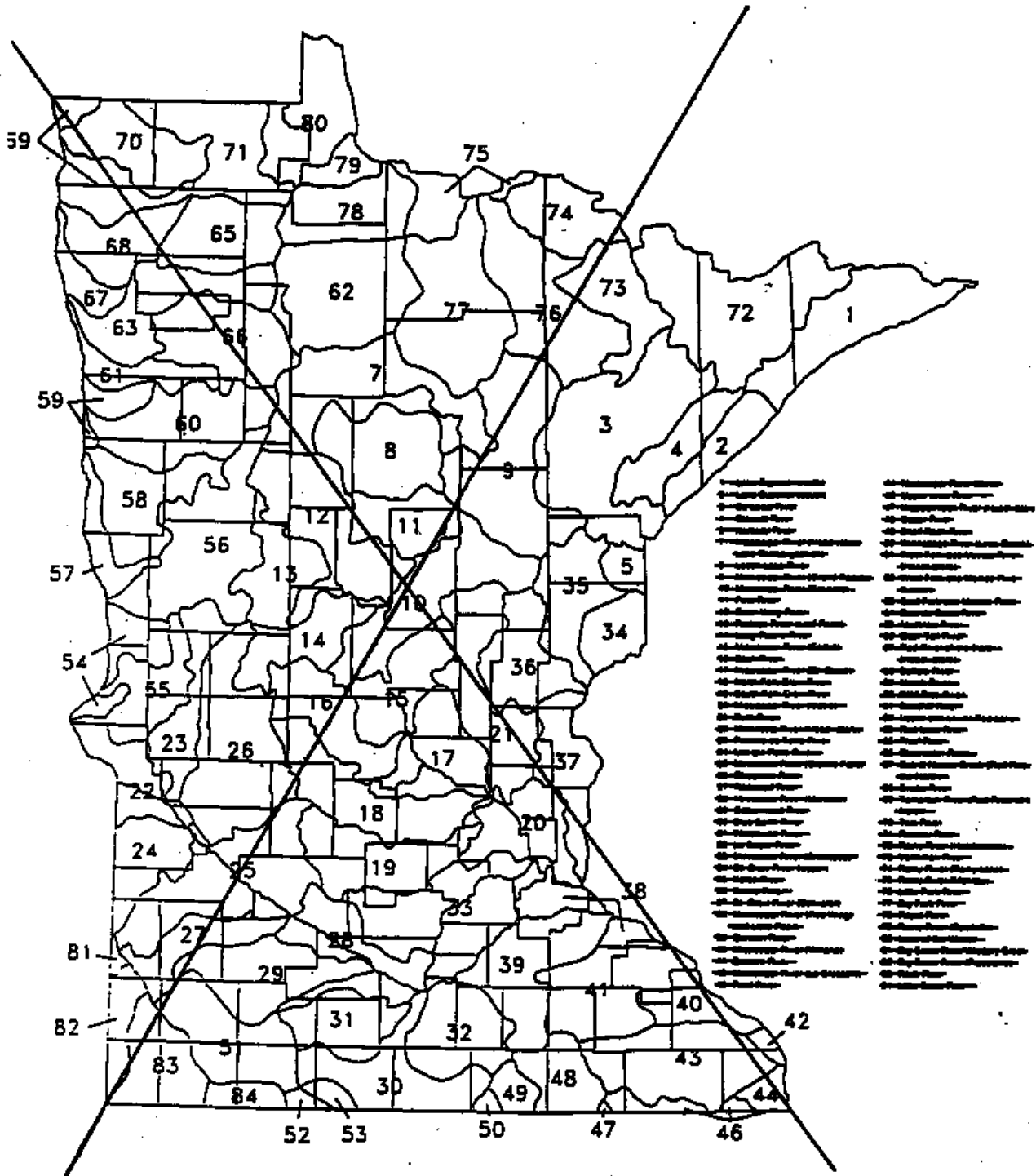


Table 3. Topographic Setting Ratios.

<u>Impacted Wetland</u>	<u>Replacement Wetland</u>		
<u>Topographic Setting</u>	<u>Shoreland</u>	<u>Riverine</u>	<u>Floodplain</u>
<u>Shoreland</u>	<u>0</u>	<u>0.2</u>	<u>0.4</u>
<u>Riverine</u>	<u>0</u>	<u>0</u>	<u>0.2</u>
<u>Floodplain</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Flow-Through</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Tributary</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Isolated</u>	<u>0</u>	<u>0</u>	<u>0</u>

<u>Impacted Wetland</u>	<u>Replacement Wetland</u>		
<u>Topographic Setting</u>	<u>Flow-Through</u>	<u>Tributary</u>	<u>Isolated</u>
<u>Shoreland</u>	<u>0.6</u>	<u>0.8</u>	<u>1.0</u>
<u>Riverine</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>
<u>Floodplain</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>
<u>Flow-Through</u>	<u>0</u>	<u>0.2</u>	<u>0.4</u>
<u>Tributary</u>	<u>0</u>	<u>0</u>	<u>0.2</u>
<u>Isolated</u>	<u>0</u>	<u>0</u>	<u>0</u>

(4) (3) Local public value ratio. A local government unit may by ordinance establish additional local public value ratios to address wetland conservation or preservation issues of local concern. These ratios must have a minimum value of zero and should be based on wetland management objectives of a local water management plan adopted under *Minnesota Statutes*, chapter 103B or 103D. The local ~~preservation public value~~ ratios must be applied as specified in subitem (5) (4).

(5) (4) Application of replacement ratios. The required replacement ratio for out-of-kind replacement shall be the sum of the wetland type ratio plus the ~~hydrologic unit topographic setting ratio plus the inlet and outlet characteristics ratio~~ plus the local public value ratio. When this ratio is less than the minimum in-kind ratio of 1:1 for wetlands on agricultural land or in ~~counties or watersheds in which greater than 80 percent or more of the presettlement wetland acreage exists~~ areas, or 2:1 for wetlands on non-agricultural lands in ~~counties where 50 percent or less of presettlement wetlands exist~~ less than 80 percent areas, the minimum in-kind ratio shall be the required replacement ratio.

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## Proposed Rules

E. Determining impacts of partial drainage. In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined according to the following formula as follows:

$$\text{Where: } NI = OA - \frac{RA}{RR}$$

NI = Net impact (acres of original wetland type to be replaced)  
 OA = Original acreage of original wetland type  
 RR = Replacement ratio, determined from table 1, using the original wetland type as the impacted wetland type and the wetland type resulting from the partial drainage as the replacement wetland type  
 RA = Remaining acres of the original wetland

Calculation of partial drainage credit is explained by the following example:

A ten-acre type 3 (PEMC) wetland is partially drained resulting in a five-acre type 1 (PEMA) wetland.  $(NI = 10 - 1/3(5) = 8 \frac{1}{3})$  Eight and one-third acres of type 3 wetland is the net impact subject to replacement.

The area impacted by partially draining a wetland is determined in two parts. The wetland area where the hydrology is totally removed must be replaced in its entirety. The area that is partially drained must be replaced in an amount that is 50 percent of the acreage of the remaining wetland area.

Calculation of partial drainage is explained by the following example:

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

F. Determining credit for restoration of partially drained wetlands. In cases where partially drained wetlands are restored to their former state, the acres credited for restoring a partially drained wetland is in two parts. The first is the new wetland credit (NWC) caused by the restoration (for example, if the preresoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres). The second credit is for the change in value of the preresoration wetland acres. This is the public value credit (PVC) and must be computed as follows:

$$PVC = \left( \frac{RR - 1}{RR} \right) OA$$

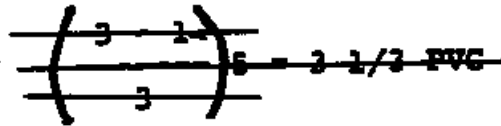
Where: PVC = Public value credit

RR = Replacement ratio, determined from table 1, using the preresoration wetland type as the replacement wetland type, and the postrestoration type as the impacted wetland type  
 OA = Wetland acreage before restoration

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

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

A partially drained five-acre type 1 (PEMA) wetland is to be restored to a ten-acre type 3 (PEMC) wetland.



This restoration is proposed as replacement for a ten-acre type 6 (PSSA) wetland. The wetland is located on nonagricultural land in a "less than 80 percent county or watershed" so the minimum replacement ratio is 2:1. This means 20 acres of replaced wetland is needed.

From the wetland type value in table 2, the replacement ratio is 1. The replacement is located in the same watershed, so the hydrologic unit ratio is 0.0. The inlet and outlet characteristics are isolated for the impacted wetland and tributary for the replacement wetland, so the inlet and outlet characteristics ratio is 0.4. The out-of-kind replacement ratio is the sum of 1.0 + 0.0 + 0.4 = 1.4. This is less than the minimum of 2:1, so additional acreage is needed.

To ensure no-net loss of wetlands, at least ten acres of new wetland credit must be used to offset the ten acres of wetland lost. The remaining ten acres of required replacement can use either new wetland credit or public value credit.

The proposed restoration is insufficient to replace the proposed impact, therefore an identical site is also selected for restoration. From site one, new wetland credit equals five; from site two, new wetland credit equals five; (5 + 5 = 10 acres of NWC). The no-net loss wetland acreage requirement is satisfied. Ten acres must still be found to satisfy the 2:1 requirement. Site one still has three and one-third acres of public value credit, as does site two; (3 1/3 + 3 1/3 = 6 2/3). An additional three and one-third acres of either new wetland credit or public value credit must be found to meet the additional acreage requirements. The determination of acres credited for fully restoring the hydrology of a wetland that has been partially, but demonstrably, affected by drainage, is in two parts. The first is the new wetland credit (NWC) caused by the restoration, for example, if the preresoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres. The second credit is for the change in value of the preresoration wetland acres. This is the public value credit (PVC) and is equal to 50 percent of the acreage of the preresoration wetland.

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

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

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

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

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

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G. Alternative Evaluation Methodologies. The local government unit may evaluate the replacement plan using a scientifically accepted methodology that evaluates all wetland functions specified in *Minnesota Statutes*, section 103B.3355, for both the impacted and replacement wetlands. Such alternative methodologies must be approved by the board, in consultation with the commissioners of natural resources and agriculture, and local government units. Currently acceptable alternative methodologies include: "Minnesota Routine Assessment Methodology for Evaluating Wetland Functions" (Board of Water and Soil Resources, Version 1.0 - May 1996); "Minnesota Wetland Evaluation Methodology (for the North Central United States)" (United States Army Corps of Engineers, September 1988); The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP-DE-3, August 1993); Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993); and Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991). Other methodologies may be used following board approval and publication in the Environmental Quality Board Monitor.

When using alternative evaluation methodologies to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in subpart 6, except as provided for in part 8420.0650, subpart 2. When using an alternative evaluation methodology to evaluate a wetland replacement plan, the replacement wetland must be projected to have an equal or greater functional level than the impacted wetland for each of the functions listed in part 8420.0103, unless the technical evaluation panel determines that the overall functional level for each of the functions will be maintained within the local government unit's jurisdiction.

H. Special cases or appeals. For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using ~~the Minnesota wetland evaluation methodology or another board, in consultation with the commissioner, approved a~~ board-approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in part 8420.0540, subpart 6. Further, ~~the hydrologic unit ratio in item D, subitem (2); the inlet and outlet characteristics topographic setting ratio in item D, subitem (3) (2), and the local public value ratio, if any, in item D, subitem (4) (3), must also be considered when using the Minnesota wetland evaluation methodology or another board, in consultation with the commissioner, approved a~~ board-approved methodology.

H. I. Adequacy decision. A replacement plan that fails to meet the requirements in items A to ~~G~~ H must be considered inadequate in replacing lost functions and values and shall not be approved by the local government unit. A replacement plan that has been considered by the local government unit and not approved may be revised and resubmitted for consideration by the local government unit. As required by part 8420.0250, the decision of a local government unit to approve, approve with conditions, or not approve a replacement plan becomes final if not appealed to the board within ~~30~~ 15 days after the date on which the decision is mailed to those required to receive notice of the decision. Before construction of the replacement wetland may proceed, the notice specified in part 8420.0530, item D, subitem (6), must be recorded and proof of recording provided to the local government unit.

I. Replacement wetlands eligible for RIM. A landowner who drains or fills a wetland and replaces it by restoring an impacted wetland on the landowner's property under an approved replacement plan may apply to the board for enrollment of the replacement wetland into the Reinvest in Minnesota program no sooner than one year after completion of the replacement project.

### 8420.0550 WETLAND REPLACEMENT STANDARDS.

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

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

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

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

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

C. For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal in part 8420.0530, item D, subitem (1), is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the ~~soil and water conservation district, in coordination with the department~~ technical evaluation panel. If the replacement wetland is seeded or planted, the seed or planting stock should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

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

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

WETLAND TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
<b>FORESTED</b>				
<del>PFA</del> (T1)	INTMTNT	—	TREES	SOMETIMES
<del>PFB</del> (T7)	SATUR'D	≥ 3:1	TREES	YES
<del>PFC</del> (T7)	6" - 3'	≥ 5:1	TREES	YES
<b>SCRUB-SHRUB</b>				
<del>PSA</del> (T6)	INTMTNT	—	SHRUBS	YES
<del>PSB</del> (T6)	SATUR'D	≥ 3:1	SHRUBS	YES
<del>PSX</del> (T8)	SATUR'D	≥ 3:1	SHRUBS	SOMETIMES
<del>PSC</del> (T6)	SAT.-INT.	—	SHRUBS	YES
<b>EMERGENT</b>				
<del>PEA</del> (T1)	INTMTNT	—	HERB/EMERG	YES
<del>PEB</del> (T2)	SATUR'D	≥ 3:1	HERB/EMERG	YES
<del>PEC</del> (T3)	6" - 2'	≥ 5:1	HERB/EMERG	YES
<del>PEF</del> (T4)	2' - 4'	≥ 10:1	HERB/EMERG	YES
<b>DEEP MARSH</b>				
<del>PA</del> (T5)	4' - 6'	≥ 15:1	AQUATIC BED	YES
<del>PU</del> (T5)	4' - 6'	≥ 15:1	ALGAE/FLOATG	YES
<b>LAKES</b>				
<del>L1</del> (T5)	≥ 6'	≥ 25:1	ALGAE/FLOATG	YES
<del>L2</del> (T5)	≤ 6'	≥ 25:1	HERB	YES
<b>RIVERINE</b>				
R2 ( <del>NA</del> )	≥ 2'	—	ALGAE, SUB	FLOWAGE
R3 ( <del>NA</del> )	6" - 2'	—	ALGAE, SUB	FLOWAGE
R4 ( <del>NA</del> )	INTMTNT	—	RIPARIAN	FLOWAGE

\* INTMTNT = Intermittent or temporarily flooded, SATUR'D = Saturated in the rooting zone  
 \*\* HERB = Herbaceous, EMERG = Emergent, SUB = Submergent, FLOATG = Floating-leaved

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### 8420.0610 DURATION OF MONITORING.

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

### 8420.0620 MONITORING ANNUAL REPORT.

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

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

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

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

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

### 8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

#### Subpart 1. General requirements; notice and participation.

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

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

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

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

Subp. 2. **Plan contents.** A comprehensive wetland protection and management plan may:

A. provide for classification of wetlands in the plan area based on:

(1) an inventory of wetlands in the plan area;

(2) an assessment of the wetland functions listed in *Minnesota Statutes*, section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and

(3) the resulting public values;

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



C. vary the replacement standards of *Minnesota Statutes*, section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

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

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

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

E. in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in *Minnesota Statutes*, section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

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

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

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

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

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

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

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

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

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

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

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

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

### STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

#### 8420.0720 PRINCIPLES OF WETLAND BANKING.

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

Subp. 2. **Sequencing prerequisite.** The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520; that the project would otherwise be allowed if adequate replacement could be secured by the applicant; that project-specific replacement is not reasonable or desirable; and that the owner of the account agrees to the withdrawal of wetland banking credits from the account.

Subp. 3. **Geographic limitations.** ~~In counties having greater than 80 percent of their presettlement wetlands intact,~~ Wetland banking is allowed for any impact, however, wetland impacts should be replaced in a location that either most closely resembles lost functions and public values at the impact site or in a location that maximizes important wetland functions and public values. ~~Wetland banking in counties with less than 80 percent of their presettlement wetlands intact can be considered only in situations involving impacts of less than five acres, except in certain circumstances as noted in part 8420.0740, subpart 2, item B, subitem (2).~~

Subp. 4. **Eligible wetlands.** Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with the restoration of previously drained or filled wetlands. ~~Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.~~

Subp. 5. **Ineligible wetlands.** Wetlands that are drained or filled under an exemption in part ~~8420.0120~~ 8420.0122 and subsequently restored are not eligible for deposit in the wetland bank. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

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

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

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

Subp. 9. **Qualification.** A wetland cannot be deposited for wetland banking credit that cannot, under parts 8420.0500 to 8420.0630, be used for replacement.

#### 8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

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

Subp. 2. **Deposit prerequisites.** To be deposited into the wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. The method of certification by local government units is optional, but wetland banking credits may not be deposited into the bank within that local government units jurisdiction without certification. If a local government unit elects to certify wetlands for the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable.

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

**8420.0740 PROCEDURES.**

Subpart 1. **Deposits and credits.**

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

E. There is no maximum wetland acreage eligible for deposit in the wetland bank. The local government unit, upon recommendation of the technical evaluation panel, must identify the acreage that will receive credit. As an incentive to encourage the deposit of small wetlands, the local government unit shall assign wetland banking credit to wetland acreage as follows:

Wetland Acreage	<u>Wetland Banking Credit</u>
0 to 10 acres	100 percent
over 10 acres	90 percent

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

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

[For text of item G, see M.R.]

H. In cases where a wetland is proposed to be restored or created solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the depositor must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D.

A copy of the bank plan shall be mailed to members of the technical evaluation panel, members of the public who have requested a copy, and members of the watershed district or watershed management organization if there is one. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and, if affirmative, approve the plan and advise the depositor of the wetland ~~acreage~~ banking credits likely to be accepted into the wetland bank. Approval of the plan shall be considered official acknowledgment that the wetland is designated for

I. In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to ~~part 8420.0740, subpart 1,~~ item H.

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

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

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Based on a site visit, the technical evaluation panel will determine the size and type of wetland; ~~using the abbreviated Cowardin et al. classification in part 8420.0540, subpart 10, item B,~~ as well as ~~inlet and outlet topographic setting characteristics and, if applicable, the new wetland credits and public value credits~~ resulting from the to be deposited wetland. The technical evaluation panel will provide the information to the local government unit.

L. The local government unit shall notify the depositor of its findings as to the suitability of the wetland and approved wetland banking credits. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0530, item D, subitem (6), and submit proof of the recording to the local government unit for the wetlands to be deposited. If the depositor chooses not to proceed with the deposit, the depositor may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor may request certification for deposit into the bank or may amend the bank plan and submit the plan to the local government unit for approval and subsequent certification. After five years, any activity in the wetland is subject to this chapter.

M. To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the local government unit in which the wetland is located:

- (1) name, address, and telephone number of the depositor;
- (2) location of the wetland, including legal description, public land survey coordinates, county, and watershed;
- (3) a copy of the deed for the property containing the wetland with the required covenant recorded;
- (4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type; ~~using the abbreviated Cowardin, et al. classification in part 8420.0540, subpart 10, item B,~~ and ~~inlet and outlet topographic setting characteristics and, if applicable, the new wetland credits and public value credits;~~ and
- (5) certification that the wetland is approved for deposit into the bank.

[For text of items N to P, see M.R.]

### Subp. 2. Withdrawals.

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

B. The use of the wetland bank is ~~limited to:~~

- ~~(1) projects occurring in counties having greater than 80 percent of their presettlement wetlands;~~
- ~~(2) counties with less than 80 percent of their presettlement wetlands remaining, with the use of the wetland bank limited to:~~
  - ~~(a) linear type transportation or utility projects with impacts less than five acres per basin, minus any project specific replacement acreage;~~
  - ~~(b) other projects with a cumulative impact of less than five acres, minus any project specific replacement acreage; or~~
  - ~~(c) allowed whenever the local government unit determines that the use of the wetland bank is reasonable and desirable.~~

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

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

- (1) account holder: name, address, and telephone number;
- (2) available wetlands: wetland acres by ~~abbreviated Cowardin et al. classification~~ type and ~~inlet and outlet topographic setting characteristics, and, if applicable, the new wetland credits and public value credits;~~
- (3) location: section, township, range, county, and watershed.

E. The applicant may then contact, negotiate, and purchase the required wetland ~~acreage banking credits~~ from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a notarized wetland banking credit ~~transfer withdrawal~~ form developed by the board, and include the wetland banking credit ~~transfer withdrawal~~ form as part of the wetland replacement plan transmitted to the local government unit. The wetland banking credit ~~transfer withdrawal~~ form will include information indicating the wetland type by acres for ~~transfer withdrawal~~, location of banked wetland, and the ~~inlet and outlet topographic setting characteristics and, if applicable, the new wetland credits and public value credits~~ of the banked wetland.

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

G. ~~Wetlands impacted by public transportation projects may be replaced statewide, provided the replacements are approved by the commissioner under an established wetland banking system or under the rules for wetland banking as provided for in parts 8420.0700 to 8420.0760.~~

~~The commissioner shall notify the local government unit and the board of the decision within 30 days of the date that the replacement plan is received by the commissioner. If the commissioner does not approve the replacement plan, the local government unit shall not approve the replacement plan.~~

H. On approval of the applicant's wetland replacement plan using wetland ~~bank acreage banking credits~~ as wetland replacement, the local government unit shall notify the board to debit the appropriate banked wetland by type and acreage. The board will complete the accounting transactions and send a notice of wetland banking credit ~~transfer withdrawal~~ to the account holder.

I. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland ~~bank banking~~ credits as replacement.

J. An individual, corporation, local government unit, or other organization may buy and hold wetland banking credits from account holders in the bank for later use or resale. Transfer of wetland banking credits must be accomplished through use of a board wetland banking credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a wetland banking credit transfer form, and required organization information. The board will notify both account holders on transfer of the wetland banking credits. An account transfer must be accompanied by transfer of the fee title or easement ~~or license~~. A wetland banking credit for a wetland may not be split between accounts. Wetland banking credits may also be transferred between banks approved by the board.

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### 8420.0750 AUDITING AND MONITORING.

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

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

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

(1) wetland acres by ~~abbreviated Cowardin et al.~~ classification type, ~~inlet and outlet~~ topographic setting characteristics, restoration or creation date, and bank acceptance date, fee owner, location by (public land survey coordinates, local government unit, county, and watershed of the banked wetland); and

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

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

D. An annual wetland bank report shall be prepared and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the ~~department~~ departments of natural resources and agriculture, and on request.

[For text of subp 2, see M.R.]

### STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS

#### 8420.1010 PURPOSE.

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

Part ~~8420.0120~~ 8420.0122 does not apply to calcareous fens.

#### 8420.1040 MANAGEMENT PLANS.

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

**REPEALER.** *Minnesota Rules*, parts 8420.0110, subparts 5, 13, 26, 27, and 47; 8420.0120; 8420.0250, subpart 2; and 8420.0710, are repealed.

#### INCORPORATIONS BY REFERENCE:

Part 8420.0112: *Wetlands of the United States* (United States Fish and Wildlife Service Circular No. 39, 1971 edition); *United States Army Corps of Engineers Wetland Delineation Manual* (January 1987); *Classification of Wetlands and Deepwater Habitats of the United States* (Cowardin, et al., 1979 edition); *Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota* (Minnesota Department of Natural Resources, 1991); United States Geological Survey Hydrologic Unit Map for Minnesota; "Minnesota Routine Assessment Methodology for Evaluating Wetland Functions" (Board of Water and Soil Resources, Version 1.0 - May 1996); Minnesota Wetland Evaluation Methodology for the North Central United States (United States Army Corps of Engineers, September 1988); *The Hydrogeomorphic Functional Assessment Methodology* (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP-DE-3, August 1993); "Oregon Freshwater Wetland Assessment Methodology" (Oregon Division of State Lands, December 1993); "Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire" (New Hampshire Department of Environmental Services, March 1991); National Wetland Inventory maps (United States Fish and Wildlife Service); Anderson and Craig, 1984, *Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective*. These documents are available through the state law library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices.

## Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 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 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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

### Exempt Rules

An exempt rule adopted under *Minnesota Statutes* §§ 14.386 or 14.388 is effective upon its publication in the *State Register*.

### Emergency Expedited Rules

Provisions for the Commissioner of Natural Resources to adopt emergency expedited Game and Fish Rules are specified in *Minnesota Statutes* §§ 84.027. The commissioner may adopt emergency expedited rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Emergency expedited rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions. Emergency expedited rules are effective for the period stated or up to 18 months.

## Pollution Control Agency

### Adopted Permanent Rules Relating to Miscellaneous Air Quality Amendments

The rules proposed and published at *State Register*, Volume 22, Number 6, pages 232-265, August 11, 1997 (22 SR 232), are adopted with the following modifications:

#### 7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES.

Subp. 7. **Two-stage issuance of part 70 permits and part 70 permit amendments authorizing construction or modification.**

(2) would include an enforceable limitation assumed to avoid being subject to a new source review program under part C or D of the act, the agency shall send the permit to the permittee after all requirements of the new source review program have been satisfied or after all requirements to avoid applicability of new source review have been completed including any required notice and comment period. The agency shall at the same time notify the permittee in writing that those permit conditions required by the new source review program or developed to avoid applicability of new source review and designated as such by the agency in the permit or amendment, and only those conditions, shall be considered issued.

#### 7007.0800 PERMIT CONTENT.

Subp. 6. **Reporting.** The permit shall require the permittee to submit to the agency the reports described in this subpart. The permit shall require that all reports be certified by a responsible official consistent with part 7007.0500, subpart 3.

A. Deviation reporting time frames are described in subitems (1) and (2).

(1) For deviations that endanger human health or the environment, the permit shall require the permittee to notify the commissioner as required in part 7019.1000, subpart 1; ~~in the event of any deviation from applicable requirements or permit conditions which could endanger human health or the environment.~~

C. The permit shall require submittal of an annual compliance certification by January 31 of each year to the agency. In the case of part 70 permits, compliance certifications shall be submitted to the administrator as well as the agency, unless the administrator agrees that the submittals are not necessary. The certification shall be on a form approved by the commissioner and shall contain ~~at least~~ the following:

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## Adopted Rules

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### 7007.1400 ADMINISTRATIVE PERMIT AMENDMENTS.

Subpart 1. **Administrative amendments allowed.** The agency may make the permit amendments described in this subpart through the administrative permit amendment process described in this part. An owner or operator of a stationary source shall request an administrative amendment if changes are to be made under item B or E:

I. an amendment to remove any condition from a permit which was based on an applicable requirement that has been repealed, but only if the permit condition:

(1) is ~~not~~ neither required ~~or~~ nor replaced by another applicable requirement; and

### 7007.1500 MAJOR PERMIT AMENDMENTS.

Subp. 3a. **Making existing facilities into affected facilities subject to new source performance standards.**

B. The agency shall issue written approval to construct, or explain in writing why the approval will not be granted, within 60 days of receiving a complete permit application seeking authorization to construct and operate the affected facility. The application must be accompanied by a written request for approval to construct under this subpart, and a statement certified by a responsible official certifying that requirements of part C (Prevention of Significant Deterioration of Air Quality) or part D (Plan Requirements for Nonattainment Areas) of the act do not apply to the proposed construction. ~~The agency's failure to respond within the 60-day period shall not be deemed approval to construct.~~ The approval to construct shall only apply to the affected facility.

### 7011.2300 STANDARDS OF PERFORMANCE FOR STATIONARY INTERNAL COMBUSTION ENGINES.

Subpart 1. **Visible air contaminants.** No owner or operator of any stationary internal combustion engine shall cause or permit the emission of visible air contaminants from the engine in excess of 20 percent opacity once operating temperatures have been ~~obtained~~ attained.

### 7019.1000 NOTIFICATIONS OF DEVIATIONS WHICH ENDANGER HUMAN HEALTH OR THE ENVIRONMENT; SHUTDOWNS AND BREAKDOWNS.

Subp. 5. **Effect of rule.** Nothing in this part:

C. excuses compliance with *Minnesota Statutes*, section 116.061; ~~or~~

D. prevents the agency from exercising its emergency powers under *Minnesota Statutes*, section 116.11, in the event that conditions warranting such action shall arise; or

E. prevents the owner or operator of an emission facility from establishing the emergency defense described in part 7007.1850 if the owner or operator meets the requirements of that part.

Subp. 7. **Transition to amended rule.** The amendments to this part ~~adopted at SR 000~~ that take effect on the effective date of this part supersede the requirements of permit conditions based on this part in air emission permits issued by the agency prior to January 1, 1998.



## Exempt Rules

Exempt rules are excluded from the normal rulemaking procedures (*Minnesota Statutes* §§ 14.386 and 14.388). They are most often of two kinds. One kind is specifically exempted by the Legislature from rulemaking procedures, but approved for form by the Revisor of Statutes, reviewed for legality by the Office of Administrative Hearings, and then published in the *State Register*. These exempt rules are effective for two years only.

The second kind of exempt rule is one adopted where an agency for good cause finds that the rulemaking provisions of *Minnesota Statutes*, Chapter 14 are unnecessary, impracticable, or contrary to the public interest. This exemption can be used only where the rules:

- (1) address a serious and immediate threat to the public health, safety, or welfare, or
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with *Minnesota Statutes* §§ 14.14-14.28, or
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required, or
- (4) make changes that do not alter the sense, meaning, or effect of the rules.

These exempt rules are also reviewed for form by the Revisor of Statutes, for legality by the Office of Administrative Hearings and then published in the *State Register*. In addition, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for the use of this exemption. Rules adopted under clauses (1) or (2) above are effective for two years only.

The Legislature may also exempt an agency from the normal rulemaking procedures and establish other procedural and substantive requirements unique to that exemption.

## Department of Natural Resources

### Adopted Exempt Permanent Rules Relating to Special Fishing Regulations

#### 6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS.

[For text of Subps 1 to 7, see M.R.]

Subp. 8. Spearing restrictions. A person may not take fish by spearing and may not possess a spear while on or fishing in the following lake.

<u>Name</u>	<u>Location</u>	<u>County</u>
<u>Beers Lake</u>	<u>T.135, R.42, S.Various</u>	<u>Otter Tail</u>

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## Expedited Emergency Rules

Provisions exist for the Commissioners of some state agencies to adopt expedited emergency rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Expedited emergency rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions. Expedited emergency rules are effective for the period stated or up to 18 months. Specific *Minnesota Statute* citations accompanying these Expedited emergency rules detail the agency's rulemaking authority.

## Department of Natural Resources

### Adopted Expedited Emergency Game and Fish Rules; Special Fishing Regulations

**NOTICE IS HEREBY GIVEN** that the above entitled rule has been adopted through the process prescribed by *Minnesota Statutes*, section 84.027, subdivision 13(b). The statutory authority for the contents of this rule is *Minnesota Statutes*, section 97C.005, subdivision 3.

Dated: 30 December 1997

Rodney W. Sando  
Commissioner of Natural Resources  
By Eugene Gere  
Assistant Commissioner for Administration

#### 6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS.

[For text of subps 1 to 8, see M.R.]

**Subp. 9. Spearing restrictions.** A person may not take fish by spearing and may not possess a spear while on or fishing in the following lake.

<u>Name</u>	<u>Location</u>	<u>County</u>
Cass Lake	T.145,146, R.30,31, S.Various	Beltrami, Cass

**EFFECTIVE PERIOD.** *Minnesota Rules*, part 6264.0400, subpart 9, expires February 15, 1998.

## Department of Natural Resources

### Adopted Expedited Emergency Game and Fish Rules; Spring Turkey Hunting

**NOTICE IS HEREBY GIVEN** that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, section 84.027, subdivision 13(b). The statutory authority for the contents of these rules is *Minnesota Statutes*, section 97A.435 and 97B.711.

Dated: 30 December 1997

Rodney W. Sando  
Commissioner of Natural Resources  
By Eugene Gere  
Assistant Commissioner for Administration

#### 6236.0600 SPRING TURKEY SEASON.

[For text of subps 1 to 3, see M.R.]

**Subp. 4. Open areas.** Wild turkey permit areas are open for the spring turkey season as prescribed by the commissioner.

Wild turkey permit areas numbered 225; 226; 227; 228-236; 235; 337-338; 339-462; 341-342; 343-347; 344; 345-348; 346; 349; 417; 418; 419; 435; 440; 442; 443; 448-449-451; 450; 454-456-458; 459; 461; 463; 464-465; and 466-467, are open during the 1998 spring turkey season.

[For text of subp 5, see M.R.]

**6236.0810 WILD TURKEY PERMIT AREA DESCRIPTIONS.**

Wild turkey permit areas are comprised of partial, single, or grouped deer and bear registration blocks, as established in part 6232.4700, and are described as follows:

[For text of items A to KK, see M.R.]

LL. wild turkey permit area 417 consists of those portions of registration block 417 described as follows:

Beginning at the intersection of State Trunk Highway (STH) 55 and STH 4; thence along STH 4 in a southerly direction to U.S. Highway 12; thence along U.S. Highway 12 to County State Aid Highway (CSAH) 104, Swift County; thence northerly on CSAH 104 to STH 55, Douglas County; thence along STH 55 in a southeasterly direction to the point of beginning;

[For text of items MM to FFF, see M.R.]

GGG. wild turkey permit area ~~448~~ 448-449-451 consists of registration ~~block~~ blocks 448, 449, and 451;

HHH. ~~wild turkey permit area 449 consists of registration block 449;~~

~~III.~~ wild turkey permit area 450 consists of registration block 450;

~~JJJ.~~ wild turkey permit area ~~451~~ consists of registration ~~block 451~~;

~~KKK.~~ III. wild turkey permit area 452 consists of registration block 452;

~~LLL.~~ JJJ. wild turkey permit area 453 consists of registration block 453;

~~MMM.~~ KKK. wild turkey permit area ~~454-455-456-458~~ 454-456-458 consists of registration blocks 454, ~~455~~, 456, and 458;

~~NNN.~~ LLL. wild turkey permit area 459 consists of registration block 459;

~~OOO.~~ MMM. wild turkey permit area 461 consists of registration block 461;

~~PPP.~~ NNN. wild turkey permit area 463 consists of registration block 463;

~~QQQ.~~ OOO. wild turkey permit area 464-465 consists of ~~those portions~~ of registration blocks 464 and 465 ~~described as follows;~~ and

Beginning at the intersection of U.S. Highway 218 and U.S. Highway 14, Steele County; thence along U.S. Highway 14 to State Trunk Highway (STH) 13; thence along STH 13 to County State Aid Highway (CSAH) 15, Waseca County; thence along CSAH 15 to CSAH 4, Steele County; thence along CSAH 4 to CSAH 45; thence along CSAH 45 to the point of beginning; and

Beginning at the intersection of County State Aid Highway (CSAH) 12, Steele County and Interstate Highway 35 (I-35); thence along I-35 to U.S. Highway 14; thence along U.S. Highway 14 to CSAH 16; thence along CSAH 16 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 12, Steele County; thence CSAH 12 to the point of beginning; and

~~RRR.~~ PPP. wild turkey permit area 466-467 consists of registration ~~block~~ blocks 466 and 467 ~~and those portions of registration block 466 described as follows;~~

Beginning at the intersection of County State Aid Highway (CSAH) 29 and State Trunk Highway (STH) 22, Faribault County; thence along STH 22 to the South Boundary of the State; thence along the South Boundary of the State to STH 105; thence along STH 105 to Interstate 90 (I-90) in Austin; thence along I-90 to the point of beginning.

**6236.1060 TURKEY HUNT QUOTAS.**

Quotas on hunter numbers are established annually by the commissioner for each wild turkey permit area and time period. Information on the quotas may be obtained in the application and annual hunting regulations and as follows:

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## Expedited Emergency Rules

### NUMBER OF TURKEY LICENSES AVAILABLE BY WILD TURKEY PERMIT AREA 1998 SPRING WILD TURKEY PERMIT AREA QUOTAS

#### Time Period and Date

<u>Wild Turkey</u> <u>Permit</u> <u>Area Number</u>	<u>A</u> <u>4/15-</u> <u>4/19</u>	<u>B</u> <u>4/20-</u> <u>4/24</u>	<u>C</u> <u>4/25-</u> <u>4/29</u>	<u>D</u> <u>4/30-</u> <u>5/4</u>	<u>E</u> <u>5/5-</u> <u>5/9</u>	<u>F</u> <u>5/10-</u> <u>5/14</u>	<u>G</u> <u>5/15-</u> <u>5/19</u>
<u>225</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>
<u>226</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>
<u>227</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<u>228-236</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>
<u>235</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<u>337-338</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>339-462</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>
<u>341-342</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>
<u>343-347</u>	<u>175</u>	<u>175</u>	<u>175</u>	<u>175</u>	<u>175</u>	<u>175</u>	<u>175</u>
<u>344</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
<u>345-348</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>
<u>346</u>	<u>250</u>	<u>250</u>	<u>250</u>	<u>250</u>	<u>250</u>	<u>250</u>	<u>250</u>
<u>349</u>	<u>350</u>	<u>350</u>	<u>350</u>	<u>350</u>	<u>350</u>	<u>350</u>	<u>350</u>
<u>417</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>
<u>418</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<u>419</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<u>435</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>
<u>440</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>
<u>442</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>	<u>65</u>
<u>443</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>
<u>448-449-451</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>
<u>450</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>
<u>454-456-458</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>
<u>459</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
<u>461</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>	<u>35</u>
<u>463</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>
<u>464-465</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>466-467</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>TOTAL</u>	<u>1,999</u>	<u>1,999</u>	<u>1,999</u>	<u>1,999</u>	<u>1,999</u>	<u>1,999</u>	<u>1,999</u>

Grand total = 13,993

**EFFECTIVE PERIOD.** The emergency amendment to *Minnesota Rules*, part 6236.0600, subpart 4, expires December 31, 1998. After the emergency amendment expires, the permanent rule as it read prior to the amendment again takes effect, except as it may be amended by permanent rule. *Minnesota Rules*, part 6236.1060, expires December 31, 1998.

**Department of Transportation**

**Amended Uniform Traffic Control Devices Manual - Order No. 82843**

**WHEREAS**, the Commissioner of Transportation has adopted a manual (Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways, dated October 3, 1991) establishing a uniform system of traffic control devices for streets and highways of the State of Minnesota as required by *Minnesota Statutes*, Section 169.06, Subdivision 1; and

**WHEREAS**, said manual is being revised, to be adopted and distributed during calendar year 1998; and

**WHEREAS**, the Commissioner may authorize and adopt amendments to the Minnesota Manual of Uniform Traffic Control Devices.

**NOW, THEREFORE**, pursuant to authority vested in my office and as provided in *Minnesota Statutes*, Section 169.06, subd. 1 (1996), I do hereby adopt and prescribe the revisions as listed on the Record of Revisions or Additions as an amendment to the 1991 Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways.

This Order amends Commissioner's Order No. 77588, dated October 3, 1991 as amended by Commissioner's Order No. 78988, dated January 4, 1993, No. 79901 dated February 4, 1994, No. 80748 dated January 6, 1995, No. 80878 dated April 3, 1995, No. 81551 dated March 15, 1996 and as further amended by Commissioner's Order No. 82232, dated January 10, 1997.

RECORD OF REVISIONS OR ADDITIONS

REVISION NUMBER	DATE ISSUED	PAGES REVISED OR ADDED
7	1/98	i,ii,Contents, 1A-3, 2A-8, 2B-2,2B-6, 2B-30, 2B-31, 2B-32.1, 2C-i, 2C-8, 2C-17, 2C-18, 2C-21, 2C-22, 2C-23, 2C-24, 2D-i, 2D-ii, 2D-24,2D-25, 2D-27, 2D-28, 2D-31, 2D-32, 2D-37 thru 2D-42, 2F-34, 2F-37, 2F-38, 2G-1 thru 2G-4, 3A-i, 3A-2 thru 3A-5, 3B-14, 3B-15, 3D-3, Part IV in its entirety, 6C-4, 6C-8, 6F-13, 6F-20, 6F-32, 6F-43, 6F-48, 6F-49, Part 6K - The Field Manual (in its entirety), 8A-i, 8B-8, 8C-9, 9C-5, C-3 thru C-6, C-13, C-14, C- 25 Thru C-28, INDEX (in its entirety), and a new Metric Part VI Addendum.

Dated at St. Paul, Minnesota, this 2nd day of January, 1998

James N. Denn  
 Commissioner of Transportation

# Official Notices

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Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and mat-

## Minnesota State Agricultural Society

### Minnesota State Fair

#### Meeting Notice

The 139th annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held January 16, 17 and 18 at the Radisson South Hotel in Bloomington. The society's general business session is scheduled for 8 a.m. Sunday January 18 at the Radisson South, followed by a meeting of the society's board of managers.

Complete programs of all scheduled events will be available at the hotel.

## Department of Economic Security

### Workforce Preparation Branch

#### Request for Public Comment on the 1998 State Welfare-to-Work Plan

The Minnesota Department of Economic Security is seeking public comment on the 1998 State Welfare to Work Plan to be submitted to the United States Department of Labor.

The plan outlines Minnesota's strategy for implementation of the welfare to work program authorized by President Clinton on August 8, 1997. This program focuses on developing self-sufficiency strategies for hard to serve public assistance recipients.

Comments must be returned by January 26, 1998.

Interested parties wishing to obtain a copy of the plan are to contact:

Steve Erbes  
Office of Employment Transitions  
Workforce Preparation Branch  
Minnesota Department of Economic Security  
390 North Robert Street  
Saint Paul, MN 55101  
(612) 297-4841

## **Department of Employee Relations**

### **Announcement of Request for Information (RFI) from Potential Vendors of Health Care and Administrative Services**

The Minnesota Department of Employee Relations (DOER) is seeking information and input from potential vendors of health care and administrative services. DOER is the state agency which provides services to meet the human resource needs of state government. It administers the State Employees Group Insurance Project (SEGIP), which will purchase health care coverage for over 150,000 eligible state employees and their dependents this year.

The Request for Information (RFI) is part of a study being conducted jointly by DOER and labor organizations representing state employees to assess current SEGIP purchasing strategies and to develop possible alternatives. The RFI, which is preliminary and non-binding, is intended to solicit information and other input from health care delivery systems, licensed health insurance plans, physician groups, and hospitals and clinics that may potentially be interested in contracting with DOER. Input and feedback from the RFI will be considered in shaping DOER's health care purchasing strategies, and will alert DOER to the presence of potential vendors in the market.

Further information and copies of the Request for Information may be obtained by contacting:

David K. Haugen  
Minnesota Department of Employee Relations  
200 Centennial Building  
658 Cedar Street  
St. Paul, MN 55155  
Tel. 612-296-3159  
Fax. 612-296-5445  
E-mail: David.Haugen@state.mn.us

Responses to the RFI are due at the address or fax number above no later than 4:30 p.m., Friday, February 6, 1998.

## **Department of Finance**

### **Cash and Debt Management Division**

#### **Notice of Available Tax Exempt Bonding Authority**

**NOTICE IS HEREBY GIVEN** pursuant to *Minnesota Statute* 474A.14 that on January 1, 1998 the total sum of \$234,277,000 of tax exempt bonding authority was available for calendar year 1998. Of this amount, \$63,210,000 was available for the Small Issue Pool; \$59,196,000 was available for the Housing Pool; \$10,535,000 was available for the Public Facilities Pool; and \$101,336,000 was available for entitlement issuers.

Available tax exempt bonding authority for entitlement issuers in 1998 consists of \$15,802,000 for the City of Saint Paul; \$21,070,000 for the City of Minneapolis; \$53,929,000 for the Minnesota Housing Finance Agency; and \$10,535,000 for Dakota County. For further information please contact Mr. Lee Mehrkens at (612) 296-1700.

Wayne Simoneau  
Commissioner

## Official Notices

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### **Minnesota State Retirement System (MSRS) Public Employees Retirement Association (PERA) Teachers Retirement Association (TRA)**

#### **Notice of a Joint Board Meeting of the Minnesota State Retirement System, Teachers Retirement Association and Public Employees Retirement Association**

A Joint Board Meeting of the Minnesota State Retirement System (MSRS), Teachers Retirement Association (TRA), and Public Employees Retirement Association (PERA), will be held on Thursday, January 15, 1998, at noon in the offices of the PERA, 514 Saint Peter Street, Suite 200, Saint Paul, Minnesota.

### **Public Employees Retirement Association (PERA)**

#### **Notice of Meetings of the Public Employees Retirement Association's Finance Committee and Board of Trustees**

A meeting of the Finance Committee of the PERA Board of Trustees will be held on Tuesday, January 13, 1998, at 10:00 a.m. in the offices of the association, 514 Saint Peter Street, Suite 200, Saint Paul, Minnesota.

A meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, January 15, 1998, at 9:30 a.m. in the offices of the association.

## **Office of the Revisor of Statutes**

### **Notice of Publication of *Minnesota Rules 1997***

*Minnesota Rules 1997* is now available. This publication is based on *Minnesota Rules 1995* and incorporates compiled rules of state agencies adopted from September 5, 1995 through September 2, 1997. *Minnesota Rules 1997* may be purchased from Minnesota's Bookstore, Print Communications Division, Department of Administration, 117 University Avenue, St. Paul, MN 55155. The cost of the 13-volume set and its supplements is \$230. Individual volumes may be purchased for \$25 each while supplies are available. Orders must be prepaid.

## **Department of Public Safety**

### **Minnesota Auto Theft Prevention Program**

#### **Change of Notice of Meeting of the Board of Directors**

The Department of Public Safety, Minnesota Auto Theft Prevention Program, will hold its Board of Directors meeting on January 15, 1998 at 9:00 a.m. A previous notice in the *State Register*, Vol. 22, #24, Monday 15 December 1997 on page 1051 (22 S.R. 1051) had listed a meeting date of January 19, 1998, which was changed by the Board. The meeting will be held at the MATPP office located at 1110 Centre Pointe Curve, Suite 405, Mendota Heights, MN (Hwy 110 and Lexington Ave, west of Hwy 35W - south side of the GNB Technologies Bldg.). The meeting is open to the public. For more information you may contact the MATPP office at (612/405-6155).



## Department of Transportation

### State Aid for Local Transportation Division

#### Notice of Membership of the State Aid Rules Committee Established in 1997

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Transportation, Division of State Aid For Local Transportation, State Aid Rules Committee established in 1997 consists of the following membership: Freeborn County Commissioner Diane Landaas; Anoka County Commissioner Dennis Berg; Kandiyohi County Commissioner Dennis Peterson; Pennington County Commissioner Don Jensen; St. Louis County Commissioner Steve Raukar; Nicollet County Engineer Mike Wagner; Washington County Engineer Don Wisniewski; Mille Lacs County Engineer Dick Larson; Big Stone County Engineer Darrell Pettis; Mark Winson, City of Duluth; Ed Warm, City of St. Paul; Dave Sonnenberg, City of Minneapolis; Dave Halter, City of Grand Rapids; Mike Metso, City of Bemidji; John Dolentz, City of St. Cloud; Dan Edwards, City of Fergus Falls; Scott Erickson, City of Andover; Jon Erichson, City of Austin; Les Proper, City of New Brighton; Ken Saffert, City of Mankato; and Mel Odens, City of Willmar.

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## Professional, Technical & Consulting Contracts

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, and final submission date of completed contract proposal.

In accordance with *Minnesota Rules* Part 1230.1910, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of up to 6% preference in the evaluation of their proposal. For information regarding certification, call the Materials Management Helpline (612) 296-2600 or [TTY (612) 297-5353 and ask for 296-2600].

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## Office of the State Auditor

### Notice of Request for Proposals for Professional Consultant and Programmer Services to Develop a Software Program for Analysis of Performance Results of Public Pension Funds Investment Program

The Minnesota Office of the State Auditor (OSA) is soliciting proposals from vendors for professional consultant and programmer services to develop a software program to provide meaningful analysis of investment performance results of Minnesota's public pension funds to comply with *Minnesota Statutes* § 356.219. The consultant/programmer will identify a methodology for analyzing the investment performance of Minnesota pension funds which complies with the law and is acceptable to the OSA, produce a program accordingly, assist in answering technical questions, and provide programming services to analyze the investment information. Responses to this request for proposal will be used to select a vendor.

All interested vendors should contact the person named below by letter or telephone to request a full copy of the Request for Proposal:

Deno Howard  
MN Office of the State Auditor  
525 Park Street  
Suite 400  
St. Paul, MN 55103  
Telephone: (612) 297-3673  
Fax: (612) 282-5298

All proposals must be submitted on or before 3:00 P.M. Central Time, February 2, 1998 as specified in the Request for Proposal.  
NO PROPOSALS RECEIVED AFTER THAT DATE AND TIME WILL BE CONSIDERED.

## Professional, Technical & Consulting Contracts

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### Department of Human Services

#### Notice of Request for Proposals — Alternative Payment for Nursing Facility Services

1995 Laws of Minnesota, Chapter 207, Article 7, Section 32 (hereinafter *Minnesota Statutes* Section 256B.434) authorized the Commissioner of the Department of Human Services to establish a contractual alternative payment system as an alternative way to pay for nursing facility services under the Medical Assistance (MA) program. In order to implement this legislation, the Department established the "Nursing Home Contract Project." The purpose of the Project is to explore a contract-based reimbursement system as an alternative to the current cost-based system for reimbursement of nursing facility services under *Minnesota Statutes* Section 256B.431.

The 1997 Laws of Minnesota amended *Minnesota Statutes* Section 256B.434. Effective July 1, 1997, the Commissioner is required to issue a request for proposals (RFPs) from nursing homes to provide services on a contract basis at least twice annually. The Commissioner may select the number of proposals that can be adequately supported with state resources but will not contract with more than 50 facilities as part of this RFP.

The purpose of this RFP is to solicit proposals from eligible nursing facilities to enter into contracts with the Department to provide nursing facility services to MA recipients. Facilities selected to participate in this project will be eligible to contract with the Department for up to four years.

Requests for copies of the complete RFP, "Alternative Payment for Nursing Facility Services," should be directed to Maren Valley at 612/296-2666. The original and five (5) copies of the proposal in response to the RFP must be submitted to the Nursing Home Contract Project, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3836, no later than 4:00 p.m. on Friday, March 20, 1998.

The State of Minnesota reserves the right to reject any and all proposals submitted.

## Legislative Coordinating Commission

### Request for Bid for Financial Audits for Fiscal Years 1996 and 1997

The Minnesota Legislative Coordinating Commission is requesting proposals to audit the financial statements of the Commission for fiscal years ending June 30, 1996 and June 30, 1997. The audit is to be performed by an independent certified public accounting firm licensed to do business in the State of Minnesota.

The deadline for receipt of proposals is 4:00 p.m., February 4, 1998. Copies of the RFB are available from:

Minnesota Legislative Coordinating Commission  
Room 85 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1298  
(612) 296-1121  
Attention: Chad Thuet

## Department of Natural Resources

### Division of Parks and Recreation

#### Notice of Request for Proposal for Design and Construction of Interactive Exhibits in the Interpretive Center at Sibley State Park

**NOTICE IS HEREBY GIVEN** to request proposals to design and construct the wetlands natural history interactive exhibits for the Interpretive Center at Sibley State Park, New London, Minnesota. Last year the interactive exhibit concepts were produced. This project will write the text, produce the illustrations and photographic images, finalize the designs and create construction drawings, construct, deliver and install the low-tech interactive exhibits and header banners as described in the RFP Tasks. Proposals shall be based on exhibits to be completed and delivered to the Department of Natural Resources by December 15, 1998, or within 12 months from the date of project authorization. Proposals must be submitted by 4:30 p.m. February 25, 1998.

To submit proposals or for additional information, contact:

Robert Beck  
Parks and Recreation - Interpretive Services  
261 Highway 15 South  
New Ulm, MN 56073-8915  
507-3590-6062

## Office of Technology

#### Notice of Request for Proposal for Professional Services and Training for Information Resource Modeling

The Minnesota Office of Technology on behalf of all state agencies is soliciting proposals from qualified professional services and training providers for information resource modeling. This RFP is seeking vendors that provide professional services and training in object, data, process, event, object oriented and technology modeling.

This Request for Proposal does not obligate the State to complete the RFP process and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

A complete copy of the request for proposal may be obtained by calling or requesting a copy in writing at the following address or telephone number:

Greg Peterson  
Minnesota Office of Technology  
First National Bank Building  
332 Minnesota Street, Suite E1100  
St. Paul, MN 55101-1322  
Telephone: (612) 296-6397  
Fax: (612) 215-3877

All proposals must be submitted no later than 3:00 p.m. CST, on February 9, 1998. Late proposals will not be accepted.

# Non-State Public Bids, Contracts & Grants

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The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

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## Metropolitan Council

### Public Notice for Design-Build Statements Of Qualifications for the Blue Lake WWTP Thickening/Dewatering Facilities MCES - Project Number 910210

**NOTICE IS HEREBY GIVEN** that the Metropolitan Council (Council) is soliciting qualifications for Design/Builders interested in delivering thickening/dewatering facilities at the Blue Lake WWTP through a Design/Build delivery process. Interested Design/Builders will be required to submit Statements Of Qualifications. All shortlisted Design/Builders will also be requested to submit a proposal(s). Proposals will be evaluated based on life cycle cost data, technical merit, risk, and other factors in the best interest of the Council.

The proposed thickening/dewatering facilities shall process raw dewatered sewage solids using equipment provided by prequalified gravity belt thickener and dewatering centrifuge manufacturers. The project design year is 2020. Design/Builder shall be required to obtain permits, approvals and licenses. Substantial Completion of all facilities shall be within 780 days of Notice To Proceed.

The Blue Lake WWTP, located in Shakopee, MN, has an average flow of 27 mgd, provides secondary treatment using a conventional activated sludge process with nitrification, and produces approximately 25 dry tons per day (dtpd) of raw solids. The Council will be installing a vortex grit removal system prior to start-up of any thickening/dewatering facilities. The primary solids are currently thickened through a gravity thickening process, and waste activated sludge (WAS) is thickened using a gravity belt thickener. This project will replace the WAS thickening process with new gravity belt thickeners and add new centrifuges for dewatering thickened primary solids and WAS. It is projected that dewatered solids production in the year 2020 will be 13,400 dry tons per year (dtpy).

Request For Qualifications documents may be obtained from the Metropolitan Council, Attn: Jan Bevins, Mears Park Centre, 230 East 5th Street, St. Paul, MN 55101 by submitting a Letter of Interest.

A site tour of the Blue Lake WWTP will be available on Tuesday, January 20, 1998 beginning at 10:00 a.m. Those interested in the site tour are to meet in the Administration Building Conference Room at the Blue Lake WWTP, 6949 Highway 101, Shakopee, MN. A pre-Statement Of Qualifications submittal conference and general informational meeting will be held on Tuesday, January 20, 1998 at 1:00 p.m. at the Shakopee City Hall, 129 Holmes Street South, Shakopee, MN.

The tentative schedule for selecting a Design/Builder for this project is as follows:

Receive Letters of Interest	January 1998
Request For Qualifications issued	January 1998
Statement Of Qualifications received	Early February 1998
Shortlisted Design/Builders identified	Late February 1998
Request For Proposals issued	Early March 1998
Pre-proposal conference(s)	Late March 1998
Proposals due	April 1998
Evaluate and rank Design/Builders	June 1998
Negotiate final Agreement	July 1998
Notice To Proceed	August 1998

Direct inquiries to the Council's Project Manager, Bill Johnson at (612) 602-1168.