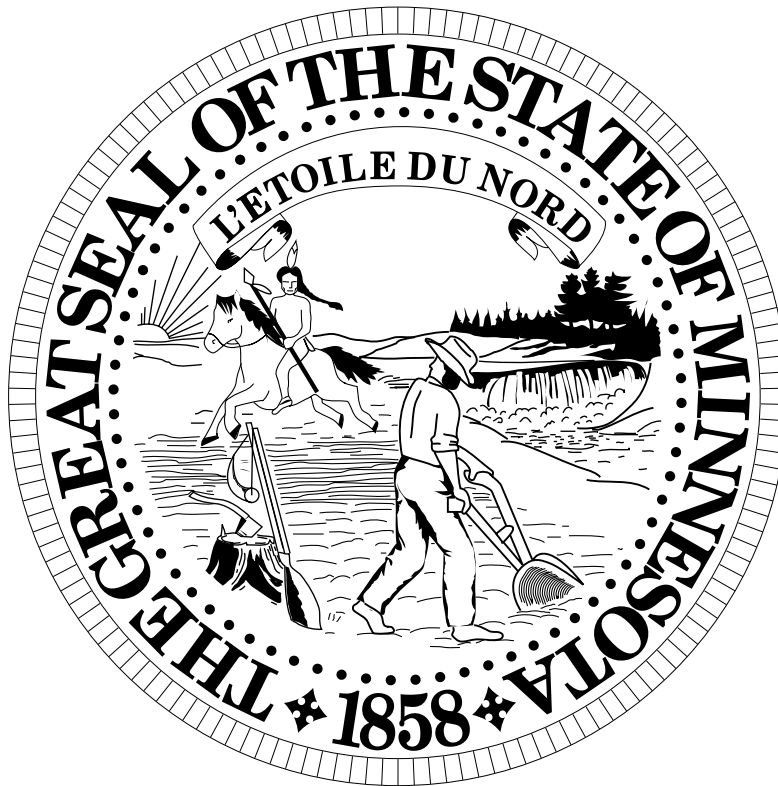


State of Minnesota

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, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes* § 14.46. The *State Register* contains:

- proposed, adopted, exempt, expedited emergency and withdrawn rules
- executive orders of the governor
- appointments
- proclamations and commendations
- commissioners' orders
- revenue notices
- official notices
- state grants and loans
- contracts for professional, technical and consulting services
- non-state public bids, contracts and grants
- certificates of assumed name, registration of insignia and marks

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Vol. 26 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
#34	Monday 11 February	Noon Wednesday 30 January	Noon Tuesday 5 February
#35	TUESDAY 19 FEBRUARY	Noon Wednesday 6 February	Noon Tuesday 12 February
#36	Monday 25 February	Noon Wednesday 13 February	Noon Tuesday 19 February
#37	Monday 4 March	Noon Wednesday 20 February	Noon Tuesday 26 February

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Minnesota Judicial Center, Room 135, 25 Constitution Ave., St. Paul, MN 55155

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Commodity, Service, and Construction contracts are published Tuesday and Friday in a bulletin, the **Solicitation Announcements**. Award results are available from the Materials Management Helpline (651) 296-2600. **Website:** www.mmd.admin.state.mn.us

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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 1999 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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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 Amendments to the Wetland Conservation Act Rules; *Minnesota Rules*, Chapter 8420

Introduction. The Minnesota 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 by 4:30 p.m. on March 13, 2002, a public hearing will be held in the Bell and Alexander Room, St. Cloud Civic Center, 10 – 4th Ave. South, St. Cloud, Minnesota, 56301 (**phone** number 1-800-450-7272), starting at 1:30 p.m. on March 26, 2002 and continuing until those present have been heard, and reconvening in the same location at 7:00 p.m. on March 26, 2002. 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 March 13, 2002 and before March 26, 2002.

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 at MN BWSR, 1 West Water Street, Suite 200, St. Paul, MN 55107, **phone:** (651) 297-3432, **fax:** (651) 297-5615, **email:** john.jaschke@bwsr.state.mn.us

Subject of Rules and Statutory Authority. The proposed rules are about amendments to the Wetland Conservation Act (WCA) rules. The BWSR is proposing rule amendments that will convert existing temporary exempt rules to permanent rules. The proposed rules incorporate legislative changes from *Laws of 2001*, Chapter 146, *Laws of 2000*, Chapter 382, and *Laws of 1998*, Chapter 312. The proposed rules make additional changes to clarify, simplify and improve the effectiveness of the rules. The statutory authority to adopt the rules is *Minnesota Statutes 2000*, sections 103B.3355 and 103G.2242. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. Also, a free copy of the rules is available upon request from the BWSR by contacting Debbie Anderson at 1 West Water Street, Suite 200, St. Paul, MN 55107, **phone:** (651) 282-9960, **fax:** (651) 297-5615, **email:** debbie.anderson@bwsr.state.mn.us

Comments. You have until 4:30 p.m. on March 13, 2002, 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

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

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 March 13, 2002. 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 when 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 valid 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 March 26, 2002, 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 (651) 297-3432 after March 13, 2002, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid 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 Richard C. Luis is assigned to conduct the hearing. Judge Richard C. Luis can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 349-2542 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 rebuttal 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 rebuttal 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 the agency.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **phone:** (651) 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 stated above.

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

Dated: 28 January 2002

Name: Ronald D. Harnack
Title: Executive Director

8420.0100 PURPOSE.

This chapter implements the Wetland Conservation Act of 1991, *Laws 1991*, chapter 354, as amended by *Laws 1993*, chapter 175; *Laws 1994*, chapter 627; ~~and~~ *Laws 1996*, chapter 462; *Laws 2000*, chapter 382; and *Laws 2001*, chapter 146. 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. 1999]

8420.0102 INTRODUCTION.

The Wetland Conservation Act achieves the purpose in part 8420.0100 by requiring persons proposing to impact a wetland by draining, excavating, 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 at least 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~~ including:

[For text of items A to F, see M.R. 1999]

G. other functions, values, and public uses as identified in board-approved wetland evaluation methods.

The board shall maintain a publicly available list of preapproved wetland evaluation methods.

8420.0105 SCOPE.

Wetlands must not be drained, excavated, or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value. This chapter regulates excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if excavation includes filling or draining or results in conversion to nonwetland.

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.~~

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

A. for projects affecting public waters wetlands, and for public transportation projects affecting the wetland areas of public waters, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit shall make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption determinations; or

B. for projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption determination if a public waters work permit is required and the commissioner includes the provisions of this chapter in the public waters work permit.

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 may be used as a means to determine compliance with the standards for physical alterations of wetlands pursuant to chapter 7050 if the standards contained in this chapter are determined by the board and the commissioner of the pollution control agency to meet or exceed those in chapter 7050 and the local government unit agrees to implement them.

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, excavating, 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 subps 1 to 1b, see M.R. 1999]

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

Subp. 3. **Activity.** "Activity" means draining or filling a wetland, wholly or partially, or excavating in permanently and semi-permanently flooded areas of type 3, 4, or 5 wetlands.

Subp. 4. **Agricultural land.** "Agricultural land," means land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farmyards; associated building sites; and public and private drainage systems and field roads located on any of these lands. "Agricultural land" must be used principally for the cultivation or production of plants or farm animals and includes former agricultural land that is presently enrolled in conservation easements.

Subp. 5. [Repealed, 22 SR 1877]

Subp. 5a. **Applicant.** "Applicant" is a person, corporation, government agency, or organization that applies for an exemption, no-loss, wetland boundary, wetland type, replacement plan, or banking plan determination or equivalent, or someone who makes an application to withdraw wetland banking credits from the wetland bank.

[For text of subps 6 to 10, see M.R. 1999]

Subp. 10a. **Contractor.** "Contractor" means an individual, business, or other organization providing a product or service to a landowner or the landowner's agent.

[For text of subp 11, see M.R. 1999]

Subp. 12. **Day.** "Day" means working days when used in a time period of 15 days or less and a calendar days when used in a time period greater than 15 days day unless specified otherwise. The day of the event shall not be used in counting any time period of time.

Subp. 13. [Repealed, 22 SR 1877]

Subp. 13a. Degraded wetland. “Degraded wetland” means a wetland that provides minimal wetland function and value due to human activities such as drainage, diversion of watershed, filling, excavating, pollutant runoff, and vegetative or adjacent upland manipulation.

[For text of subps 14 to 16, see M.R. 1999]

Subp. 17. Excavation. “Excavation” means the displacement or removal of ~~the~~ substrate, sediment, or other materials by any method.

Subp. 18. Fill. “Fill” means any solid material added to or redeposited in a wetland that would alter its cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. It does not include posts and pilings for linear projects such as bridges, elevated walkways, or powerline structures, or structures traditionally built on pilings such as docks and boathouses. It does include posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland’s functions and values, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, ~~multifamily~~ housing projects, and similar structures. It does not include slash or woody vegetation, if the slash or woody vegetation originated from vegetation growing in the wetland and does not impair the flow or circulation of water or the reach of the wetland.

[For text of subps 18a to 20a, see M.R. 1999]

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

[For text of subps 21 and 22, see M.R. 1999]

Subp. 23. Impact. “Impact” means a loss in the quantity, quality, or biological diversity of a wetland caused by draining ~~or~~ filling, ~~or excavating.~~

Subp. 24. Impacted wetland. “Impacted wetland” means a wetland that has been ~~drained or filled~~, partially or wholly, ~~and is subject to replacement~~ subjected to an impact.

[For text of subp 25, see M.R. 1999]

Subp. 26. [Repealed, 22 SR 1877]

Subp. 27. [Repealed, 22 SR 1877]

[For text of subp 28, see M.R. 1999]

Subp. 29. Landowner. “Landowner” means a person or entity having the rights necessary to drain, excavate, or fill a wetland, or to establish and maintain a replacement or banked wetland. Typically, the landowner is a fee title owner or a holder of an easement, license, lease, or rental agreement providing the necessary rights. The right must not be limited by a lien or other encumbrance that could override the obligations assumed with the replacement or banking of a wetland.

[For text of subps 29a and 30, see M.R. 1999]

Subp. 30a. Local water plan. “Local water plan” means either a watershed plan pursuant to Minnesota Statutes, sections 103B.201 to 103B.255, a comprehensive local water management plan pursuant to Minnesota Statutes, sections 103B.301 to 103B.355, or a watershed management plan pursuant to Minnesota Statutes, section 103D.401.

[For text of subp 31, see M.R. 1999]

Subp. 31a. Minor watershed. “Minor watershed” means one of the 5,600 minor watersheds established by the Minnesota Department of Natural Resources for the “1979 Watershed Mapping Project” pursuant to Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

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

Subp. 31c. Native vegetation. “Native vegetation” means plant species that are indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity.

Subp. 32. Nondegraded wetland. “Nondegraded wetland” means a wetland that has not been ~~partially drained or filled~~ degraded by human activities.

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Subp. 32a. **Noninvasive vegetation.** “Noninvasive vegetation” means plant species that do not typically invade or colonize existing, stable plant communities.

Subp. 32b. **Nonwetland.** “Nonwetland” means upland areas or previously converted areas that do not meet the criteria for classification as a jurisdictional wetland using the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and deepwater habitats identified using “Classification of Wetlands and Deepwater Habitats of the United States” (Cowardin et al., 1979 edition).

Subp. 32c. **On site.** “On site” means within or directly adjacent to a project.

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

[For text of subp 34, see M.R. 1999]

Subp. 34a. **Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland.** “Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland” means the portion of a type 3, 4, or 5 wetland below the level where the water has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

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

[For text of subps 35 to 37, see M.R. 1999]

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 required above a 1:1 ratio.

[For text of subp 38, see M.R. 1999]

Subp. 39. **Public waters wetlands.** “Public waters wetlands” means ~~all types 3, 4, and 5 public waters~~ 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 chapter 6115.

Subp. 39a. **Public waters.** “Public waters” means public waters as defined in part 6115.0170.

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, 8420.0541, or the equivalent, to replace wetland area or public values of wetland functions lost at an impacted wetland.

Subp. 40a. **Responsible party.** “Responsible party” means an individual, business, or other organization causing the draining, excavation, or filling of wetlands on the property of another, with or without the landowner’s permission or approval.

Subp. 41. **Restoration.** “Restoration” means reestablishment of an area that was historically wetlands ~~but currently provides no or minimal wetland functions due to manmade alteration such as filling or drainage~~ or remains as a degraded wetland.

[For text of subps 42 and 43, see M.R. 1999]

Subp. 44. [See repealer.]

[For text of subps 44a to 45, see M.R. 1999]

[For text of subp 46, see M.R. 1999]

Subp. 47. [Repealed, 22 SR 1877]

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

Subp. 47b. **Structure.** “Structure” means any object erected or placed in, under, over, or anchored or attached to, a wetland area.

[For text of subp 48, see M.R. 1999]

Subp. 49. **Utility.** “Utility” means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, petroleum products, electricity, telephone, or radio service or communications.

[For text of subps 50 and 51, see M.R. 1999]

Subp. 51a. **Wetland banking credits.** “Wetland banking credits” means acres or parts of acres of restored or created wetland or adjacent upland buffer described by type and topographic setting, or areas as described in ~~part parts~~ 8420.0540, ~~subpart 2 and~~ 8420.0541, 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 and B, see M.R. 1999]

C. Wetlands does not include public waters wetlands and public waters ~~that are designated on the public waters inventory maps prepared unless reclassified as wetlands by the commissioner~~ under *Minnesota Statutes*, section 103G.201.

[For text of item D, see M.R. 1999]

[For text of subps 53 and 54, see M.R. 1999]

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. “Classification of Wetlands and Deepwater Habitats of the United States” (Cowardin et al., 1979 edition) is a separate, parallel wetland typing that may be used to characterize components of a wetland.

[For text of items A to H, see M.R. 1999]

8420.0112 INCORPORATION BY REFERENCE.

This chapter incorporates by reference the following documents and any subsequent updates, addenda, or derivations related to them, as approved by the board:

[For text of items A to E, see M.R. 1999]

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

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

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

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

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

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

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

~~H. Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982).~~

~~I. Vegetation in Restored and Created Wetlands, Minnesota Board of Water and Soil Resources, September 2000.~~

~~J. Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000.~~

~~K. Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers. Minnesota Forest Resources Council, St. Paul, 1999.~~

~~L. Minnesota Construction Site Erosion and Sediment Control Planning Handbook. Minnesota Board of Water and Soil Resources and the Association of Metropolitan Soil and Water Conservation Districts, St. Paul, 1988.~~

~~M. Agriculture and Water Quality: Best Management Practices for Minnesota, Minnesota Pollution Control Agency, St. Paul, 1991.~~

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N. Storm Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm Water and Snow Melt Runoff on Wetlands, Minnesota Storm Water Advisory Group, 1997.

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

8420.0115 SCOPE OF EXEMPTION STANDARDS.

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

Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on ~~minimizing~~ determining whether a proposed project is eligible for an exemption and to evaluate alternatives to avoid or minimize 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, excavation, or filling.

~~Nonexempt~~ Wetlands ~~cannot~~ may not be partially drained, excavated, 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. Exemptions may not be combined on a wetland that is impacted by a project.

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

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

- A. appropriate erosion control measures are taken to prevent sedimentation of the water;
- B. the activity does not block fish activity in a watercourse; and
- C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices as listed in part 8420.0112, 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; or 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; or 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;

[For text of items C to G, see M.R. 1999]

H. agricultural activities that are:

(1) in a wetland that is on agricultural land annually enrolled in or determined to be eligible for benefits under 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, Public Law Number 104-127; or

(2) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency. The approved conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards shall take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. This exemption may be applied to agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act Farm Program as long as wetlands are not drained, excavated, 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. is:

(a) allowed under the other exemptions in this part;

(b) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed; or

(c) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions as supported by documentation from the United States Department of Agriculture may which must be used included 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.**

[For text of items A and B, see M.R. 1999]

C. A replacement plan is not required for draining, excavating, 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 conducted or authorized by a public drainage authority pursuant to Minnesota Statutes, chapter 103E.

D. A replacement plan is not required for draining, excavating, 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, excavating, 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.

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[For text of item F, see M.R. 1999]

G. Wetlands and public waters of all types that ~~would~~ could be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve program established under *Minnesota Statutes*, section 103F.516. The board 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 ~~activities described in items A and B.~~

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 section 404 of the federal Clean Water Act, *United States Code*, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, *United States Code*, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by the board of water and soil resources, the department of agriculture, the department of natural resources, and the pollution control agency.~~

[For text of subp 4, see M.R. 1999]

Subp. 5. **Incidental wetlands.** A replacement plan for wetlands is not required for activities in a wetland areas 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 related 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~~ Wetland areas may be drained, excavated, 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~~ replacement process that may, over time, take on wetland characteristics, are also exempt.

[For text of subp 6, see M.R. 1999]

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

[For text of item A, see M.R. 1999]

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, or building; 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.

[For text of subp 8, see M.R. 1999]

Subp. 9. **De minimis.**

A. Except as provided in items B ~~to D~~ and C, a replacement plan for wetlands is not required for draining, excavating, 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 and that are not fringe areas of type 3, 4, or 5 wetlands 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 and that are not fringe areas of type 3, 4, or 5 wetlands 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 and that are not fringe areas of type 3, 4, or 5 wetlands 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 not a type 3, 4, or 5 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 proposed project impact area and the cumulative area of the landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:

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

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

(3) 400 square feet.

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

~~E. For purposes of this subpart, for wetlands greater than 40 acres, the wetland type may be determined to be the wetland type with the deepest water regime within the wetland and within 1,000 feet of the impact. 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. excavation or the associated deposition of spoil ~~resulting from excavation~~ within a wetland for a wildlife habitat improvement project, if:

(1) the area of deposition, and excavation if within the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded with native, noninvasive species 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 technical evaluation panel using the "Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000" or similar criteria approved by the board; or

B. duck blinds.

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

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. Determinations of local government unit. The local government unit responsible for making exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans shall be determined according to items A to ~~E~~ D.

[For text of items A and B, see M.R. 1999]

C. If the activity in a wetland is located in two jurisdictions, the local government unit ~~shall be~~ is 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~~ is 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.

D. In those cases where an activity will occur on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land.

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

Notwithstanding items A to ~~E~~ D, 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, and for projects affecting calcareous fens.

Subp. 2. Local government unit duties.

A. A local government unit must provide knowledgeable and trained staff to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in part 8420.0260 or take other appropriate legal action to assure proper implementation and compliance with this chapter. The board may establish standards and requirements for training, experience, and certification.

B. The local government unit may place the decision authority for exemption, no-loss, wetland boundary and type, replacement plan, and wetland banking determinations with local government unit staff according to procedures it establishes. For final determinations made by staff, the local government unit must establish a local appeal process that includes a public hearing before appointed or elected officials.

C. The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing this chapter and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

8420.0210 EXEMPTION DETERMINATIONS.

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

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

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed, including proof of the requisite property rights to do the activity. The local government unit may evaluate evidence for an exemption without making a determination.

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

The local government unit decision shall be based on the exemptions standards in part 8420.0122. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in Minnesota Statutes, section 15.99, subdivision 3, paragraph (f). The local government unit decision must be ~~mailed~~ sent 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 working days of the decision.

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, including proof of the requisite property rights to do the activity. The local government unit may evaluate evidence for a no-loss claim without making a determination.

~~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, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in *Minnesota Statutes*, section 15.99, subdivision 3, paragraph (f). The local government unit decision must be ~~mailed~~ sent 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 working days of the decision.

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

- A. the work will not ~~drain or fill~~ impact a wetland;
- B. the work is limited to removal of debris such as trees, logs, stumps, and trash, provided the removal does not alter the original cross-section of the wetland;
- ~~B. C.~~ water level management activities will not result in the conversion of a wetland to another land use;
- ~~C. D.~~ the activities are in a surface impoundment for containment of fossil fuel combustion waste material or water retention, and are not part of a compensatory wetland mitigation program treatment; or
- ~~D. E.~~ 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, fish and wildlife habitat restoration or improvement using guidance in part 8420.0112, item J, or repair and maintenance of earthen containment structures;
- F. the activity is limited to excavation and removal of deposited sediment in constructed stormwater management basins or wetlands that are presently utilized as stormwater management basins, or to excavation and removal of contaminated substrate, and the excavated area is stabilized so as to prevent water quality degradation and the excavation is limited to the minimum dimensions necessary for achieving the desired purpose; or
- G. the project is an impact rectification activity listed in part 8420.0520, subpart 5.

8420.0225 WETLAND BOUNDARY OR TYPE DETERMINATIONS.

A. A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.

B. A local government unit that receives an application under item A may seek the advice of the technical evaluation panel and, if necessary, expand the technical evaluation panel.

C. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in *Minnesota Statutes*, section 15.99, subdivision 3, paragraph (f). Within ten working days of the decision, the local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

D. The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

8420.0230 REPLACEMENT PLAN DETERMINATIONS.

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

Within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must ~~mail~~ send 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 working days of receipt of an application for approval of a replacement plan for an activity affecting 10,000 square feet or more of total wetland impacts, the local government unit must ~~mail~~ send a copy of the application and an invitation to submit comments to members of the technical evaluation panel; the watershed district or water management organization if there is one; the commissioner of natural resources and individual members of the public who request a copy. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The comment period must be 15 days or more. The project notification must state when the comment period ends.

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

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

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

Subp. 2. **Decision.** The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the technical evaluation panel's 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 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, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in Minnesota Statutes, section 15.99, subdivision 3, paragraph (f). 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 sent~~ to the landowner within ten working days of the decision. A summary of the local government unit decision must be ~~mailed sent~~ within ten working 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 at least 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 wetland management appointed by the local government unit. ~~One member selected by~~ For projects affecting public waters or public waters wetlands or affecting wetlands adjacent to the public waters or public waters wetlands, the technical evaluation panel shall also include a technical professional employee of the department of natural resources. For purposes of this section, "adjacent" means within the shoreland wetland protection zone or 1,000 feet, whichever is less. The local government unit shall ~~act as the contact person and coordinator for~~ coordinate the panel.

Two members of the panel must be knowledgeable and trained in applying methodologies of the “United States Army Corps of Engineers Wetland Delineation Manual” (January 1987), “Wetlands of the United States” (United States Fish and Wildlife Service Circular 39, 1971 edition), and “Classification of Wetlands and Deepwater Habitats of the United States” (Cowardin, et al., 1979 edition), ~~and including updates, supplementary guidance, or replacements of these methods provided by the board.~~ The panel shall also be knowledgeable and trained in evaluation of wetland functions and the resulting public values. The technical evaluation panel may invite additional ~~wetland experts~~ expertise to help the panel in its work.

The panel shall make technical ~~determinations on questions of~~ findings and recommendations regarding wetland functions and the resulting public values, location, size, and type for replacement plans, ~~exemption and wetland banking plans and exemption, no-loss requests, avoidance and minimization wetland boundary or type, and sequencing requests,~~ and for comprehensive wetland protection and management plans and wetland ordinances, 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 wetland banking plans and exemption, no-loss, wetland boundary or type, and sequencing requests, and recommend to the local government unit either approval, approval with changes or conditions, or rejection. When a technical evaluation panel is called, the local government unit must consider the recommendation of the technical evaluation panel in its approval or denial of a plan or determination. The panel shall make no ~~determinations~~ findings or recommendations without at least one member having made an on-site inspection. Panel ~~determinations~~ findings and recommendations must be documented and endorsed by ~~at least two~~ a majority of the ~~three~~ members.

Applicants for replacement plans, wetland banking plans and exemption, no-loss, and wetland boundary or type, and sequencing determinations must cooperate in providing local government unit staff and members of the technical evaluation panel and their designated experts with access to proposed project sites for investigation. Such investigations shall be preceded by notice to the landowner or designated agent, unless prior approval has been granted. If an applicant refuses to allow access, the local government unit may deny an application.

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~~ without calling 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 APPEALS.

Subpart 1. ~~Appeal of replacement plan, banking plan, exemption, and no-loss~~ local government unit decisions. The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, public road project notice, exemption, ~~or~~ no-loss, or wetland boundary or type request becomes final if not appealed to the board within ~~45~~ 30 days after the date on which the decision is mailed to those required to receive notice of the decision. This subpart applies to those determinations which are made under comprehensive wetland protection and management plans.

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

Appeal is effective upon mailing of the petition and payment of a nonrefundable filing fee of \$200 to the board with evidence that a copy of the petition has been mailed to the local government unit. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. Subsequent to receipt of a petition, the local government unit may require the petitioner to post a letter of credit, cashier’s check, or cash in an amount not to exceed \$500 per appeal. The amount posted must be returned to the petitioner unless there is a finding under subpart 3 that the appeal is meritless, trivial, or brought solely for the purposes of delay. The local government unit shall then mail a copy of the petition to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

Subp. 2. [Repealed, 22 SR 1877]

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Proposed Rules

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 board or its executive director may stay the local government unit decision until the appeal is resolved.

The board or its executive director may remand the appealed decision back to the local government unit if the petitioner has not exhausted all local administrative remedies such as a local government unit public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, the local government unit must make a decision within 60 days unless the remand order, or a subsequent order, specifies a longer period.

After granting the petition, the appeal will shall be heard by the dispute resolution committee and decided by the board within 60 days after ~~granting the petition~~ the filing of the local government unit's record, submittal of the written briefs for the appeal, and the hearing by the dispute resolution committee. 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.

The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

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.

[For text of subp 4, see M.R. 1999]

Subp. 5. [See repealer.]

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

~~By January 1, 1994, A.~~ Each local government unit of the state, except tribal lands, shall acknowledge, in writing, 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 shall~~ be given written notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, wetland boundary, wetland type, no-loss, replacement plan, and banking determinations. The board ~~will~~ shall end the moratorium within the 60 days upon written 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 a written~~ 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.

B. 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, public road project notice reviews, wetland boundary, wetland type, or banking determinations, or if the local government unit does not have knowledgeable and trained staff with expertise in wetland management, the board shall notify the local government unit in writing of its concerns. The local government unit shall respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's written response, or none is received, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. The board may invite comments from other local governments or state and federal agencies. ~~If it is determined~~ the board determines at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice shall explain the reason for the action.

C. 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 declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

8420.0290 ENFORCEMENT PROCEDURES.

Subpart 1. **Enforcing Enforcement authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

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, excavation, 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 or involving a determination stayed by the board pursuant to part 8420.0250.

A cease and desist order must not be issued if the landowner has a valid ~~certificate of exemption or~~ no-loss, or replacement plan determination from the local government unit or a completed and submitted public road project notification that has not been stayed, remanded, or reversed on appeal under provisions of part 8420.0250, or has sufficient evidence to support an exemption or no-loss determination. ~~Otherwise:~~

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

~~B. the order may be withheld to give the landowner time to produce the evidence required by part 8420.0122 to the enforcement authority of qualification for an exemption or no-loss determination; or~~

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

The enforcement authority shall advise the landowner that the landowner's written application, if any, for an exemption ~~or~~ no-loss, or replacement plan determination, should be made immediately to the local government unit and that whatever drain ~~and~~ excavation, or fill work ~~the landowner that has been 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, or replacement plan determination is denied or reversed on appeal.

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, or replacement plan 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 shall make the determination in accordance with parts 8420.0210 to 8420.0230.~~

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

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

Subp. 3. **Restoration and replacement orders.** The enforcement authority shall issue a restoration order or replacement order when:

~~A. the drain, excavation, or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek apply for an exemption, replacement plan, or no-loss determination within three weeks; or~~

~~B. the local government unit grants the application but it is reversed on appeal; or~~

~~C. the local government unit denies the application.~~

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Proposed Rules

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. ~~Restoration shall be ordered 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 not possible or prudent.~~ 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 or responsible party.

Subp. 3a. Contents of order. ~~The A~~ restoration order must specify ~~a date~~ dates by which the landowner or responsible party 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 complete replacement plan application to the local government unit.

If the replacement plan application is denied, the landowner or responsible party shall restore the wetland as specified in the order.

~~The restoration order shall state that it will be canceled when rescinded if the landowner or responsible party obtains a certificate of an after-the-fact replacement plan, exemption, or no-loss determination from the local government unit, or a certificate that replacement has been completed according to an approved replacement plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order that is not reversed on appeal.~~

A replacement order must specify a date by which the landowner or responsible party must submit a replacement plan to the local government unit and a subsequent date by which the landowner or responsible party must replace the wetland according to the approved replacement plan and obtain a certificate of satisfactory replacement from the soil and water conservation district.

Subp. 3b. Enforcement authority orders. If the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, determines that restoration will not restore all the loss caused by the drain, excavation, 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 or responsible party to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner or responsible party must restore the wetland ~~in a manner determined by the soil and water conservation district as ordered.~~

Each cease and desist, restoration, and replacement order shall ~~tell the landowner~~ state 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 evaluation 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 or responsible party must follow the replacement plan process in subpart 4 and parts 8420.0500 to 8420.0630 ~~unless the court orders otherwise.~~

Subp. 3c. Appeals of replacement and restoration orders. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director shall review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration order until the appeal is resolved.

Subp. 4. After-the-fact replacement. If a landowner or responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland, the local government unit ~~may~~ shall require the landowner or responsible party to replace the impacted wetland at a ratio ~~not to exceed~~ twice the replacement ratio otherwise required, ~~unless the local government unit and enforcement authority concur that an increased ratio is not required.~~

Subp. 5. Misdemeanor. A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

Subp. 6. Contractor's responsibility when work drains, excavates, or fills wetlands.

A. An agent or employee of another may not drain, excavate, or fill a wetland, wholly or partially, unless the agent or employee has:

(1) obtained a signed statement from the landowner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and

(2) mailed a copy of the statement to the local government unit with jurisdiction over the wetland.

B. Work in violation of this part is a misdemeanor.

C. The board shall develop a form to be distributed to contractor's associations, local government units, and soil and water conservation districts to comply with this part. The form must include:

- (1) a listing of the activities for which a replacement plan is required;
- (2) a description of the penalties for violating *Minnesota Statutes*, sections 103G.2212 to 103G.237;
- (3) the telephone number for information on the responsible local government unit;
- (4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and
- (5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

8420.0300 MINING.

Wetlands may not be drained, excavated, 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, excavating, or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.0122.

[For text of item A, see M.R. 1999]

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

(1) no draining, excavating, or filling activities shall be conducted within wetlands for which these activities were approved but not initiated before July 1, 1993, until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan shall meet the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630;

[For text of subitems (2) and (3), see M.R. 1999]

[For text of item C, see M.R. 1999]

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

[For text of item E, see M.R. 1999]

8420.0350 HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. **High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the ~~counties that have lost less than 50 percent or more of their presettlement wetland base areas~~, which are those listed in part ~~8420.0540~~ 8420.0544, ~~subpart 5~~, item B.

In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

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

[For text of items A and B, see M.R. 1999]

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)~~ at a minimum those items listed in part 8420.0103.

~~(1) Land use and cover types. Wetlands located in watersheds having a high proportion of cultivated land, developed areas, or other intensive land use are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with high proportions of intensive land use should be considered as priority preservation and restoration areas.~~

~~(2) Wetland and watershed ratio. Wetlands located in watersheds having a low proportion of wetlands relative to the size of the watershed are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with a low wetland and watershed ratio should be considered as priority preservation and restoration areas.~~

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~~(3) Soil erosion rates. Wetlands located in watersheds where erosion rates are high are likely to have high value for water quality. Watersheds with high erosion rates should be considered as priority preservation and restoration areas.~~

~~(4) Watershed gradient. Wetlands in watersheds where the difference between the highest and lowest points of the watershed is great are likely to have high value for flood water retention and water quality. Watersheds with a high gradient should be considered as priority preservation and restoration areas.~~

~~(5) Surface water retention. Wetlands in watersheds where direct runoff is high are likely to have high value for flood water retention and water quality. Watersheds with high levels of direct runoff should be considered as high priority preservation and restoration areas.~~

~~(6) Soil fertility. Wetlands in watersheds where soil fertility is high are likely to have high value for wildlife habitat and commercial uses. Watersheds with high soil fertility should be considered as high priority preservation and restoration areas.~~

~~(7) Geology. Wetlands in watersheds with high subsurface permeability are likely to have high value for groundwater recharge and water quality. Watersheds with high subsurface permeability should be considered as high priority preservation and restoration areas.~~

~~(8) Wetland complexes. Wetlands in watersheds where a diversity of wetland types and sizes are or were historically present are likely to have high value for public recreation. Watersheds with an existing or historical high diversity of wetland types should be considered as priority preservation and restoration areas.~~

~~(9) Proximity to population centers. Wetlands in watersheds that are close to population centers are likely to have high value for water quality, flood water retention, public recreation, and commercial uses. Watersheds near population centers should be considered as high priority preservation and restoration areas.~~

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

~~(11) Significant wildlife use. Wetlands in watersheds with current or historical records of use by significant numbers or species of wildlife or fish are likely to have high value for public recreation and commercial uses. Watersheds with records of significant fish or wildlife use should be considered as high priority preservation and restoration areas.~~

D. The board ~~will~~ shall review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in ~~item C~~ subpart 1 become high priority regions with board approval.

8420.0400 WETLAND PRESERVATION AREAS.

Subpart 1. **Purpose.** Wetlands located in areas that are both high priority regions and high priority areas as identified in part 8420.0350 are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax.

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, 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 or watershed district review of application.** The county or watershed district 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 or watershed district may limit or reject additional upland proposed to be included according to standards the county establishes.

The county or watershed district 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 or watershed district may approve it and mark the date of approval on the application. The county or watershed district shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Within five working days of approval of the application, the county or watershed district 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 or watershed district 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 or watershed district shall also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas are subject to *Minnesota Statutes*, sections 103F.612 to 103F.616, and the property tax provisions of *Minnesota Statutes*, section 272.02, subdivision ~~1, clause (10)~~ 11.

[For text of subp 5, see M.R. 1999]

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

[For text of subp 7, see M.R. 1999]

8420.0505 PREVIOUSLY APPROVED ~~REPLACEMENT PLANS DETERMINATIONS.~~

Replacement ~~plans plan, exemption, public road project notification, wetland boundary, wetland type, and no-loss determinations~~ may be completed under the laws, rules, conditions, and guidelines in effect when they were approved.

8420.0510 REPLACEMENT PLAN PROCEDURES.

Subpart 1. **Generally.** No person shall drain, excavate in the permanent or semipermanently flooded areas of type 3, 4, or 5 wetlands, or fill a wetland, wholly or partially, or otherwise convert wetlands to nonwetlands without first having a wetland ~~value~~ replacement plan or other determination 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 8420.0122 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 subps 2 and 3, see M.R. 1999]

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. 1999]

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

Exceptions to this part include wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9.

Subp. 2. **Application options.** An applicant may either submit the information required for sequencing analysis as part ~~the application for replacement plan approval~~ a replacement plan application or apply for a preliminary sequencing determination from the local government unit before preparing a replacement plan. The local government unit may request additional information needed to make a determination. For projects impacting wetland areas less than 10,000 square feet more than the de minimis amount listed in part 8420.0122, subpart 9, item A, the local government unit may provide an on-site sequencing determination without written documentation from the applicant.

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

A. Avoidance must be required when indicated by part ~~8420.0540, subpart 9~~ 8420.0548.

B. Wetland dependence determination:

[For text of subitems (1) and (2), see M.R. 1999]

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; to avoid wetland impacts. ~~One of which~~ may be the no-build alternative, that would avoid impacts to wetlands, ~~except that.~~ For projects that repair or rehabilitation projects on rehabilitate existing infrastructure, only one alternative is required. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site.

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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.

(2) The local government unit shall determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall be considered feasible and prudent if it meets all of the following requirements:

(a) it is capable of being done from an engineering point of view;

(b) it is in accordance with accepted engineering standards and practices;

(c) it is consistent with reasonable requirements of the public health, safety, and welfare;

(d) it is an environmentally preferable alternative based on a review of social, economic, and environmental impacts;

and

(e) it would create no truly unusual problems.

(3) For projects proposing impacts to type 3, 4, or 5 wetlands, the local government unit shall also determine that there are no environmentally preferable alternatives that would avoid the impact. The local government unit shall consider the following in evaluating alternatives as applicable:

(a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site may not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;

(b) the general suitability of alternate sites considered by the applicant;

(c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

(d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for conditional use permits, variances, or planned unit developments; and

(e) the physical, economic, and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.

~~(3)~~ (4) If the local government unit determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it shall deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the local government unit shall evaluate the replacement plan for compliance with subparts 4 to ~~6~~ 8.

Subp. 4. **Determination of impact minimization.**

A. The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the local government unit must consider:

[For text of subitems (1) to (6), see M.R. 1999]

(7) an applicant's efforts to:

(a) modify the size, scope, configuration, or density of the project;

(b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; ~~and~~

(c) confine impacts to the fringe or periphery of the wetland; and

(d) otherwise minimize impacts.

[For text of item B, see M.R. 1999]

[For text of subps 5 to 7, see M.R. 1999]

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

[For text of item A, see M.R. 1999]

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; or

(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.~~

Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated field, ~~replacement must be accomplished and will be replaced~~ through restoration ~~without regard to, then~~ the priority order for sequencing in subpart 1 ~~is not required~~. A wetland drained or filled under this provision must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for the county in which the property is located.

[For text of subp 9, see M.R. 1999]

8420.0530 REPLACEMENT PLAN COMPONENTS.

On an application form approved by the board in consultation with the commissioner of natural resources, provided ~~by~~ through the local government unit, and with ~~needed~~ required 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, subitem (1); and D, do not apply; instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E:

A. generally, organizational information, including but not limited to the following:

[For text of subitems (1) to (3), see M.R. 1999]

B. either:

(1) 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

(2) an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland ~~value~~ replacement;

C. for the impacted wetland:

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

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

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

(4) the type of the 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, if known;

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

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

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

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

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~~(10)~~ (8) the nature of the proposed project, its areal extent, and the impact on the wetland must be described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;

~~(11)~~ (9) evidence of ownership or property rights to the affected areas, ~~including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgment of the covenant provisions in item D, subitem (6), by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan; and~~

~~(12)~~ (10) a list of all other local, state, and federal permits and approvals required for the activity, if known; and

~~(13) other information considered necessary by the local government unit for evaluation of the activity;~~

D. for the replacement wetland, item C, subitems (1) to ~~(9)~~ and ~~(11)~~ to ~~(13)~~ (7), (9), and (10), and:

(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;

(2) scale drawings showing plan and profile views of the replacement wetland ~~and fixed photo reference points for monitoring purposes. Photo reference points should include views of any control structures and enough additional points to adequately depict the entire project;~~

[For text of subitems (3) to (5), (see M.R. 1999)]

(6) a notice in a form provided by the board attached to and recorded with the deed for lands containing a wetland, specifying the following:

(a) the location of the replacement wetland;

(b) that the wetland is subject to the act;

(c) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;

(d) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

(e) that costs of title review and document recording is the responsibility of the fee title owner; and

(f) that the local government unit or board can require necessary repairs or reconstruction and revegetation work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;

(7) ~~a statement~~ an affidavit that the replacement wetland was not previously restored or created under a prior approved replacement plan;

(8) a statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;

(9) a statement that the replacement wetland was not restored with financial assistance from public conservation programs, or was not restored for other unrelated regulatory purposes;

(10) a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement;

(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~~ a statement by the applicant that monitoring will occur in accordance with parts 8420.0610 and 8420.0620 unless the local government unit will be conducting the monitoring of the wetland replacement area; 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) evidence that any drainage or property rights potentially detrimental to the replacement wetland have been acquired, subordinated, or otherwise eliminated; and

(14) a five-year vegetation establishment and management plan, including seeding rates, planting methods, seed and plant mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species such as reed canary grass and purple loosestrife;

E. other information considered necessary for evaluation of the project by the local government unit; and

~~E. the applicant must provide~~ E. information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540, subpart 9.

8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

[For text of subpart 1, see M.R. 1999]

Subp. 2. Type of replacement.

A. The ~~order of~~ preference for the method of replacement, ~~from most preferred to least preferred,~~ is that which is most likely to result in a wetland area that functions wholly, perpetually, and naturally. Generally, wetland restoration, ~~then~~ is preferred over creation.

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

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

8420.0541 ACTIONS ELIGIBLE FOR CREDIT.

~~D. Subpart 1. Scope.~~ The ~~following~~ actions in this part 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;~~

Subp. 2. Restoration of completely drained wetland areas. Restoration of the natural hydrology regime and vegetation on completely drained or filled wetlands may receive new wetland credit in an amount not to exceed 100 percent of the total wetland area hydrologically restored.

Subp. 3. Restoration of partially drained wetland areas. Restoration of the natural hydrology regime and vegetation of jurisdictional wetlands that have been degraded by prior drainage, diversion of the natural watershed, or filling may:

A. in a less than 80 percent area, receive public value credit in an amount up to 50 percent of the degraded wetland area or receive new wetland credit in an amount not to exceed 25 percent of the total wetland area hydrologically restored, provided that permanent native, noninvasive vegetation is established within the restored wetland area and on an upland buffer, which may receive replacement credit according to subpart 6, that is contiguous with the restored wetland and that has an average width of at least 50 feet for wetlands 2.5 acres or less and an average width of at least 100 feet for wetlands greater than 2.5 acres; and

B. in a greater than 80 percent area, receive new wetland credit in an amount not to exceed 25 percent of the total wetland area hydrologically restored.

Subp. 4. Exceptional natural resource value projects. Projects that restore exceptional natural resource values of wetlands may receive either public value or new wetland replacement credit solely or in combination as determined by the local government unit with concurrence of the technical evaluation panel. The amount and type of credit allowed shall be based on a functional assessment that documents the restoration of these values.

Subp. 5. Restoration of farmed wetlands. Reestablishment of permanent native, noninvasive 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 equivalent payments in six of the last 20 years prior to the date of application for a replacement plan or bank plan may receive credit in accordance with one of the following considerations:

A. if the wetland was annually seeded, in rotation, or set aside for six or more of the last 20 years, the wetland is eligible for public value credit not to exceed 50 percent of the wetland area; or

B. if the wetland was annually seeded, in rotation, or set aside for ten or more of the last 20 years, the wetland is eligible for new wetland credit based on the percent of the time the wetland area was annually seeded, in rotation, or set aside during the prior 20-year period.

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(2) **Subp. 6. Upland buffer areas.** Buffer areas of permanent native and noninvasive dominated vegetative cover established or preserved on upland adjacent and contiguous to replacement wetlands may receive credit, provided that the upland buffer ~~must be established at the time of wetland replacement~~ must have an average width of at least 50 feet for wetlands 2.5 acres or less and an average width of at least 100 feet for wetlands greater than 2.5 acres and the buffer vegetative establishment or preservation plan must be approved by the technical evaluation panel. 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) **Subp. 7. Wetlands previously restored via conservation easements.** Wetland areas restored for conservation purposes under terminated easements or contracts, ~~provided that are eligible for up to 75 percent of the restored wetland area is eligible for~~ new wetland credit and adjacent upland buffer areas reestablished to permanent native, noninvasive 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. 8. Restoration of wetland vegetation. Reestablishment and maintenance of permanent native, noninvasive vegetation cover on a wetland that is dominated by invasive or exotic species may receive public value credit. Replacement credit may not exceed 25 percent of the total wetland area vegetatively restored and the vegetative restoration and maintenance plan must be approved by the technical evaluation panel. The technical evaluation panel may require a monitoring period in excess of 12 months after the vegetative restoration is completed before approving the site for replacement credit.

Subp. 9. Wetlands established via mineral extraction site reclamation. Wetland areas established in nonwetland areas due to mineral extraction activities may receive new wetland credits if all of the following criteria are met:

A. application for replacement credit is made within ten years after the last day that extraction activities have taken place;

B. a wetland establishment and management plan has been approved by the technical evaluation panel and implemented by the landowner or authorized agent;

C. the wetland area meets the criteria in part 8420.0550; and

D. if the land is not state-owned, a conservation easement in favor of the state has been accepted by the state and recorded in the county recorder's office, or if the land is state-owned, covenants and restrictions are recorded that identify that the wetland area is a replacement wetland subject to this chapter.

Subp. 10. Water quality treatment areas.

A. Replacement credit for water quality treatment ponds constructed to pretreat stormwater runoff prior to discharge to wetlands or public waters is allowed, provided that:

(1) the local government unit has an approved and active stormwater management plan;

(2) the basins are constructed in nonwetland areas; and

(3) the basins are associated with an ongoing or proposed project that will impact a wetland or public waters.

B. Credits are determined according to subitems (1) to (3) by the local government unit with concurrence of the technical evaluation panel.

(1) Public value credit may be allowed for up to 100 percent of the normal pool area of an isolated one-cell, wet detention basin or the upper cell of a two-cell system, or for the one-year design pool of a stormwater infiltration area that also has an established native, noninvasive vegetative cover.

(2) New wetland credit may be allowed for up to 100 percent of the normal pool area of the downstream cell of a two-cell wet detention system, provided:

(a) the two cells are completely separated by a barrier for up to the ten-year critical event;

(b) the upstream basin meets the criteria in subitem (1);

(c) the downstream cell is designed for a maximum 24-inch rise in water level for the ten-year critical storm event;

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

(e) the design goal is a fully functioning wetland for the downstream cell.

(3) Buffer areas installed adjacent to two-celled systems that are consistent with subitem (2) may be allowed for public value credit in an amount up to 75 percent of the acreage of the downstream cell of a two-cell system, provided the buffer is applied only to the downstream cell, has an average width of 50 feet, and is adjacent to the entire periphery of the downstream cell.

C. Stormwater 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.

Subp. 11. **Wetland creations.** All other wetland creation sites may receive new wetland credit in an amount not to exceed 100 percent of the total wetland area created. Except for public projects, a performance bond or other surety shall be secured and held until the local government unit has determined that the design goal for the wetland replacement site, as approved in the replacement plan, is fully achieved.

Subp. 3. 8420.0542 TIMING OF REPLACEMENT.

Replacement of wetland functions and values must be completed before or concurrent with the actual draining or excavation, or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the responsible local government unit is submitted to the responsible local government unit to guarantee successful completion of the replacement. Local government units may require performance bonds or similar instruments to assure that the replacement wetland is successfully established. 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~~ part 8420.0544 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. 8420.0543 Location of replacement wetlands~~ **WETLAND REPLACEMENT SITING.** ~~Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that greater than 80 percent areas may accomplish replacement in less than 50 percent areas. When environmentally preferable, replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.~~

A. Siting wetland replacement must follow this priority order:

(1) on site or in the same minor watershed as the affected wetland;

(2) in the same watershed as the affected wetland;

(3) in the same county as the affected wetland;

(4) in an adjacent watershed or county to the affected wetland; and

(5) statewide, for:

(a) wetlands affected in greater than 80 percent areas; and

(b) public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven-county metropolitan area must be replaced in the affected county or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county.

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B. When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in item A, the applicant may seek opportunities at the next level.

C. For the purposes of item B, “reasonable, practicable, and environmentally beneficial replacement opportunities” means opportunities that:

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;

(3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

D. Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

Subp. 5. ~~8420.0544~~ REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.

A. Wetlands impacted by public transportation projects may be replaced statewide, 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~~ roads must be replaced in the affected county, or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county. The exception in part 8420.0543, item A, subitem (5), does not apply to replacement completed using wetlands banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

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

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

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

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

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

D. A replacement plan for wetlands is not required for individual public road projects that result in the ~~filling or~~ draining, excavating, or filling 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 road~~ 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 road~~ projects that:

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

(2)(a) submit ~~annual~~, at least 30 days prior to construction, project-specific reports ~~by January 15~~, and any changes or addenda, to the board, the technical evaluation panel, the commissioner of natural resources, 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, excavated, or filled by the project;~~

(b) convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; or

(c) for minor and emergency maintenance work impacting less than 10,000 square feet, the public road authority may submit project-specific reports, within 30 days of commencing the activity, to the board and the technical evaluation panel that indicate the location, amount, and type of wetlands that have been drained, excavated, or filled.

E. The technical evaluation panel shall review minimization and delineation decisions made by the public ~~transportation road~~ 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. Those required to receive notice of public road projects may appeal minimization, delineation, and on-site mitigation decisions made by the public road authority to the board according to part 8420.0250.

G. Changes to wetland impacts proposed by local road authorities in item D shall be reported to the board within six months from the date of the change being finalized.

H. Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace ~~the public road project impacts to wetlands and wetland areas of public waters if authorized by the commissioner or a delegated authority, that are drained, excavated, or filled by public transportation~~ local government projects on existing roads. Replacement of the wetlands must occur in critical rural and urban watersheds.

~~G. I.~~ I. Public ~~transportation road~~ 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.~~ 8420.0545 PRESETTLEMENT WETLAND ACRES AND AREAS.

A. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are greater than 80 percent areas: Aitkin; Beltrami; Carlton; Cass; Clearwater; Cook; Crow Wing; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; ~~and~~ St. Louis; and Wadena.

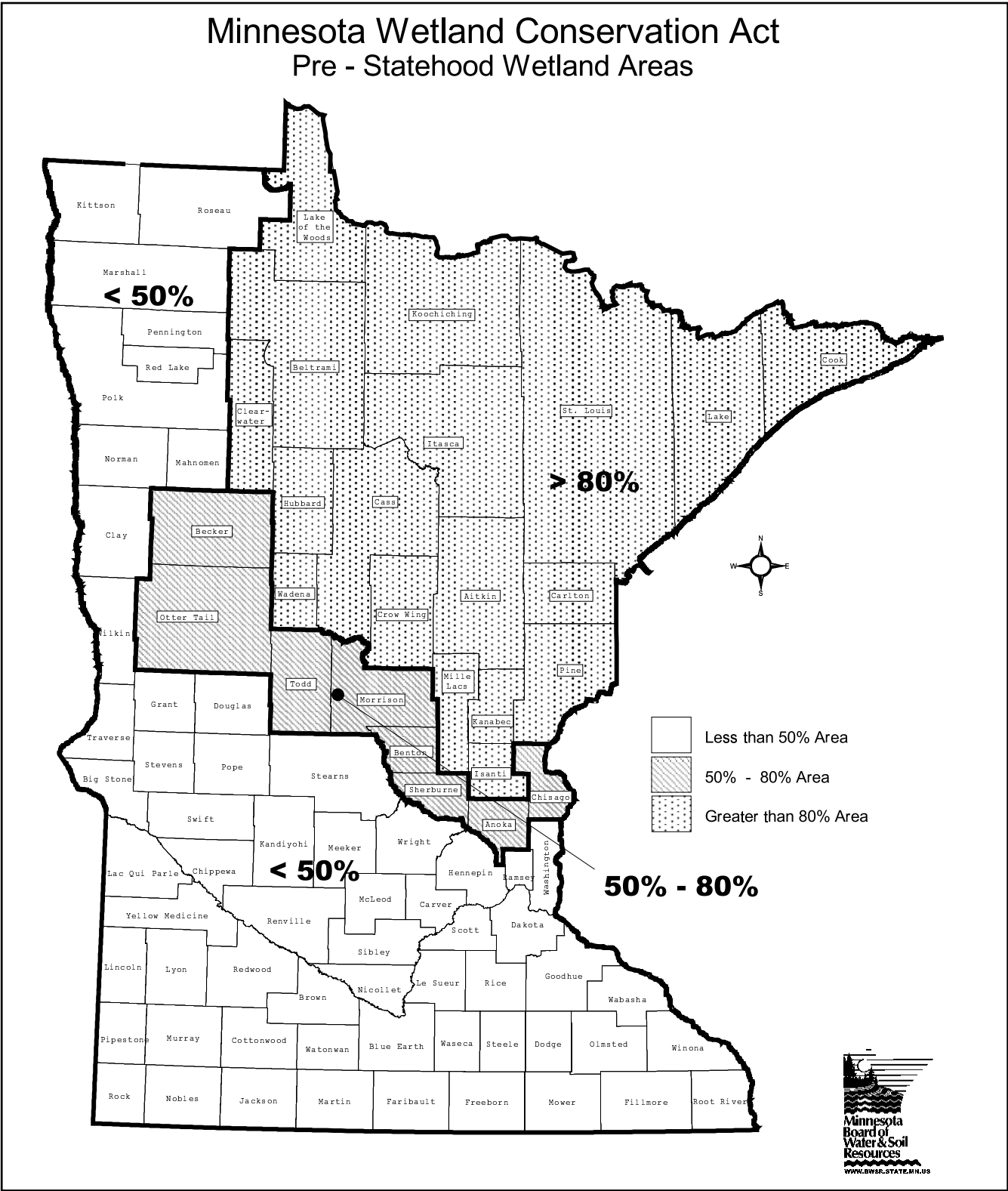
B. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are less than 50 percent areas: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall; Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse; Wabasha; Waseca; Washington; Watonwan; Wilkin; Winona; Wright; and Yellow Medicine.

C. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are 50 to 80 percent areas: Anoka; Becker; Benton; Chisago; Morrison; Otter Tail; Sherburne; and Todd; ~~and Wadena.~~

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WETLAND AREAS

Figure 1. [The old map is stricken, the following map is all new material.]



Subp. 6. 8420.0546 SIZE OF REPLACEMENT WETLANDS.

Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. Except in greater than 80 percent areas, for a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, or in greater than 80 percent areas, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values in ~~subpart 10 part~~ 8420.0549.

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

8420.0547 OTHER REQUIREMENTS.

~~Subp. 7. Subpart 1.~~ **Carbon balance.** When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally ~~invading pioneering native~~ vegetation established within three growing seasons.

~~Subp. 8. 2.~~ **Ecological consistency.** Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.

Subp. 9. 8420.0548 SPECIAL CONSIDERATIONS.

Subpart 1. Scope. The factors in ~~items A to I~~ this part, 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. Subp. 2.~~ **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 must be approved~~ denied if it is determined that the proposed activities will constitute a taking of those listed species under *Minnesota Statutes*, section 84.0895. Limited information on the presence of listed species at a particular site is available from the Department of Natural Resources' natural heritage program. Activities that involve taking listed species are subject to *Minnesota Statutes*, section 84.0895.

~~B. Subp. 3.~~ **Rare natural communities.** A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program ~~will not must be approved~~ denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

~~C. Subp. 4.~~ **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 must be approved~~ denied. These activities include, but are not limited to:

- (+) ~~A.~~ fish passage and spawning areas;
- (+) ~~B.~~ colonial waterbird nesting colonies;
- (+) ~~C.~~ migratory waterfowl concentration areas;
- (+) ~~D.~~ deer wintering areas; and/or
- (+) ~~E.~~ wildlife travel corridors.

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

~~D. Subp. 5.~~ **Archaeological ~~or~~, historic, or cultural resource sites.** A replacement plan for activities that involve the modification of known archaeological ~~or~~, historical, or cultural resource sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, ~~will not must be approved~~ denied, if the local government unit, in consultation with the State Historical Preservation Office, determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.

~~E. Subp. 6.~~ **Groundwater sensitivity.** A replacement plan for activities ~~will not must be approved~~ denied if the local government unit determines the activities would have a significant adverse impact on groundwater quality. The publication "Criteria and

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Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota” (MDNR, 1991) may be used as a guide in determining potential impacts.

~~F. Subp. 7. Sensitive surface waters.~~ A replacement plan ~~will not must~~ be ~~approved denied~~ if the local government unit determines the activities will have a significant adverse impact on the water quality of outstanding resource value waters listed in part 7050.0180 or on trout waters designated by the commissioner.

~~G. Subp. 8. Education or research use.~~ Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.

~~H. Subp. 9. Waste disposal sites.~~ The local government unit must evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

~~I. Subp. 10. Consistency with other plans.~~ The local government unit must consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

Subp. 10. 8420.0549 EVALUATION OF WETLAND FUNCTIONS AND VALUES.

~~A. Subpart 1. Evaluation options.~~ Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. When environmentally preferable, a replacement wetland should replace the same combination of functions and values provided by the impacted wetland. Replacement of wetland functions and values may occur at more than one location. ~~The wetland type index system in items D and E uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement.~~ The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in *Minnesota Statutes*, section 103B.3355, with a scientifically accepted methodology in ~~items G and H subparts 7 and 8.~~

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

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

Cowardin System	Circular 39
L1 (all)	5*
L2ABF	4
L2ABG	5
L2ABH	5
L2EMA	5
L2EMB	5
L2EMF	4
L2EMG	4
L2EMH	5
L2RS	5
L2UB	5
L2US	4
PABF	4
PABG	4
PABH	5
PEMA	1
PEMB	2, 8
PEMC	3
PEMD	3
PEME	2
PEMF	3
PEMG	4
PEMH	4
PEMJ	1
PEMU	3
PEMW	1

PEMY	3
PEMZ	4
PFOA	1L**
PFO1B	7
PFO2B	8 <u>7</u>
PFO4B	8 <u>7</u>
PFO5B	7
PFO6B	7
PFO7B	8 <u>7</u>
PFOC	7
PFOD	7
PFOF	7
PFOJ	1L**
PFOU	1L**
PFOW	1L**
PFOY	7
<u>PMLB</u>	<u>8</u>
PRB (all)	5
PSSA	6
PSS1B	6
PSS2B	8
PSS3B	8
PSS4B	8
PSS5B	6
PSS6B	6
PSS7B	8
PSSC	6
PSSD	6
PSSF	6
PSSG	6
PSSH	6
PSSJ	6
PSSW	6
PSSY	6
PSSZ	6
PSSU	6
PUBB	4 <u>3</u>
PUBF	4
PUBG	5
PUBH	5
PUS (all)	4 <u>3</u>
R1	R2***
R2 (all)	R2***
R3 (all)	R3***
R4 (all)	R4***
R5	R4***

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

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

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

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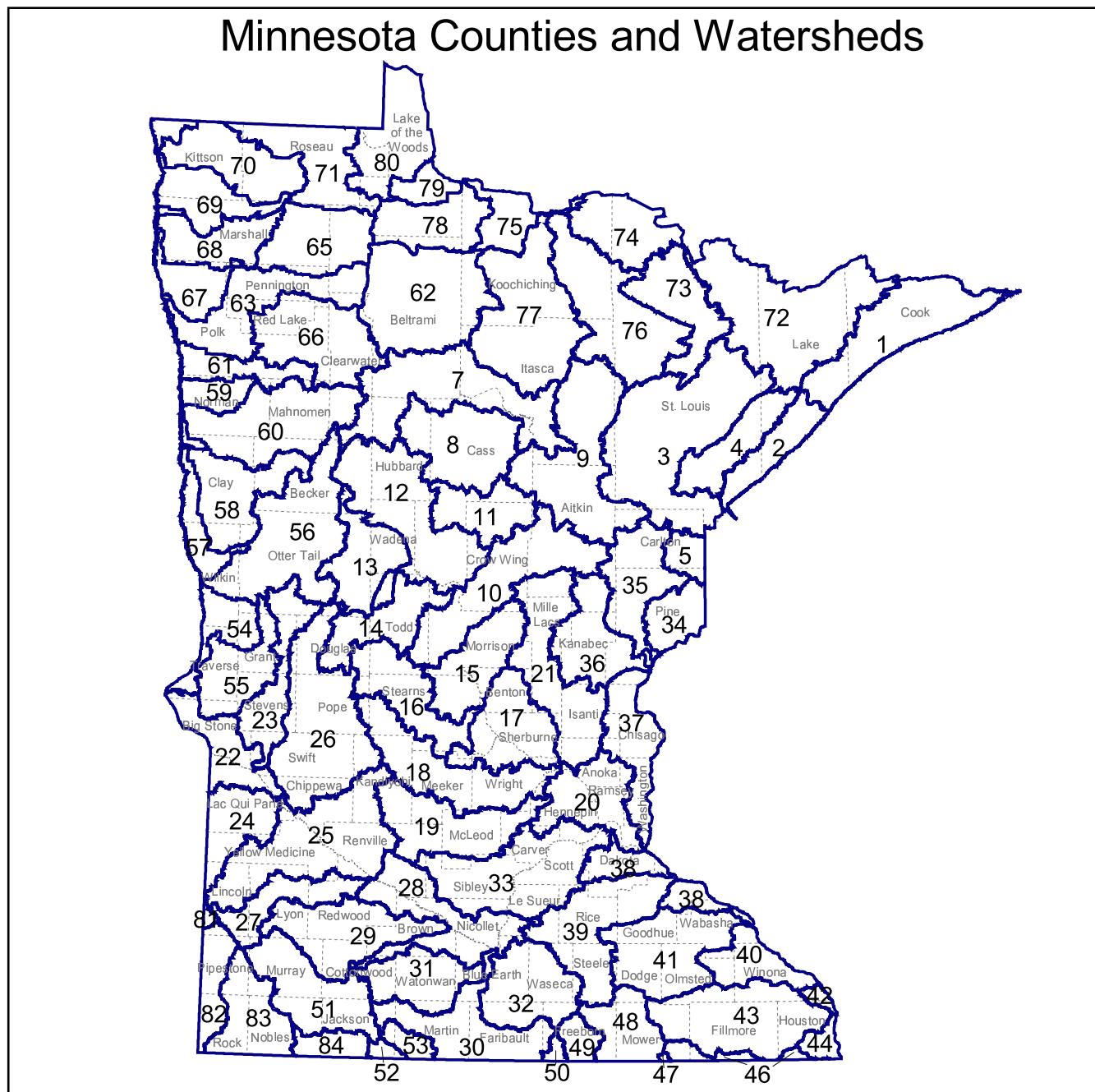
“K” water regimes are often municipal/industrial water facilities.

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.

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

~~Figure 2.~~

[The old map is stricken, and the following map is all new material.]



LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

- 1 Lake Superior (north)
- 2 Lake Superior (south)
- 3 St. Louis River
- 4 Cloquet River
- 5 Nemadji River
- 7 Mississippi River (Headwaters, Lake Winnibigoshish)
- 8 Leech Lake River
- 9 Mississippi River (Grand Rapids)
- 10 Mississippi River (Brainerd)
- 11 Pine River
- 12 Crow Wing River
- 13 Redeye River (Leaf River)
- 14 Long Prairie River
- 15 Mississippi River (Sartell)
- 16 Sauk River
- 17 Mississippi River (St. Cloud)
- 18 North Fork Crow River
- 19 South Fork Crow River
- 20 Mississippi River (Metro)
- 21 Rum River
- 22 Minnesota River (Headwaters)
- 23 Pomme de Terre River
- 24 Lac qui Parle River
- 25 Minnesota River (Granite Falls)
- 26 Chippewa River
- 27 Redwood River
- 28 Minnesota River (Mankato)
- 29 Cottonwood River
- 30 Blue Earth River
- 31 Watonwan River
- 32 Le Sueur River
- 33 Minnesota River (Shakopee)
- 34 St. Croix River (Upper)
- 35 Kettle River
- 36 Snake River
- 37 St. Croix River (Stillwater)
- 38 Mississippi River (Red Wing) and Lake Pepin
- 39 Cannon River
- 40 Mississippi River (Winona)
- 41 Zumbro River
- 42 Mississippi River (La Crescent)
- 43 Root River
- 44 Mississippi River (~~Neve~~ Revo)
- 46 Upper Iowa River
- 47 Wapsipinican River (Headwaters)
- 48 Cedar River
- 49 Shell Rock River
- 50 Winnebago River (Lime Creek)
- 51 West Fork des Moines River (Headwaters)

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52	West Fork des Moines River (Lower)
53	East Fork des Moines River
54	Bois de Sioux River
55	Mustinka River
56	Otter Tail River
57	Red River of the North (Headwaters)
58	Buffalo River
59	Marsh River
60	Wild Rice River
61	Sandhill River
62	Upper and Lower Red Lake
63	Red Lake River
65	Thief River
66	Clearwater River
67	Grand Marais Creek (Red River of the North)
68	Snake River
69	Tamarack River (Red River of the North)
70	Two River
71	Roseau River
72	Rainy River (Headwaters)
73	Vermillion River
74	Rainy River (Rainy Lake)
75	Rainy River (Manitou)
76	Little Fork River
77	Big Fork River
78	Rapid River
79	Rainy River (Baudette)
80	Lake of the Woods
81	Big Sioux River (Medary Creek)
82	Big Sioux River (Pipestone)
83	Rock River
84	Little Sioux River

~~C. Subp. 3. Replacement ratios for In-kind wetland replacement. When Wetland functions lost as a result of replacement for drainage, excavation, or filling are replaced by restoring a wetland fill shall be considered in-kind if one of the following applies:~~

~~A. the replacement wetland is of the same type, and having as the impacted wetland;~~

~~B. the replacement wetland is within the same topographic setting, county as the impacted wetland; or~~

~~C. the replacement wetland is in the same watershed and with the same topographic setting ratio as described in item D, subitem (2), and related definitions, the replacement shall be considered to be as the replacement wetland. For in-kind and replacement, 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 greater than 80 percent or more of the presettlement wetland acreage exists areas, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted. Except for counties or watersheds in which For less than 80 percent or more of the presettlement wetland acreage exists, areas and for impacted wetlands on nonagricultural land, the minimum replacement ratio is 2:1, requiring two times the impacted area be replaced and public value credits can be used for the portion of replacement required above 1:1.~~

~~D. Subp. 4. Out-of-kind wetland 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 Out-of-kind replacement is any replacement that is not in-kind in subpart 3.~~

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

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical evaluation panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be ~~converted to nonwetland~~ impacted shall be determined. ~~The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type.~~ The sum of the replacement for each wetland type shall be the resultant acreage requirement ~~for the wetland type ratio.~~ Table 2. ~~Wetland type ratio values for use in determining wetland replacement ratios for out of kind replacement.~~ Circular No. 39 wetland types include Type 1 (seasonally flooded basin or flat), Type 1L (bottomland hardwoods), Type 2 (wet meadow), Type 3 (shallow marsh), Type 4 (deep marsh), Type 5 (shallow open water), Type 6 (shrub swamp), Type 7 (wooded swamp), Type 8 (bog), R2 (lower perennial river), R3 (upper perennial river), and R4 (intermittent river).

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

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

Replacement Type	Impact Location	
	>80% Area or Ag Land	<80% Area and Non-Ag Land
<u>In-kind (same wetland type or same watershed or same county)</u>	1:1	2:1
<u>Out-of-kind: direct replacement</u>	1.5:1	2.5:1
<u>Out-of-kind: banking</u>	1.25:1	2.25:1

*See Table 1 of ~~item B~~ subpart 2 for wetland classification equivalency.

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~~(2) Topographic setting ratio. If The topographic setting characteristics of a replacement wetland differ from those of the and an impacted wetland, the following ratios shall be applied, described as specified in subitem (4) topographic, riverine, floodplain, flow-through, tributary, or isolated.~~

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

~~Table 3. Topographic Setting Ratios.~~

Impacted Wetland	Replacement Wetland		
	Shoreland	Riverine	Floodplain
Topographic Setting			
Shoreland	0	0.2	0.4
Riverine	0	0	0.2
Floodplain	0	0	0
Flow Through	0	0	0
Tributary	0	0	0
Isolated	0	0	0
Impacted Wetland	Replacement Wetland		
	Flow Through	Tributary	Isolated
Topographic Setting			
Shoreland	0.6	0.8	1.0
Riverine	0.4	0.6	0.8
Floodplain	0.2	0.4	0.6
Flow Through	0	0.2	0.4
Tributary	0	0	0.2
Isolated	0	0	0

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

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

E. Subp. 5. Determining impacts of partial drainage. In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined as follows:

The area impacted by partially draining a wetland is determined in two parts. The wetland area where the hydrology is totally removed must be replaced in its entirety. The area that is partially drained must be replaced in an amount that is at least 50 percent of the acreage of the remaining wetland area or determined by an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board.

Calculation of partial drainage is explained by the following example:

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

F. Determining credit for restoration of partially drained wetlands.

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

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

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

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

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

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

~~**G. Subp. 6. 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 and listed 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. Subp. 7. Special cases or appeals.** For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.~~

~~When using a board-approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in subpart 6 part 8420.0546. Further, the topographic setting ratio in item D, subitem (2), subpart 4 and the local public value ratio, if any, in item D, subitem (3), subpart 4 must also be considered when using a board-approved methodology.~~

~~**I. Subp. 8. Adequacy decision.** A replacement plan that fails to meet the requirements in items A to H this part must be considered inadequate in replacing lost functions and values and shall not must be approved denied 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 deny a replacement plan becomes final if not appealed to the board within 45 30 days after the date on which the decision is mailed to those required to receive notice of the decision. Before Within 30 days of completing construction of the a 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.~~

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.

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~~Table 4, in subpart 3, provides technical specifications for constructing wetland types.~~ In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination. The local government unit must also determine that the proposed replacement plan will adequately replace functions and public values lost. If adequate replacement of function and public value is not likely to result, the local government must determine what further measures are necessary to obtain adequate replacement or deny the replacement plan.

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.

B. Best management practices must be established and maintained adjacent to the entire perimeter of all replacement wetlands.

C. For replacement wetlands where ~~the dominant native, noninvasive~~ vegetation that is characteristic of the wetland type identified as the replacement goal in part 8420.0530, item D, subitem (1), is not likely to ~~recover~~ become dominant naturally in a five-year period, ~~wooded and shrub wetlands especially,~~ the replacement wetland ~~must~~ shall be seeded or planted with appropriate native, noninvasive species, as determined by the technical evaluation panel. If the replacement wetland is seeded or planted, the seed or planting stock should be from native, noninvasive species of local regional wetland origin ~~to preserve local genotypes.~~ During the monitoring period, the applicant must take reasonable steps to prevent and manage invasion by any nonnative or invasive species, for example, reed canary grass, Canada thistle, common buckthorn, spotted knapweed, leafy spurge, purple loosestrife, and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

D. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

E. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate unless the technical evaluation panel recommends otherwise. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland dominated by native, noninvasive species. Organic soil for backfill from wetlands dominated by nonnative, invasive species should be avoided.

F. The bottom contours of created types 3, 4, and 5 wetlands should be undulating, rather than flat, to provide a variety of water depths ~~to, comparable to natural wetlands in the vicinity of the replacement, and~~ be consistent with part ~~8420.0540~~ 8420.0547, subpart 2.

G. Sideslopes of created portions of wetlands and graded buffer ~~strip strips~~ must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred. More than half of the slopes of graded areas inside the exterior boundaries of restored, created, or enhanced wetlands must be no steeper than 10:1 unless the technical evaluation panel concurs that steeper slopes are acceptable.

H. Created wetlands should have an irregular edge to create points and bays ~~to be,~~ consistent with part ~~8420.0540~~ 8420.0547, subpart 2.

Subp. 3. [See repealer.]

8420.0600 MONITORING.

The purpose of wetland ~~value~~ replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.

8420.0610 DURATION OF MONITORING.

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

8420.0620 MONITORING ANNUAL REPORT.

[For text of subpart 1, see M.R. 1999]

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. 1999]

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

D. ~~a list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattail, and 30 percent sedge~~ a map of plant communities within the boundaries of the replacement site, including hydrologic indicators observed; and

E. color photographs of the project area taken anytime during the ~~period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly~~ growing season.

8420.0630 MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT.

The local government unit responsible for monitoring as determined under part 8420.0230:

A. must inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise the applicant and return any construction bond or other construction security that the applicant had provided;

[For text of items B and C, see M.R. 1999]

D. shall require one or more of the following actions if during the monitoring period the local government unit finds that the goal of the replacement plan will not be met:

- (1) order the applicant to prepare and implement a new replacement plan;
- (2) issue a cease and desist order on the draining and filling activity if it has not been completed;
- (3) order restoration of the impacted wetland;
- (4) obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland functions and values;
- (5) ask the district court to order the applicant to fulfill the replacement plan; or
- (6) other actions that the local government unit determines necessary to achieve the goal of the replacement plan.

8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. ~~General requirements, notice and participation.~~

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

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. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing wetland management classifications, and identifying local reference standard wetlands.

C. After board approval and local government adoption, replacement plan, exemption, and no-loss determinations are made according to the plan and ordinance. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.

Subp. 2. **Plan contents.** ~~A~~ The comprehensive wetland protection and management component of the local water 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~~ part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board ~~under that section;~~ and

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(3) the resulting public values;

B. vary application of the sequencing standards in ~~Minnesota Statutes, section 103G.222, subdivision 1, paragraph (b) part 8420.0520~~, 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) part 8420.0540~~, 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:

[For text of subitems (1) and (2), see M.R.]

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) part 8420.0122, subpart 1, item D~~, to also include nonagricultural land, provided there is no net loss of wetland values;

F. prescribe standards for size and location of replacement wetlands by establishing type requirements, size/ratio requirements, functional quality requirements, location requirements, and wetland mitigation fee in lieu of direct replacement criteria. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan which cannot exceed ten years;

G. allow exemptions based on ordinance standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts 8420.0115, 8420.0122, and 8420.0210 based on wetland classifications as defined in the plan; and

H. define and establish high priority wetland areas pursuant to parts 8420.0350 and 8420.0400.

Subp. 2a. Project notice and appeal under local ordinance.

A. The local government unit shall submit to the commissioner of natural resources, the watershed district if there is one, local government units, members of the technical evaluation panel, and local citizens who request it, a copy of the application and provide at least 15 days' notice for comments and a schedule for a hearing if one is to be held. A copy of all decisions shall be forwarded to those mentioned above within ten days of the action.

B. Appeals of ordinance decisions. Persons may appeal replacement plan, no-loss and exemption determinations made pursuant to an approved wetland ordinance according to the procedures defined in part 8420.0250.

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

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

G. The comprehensive wetland protection and management plan may be developed as part of, or in conjunction with, a local water plan. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401.

Subp. 4. Effective date; replacement decisions and amendments.

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. All amendments to the adopted plan and ordinance must be approved by the board.

C. After the effective date of the plan, a local government unit shall make replacement, exemption, no-loss, and other determinations consistent with the plan.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. Local program capacity requirements. Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.

Subp. 8. Reporting and oversight. An annual activity report must be provided to the board which documents compliance with plan standards as required in subpart 2. The annual report shall include such items as the number and type of permits and exemptions issued, including documentation of the area of wetlands impacted and replaced, complaints received, plan and ordinance violations including number of cease and desist orders, projects constructed, variances granted, and local appeal proceedings.

8420.0720 PRINCIPLES OF WETLAND BANKING.

[For text of subpart 1, see M.R. 1999]

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

Subp. 3. **Geographic limitations.** Wetland banking is allowed for any impact; ~~however, wetland impacts should be replaced in a location that either most closely resembles lost functions and public values at the impact site or in a location that maximizes important wetland functions and public values~~ subject to the requirements of part 8420.0543.

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. Only wetland and buffer areas eligible for replacement credit under parts 8420.0540 to 8420.0549 are eligible for deposit in the state wetland bank.~~

[For text of subps 5 and 6, see M.R. 1999]

Subp. 7. **Wetland banking credit withdrawals and transfers.** Wetland banking credits may be ~~withdrawn to provide replacement pursuant to an approved replacement plan or equivalent or transferred to another account holder providing the fee title or easement is transferred also, and providing all the remaining wetland banking credit for a wetland remains in one account for future use or resale if a state conservation easement has been recorded as required in subpart 8.~~ 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, from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin. 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.~~

Subp. 8. **Deed recording Conservation and access easement.** ~~For wetlands proposed for deposit, a deed covenant must be recorded stating that the subject wetland was or will be restored or created for mitigation banking purposes. No credits may be deposited in the state wetland bank until a perpetual conservation easement, in a format provided by the board, is granted to and accepted by the state. The easement shall provide for preservation of the banked wetland's functions by the fee owner and wetland banking plan applicant. The wetland banking plan applicant must also provide a title insurance policy that is acceptable to the state naming the state of Minnesota as the insured. If the conservation easement does not abut a public road, the fee owner and wetland banking plan applicant must also grant and record an access easement in favor of the board, the local government unit, and any other state, local, or federal regulatory authority that has authorized use of credits from the site for mitigation.~~

Subp. 8a. **Reporting of sale of credits.** The owner of an account in the state wetland bank must report the sale of credits to the board on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale. Proposed withdrawals are not complete until at least one regulatory authority has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled.

Subp. 9. [See repealer.]

Subp. 10. **Marking of boundaries of bank areas.** The boundary of bank areas must be clearly marked with visible monuments such as signs or fence posts at prominent locations. The monuments must be made of nondegradable material and shall be at least four feet in height and contain the wording "Wetland Bank Area - Subject to Use Restrictions."

Subp. 11. **Administrative fees.** The board and local government units may collect administrative fees for managing wetland banking accounts.

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Subp. 12. Wetland banking appeals. Appeals of the local government unit banking determinations are taken according to part 8420.0250.

8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.

Subp. 2. **Deposit prerequisites.** To be deposited into the state 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 deposit in 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 or wetland protection and management 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. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.

Subp. 3. [See repealer.]

8420.0740 PROCEDURES.

Subpart 1. **Deposits and credits.**

~~A. 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.~~

~~B. A.~~ Wetland replacement credits approved before July 1, 1993, are eligible for deposit into the state wetland banking system if the wetland replacement credit was authorized by a public agency specifically for a wetland bank that has been approved by the commissioner. Also, wetland replacement credits that have been deposited in a local government unit bank before July 1, 1993, and after January 1, 1992, are eligible for deposit into the state wetland banking system if the deposit meets all the criteria in parts 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.

~~C. B.~~ After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank.

~~D. The minimum wetland acreage eligible to establish an account in the wetland bank is 0.1 acres.~~

~~E. C.~~ There is no maximum or minimum wetland acreage eligible for deposit in the wetland bank. Based on the recommendation of the technical evaluation panel, 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: The acreage must be based on a land survey or comparable method of field measurement of the credit areas recommended for deposit. The person making the measurement must certify in writing as to the method and accuracy of the measurement.

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

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

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

~~G. E.~~ Except as provided for in item ~~B. A.~~, in order to deposit wetland acres into the wetland bank, the ~~depositor wetland banking plan applicant~~ must notify the local government unit in writing, before restoration or creation, that the proposed wetland is

specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item ~~H~~ F. In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking or lose the opportunity to use the excess credits for future projects. If the excess credit is less than 1.0 acre, an account may be established without the need to grant a perpetual conservation easement to the state of Minnesota.

~~H~~ F. 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~~ wetland banking plan applicant must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D. The bank plan must include design plans that show structural, earthmoving, and vegetative management components. The plan must clearly show existing jurisdictional wetlands and areas proposed to receive credit, and be signed, dated, and consistent with part 8420.0550.

A copy of the bank plan shall be mailed to members of the technical evaluation panel, the administrator of the state wetland bank, members of the public who have requested a copy, the commissioner of natural resources, the district office of the United States Army Corps of Engineers, 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, modify, or reject the banking plan and advise the depositor of the wetland banking credits likely to be accepted into the wetland bank. ~~Approval of the plan shall be considered official acknowledgment that the wetland is designated for replacement.~~ 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 wetland banking plan applicant within ten working days of the decision. A summary of the government unit decision must be mailed within ten working days of the decision to those required to receive notice of the application.

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

~~J~~ H. The proposed wetland must be restored or created within two years of approval or the bank plan must be resubmitted for consideration. Upon approval, the ~~depositor~~ wetland banking plan applicant shall restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications and the vegetation management plan have been followed. Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

~~K~~ I. Up to 15 percent of the proposed credits are eligible for deposit in the bank immediately after completion of construction and vegetative planting if all of the following subitems apply:

(1) For projects that contain elements that include dams, dikes, or other impoundment features, the construction plans were designed, overseen, and certified by a registered professional engineer.

(2) The technical evaluation panel certifies that the initial planting has been completed in accordance with the vegetation management plan.

(3) The provisions of part 8420.0720, subpart 8a, have been complied with.

The remaining proposed credits may be eligible for deposit 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~~ wetland banking plan applicant shall contact the local government unit to request a ~~final~~ determination of wetland bank acceptability and approved quantities of wetland banking credits for ~~deposit~~ initial and subsequent deposits. 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. As part of its initial review and comment on the bank plan, the panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel.

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

~~L. J.~~ The local government unit shall ~~notify the depositor of its findings as to the suitability of the wetland and approved~~ consider the recommendations of the technical evaluation panel and comments from those required to receive a copy of the banking plan prior to developing findings. The local government unit shall review and approve wetland banking credits and submit the complete wetland bank application for deposit, wetland bank application, and plan to the board. ~~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 wetland banking plan applicant chooses not to proceed with the deposit, the depositor wetland banking plan applicant may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor wetland banking plan applicant may request ~~certification for~~ the board to deposit any or all eligible and approved credits into the bank or may amend the bank plan and ~~submit resubmit~~ the plan to the local government unit for approval and subsequent board certification. After five years, any activity in the wetland is subject to this chapter.

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

- (1) name, address, and telephone number of the ~~depositor~~ wetland banking plan applicant;
- (2) ~~location of the wetland, including legal description, public land survey coordinates, county, and watershed~~ a complete copy of the wetland banking plan application, supporting documents, and a survey of the land area that will be subject to restrictions;
- (3) a copy of the deed for the property containing the wetland ~~with the required covenant recorded~~ and any easement if the wetland banking plan applicant is not the fee owner;
- (4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type and topographic setting characteristics and, if applicable, the new wetland credits and public value credits; and
- (5) local government unit certification that the wetland is approved for deposit into the bank.

~~N. L.~~ The board shall acknowledge the deposit to the ~~depositor~~ wetland banking plan applicant and local government unit and officially enter the information in item ~~M. K.~~ into the wetland bank. Information on deposited wetlands shall be available from the board on request according to subpart 2, item D.

~~O. M.~~ Wetlands deposited into the wetland bank, on which withdrawals have occurred, are subject to replacement for any subsequent drainage or filling.

~~P. N.~~ Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750.

Subp. 2. Withdrawals.

A. Before consideration of use of the wetland bank, replacement plan applicants must satisfy the requirements of part 8420.0520 or equivalent. ~~It must be clearly demonstrated that the applicant has made a good faith effort to avoid, minimize, rectify, or reduce or eliminate over time the impact on the wetland, and that no feasible and prudent alternative to the impact exists. The local government unit must certify that the project would otherwise be allowed if adequate replacement could be secured by the applicant and that the applicant has made a good faith effort to do so and has not succeeded in locating a site.~~

B. ~~The use of the wetland bank is allowed.~~ Credits from the state wetland bank may be used to mitigate wetland losses authorized by local government units or other local, state, and federal regulatory authorities provided the impacted wetland is within the state of Minnesota and the credit withdrawal procedures of this chapter are followed.

C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with ~~part~~ parts 8420.0540 to 8420.0549.

[For text of item D, see M.R. 1999]

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

[For text of item F, see M.R. 1999]

G. On approval of the applicant's wetland replacement plan using wetland banking credits as wetland replacement, the local government unit shall notify the board to debit the appropriate ~~banked wetland account~~ by type and ~~acreage amount~~. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the account holder and the applicant. No sale, withdrawal, transfer, or use of wetland credits is valid until the board debits a wetland bank account. Wetland credits may be only used once.

H. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland banking credits as replacement and the applicant has received notice of withdrawal of the wetland banking credits from the board or local government unit.

I. An individual, corporation, local government unit, state or federal agency, 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 evidence that the perpetual conservation easement required by part 8420.0720, subpart 8, has been recorded.~~ The board will notify both account holders on transfer of the wetland banking credits. ~~An account transfer must be accompanied by transfer of the fee title or easement. A wetland banking credit for a wetland may not be split between accounts. Wetland banking credits may also be transferred between banks approved by the board.~~

8420.0750 AUDITING AND MONITORING.

Subpart 1. Annual report and audit.

[For text of items A to C, see M.R. 1999]

D. ~~An annual~~ A wetland bank status report shall be prepared as part of the report required by Minnesota Statutes, section 103G.2373, and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the departments of natural resources and agriculture, and on request.

Subp. 2. Monitoring.

A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part 8420.0230 and the ~~account holder~~ wetland banking plan applicant shall continue monitoring according to parts 8420.0600 to 8420.0630. ~~The account holder is responsible for the success of the wetland until completion of monitoring, even after all the credit has been withdrawn. A copy of each monitoring report must be submitted to the local government unit and the board.~~

[For text of item B, see M.R. 1999]

8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.

A. ~~Enforcement of parts 8420.0700 to 8420.0750 is governed by part 8420.0290 and Minnesota Statutes, section 103G.2372. The fee owner and the wetland banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the wetland banking project and maintaining the wetland banking project in accordance with the approved wetland banking plan both during and after monitoring, provided that the wetland banking plan applicant, if different from the fee owner, is not responsible after monitoring if the wetland banking plan applicant no longer owns an easement interest in the real estate or credits associated with the banked wetland.~~

B. If, on inspection, the board determines that wetlands deposited in the wetland bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit and fee owner or wetland banking plan applicant to bring the wetland into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank certifications by the local government unit and require all wetland replacements to be on a project specific basis and future deposits from the fee owner or wetland banking plan applicant.

D. If, whether during or after the completion of the monitoring, a local government unit or the technical evaluation panel determines that a banked wetland does not substantially meet the specifications in the approved bank plan, the local government unit or technical evaluation panel must notify the board, ~~and,~~ The board shall restrict further withdrawals ~~from the account and transfers of all credits associated with the wetland, whether held by the wetland banking plan applicant or a subsequent account holder,~~ until the local government unit or technical evaluation panel notifies the board, or the board otherwise determines, that the

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Proposed Rules

wetland banking project has been brought into compliance. ~~The board may also restrict withdrawals when a local government unit is the account holder and the board determines that a banked wetland does not substantially meet the specifications in the approved bank plan.~~

E. The local government unit or the board ~~can~~ may undertake reconstruction work and require reimbursement of reasonable costs from the fee ~~title~~ owner or ~~easement or license holder~~ wetland banking plan applicant.

F. Fee owners, wetland banking plan applicants, or account holders may appeal restrictions on credit withdrawals and transfers, civil penalties, or demands for reimbursement of reconstruction costs to the dispute resolution committee of the board which shall make a recommendation to the full board.

G. Noncompliance with or impacts to, wetland banking projects are subject to enforcement under part 8420.0290.

8420.1010 PURPOSE.

The purpose of parts 8420.1010 to ~~8420.1060~~ 8420.1070 is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by *Minnesota Statutes*, section 103G.223. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

Part 8420.0122 does not apply to calcareous fens.

8420.1070 ENFORCEMENT PROCEDURES.

Enforcement procedures for calcareous fens shall be conducted consistent with *Minnesota Statutes*, sections 103G.141 and 103G.2372, except that necessary restoration or replacement activities, if required, will be determined by the commissioner, in consultation with the local soil and water conservation district.

REPEALER. *Minnesota Rules*, parts 8420.0110, subpart 44; 8420.0235; and 8420.0250, subpart 5; 8420.0550, subpart 3; 8420.0650, subparts 5 and 6; 8420.0720, subpart 9; and 8420.0730, subpart 3, are repealed.

EFFECTIVE DATE. This chapter is effective July 31, 2002.

RENUMBERER. The rule parts in column A are renumbered as the rule parts in column B.

<u>A</u>	<u>B</u>
<u>8420.0540, subp 2, item D</u>	<u>8420.0541, subp 1</u>
<u>8420.0540, subp 2, item D, subitem (2)</u>	<u>8420.0541, subp 6</u>
<u>8420.0540, subp 2, item D, subitem (3)</u>	<u>8420.0541, subp 7</u>
<u>8420.0540, subp 3</u>	<u>8420.0542</u>
<u>8420.0540, subp 4</u>	<u>8420.0543</u>
<u>8420.0540, subp 5</u>	<u>8420.0544</u>
<u>8420.0540, subp 5a</u>	<u>8420.0545</u>
<u>8420.0540, subp 6</u>	<u>8420.0546</u>
<u>8420.0540, subp 7</u>	<u>8420.0547, subp 1</u>
<u>8420.0540, subp 8</u>	<u>8420.0547, subp 2</u>
<u>8420.0540, subp 9</u>	<u>8420.0548, subp 1</u>
<u>8420.0540, subp 9, item A</u>	<u>8420.0548, subp 2</u>
<u>8420.0540, subp 9, item B</u>	<u>8420.0548, subp 3</u>
<u>8420.0540, subp 9, item C</u>	<u>8420.0548, subp 4</u>
<u>8420.0540, subp 9, item D</u>	<u>8420.0548, subp 5</u>
<u>8420.0540, subp 9, item E</u>	<u>8420.0548, subp 6</u>
<u>8420.0540, subp 9, item F</u>	<u>8420.0548, subp 7</u>
<u>8420.0540, subp 9, item G</u>	<u>8420.0548, subp 8</u>
<u>8420.0540, subp 9, item H</u>	<u>8420.0548, subp 9</u>
<u>8420.0540, subp 9, item I</u>	<u>8420.0548, subp 10</u>
<u>8420.0540, subp 10, item A</u>	<u>8420.0549, subp 1</u>
<u>8420.0540, subp 10, item B</u>	<u>8420.0549, subp 2</u>
<u>8420.0540, subp 10, item C</u>	<u>8420.0549, subp 3</u>
<u>8420.0540, subp 10, item D</u>	<u>8420.0549, subp 4</u>
<u>8420.0540, subp 10, item E</u>	<u>8420.0549, subp 5</u>
<u>8420.0540, subp 10, item G</u>	<u>8420.0549, subp 6</u>
<u>8420.0540, subp 10, item H</u>	<u>8420.0549, subp 7</u>
<u>8420.0540, subp 10, item I</u>	<u>8420.0549, subp 8</u>

Part 8420.0112, items F to N:

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

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

Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982).

Vegetation in Restored and Created Wetlands, Minnesota Board of Water and Soil Resources, September 2000.

Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000.

Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers. Minnesota Forest Resources Council, St. Paul, 1999.

Minnesota Construction Site Erosion and Sediment Control Planning Handbook. Minnesota Board of Water and Soil Resources and the Association of Metropolitan Soil and Water Conservation Districts, St. Paul 1988.

Agriculture and Water Quality: Best Management Practices for Minnesota, Minnesota Pollution Control Agency, St. Paul, 1991.

Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands, Minnesota Storm-Water Advisory Group, 1997.

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.

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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

Division of Fisheries

Adopted Exempt Permanent Rules; Designated Experimental and Special Management Waters

NOTICE IS HEREBY GIVEN that the above entitled rules have been adopted through the process prescribed by *Minnesota Statutes*, sections 97C.001 and 97C.005.

Dated: 23 January 2002

Allen Garber
Commissioner of Natural Resources

6264.0300 DESIGNATED EXPERIMENTAL WATERS.

[For text of subps 1 to 30, see M.R.]

Subp. 31. **Largemouth bass catch and release regulations.** While on or fishing in these waters, angling for largemouth bass shall be limited to catch and release only, whereby any largemouth bass caught must be immediately returned to the water. Catch and release angling for largemouth bass shall be legal during the open season for largemouth bass in inland waters. It is unlawful for anyone to have in possession or under control, regardless of where taken, any largemouth bass while on or fishing in these waters.

	Name	Location	County	End Date
A.	Clear Lake	T.107, R.22, S.4, 5,8,9,16,17	Waseca	3/1/1999
B.	Jane Lake	T.29, R.21, S.9,10	Washington	3/1/2006
C.	Minnewashta Lake	T.116, R.23, S.4,5,8,9	Carver	3/1/2006
D.	Turtle Lake	T.30, R.23, S.11,14	Ramsey	3/1/2006
D.	Hovde	<u>T.141, R.30,</u> <u>S.22,23,26,27</u>	<u>Cass</u>	<u>3/1/2012</u>

[For text of subps 32 to 36, see M.R.]

Subp. 37. **Northern pike maximum size limits.** All northern pike in possession while on or fishing in the following waters must be less than 24 inches in length. All northern pike 24 inches or greater must be immediately returned to the water.

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

	Name	Location	County	End Date
I.	<u>Big Rabbit</u>	<u>T.47, R.28,</u> <u>S.19,30; T.47,</u> <u>R.29, S.24,25</u>	<u>Crow Wing</u>	<u>3/1/2010</u>
J.	<u>East Big Rabbit</u>	<u>T.47, R.28,</u> <u>S.19,20,29,30</u>	<u>Crow Wing</u>	<u>3/1/2010</u>

[For text of subps 38 to 46, see M.R.]

Subp. 47. **Sunfish possession limits.** While on or fishing in the following waters the daily and possession limit for sunfish is ten. It is unlawful for anyone to have in possession, regardless of where taken, any sunfish in excess of the daily and possession limit while fishing in these waters. A person who is in transit, taking the most direct route back to the person's lodging or docking, and not fishing, may possess sunfish in excess of the daily and possession limit if the sunfish were legally taken from connecting waters or the Wisconsin waters of the Mississippi.

	Name	Location	County	End Date
A.	Carnelian	T.122, R.29, S.13, 14	Stearns	3/1/2002 <u>3/1/2007</u>
B.	Ox Yoke	T.139, R.30, S.10, 15	Cass	3/1/2002 <u>3/1/2007</u>
C.	Pleasant	T.123, R.29, S.1,2	Stearns	3/1/2002 <u>3/1/2007</u>
D.	Sanburn	T.139, R.30, S.22, 26,27	Cass	3/1/2002 <u>3/1/2007</u>

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

Subp. 48. **Sunfish possession limits and catch and release fishing for northern pike and largemouth bass.** Effective May 11, 1996, while on or fishing in the following waters the daily and possession limit for sunfish is ten, and angling for northern pike and largemouth bass shall be limited to catch and release only, whereby any northern pike or largemouth bass caught must be immediately returned to the water. Catch and release angling for northern pike and largemouth bass shall be legal during the open season for these species in inland waters. It is unlawful for anyone to have in possession, regardless of where taken, any northern pike or largemouth bass while on or fishing in the following waters.

	Name	Location	County	End Date
A.	Fladmark	T.135, R.42, S.13, 14,24	Otter Tail	3/1/2002 <u>3/1/2007</u>
B.	Twenty One	T.135, R.42, S.16, 21	Otter Tail	3/1/2002 <u>3/1/2007</u>

[For text of subps 49 to 65, see M.R.]

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Exempt Rules

6264.0400 DESIGNATED SPECIAL MANAGEMENT WATERS.

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

[For text of subp 4, see 26 SR 565]

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

Subp. 6. **Zumbro River special regulations.** While on or fishing in these waters, angling for smallmouth bass shall be limited to catch and release only, whereby any smallmouth bass caught must be immediately returned to the water. Catch and release angling for smallmouth bass shall be legal during the open season for that species in inland waters. It is unlawful for anyone to have in possession, regardless of where taken, any smallmouth bass while on or fishing in these waters. ~~The possession and use of live or dead minnows, leeches, or worms while angling on these waters is prohibited.~~

Name	Location	County
Zumbro River	<u>T.109, R.13W, S.6;</u> <u>T.110, R.13W, S.31;</u> <u>T.110, R.14W, S.36;</u> <u>T.109, R.14, S.22,27,</u> <u>R.14W., S.1,2,</u> <u>10,11,15,22,27,</u> from the upstream side of the bridge at Wabasha <u>County State Aid Highway 7</u> <u>U.S. Highway</u> <u>63 bridge at Zumbro Falls</u> upstream approximately 4-9 <u>12</u> miles to the posted boundary below the Zumbro Lake dam plunge pool	Wabasha

[For text of subps 7 to 16, see M.R.]

Subp. 17. **Restricted harvest lake.** While on or fishing in the following waters, the daily and possession limit for walleye is two, for crappie is five, and for northern pike is one. All northern pike in possession while on or fishing in these waters must be 38 inches or greater in length. All northern pike less than 38 inches in length must be immediately returned to the water.

<u>Name</u>	<u>Location</u>	<u>County</u>
<u>Cedar Lake</u>	<u>T.127N, R.31W, S.7,</u> <u>18; T.127N, R.32W,</u> <u>S.13</u>	<u>Morrison,</u> <u>Todd</u>

Subp. 18. **Walleye 18- to 24-inch protected slot limit.** All walleye in possession while on or fishing in the following waters must be less than 18 inches in length or greater than 24 inches in length. All walleye that are 18 to 24 inches in length, inclusive, must be immediately returned to the water.

<u>Name</u>	<u>Location</u>	<u>County</u>
<u>Knife</u>	<u>T.40,41, R.23,24,</u> <u>S.Various</u>	<u>Kanabec</u>

EFFECTIVE DATE. The amendments to *Minnesota Rules*, part 6264.0300, subparts 31 and 37, are effective May 11, 2002. The amendments to *Minnesota Rules*, part 6264.0400, subpart 6, are effective May 25, 2002. The amendments to *Minnesota Rules*, part 6264.0400, subparts 17 and 18, are effective May 11, 2002.

Commissioners' Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners' orders are compiled in the year-end subject matter index for each volume of the *State Register*.

Minnesota Public Utilities Commission

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of an Application by Hutchinson Utilities Commission for a Certificate of Need to Construct a Large Natural Gas Pipeline

ORDER ACCEPTING FILING AS SUBSTANTIALLY COMPLETE UPON RECEIPT OF CERTAIN INFORMATION AND NOTICE AND ORDER FOR HEARING

ISSUE DATE: January 30, 2002

DOCKET NO. G-252/CN-01-1826

PROCEDURAL HISTORY

On December 13, 2001, the Hutchinson Utilities Commission (Hutchinson, HUC, or the Applicant) submitted its application for a certificate of need. Hutchinson proposes to construct, own and operate an 89 mile long natural gas pipeline between Trimont, Minnesota and Hutchinson, Minnesota. The proposed pipeline is a "large energy facility" as defined in *Minnesota Statutes* § 216B.2421, subd. 2(4). Therefore, Hutchinson must receive a certificate of need prior to construction under the provisions of *Minnesota Statutes* § 216B.243.

On December 24, 2001, the Commission issued its **ORDER EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING**, thus giving all parties additional time to review the filing.

On December 26, 2001, the Department of Commerce (DOC) submitted comments regarding the completeness of the application. The DOC recommended that the Commission find that the Application was not substantially complete as of the December 13, 2001 filing date.

On January 14, 2002, in response to the DOC's comments, HUC submitted revised portions of its application, a letter from New Ulm Public Utilities dated December 31, 2001, and a copy of a letter from HUC to Northern Natural Gas Company (Northern).

On January 15, 2002, the DOC submitted reply comments recommending that the application be found substantially complete upon receipt of a feasibility study from Northern and a cost-comparison analysis by HUC.

On January 17, 2002, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Hutchinson's Proposed Pipeline

Hutchinson proposes building an 89 mile long pipeline between Trimont, Minnesota and Hutchinson, Minnesota that will connect with the Northern Border Pipeline Company in Martin County, Minnesota and provide an alternative to the Northern Natural Gas Company Pipeline. The pipeline will be used to transport natural gas to the City of New Ulm, New Ulm's electric generating facilities, the City of Hutchinson and Hutchinson Utilities Commission's electric generating facilities.

The proposed pipeline will be designed for a capacity of 60,000 Mcf/day through 46 miles of 16-inch diameter pipe (from Trimont to New Ulm) and 40,000 Mcf/day through 43 miles of 12-inch diameter pipe (from New Ulm to Hutchinson). The cost of this project has been estimated to be approximately 26 million dollars. Hutchinson proposes to begin construction in May, 2003 and have the pipeline in service by November, 2003.

Commissioner's Orders

II. Jurisdiction

The Commission has jurisdiction over applications for certificates of need for large energy facilities under *Minnesota Statutes* § 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. *Minnesota Statutes* § 216B.243, subd. 4.

III. Comments of the Parties

A. The DOC

The DOC stated that upon receipt of the feasibility study Hutchinson requested from Northern Natural Gas and a cost-comparison analysis by Hutchinson the application would be substantially complete. The DOC argued that when the above items are received, the application should be accepted and the statutory six month time-line should begin.

B. Hutchinson Utilities Commission

At the Commission meeting, Hutchinson agreed that the application be considered substantially complete, and the statutory six month time line begin, when it submitted Northern's feasibility study and its own cost comparison. Hutchinson stated that the feasibility study would be available within four weeks and the cost study would be done shortly thereafter. However, Hutchinson requested that the Commission refer the matter for a contested case hearing at this time so as to avoid further delay.

IV. Commission Action

A. Finding Filing Substantially Complete

Upon review of the Company's filing, and on the basis of the record, the Commission will accept Hutchinson's filing as substantially complete as of the date Hutchinson submits the feasibility study requested from Northern and a cost comparison by Hutchinson of Hutchinson's proposed pipeline and Northern's proposal. The Commission clarifies that its assessment of the completeness of the filing does not prejudice the merits of Hutchinson's application, which will be thoroughly examined in the course of this docket.

B. Referral for Contested Case Proceedings

The Commission finds that it cannot satisfactorily resolve all issues raised by the Hutchinson's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

C. Public Participation

Minnesota Statutes § 216B.243, subd. 4 encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst Robert Harding to facilitate and coordinate public participation in this proceeding. He may be reached by **phone:** (651) 296-7125 and by **fax:** at (651) 297-7073. His address is 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require Hutchinson to publish notice of the public and evidentiary hearings in relevant newspapers to encourage public participation.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kenneth A. Nickolai. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; **phone:** (612) 341-7604.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, *Minnesota Statutes* §§ 14.57-14.62; the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, *Minnesota Rules*, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's **website** at: www.revisor.leg.state.mn.us

The Office of Administrative Hearings conducts contested case proceedings in accordance with the *Minnesota Rules of Professional Conduct* and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under *Minnesota Rules*, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under *Minnesota Rules*, parts 1400.6700 to 1400.6800 or informal disposition under *Minnesota Rules*, part 1400.5900 should be directed to Robert Harding, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 296-7125; or Jim Alexander, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-9965.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under *Minnesota Statutes* § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Hutchinson Utilities Commission and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. *Minnesota Rules*, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Monday, March 4, 2002, at 1:30 p.m. in the Small Hearing Room of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

Commissioner's Orders

VI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, *Minnesota Statutes* §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, **phone:** (651) 296-5148, with any questions.

VII. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at *Minnesota Rules*, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. Hutchinson Utilities Commission's application shall be accepted as substantially complete as of the date Hutchinson submits Northern Natural Gas Company's feasibility study and Hutchinson's cost comparison of the two proposals.
2. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
3. A prehearing conference shall be held on Monday, March 4, 2002, at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101.
4. The Department of Commerce shall examine this application and other information and develop testimony on the reasonableness of granting a certificate of need to the Applicant.
5. The Applicant shall facilitate in every reasonable way the DOC's participation in this proceeding.
6. The Commission staff shall work with the Administrative Law Judge and the parties in selecting suitable times and locations for the public and evidentiary hearings on the application.
7. The Applicant shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice shall be in the form of visible display ads. The Applicant shall obtain proofs of publication of such ads from the newspapers selected. The Applicant shall consult with Commission staff on the timing, text, and distribution of such ads prior to publication.
8. This Order shall become effective immediately.

(SEAL)

BY ORDER OF THE COMMISSION
Burl W. Haar
Executive Secretary

This document can be made available in alternative formats (i.e., large print or audio tape) by **phone** at: (651) 297-4596, **TTY:** (651) 297-1200, **TTY** relay service: 1-800-627-3529.

Official Notices

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 matters of public interest.

Minnesota Comprehensive Health Association

Notice of Meeting of Executive Committee

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA) **Executive Committee** will be held at 9:00 a.m., on Tuesday, February 19, 2002, at the MCHA Executive Office, 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

For additional information, please call Mary McCaffrey at (952) 593-9609.

Minnesota Higher Education Services Office

REQUEST FOR COMMENTS on Possible Rules Governing the Advance Placement and International Baccalaureate Grant Program, *Minnesota Rules*, 4830.8100 - 4830.8150

Subject of Rules. The Minnesota Higher Education Services Office [MHESO] requests comments on its possible rules governing Advance Placement and International Baccalaureate Grants. The MHESO is considering rules that will govern the application process for and the administration of the Advance Placement and International Baccalaureate Grant Program. This grant program is targeted at high school students who are in advance placement or international baccalaureate programs; and who achieve a certain level of test scores on examinations for full-year courses.

Persons Affected. The proposed rules would likely affect Minnesota students eligible to apply for such grants, Minnesota high schools with Advance Placement or International Baccalaureate Degree programs, and eligible Minnesota post-secondary institutions as defined in *Minnesota Statutes* 136A.124.

Statutory Authority. *Minnesota Statutes* 136A.01, Subd.2(8) authorizes the MHESO to adopt rules to administer the programs under its supervision.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing or orally until 4:00 p.m., on April 15, 2002. The MHESO does not contemplate appointing an advisory committee to comment on the possible rules. However, per *Minnesota Statutes*, 136A.124, Subd. 3, the MHESO has met with representatives of the advanced placement and international baccalaureate programs selected by the advanced placement advisory council, international baccalaureate of Minnesota (IBMN), and the department of children, families, and learning to discuss how this program will be administered and how the grant awards would be calculated. Such discussions provided the basis for the draft of the proposed rules which the MHESO has prepared.

Rules Drafts. The MHESO has prepared a draft of the possible rules.

Agency Contact Person. Written or oral comments, questions, requests to receive a draft of the rules, and requests for more information on these possible rules should be directed to: Mary Lou Dresbach, Minnesota Higher Education Services Office, 1450 Energy Park Drive, Suite 350, St. Paul, MN 55108, **phone:** (651) 642-0530, **fax:** (651) 642-0675. **TTY** users may call the Minnesota Relay Services at 1-800-627-3529 to contact the Agency Contact Person indicated above.

Alternative Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed.

Dated: 22 January 2002

Robert K. Poch, Director
Minnesota Higher Education Services Office

Department of Labor and Industry

Labor Standards Unit

Notice of Addition to Commercial Prevailing Wage Rates

An **additional** rate has been added to the Commercial Prevailing Wage Rates certified 12/17/01, for **Labor Code 430, Wiring System Technician, in Polk County.**

Copies of the certified wage rates for these Counties may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306, or by calling (651) 284-5091. Charges for the cost of copying and mailing are \$.65 per page. Make check or money order payable to the State of Minnesota.

Shirley I. Chase
Commissioner

Official Notices

Department of Labor and Industry

Labor Standards Unit

Notice of Correction to Commercial Prevailing Wage Rates

A **correction** has been made for **Group 2**, in **Dakota County**, for Commercial Wage Rates certified 12/17/01.

A Copy of the corrected certification may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306 or by calling (651) 284-5091. Charges for the cost of copying and mailing are \$.65 per page. Make check or money order payable to the State of Minnesota.

Shirley I. Chase
Commissioner

Department of Labor and Industry

Labor Standards Unit

Notice of Correction to Commercial Prevailing Wage Rates

A **correction** has been made for **Labor Code, 417, Pipefitters-Steamfitters**, in **Ramsey County**, for Commercial Wage Rates certified 12/17/01.

A **correction** has also been made for **Labor Code 407, Electricians**, in **Benton, McLeod, Meeker, and Stearns Counties**, for Commercial wage rates certified 12/17/01.

A Copy of the corrected certification may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306 or by calling (651) 284-5091. Charges for the cost of copying and mailing are \$.65 per page. Make check or money order payable to the State of Minnesota.

Shirley I. Chase
Commissioner

Department of Labor and Industry

Labor Standards Unit

Notice of Correction to Highway/Heavy Prevailing Wage Rates

A **correction** has been made to the **Highway/Heavy Prevailing Wage Rates** certified 01/10/01, in **Region 06, Group 3**.

A Copy of the corrected certification may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306 or by calling (651) 284-5091. Charges for the cost of copying and mailing are \$.65 per page. Make check or money order payable to the State of Minnesota.

Shirley I. Chase
Commissioner

Public Employees Retirement Association

Notice of Meeting of the Board of Trustees

A meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, February 14, 2002, at 9:30 a.m., in the PERA offices, 60 Empire Drive, Room 117, St. Paul, Minnesota.

Department of Trade and Economic Development Business and Community Development Division

Notice of Public Hearing on Criteria for Awarding Business Subsidies Through the Minnesota Minerals 21st Century Fund

NOTICE IS HEREBY GIVEN that the Department of Trade and Economic Development will conduct a public hearing as required by *Minnesota Statutes* 116J.994, Subdivision 5.

This hearing will provide interested parties and organizations with an opportunity to comment on the criteria as it pertains to financial assistance for Mesabi Nugget Corporation from the Minnesota Minerals 21st Century Fund. The hearing will be conducted on February 25, 2002, beginning at 9:00 a.m. on the 5th floor of the Metro Square building, 121 7th Place East, St. Paul, Minnesota. Information about the business subsidy, including a summary of the terms is available at the Department of Trade and Economic Development.

For more information contact:

Paul A. Moe
Director of Business Finance
Department of Trade and Economic Development
500 Metro Square Building
121 7th Place East
St. Paul, MN 55101-2146
Phone: (651) 297-1391

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Administration Governor's Council on Developmental Disabilities

Notice of Cosponsorship Funds for Leadership Training Conferences

The Governor's Council on Developmental Disabilities (DD Council) is pleased to announce the availability of a total of \$16,000 in cosponsorship funds for training conferences in Minnesota. Conferences must focus on leadership skills training – the development or strengthening of personal leadership skills that will influence positive systems change. Conferences must be marketed to people with developmental disabilities and their families as the primary audience. A maximum of \$2,000 may be awarded to an applicant who meets the eligibility criteria.

Conferences must be held **no later than September 15, 2002**. **Eligible applications:** Minnesota associations/organizations of parents, people with developmental disabilities, advocates, providers, or professionals; Minnesota chapters of national organizations; or national organizations that are holding a conference in Minnesota. The DD Council reserves the right to award less than the maximum of \$2,000 to an applicant, refuse to cosponsor a conference, or withdraw the availability of funds at any time. **Application deadline:** Monday, March 11, 2002 at 4:00 p.m.

State Grants & Loans

For additional information or to request an application form, please contact:

Mary Jo Nichols
Governor's Council on Developmental Disabilities
370 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (651) 282-2899
Toll free: 1-877-348-0505
TTY: (651) 296-9962
Email: admin.dd@state.mn.us

The application is also available at www.mnddc.org OR www.mncdd.org; go to "The Council" and then "News and Events."

Minnesota Department of Corrections

Notice of Availability of Funds for Continuum of Care to Juveniles

The Minnesota Department of Corrections, Community and Juvenile Services Division, announces the availability of funds to provide a Continuum of Care to juveniles at high risk of becoming Extended Jurisdiction Juveniles or who are Extended Jurisdiction Juveniles under a Minnesota county's jurisdiction.

A total of \$1,000,000 is available for grants ranging from \$30,000 to \$90,000 for the twelve-month period from July 1, 2002 through June 30, 2003. These funds are available to non-profit 501(c)(3) organizations, local units of government and American Indian tribal governments. Successful applicants may be eligible for an additional two years of funding.

The state reserves the right to cancel this solicitation.

The deadline for proposal submission is April 5, 2002 at 12:00 noon. To receive a copy of the request for proposal which describes in detail how to apply for this funding contact:

Lynda Davis
Minnesota Department of Corrections
Community and Juvenile Services Division
1450 Energy Park Drive, Suite 200
St. Paul, MN 55108-5219
Phone: (651) 643-2533
TTY: (651) 643-3589
Email: ldavis@co.doc.state.mn.us

This RFP can be accessed on the DOC **website** at www.doc.state.mn.us

State Contracts

Informal Solicitations: Effective March 1, 2002, informal solicitations for all contracting opportunities for professional/technical (consultant) contracts with values estimated to be over \$5,000 and under \$50,000 must be posted on the Department of Administration, Materials Management Division web page (www.mmd.admin.state.mn.us) and access P/T Contracts.

Effective February 11, 2002, informal solicitations for all contracting opportunities for professional/technical (consultant) contracts with values estimated to be over \$5,000 and under \$50,000 for the Department of Administration, Materials Management Division web page (www.mmd.admin.state.mn.us) under the P/T Contracts access.

Formal Requests for Proposals: Department of Administration procedures require that formal notice of any professional/technical (consultant service) contract which has an estimated value over \$50,000 must be printed in the *State Register*. Certain quasi-state agencies and Minnesota State Colleges and Universities institutions are by law exempt from these requirements.

Perpich Center for Arts Education

Notice of Request for Proposal for a Statewide Conference Coordinator for the Professional Development Institute

The Perpich Center for Arts Education is seeking proposals from qualified individuals to serve as coordinator of a statewide arts education conference, to be held August 14-15, 2002. The individual contracted must have demonstrated experience managing large events and/or conferences.

Direct experience with educational and/or arts-focused conferences is preferred. The specific services to be provided under this contract are outlined in detail in the Professional Development Institute Request for Proposal (RFP) Statement of Project Scope and Tasks. The formal RFP may be requested from:

Mary Sundet Jones, Partnering Resources Coordinator
Perpich Center for Arts Education
6125 Olson Memorial Highway
Golden Valley, Minnesota 55422
Phone: (763) 591-4711
Toll free: 1-800-657-3515

Services are to be provided during the contract period from April 6, 2002 to September 30, 2002. It is anticipated that the cost of the contracted services described in the Request for Proposals will be between \$8,000 and \$10,000 for the contract dates indicated.

The deadline for submission of proposals is **4:00 p.m., February 25, 2002. Faxed proposals will not be considered.** It is anticipated selections will be made by March 1, 2002. Proposals should be submitted to Mary Sundet Jones, Partnering Resources Coordinator.

Community Colleges and Universities, Minnesota State

North Hennepin Community College

Request for Proposal (RFP) for Food Service at North Hennepin Community College

Introduction

North Hennepin Community College, Brooklyn Park, is soliciting bids for the management of its Food Service, beginning July 1, 2002.

Proposal Due Date

Vendor proposals are due **no later than Monday, March 18, 2002.** Proposals must be submitted to Kitty Hennemann, Director of Student Life, North Hennepin Community College, 7411 85th Avenue North, Brooklyn Park, MN 55445. Specifications can be obtained by **phone** at: (763) 424-0803.

Site Inspection and Briefing

North Hennepin Community College will host a briefing session and site inspection Tuesday, March 4, 2002 from 4:00 - 7:00 p.m., for interested bidders. Call Kitty Hennemann at **phone:** (763) 424-0803 to schedule an appointment.

Minnesota State Colleges and Universities (MnSCU)

Hennepin Technical College, Brooklyn Park and Eden Prairie Campuses

NOTICE OF REQUEST FOR PROPOSAL from Licensed Architectural and Engineering Consultants to Provide Design and Construction Administration for the Remodeling of Approximately 10,500 GSF of Existing Space Between Both Campus Locations

This project has been estimated not to exceed \$3,500,000 including consultant services, construction, contingency, and management. This proposal does not obligate MnSCU to spend the estimated dollar amount.

For the full RFP package, call or email the following Project Manager:

William H. Hansen
MnSCU Facilities
1450 Energy Park Dr., Suite 300
St. Paul, MN, 55108
Phone: (651) 649-5933 or (320) 255-3248
Email: hansenbi@csu.mnscu.edu

State Contracts

Questions regarding the project may also be directed to:

Ms Diane Paulson, Vice President
Hennepin Technical College
9000 Brooklyn Blvd.
Brooklyn Park, MN, 55445
Phone: (763) 550-2170
Email: *diane.paulson@htc.mnscu.edu*

Design firms that wish to be considered for this project must deliver their proposal on or before **3:00 p.m., March 5, 2002.**

Minnesota State Colleges and Universities (MnSCU)

Hennepin Technical College, Brooklyn Park and Eden Prairie Campuses

NOTICE OF REQUEST FOR PROPOSAL from Licensed Engineering Consultants to Provide Design and Construction Administration for the Replacement of Chillers at Both Campus Locations

This project has been estimated not to exceed \$4,200,000 including consultant services, construction, contingency, and management. This proposal does not obligate MnSCU to spend the estimated dollar amount.

For the full RFP package, call or email the following Project Manager:

William H. Hansen
MnSCU, Facilities
1450 Energy Park Dr., Suite 300
St. Paul, MN, 55108
Phone: (651) 649-5933 or (320) 255-3248
Email: *hansenbi@csu.mnscu.edu*

Questions regarding the project may also be directed to:

Ms. Diane Paulson, Vice President
Hennepin Technical College
9000 Brooklyn Blvd.
Brooklyn Park, MN 55445
Phone: (763) 550-2170
Email: *diane.paulson@htc.mnscu.edu*

Design firms that wish to be considered for this project must deliver their proposal on or before **3:00 p.m., March 5, 2002.**

Department of Corrections

Minnesota Correctional Facility-Red Wing

Extension of Original Request for Proposal: Mentoring Program for Male Juveniles with a Community Reintegration Component

The Minnesota Department of Corrections, Minnesota Correctional Facility-Red Wing (MCF-Red Wing) is issuing this Request for Proposal (RFP) to establish one or more Professional/Technical Service Contract(s) with an organization to administer mentor programming with a community reintegration component for male juveniles incarcerated at MCF-Red Wing, and to provide fiscal over-site and general program compliance. Fifty percent of mentors will be of color or be culturally knowledgeable and competent. Partnership and collaboration among agencies is highly recommended.

It is anticipated that the contract(s) resulting from the RFP will be for a period from April 1, 2002 to June 30, 2003, with two one-year extensions possible at the discretion of MCF-Red Wing, and with concurrence of the potential contractor. Dollar amount for

the contract(s) is estimated at \$75,000 annually, and must not exceed \$93,750 for fifteen months. This proposal does not obligate the agency to spend the estimated dollar amount.

Potential responders who wish a copy of the full RFP may call, write, or e-mail and a copy will be sent free of charge to interested vendors. Proposals must be submitted to the department contact listed below. Other state personnel are NOT allowed to discuss the RFP with anyone, including responders, before the proposal submission deadline. Proposals must be received by the contact person listed below **no later than 4:00 p.m., CST, Friday, March 15, 2002.**

Tim O'Daniel, Director of Transition Services
MCF-Red Wing
1079 Highway 292
Red Wing, MN 55066
Phone: (651) 267-3666
Fax: (651) 267-3761
Email: *todaniel@rw.doc.state.mn.us*

Department of Natural Resources

Request for Proposals from Consulting Engineering Firm for Preparation of Construction Plans and Specifications and Provide Construction Inspection and Contract Administration Services for Two Trail Bridges

Project

Bluffland State Trail-Fillmore County
Preston to Forestville
Bridges over Root River in City of Preston
File No.: TRA 00708.02.00.07/TO-01-13

Project Overview

The Minnesota Department of Natural Resources Bureau of Facilities and Operations Support and the Division of Trails and Waterways request proposals from interested consulting engineering firms for professional services to prepare construction plans and specifications and provide construction inspection and contract administration services for two (2) trail bridges over the Root River in the City of Preston, Fillmore County, MN.

The Fillmore Street Bridge will be approximately 260 feet long and will either be attached to the existing CSAH 12 Bridge No. 23546 or a separate bridge adjacent to the existing bridge. It is the intent that this bridge will match the appearance and alignment of the existing road bridge. Retaining walls and trail construction immediately adjacent to the bridge are also included in this project.

The West River Road Bridge will be approximately 160 feet long and will be a widening of the existing Bridge No. 23537. It is the intent that the bridge will be widened on the north side and that the vehicular traffic will be shifted to the north allowing for the trail to be placed on an elevated walkway on the south side of the bridge. Retaining walls, trail construction and minor road construction immediately adjacent to the bridge are also included in this project.

To obtain a "Request for Proposal", contact:

Deb Guither
DNR Region 5/6 Engineering
1200 Warner Road
St. Paul, MN 55106
Phone: (651) 772-7904
Fax: (651) 772-7977
Email: *deb.guither@dnr.state.mn.us*

All proposals must be received not later than **4:00 p.m., Central Time, March 7, 2002**, as indicated by a notation made by the Receptionist. **Late proposals will not be considered.**

State Contracts

Public Employees Retirement Association

Request for Proposals (RFP) for the Collection and Electronic Transfer of Payment Information

Public Employees Retirement Association of Minnesota (PERA) is soliciting proposals from qualified vendors to provide the necessary services to process the electronic transfer of PERA retirement payment information from 2500 local units of government. The vendor will collect payment information, format that information and transfer that information to PERA's financial institution daily. For purposes of the RFP, a transaction is a completed, accepted and acknowledged transfer of data to PERA's financial institution. PERA will require a phone based touch tone reporting method for incoming data collection. It is expected that the number of transactions processed will increase from 650 per month to 5200 per month during the next two years.

Details are contained in a Request for Proposal which may be obtained by calling, faxing or writing:

Dave DeJonge, Finance Manager
PERA
Suite 200
60 Empire Drive
St. Paul, MN 55103
Phone: (651) 297-3573
Fax: (651) 297-2547

One original and three (3) copies of the RFP response are to be submitted no later than **4:00 p.m., on Monday, March 4, 2002.**

Department of Transportation

Program Support Group

Notice Concerning Professional/Technical Contract Opportunities

NOTICE TO ALL: The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on Mn/DOT's Office of Consultant Services **website** at: www.dot.state.mn.us/consult

New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State 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.

Metropolitan Council

Invitation for Bid for Uniform Rental Services

NOTICE IS GIVEN THAT Metropolitan Council Environmental Services Division will receive and publicly open sealed bids for Uniform Rental Services on February 26, 2002 at 2:00 p.m., at the offices of the Metropolitan Council located at 230 E. 5th Street, St. Paul, MN 55101.

Bidding documents may be obtained from the offices of the Metropolitan Council by **phone:** (651) 602-1499 or by **fax:** (651) 602-1083.

The Metropolitan Council shall consider all bids received and intends to award a contract to the responsive and responsible bidder(s) submitting the lowest bid to the Council. However, the Metropolitan Council reserves the right to reject all bids, to investigate the qualifications and experience of any bidder, to reject any provisions of any bid, to obtain new bids, or to proceed to do the work otherwise.

Dated: 21 January 2002

By Order of the Metropolitan Council
William G. Moore, General Manager/Division Director
Metropolitan Council Environmental Services

Metropolitan Council

Notice of Availability of Funds from the Metropolitan Livable Communities Act Tax Base Revitalization Account

Purpose: The Metropolitan Livable Communities Act (*Minnesota Statutes*, Ch. 473.25) created a **Tax Base Revitalization Account** to make grants to clean up contaminated land for subsequent commercial/industrial redevelopment; job retention and job growth. Applications will be prioritized to the extent that they address the following: increase local tax base; create net gain in regional jobs; demonstrate market demand for proposed site; supplement a previously approved project; preserve and/or increase living wage jobs; improve the environment by reducing human health risk; promote compact development; provide living wage jobs; leverage private investment; and make more efficient use of current infrastructure capacity. This program is being coordinated with complementary programs at the MN Pollution Control Agency (MPCA) and MN Department of Trade and Economic Development (DTED).

Eligible Applicants: Statutory or home rule charter cities participating in the Metropolitan Livable Communities Housing Incentives Program are eligible to apply. Metropolitan counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington) and development authorities (e.g., Housing and Redevelopment Authority, Economic Development Authority or Port Authority) may apply for projects in eligible communities.

Submission Date: An original and two (2) copies of each application are due at the Metropolitan Council, Attn: Wayne Nelson 230 E. Fifth St., St. Paul, MN 55101, by 5:00 p.m., Wednesday, May 1, 2002.

Amount Available: Approximately \$2.5 million will be available for grants awarded this cycle. Grants will be awarded on a competitive basis. If applications for grants exceed the available funds for this cycle, no more than one-half of the funds may be granted to projects in a single city, and no more than three-quarters of the funds may be granted to projects located in cities of the first class.

Obtain Information: For a copy of the grant application guide and format, contact Wayne Nelson, Metropolitan Council at **phone:** (651) 602-1406 or **TTY:** 291-0904, or via **email:** wayne.nelson@metc.state.mn.us. The application form may be copied from the Metropolitan Council **web site** at: www.metrocouncil.org under the topic "Planning".

Metropolitan Council

Notice of Request for Proposals No. 02P005: Public Transit Contract Route Operations & Management

NOTICE IS HEREBY GIVEN that the Metropolitan Council is soliciting proposals from transit service providers to provide bus operations services on one or both of the following public transit contract routes known as: "*Roseville Area Circulator (RAC)*" or "*The Bloomington/Edina (BE) Line*". The *Roseville Circulator* route operates weekdays and Saturdays, consists of seven routes, makes 12,000-passenger trips/month and utilizes seven buses. The *BE-Line* consists of two routes, makes 24,000-passenger trips/month and utilizes four buses. The Council will supply contractor with new 30' low-floor buses to the contract providers for use on these contract routes through its Transportation and Transit Development Division.

The Metropolitan Council provides mass transit and circulator bus services to metropolitan, suburban and the outlying Twin Cities areas of Minneapolis and St. Paul. The Council is seeking proposals from firms that have an FTA-compliant Drug and Alcohol Program, a proven bus maintenance program, and who have the capability of providing a fully trained cadre of drivers and maintenance personnel within three weeks of NTP. Local and national providers of transportation services, including school bus transportation companies, transportation charter companies, private transit companies, non-profits and public agencies that provide transportation services are encouraged to propose.

Non-State Contracts & Grants

All proposals must be submitted in accordance with the RFP. The tentative schedule is as follows:

<i>RFP Issue Date</i>	January 31, 2002
<i>RSVP for Pre-proposal Teleconference</i>	February 14, 2002
<i>Pre-proposal Meeting/Teleconference</i>	February 19, 2002
<i>Questions Due</i>	February 26, 2002
<i>Proposals Due</i>	March 14, 2002
<i>Council Action</i>	May 1, 2002
<i>Notice to Proceed</i>	May 7, 2002

All firms interested in this project should request a copy of the RFP through:

Amanda Petersen, Administrative Assistant, Contracts and Procurement Unit
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101
Phone: (651) 602-1585
Fax: (651) 602-1138
Email: amanda.peterson@metc.state.mn.us

Please provide a *single* point of contact; *complete* company name; address/city/state/zip, along with phone/fax/mobile/cell and pager numbers *and* email information if you wish to be placed on the RFP Holders List. All other inquiries regarding this procurement shall be directed by email, fax or letter to Mary DeMers at the above address: **phone:** (651) 602-1120, **fax:** (651) 602-1138, **email:** mary.demers@metc.state.mn.us

This project is funded by transit revenues generated by the motor vehicle tax per Minnesota State Statute. *Minnesota Statutes*, Sections 473.144 and 363.073, and *Minnesota Rules*, Parts 5000.3400 to 5000.3600 and the requirements of *Minnesota Rules* 5000.3530 will be applied to and incorporated in any contract based upon the proposal or any modifications thereto. The Minnesota Data Practices Act governs data submitted in response to this RFP. It provides that all information submitted by a Proposer in response to an RFP, with the exception of trade secret data as defined in *Minnesota Statutes*, section 13.37, becomes public at the times specified in the Act and is then available to any person upon request. Any information in its response for which Proposer claims trade secret protection must be limited and set apart in the proposal on separate pages, with a heading that identifies the information as trade secret information. Blanket-type identification on whole pages or sections containing trade secret information will not assure protection. A statement that submitted information is copyrighted or otherwise protected does not prevent public access.

Metropolitan Council

Notice of Two-Step Rolling Stock Solicitation 40' Low-Floor Transit Buses

Solicitation No. 02P016

NOTICE IS HEREBY GIVEN that the Metropolitan Council is soliciting proposals from manufacturers to provide forty-five (45) 40-foot low-floor model transit buses with an option for forty-five (45) additional buses over a period of five years (through 2009).

The solicitation will be conducted in a two-phase process. In the pre-qualification phase, all prospective offerors must submit a technical proposal and a separate, sealed price proposal. Upon evaluation, a competitive range will be established and sealed bids will be requested in the form of Best and Final Offers (BAFOs). All proposals must be submitted in accordance with the solicitation Package. The tentative schedule for this procurement process is:

<i>Solicitation Package Release Date</i>	End of February, 2002
<i>Teleconference Pre-Proposal Date</i>	Mid-March, 2002
<i>RSVP for Teleconference Due</i>	One-week prior to Teleconference
<i>Proposal Due Date</i>	End of March, 2002

All firms interested in this project should request a copy of the solicitation through:

Amanda Petersen, Administrative Assistant, Contracts and Procurement Unit
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101
Phone: (651) 602-1585
Fax: (651) 602-1138
Email: amanda.petersen@metc.state.mn.us

Please provide **one** contact point; complete company name; address/city/state/zip along with phone/fax/mobile/cell phone and pager numbers as well as email information if you wish to be placed on the Solicitation List. **All inquiries** regarding this procurement shall be directed by **email** to: Mary DeMers at: mary.demers@metc.state.mn.us

The Metropolitan Council provides mass transit bus services to the Twin Cities of Minneapolis/St. Paul Metro and outlying areas. The buses will be supplied to contract providers for use on contract routes outside of the Metro Transit system through its Transportation and Transit Development Division.

This project may be funded in part by local funds, transit revenues generated by the motor vehicle tax per *Minnesota State Statute* of FTA grant funds, to which federal rules apply. *Minnesota Statutes*, Sections 473.144 and 363.073 and *Minnesota Rules*, Part 5000.3400 to 5000.3600 will be incorporated into any contract based upon the Proposal or any modifications to it. The Minnesota Data Practices Act governs data submitted in response to this RFP. It provides that all information submitted by a Proposer in response to an RFP, with the exception of trade secret data as defined in *Minnesota Statutes*, Section 13.37, becomes public at the times specified in the Act and is then available to any person upon request. Any information in its response for which Proposer claims trade secret protection must be limited and set apart in the proposal on separate pages, with a heading that identifies the information as trade secret information. Blanket-type identification on whole pages or sections containing trade secret information will not assure protection. A statement that submitted information is copyrighted or otherwise protected does not prevent public access.

Metropolitan Council – Metro Transit

Sealed Bids Sought to Refurbish Freight Elevator

The Metropolitan Council is soliciting sealed bids for Refurbish Freight Elevator at the Metro Transit Overhaul Base, 515 N. Cleveland Ave., St. Paul, MN 55114. A walk through will be held at the Overhaul Base at 10:00 a.m., on February 27, 2002. Bids are due at **2:00 p.m., on March 6, 2002.**

Bids must be submitted in accordance with the Invitation for Bids document available from:

Metropolitan Council
Metro Transit Purchasing Department
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070

University of Minnesota

Notice of Bid Information Service (BIS) Available for All Potential Vendors

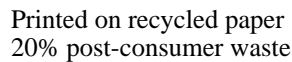
The University of Minnesota offers 24 hour/day, 7 day/week access to all Request for Bids/Proposals through its web based Bid Information Services (BIS). Subscriptions to BIS are \$75/year. Visit our web site at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Requests for Bids/Proposals are available to the public at no charge each business day from 8:00 a.m. to 4:30 p.m. in Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Mpls., MN 55454.



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