

This **April 25, 2025** version of the Wetland Conservation Act (WCA) rule is the second preliminary draft which was developed after a review of comments received on the 11/12/24 preliminary draft rule. It is a “strikeout/underline” version, showing each addition and deletion. The purpose of this second preliminary draft is to allow for continued early review by the interested public of potential rule amendments prior to initiation of the formal rulemaking process.

Brief explanations for the preliminary revisions to this rule are provided below each substantive revision. Substantive changes made to the 11/12/24 preliminary draft rule are shown in **yellow highlight**. Numerous less consequential changes (e.g. grammar, punctuation, corrected references, etc.) are not highlighted. Reference to an “April 25, 2025 Preliminary Draft WCA Rule Companion Document” is also provided for select rule language where significant changes to previously proposed language from the 11/12/24 Preliminary Draft Rule are proposed (i.e. “changes to previous changes”).

Further additions and revisions to this preliminary draft may occur in response to comments, feedback received, and continued internal review.

CHAPTER 8420

BOARD OF WATER AND SOIL RESOURCES

WETLAND CONSERVATION

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PURPOSE AND SCOPE

8420.0100 PURPOSE.

Subpart 1. **Purpose.** This chapter implements the regulatory provisions of the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended, ~~and other relevant laws by Laws 1993, chapter 175; Laws 1994, chapter 627; Laws 1996, chapter 462; Laws 2000, chapter 382; Laws 2001, chapter 146; Laws 2002, chapter 220; Laws 2003, chapter 128; Laws 2004, chapters 221 and 255; Laws 2007, chapters 57 and 131; and Laws 2008, chapter 368.~~ This chapter shall be interpreted to implement the purpose of the act, which is to:

Reason for change: Striking the list of relevant laws because it is incomplete, and it is unnecessary to have a complete list.

- A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent.

Subp. 2. **Method.** The regulatory provisions of the Wetland Conservation Act advance the purpose in this part by requiring persons proposing to impact a wetland 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 8420.0420, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

Subp. 3. **Administration.** 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. Persons seeking general information on wetlands and the interpretation of this chapter may contact their local government unit or soil and water conservation district.

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

Posted: *August 26, 2009*

8420.0105 SCOPE.

Subpart 1. **Scope; generally.** Wetlands must not be impacted unless replaced by restoring or

creating wetland areas of at least equal public value. This chapter regulates the draining or filling of wetlands, wholly or partially, and excavation in the permanently and semipermanently flooded areas of ~~type 3, 4, or 5~~ wetlands, and in all wetland **types areas** if the excavation results in filling, draining, or conversion to nonwetland.

Reason for change: Conforms the WCA rule to amendments to MN Statutes 103G.222, subdivision 1, which eliminated Circular 39 wetland type as a relevant factor for determining when excavation is regulated under this chapter.

Subp. 2. Applicability.

A. 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 or improved and the agricultural use does not impact the wetlands.

B. This chapter does not regulate normal farming practices in a wetland. "Normal farming practices" means ranching, silvicultural, grazing, and farming activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands.

C. This chapter does not prevent control of noxious weeds if the control does not impact the wetland.

D. This chapter does not regulate impacts to incidental wetlands. "Incidental wetlands" are wetland areas that the landowner can demonstrate, to the satisfaction of the local government unit, were created in nonwetland areas solely by actions, the purpose of which was not to create the wetland. Incidental wetlands include drainage ditches, impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention or detention, drainage, soil and water conservation practices, and water quality improvements and not as part of a wetland replacement process that may, over time, take on wetland characteristics.

E. 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 according to Minnesota Statutes, section 103G.201, except that:

(1) 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 must make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption decisions; or

(2) 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 decision if a public waters work permit is required and the commissioner includes the provisions of this chapter in the public waters work permit.

F. This chapter is in addition to other regulations **and requirements**, including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state

agencies, watershed districts, and local governments.

Reason for change: The addition of “and requirements” recognizes that the “Swampbuster” provisions of the federal farm program administered by the USDA are not regulations, but program requirements.

G. 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.

H. This chapter does not require state agencies to obtain local government unit approvals. However, the state agencies must follow the procedures and standards prescribed by this chapter.

~~I. In addition to the provisions of this chapter, governmental decisions on impacting 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.~~

Reason for change: This item is deleted because it is addressed in greater detail in part 8420.0520. These and other relevant statutory provisions apply regardless of inclusion in the WCA rule.

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; L 1996 c 462 s 43; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

Posted: *August 26, 2009*

8420.0111 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Account or wetland bank account.** "Account" or "wetland bank account" means a record of wetland banking debits and credits established by an account holder within the state wetland banking system.

Subp. 3. **Account holder.** "Account holder," in the state wetland banking system, means a person, corporation, legal partnership, government agency, or organization that is the owner of replacement credits.

Reason for change: Language added for clarity.

Subp. 4. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended.

Subp. 5. **Activity.** "Activity" means any work or action conducted in or near a wetland that could potentially affect a wetland. An activity may or may not result in an impact.

Subp. 6. **Agricultural land.** "Agricultural land" means land used for horticultural, row, close grown, pasture, or hayland crops; growing nursery stocks; animal feedlots; farmyards; or 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 a conservation program under contract or easement.

Subp. 7. **Applicant.** "Applicant" means a person, corporation, government agency, or organization that submits an application.

Subp. 8. **Application.** "Application" means a formal request for a decision by a local government unit, made under this chapter and the act, for an exemption, no-loss, wetland boundary, wetland type, sequencing, replacement plan, or banking plan. The board ~~shall~~ **must** provide forms to be used for applications.

Subp. 9. **Approve or approval.** "Approve" or "approval" means the formal authorization by a local government unit of an activity described in an application.

Subp. 10. **Aquaculture.** "Aquaculture" means cultivation of plants and animals in water for harvest, including hydroponics and raising fish in fish farms.

Subp. 11. **Banking credits.** "Banking credits" means replacement credits resulting from the actions in part 8420.0526 that have been certified and deposited in the wetland bank according to part 8420.0725.

Subp. 11a. Bank Service Area or Wetland Bank Service Area. "Bank Service Area" or "Wetland Bank Service Area" means a geographic area wherein replacement wetlands, including banking credits, can provide preferred replacement for wetland impacts incurred in the same area according to part 8420.0522. Bank Service Areas are established by the board in consultation with the U.S. Army Corps of Engineers and publicly available on the board's website. The bank service areas **must be published in the State Register**, take effect **when specified in the notice but no sooner than 120** days after publication, and remain in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register. The board will consider watershed boundaries, ecological characteristics, land use, wetland quality, historic wetland abundance and loss, restoration opportunities, geographic size, and the economic viability of wetland banks when defining bank service areas.

Note: See the "April 25, 2025 Preliminary Draft WCA Rule Companion Document" for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: This previously undefined term is used throughout the current rule and has been incorporated into amendments to MN Statutes 103G.222, subdivision 3 and 103G.005, subdivisions 10b and 10h. The definition includes criteria for the defining bank service areas consistent with federal regulations, requires consultation with the U.S. Army Corps of Engineers (USACE), and includes procedures for public notice via the State Register.

Subp. 12. **Best management practices.** "Best management practices" means state-approved and published practices that are capable of preventing and minimizing degradation of surface water and

groundwater.

Subp. 13. **Board.** "Board" means the Board of Water and Soil Resources under Minnesota Statutes, section 103B.101.

Subp. 13a. Calcareous fen. "Calcareous fen" means a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

Reason for change: The definition is relocated here from 8420.0935, Subp. 2. The definition is more appropriately located here in the definitions part as the term is used in multiple locations in the rule.

Subp. 14. **City.** "City" means a home rule charter or statutory city.

Subp. 15. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subp. 16. **Creation.** "Creation" means construction of wetlands in an area that was not wetlands in the past.

Subp. 16a. Credit or replacement credit. "Credit" or "replacement credit" means a unit of measure representing the accrual and attainment of aquatic functions at a replacement site. Credit can be project specific, banking, or in-lieu fee.

Reason for change: Definition added for clarity, consistent with the federal mitigation rule.

Subp. 17. **Day.** "Day" means a calendar day unless specified otherwise. The day of the event is not used in counting any time period.

Subp. 18. **Decision.** "Decision" means a formal action by the local government unit or delegated staff to approve, approve with conditions, or deny an application.

Subp. 19. **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.

Subp. 20. **Determination or determine.** "Determination" or "determine" refers to a conclusion or technical finding by the technical evaluation panel or ~~local~~ the applicable government al unit ~~staff or their designee~~.

Reason for change: Clarifies that determinations are not limited to "technical finding[s]" and that they are also made by governmental units other than the "local government unit" (LGU), as defined in this chapter.

Subp. 21. **Ditch.** "Ditch" has the meaning given under Minnesota Statutes, section 103E.005, subdivision 8.

Subp. 22. **Drain or drainage.** "Drain" or "drainage" means any method for removing or diverting waters from wetlands. Methods include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 23. **Drainage system.** "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets.

Subp. 23a. **Electronic transmission.** "Electronic transmission" has the meaning given under Minnesota Statutes, section 103G.005.

Reason for change: Incorporates the statutory definition of "electronic transmission" in MN Statutes 103G.005, subdivision 9d into rule by citation. MN Statutes 103G.2242, subdivision 6 authorizes the use of electronic transmission for WCA notices under 8420.0255. Note: Only the section of statute is cited because the subdivision numbers change each time the statute is amended, and this subdivision has changed from 10f to 9b to 9d since the definition was added statute.

Subp. 24. **Eligible.** "Eligible" means the maximum extent to which a local government unit or, when appropriate, delegated staff, can set the applicable parameter in the application of the Wetland Conservation Act and parts 8420.0100 to 8420.0935. The actual amount awarded is determined by the specific circumstances of each application, determined on a case-by-case basis, applying the standards set out in parts 8420.0100 to 8420.0935.

Subp. 25. **Excavation.** "Excavation" means the displacement or removal of substrate, sediment, or other materials by any method.

Subp. 26. **Fill.** "Fill" means any solid material added to or redeposited in a wetland that would alter the wetland's cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. Fill 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. Fill includes posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland's function and value, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, housing projects, and similar structures. Fill 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.

Subp. 27. **50 to 80 percent area.** "50 to 80 percent area" means a county or watershed with at least 50 percent but less than 80 percent of the presettlement wetland acreage intact, as provided in part 8420.0117.

Subp. 28. **Greater than 80 percent area.** "Greater than 80 percent area" means a county, ~~or~~ watershed, or, for the purposes of wetland replacement, bank service area where 80 percent or more of the presettlement wetland acreage is intact and:

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

B. 50 percent or more of the current total land area is state or federal land. Greater than 80 percent areas are provided in part 8420.0117.

Reason for change: Conforms the WCA rule to amended MN Statutes 103G.005, subdivision 10b that allows for aligning presettlement areas along bank service area boundaries.

Subp. 29. **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.

Subp. 30. **Hydric soils.** "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

Subp. 30a. **Hydrogeomorphic wetland classification or hydrogeomorphic class.** "Hydrogeomorphic wetland classification" or "hydrogeomorphic class" means classifying a wetland for assessment and characterization of wetland functions based on its geomorphic position in the landscape and hydrologic characteristics according to A Hydrogeomorphic Classification for Wetlands (Brinson 1993) including updates, supplementary guidance, and replacements, if any, as determined by the board.

Reason for change: Adds a definition of hydrogeomorphic (HGM) class consistent with its addition to MN Statutes 103G.005, subdivision 17b and 103G.2242, subdivision 2(b). HGM concepts and classification is referred to in current WCA rules 8420.0522, subparts 3B and 5A and in MN Statutes 103G.222, subdivision (e)(1).

Subp. 31. **Hydrophytic vegetation.** "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Subp. 32. **Impact.** "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or by excavation in the permanently and semipermanently flooded areas of ~~type 3, 4, or 5~~ wetlands, as defined in subpart 75, and in all wetland types areas if the excavation results in filling, draining, or conversion to nonwetland.

Reason for change: Conforms the WCA rule to amendments to MN Statutes 103G.222, subdivision 1, which eliminated Circular 39 wetland type as a relevant factor for determining when excavation is regulated under this chapter.

Subp. 33. **Impacted wetland.** "Impacted wetland" means a wetland that has been partially or wholly subjected to an impact.

Subp. 34. **Indirect impact.** "Indirect impact" means an impact that is the result of an activity that occurs outside of the wetland boundary.

Subp. 35. **Infrastructure.** "Infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, ditches, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement within the context of an approved development plan.

Subp. 35a. **In-lieu fee program.** "In-lieu fee program" means a program in which the wetland replacement requirements of this chapter are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits.

Reason for change: New definition added consistent with amendment to MN Statutes 103G.005, subdivision 10g.

Subp. 36. **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.

Reason for change: The term "banked wetland" is undefined, only used twice in the rule, and is unnecessary as replacement wetlands include wetlands for which credits have been deposited in the bank.

Subp. 37. **Less than 50 percent area.** "Less than 50 percent area" means a county, ~~or~~ watershed, or, for the purposes of wetland replacement, bank service area with less than 50 percent of the presettlement wetland acreage intact or any county, ~~or~~ watershed, or bank service area not defined as a greater than 80 percent area or 50 to 80 percent area, as provided in part 8420.0117.

Reason for change: Conforms the WCA rule to amended MN Statutes 103G.005, subdivision 10h that allows for aligning presettlement areas along bank service area boundaries.

Subp. 38. **Local government unit.** "Local government unit" means:

A. outside of the seven-county metropolitan area, a city council, county board of commissioners, or soil and water conservation district or their delegate;

B. in the seven-county metropolitan area, a city council, town board under Minnesota Statutes section 368.01, watershed management organization as defined under Minnesota Statutes, section 103B.205, subdivision 13, or soil and water conservation district or their delegate; ~~and~~

C. in those cases where an activity or replacement will occur on state land, the agency with administrative responsibility for the land; and

D. for wetland banking projects established solely for replacing wetland impacts under a permit to mine under Minnesota Statutes section 93.481, the commissioner.

Reason for change: Item B is amended to add a specific reference that exists in statute but is currently not included in the rule. This omission was an oversight that was identified at the end of the last rulemaking effort. Item D is added to conform the rule to amendments to MN Statutes 103G.005, subdivision 10e (4).

Subp. 39. **Local water plan.** "Local water plan" means a board approved and locally adopted watershed plan pursuant to Minnesota Statutes, sections 103B or 103D 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.

Reason for change: Updates the definition to be more inclusive, specifically including comprehensive watershed management plans developed under the "One Watershed One Plan" process.

Subp. 40. **Major watershed.** "Major watershed" means the 81 major watershed units delineated by the map State of Minnesota Watershed Boundaries, 1979, incorporated by reference under part 8420.0112, ~~item Q.~~

Subp. 41. **Mining.** "Mining" means the removal of peat and metallic minerals as provided in Minnesota Statutes, sections 93.461 and 93.481.

Subp. 42. **Minor watershed.** "Minor watershed" means one of the 5,600 minor watersheds delineated by the map State of Minnesota Watershed Boundaries, 1979, incorporated by reference under part 8420.0112, ~~item Q.~~

Subp. 43. **Municipality.** "Municipality" has the meaning given in Minnesota Statutes, section 103G.005, subdivision 12.

Subp. 44. **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 ~~and that are classified as native in the Minnesota Plant Database, incorporated by reference under part 8420.0112, item Q.~~

Reason for change: The deletion removes an obsolete reference to the Minnesota Plant Database.

Subp. 45. **Noninvasive vegetation.** "Noninvasive vegetation" means plant species that do not typically invade or rapidly colonize existing, stable plant communities.

Subp. 46. **Nonwetland.** "Nonwetland" means upland areas ~~or previously converted areas~~ that do not meet the definition of wetlands, a wetland, the wetland, or wetland area in subpart 72 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. Both documents are incorporated by reference under part 8420.0112, items B and C.

Reason for change: Conforms the WCA rule to statutory amendments to 103G.005, subdivision 17b.

Subp. 47. **On-site.** "On-site" means within or directly adjacent to a project.

Subp. 48. **Ordinance.** "Ordinance" means a body of regulations developed, approved, and implemented by a county, city, or township as authorized by Minnesota Statutes, chapters 394, 462, and 366, respectively.

Subp. 49. **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.

Subp. 50. **Peace officer.** "Peace officer" has the meaning given under Minnesota Statutes, section 626.84.

Subp. 51. **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 covers the substrate throughout the year except in years of extreme drought or where surface water persists throughout the growing season in most years and when absent, the water table is usually at or very near the land surface.

Reason for change: Conforms the WCA rule to amendments to MN Statutes 103G.222, subdivision 1, which eliminated Circular 39 wetland type as a relevant factor for determining when excavation is regulated under this chapter. Also, establishes a definition consistent with the semi-permanently and permanently flooded water regimes in Classification of Wetlands and Deepwater Habitats of the United States, 2013.

Subp. 52. **Plant community.** "Plant community" means a wetland plant community classified according to Minnesota's Native Plant Community Classification, Version 2.0, Minnesota Department of Natural Resources (2005), including updates and amendments ~~Wetland Plants and Plant Communities of Minnesota & Wisconsin, incorporated by reference under part 8420.0112, item P.~~

Reason for change: Amended to refer to DNR's more complete Minnesota Native Plant Community Classification that supports the restoration of rare natural communities which are defined in the classification. Mitigation for rare natural communities is addressed elsewhere in rule due to statute changes that have occurred since the current rule was adopted.

Subp. 53. **Presettlement wetland.** "Presettlement wetland" means a wetland or public waters wetland that existed in Minnesota at the time of statehood in 1858.

Subp. 54. **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by a local government unit. As used in this chapter, a project may not be split into components or phases for the purpose of gaining additional exemptions.

Subp. 55. **Project-specific.** "Project-specific" means the applicant for a replacement plan approval provides the replacement as part of the project, rather than attain the replacement from a wetland bank or in-lieu fee program.

Reason for change: In-lieu fee added consistent with definition in Subp. 35a and statutory authority granted to the board to adopt rules containing provisions for an in-lieu fee replacement program per MN Statutes 103G.2242, subdivision 1(a).

Subp. 56. **Public transportation project.** "Public transportation project" means a project conducted by a public agency involving transportation facilities open to the public.

Subp. 57. **Public value of wetlands.** "Public value of wetlands" means the importance and benefit to the public derived from the wetland functions listed in part 8420.0522, subpart 1.

Subp. 58. **Public waters wetlands.** "Public waters wetlands" has the meaning given under part 6115.0170.

Subp. 59. **Public waters.** "Public waters" has the meaning given under part 6115.0170.

Subp. 60. **Replacement wetland.** "Replacement wetland" means a wetland restored or created or an area designated in part 8420.0526, or the equivalent, to replace wetland area or the public value of wetland functions lost at an impacted wetland.

Subp. 61. **Responsible party.** "Responsible party" means an individual, business, [legal partnership](#), or other organization causing draining, excavation, or filling of wetlands on the property of another, with or without the landowner's permission or approval.

Subp. 62. **Restoration.** "Restoration" means reestablishment of an area as wetlands that was historically wetlands and that is no longer wetlands or remains as a degraded wetland.

Subp. 63. **Rule.** "Rule" means a body of regulations developed, approved, and implemented by a watershed management organization as authorized under Minnesota Statutes, chapter 103D [or administrative rules adopted by a state agency under Minnesota Statutes, chapter 14](#).

Reason for change: Amended to clarify that the use of "rule" in this chapter also includes state administrative rules.

Subp. 64. **Shoreland or shoreland wetland protection zone.**

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

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

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

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

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

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

Subp. 65. **Silviculture.** "Silviculture" means management of forest trees.

Subp. 66. **Soil and water conservation district.** "Soil and water conservation district" means a legal subdivision of state government under Minnesota Statutes, chapter 103C.

Subp. 67. **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 and providing for, 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. 68. **Structure.** "Structure" means any object erected or placed in, under, or over or anchored or attached to a wetland area.

Subp. 69. **Utility.** "Utility" means a sanitary sewer; a storm sewer; potable water distribution; or transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, petroleum products, electricity, telephone, or radio service or communications.

Subp. 70. **Watershed.** "Watershed" means a land area that drains to a common waterway, such as a stream, lake, estuary, or wetland.

Subp. 71. **Watershed management organization.** "Watershed management organization" has the meaning given under Minnesota Statutes, section 103B.205, subdivision 13.

Subp. 72. **Wetlands, a wetland, the wetland, or wetland area.**

A. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this subpart, wetlands must:

(1) have a predominance of hydric soils;

(2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances, support a prevalence of hydrophytic vegetation.

B. "A wetland" or "the wetland" means a distinct hydrologic feature with characteristics of item A, surrounded by nonwetland ~~and including all contiguous wetland types, except those connected solely by riverine wetlands~~. "Wetland area" means a portion of a wetland or the wetland.

C. For the purposes of regulation under this chapter, "wetlands", "a wetland", "the wetland", and "wetland area" Wetlands does do not include public waters wetlands and public waters unless

reclassified as wetlands by the commissioner under Minnesota Statutes, section 103G.201.

D. Notwithstanding items A and B, “wetlands”, “a wetland”, “the wetland”, and “wetland area” includes deepwater aquatic habitats that are not public waters or public waters wetlands. For purposes of this item, “deepwater aquatic habitats” has the meaning given in Corps of Engineers Wetlands Delineation Manual, United States Army Corps of Engineers (January 1987).

Reason for change: The amendments to Item B remove previous and confusing rule language that is not in statute. Item C is revised for clarity. Item D is added to conform the WCA rule to amendments to MN Statutes 103G.005, subdivision 19.

~~D E. The wetland size is the area within its boundary. The boundary must be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987), which is incorporated by reference under part 8420.0112. The wetland type must be determined according to Wetlands of the United States, (1971 edition). Both documents are incorporated by reference under part 8420.0112, items A and B. The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.~~

Reason for change: Conforms the WCA rule to amendments to Minnesota Statutes 103G.2242, subdivision 2(b).

Subp. 73. **Wetlands in a cultivated field.** "Wetlands in a cultivated field" means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten most recent years ~~before January 1, 1991.~~

Reason for change: The “before January 1, 1991” provision is no longer relevant as corresponding language related to the agricultural exemption has been removed from statute. It is replaced with a standard related to the most recent ten years of land use as opposed to land use that occurred over 30 years ago. This standard is consistent with joint BWSR-USACE guidance relating to crediting for the restoration of partially drained agricultural wetlands as well as proposed rule language in WCA rule 8420.0526, subpart 4.

Subp. 74. **Wetlands located on agricultural land.** "Wetlands located on agricultural land" means a wetland where greater than 50 percent of its boundary abuts agricultural land.

Subp. 75. **Wetland type or type.** "Wetland type" or "type" means a wetland type classified according to ~~Wetlands of the United States (1956 and 1971 editions), as summarized in this subpart A Hydrogeomorphic Classification for Wetlands, United States Army Corps of Engineers (August 1993), including updates, supplementary guidance, and replacements, if any, as determined by the board.~~ Classification of Wetlands and Deepwater Habitats of the United States (2013) is a separate, parallel wetland typing system that may be used to characterize components of a wetland. Both documents are incorporated by reference under part 8420.0112, ~~items A and B.~~

~~A. "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing~~

season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses. In type 1 wetlands, vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

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

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

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

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

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

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

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

Reason for change: Conforms the WCA rule to amendments to MN Statutes 103G.222, subdivision 1, which eliminated Circular 39 wetland type as a relevant factor for implementation of this chapter. Also conforms the WCA rule to amendments to Minnesota Statutes 103G.2242, subdivision 2(b) incorporating HGM classification according to rules authorized under this part. Detailed definitions of each wetland type under Circular 39 are unnecessary and stricken.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

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~~ unless specified otherwise by the board:

A. ~~Wetlands of the United States (United States Fish and Wildlife Service Circular No. 39, 1956 and 1971 editions). A Hydrogeomorphic Classification for Wetlands, United States Army Corps of Engineers (August 1993).~~

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

C. Classification of Wetlands and Deepwater Habitats of the United States (~~Cowardin, et al., 1979 edition~~ Wetlands Subcommittee, Federal Geographic Data Committee and United States Fish and Wildlife Service, 2013).

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

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

~~DF. National Minnesota Wetland Inventory maps (United States Fish and Wildlife Service) (Minnesota Department of Natural Resources).~~

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

~~FH. Minnesota Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982~~ January 2012).

~~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.~~

~~G. Minnesota Stormwater Manual, Minnesota Pollution Control Agency (January 2008).~~

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

~~H. Agricultural BMP Handbook for Minnesota, Minnesota Department of Agriculture, St. Paul, 2017.~~

~~I. Best Management Practices and Data Needs for Groundwater Protection. Minnesota Pollution Control Agency (April 2019).~~

~~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.~~

~~O. Minnesota Plant Database, Minnesota Department of Natural Resources, St. Paul, 2002.~~

~~P. Wetland Plants and Plant Communities of Minnesota & Wisconsin, S. Eggers and D. Reed, 1997.~~

~~JQ. State of Minnesota Watershed Boundaries, 1979, Minnesota Department of Natural Resources, St. Paul, 1979 (1979).~~

These documents are available online, ~~through the State Law Library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. Except for the Minnesota Plant Database in item O, none of the documents are subject to frequent change.~~

Reason for change: Above revisions to part .0112 eliminate obsolete references, update outdated references, and to conform with statutory amendments that have occurred since the current WCA rule was adopted.

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

Posted: *August 26, 2009*

8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.

Subpart 1. **County classification.** For purposes of ~~this chapter part 8420.0420, subp. 8:~~

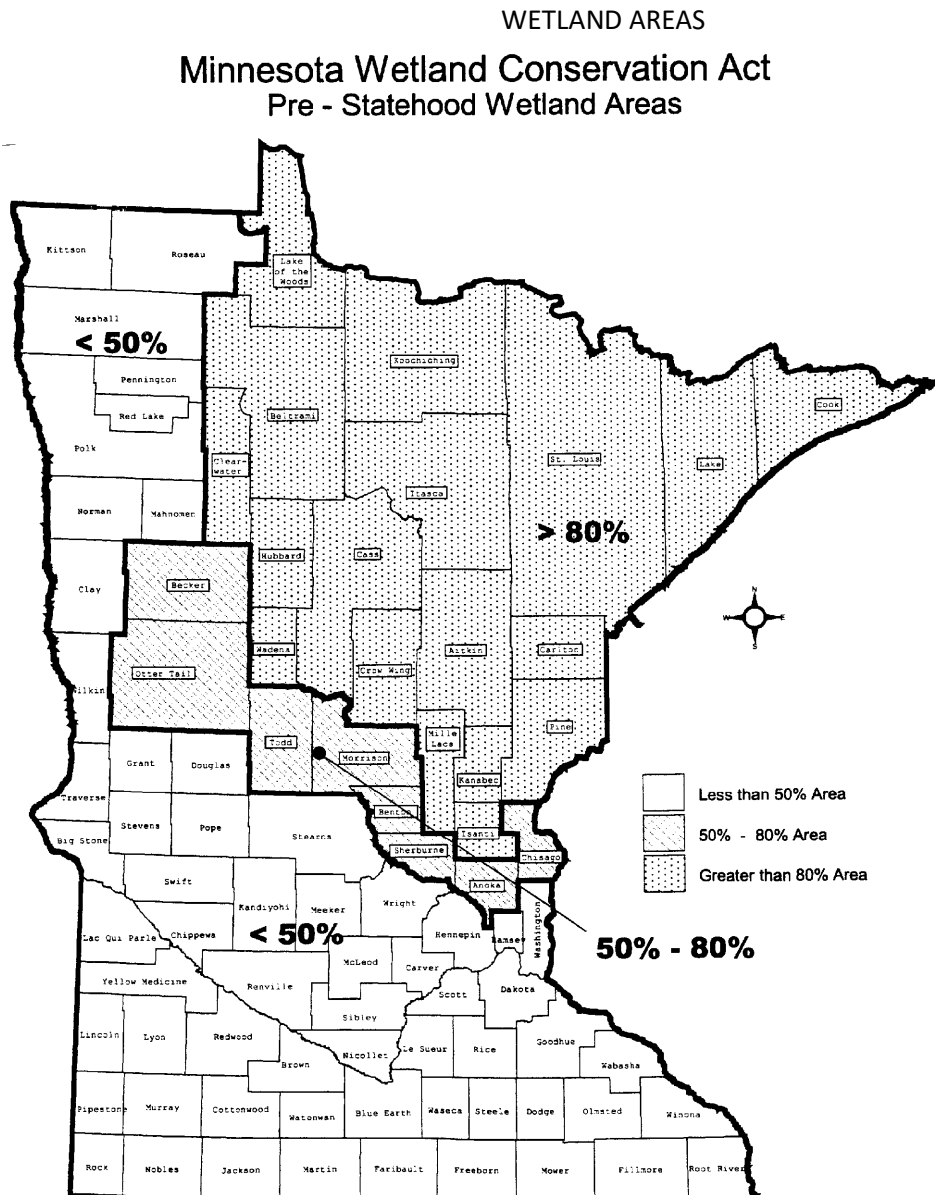
A. the following counties are greater than 80 percent areas: Aitkin; Beltrami; Carlton; Cass; Clearwater; Cook; Crow Wing; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; St. Louis; and Wadena;

B. the following counties are 50 to 80 percent areas: Anoka; Becker; Benton; Chisago;

Morrison; Otter Tail; Sherburne; and Todd; and

C. 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; Mahanomen; 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.

Reason for change: Due to amendments to MN Statutes 103G.005 subdivisions 10b and 10h that change how presettlement areas are determined for wetland replacement, the scope of this subpart was clarified as it now only pertains to the de minimis exemption.



Subp. 2. County or watershed reclassification.

A. A local government unit may request the board to reclassify a county or major watershed under subpart 1 that is wholly or partly within its jurisdiction on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board must change the classification of a county or major watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board must publish a notice of the change in the Environmental Quality Board Monitor.

B. One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify the county or major watershed under subpart 1 on the basis of its percentage of presettlement wetlands remaining. In support of the petition, the citizens must provide satisfactory documentation to the local government unit. The local government unit must consider the petition and forward the request to the board or provide a reason why the petition is denied.

Subp. 3. Bank Service Area Classification. For purposes of wetland replacement, the board will designate bank service areas as greater than 80 percent areas or less than 50 percent areas in accordance with part 8420.0111, subparts 28 and 37. Bank service area classifications established by the board must be published in the State Register and made publicly available on the board's website. The classifications take effect when specified in the notice but no sooner than 120 days after publication, and remain in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register.

Reason for change: New subpart added to conform the rule to amendments to MN Statutes 103G.005, subdivisions 10b and 10h which align presettlement area boundaries along bank service areas (BSAs) boundaries. The changes to items A and B clarify that they apply to the existing language in Subp. 1, while the new Subp. 3 addresses the new statute language. The process for establishing presettlement area BSA classifications is consistent with the process for establishing BSAs under 8420.0111, Subp. 11a.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

**LOCAL GOVERNMENT UNIT
DUTIES AND PROCEDURES**

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. **Determining local government unit.** The local government unit or responsible authority for making decisions must be determined according to items A to J K.

Reason for change: Subp. 1 is amended for clarity, as not all approving authorities in this subpart are defined as local government units. Item J is changed to K due to the addition/relocation of Item D.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town board under Minnesota Statutes section 368.01, or water management organization regulating surface-water-related matters in the area in which the activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related ~~board~~ rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

Reason for change: Item B is amended, consistent with 8420.0111 Subp. 38, to add a specific reference that exists in statute but is currently not included in the WCA rule. This omission was an oversight that was identified at the end of the last WCA rulemaking effort. “Board” is removed from the second sentence as the rules being referenced are those of the watershed management organization, not the board.

C. For activities on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land. However, state agencies must coordinate with local government units that would otherwise have jurisdiction, according to items A and B, when conducting or making decisions on activities in wetlands.

D. Notwithstanding items A to G, the Department of Natural Resources is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens. For wetland banking projects established solely for replacing wetland impacts occurring under a permit to mine under Minnesota Statutes Section 93.481, the local government unit is the Department of Natural Resources.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: Consistent with the changes to 8420.0111, Subp. 38, item D was amended to conform the WCA rule to amendments to MN Statutes 103G.005, subdivision 10e (4) which added DNR as a local government unit for wetland banking projects established solely for replacing wetland impacts under a permit to mine. The language regarding activities associated with “projects requiring permits to mine” and “calcareous fens” is relocated to a more logical location in the order of the subpart (Item J), as the DNR is the “approval authority” for these activities, not a “local government unit” as defined in WCA.

E. Implementation of this chapter and the act may be delegated from a county, city, or town, as applicable according to item A or B, to a soil and water conservation district or other governmental entity by the passage of resolutions by both parties. The delegation becomes effective when resolutions

have been passed by both parties, or on the date specified in the resolutions, whichever is later. Both parties must provide notice to the board, the commissioner, and the soil and water conservation district within 15 business days of adoption of the resolution. The notice must include a copy of the resolution and a description of the applicable geographic area.

F. If the activity is located in two jurisdictions, the local government unit is the one exercising zoning authority over the project or, if both have zoning authority, the one in which most of the wetland impacts will occur. If no zoning permits are required, the local government unit is the one in which most of the wetland impacts will occur. If an activity will affect or an application involves wetlands in more than one local government unit, the board may coordinate the project review to ensure consistency and consensus among the local government units involved. Local government units may maintain separate jurisdiction if mutually agreed upon.

Reason for change: The addition clarifies that BWSR may also coordinate the review of wetland delineation applications that cross local government unit boundaries in addition to applications that involve activities that impact wetlands.

G. For a replacement site located in more than one jurisdiction, the local government unit is the one in which most of the replacement wetland area occurs.

H. For replacement plans where the project-specific replacement will occur in a different local government unit than the impact, approval of all local government units involved or as specified in items A to G constitutes 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 required by this chapter. The local government unit with jurisdiction for the replacement site must limit the review to evaluation of the replacement site 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 8420.0800 to 8420.0820. 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.

I. For instances where the activity or replacement occurs in multiple jurisdictions, the local government unit with decision-making authority must coordinate with the other local government units.

J. Notwithstanding items A to I, the commissioner is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: The language above is relocated here from Item D. It is more appropriately located here as Items A through I refer to local government units, while the DNR does not act as a local government unit as defined in WCA for the implementation of these authorities.

~~JK~~. The board shall resolve all questions as to which government entity is the responsible authority, applying ~~the guidelines in~~ items ~~A to I~~.

Reason for change: Amended to address the addition (relocation) of Item J and language removed for clarity.

Subp. 2. **Local government unit duties.**

A. Local government units are responsible for making decisions on applications made under this chapter. Each local government unit of the state, except tribal lands and state agencies, must send a written acknowledgment, including a copy of the adopting resolution, to the board that it is assuming its responsibilities under this chapter and the act.

B. A local government unit must provide knowledgeable and trained staff with expertise in water resource management to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in subpart 3 or take other appropriate legal action to ensure proper implementation and compliance with this chapter. The board may establish standards and requirements for training, experience, and certification.

C. The local government unit may, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes. For final decisions made by staff, the local government unit ~~must~~ may establish a local appeal process that includes an evidentiary public hearing before appointed or elected officials.

Reason for change: This change conforms the WCA rule with amendments to MN Statutes 103G.2242, subdivision 2a that eliminated the requirement that all appeals be made to the local government unit. A local appeals process is now optional.

D. As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland must be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering this chapter and the act.

E. An application must not be approved unless entitlement thereto is established by a fair preponderance of the evidence. For each finding of fact and recommendation included in a written technical evaluation panel report that is not adopted by the local government unit, the local government unit must provide detailed reasons for rejecting the finding of fact or recommendation in its record of decision; otherwise, the local government unit has not sufficiently considered the technical evaluation panel report.

F. In the absence of an application, the local government unit may evaluate information related to a potential activity upon the request of a landowner. The evaluation provided does not constitute a decision for the purposes of parts 8420.0100 to 8420.0935.

G. The local government unit must retain a record of all decisions for a minimum of ten years after all applicable requirements and conditions pertaining to the project are fulfilled.

H. 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.

I. The local government unit must annually report information to the board regarding implementation of this chapter in a format and time period prescribed by the board. Failure to comply with the board's reporting requirements may subject the local government to a penalty under subpart 3.

Subp. 3. Failure to apply law.

A. If a local government unit fails to acknowledge in writing its responsibilities under this chapter and the act, as required in subpart 2, the board must impose, in the local government unit's jurisdiction, a 60-day moratorium on making decisions and implementing this chapter and the act. The board must notify the local government unit in writing of the start and end dates of the moratorium. The board must end the moratorium within the 60 days upon written agreement by the local government unit that it will assume, and is currently capable of implementing, its duties under this chapter and the act. If at the end of the initial 60-day moratorium a written agreement has not been made for the local government unit to apply the law, the board may 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 decisions; if the local government unit does not have knowledgeable and trained staff with experience in water resource management; or if the local government unit fails to comply with the board's reporting requirements, the board must notify the local government unit in writing of its concerns. The local government unit must 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 must 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 the board determines at the hearing that corrective action is necessary, the board must write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice must explain the reason for the action. If, after the 60-day period, the local government unit has not corrected the problem to the satisfaction of the board, the board must declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

C. When a moratorium is declared as prescribed in item A or B, a decision cannot be made on an application because a local government unit authorized to implement this chapter does not exist while the moratorium is in effect. An application pending a local government unit decision when a moratorium is declared must be returned by the local government unit to the applicant within 15 business days of the moratorium being placed in effect. An application submitted while a moratorium is in effect must be returned by the local government unit to the applicant with an explanation and within 15 business days of the local government unit's receipt of the application.

Statutory Authority: *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 32 SR 281; 34 SR 145*

Posted: *August 26, 2009*

8420.0233 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.

This chapter and the act provide minimum standards. Local government units may require more procedures and more wetland protection, but not less.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

A. For each local government unit, there is a technical evaluation panel. Panel membership consists of: 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 resource management appointed by the local government unit. For projects affecting public waters, public waters wetlands, or wetlands within the shoreland protection zone, the panel also includes a technical professional employee of the Department of Natural Resources. The local government unit must coordinate the panel.

B. Two members of the technical evaluation panel must be knowledgeable and trained in applying methodologies of the United States Army Corps of Engineers Wetland Delineation Manual (January 1987), ~~Wetland Plants and Plant Communities of Minnesota & Wisconsin (S. Eggers and D. Reed 1997), Wetlands of the United States (United States Fish and Wildlife Service Circular 39, 1971 edition), A Hydrogeomorphic Classification for Wetlands, United States Army Corps of Engineers (August 1993), and Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition Wetlands Subcommittee, Federal Geographic Data Committee and United States Fish and Wildlife Service, 2013),~~ including updates, ~~and~~ supplements, replacements, and any modifications or guidance provided by the board. The panel must also be knowledgeable and trained in evaluation of wetland functions and the resulting public value. The panel may seek advice and assistance from others with additional expertise to help the panel in its work.

Reason for change: Conforms the WCA rule to amendments to MN Statutes 103G.005, subdivision 17b and 103G. 2242, subdivision 2(b) which incorporates HGM classification. Also updates reference to Classification of Wetlands and Deepwater Habitats of the United States.

C. The technical evaluation panel, if requested to do so by the local government unit, the landowner, or a member of the panel, must make technical findings and recommendations regarding applications, the scope of this chapter and the act, the applicability of exemption and no-loss standards, wetland functions and the resulting public value, direct and indirect impacts, possible violations of this chapter and the act, enforcement matters under part 8420.0900, comprehensive wetland protection and management plans and implementing rules and ordinances, and other technical issues related to implementation of this chapter. The panel must review applications for replacement of public road projects submitted according to part 8420.0544, banking projects according to parts 8420.0700 to 8420.0755, and replacement wetland monitoring as provided in parts 8420.0800 to 8420.0820. The panel must provide its findings to the local government unit for consideration. For violations of this chapter that may result in the issuance of an enforcement order, the panel must consult with the enforcement

authority.

D. The panel's recommendation to the local government unit may recommend approval, approval with changes or conditions, or denial of an application. When a technical evaluation panel assembles findings or makes a recommendation, the local government unit must consider the findings or recommendation of the panel in its approval or denial of an application. The panel shall make no findings or recommendations without at least one member having made an on-site inspection. Panel findings and recommendations must be documented and endorsed by a majority of the members. If the local government unit does not agree with the panel's findings and recommendation, the detailed reasons for the disagreement must be part of the local government unit's record of decision.

E. Applicants 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. Investigations must 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.

F. An individual member of the technical evaluation panel that has a financial interest in a wetland bank, or management responsibility to sell or make recommendations in their official capacity to sell credits from a publicly owned wetland bank, must disclose that interest, in writing, to the panel and the local government unit.

Reason for change: Item F was added to conform the WCA rule to amendments to MN Statutes 103G.2242, subdivision 2(d).

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

Posted: *August 26, 2009*

8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES.

Subpart 1. **General.** Notices and local government unit decisions made under this chapter must be in compliance with Minnesota Statutes, section 15.99 except for decisions on banking plan applications which must be made in compliance with part 8420.0705, subpart 3. Notices and other documents may be sent by electronic transmission except when the recipient has provided a valid mailing address and specified that mailing is preferred.

Reason for change: Language added to conform the WCA rule to amendments to MN Statutes 103G.2242, subdivision 2a (c) directing the board to establish separate timelines for banking projects. Language was also added to allow for electronic transmission of notices in accordance with MN Statutes 103G.2373.

Subp. 2. **Determination of complete application.** The local government unit must determine ~~that if~~ an application is complete based on parts 8420.0305 to 8420.0330. For incomplete applications, the local government unit must notify the applicant within 15 business days of receipt of the application and list in

writing what items or information is missing.

Subp. 3. **Notice of application.**

A. Within 15 business days of receipt of a complete application, the local government unit must send a copy of the application and a notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization, if there is one; the commissioner; ~~and~~ individual members of the public who request a copy; ~~and, for activities within the~~ exterior reservation boundary of a federally recognized Indian Tribe listed in Minn. Stat. Section 10.65, subdivision 2, the lead official of the Tribal governing body or their designee. The notice must identify the type of application, the date the comment period ends, and where to submit comments. ~~If requested, individual members of the public who request a copy~~ must be sent a summary copy of the application that includes information to identify the applicant and the location and scope of the project. The comment period must ~~be at least~~ end no sooner than 15 business days from the date the notice of application is sent. Revisions of an approved and valid replacement plan must be noticed according to this subpart by sending a summary of the proposed revisions if:

Note: See the "April 25, 2025 Preliminary Draft WCA Rule Companion Document" for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: Noticing federally recognized Indian Tribes of applications for activities within reservation boundaries will improve communications and coordination between local governments and the Tribes. The remaining changes to Item A were made to improve clarity.

(1) the wetland area to be impacted under the revised replacement plan is:

- (a) increased by more than ten percent;
- (b) a different type;
- (c) part of a different wetland; or
- (d) more than 500 feet from the location of the previously approved wetland

impact; or

(2) the project-specific replacement area is:

- (a) a different wetland type;
- (b) more than 500 feet from the location of the previously approved
- (c) a different action eligible for credit; ~~or~~

replacement; or

(3) the wetland bank credits are to be withdrawn from a bank that is of a lower siting priority under 8420.0522 subpart 7 than the bank identified in the approved replacement plan.

Reason for change: The “re-noticing” provision of sub-item 2 is largely applicable to project-specific replacement. The majority (over 95%) of wetland replacement now occurs through wetland banking. The amendments to sub-item 2 and the addition of sub-item 3 clarify the instances when approved replacement plans that utilize wetland banking credits need to be re-noticed.

B. This subpart does not apply to exemption or no-loss applications. However, a local government unit may issue a notice for an exemption or no-loss application following the requirements in this part when the local government unit believes that input from those required to receive notice will be useful in determining whether an exemption or no-loss applies.

Subp. 4. **Decision.** ~~The local government unit's decision must be based on the standards and procedures required by this chapter and on the technical evaluation panel's findings and recommendation, when provided. The local government unit must consider and include in its record of decision the technical evaluation panel's recommendation, when provided, to approve, modify, or deny the application. The local government unit must also consider any comments received from those required to receive notice. The local government unit's decision must be made in compliance with the time period prescribed by Minnesota Statutes, section 15.99, which, on the effective date of this part, generally requires a decision in 60 days. The local government unit may make on-site exemption and no-loss decisions if the decisions are noticed according to subpart 5 and project details are provided sufficient to document eligibility. The local government unit's decision is valid for three years or as otherwise specified in the local government unit's decision when the technical evaluation panel advises that a longer period is justified in accordance with the standards in parts 8420.0100 to 8420.0935.~~

A. When making a decision, the local government unit must:

- (1) make the decision based on the standards and procedures required by this chapter and on the technical evaluation panel's findings and recommendation, when provided;
- (2) make the decision in compliance with the time period prescribed by Minnesota Statutes, section 15.99;
- (3) consider and include in its record of decision the technical evaluation panel's recommendation, when provided; and
- (4) consider any comments received from those required to receive notice.

B. The local government unit may make on-site exemption and no-loss decisions if the decisions are noticed according to subpart 5 and project details are provided to document eligibility.

C. The local government unit's decision is valid for five years, or as otherwise specified in the local government unit's notice of decision when a longer period is justified in accordance with the standards in this chapter. For wetland boundary and type decisions that are not associated with another type of valid decision under this chapter, the local government unit's wetland boundary and type decision is valid for five years except when the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have altered the wetland boundary or type.

Note: See the “April 24, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: Subpart 4 was reorganized from a narrative format to a more concise list-based format for ease of interpretation, increased clarity, and consistency with current guidance on rule formatting. The decision validity timeframe was also revised from three to five years to conform amendments to MN Statutes 103G.2242, subdivision 2a (d).

Subp. 5. **Notice of decision.** The local government unit's decision must be ~~mailed~~sent to the landowner within ten ~~business~~ days of the decision. A summary of the local government unit's decision, ~~in~~on a format prescribed by the board, must be sent within ten ~~business~~ days of the decision to those required to receive notice of the application. The notice of decision must include information on the process and time period to appeal the decision of the local government unit. This subpart also applies to decisions made on appeals to the local government unit under part 8420.0905, subpart 2.

Reason for change: Revised terminology (“mailed” to “sent”) to conform the WCA rule to amendments to MN Statutes 103B.2373. “Business” is deleted to conform the rule to MN Statutes 103G.2242, subdivision 7. Also clarified that this subpart applies to decisions made on local appeals.

Subp. 6. **Decisions and notice for replacement via banking.** For replacement plan applications proposing the use of banking credits, the local government unit must verify, before approving the application, that the credits to be withdrawn are available and the applicant has a purchase agreement with the seller. For an approval of a replacement plan using banking credits as replacement, the local government unit must notify the board's designated banking administrator of the approval. The notification must be sent concurrent with the notice of decision and must include the bank account, the user of credits, and the amount of credit approved for withdrawal.

Reason for change: BWSR does not have a position titled “banking administrator,” and the rule should avoid using specific position titles. “Designated” was added to clarify that the banking administrator function will be fulfilled by whichever position is designated to do so by the agency.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0265 PREVIOUSLY APPROVED APPLICATIONS.

Activities for which an application was approved may be completed under the laws, rules, conditions, and guidelines in effect when they were approved, provided the local government unit's approval is still valid.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

APPLICATION PROCEDURES

8420.0305 GENERAL APPLICATION REQUIREMENTS.

A. Persons requesting approval of an application must fulfill the application requirements of this part and those applicable to the type of application submitted according to parts 8420.0310 to 8420.0330 and, for wetland banking, part 8420.0705.

B. The following information must be submitted to the local government unit for all types of applications:

- (1) the full name, post office address, and telephone number of the applicant;
- (2) for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;
- (3) managing agents, subsidiaries, or consultants that are or may be involved with the activity;
- (4) the type of decision requested, as identified in parts 8420.0310 to 8420.0330;
- (5) the location of the project by township, range, section, and quarter section;
- (6) evidence of ownership of the project area or the requisite property rights to perform the activity;
- (7) an accurate map, survey, or recent aerial photograph showing the boundaries of the project area and boundaries, size, and type of each wetland relevant to the type of decision requested;
- (8) if applicable to the type of decision requested, a written description of the proposed project and project area, including its areal extent, with sufficient detail to allow the local government unit to assess the amount and types of wetland to be affected; and
- (9) other information considered necessary for evaluation of the application or project by the local government unit.

C. A landowner may seek advice from the local government unit regarding the applicability of an exemption or no-loss ~~a no-loss or exemption~~, the adequacy of sequencing arguments and alternatives, or other interpretation of this chapter without submitting an application.

Reason for change: The order of the terminology used was amended for consistency with other parts of the rule.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.

A landowner may apply for a wetland boundary or type decision from the local government unit. ~~The landowner is responsible for submitting proof necessary to make the decision.~~ Applications for approval of wetland boundary or type must include information according to the wetland delineation report submittal guidelines provided by the board. A wetland boundary or type application may be submitted independently or as part of a no-loss, exemption, sequencing, replacement plan, or banking application. When an independent wetland boundary or type application is approved, and the approval remains valid, the applicant may incorporate the approval in a subsequent application for a no-loss, exemption, sequencing, replacement plan, or banking application. This part also applies to identification and delineation of permanently and semipermanently flooded areas of wetlands.

Reason for change: The second sentence was deleted as it is redundant. Language was also added at the end of the paragraph to incorporate permanently and semi-permanently flooded water regimes consistent with amendments to MN Statutes 103G.222, subdivision 1.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0315 NO-LOSS APPLICATIONS.

A. A landowner may apply to the local government unit for a no-loss decision. A landowner who does not request a decision from the local government unit and proceeds with the activity may be subject to the enforcement provisions under part ~~8420.0915 8420.0900~~ and Minnesota Statutes, section 103G.2372.

Reason for change: Corrects an incorrect citation.

B. The landowner applying for a no-loss is responsible for submitting the ~~proof~~ information necessary to show qualification for the claim. This part also applies to applications requesting a decision on whether an activity or wetland falls within the scope of this chapter.

Reason for change: “Proof” is changed to “information” as “proof” can be interpreted in different ways and can represent an unattainable standard.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0320 EXEMPTION APPLICATIONS.

A. A landowner intending to impact a wetland without replacement, claiming exemption under part 8420.0420, may apply to the local government unit for an exemption decision or request an on-site exemption decision before beginning the activity to verify whether the proposed impact is exempt. A landowner who does not request a decision from the local government unit and proceeds with the activity may be subject to the enforcement provisions under part **8420.0915 8420.0900** and Minnesota Statutes, section 103G.2372. An exemption may apply whether or not the local government unit has made an exemption decision. If the landowner requests an exemption decision, then the local government unit must make one.

Reason for change: Corrects an incorrect citation.

B. The landowner applying for exemption must identify the specific exemption being claimed and submit the **proof information** necessary to show qualification for the exemption.

Reason for change: “Proof” is changed to “information” as “proof” can be interpreted in different ways and can represent an unattainable standard.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0325 SEQUENCING APPLICATIONS.

An applicant may either submit the information required for sequencing analysis as part of a replacement plan application or apply separately for a preliminary sequencing decision from the local government unit before preparing a complete replacement plan. The applicant must provide written documentation of the project's compliance with the sequencing standards in part 8420.0520, including the identification of the project purpose and a detailed description of the project and alternatives considered. The local government unit may request additional information needed to make a decision.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0330 REPLACEMENT PLAN APPLICATIONS.

Subpart 1. **Requirement.** A landowner proposing a wetland impact that requires replacement under this chapter must apply to the local government unit and receive approval of a replacement plan before impacting the wetland.

Subp. 2. **Preapplication conference and site visit.** Before preparation of a replacement plan, it is recommended that the landowner meet with the local government unit for a preapplication conference and site visit. The local government unit is encouraged to inform the landowner of all sequencing requirements and the criteria used to evaluate replacement plans.

Subp. 3. **Application contents.** ~~On an application form approved by the board in consultation with the commissioner, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information required in part 8420.0305:~~ **The landowner applying for a replacement plan is responsible for submitting the information necessary, on a form provided by the board, to show that the proposed project satisfies the requirements and standards of parts 8420.0500 to 8420.0528 and, for project-specific replacement plans, part 8420.0810.**

Note: See the "April 25, 2025 Preliminary Draft WCA Rule Companion Document" for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

A. for the impacted wetland:

- ~~(1) the amount, in square feet or acres, of wetland proposed to be impacted by type;~~
- ~~(2) the minor watershed, major watershed, county, and bank service area;~~
- ~~(3) a soil survey map of the site showing soil type and identifying hydric soils, where available;~~
- ~~(4) a map showing the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetland and, if the wetland is within the shoreland wetland protection zone or floodplain, the distance and direction to the nearest watercourse;~~
- ~~(5) information known to the applicant or readily available concerning the special considerations criteria in part 8420.0515;~~
- ~~(6) a list of all other known local, state, and federal permits and approvals required for the activity; and~~
- ~~(7) written documentation to demonstrate compliance with the sequencing standards in part 8420.0520, including identification of the project purpose and a detailed description of the project and alternatives considered;~~

B. for the replacement wetland when replacement is project specific:

- ~~(1) the proposed action eligible for credit from part 8420.0526;~~
- ~~(2) the minor watershed, major watershed, county, and bank service area;~~
- ~~(3) evidence of ownership or property rights to the replacement areas;~~
- ~~(4) information known to the applicant or readily available concerning the special considerations criteria in part 8420.0515;~~

~~(5) a description of how the proposed replacement meets the ecological suitability and sustainability criteria under part 8420.0522, subpart 5;~~

~~(6) a map showing the locations of any existing surface inlets or outlets, natural or otherwise, draining into or out of the replacement wetland and, if the replacement wetland is within the shoreland wetland protection zone or floodplain, the distance and direction to the nearest watercourse;~~

~~(7) scale drawings showing plan and profile views of the replacement wetland areas;~~

~~(8) a description of how the replacement area will be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to mean sea level, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;~~

~~(9) a soil survey map of the site showing soil type and identifying hydric soils, where available, and site-specific soils information sufficient to determine the capability of the site to produce and sustain wetland characteristics and achieve replacement goals;~~

~~(10) a timetable that clearly states how and when implementation of the replacement plan will proceed and when construction of the replacement area will be completed;~~

~~(11) statements signed by the applicant confirming that:~~

~~(a) the wetland will be replaced in advance of or concurrent with the actual impact;~~

~~(b) the replacement area was not previously restored or created under a prior approved replacement plan;~~

~~(c) the replacement area was not impacted under an exemption during the previous ten years;~~

~~(d) the replacement area was not, and will not be, restored or created with financial assistance from public conservation programs or restored or created for other unrelated regulatory purposes;~~

~~(e) the replacement area was not, and will not be, restored or created 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 or creation and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement; and~~

~~(f) monitoring will occur according to parts 8420.0800 to 8420.0820 unless the local government unit will be conducting the monitoring of the wetland replacement area;~~

~~(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; the activity;~~

~~(13) a list of all other known local, state, and federal permits and approvals required for the activity;~~

~~(14) evidence that any drainage or property rights potentially detrimental to the replacement area have been acquired, subordinated, or otherwise eliminated;~~

~~(15) a vegetation establishment and management plan according to part 8420.0528, subpart 2, item D; and~~

~~(16) the size, type, and credits expected to result from the proposed replacement actions;~~

~~C. for the replacement wetland when the replacement consists of wetland bank credits:~~

~~(1) the wetland bank account number;~~

~~(2) the minor watershed, major watershed, county, and bank service area;~~

~~(3) the amount of credits to be withdrawn in square feet; and~~

~~(4) a completed application for withdrawal of wetland credits from the wetland bank in a form provided by the board or a purchase agreement signed by the applicant and bank account holder; and~~

~~D. a description of the required replacement as determined according to the proposed replacement actions and the replacement standards in part 8420.0522.~~

Reason for change: Part of the removed language pertained to paper copies of applications and is obsolete. The unnecessarily detailed replacement plan application contents are removed from the rule and replaced with a reference to the relevant requirements and standards of this chapter, with the information provided on a form provided by the board. This change will allow for better coordination with the USACE in developing joint application forms and to address changing technology or other informational needs.

Item B11(e) is also eliminated as it is not relevant and impossible to enforce. Item B11(c) is located at 8420.0526, Sup. 1, Item D. Item B11 (a), (b), and (d), item B12, and item B14 are relocated to the new Subp. 10 in part 8420.0522 (Replacement Standards) as they are standards/restrictions applicable to all methods of wetland replacement and more appropriately located in that part. These changes will improve clarity and usability of the rule.

Subp. 4. **Approval conditions.** A landowner must not impact a wetland under an approved replacement plan until submittal of the following, to the satisfaction of the local government unit:

A. for project-specific replacement that is not in advance according to part 8420.0522, subpart

8, item B, a financial assurance according to part 8420.0522, subpart 9, unless waived by the local government unit;

B. for project-specific replacement, evidence that a notice in a form prescribed by the board has been attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:

- (1) the location of the replacement area;
- (2) that the replacement area is subject to the act;
- (3) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;
- (4) that reasonable access to the replacement area shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;
- (5) that costs of title review and document recording is the responsibility of the fee titleowner; and
- (6) that the local government unit or board may 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 may require replacement of the wetland according to this chapter; and

C. for replacement consisting of wetland bank credits, confirmation that the board has withdrawn the credits from the state wetland bank as specified in the approved replacement plan.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0335 CONTRACTOR'S NOTIFICATION RESPONSIBILITY.

A. For the purposes of this part, "contractor" means an individual, business, or other organization providing to a landowner or the landowner's agent a product or service that drains, fills, or excavates wetland.

B. A contractor must not drain, excavate, or fill a wetland, wholly or partially, unless the contractor has:

- (1) obtained a signed statement from the landowner or landowner's agent stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and
- (2) sent a copy of the statement to the local government unit with jurisdiction over the wetland.

C. A form shall be provided by the board for use in complying with this part.

D. Work performed in violation of this part is a misdemeanor by operation of Minnesota Statutes, section 103G.141.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

**BOUNDARY OR TYPE, NO-LOSS, AND
EXEMPTION STANDARDS**

8420.0405 BOUNDARY OR TYPE.

Subpart 1. **Wetland boundary.** Wetland boundaries must be determined using the methodologies in the United States Army Corps of Engineers Wetlands Delineation Manual (January 1987), including subsequent updates and supplements, and guidance provided by the board.

Subp. 2. **Wetland type.** Wetland type must be identified according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) Wetlands of the United States A Hydrogeomorphic Classification for Wetlands (August 1993) and components of the wetland described using Classification of Wetlands and Deepwater Habitats of the United States (2013), including modifications or guidance provided by the board. Wetland type in relation to Wetland Plants and Plant Communities of Minnesota & Wisconsin is shown in the following table:

<u>Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed 1997), as modified by the Board of Water and Soil Resources United States Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (May 2007)</u>	<u>Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979)</u>	<u>Fish and Wildlife Services Circular 39 (Shaw and Fredine 1971)</u>
<u>Shallow, open water</u>	<u>Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved</u>	<u>Type 5: Inland open fresh water</u>
<u>Deep marsh</u>	<u>Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved; emergent; persistent and nonpersistent</u>	<u>Type 4: Inland open fresh water</u>
<u>Shallow marsh</u>	<u>Palustrine; emergent; persistent and nonpersistent</u>	<u>Type 3: Inland shallow fresh marsh</u>
<u>Sedge meadow</u>	<u>Palustrine; emergent; narrow-leaved persistent</u>	<u>Type 2: Inland fresh meadow</u>

Fresh (wet) meadow	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Wet to wet-mesic prairie	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Calcareous fen	Palustrine; emergent; narrow-leaved persistent; scrub/shrub; broad-leaved deciduous	Type 2: inland fresh meadow
Open bog or coniferous bog	Palustrine; moss/lichen; scrub/shrub; broad-leaved evergreen; forested; needle-leaved evergreen and deciduous	Type 8: Bog
Shrub carr or alder thicket	Palustrine; scrub/shrub; broad-leaved deciduous	Type 6: Shrub swamp
Hardwood swamp or coniferous swamp	Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and deciduous	Type 7: Wooded swamp
Floodplain forest	Palustrine; forested; broad-leaved deciduous	Type 1: Seasonally flooded basin or flat
Seasonally flooded basin	Palustrine; flat; emergent; persistent and nonpersistent	Type 1: Seasonally flooded basin or flat

Reason for change: Adds HGM wetland classification consistent with its addition to MN Statutes 103G.005, subdivision 17b and 103G.2242, subdivision 2(b). The addition of “components of the wetland described” in Subp. 2 clarifies the use of the Cowardin system (Classification of Wetlands and Deepwater Habitats of the United States, 2013) consistent with 8420.0111, Subp. 75. The reference to “Wetland Plants and Plant Communities of Minnesota & Wisconsin,” including the conversion table, is eliminated as it is no longer relevant to any specific regulatory provisions in this chapter.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.

A person conducting an activity in a wetland under no-loss in part 8420.0415 or an exemption in part 8420.0420 must ensure that:

A. appropriate erosion control measures are taken to prevent sedimentation of the wetland or of any receiving waters;

B. the activity does not block fish activity in a watercourse, except when done purposely to prevent movement of undesirable fish species in accordance with a recommendation from the commissioner; and

C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices according to the documents referenced in part 8420.0112, ~~items L, M, and N~~ G, H, and I, and water resource protection requirements established under Minnesota Statutes, chapter 103H.

Reason for change: Revised due to updates to 8420.0112, Incorporation by Reference.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0415 NO-LOSS CRITERIA.

"No-loss" means no permanent loss of, or impact to, wetlands from an activity according to the criteria in this part. The following qualify for a no-loss:

A. an activity that will not impact a wetland;

B. excavation in wetlands when limited to removal of sediment or debris such as trees, logs, stumps, beaver dams, blockage of culverts, and trash, provided the removal does not result in alteration of the original cross-section of the wetland or watercourse. Wetland areas created solely 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;

C. temporary or seasonal water level management activities done for the purpose of performing maintenance or as part of vegetation or habitat management activities, which will not result in the conversion of a wetland to a nonwetland or conversion of a nondegraded wetland to a different type degraded wetland;

Reason for change: The language change in Item C is consistent with the change in wetland type under 8420.0111, Subp. 75 and elsewhere. Water level manipulations could result in a change in Circular 39 type because such types are highly dependent on water depth and duration. In contrast, HGM classes are based largely on landscape position and water source, neither of which can be changed by water level manipulations. Therefore, a different criterion (in addition to converting wetland to nonwetland) is proposed to identify water level management activities that do not qualify as a no-loss. The conversion of a nondegraded wetland to a “degraded wetland” is based on the existing definition in 8420.0111, Subp. 19, which encompasses drainage and diversion of the watershed. This criterion relates more directly to wetland function and value as compared to the previous criterion of simply changing Circular 39 type.

D. an activity:

- (1) conducted as part of an approved replacement or banking plan,
- (2) conducted or authorized by public agencies for the purpose of ~~wetland restoration or~~ fish and wildlife habitat restoration or improvement, ~~or wetland restoration in accordance with~~ according to the guidance referenced in part 8420.0112, items ~~J and H~~ E, or,
- (3) conducted for the repair and maintenance of earthen containment structures;

Reason for change: Reorganized to clarify that item (D) contains three separate no loss actions and for consistency with current guidance on rule formatting.

E. excavation limited to removal of deposited sediment in wetlands that are presently utilized as storm water management basins, or excavation and removal of contaminated substrate, when the excavated area is limited to the minimum dimensions necessary for achieving the desired purpose and stabilized to prevent water quality degradation;

F. an activity associated with the operation, routine maintenance, or emergency repair of existing utilities and public works structures, including pipelines, provided the activity does not result in additional wetland intrusion or additional impacts, either wholly or partially;

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

H. a temporary impact that is rectified by repairing, rehabilitating, or restoring the affected wetland. No-loss under this item only applies if all of the following conditions are met:

- (1) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, plant communities, and hydrologic regime, are

restored to preproject conditions sufficient to ensure that all preproject functions are restored;

(2) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity, unless an extension is granted by the local government unit after consultation with the technical evaluation panel;

(3) the landowner provides sufficient financial assurance acceptable to the local government unit to cover the estimated cost to restore the wetland to preproject conditions. The local government unit must return any remaining financial assurance to the landowner upon a determination by the local government unit that the conditions in this item have been met by the landowner; and

(4) a no-loss has not been approved under this item for a particular site within a wetland within the previous ten years, except that repairs to the original project may be allowed under the no-loss if the local government unit determines the request to be necessary and reasonable.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0420 EXEMPTION STANDARDS.

Subpart 1. Scope.

A. An impact is exempt from replacement if it qualifies for any one of the listed exemptions. An impact is not disqualified when it is indicated as not exempt under a different exemption. Persons proposing to conduct an exempt activity may contact the local government unit to verify eligibility for an exemption and to evaluate alternatives to avoid or minimize wetland impacts. When the total amount of impact exceeds the amount allowed under the applicable exemption, the impact is not exempt and the entire amount of impact must be replaced.

B. No exemptions apply to:

(1) calcareous fens as identified by the commissioner;

(2) wetlands that have been deposited in the state wetland bank;

(3) wetlands that have previously received replacement credit as a result of an approved replacement or banking plan; or

(4) wetlands that were partially impacted, so that the remainder would be eligible for an exemption, when the exemption would not have been applicable before the impact. Impacts to any such wetlands are subject to the replacement requirements of this chapter or, for calcareous fens, part 8420.0935.

C. Exemptions may not be combined on a wetland that is impacted by a project.

Reason for change: Reestablishes language from the 2007 rule to correct inconsistency with statute that resulted from its' deletion in the 2009 rule.

D. Present and future owners of wetlands impacted without replacement under an exemption for agricultural activities in subpart 2 ~~or drainage in subpart 3~~ must make no use of the wetland area after it is impacted, other than as agricultural land or other use specified in subpart 2, for at least ten years after the impact unless it is first replaced according to Minnesota Statutes, section 103G.222. Except for land in public ownership, at the time of impact, the local government unit may require the landowner to record a notice of these deed restrictions in the office of the county recorder for the county in which the project is located if the local government unit determines the wetland area impacted is at risk of conversion to a nonagricultural use or use other than that specified in subpart 2 within ten years, based on the zoning classification, proximity to a municipality or full-service road, or other criteria that may affect the risk of conversion to a non-agricultural use as determined by the local government unit. ~~When~~ making a decision under this item, the local government unit must review the applicable comprehensive plan, if one exists, when evaluating the risk of conversion to a nonagricultural use and monitor and enforce the prohibition on using the area impacted for a nonagricultural purpose for at least ten years. 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 restrictions expire, the name of the local government that approved the exemption, if an exemption occurred, the signatures of all owners, and an acknowledgment.

Reason for change: The deletion of "or drainage in subpart 3" is necessary to conform WCA rule to amendments to MN Statutes 103G.2241, subdivision 2 which eliminated components of the drainage exemption related to agricultural land uses. Other edits are clarifying in nature.

Subp. 2. **Agricultural activities.** A replacement plan is not required for:

A. ~~impacts resulting from agricultural activities in a wetland that was planted with annually seeded crops or was in a crop rotation seeding of pasture grass or legumes in six of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs, United States Department of Agriculture records, or other applicable documentation may be used as evidence for this exemption. Impacts eligible for this exemption must be to type 1 or 2 wetlands; impacts to wetlands on agricultural land labeled prior-converted cropland and impacts to wetlands resulting from drainage maintenance activities authorized by the United States Department of Agriculture, Natural Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture, and wetland.~~

(1) For purposes of this item, "authorized" means:

(a) written confirmation from the Natural Resources Conservation Service verifying that the specific activity is authorized under Code of Federal Regulations, title 7, part 12 as amended, or, in the absence of such written confirmation,

(b) the maintenance activity does not exceed the scope and effect of drainage manipulations that occurred prior to December 23, 1985.

(2) This item is subject to the following conditions;

(a) the prior-converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service in accordance with Code of Federal Regulations, title 7, part 12;

(b) for areas labeled prior converted cropland to be eligible for the exemption under item A, the area must have been planted with an annually seeded crop at least once before December 23, 1985 and must not have supported woody vegetation as of December 23, 1985;

(c) impacts to wetlands resulting from drainage maintenance activities that involve relocating any portion of the drainage system are not exempt under item A unless those wetlands are labeled farmed wetland, farmed wetland pasture, or wetland on a valid, final certified wetland determination and the impacts to those wetlands are authorized by the Natural Resources Conservation Service;

(d) when required by the local government unit or the board for purposes of verifying qualification for the exemption under this item, it is the responsibility of the owner or operator of the land to provide a copy of the final certified wetland determination and any other information necessary to demonstrate qualification to, and allow the Natural Resources Conservation Service to share related information with, the local government unit, the soil and water conservation district, and the board; and

(e) impacts under this Item must not exceed those allowed using the label definitions and activities authorized under the version of Code of Federal Regulations, title 7, part 12 that was in effect on Aug 1, 2024. The board may issue orders to update the criteria and application of this item if changes to the Code of Federal Regulations, title 7, part 12, its successor laws, or United States Department of Agriculture implementation standards are enacted.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

~~B. impacts resulting from agricultural activities in a type 1 wetland on agricultural pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands, and impacts resulting from agricultural activities in a type 2 or 6 wetland that is less than two acres in size and located on agricultural pasture land that remains in the same use;~~

Reason for change: The amendments to Subp. 2A conform the WCA rule with amendments to MN Statutes 103G.2241, subdivision 1. Specifically, the language in item A and subitem 2(a) are taken directly from statute. Additional language is added as follows:

(1). Clarify the meaning of “authorized” as used in the statute and corresponding rule language.

(2)(b). Ensure that the exemption for areas labeled Prior Converted Cropland (PC) is applied only to those areas that meet the criteria for PC prescribed in NRCS’ Wetland Conservation Rule (7 CFR Part 12). Those criteria are included in the proposed language and must be met for the exemption to apply. NRCS’ use of “agricultural commodity” in their criteria for PC is presented as “annually seeded crop” in the proposed language for consistency with current WCA terminology. Further, the additional language ensures that the exemption is applied only to areas that meet the definition of PC when NRCS has combined the PC and Non-Wetland (NW) labels on a single area.

(2)(c). Clarify the applicability of the exemption in situations when any portion of the drainage system is being relocated.

(2)(d). Include the statutory requirement and clarify that “related” information (as used in statute) means information necessary to demonstrate eligibility for the exemption, and include the Soil and Water Conservation District as an entity with which the landowner must allow NRCS to share information.

(2)(e). Clarify that the exemption does not allow impacts to wetlands beyond those that would be allowed under the version of Swampbuster that was in place at the time the statutory exemption took effect, and that BWSR may update the criteria and application of the exemption if changes to Swampbuster occur.

~~CB.~~ impacts resulting from soil and water conservation projects that are certified by the soil and water conservation district ~~technical staff~~ after review by the technical evaluation panel, if the project minimizes adverse effects on the hydrologic and biologic characteristics of the wetland. For purposes of this item, examples of soil and water conservation projects include those identified in the ~~State Cost Share Program Manual, available from the board or soil and water conservation districts, and federally funded demonstration, research, and cost share programs and projects~~ United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide;

Reason for change: The State Cost Share Program Manual no longer exists. The Field Office Technical Guide is a well-known and accepted, commonly used, and fairly comprehensive compilation of relevant conservation practices.

~~DC.~~ filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage;

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

~~FE.~~ impacts resulting from wild rice production activities, including necessary diking and other activities authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.2241, subdivision 1 (5).

~~GF.~~ impacts resulting from agricultural activities on agricultural land that is subject to the wetland conservation compliance provisions of the federal Food Security Act of 1985, as amended, consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service. ~~that are subject to 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, the commissioners of natural resources and agriculture, and the Pollution Control Agency. An exemption under this item is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. Upon taking effect, this exemption only applies to impacts on agricultural land annually enrolled in the federal Farm Program that are not beyond what is:~~

~~(1) allowed under the other exemptions in this part;~~

~~(2) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed; or~~

~~(3) 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, which must be included as evidence to support this exemption.~~

~~If the impact would result in loss of eligibility, the landowner cannot qualify for the exemption.~~

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.2241, subdivision 1 (6).

Subp. 3. Drainage.

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

~~B. A replacement plan is not required for:~~

~~(1) impacts resulting from maintenance or repair of existing public drainage systems conducted or authorized by a public drainage authority under Minnesota Statutes, chapter 103E, when the maintenance or repair does not drain type 3, 4, or 5 wetlands that have existed for more than 25 years before the proposed impact; or~~

~~(2) A. A replacement plan is not required for impacts to wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance ~~or~~ and repair of existing drainage systems, other than including public drainage systems, when the maintenance or repair does not drain wetlands that have existed for more than 25 years before the proposed impact.~~

~~For projects proposed under this item, the landowner must provide documentation that the wetlands to be partially or completely impacted by the maintenance or repair 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 drainage system maintenance records.~~

~~C. A replacement plan is not required for:~~

~~(1) draining a wetland on agricultural land when the wetland was:~~

~~(a) planted with annually seeded crops before July 5, except for crops that are normally planted after this date, in eight out of the ten most recent years before the impact;~~

~~(b) in a crop rotation seeding of pasture grass, cover crop, or legumes or was fallow for a crop production purpose in eight out of the ten most recent years before the impact; or~~

~~(c) enrolled in a state or federal land conservation program and met the requirements of unit (a) or (b) before enrollment;~~

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

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

~~i. there was an expenditure made from the drainage system account for the public drainage system;~~

~~ii. the public drainage system was repaired or maintained as approved by the drainage authority; or~~

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

~~(b) the wetlands are not drained for conversion to:~~

~~i. platted lots;~~

~~ii. planned unit, commercial, or industrial developments; or~~

~~iii. any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow family members to establish an additional residence on the same 40 acres.~~

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

~~Documentation such as aerial photographs, United States Department of Agriculture records, or other applicable documentation may be used as evidence for the exemption under this item.~~

DB. For projects completed under this subpart, spoil must be placed and stabilized in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch or contributing to the degradation of downstream water quality.

EC. A public drainage authority may, as part of ~~a~~ the repair ~~of a public drainage system as defined in Minnesota Statutes, section 103E.005, subdivision 12,~~ install control structures, realign ~~a~~ the ditch, construct dikes along ~~a~~ the ditch, or make other modifications as necessary to prevent the drainage of ~~a~~ wetlands.

~~F. Wetlands and public waters of all types that 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 must give priority to acquisition of easements on type 3, 4, or 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.~~

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.2241, subdivision 2.

Subp. 4. **Federal approvals.** A replacement plan is not required for impacts authorized under 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, the Department of Agriculture, the Department of Natural Resources, and the Pollution Control Agency. This exemption is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and published in the State Register. The exemption takes effect 30 days after publication and remains in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register.

Reason for change: Language added for clarity.

Subp. 5. **Restored wetlands.** A replacement plan is not required for:

A. draining a wetland that was restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland to preproject hydrologic conditions. The landowner must provide a contract or easement conveyance demonstrating

that the landowner or a predecessor restored or created the wetland for conservation purposes but retained the right to subsequently drain the restored or created wetland to the conditions that existed before restoration or creation; or

B. impacts to a wetland that was restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner, if the wetland has not been used for wetland replacement or deposited in the state wetland bank. For purposes of this item, assistance by public agencies does not include consultation on project design or advice on the project's relationship to state or federal programs. The landowner must provide a contract, billing statements, or other evidence sufficient to demonstrate that the landowner or a predecessor restored or created the wetland without any assistance or financing from public agencies or private entities other than the landowner or predecessor. The landowner must also provide sufficient information to determine that the area was not wetland before restoration or creation activity.

Subp. 6. Utilities.

A. A replacement plan is not required for impacts resulting from:

(1) ~~installation, new placement or~~ maintenance, repair, ~~enhancement, realignment,~~ or replacement of ~~existing~~ utility lines ~~or utility-type service,~~ including pipelines, ~~if: when wetland impacts are authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, and~~

~~(a) the impacts~~ of the proposed project have been avoided and minimized to the extent possible; ~~and~~

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

(2) repair or updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations. This exemption does not apply if the wetland impacts are the result of the treatment system being expanded to accommodate increased use.

~~B. For maintenance, repair, and replacement, a local government unit may issue a seasonal or annual exemption approval or the utility may proceed without local government unit approval if the utility is carrying out the work according to approved best management practices.~~ Work of an emergency nature may proceed as necessary and any impacts must be addressed with the local government unit after the emergency work has been completed.

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.2241, subdivision 6.

Subp. 7. Forestry. The exemption under this subpart is for roads and crossings solely constructed, and primarily used, for the purpose of providing access for the conduct of silvicultural activities. A replacement plan is not required for impacts resulting from construction of forest roads and crossings so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not include, or result in, the access becoming a dike, drainage ditch, or tile line; impacts are avoided wherever possible; and there is no drainage of the wetland or public waters.

Subp. 8. **De minimis.**

A. Except as provided in items ~~B and C~~ D, E, F, G, H, and I, a replacement plan is not required for ~~impacts projects that impact up~~ to the following amounts of wetlands, excluding the permanently and semipermanently flooded areas of wetlands, as part of a project outside of the shoreland wetland protection zone:

(1) one-quarter acre of wetland in a greater than 80 percent area~~;~~

~~(a) 10,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone;~~

~~(b) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. This amount may be increased to 1,000 square feet by the local government unit if the wetland is isolated and determined to have no direct surficial connection to the public water;~~

~~(c) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(d) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance;~~

(2) one-tenth acre of wetland in a 50 to 80 percent area~~;~~ or

~~(a) 5,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and outside of the 11-county metropolitan area;~~

~~(b) 2,500 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;~~

~~(c) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;~~

~~(d) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance; or~~

(3) one-twentieth acre of wetland in a less than 50 percent area~~;~~

~~(a) 2,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland protection zone and outside the 11-county metropolitan area;~~

~~(b) 1,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland~~

~~protection zone and inside the 11-county metropolitan area;~~

~~(c) 400 square feet of type 1, 2, or 6 wetland outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;~~

~~(d) 100 square feet of type 3, 4, 5, 7, or 8 wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance.~~

B. Except as provided in items E, F, G, H, and I, a replacement plan for wetlands is not required for up to 100 square feet of impacts to wetlands as part of a project within the shoreland wetland protection zone beyond the shoreland building setback zone.

C. Except as provided in items E, F, G, H, and I, a replacement plan is not required for up to 20 square feet of impacts to wetlands as part of a project within the shoreland building setback zone, as defined in the local shoreland management ordinance. The amount in this paragraph may be increased to 100 square feet if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.

D. Except as provided in items **B**, C, E, F, G, H, and I, a replacement plan is not required for up to 400 square feet of impacts to the permanently and semipermanently flooded areas of wetlands as part of a project.

B E. The amounts listed in items A, B, C, and D may not be combined on a project.

~~C. The exemption under this subpart 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.~~

F. When the total area of impacts to wetlands as part of a project exceeds the applicable amount in this subdivision, a replacement plan is required for the entire amount.

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

~~H.~~ H. Property may not be divided to increase the amounts listed in items A, B, C, or D or to gain an exemption.

I. If a local ordinance or similar local control is more restrictive than this subpart, the local standard applies.

~~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 300 feet of the impact.~~

~~F. For purposes of this subpart, the 11 county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.~~

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.2241, subdivision 9.

Subp. 9. **Wildlife habitat.** A replacement plan is not required for:

A. excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat improvement, if:

(1) the total area of deposition, ~~and excavation if within the permanently or semipermanently flooded areas of type 3, 4, or 5 wetland,~~ does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized to prevent erosion and native, noninvasive vegetation is established;

(2) the project does not have an adverse effect 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 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

Reason for change: The removal of wetland type in sub-item 1 corrects a conflict with statute. The deletion in sub-item 3 removes a reference to obsolete wildlife habitat guidance and improves consistency with statute.

B. duck blinds.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

WETLAND REPLACEMENT

8420.0500 PURPOSE AND REQUIREMENT.

Subpart 1. **Purpose.** Parts 8420.0500 to 8420.0544 specify the procedures and criteria for avoiding and minimizing impacts and for ensuring adequate replacement of lost public value from unavoidable impacts.

Subp. 2. **Requirement.** No person may impact a wetland, wholly or partially, without being eligible

for an exemption or no-loss, or first having a wetland replacement plan approved by the local government unit. Before approval of a replacement plan, the local government unit must ensure that the applicant has exhausted all possibilities to avoid and minimize wetland impacts according to sequencing in part 8420.0520. The applicant must demonstrate to the local government unit that the replacement plan complies with this part, ~~and~~ parts 8420.0515 to 8420.0528, **and, for project-specific replacement plans, part 8420.0810**. A replacement plan that fails to meet the requirements of this chapter is inadequate in replacing lost function and value and must be denied by the local government unit.

Reason for change: The addition of part 8420.0810 clarifies that project-specific replacement plans must include a monitoring plan and comply with the requirements of that part.

Subp. 3. **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. The alternative methodologies must be approved and listed by the board, in consultation with the commissioners of natural resources and agriculture and local government units. When using alternative evaluation methodologies to evaluate replacement plans, the ratio of replacement credit to impacted wetland must not be less than the minimum requirements listed in part 8420.0522, subpart 4, except as provided for in part 8420.0830.

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 34 SR 145*

Posted: *August 26, 2009*

8420.0515 SPECIAL CONSIDERATIONS.

Subpart 1. **Scope.** The factors in this part, when identified as being applicable to an impact site or a replacement site, must be considered by the applicant before submitting a replacement plan and by the local government unit in the review of replacement plans.

Subp. 2. **Endangered and threatened species.** A replacement plan for activities that involve taking species listed as endangered or threatened in parts 6134.0200 to 6134.0400 must be denied unless the commissioner issues a permit under part 6212.1800 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may identify if there are known locations of listed species at a particular site by contacting the Department of Natural Resources' natural heritage and nongame research program.

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~~ **commissioner** must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

A. The commissioner must consider the following when making a rare natural community determination:

(1) existing **natural heritage data**, including native plant communities in the area;

(2) the **Conservation Status Rank of the native plant community**; and

(3) the **landscape** context of the native plant community, including:

- a. the location of the community relative to surrounding native plant communities and land uses; **and**
- b. the rarity of the community at local, regional, and statewide scales.

B. The commissioner may request and consider additional data for areas that have not been mapped or surveyed.

C. For projects potentially affecting a rare natural community, the local government unit must consult with the Department of Natural Resources. The local government unit must consider the following when determining if the proposed activities will permanently adversely affect a rare natural community:

(1) the permanence of the adverse effect;

(2) the size of the area affected by the impact relative to overall size of the community and the extent to which the impact will alter its character and quality;

(3) any ongoing or anticipated future adverse effect to any portions of the community that will remain after the initial impact;

(4) onsite mitigation measures aimed at sustaining or enhancing the same community type; and

(5) mitigation measures that permanently protect at-risk rare natural communities. **Protection** of a rare natural community must include permanent protection of its native community attributes, preferably in the same watershed or ecological section.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: Additional detail was added in the WCA rule to provide a basis for both DNR and LGU determinations related to rare natural communities. These added details improve clarity and are consistent with previously developed joint DNR/BWSR guidance. The language also clarifies that DNR can consider mitigation measures when determining if a rare natural community is adversely affected, consistent with amendments to MN Statute 103G.2242, subdivision 1 (d). The provision in C requiring LGU-DNR coordination and consultation on potential rare natural community impacts was added to foster early identification and discussion during wetland delineation and identification applications that often lead to future applications involving wetland impacts and replacement.

Subp. 4. **Special fish and wildlife resources.** A replacement plan for activities that would have a significant adverse effect on a special or locally significant fish and wildlife resource that cannot be functionally replaced must be denied. These resources include, but are not limited to:

- A. fish passage and spawning areas;
- B. colonial water bird nesting colonies;
- C. migratory waterfowl concentration areas;
- D. deer wintering areas; and
- E. wildlife travel corridors.

Activities involving streams must not block fish passage unless approved by the commissioner.

Subp. 5. **Archaeological, historic, or cultural resource sites.** A replacement plan for activities that involve the modification of known archaeological, historical, or cultural resource sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, must be denied if the local government unit, in consultation with the State Historical Preservation Office, determines that the proposed activities will have a significant adverse effect on the archaeological or historical value of the site.

Subp. 6. **Groundwater sensitivity.** A replacement plan for activities must be denied if the local government unit determines the activities would have a significant adverse effect on groundwater quality. ~~The publication Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota may be used as a guide in determining potential impacts.~~

Reason for change: Deletes an obsolete reference. Multiple newer sources of information are available.

Subp. 7. **Sensitive surface waters.** A replacement plan must be denied if the local government unit determines the activities will have a significant adverse effect on the water quality of outstanding resource value waters listed designated in part 7050.0180 7050.0335 or on trout waters designated by the commissioner.

Reason for change: Corrects an obsolete rule reference.

Subp. 8. **Education or research use.** ~~A replacement plan for impacts to wetlands known to be used for educational or research purposes must be denied if the~~ The local government unit must deny a replacement plan if it determines that impacts to wetlands used for educational or research purposes will have a significant adverse effect on those uses and the uses will not be ~~maintained or~~ adequately replaced.

Reason for change: This change allows the local government unit to consider the effect of the wetland impacts on the education and research uses of wetlands. The existing language focuses on maintenance and replacement of those uses without any consideration of their significance.

~~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.~~

Reason for change: This change removes the requirement that local government unit (LGU) staff evaluate hazardous wastes and contaminants. This provision does not prevent the LGU from approving a replacement plan (like the other special considerations), it simply directed the LGU to evaluate potential waste material in a disposal site, with no outcome on replacement plan approval. The MPCA has the expertise and is the relevant agency for this type of assessment, not the LGU. Other sections of the WCA rule require the applicant to disclose and follow all other local, state, and federal permits and approvals, which would include those related to hazardous wastes and contaminants.

Subp. ~~10~~ **9. Consistency with other plans.** The local government unit must consider the extent to which proposed activities are consistent with other plans, such as local water ~~management~~ plans, ~~watershed management plans~~, land use plans, zoning, and comprehensive plans.

Reason for change: Amended for clarification. Local water plan is defined in 8420.0111, Subp. 39, which includes watershed management plans.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0520 SEQUENCING.

Subpart 1. **Requirement.** The local government unit must not approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland complies with all of the following principles in descending order or priority:

A. avoids direct or indirect impacts that may destroy or diminish the wetland under the criteria in subpart 3;

B. minimizes impacts by limiting the degree or magnitude of the wetland activity and its implementation under the criteria in subpart 4;

C. rectifies impacts by repairing, rehabilitating, or restoring the affected wetland under the criteria in subpart 5;

D. reduces or eliminates impacts over time by operating the project in a manner that preserves and maintains the remaining wetland under the criteria in subpart 6; and

E. replaces unavoidable impacts by restoring or, if wetland restoration opportunities are not reasonably available, creating replacement wetland areas having equal or greater public value as provided for in parts 8420.0500 and 8420.0522 to 8420.0528.

Wetlands located in cultivated fields that are subject to subpart 8 are an exception to this part.

Subp. 2. [Repealed, 34 SR 145]

Subp. 3. Impact avoidance.

A. Avoidance is required when indicated by part 8420.0515.

B. Wetland dependence determination:

(1) Based on information provided by the applicant, the local government unit must determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features or functions are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.

(2) A project that has been determined by the local government unit to be wetland dependent is exempt from the analysis of avoidance alternatives in item C.

C. Alternatives analysis:

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

(2) The local government unit must determine whether any proposed feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative is 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) The local government unit must consider the following in evaluating avoidance 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 must 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 the project site and alternate sites considered by the

applicant to achieve the purpose of the project;

(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;

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

(f) the amount, distribution, condition, and public value of wetlands and associated resources to be affected by the project and the potential for direct and indirect effects over time.

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

Subp. 4. **Impact minimization.** 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 proposal to minimize wetland impacts, the local government unit must consider all of the following:

A. the spatial requirements of the project;

B. the location of existing structural or natural features that may dictate the placement or configuration of the project;

C. the purpose of the project and how the purpose relates to placement, configuration, or density;

D. the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;

E. the value, function, and spatial distribution of the wetlands on the site;

F. individual and cumulative impacts; and

G. an applicant's efforts to:

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

(2) remove or accommodate site constraints including zoning, infrastructure, access, or natural features;

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

(4) otherwise minimize impacts.

Subp. 5. **Impact rectification.** Temporary impacts must be rectified by repairing, rehabilitating, or restoring the affected wetland according to the no-loss provisions of part 8420.0415, item H.

Subp. 6. **Reduction or elimination of impacts over time.** After an activity is completed, further impacts must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions. The local government unit must require applicants to implement best management practices to protect wetland functions.

Subp. 7. **Unavoidable impacts.** Unavoidable impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be replaced according to parts 8420.0522 to 8420.0528.

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

A. Flexibility in application of the sequencing steps may be ~~applied by requested by the applicant and allowed at the discretion of~~ the local government unit, subject to the conditions in item B, as determined by the local government unit, if:

Reason for change: Corrects unintended limitations on the use of sequencing flexibility by removing the requirement that flexibility be requested by the applicant and allowing it to be applied directly by the LGU absent the applicant's request.

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

(3) the only feasible and prudent upland site available for the project or replacement has greater ecosystem function and public value than the wetland. This may be appropriate only if the applicant:

(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 value; or

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

B. ~~Sequencing Flexibility in the order and application of sequencing standards~~ must not be implemented unless alternatives have been considered and the proposed replacement wetland is certain to provide equal or greater public value ~~as determined~~ based on ~~an assessment of the wetland's functions a functional assessment~~ reviewed by the technical evaluation panel ~~using a methodology approved by the board~~. The ~~applicant must provide the necessary information and the~~ local government unit must

document the application of sequencing flexibility in the replacement plan approval.

Reason for change: Shifts the mechanism for determination of public value from the use of “a functional assessment” to, more broadly, “an assessment of wetlands functions,” as the use of the quantitative methods characteristic of functional assessment models is not always necessary. It also provides more consistency with Technical Evaluation Panel (TEP) procedures, as it is the TEP’s responsibility to determine wetland functions.

Subp. 8. **Wetlands on cultivated fields.**

If the wetland is located on a cultivated field and will be replaced through restoration, then the priority order for sequencing in subpart 1 is not required. A wetland impacted under this subpart must not be converted to nonagricultural land for ten years. As a condition of approval, a local government unit may require the recording of a deed restriction prohibiting non-agricultural use for ten years on a wetland replaced under this subpart when it determines the wetland is at risk of conversion to non-agricultural use. The determination must be based on zoning classification, proximity to a municipality or full-service road, or other criteria as determined by the local government unit. When included as a condition of approval, the landowner must execute and record a notice of this ~~requirement restriction~~ in the office of the county recorder for the county in which the property is located and, ~~as a condition of approval,~~ provide documentation of the recording to the local government unit prior to impacting the wetland.

Reason for change: This change removes the requirement for a deed restriction on wetlands impacted for agricultural use and replaced at 1:1 without regards to sequencing, except when the LGU determines the wetland is at risk of conversion from agricultural use to another use within 10 years. Additionally, rule language was updated to indicate that the LGU “may” require recording of notice of requirement. These amendments are necessary to conform the WCA rule with amendments to MN Statutes 103G.222, subdivision 1 (c) and (d).

Subp. 9. [Repealed, 34 SR 145]

Statutory Authority: *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 32 SR 281; 34 SR 145*

Posted: *August 26, 2009*

8420.0522 REPLACEMENT STANDARDS.

Subpart 1. **General requirement.** Wetland replacement must replace the public value of wetlands lost as a result of an impact. Replacement of wetland function and value may occur at more than one location. The public value of wetlands is based upon the functions of wetlands, including:

A. water quality, including filtering pollutants to surface water and groundwater, using nutrients that would otherwise pollute public waters, trapping sediments, protecting shoreline, and recharging groundwater;

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

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

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

E. fish, wildlife, and native plant habitats;

F. low-flow augmentation; ~~and~~

G. carbon sequestration; and

H. other functions and public uses as identified in wetland evaluation methods demonstrated to reasonably identify appropriate candidates for wetland replacement. The board shall maintain a publicly available list of the methods that have been approved for wetland evaluation under the standards set out in this item.

Reason for change: The addition of Item G conforms the WCA rule with MN Statutes 103G.2242, subdivision 1 requiring that replacement plan rules consider the impact on carbon.

Subp. 2. **Determining impacts of partial drainage.** In cases where wetlands will be partially drained, the amount of wetland to be replaced must be determined according to this subpart. The area impacted by partially draining a wetland is determined in two parts. The wetland area where the hydrology will be totally removed must be considered an impact in its entirety. The amount of impact for the area that is partially drained must be at least 50 percent of the acreage of the remaining wetland area determined by an assessment acceptable to the technical evaluation panel.

Subp. 3. **In-kind wetland replacement.** In-kind means a wetland of similar ~~type and~~ function to the impacted wetland. Wetland replacement is in-kind if it is of the same hydrogeomorphic class.:

~~A. the same type or plant community as the impacted wetland or, for degraded wetlands, the same type or plant community that historically occurred at the impact site; or~~

~~B. the same hydrologic conditions and landscape position as the impacted wetland.~~

Reason for change: With HGM defined in WCA rule (via other amendments), this revision replaces "same hydrology conditions and landscape position" with the more comprehensive term "hydrogeomorphic class" and eliminates the use of Circular 39 wetland type or plant community type as surrogates for wetland function when determining in-kind replacement. HGM is both simpler and better correlated to wetland function.

Subp. 4. **Replacement ratios.**

A. The replacement ratio is 2.5 replacement credits for each acre of wetland impacted, except in greater than 80 percent areas or on agricultural land the replacement ratio is 1.5 replacement credits for each acre of wetland impacted. The replacement ratio may be reduced by 0.5:1 when the replacement consists of:

(1) withdrawal of available credits from an approved wetland bank site within the same bank service area as the impacted wetland; ~~or~~

(2) project-specific replacement within the same major watershed or county as the impacted wetland, a majority of which is in-kind; ~~or~~

(3) withdrawal of available credit from an approved bank site within the same city or county as the impacted wetland when the bank owner and credit user are the same entity. This sub-item does not apply to credits that have been transferred from one bank account to another.

Reason for change: The addition of sub-item 3 eliminates the replacement ratio penalty for bank owners, including local governments, for the use of their own credits for a project that crosses a Bank Service Area (BSA) boundary but is within the same city or county. Some local governments have more than one BSA within their jurisdiction and this change will eliminate a disincentive for establishing single-user wetland banks in those areas.

Minimum Replacement Ratios: Banking		
Location of impact	Replacement	Minimum replacement ratio
>80% area or agricultural land	Outside bank service area	1.5:1
	Within bank service area	1:1 <u>1:1</u>
<50% area, 50-80% area, and nonagricultural land	Outside bank service area	2.5:1
	Within bank service area	2:1

Minimum Replacement Ratios: Project-Specific		
Location of impact	Replacement	Minimum replacement ratio
>80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
	Within major watershed and in-kind	1:1 <u>1:1</u>
<50% area, 50-80% area, and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Within major watershed and in-kind	2:1

Reason for change: The edits to the table provide consistency with other rule changes made to conform the WCA rule to statutory amendments that have occurred since the current rule was adopted relating to presettlement areas. Also, a colon was added to the 1:1 ratios to correct the inadvertent use of a period in a previous rulemaking.

B. For replacement via banking, impacts in bank service area 10 that are replaced in bank service area 9 or the Des Moines River Basin in bank service area 8 and impacts in bank service area 1 that are replaced in bank service area 2 count as replacement within the same bank service area for the purpose of reducing the minimum required replacement ratio according to this subpart.

C. For purposes of determining project-specific replacement ratios, the local government unit may authorize the use of out-of-kind wetland replacement in the same ratio allowed for in-kind replacement. ~~Out-of-kind replacement may qualify for the same ratio as in-kind when it consists of a type or plant community that has been significantly lost in the watershed or that if the proposed replacement will provide important functional benefits to the watershed in accordance with the principles described in part 8420.0830, subpart 5,~~ as determined by the technical evaluation panel based on a review of available evidence, ~~or according to a local board approved plan, or board approved criteria approved by the board. A reduced ratio for out-of-kind replacement is typically not appropriate for wetlands that are difficult to replace, such as white cedar swamps or bogs.~~

Reason for change: The language in Item C is modified for consistency with the changes to the definition of in-kind replacement in 8420.0522, Subp. 3. References to plant communities (which are poor surrogates for wetland function) are removed, and the remaining language is modified to reference a board approved plan and/or criteria rather than the vague reference to any local plan. The revised language better allows for utilization of the watershed approach to mitigation in evaluating out-of-kind replacement.

D. Wetland replacement must be of a size sufficient to ensure that it provides equal or greater public value than the impacted wetland it will replace. The actual replacement ratio required may be more than the ratio required in item A if the local government unit determines that a higher ratio is necessary to replace the public value of the wetland lost. In no case shall the replacement ratio be less than 1:1 in greater than 80 percent areas or agricultural land, and 2:1 in all other areas.

E. Owners of wetlands impacted for use as agricultural land may make no use of the wetland area after it is impacted, other than as agricultural land, for a period of ten years unless future replacement to achieve a ratio equaling or exceeding the appropriate ratio for nonagricultural land in item A occurs. The local government unit may require the landowner ~~must to~~ record a notice of this deed restriction in the office of the county recorder in which the project is located, and, as a condition of ~~local government unit~~ approval, provide documentation of the recording to the local government unit.

Reason for change: The agricultural land deed restriction is made optional to conform the WCA rule with amendments to MN Statutes 103G.222, subdivision 1 (d).

F. The board may approve special replacement ratios based on data derived from

comprehensive inventories of replacement opportunities. The board must give notice of the replacement ratios to local government units and must publish the ratios in the State Register. The board must provide opportunities for public input and comment before publishing the special replacement ratios. The conditions and standards take effect 30 days after publication and remain in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register.

G. For purposes of determining replacement ratios, a wetland bank is also within the same bank service area as the proposed impact if, at the time that the bank was approved by the local government unit, the bank was within the same bank service area as the proposed impact.

Reason for change: The addition of Item G, coupled with Subp. 7F, “grandfathers” existing banks affected by Bank Service Area changes, allowing existing banks to continue to sell credits in the BSA which was in place when their bank was approved.

Subp. 5. **Ecological suitability and sustainability.**

A. The preferred method of replacement is that which takes advantage of naturally occurring hydrogeomorphic conditions with minimal landscape alteration and is most likely to result in a wetland area that functions wholly, perpetually, and naturally. ~~Wetland restoration is generally preferred over creation, and restoration of completely impacted wetlands is generally preferred over other methods of replacement.~~

Reason for change: Second sentence is deleted as it is redundant with the first sentence and not prescriptive.

B. Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area. The replacement site must be ecologically suitable for providing the desired functions and compatible with adjacent land uses. A replacement or banking plan that would result in wetland types or characteristics that do not naturally occur in the landscape area in which the replacement will occur must be denied. Replacement must not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area.

C. Replacement projects must be located and designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. "Self-sustaining" refers to the ability of a wetland to provide the desired functions over time in a changing landscape without human intervention.

D. In addition to items A to C, when determining the location, type, function, and design of replacement, applicants and local government units must consider: landscape position, habitat requirements of important species, ~~development and~~ habitat loss trends, sources of watershed impairment, current land development trends, protection and maintenance of upland resources and riparian areas, and providing a suite of functions.

Reason for change: The above amendments are minor clarifications.

Subp. 6. **Required ~~upland~~ buffer.**

A. Establishment or preservation of unmanicured vegetated ~~upland~~ buffer areas is required adjacent and contiguous to replacement wetlands receiving credit under part 8420.0526, subparts 3 to 7.

B. For replacement wetlands less than two acres in size, the buffer must be a minimum average width of 25 feet. For all other replacement wetlands, the buffer must be a minimum width of 25 feet and an average width of 50 feet.

C. The applicant may request the local government unit to vary the ~~upland~~ buffer standards under items A and B. The local government unit may vary the standards under items A and B based on a recommendation by the technical evaluation panel when compliance is not practicable or feasible, and the replacement wetland will otherwise meet the requirements of subpart 5, or when the variance would be ecologically beneficial.

Reason for change: The word “upland” is removed to clarify that all required buffer may not be upland – wetland areas are also used for buffer when upland is not available, consistent with current practice and implementation of Section 404 of the federal clean water act by the USACE.

Subp. 7. **Siting of replacement.**

A. Impacted wetlands outside of a greater than 80 percent area must not be replaced in a greater than 80 percent area. Siting of wetland replacement must follow this priority order:

- (1) in the same minor watershed as the ~~affected~~ impacted wetland;
- (2) in the same major watershed as the ~~affected~~ impacted wetland;
- (3) in the same ~~county~~ wetland bank service area as the ~~affected~~ impacted wetland; and
- (4) ~~for replacement by wetland banking, in the same another wetland bank service area as the impacted wetland, except that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a less than a 50 percent area; and~~

~~(5) for project-specific replacement, in an adjacent major watershed to the affected wetland or, for replacement by wetland banking, in an adjacent wetland bank service area, except that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a less than 50 percent area.~~

B. Notwithstanding item A, clauses (1) and (2), the priority order for replacement by wetland banking begins at item A, clause (3). This item does not apply to the siting of wetland replacement for wetlands impacted within the seven-county metropolitan area until January 1, 2028. siting wetland replacement in greater than 80 percent areas may follow the priority order under this item:

~~(1) by wetland banking after evaluating replacement within the minor and major watersheds;~~

~~(2) replaced in an adjacent wetland bank service area if wetland bank credits are not reasonably available in the same wetland bank service area as the affected wetland, as determined by a comprehensive inventory approved by the board; or~~

~~(3) statewide.~~

~~C. Notwithstanding item A, siting wetland replacement in the seven-county metropolitan area must follow the priority order under this item:~~

~~(1) in the affected county;~~

~~(2) in another of the seven metropolitan counties; or~~

~~(3) in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one to one must be replaced within the seven-county metropolitan area.~~

~~D. Siting wetland replacement for public transportation projects must comply with part 8420.0544.~~

Reason for change: The above changes are made to conform the WCA rule with amendments to MN Statutes 103G.222, subdivision 3. The second sentence of Item B delays implementation of the siting criteria for wetland banking in the metro area consistent with the authority granted in statute.

~~E C. When Applicants must seek~~ reasonable, practicable, and environmentally beneficial replacement opportunities ~~are not available in siting priorities in the order of priority listed in items A, to D, the applicant may seek opportunities at the next level. For the purposes of this item, "Reasonable~~ reasonable, practicable, and environmentally beneficial replacement opportunities" means opportunities that are:

~~(1) ecologically suitable and sustainable according to subpart 5; and~~

~~(2) available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes. The cost of replacement credits alone is not sufficient reason to conclude that reasonable, practicable, or environmentally beneficial replacement opportunities are not available.~~

Reason for change: The opening language is revised to improve clarity. Item (2) is deleted to address unintended consequences resulting from previous WCA rule revisions where credit prices were artificially inflated for certain projects. Since most wetland replacement now occurs through wetland banking (over 95%), and the standards of wetland banks are now higher and more consistent across banks, cost can be a sole factor.

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

E. Wetland replacement sites identified in accordance with the priority order for replacement siting in item A, as part of the completion of an adequate environmental impact statement, may be approved for a replacement plan without further modification related to the priority order, notwithstanding availability of new mitigation sites or availability of credits after completion of an adequate environmental impact statement. Wetland replacement plan applications must be submitted within one year of the adequacy determination of the environmental impact statement to be eligible for approval under this item.

Reason for change: Item E is added to conform the WCA rule with amendments to MN Statutes 103G.222, subdivision 3 (h).

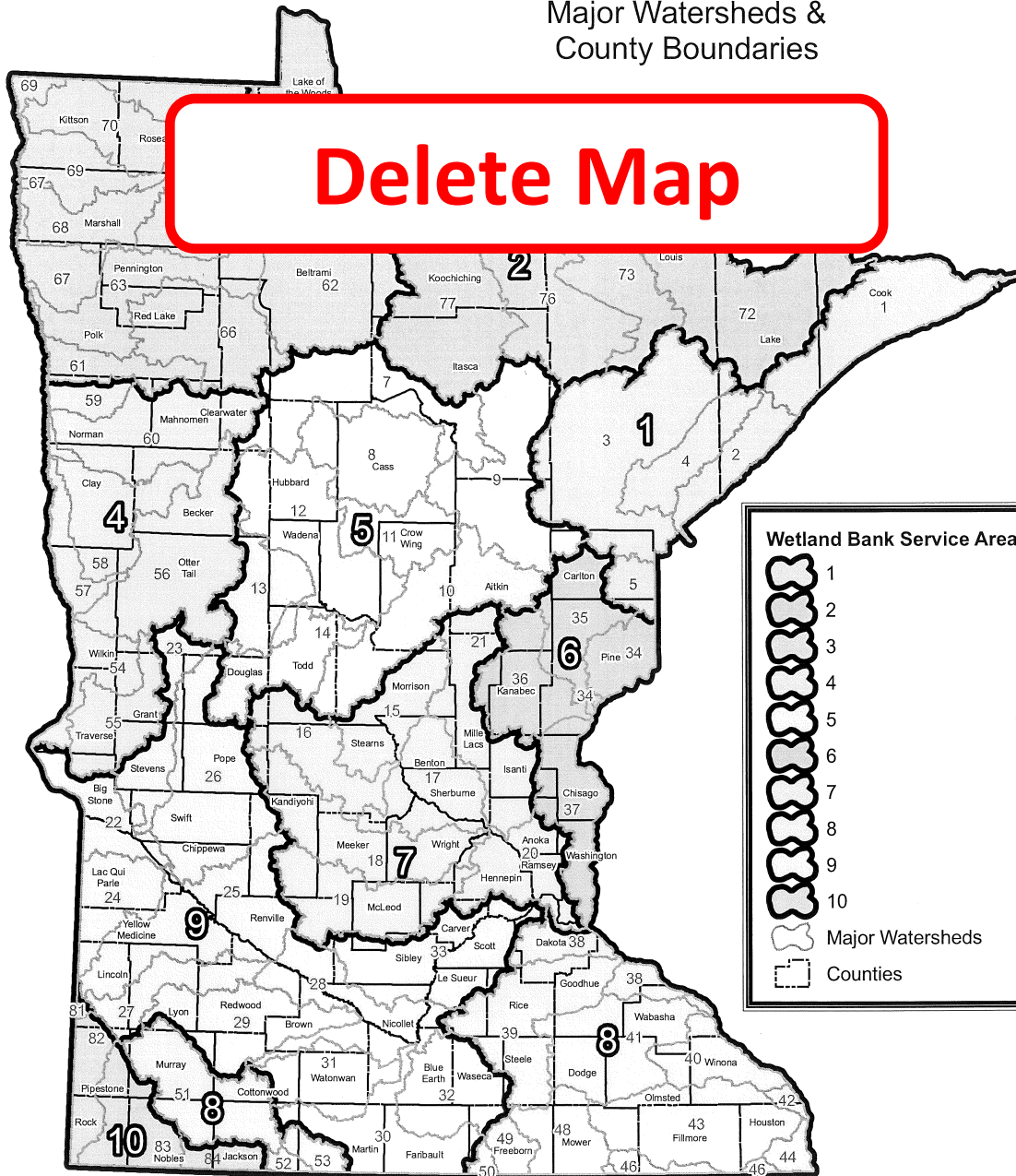
F. For purposes of this subpart, a wetland bank is also within the same bank service area as the proposed impact if, at the time that the bank was approved by the local government unit, the bank was within the same bank service area as the proposed impact.

Reason for change: The addition of Item F, coupled with Subp. 4G, “grandfathers” existing banks affected by Bank Service Area changes, allowing existing banks to continue to sell credits in the BSA which was in place when their bank was approved.

Wetland Bank Service Areas

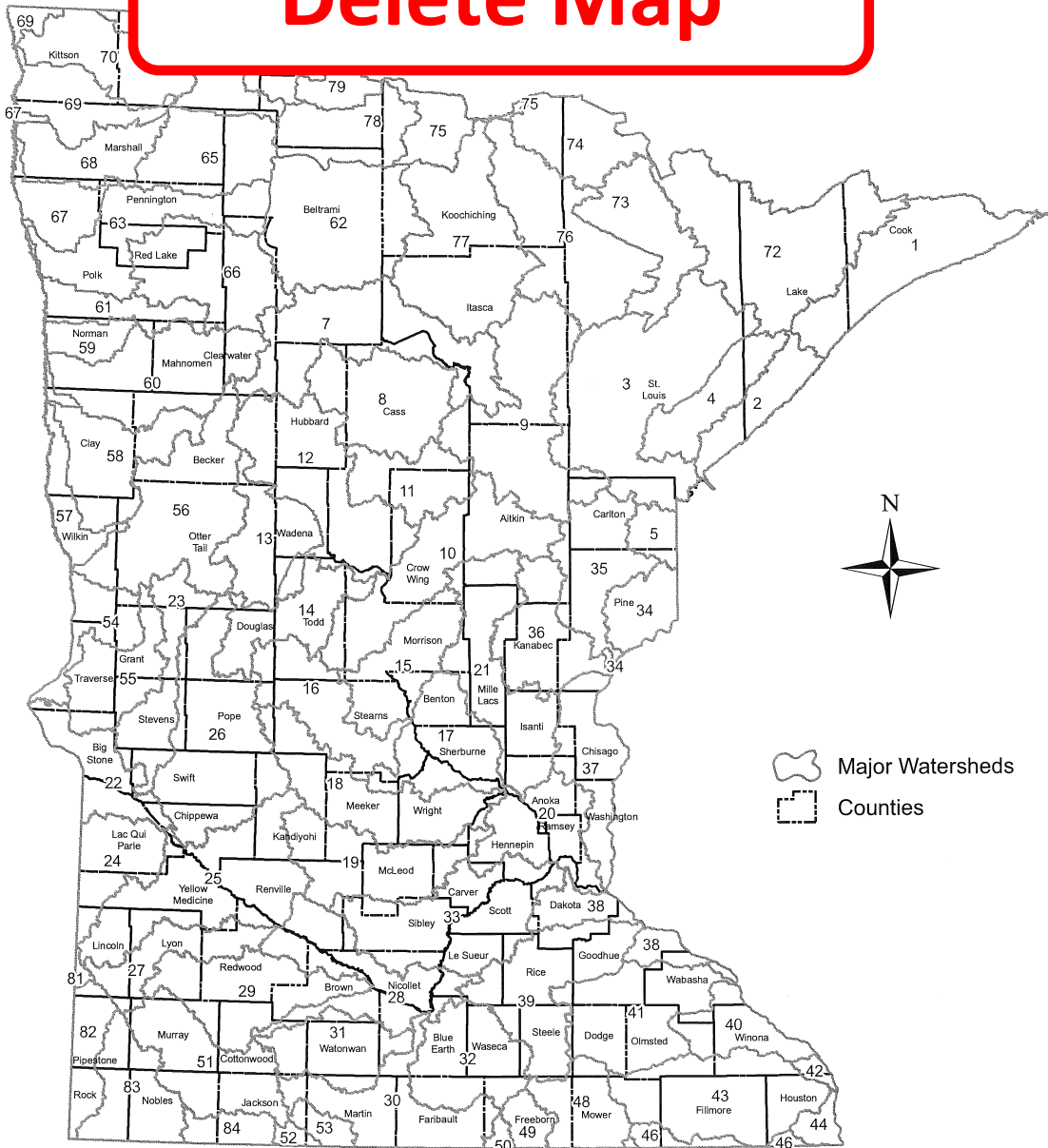
With
Major Watersheds &
County Boundaries

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Major Watersheds & Counties of Minnesota

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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 (Reno)
- 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)~~
- 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~~

Reason for change: The maps and list above are deleted due to online availability of better and more current information.

Subp. 8. **Timing of replacement.**

A. Replacement of wetland function and value must be completed in advance of or concurrent with the actual wetland impact. For replacement that is not in advance, a financial assurance is required according to subpart 9.

B. Replacement is in advance if the replacement is:

(1) approved wetland bank or in-lieu fee replacement credits withdrawn before the impact; or

Reason for change: Includes in-lieu fee (ILF) credits in the definition of advance replacement to facilitate use of the ILF for the Local Government Roads Wetland Replacement Program.

(2) project-specific replacement for which construction has been certified and the first monitoring report of the first full growing season following construction certification has been submitted according to part 8420.0810, and the replacement meets all goals and performance standards applicable to that development stage of the replacement site.

C. Any action being proposed for replacement credit must be specifically identified for replacement purposes and approved by the local government unit as part of a replacement or banking plan before the actual restoration or creation activity is initiated.

Subp. 9. **Financial assurance.**

A. For wetland replacement that is not in advance, a financial assurance acceptable to the local government unit must be submitted to, and approved by, the local government unit to ensure successful replacement. The local government unit may waive this requirement if it determines the

financial assurance is not necessary to ensure successful replacement. The local government unit may incorporate this requirement into any financial assurance required by the local government unit for other aspects of the project.

B. The financial assurance may be used to cover costs of actions necessary to bring the project into compliance with the approved replacement plan specifications and monitoring requirements. The financial assurance does not serve as an in-lieu fee and is not a substitute for enforcement, but may be used for repair, construction, vegetation establishment and management, maintenance, monitoring, or other actions the local government unit determines necessary to ensure adequate replacement.

C. Before drawing on the financial assurance, the local government unit must provide written notice to the landowner stating the actions necessary to bring the replacement project into compliance and that the landowner has 30 days to complete the actions, after which the local government unit will use the financial assurance to gain compliance. Use of the financial assurance by the local government unit may be appealed by the landowner within 30 days after the date on which the notice is mailed, according to part ~~8420.0910~~ 8420.0905.

Reason for change: Corrects an incorrect reference.

D. The local government unit may release a portion of the financial assurance upon successful completion of construction, but must retain a sufficient amount to ensure successful vegetative establishment and completion of the monitoring requirements. Within 60 days of certification of successful replacement and completion of monitoring according to part 8420.0820, subpart 2, the local government unit must release any remaining financial assurance submitted by the applicant, provided all other conditions of the approval are met.

Subpart 10. Replacement site limitations. The replacement area must not:

(1) have been previously restored or created under a prior approved replacement plan;

(2) have been, and will not be, restored or created with financial assistance from public conservation programs or restored or created for other unrelated regulatory purposes;

(3) be within the easement of a pipeline, as defined in Minnesota Statutes, section 299J.02, subdivision 11, unless the applicant notifies the easement holder and the director of the Office of Pipeline Safety in writing and within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides a written notice of objection to the applicant that includes the reasons for the objection; or

(4) be subject to any drainage or property rights potentially detrimental to the replacement area unless those rights have been acquired, subordinated, or otherwise eliminated.

Reason for change: This new subpart is added to relocate replacement site limitations from 8420.0330 Subpart 3 (Replacement Plan Application Contents) to the replacement standards section of the rule for increased clarity.

Statutory Authority: *MS s 103G.2242*

History: 34 SR 145

Posted: August 26, 2009

8420.0526 ACTIONS ELIGIBLE FOR CREDIT.

Subpart 1. **Scope.**

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

B. This part identifies the amount of credit allowed for each action; however, the **actual** amount **allocated** may be less **as determined by when** the local government unit **determines that the replacement wetland does not meet performance standards**. When the local government unit allows less replacement credit than the amounts described in this part, the local government unit must provide justification for the lower credit allocation.

Reason for change: The new language provides a standard upon which the local government unit's credit determination must be based (the success/outcomes of the restoration actions). The existing language could allow for arbitrary credit allocations.

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

D. Modification or conversion of nondegraded wetlands from one wetland type to another by damming, diking, impounding, or excavating does not constitute replacement credit. Restoration of wetlands drained or filled in violation of this chapter is not eligible for replacement credit. **Except for wetlands affected by the maintenance and repair of existing drainage systems under 8420.0420, subpart 3, item A, W**wetlands impacted under an exemption may not be restored for replacement credit for ten years after the impact.

Reason for change: The new language clarifies that legal maintenance of an existing drainage system does not disqualify the affected wetlands from being restored for replacement credit.

Subp. 2. **Upland buffer Buffer** areas.

A. **The establishment or preservation of native, noninvasive vegetation within the buffer area is eligible for replacement credit in an amount up to 25 percent of the area established or preserved. Up to ten percent of the buffer area is eligible for replacement credit for establishment or The** preservation of nonnative vegetation **within the buffer area is eligible for replacement credit in an amount up to 10 percent of the area preserved, provided the vegetation is noninvasive. and up to 25 percent of the buffer area is eligible for replacement credit for establishment or preservation of native, noninvasive vegetation.** Establishing **or preserving upland** buffer around existing high value wetlands adjacent to the replacement wetland is eligible for replacement credit only when the minimum widths provided in part 8420.0522, subpart 6, are maintained and the maximum buffer area under item B is not exceeded.

Reason for change: The language has been modified and reorganized for clarity and consistency with the language used in other actions eligible for credit. The new language also clarifies that credit will not be allocated for the establishment of non-native vegetation, and any non-native vegetation preserved must be noninvasive. “Upland” is removed from the title of Subp. 2 for consistency with the language and current implementation of the subpart.

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

(1) the technical evaluation panel determines that the incorporation of an expanded buffer area under part 8420.0528, subpart 3B, that exceeds the area of the replacement wetland, is ecologically justified; or

(2) the board determines that a buffer area that exceeds the area of the replacement wetland is necessary to provide for an implementable and enforceable easement boundary and the additional buffer area is ecologically beneficial to the replacement wetland.

Reason for change: The new language provides flexibility to increase the buffer area under circumstances already identified in another portion of the WCA rule or in instances related to the establishment of easement boundaries. This language is consistent with the federal mitigation rule which requires that credit be allocated to any areas that the applicant must protect in order to gain approval of the replacement site.

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

(1) extend upstream in the watershed, provide slope and soil stability, and otherwise protect and improve water quality; a rare natural community is established in the buffer area;

(2) protect valuable native plant communities or habitats that could otherwise be lost or degraded; the buffer protects a rare natural community within the restored wetland; or

(3) provide important habitat connections; or restoration of the buffer area includes specific components that will significantly improve critical habitat for an identified population of state threatened or endangered species or species of special concern in the area.

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

Reason for change: The existing criteria under Item C is vague and, in some cases, inconsistently applied. Local governments and Technical Evaluation Panels (TEPs) have found it difficult to determine when those criteria are met. In addition to improved clarity, the proposed language provides an incentive to restore rare and important plant communities as well as plant communities that provide critical habitat for rare species. The increased credit amount is directly correlated to the high value of these communities and species. “With concurrence of” is changed to “based on a recommendation from” for clarity as credits are allocated via a local government unit decision. TEPs do not make decisions.

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

Reason for change: The stricken text has been relocated to 8420.0528, Subp. 2, Item D.

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

~~A. any wetland area substantially degraded by partial drainage or fill that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or equivalent payments in at least ten of the last 20 years before the date of application, is eligible for replacement credit in a percentage equivalent to the percent of the time the wetland area was annually seeded, in rotation, or set aside during the prior 20-year period; and~~

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

A. up to 100 percent of the wetland area restored for wetlands in a cultivated field where a majority of the area to be restored:

(1) was cultivated in at least six of the ten most recent years. For purposes of this determination, prevented planting, temporary conservation program enrollment, and years when the area was uncultivated as a result of being in a crop rotation seeded to pasture grasses or legumes may be removed from the analysis and the next most recent year(s) progressively added until there is a total of ten years on which to base the analysis; or

(2) is highly degraded as determined by the technical evaluation panel using assessment criteria provided by the board;

B. up to 75 percent of the wetland area restored for wetlands in a cultivated field where a majority of the area to be restored is moderately degraded as determined by the technical evaluation

panel using assessment criteria provided by the board; and

C. up to 50 percent of the wetland area restored for all other wetlands.

Reason for change: This change simplifies wetland credit determinations for restoring degraded wetlands in agricultural fields by, in many instances, eliminating the need to distinguish between wetland areas that have been completely drained (no longer wetland) and areas that are partially drained. Making this distinction in highly altered agricultural landscapes is difficult, inexact, and not well correlated to differences in functional gain. The new language allows for a more comprehensive credit eligibility determination based on the majority of the wetland area restored when the wetland has been degraded by long-term cultivation activities. In addition, the new language is consistent with Joint BWSR-USACE guidance for [Determining Wetland Mitigation Credit Potential for Hydrologic Restorations on Cultivated Fields in Minnesota](#) issued in 2019.

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

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

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

Subp. 6. **Protection of wetlands previously restored via conservation ~~easements~~ programs.** Permanently protecting wetlands previously restored or created for conservation purposes under a contract or easement, when the contract or easement has expired and gives the landowner the right to drain or fill the wetland upon termination, is eligible for replacement credit where the area receiving credit meets the replacement wetland construction standards of part 8420.0528. The maximum replacement credit is 75 percent of the area created or restored under the conservation contract or easement. Alternatively, credit may be allocated according to the other subparts in this part as applied prior to initiation of the contract or easement, when the applicant can document eligible credit yield to the satisfaction of the local government unit.

Reason for change: Title revised for clarity, as not all conservation programs utilize easements to restore wetlands.

Subp. 7. **Wetland creations.**

A. A wetland created in an upland area is eligible for replacement credit in an amount up to

75 percent of the total wetland area created.

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

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

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

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

(1) habitat for state-listed endangered or threatened species; (2) rare native plant communities;

(3) special fish and wildlife resources, such as fish passage and spawning areas, colonial water bird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, and wildlife travel corridors;

(4) sensitive surface waters; or

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

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

Subp. 9. Preservation of wetlands ~~owned by the state or a local unit of government~~. In greater than 80 percent areas, up to 12.5 percent of wetland areas and adjacent buffer that are protected by a permanent conservation easement are ~~owned by the state or a local unit of government and protected by a permanent conservation easement is~~ eligible for replacement credit. The easement must be in a format prescribed by the board and granted to and accepted by the board after approval of the replacement or banking plan application. ~~Replacement credit for wetland preservation may only be granted after considering replacement as provided under subparts 3 to 8. Wetland areas on private lands that have been restored or protected using public conservation funds are not eligible for replacement credit under this subpart.~~ To be eligible for credit under this subpart, the technical evaluation panel must determine that there is a high probability the wetland will be degraded or impacted and the wetland:

~~A.~~(1) contains or benefits an exceptional resource identified in subpart 8;

~~B.~~(2) is of a type or function that is rare, difficult to replace, or of high value to the watershed;

~~C.~~(3) contains a rare or declining plant community; or

~~D.~~(4) is of a type that is not likely to regenerate, such as northern white cedar.

Reason for change: Amended to conform the WCA rule with amendments to MN Statutes 103G.2251.

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

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

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

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

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

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.

Subpart 1. **General requirement.** The standards and guidelines in this part must be followed in wetland creation and restoration efforts to ensure adequate replacement of wetland function and value.

In evaluating a proposed replacement or banking plan application, the local government unit must determine that the plan will adequately replace the public value of wetlands lost. If the local government unit determines that the proposed replacement is not likely to result in adequate replacement of function and public value, the local government must either require modifications necessary to obtain adequate replacement or deny the application.

Subp. 2. **Design requirements.**

A. The standards in this subpart must be met for all replacement wetlands unless the local

government unit, with concurrence of the technical evaluation panel, determines that a standard is clearly not appropriate.

B. 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.

C. Best management practices must be established and maintained at the replacement site as necessary to protect the replacement wetland and other waterbodies. Erosion control measures must be employed during construction and until permanent ground cover is established.

D. Native, noninvasive vegetation must be established in restored and created wetlands. Each replacement or banking plan involving wetland restoration or creation must include a vegetation establishment and management plan. ~~The vegetation establishment and management plan must include a goal of, and with~~ specific provisions for, establishing ~~plant communities~~ native, noninvasive vegetation that corresponds to the hydrology and landscape position of the replacement site. The plan must include actions to restore the native plant community or communities historically associated with the wetlands of the same hydrogeomorphic class in the watershed, or other plant communities when the local government unit determines that establishment of the historic native plant community is not feasible or ecologically preferable. If the replacement wetland is seeded or planted, the seed or planting stock should be from native, noninvasive species in accordance with the Minnesota Wetland Restoration Guide. In evaluating the vegetation establishment and management plan, the local government unit must determine that implementation of the plan is likely to result in establishment of the appropriate native, noninvasive vegetation within the monitoring period. During the monitoring period, the applicant must take reasonable steps to control invasion by any nonnative or invasive species.

Reason for change: The “actions to restore the native plant community” language is amended slightly for clarity and relocated here from 8420.0526, Subp. 3 in order to apply it to all wetland restoration or establishment projects. Additional revisions are made for clarity.

E. The bottom contours of the permanently and semipermanently flooded areas of created ~~types 3, 4, and 5~~ wetlands must provide a variety of water depths, comparable to natural wetlands in the vicinity of the replacement, and be consistent with part 8420.0522, subpart 5.

Reason for change: Eliminated the reference to Circular 39 types as the requirement should apply to any wetland with deeper water areas.

F. The edge of created or graded wetlands must be comparable to other naturally occurring wetlands of similar hydrologic condition and landscape position in the major watershed. Sideslopes of created wetlands, graded portions of restored wetlands, and graded buffer strips, must not be steeper than 8:1, eight feet horizontally for every one foot vertically, or flatter, unless the technical evaluation panel concurs that steeper slopes are acceptable based on the surrounding landscape and the characteristics of other naturally occurring wetlands in the vicinity. ~~Sideslopes of 10:1 to 15:1 are preferred.~~

Reason for change: The sideslope preference is deleted as each created wetland will be unique, corresponding to the landscape in which it is created, and a “preference” is not enforceable. The Minnesota Wetland Restoration Guide (incorporated by reference) is a more appropriate source of information regarding wetland establishment.

G. Treatment of runoff before discharge to replacement areas is required to improve sustainability and minimize degradation of the wetland over time. The replacement area must be physically separated from any water quality treatment system. "Treatment of runoff" under this part means:

(1) any part of a stormwater treatment system needed to comply with water quality treatment requirements of state or local stormwater permits or ordinances, provided the treatment system is physically separated from the replacement wetland; or

(2) when water quality treatment is not required by state or local permits or ordinances, the installation of appropriate best management practices, to the extent practicable and feasible, to protect long-term wetland function.

H. For projects that contain elements that include dams, dikes, or other ~~impoundment features~~ water control structures, the construction plans must be designed, overseen, and certified by a ~~registered professional engineer~~ qualified individual licensed to practice engineering in Minnesota.

Reason for change: Revised to incorporate accurate terminology.

Subp. 3. **Design considerations.** The following replacement wetland design elements must be considered for replacement wetlands and incorporated to the extent practicable and feasible:

A. restored wetlands should emulate the hydrology and vegetation of the presettlement wetland condition;

B. expanded buffers should be incorporated into the design of replacement wetlands in areas where there is a high potential for erosion and the buffer will improve slope stability or ~~when necessary~~ to provide wildlife habitat corridor connections with other wetlands or habitats;

C. measures should be taken to manage ~~hydraulic~~ hydrologic bounce ~~as indicated in the guidance document under part 8420.0112, item N such that the wetland's function, value, and sustainability are maintained;~~ and

Reason for change: Replace outdated guidance with an implementable standard. Rather than referring to an outdated document, BWSR will coordinate with DNR and PCA to identify updated references and, as needed, develop guidance relating to hydrologic bounce and wetlands.

D. for all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, the organic substrate must be sufficient to establish a functioning wetland and to accomplish the goals of the replacement or banking plan. When feasible, organic soil used for backfill

should be salvaged from the impacted wetland for utilization in the replacement wetland. Organic soil for backfill from wetlands dominated by nonnative or invasive species should be avoided.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.

A. Impacts resulting from public transportation projects must be replaced according to the requirements of this chapter except as provided in this part.

B. Siting of wetland replacement for public transportation projects must comply with part 8420.0522, subpart 7, except that wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide. Wetlands impacted by public transportation projects:

~~(1) outside the seven-county metropolitan area may be replaced statewide, except that impacts in less than 50 percent areas must be replaced in less than 50 percent areas; and~~

~~(2) in the seven-county metropolitan area must be replaced in the seven-county metropolitan area or in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one-to-one must be replaced within the seven-county metropolitan area.~~

~~This item does not apply to replacement completed using wetland banking credits established by an applicant who submitted a complete wetland banking application to a local government unit by April 1, 1996.~~

Reason for change: Amended to conform the WCA rule with amendments to MN Statutes 103G.222, subdivision 3.

C. A replacement plan is required for public transportation projects that involve new roads or roads expanded solely for additional traffic capacity lanes.

D. A replacement plan is not required for individual public road projects that impact 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 road authority, to meet state or federal design or safety standards or requirements. This item only applies to authorities for public road projects that:

(1) minimize impacts associated with the project and consider replacing important site-specific wetland functions on site; and

(2) provide project-specific plans and information, including project locations, wetland boundaries, amount and type of wetlands impacted, demonstration of impact minimization, and any

changes or addenda, to the board's designated banking administrator, the technical evaluation panel, the commissioner, and members of the public requesting a copy:

Reason for change: BWSR does not have a position titled “banking administrator,” and the rule should avoid using specific position titles. “Designated” was simply added to clarify that the banking administrator function will be fulfilled by whichever position is designated to do so by the agency.

- (a) at least 30 days before construction;
- (b) at an annual meeting of the parties required to receive notice, convened to review projects to be commenced during the upcoming year; or
- (c) within 30 days of commencing minor and emergency maintenance work impacting less than 10,000 square feet.

Public road authorities that do not follow the process required in this item for a project must submit a complete replacement plan application to the local government unit and provide for replacement of impacts associated with the project according to this chapter.

E. For impacts associated with a new public road project, or a public road project expanded solely for additional traffic capacity, the public transportation authority may purchase credits from the board at the cost to the board to establish credits. Purchase of credits under this item is allowed only when the board has determined that sufficient credits are available for sale.

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

G. Those required to receive notice of public road projects may appeal minimization, delineation, and on-site replacement decisions made by the public road authority to the board according to part 8420.0905.

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

I. Except for state public transportation projects that occur on state roads, for which the state Department of Transportation is responsible for the wetland replacement, and public road authority projects that do not meet the requirements of item D, the board must replace public road project impacts, including impacts to public waters if authorized by the commissioner or a delegated authority, that result from local government projects on existing roads.

Reason for change: Conforms the WCA rule with amendments to MN Statutes 103G.222, subdivision 1.

J. Public road authorities, at their discretion, may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid impacts, 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.

Statutory Authority: *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; L 2004 c 228 art 1 s 71; 32 SR 281; 34 SR*

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Posted: *August 26, 2009*

8420.0700 PURPOSE OF WETLAND BANKING.

The purpose of parts 8420.0700 to 8420.0755 is to provide standards for the establishment and administration of a state wetland banking system, including individual wetland bank sites, as authorized by Minnesota Statutes, section 103G.2242. The purpose of the state wetland banking system is to provide a market-based structure that allows for replacement of unavoidable impacts with preestablished replacement wetlands. The board or the board's designee 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 [this chapter parts 8420.0700 to 8420.0755](#).

Reason for change: Clarifies that operation of banks must comply with all applicable rule requirements.

Statutory Authority: *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

History: *18 SR 274; 34 SR 145*

Posted: *August 26, 2009*

8420.0705 ESTABLISHING [A](#) WETLAND BANK SITE.

Reason for change: Corrected grammar.

Subpart 1. **Eligibility for wetland banking.** Replacement wetland credits that result from any of the eligible actions in part 8420.0526, and that meet the [standards of parts 8420.0522 and 8420.0528 requirements of this chapter](#), may be deposited in the state wetland bank for later use in replacing unavoidable impacts. To be eligible for deposit in the bank, the credits must be specifically designated for wetland banking purposes prior to undertaking the replacement actions and certified by the local government unit prior to deposit. Designation of credits for wetland banking is accomplished by approval of a wetland banking plan by a local government unit. Replacement actions completed or initiated without prior local government unit approval are not eligible for deposit in the wetland bank.

Reason for change: Amended to be inclusive of all relevant rule requirements.

Subp. 2. **Local government unit and board authority.**

A. Based on a comprehensive local water or wetland protection and management plan approved by the board, a local government unit may, by rule or ordinance, limit the establishment of bank sites within its jurisdiction. The local government unit that approves a banking plan application is responsible for construction certification according to part 8420.0800, ensuring the monitoring provisions of part 8420.0810 are fulfilled, and certifying credits for deposit according to part 8420.0725.

B. The board may refuse to accept the conservation easement under Subp. 5 ~~reject or modify an application for deposit if, during its review, if it determines that~~ any part of the banking application or plan is missing, ~~incorrect~~, or inconsistent with this chapter. The board may reject or modify an application for deposit if it determines that the application is inconsistent with the approved banking plan.

Reason for change: The amendments clarify BWSR's authority regarding LGU-approved banking plans or credit releases that are inconsistent with WCA. The existing language was confusing as it referenced the banking plan in rejecting an application for deposit. The new language differentiates between banking plans and applications for deposit.

Subp. 3. **Application and decision procedures.** ~~When replacement actions are proposed for banking purposes, the applicant must submit to the local government unit a banking plan application, in a form prescribed by the board, containing the information identified in parts 8420.0305, item B, and 8420.0330, subpart 3, item B, and other information required by the board. The banking plan must also contain specific performance standards and a proposed credit release schedule based upon achievement of those standards. The local government unit is responsible for ensuring that a copy of the banking plan application is sent to the administrator of the state wetland bank, to the St. Paul District Office of the United States Army Corps of Engineers, and to those required to receive a copy of an application in part 8420.0255, subpart 3. The technical evaluation panel must review the banking plan application and may recommend changes or additions to the performance standards and credit allocation schedule. The wetland banking plan applicant must be advised of any panel recommendations. Based on the panel's findings and recommendations and other comments received, the local government unit must determine the likelihood that the replacement actions will be successful and approve, approve with modifications, or deny the banking plan application. All application information required in this subpart must be provided in a form prescribed by the board.~~

A. Prior to the submittal of a banking plan application to a local government unit, the applicant must submit a prospectus to the local government unit for review by the technical evaluation panel.

(1) The prospectus must describe the location of the proposed bank, how the bank will be established, associated land rights and ownership arrangements, and the actions proposed to generate credits in accordance with part 8420.0526, and include other information required by the board.

(2) The local government unit must determine whether the prospectus is complete. If the prospectus is incomplete, the local government unit must notify the applicant within 15 business days of receipt of the incomplete prospectus and list, in writing, what information is missing.

(3) Within 15 business days of receipt of a complete prospectus, the local government unit must send a copy of the prospectus to members of the technical evaluation panel and the board's

designated banking administrator.

(4) The technical evaluation panel must review the prospectus to determine the feasibility of the project and the potential of the proposed wetland bank to generate replacement credits in accordance with this chapter. The local government unit must send findings and recommendations to the applicant within 90 days of its receipt of the complete prospectus.

B. An applicant may submit a banking plan application to the local government unit after completion of the prospectus review in Item A. A banking plan application must include the information specified in parts 8420.0305 and 8420.0330, subpart 3, a proposed conservation easement, a credit release schedule with associated performance standards as applicable, and other information required by the board.

(1) The local government unit must determine whether a banking plan application is complete. If the banking plan application is incomplete, the local government unit must notify the applicant within 15 business days of receipt of the application and list, in writing, what items or information is missing.

(2) Within 15 business days of receipt of a complete banking plan application, the local government unit must send a copy of the application and a notice of application, on a form provided by the board, to those required to receive notice in part 8420.0255, subpart 3 and the board's designated banking administrator. The notice must designate a comment period of 60 days, which will begin on the date the notice is sent. Any comments received by the local government unit must be shared with the technical evaluation panel for consideration in developing its findings and recommendations. The technical evaluation panel must provide its findings and recommendations to the local government unit within 90 days of issuance of the notice of application.

(3) Decisions made by the local government unit must be based on the standards and procedures prescribed in this chapter and any findings and recommendations provided by the technical evaluation panel. A local government unit's decision to approve, approve with conditions, or deny a banking plan application must be made within 140 days of receipt of the complete application.

(4) The local government unit may extend the decision timeline in subitem (3) for an additional 60 days if additional field review is required or substantive plan details require additional review by other experts. The applicant and the local government unit may agree to further extend the decision timeline beyond the initial 60-day extension. All extensions must be specified in writing.

(5) If a banking plan applicant notifies the local government unit in writing of their intent to revise the banking plan application or respond to any findings and recommendations provided, the decision timeline in subitem 3 does not apply and the local government unit's decision must be made in accordance with subitem 6 of this item.

(6) If substantive revisions to a banking plan application are received, the local government unit must send a copy of the revised banking plan application and a notice of application, on a form provided by the board, to the technical evaluation panel and the board's designated banking administrator within 10 days of receipt of the revisions. The notice must designate a comment period of 60 days, which will begin on the date the notice is sent. The local government unit must make a decision on the revised banking plan application within 100 days of receiving it.

(7) A notice of decision must be sent within ten days of the date of the decision, on a

form provided by the board, to all required to receive notice of application under subitem 2 of this item. The notice must designate a 30-day appeal period consistent with part 8420.0905.

(8) If the local government unit fails to make a decision on a banking plan application within the timelines required under this item, the board must act on the application in lieu of the local government unit decision or remand the matter to the local government unit with instructions.

Reason for change: MN Statute 103G.2242, subdivision 2a (c) was amended to direct BWSR to establish timelines for wetland bank project review and comment apart from Minn. Stat. 15.99, Subd. 2. The proposed process largely emulates the timelines and steps for wetland bank reviews required by the Federal Mitigation Rule, as implemented by the St. Paul District of the USACE. Wetland banking provides over 90% of the wetland replacement in Minnesota. Wetland banks often involve significant landscape/drainage alterations, engineered structures, possible effects on adjacent properties, and easement acquisition, all of which necessitate extra review time as compared to most other WCA decisions.

The Federal Mitigation Rule includes four mandatory phases in the bank approval process, plus an optional phase at the beginning. Because the final phases of the federal process involve the drafting and finalization of a banking instrument, which is not applicable to the WCA program, the exact duplication of the phases and timelines is not possible. This proposed process also incorporates existing decision and noticing mechanisms currently used in WCA.

The optional pre-prospectus phase of the Federal process is much like the pre-application option already in WCA and was not added as a separate phase.

The prospectus phase is required under the proposed language, consistent with federal process. The review timeline for the prospectus phase also matches the federal process. The prospectus phase does not involve an LGU decision, but instead compels the TEP to develop findings and recommendations regarding project feasibility, prior to development of the full banking plan application.

The second phase is the review of the full banking plan application, which follows the same basic noticing provisions as other WCA decisions except that the review and decision timelines are increased to closely match the last two phases of federal process. The TEP is afforded additional time after the comment period ends to allow for consideration of any other comments received as they develop their findings and recommendations.

A process has been added for handling revisions to banking plan applications, which are very common as the plans are refined. This process is intended to create predictability and to minimize the need for the LGU to continually extend timelines while applicants are revising their plans.

A final provision is added to address a situation when an LGU may fail to make a decision within the required timelines.

Subp. 4. **Combined banking and project-specific replacement.** When a banking plan applicant wishes to use a portion of the credits generated from a banking project for project-specific replacement, the banking plan must identify the project-specific impact and the amount of credits to be used according to a corresponding replacement plan. The credits must meet the requirements of parts 8420.0500 to 8420.0528 and the approved replacement plan, and be deducted before deposit of any credits into the state wetland bank.

Subp. 5. **Conservation easement.** No credits may be deposited in the state wetland bank until a perpetual conservation easement, in a format meeting requirements prescribed by the board, is granted to and accepted by the state. ~~The easement must encompass the entire replacement area, unless the local government unit and the board approve an alternate boundary at the time of bank application approval. The easement must 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 wetland replacement. The access easement does not confer a right of access to the general public. The boundary of bank areas must be clearly marked as prescribed in the conservation easement. This subpart does not apply to state land. The board may waive the requirement for a conservation easement on state or federal land, or land held in trust by the federal government for tribal nations, when the board determines that adequate access to, and long-term protection of, the bank site exists.~~

Reason for change: Proposed amendments to this subpart include eliminating very prescriptive details related to conservation easement acquisition and adding a provision to allow the board to waive the easement requirement on certain lands (federal, state, land held in trust by the federal government for tribal nations) where easement acquisition is prohibited or difficult but adequate access and protection can still be provided. The amendments increase the board's flexibility to provide adequate long-term protection for wetland banks in consideration of evolving easement policies and acquisition methods, as well as unique land ownership arrangements.

Subp. 6. **Time limits for construction.** Replacement actions under an approved banking plan must be initiated within three years of banking plan approval or the banking plan must be resubmitted to the local government unit for consideration. Construction certification verification according to part 8420.0800 must be gained within five years of banking plan approval. The time limits of this subpart may be extended by the local government unit in consultation with the technical evaluation panel.

Reason for change: Allows for an extension of time for initiation and completion of bank construction activities to account for potential delays due to weather, regulatory approvals, or other unforeseen circumstances. "Certification" is changed to "verification" for consistency with changes to the referenced part and elsewhere in the rule.

Statutory Authority: *MS s 103G.2242*

History: 34 SR 145

8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.

A. To be deposited into the state wetland bank, replacement credits must be certified for deposit by the local government unit ~~in which they are located. Certification of credits by The wetland banking plan applicant may, on a form provided by the board, request the certification and deposit of credits by~~ the local government unit ~~in accordance with the credit release schedule and associated performance standards contained in the approved banking plan is requested by the banking plan applicant and may occur at any time during the monitoring period.~~ The certification must be based on the findings and recommendation of the technical evaluation panel and must identify the ~~area by type, area of buffer, and number of~~ credits eligible for deposit by area. The technical evaluation panel must ensure that sufficient time has passed for the wetland to become established, especially vegetation and hydrology, before recommending certification. The area certified must be based on a land survey or comparable method of field measurement. The person making the measurement must verify in writing as to the method and accuracy of the measurement. Failure to follow the approved construction specifications or vegetation management plan is sufficient grounds for the local government unit to deny certification of credits for deposit.

Reason for change: The first sentence is revised to recognize that the LGU that possesses jurisdiction over a project may differ from the physical location of the project, such as when DNR is designated as the LGU under certain circumstances. The second sentence is amended to provide greater clarity regarding the process for the certification and deposit of credits. The remaining edits eliminate the confusing requirement of buffer area identification.

B. The certification and request for deposit of credits must be in a form prescribed by the board. ~~and must contain the following information:~~

- ~~(1) name, address, and telephone number of the banking plan applicant;~~
- ~~(2) a complete copy of the banking plan application and local government unit approval, supporting documents, and a legal boundary survey of the land area that will be subject to restrictions (for initial deposit only);~~
- ~~(3) a copy of the deed for the property containing the wetland and any easement if the banking plan applicant is not the fee owner (for initial deposit only);~~
- ~~(4) a copy of the recorded conservation easement according to part 8420.0705, subpart 5;~~
- ~~(5) amount of replacement credit to be deposited, to the square foot, by wetland type;~~
- ~~(6) technical evaluation panel recommendation and local government unit certification;~~
- and
- ~~(7) other information required by the board.~~

Reason for change: The list in item B contains technical requirements that can vary over time. It is deleted to provide flexibility to adjust the requirements over time when needed.

C. Up to 15 percent of the credits proposed for banking are eligible for deposit in the bank immediately after the certification of local government unit has determined that construction specifications of replacement wetlands have been met according to part 8420.0800 8420.0820, subpart 2, and recording of a conservation easement according to the requirements of part 8420.0705, subpart 5 have been met.

Reason for change: Corrects an incorrect reference from the prior rulemaking. Also revised for clarity and consistency with other amendments to part 8420.0800 and 8420.0705.

D. After the initial deposit, the remaining credits proposed for banking are eligible for deposit in accordance with the credit release schedule and performance standards included in the approved banking plan, subject to review by the technical evaluation panel and certification by the local government unit. If the approved banking plan does not contain a credit release schedule and associated performance standards, remaining credits will be eligible for deposit based on the findings and recommendation of the technical evaluation panel regarding the success of the proposed replacement action.

E. After certifying the credits for deposit, the local government unit must ~~forward the signed request for sign the banking credit~~ deposit form ~~to the board's banking administrator and promptly forward it to the banking plan applicant.~~ The banking plan applicant must then send the fully executed banking credit deposit form and any required fees to the board's designated banking administrator. No credits ~~will can~~ be deposited until receipt of the completed and approved request to deposit form by the board. The board must ~~acknowledge the deposit to notify~~ the banking plan applicant and local government unit ~~of the deposit~~ and ~~enter record~~ the information in ~~item B into~~ the wetland bank ~~account~~.

Reason for change: Item E is amended to clarify responsibilities relating to applications for the deposit of banking credits. Remaining language edits are made to improve clarity and accuracy.

F. If the banking plan applicant chooses not to proceed with the initial deposit, the banking plan applicant may return the site to its preconstruction condition without replacement. If credits have been deposited but none have been withdrawn, the banking plan applicant may request the board vacate the conservation easement at the applicant's expense. If the board vacates the conservation easement, the account will be closed and the site may be returned to preconstruction condition without replacement. Replacement areas wholly or partially deposited into the bank, on which withdrawals have occurred or which otherwise have been used for replacement, are subject to this chapter, including replacement for any subsequent impacts.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0735 MONITORING AND CORRECTIVE ACTIONS.

Subpart 1. **Monitoring.**

A. Monitoring of wetland bank sites must conform to the monitoring requirements of part 8420.0810. Failure to submit the required monitoring reports or otherwise comply with monitoring requirements will prevent the deposit of credits and may result in the freezing of the bank account by the board until compliance is attained.

B. After completion of the required monitoring period, the board ~~shall periodically inspect wetlands deposited into the bank at a frequency sufficient to ensure that easement conditions are being met~~ **is responsible for assessing a wetland bank site to ensure that it continues to provide important functions and values consistent with its approved bank plan.**

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: Item B is amended to provide flexibility in the requirements for site inspections and to better allow for the use of technology for long-term easement oversight. The standard is to ensure the functions and values are maintained consistent with the bank plan, regardless of the method. The amendments also provide consistency with proposed changes to 8420.0705, Subp. 5, under which an easement may not always be required under certain circumstances.

Subp. 2. **Maintenance responsibilities.** The fee owner and the banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the banking project according to the approved banking plan and for maintaining the banking project according to the conditions of the conservation easement. The banking plan applicant, if different from the fee owner, is not responsible for maintenance after the monitoring requirements have been completed if the banking plan applicant no longer owns an easement interest in the real estate or credits associated with the ~~banked replacement~~ wetland.

Reason for change: The term “banked wetland” is undefined, only used twice in the rule, and is unnecessary as replacement wetlands include wetlands for which credits have been deposited in the bank.

Subp. 3. **Corrective actions.**

A. If, during the monitoring period, the local government unit or the technical evaluation panel determines that a bank site does not meet the specifications in the approved banking plan, the local government unit must require corrective actions and notify the board's **designated** banking administrator. The board may restrict further deposits, withdrawals, and transfers of all credits associated with the bank site until the local government unit and the board, based on findings from the technical evaluation panel, determine that the banking project has been brought into compliance.

Reason for change: BWSR does not have a position titled “banking administrator,” and the rule should avoid using specific position titles. “Designated” was simply added to clarify that the banking administrator function will be fulfilled by whichever position is designated to do so by the agency.

B. If, after the monitoring period, the board determines that wetlands deposited into the bank are not in compliance with the conditions of the conservation easement, the board must require corrective actions of the fee owner or banking plan applicant to bring the bank site into compliance with easement conditions.

C. If satisfactory remediation does not result under item A or B, the local government unit or the board may undertake reconstruction work to bring the site into compliance. Alternatively, when credits have not been withdrawn or transferred, the board may vacate the conservation and access easement and close the account. The board and local government unit may require reimbursement of reasonable costs of bringing the site into compliance or vacating the conservation and access easement.

D. Fee owners, banking plan applicants, or account holders may appeal restrictions on credit deposits, withdrawals, and transfers or demands for reimbursement of reconstruction costs to the board.

E. Noncompliance with easement conditions or impacts to bank sites are subject to enforcement under part 8420.0900.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0745 WITHDRAWALS AND TRANSFERS.

Subpart 1. **General.** Credits from the state wetland bank may only be used to replace wetland impacts when authorized by a local government units under this chapter, or by other local, state, and federal regulatory governmental authorities, provided when the impacted wetland is within the state of Minnesota and the credit withdrawal procedures of this chapter are followed. No sale, withdrawal, transfer, or use of banking credits for replacement is valid until the board debits the applicable bank account. Bank credits may be used only once to replace wetland impacts. Bank accounts must maintain a positive balance. When all credits have been withdrawn or transferred, the account is closed.

Reason for change: Revised language for clarity; “regulatory” is replaced with “governmental” as not all agencies approving the use of wetland bank credits are regulatory in nature (e.g. NRCS).

Subp. 2. **Withdrawals.** Replacement plan applicants ~~seeking to use or others proposing to withdraw~~ banking credits for replacement are responsible for contacting and arranging for acquisition of the credits from the holder of a bank account according to the ~~wetland replacement~~ requirements of this chapter. ~~The board shall supply information on wetland bank sites according to part 8420.0755, subpart 1, item B. Replacement plan applicants proposing the use of bank credits for replacement must complete a credit withdrawal form prescribed by the board and include it as part of the replacement plan application submitted to the local government unit.~~ If the local government unit approves the use of bank credits for

replacement, the local government unit must sign the completed credit withdrawal form provided by the applicant and return the form to the applicant ~~notify the board's banking administrator according to part 8420.0255, subpart 5. The applicant must then submit the fully executed form and any required fees to the board's designated banking administrator. The board shall not withdraw credits from a bank account unless a regulatory entity with authority over the use of the credits has approved the use of the subject credits for replacement of a specific wetland impact.~~ Local government unit approval of replacement plans involving the use of banking credits is conditional upon withdrawal of the credits by the board. Impacts under replacement plans must not occur until the board has notified the replacement plan applicant that the credits have been withdrawn.

Reason for change: This subpart was revised to improve clarity. The sentence regarding information on bank sites according to part 8420.0755, subpart 1, item B is deleted as it is duplicative and not germane to withdrawal procedures.

Subp. 3. **Transfers.** Wetland credits deposited in the state wetland bank may be transferred from one account to another. If the recipient of the credits does not already have an account, one must be established. To transfer credits, a credit transfer form provided by the board must be completed and submitted to the board's designated banking administrator. The board shall notify all affected account holders upon transfer of the credits.

Subp. 4. **Reporting credit transactions.** Upon the sale, use, or transfer of credits, the owner of the account must immediately report the transaction to the board's designated banking administrator on withdrawal or transfer forms provided by the board and include a copy of the bill of sale when applicable. The board shall complete the accounting transactions and send a notice of credit withdrawal to the local government unit, the account holder, and the applicant. Failure to report the sale, use, or transfer of credit may result in restrictions on withdrawals until the account is reconciled.

Reason for change: BWSR does not have a position titled “banking administrator,” and the rule should avoid using specific position titles. “Designated” was simply added to subparts 3 and 4 to clarify that the banking administrator function will be fulfilled by whichever position is designated to do so by the agency.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0755 BANK ~~ACCOUNT~~ ADMINISTRATION AND MANAGEMENT.

Reason for change: Title revised to improve accuracy of terminology with regard to the additions below.

Subpart 1. **Account information.** The board must maintain ownership and credit transaction information for each wetland bank account. If requested by the account owner, the board must make account contact information and credit balances publicly available.

A. ~~For each wetland bank site, the board shall maintain at least the following information:~~

~~(1) the fee owner's name, address, and telephone number;~~

~~(2) the location, including public land survey coordinates, local government unit, county, major watershed, and bank service area;~~

~~(3) replacement acres by amount and replacement action, the restoration or creation date, and bank acceptance date;~~

~~(4) withdrawals made from the bank site including, for each impacted wetland, the amount of wetland; fee owner, address, telephone number; and public land survey coordinates, local government unit, county, and watershed; and~~

~~(5) the original copy of the recorded conservation easement for the site and a title insurance policy naming the state as an insured party.~~

B. ~~The board shall provide the following information to persons inquiring about available bank credits within a local government unit, county, major watershed, or bank service area:~~

~~(1) account holder name, address, telephone number, and e-mail address, if available;~~

~~(2) acres or square feet of available credit; and~~

~~(3) location by section, township, range, county, major watershed, and bank service area.~~

Reason for change: The detailed list of information contained in Subp. 1 is outdated and applies only to BWSR. Unnecessary specificity for account information is deleted.

Subp. 2. **Administrative fees.** The board may collect ~~administrative~~ fees for establishing, protecting, and managing bank sites and related accounts in accordance with Minnesota Statutes section 103G.2242, subdivision 14, section 103B.103, and any other applicable statutes. ~~The following fees must be paid to the board to be used for administering and monitoring the wetland bank:~~

~~A. account maintenance annual fee: one percent of the value of credits not to exceed \$500 for any year the account is active;~~

~~B. account deposit or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per deposit or transfer; and~~

~~C. withdrawal fee: 6.5 percent of the value of credits withdrawn.~~

Reason for change: Subp. 2 is amended to remove specificity in rule and to better allow for conformity to statute when fees or fee authorities are changed. All necessary specificity is contained in BWSR's fee policy.

Subp. 3. **Audit.** The board may periodically inspect wetland bank records and correspondence maintained by a local government unit to determine compliance with this ~~part~~ chapter.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION VERIFICATION.

Subpart 1. ~~Purpose.~~ **General Requirement.** ~~This part applies to both wetland banking and project-specific replacement.~~ The local government unit must ~~certify the initial~~ determine that construction specifications of replacement wetlands have been met before replacement wetland monitoring may begin⁵. The local government unit may require a preconstruction meeting before replacement wetland construction begins and may inspect the replacement wetland at any time during construction. ~~This part applies to both wetland banking and project-specific replacement.~~

Reason for change: Relocates the stricken text to the beginning of the paragraph and amends title for accuracy and consistency with other changes to the part. Other changes clarify the local government unit's responsibility to determine that the construction specifications have been met vs. construction certification by a licensed engineer in Subp. 3.

Subp. 2. **Construction as-built documentation.** Upon completion of initial construction or restoration activities, the landowner must provide the local government unit with as-built information that documents compliance with the approved replacement or banking plan construction specifications. As-built information includes:

Reason for change: Clarifies that as-built information to document compliance with replacement plans also applies to wetland banks. "Construction specifications" is added consistent with other changes to Subp. 1.

- A. surveyed elevations of slopes, contours, outlets, and dikes;
- B. seed tags and contractor receipts or other documentation of seeding or planting;
- C. a description of site preparation activities, such as mulching, seedbed preparation, seeding methods, or initial weed control activities;
- D. a survey map showing relevant areas of seeding and construction activities;
- E. construction photos showing relevant restoration work;
- F. evidence that, for projects including dams, dikes, or other ~~impoundment features~~ water control structures, the construction was designed, overseen, and certified by a ~~licensed professional engineer~~ qualified individual licensed to practice engineering in Minnesota; and

Reason for change: Improves the accuracy of terminology.

G. a comparison of the as-built documentation versus the design specifications and a description and rationale for any significant changes.

Subp. 3. **Construction inspection and certification.** Upon receipt of as-built documentation from the landowner, the local government unit must inspect the replacement wetland to determine whether the as-built conditions comply with the construction specifications of the approved replacement or banking plan. The local government unit may inspect the replacement wetland at any time during the construction and monitoring periods to assess its long-term viability. If the local government unit determines that the construction is not in compliance with the approved plan, it must promptly notify the landowner of the deficiencies and actions required to gain compliance. For projects involving the practice of engineering, the local government unit must ensure an engineer that a qualified individual licensed to practice engineering in Minnesota has certified the construction. When the local government unit certifies determines that the construction specifications have been met, the local government unit must notify the applicant and technical evaluation panel. Upon construction certification, the local government unit and may release a portion of any financial assurance the applicant had provided, while retaining a sufficient an amount necessary to ensure compliance with monitoring and replacement requirements.

Reason for change: Clarifies that construction inspection and certification requirements also apply to banking plans, and improves the accuracy of terminology. The changes also clarify the role of the local government unit vs. construction certification by a licensed engineer in Subp. 3.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0810 REPLACEMENT WETLAND MONITORING.

Subpart 1. **Purpose.** The purpose of replacement wetland monitoring is to measure replacement wetland success relative to the goals and associated performance standards of the approved replacement or banking plan and to identify any needed corrective actions during the monitoring period.

Reason for change: “Performance standards” are added for clarity, as they are the mechanism by which monitoring success is determined.

Subp. 2. **Responsibilities.**

A. Monitoring of replacement wetlands is the responsibility of the landowner of the property where the replacement wetland is located. Any agreement to transfer monitoring responsibilities from the landowner to a local government unit or other party must be in writing and signed by both parties and does not release the applicant from the responsibility to provide replacement as specified in the approved replacement plan.

B. Compliance with monitoring requirements for an approved replacement or banking plan is determined by the local government unit. For project-specific replacement in which the wetland impact site occurs in a different local government unit from the replacement site, the local government unit for the impact site may assume the monitoring enforcement responsibility for the replacement site upon written agreement between the local government units.

Reason for change: The first sentence is added to item B to clarify the role and authority of the local government unit in determining monitoring compliance.

Subp. 3. **Monitoring Plan.** Each replacement plan and banking plan involving restoration or creation must include a monitoring plan that achieves the purpose in subpart 1. The monitoring plan must conform to the requirements of this part and include information required by the board. The plan must include information on monitoring methods, the frequency and timing of monitoring during the growing season, the content and submittal dates of monitoring reports, and any other information required by the board.

Reason for change: The new Subp. 3 is added to clarify the requirements for monitoring plans. This information is lacking in the existing rule. Because monitoring requirements vary depending on the nature and scope of the project, it is important that the rule allow BWSR to provide a more detailed list of information commensurate with the project parameters.

Subp. ~~3~~ 4. **Duration Timing and duration** of monitoring.

A. Monitoring may, at the discretion of the local government unit, begin upon construction certification, but must begin no later than the first full growing season following construction certification. Monitoring must continue for five full growing seasons or until the local government unit determines, with the concurrence of the technical evaluation panel, that the replacement is successful, but in no case may the determination be made before the end of the third full growing season. Replacement wetland monitoring must begin no later than the first full growing season after the local government unit has determined that the construction specifications of replacement wetlands have been met. The monitoring plan must include a monitoring period that is sufficient to determine whether the replacement wetland has met performance standards. For replacement wetlands involving actions in 8420.0526 subparts 3, 4, 5, 7, and 8, monitoring must continue for at least five full growing seasons. When the technical evaluation panel has determined that the replacement wetland has met all performance standards in less than five full growing seasons, the local government unit may waive the remaining monitoring requirements.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Reason for change: The timing and duration of monitoring is updated to be consistent with the Federal Mitigation Rule which has a flexible standard to accommodate the various types of replacement projects and credit actions. A minimum monitoring period of 5 years is set for certain actions eligible for credit involving significant wetland restoration activities.

B. For wetland banking projects, the applicant may request additional time to monitor the wetland and achieve performance standards. The local government unit may extend the monitoring period when it determines, in consultation with the technical evaluation panel, that more time is needed to achieve performance standards.

BC. If the goals of ~~the an~~ approved project-specific replacement plan have not been achieved after the fifth season of monitoring but, in the written opinion of the technical evaluation panel, may be achieved with more time, the local government unit may, through written notification of the applicant, extend the monitoring period for not more than an additional five growing seasons. The local government unit's notification of extension must specify the reasons for the extension and any corrective actions necessary to bring the replacement wetland into compliance with the approved plan.

CD. For project-specific replacement plans, if the local government unit determines that, at any time during the monitoring period and based on the recommendation of the technical evaluation panel, the goals of the approved replacement plan have not been achieved, and will not be achieved with more time, the local government unit must pursue one or more corrective actions identified in part 8420.0820, subpart 1.

Reason for change: This subpart is amended to provide improved clarity regarding the timing and duration of monitoring. Item A removes the arbitrary “discretion” of the local government and clarifies that monitoring is required only for restoration and creation activities, as it is typically not necessary for preservation. Item B is added to provide greater clarity in instances when a bank site has not fully met performance standards after the five-year monitoring period. Banking is different than project-specific wetland replacement (Item C) in this regard as the wetland impacts have not yet occurred and credits are only allocated for banking as performance standards are met vs. project-specific replacement for which the impacts have already occurred.

Subp. 4 5. **Monitoring reports.**

A. ~~Following the first full growing season after construction certification, the~~ The applicant must submit ~~annual~~ monitoring reports documenting the progress toward, and achievement of, performance standards for ~~of~~ the replacement wetland during the required monitoring period consistent with the approved monitoring plan. The first annual monitoring report must include any pre-construction monitoring data collected required by the local government unit during the previous year. The applicant must submit the ~~annual~~ report to the ~~appropriate~~ local government unit ~~on a date determined by the local government unit in accordance with the timelines identified in the approved monitoring plan and prior to any credit deposit request, but no later than December 31~~. The local government unit must ensure that copies of the monitoring report are distributed to the technical evaluation panel. ~~For wetland banking projects, the applicant must also submit the annual report to the board's wetland banking administrator.~~ The monitoring reports must be submitted annually, ~~or biannually if~~ unless the local government unit determines that, ~~after the third full growing season, biannual reports are sufficient~~ an alternative schedule is sufficient for long-term monitoring ~~of the site, until the local government unit determines the replacement has been successful.~~

Reason for change: The amendments to this subpart are intended to clarify the requirements for monitoring report content and submittal. Changes to item A include clarifying the purpose of the report (to document progress in achieving performance standards), the inclusion of preconstruction data, and the timing of report submittal (changing the arbitrary date determined by the LGU to “prior to any credit deposit request”). Monitoring reports must now be submitted consistent with the site-specific timelines identified in the approved monitoring plan. Other edits are made for clarity and accuracy.

~~B. The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the success of the replacement activities in achieving identified goals and performance standards. The annual~~ Each monitoring report must, at a minimum, include: information sufficient to evaluate progress toward meeting performance standards and other information required by the board.

~~(1) a project location map with legal description;~~

~~(2) a description of replacement wetland goals and performance standards;~~

~~(3) a description of activities completed during the past year;~~

~~(4) a description of activities planned for the upcoming year;~~

~~(5) hydrology measurements during the growing season, including water level elevations at fixed, repeatable locations representative of the replacement wetland types or areal coverage measurements of inundation for replacement wetlands with deeper hydrologic regimes;~~

~~(6) a map of plant communities within the boundaries of the replacement site, including estimates of square footage or acreage of each and identification of areas of invasive or nonnative vegetation;~~

~~(7) color photographs of all replacement areas taken during the growing season from fixed, repeatable reference locations that are representative of each plant community type;~~

~~(8) a delineation and survey of the replacement wetland areas, if applicable, for the final monitoring season; and~~

~~(9) other information specified in the approved monitoring plan or subsequently requested by the local government unit.~~

Reason for change: Subp. B is amended to provide flexibility concerning the content of monitoring reports, which can vary from site to site. Some monitoring requirements are more general, while others are specific to the site and associated restoration plan. BWSR and the Corps of Engineers have coordinated on several guidance documents that identify specific monitoring requirements and considerations related to different types of projects in different situations. The “purpose” language in item B is deleted as it is addressed by other related rule amendments.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.

Subpart 1. Monitoring oversight.

A. The local government unit must evaluate all monitoring reports for compliance with report requirements and must determine if the goals of the approved plan can be met within the specified monitoring period based on the current condition of the replacement wetland and the applicant's proposed management activities for the following growing season.

B. For project-specific replacement, if the local government unit determines that the goals of the approved replacement plan will not be met, it must take one or more of the following actions:

- (1) ~~order require~~ specific corrective actions on the replacement wetlands;
 - (2) ~~order require~~ the applicant to prepare and implement a new or revised replacement plan;
 - (3) ~~request the enforcement authority to issue a cease and desist order on the wetland impact activity if it has not been completed;~~
 - (4) ~~request the local soil and water conservation district and enforcement authority to order restoration of the impacted wetland; pursue enforcement actions in accordance with part 8420.0900;~~
 - (~~54~~) use any financial assurance collected from the applicant to ~~replace the lost wetland function and value~~ ~~satisfy the replacement requirements of this chapter~~;
 - (~~65~~) pursue a district court order requiring the applicant to fulfill the replacement plan;
- or
- (~~76~~) other actions that the local government unit determines necessary to achieve the goals of the replacement plan.

C. If the landowner fails to submit the ~~annual~~ report associated with a project-specific

replacement plan in accordance with part 8420.0810, the local government unit responsible for monitoring oversight must either pursue enforcement actions under item B or prepare the **annual** report for the applicant. The local government unit may charge fees for preparing the report or use any financial assurance the applicant had provided to complete **the** monitoring requirements.

Subp. 2. **Certification Completion of monitoring and determination of successful replacement and completion of monitoring.** Upon completion of the **minimum required** monitoring period, **the applicant may request a field review by** the local government unit and technical evaluation panel **of the success of the replacement must determine whether the** wetland **replacement is successful**. If the replacement is determined successful, the local government unit must **provide written notification to notify** the applicant **in writing** that the replacement **has been certified and the monitoring requirements requirements** have been fulfilled.

Reason for change: This subpart was edited to clarify that it is the LGU and TEP who are responsible for determining when replacement is successful, and monitoring can cease. Eliminates potential confusing references to "certification" which is the responsibility of the engineer as specified in 8420.0800, subpart 3.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. Purpose and eligibility.

A. As an alternative to the rules adopted under Minnesota Statutes, section 103G.2242, subdivision 1, and the public value criteria established or approved under Minnesota Statutes, section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that the requirements of this part are met. This part provides minimum standards. Local government units may require equivalent or more stringent standards and procedures for wetland conservation, but not less stringent standards and procedures.

B. The ultimate goal of a comprehensive wetland protection and management plan is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through the prioritization of existing wetlands and the strategic selection of replacement sites. The purpose of developing a plan is to provide a watershed and ecosystem-based framework to make wetland impact and replacement decisions that meet state standards and locally identified goals and support the sustainability or improvement of wetland resources in watersheds while providing local flexibility as allowed under subpart 4.

C. Any local government unit opting to pursue development of a plan and incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the plan.

Subp. 2. **Relationship to other plans.** To maximize effectiveness, the comprehensive wetland

protection and management plan should be developed as part of, or in coordination with, other relevant local or regional plans and requirements. The plan should provide a mechanism for integrating local land use decisions with wetland ecosystem management goals at the watershed level.

Subp. 3. **Plan area.** To the extent practical and feasible, the comprehensive wetland protection and management plan should be based on watershed boundaries. The size of watershed addressed should not be larger than is appropriate to ensure that the wetland resources provided through replacement will effectively compensate for approved impacts. For local governments with multiple watersheds, a separate analysis should be completed for each watershed substantially within the local government's jurisdiction. Local governments should consider joint planning efforts for those watersheds that cross political boundaries.

Subp. 4. **Flexibility options under local plan.** The comprehensive wetland protection and management component of the local water plan may:

A. vary application of the sequencing standards in part 8420.0520, for projects based on the classification and criteria in the plan;

B. vary the replacement standards of part 8420.0522, subparts 3 to 9, and the actions eligible for credit under part 8420.0526, based on the classification and criteria in the plan, so long as there is no net loss of public value within the area subject to the plan and so long as:

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

(2) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of impacted wetland requiring replacement is met within the area subject to the plan;

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

~~D. in a greater than 80 percent area, based on the classification and criteria in the plan, expand the application of the exemptions in part 8420.0420, subpart 2, item B, to also include nonagricultural land, provided there is no net loss of wetland value;~~

Reason for change: Item D is deleted as the corresponding exemption no longer exists due to 2024 statute changes.

~~E D.~~ prescribe standards for size and location of replacement wetlands by establishing type requirements, size and ratio requirements, functional quality requirements, location requirements, and criteria for wetland mitigation fee in lieu of direct replacement. 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; and

~~F E.~~ allow exemptions based on ordinance or rule standards, eligibility criteria, and processes

that are not less restrictive than the requirements in parts 8420.0320 and 8420.0420 based on wetland classifications as defined in the plan.

Subp. 5. Plan content.

A. The comprehensive wetland protection and management plan must include the establishment of watershed goals based on an analysis of the existing ecological conditions of the plan area and the development of corresponding goals for maintaining and improving those conditions. The ecological condition of the plan area should be based on inventories of historic and existing wetland resources, including identification of degraded wetlands, existing high-quality wetlands, and immediate and long-term resource needs within the plan area. The analysis may be completed as part of the comprehensive wetland protection and management plan or adopted from a relevant local or regional water plan, if one exists.

B. The plan may provide for the classification of wetlands in the plan area based on:

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

(2) an assessment of the wetland functions listed in part 8420.0522, subpart 1, using a methodology chosen by the technical evaluation panel and based on one of the methodologies established or approved by the board;

(3) landscape position, adjacent habitats or buffers, connectivity with or between important resources, projected land use, and other watershed-scale criteria; and

(4) the resulting public value.

C. The plan must include an inventory and prioritization of replacement sites based on an analysis of the types and locations of replacement projects that will provide the desired wetland functions, benefit the watershed from a landscape perspective, and best offset losses of public value caused by approved impacts. The goal of the analysis is to provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to naturally self-sustaining replacement that best achieves watershed goals and improves the ecological condition of the watershed. The plan must include strategies for the promotion and establishment of high-priority replacement sites that best meet the goals of the plan.

D. Comprehensive wetland protection and management plans developed as part of county, watershed district, or watershed management organization plan may identify those areas that qualify as high-priority areas for wetland preservation, enhancement, restoration, and establishment according to part 8420.0835.

E. The plan must include a provision for periodic assessment of the effectiveness of the plan, and the local government unit's implementation of it, in achieving plan goals. Updates to previously approved plans must include an analysis of the effectiveness of the previous plan, including the identification of barriers to achieving identified goals and development of strategies to overcome them.

F. The plan must specify the period covered by the plan, which must extend at least five years but not more than ten years from the date the board approves the plan.

Subp. 6. Plan development and review process.

A. A notice of intent to plan must be sent, at the beginning of the planning process, to the technical evaluation panel, the Department of Natural Resources, the Department of Agriculture, the Pollution Control Agency, watershed management organizations within the plan area, local government units within and adjacent to the plan area, and the St. Paul district office of the United States Army Corps of Engineers with an invitation to actively participate in the development of the plan. The notice should also include a general description of the planning effort, the planning area, and an anticipated timeline.

B. The technical evaluation panel must be consulted in all components of plan and ordinance development, including conducting wetland functional assessments, establishing wetland management classifications and standards, prioritizing replacement sites, and identifying local reference standard wetlands.

C. The local government unit must implement a process for notifying and involving local citizens in the development of the plan and determination of local value. Local citizen involvement may include the formation of a citizen's advisory committee or utilization of other existing citizen groups.

D. Upon completion, the local government unit must submit the draft comprehensive wetland protection and management plan and ordinance or rule for a 60-day review and comment period to those required to receive notice under item A. The local government unit must respond in writing, within 30 days of the end of the review period, to any comments received during the review period.

E. The local government unit must conduct a public hearing on the plan no sooner than 30 days after the end of the 60-day review period but before submitting the final draft plan to the board for approval.

F. After conducting the public hearing but before final adoption, the local government unit must submit the plan and ordinance or rule, all written comments received, a record of the public hearing, and a summary of responses to comments and changes incorporated as a result of the review process to the board for review under subpart 7.

G. An organization that is invited to participate in the development of the draft local plan, but declines to do so or fails to participate or to provide written comments during the local review process, waives the right during the review under item D 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 must consider the involvement of the agency in the development of the local plan.

H. 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. A plan developed as part of a local water management plan may follow the review and approval process applicable to the local water management plan instead of the review and approval process under items D to F.

Subp. 7. Board decision; mediation; judicial review.

A. The board shall make a decision to approve or disapprove a comprehensive wetland protection and management plan within 60 days of receipt of a complete and final draft of the plan and ordinance or rule as required in subpart 6, item F. The board may disapprove all or parts of the plan if the board determines the plan does not meet the requirements of this part. If the board has not made a decision within 60 days of receipt of the final plan, the plan is deemed approved. The 60-day period may

be extended upon mutual agreement of the board and the local government unit.

B. In its review of a plan, the board must advise the local government unit of those elements of the plan that are more restrictive than this chapter and the act.

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

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

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

Subp. 8. Effective date and amendments.

A. The comprehensive wetland protection and management plan is effective after approval by the board as provided in subpart 7 and after adoption of the plan into the official controls of the local government unit.

B. Comprehensive wetland protection and management plans remain in effect according to subpart 5, item F, unless revised according to subpart 6 and approved by the board. Plans that contain revision dates inconsistent with this part must comply with the plan's date if the date is not more than ten years beyond the date of board approval. An extension of the revision date of the plan may be granted by the board.

C. All amendments to the adopted plan and ordinance are effective upon completion of the same process required for the original plan, except when the proposed amendments constitute minor amendments and:

(1) a public hearing has been held to explain the amendments;

(2) the local government unit has sent copies of the amendments to those required to receive notice under subpart 6; and

(3) the board has either agreed that the amendments are minor or failed to act within 60 days of receipt of the amendments.

D. For the purposes of this subpart, "minor amendments" include clarifications, updates to wetland or replacement site inventories, and other changes that do not substantially alter the standards of the approved plan and ordinance or rule, as determined by the board. Amendments required to bring the plan into conformance with revisions to this chapter are also considered minor.

Subp. 9. Implementation.

A. The comprehensive wetland protection and management plan must be implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; and Minnesota Statutes, chapter 366, for a town and by rules adopted under Minnesota Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.

B. After board approval and local government adoption, decisions made to implement this chapter and the act must be made according to the plan and ordinance or rule.

C. Noticing, appeals, and all other administrative processes under a local plan must follow the requirements of this chapter.

Subp. 10. Reporting. In addition to and as part of the reporting requirements of part 8420.0200, subpart 2, item 1, a local government unit with an approved and adopted comprehensive wetland management plan must annually provide information to the board regarding activities that vary from this chapter, this part notwithstanding, and documenting compliance with the minimum plan standards developed according to subpart 4. Failure to provide this information on an annual basis may subject the local government unit to penalties under part 8420.0200, subpart 3.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0835 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 major watersheds with a majority of their land area contained within counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in part 8420.0117, subpart 1, item C. In all other major watersheds 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.

A. Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, may identify those areas that qualify as high-priority areas for wetland preservation, enhancement, restoration, and establishment. To designate a high-priority area, the preservation, enhancement, restoration, and establishment of wetlands must have or achieve high public value based on the functions of wetlands listed in part 8420.0522, subpart 1, and the goals of the water management plan.

B. High-priority areas should be designated by minor watershed or subwatershed. Strong consideration should be given to identifying as high-priority areas minor watersheds that have less than 50 percent of their original wetland acreages and where restoration of previously impacted or degraded wetlands will contribute toward achieving watershed-based goals. Consideration should also be given to watersheds that contain high-valued wetlands that are at risk of degradation or loss, the protection of which is integral to maintaining the ecology and condition of the watershed. Identification of high-priority watersheds should be consistent with part 8420.0830, subpart 5, item A.

C. Local water plans may identify individual wetlands, or criteria to establish individual wetlands, as high-priority areas. Individual wetlands identified as high-priority areas should be of high local value, at risk of degradation or loss, and consistent with any existing wetland classification criteria established under part 8420.0830, subpart 5, items A and B. Plans may also identify individual sites as high-priority areas for wetland restoration and establishment. High-priority restoration sites should be identified according to the criteria in part 8420.0830, subpart 5, items A and C.

~~D. Local water plans that identify high-priority areas and intend to accept applications for wetland preservation areas under part 8420.0840 should include criteria for eligibility and prioritization of applications.~~

Reason for change: Item D is deleted due to the corresponding deletion of part 8420.0840.

~~E D.~~ The board shall review the inclusion of high-priority areas in plans as part of the standard process for plan review. High-priority areas approved by the board that are not in a high-priority region under subpart 1 become high-priority regions with board approval.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

~~8420.0840 WETLAND PRESERVATION AREAS.~~

~~Subpart 1. **Purpose and eligibility.** The purpose of this part is to provide local governments with a tool to promote the preservation of high-valued wetlands and the restoration and enhancement of wetland areas that will contribute toward meeting watershed-based goals identified in a local water management plan. Wetlands located in high-priority areas as identified in part 8420.0835 and a local water plan are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax. Sites identified as high-priority areas for wetland restoration and establishment are eligible for wetland preservation area designation only after restoration of the wetland. Wetland areas receiving replacement credit are not eligible for designation as a wetland preservation area.~~

~~Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, if the county or watershed district 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 buffer strip that meets the minimum width requirements of part 8420.0522, subpart 6, 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 must 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 must 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.** Upon receipt of a complete application, the county or watershed district must send a copy of the application to the county assessor, the board, and the soil and water conservation district where the land is located. The soil and water conservation district must prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county or watershed district. The county or watershed district may accept the application if the wetland is in a high-priority region and high-priority area, the application provides for the minimum required buffer strip, and the application is accompanied by the proper covenant. The county or watershed district may limit or reject additional upland proposed to be included according to criteria identified in the approved plan and standards the county may establish. The county or watershed district may reject the application if the application does not qualify or may require modification and resubmittal of the application. 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 must notify the landowner of the acceptance or denial of the application within 60 days from the date of the application. Within five business days of approval of the application, the county or watershed district must 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 must 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 must 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 11.~~

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

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

~~Subp. 7. **Maps.** Counties having approved wetland preservation areas within their legal boundaries must maintain maps illustrating land covenanted as wetland preservation areas.~~

~~Subp. 8. **Reimbursement of unpaid taxes.** A county or watershed district with an approved wetland preservation area shall be reimbursed for lost tax revenue according to Minnesota Statutes, section 275.295.~~

Reason for change: Deleted due to the 2011 repeal of the statutory reimbursement mechanism. The procedures for establishing wetland preservation areas remain in Minn. Stat. 103G.612 to .616.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: August 26, 2009

8420.0900 ENFORCEMENT PROCEDURES.

Reason for change: The entire part 8420.0900 has been reorganized, and language amended, to clarify enforcement roles and procedures as the previous language was poorly organized and difficult to follow. Amendments were also made to conform the rule to statute, including amendments that have occurred since the current rule was adopted. The intent of the language amendments is to improve clarity without materially affecting the current enforcement process.

Subpart 1. **Enforcement responsibilities and authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist, ~~orders and~~ restoration, and replacement orders. The enforcement authority must serve an enforcement order in person or by certified mail to the landowner or responsible party. The local government unit is responsible for determining if an activity complies with this chapter. The soil and water conservation district is responsible for preparing the plan for inclusion in a restoration or replacement order.

Explanation: The language in the first sentence is tweaked for appropriate grammar. The second sentence is relocated here from the last sentence of Subp. 3B of the 2009 rule to provide a more appropriate location and to clarify that the requirement applies to all enforcement orders. The title is amended, and the last two sentences added, to improve up-front clarity in the roles responsibilities of local government units and SWCDs in the enforcement process.

Subp. 2. Cease and desist orders.

A. ~~A cease and desist order~~ may only be issued when the enforcement authority has probable cause that an activity is not in compliance with this chapter is being or will again be conducted that impacts a wetland, does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and is being or will again be conducted without prior approval of a replacement plan by a local government unit under part 8420.0255 or involving a decision stayed by the board pursuant to part 8420.0905.

~~B. A cease and desist order must not be issued if the landowner:~~

~~(1) has, and is complying with, a valid replacement plan, exemption, or no-loss approved by the local government unit or a completed and submitted public road project notification that has not been stayed, remanded, or reversed on appeal under part 8420.0905; or~~

~~(2) has sufficient evidence to support qualification for an exemption or no-loss.~~

Note: See the "April 25, 2025 Preliminary Draft WCA Rule Companion Document" for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Explanation: Item A is simplified. Rather than trying to describe all of the instances when a cease and desist order (CDO) can be issued, the language now simply requires “*probable cause that an activity is not in compliance with this chapter.*” Item B is deleted as its unnecessary to try to describe all of the instances when a CDO can not be issued. The word “only” is also added to Item A for clarity.

~~C B. The enforcement authority must advise the landowner that the landowner's written application, if any, for a replacement plan, exemption, or no-loss should be made immediately to the local government unit and that any wetland that has been impacted may require restoration if the application for replacement plan, exemption, or no-loss is denied or reversed on appeal. The~~ When a cease and desist order is issued, the enforcement authority ~~issuing a cease and desist order~~ must promptly submit copies of the order to the soil and water conservation district, the local government unit, and ~~Department of Natural Resources~~ the commissioner.

Explanation: The first sentence of Item B above is now addressed in Subp. 4B of this draft rule and applied as required content of the order, rather than a requirement that the enforcement authority “advise the landowner.” The second sentence is revised for clarity.

~~C. Upon receipt of a cease and desist order from the enforcement authority, the local government unit must promptly determine whether the cease and desist order should remain in place and, if so, whether a restoration or replacement order is needed according to subpart 3.~~ Within ten business days of receipt of a cease and desist order issued for an activity occurring within the exterior reservation boundary of a federally recognized Indian Tribe listed in Minn. Stat. Section 10.65, subdivision 2, the local government unit must notify the lead official of the Tribal governing body or their designee of the order.

Explanation: The first sentence above is added to the draft rule to clarify the role and responsibility of the local government unit when a CDO has been issued. The second sentence is added to improve communications and coordination with Tribal governments on enforcement actions.

~~D. If an application for a replacement plan, exemption, or no-loss approval is triggered by a cease and desist order, the local government unit must make the decision according to part 8420.0255 and the standards and application procedures applicable to the type of application.~~

Explanation: The language in Item D of the 2009 rule (above) is being deleted as it is now addressed in Subp. 5A.

~~E D. If the decision is local government unit determines~~ that the activity is exempt or qualifies as a no-loss, ~~the local government unit it~~ must 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 enforcement authority, and the landowner. The enforcement authority must notify those required to receive a copy of the order under Item B when the order has been rescinded.

Explanation: This language is being modified to clarify its applicability to an LGU determination under item C of the draft rule (above). The subsequent submittal of an application is now addressed in Subp. 5 of the draft rule. The notification is requirement is clarified for consistency with Item B above.

E. If the local government unit determines that the activity does not qualify for an exemption or no-loss, the landowner's application is denied, or the landowner fails to submit an application, it must inform the soil and water conservation district of the need for a restoration or replacement order.

Explanation: The language above is relocated here from Subp. 2F of the 2009 rule and is amended to clarify process and roles for determining when a restoration or replacement order (RO) is necessary and the communication that needs to occur in those instances.

~~F. If the application is denied, the local government unit must immediately notify the soil and water conservation district, the enforcement authority, and the landowner.~~

Explanation: The deleted Item F is now addressed in the new Subp. 2E of this draft rule (above).

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

Explanation: This language is relocated to Subp. 5C of the draft rule.

Subp. 3. Restoration and replacement orders.

A. The enforcement authority ~~must~~ may issue a restoration order or replacement order when an activity has impacted a wetland in violation of this chapter and the enforcement authority has received an order in accordance with item F. If a cease and desist order has been issued, the landowner has 30 days to apply for a replacement plan, exemption, or no loss before a restoration or replacement order may be issued.:

~~(1) the impact has already been completed when discovered or, after a cease and desist order has been issued, the landowner does not apply for a replacement plan, exemption, or no-loss within three weeks;~~

~~(2) the local government unit approves the application but it is reversed on appeal; or~~

~~(3) the local government unit denies the application.~~

Note: See the "April 25, 2025 Preliminary Draft WCA Rule Companion Document" for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Explanation: “Must” is changed to “may” to correspond with current practice, where an RO may not always be necessary. For example, a landowner may voluntarily complete a simple restoration prior to the development of the order. Additional language is added to Item A for clarity and consistency with Subp. 2A. The language in sub-item 1 is revised for clarity, and “three weeks” was changed to 30 days to provide for a clearer timeframe that both allows a reasonable period of time for development of a replacement plan and that is consistent with other commonly used timeframes. Sub-items (2) and (3) are deleted and now covered in Item A of this draft rule, as the related activities are in violation of this chapter.

B. Promptly upon being informed by ~~the enforcement authority or~~ the local government unit of the need, a soil and water conservation district staff person must inspect the site and prepare a plan in consultation with the ~~local government unit and the enforcement authority for restoring technical evaluation panel to restore~~ the site to its prealtered condition. The plan must include:

Explanation: The change from the “local government unit and the enforcement authority” to the “technical evaluation panel clarifies roles and responsibilities consistent with statute and ensures that staff with important technical expertise are consulted in developing restoration plans, which are site-specific and often complex. “Enforcement authority” is deleted as it is the role of the local government unit to determine whether an activity complies with WCA.

(1) specific actions and standards necessary to restore the wetland and satisfy the order;

(2) restoration methods and approaches such as construction and re-vegetation techniques;

(3) the date by which the landowner or responsible party must submit a complete replacement plan, exemption, or no-loss application, if any, to the local government unit in lieu of restoring the wetland, which must be at least 30 days from the date the order is served; and

(4) the date by which the landowner or responsible party must restore the wetland according to the plan and satisfy the order. The complexity of restoring the wetland, any seasonal constraints associated with required restoration actions, and the availability of required resources may be considered when specifying a date for restoration completion.

Explanation: Restoration plan contents are proposed to be listed here for improved clarity of content requirements for SWCD technical staff developing restoration plans.

- #1 clarifies that the restoration plan must identify the actions to be completed and associated standards. Clear identification of restoration actions and standards will help ensure full understanding of the measures to be taken and provide clear benchmarks for determining restoration success.
- #2 is intended to improve the consistency and specificity of restoration plans, ensuring that landowners are provided with clear direction and improving the likelihood that restoration actions will be sustainable.
- #3 and #4 are addressed in Subp. 4C, but are proposed to be listed here for clarity that it is the SWCD's role to determine the dates as part of developing the restoration plan. The 30-day minimum timeframe in (3) is relocated here from the last sentence of Subp. 4D of the 2009 rule.
- #4 includes factors for which the SWCD can/should consider when specifying the date for restoration completion.

C. The soil and water conservation district may request assistance from the local government unit or technical evaluation panel in inspecting the site and preparing the plan. If the soil and water conservation district determines that a conflict of interest may exist, it may request that another member of the technical evaluation panel develop the plan.

Explanation: The last sentence of C is proposed to be added to address situations where a conflict of interest may exist, e.g. a relationship between the SWCD staff person and the landowner, etc.

D. Restoration must be ordered unless the soil and water conservation district, in consultation with the technical evaluation panel, concludes that restoration is not possible or prudent.

Explanation: This amendment is proposed to clarify roles/responsibilities consistent with 103G.2372, Subdivision 1(b).

E. If a replacement order is required, the plan developed by the soil and water conservation district, in consultation with the technical evaluation panel, must specify the replacement actions to be completed. The order may provide more than one option for replacement and may require a combination of restoration and replacement.

Explanation: The first sentence improves clarity by stating that the replacement order must include the specific actions to be completed for compliance. The second sentence was previously addressed in Subp. 5A of the 2009 rule.

F. Upon completion, ~~the~~ the soil and water conservation district must 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.

Explanation: The “in-person or by certified mail” language is no longer necessary here as it is now addressed in Subp. 1 of this draft rule.

G. If a complete application is not submitted within the time period specified in the restoration **or replacement** order, the landowner or responsible party must restore **or replace** the wetland as specified in the order unless the local government unit and the enforcement authority agree to allow an extension or the order is stayed under appeal to allow for the submittal of, or a decision on, a complete application.

Explanation: This language is relocated here from Subp. 4E of the 2009 rule, and revised to improve clarity.

H. A restoration **or replacement** order is completed when the soil and water conservation district has determined that the landowner or responsible party has satisfied the requirements of the plan **incorporated under item F** and has issued a certificate of satisfactory restoration **or replacement**.

Explanation: This language is added to provide clarity regarding when an RO has been complied with. Such language is missing from the 2009 rule.

I. A certificate of satisfactory restoration or replacement may be issued with conditions, such as requirements for wetland vegetation, weed control, inspections, monitoring, or hydrology. Failure to comply with such conditions may result in the issuance of a subsequent restoration or replacement order.

Explanation: This language is relocated here from Subp. 4F of the 2009 rule and modified slightly for clarity.

Subp. 4. Contents of **the orders**.

A. Each cease and desist, restoration, and replacement order must state that any violation of the order is a misdemeanor.

Explanation: This language is relocated here from Subp. 5B of the 2009 rule.

B. Each cease and desist order must advise the landowner or responsible party that an application for a replacement plan, exemption, or no-loss should be made promptly to the local government unit and that any wetland that has been impacted may require restoration if the application for replacement plan, exemption, or no-loss is denied or reversed on appeal.

Explanation: This language is relocated here from Subp. 2C of the 2009 rule. It is also modified to clarify that the CDO itself must include content that advises the landowner or responsible party of their ability to submit an application, etc. – under the 2009 rule it is the enforcement authority who must advise the landowner but the method is not specified.

C. A restoration order must incorporate the soil and water conservation district plan to restore the wetland, including the ~~specify~~ dates by which the landowner or responsible party must:

(1) 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

(2) submit a complete replacement plan, exemption, or no-loss application to the local government unit. The order must specify that, if the landowner or responsible party does not obtain approval by the local government unit of a replacement plan, exemption, or no-loss for the wetland impacts, they must restore the wetland as ordered.

Explanation: The language in the new Item C is revised for clarity. The last sentence is relocated here from Subp. 5A of the 2009 rule and edited for accuracy.

~~B. If an application submitted under item A, subitem (2), is denied, the landowner or responsible party must restore the wetland as specified in the order.~~

Explanation: The deleted language above is now addressed in Subp. 5E of this draft rule.

~~C. The restoration order must be rescinded if the landowner or responsible party obtains approval of an after-the-fact replacement plan, exemption, or no-loss from the local government unit that is not reversed on appeal.~~

Explanation: The deleted language above is now addressed in Subp. 5B of this draft rule.

D. A replacement order must specify a date by which the landowner or responsible party must submit a complete replacement plan application 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. ~~The restoration or replacement order must specify a time period of at least 30 days for submittal of a complete application under this subpart.~~

Explanation: The last sentence in Item D above is now addressed in Subp. 3B(3) of the draft rule.

~~E. If a complete application is not submitted within the time period specified in the restoration order, or as properly extended, the landowner or responsible party must restore the wetland as specified in the order before submitting an application under item A, subitem (2), unless the local government unit and the enforcement authority agree otherwise or unless allowed under appeal.~~

Explanation: This language is proposed for removal as it is unnecessary and allows for arbitrary decisions by the LGU/enforcement authority.

~~F. A certificate of satisfactory restoration or replacement may be issued with conditions that must be met in the future, such as for issues with wetland vegetation, weed control, inspections, monitoring, or hydrology. Failure to fully comply with any conditions that have been specified may result in the issuance of a new restoration or replacement order.~~

Explanation: This language is now addressed in Subp. 3I of this draft rule.

Subp. 5. **Applications submitted in response to Enforcement authority orders.**

~~A. If the technical evaluation panel determines that restoration will not restore all the loss caused by the impact, the order may require a combination of restoration and replacement or may require replacement rather than restoration. 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 as ordered.~~

Explanation: The first sentence above is now addressed in Subparts 3D&E of this draft rule. The second and last sentences are now addressed in Subp. 4C of this draft rule.

~~B. Each cease and desist, restoration, and replacement order must state that violation of the order is a misdemeanor.~~

Explanation: This language is relocated to Subp. 4A of this draft rule.

~~C. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the technical evaluation panel must 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 under subpart 6 and part 8420.0330, and the wetland replacement, construction, and monitoring requirements of this chapter.~~

Explanation: This language is relocated to Subp. 7B of this draft rule.

A. When an application for a replacement plan, exemption, or no-loss decision is submitted to the local government unit by the landowner or responsible party in response to an enforcement order, the application must comply with the requirements of this chapter. The local government unit must make the decision on such an application according to part 8420.0255. In addition to those required to received notice, the local government unit must provide notice of the application and decision to the enforcement authority.

Explanation: The first sentence clarifies that any application submitted in response to an enforcement order must comply with WCA. The second sentence is relocated here from Subp. 2D of the 2009 rule and revised to clarify that it applies to applications submitted in response to any enforcement order. The last sentence addresses noticing of the decision, which was previously included in Subp. 2F of the 2009 rule pertaining to applications submitted in response to CDOs.

B. The enforcement authority must rescind the enforcement order when the landowner or responsible party has obtained approval of an after-the-fact replacement plan, exemption, or no-loss from the local government unit that is not reversed on appeal, and any required replacement is completed in accordance with the approved plan.

Explanation: This language is relocated here from Subp. 4C of the 2009 rule. It is also revised to clarify that it is the role of the enforcement authority to rescind the RO, and that any required replacement must be completed prior to the RO being rescinded.

C. When an enforcement order has been issued to a local government unit, the decision on an exemption, no-loss, or replacement plan application must be made by the board in accordance with item A.

Explanation: This language is relocated here from Subp. 2G of the 2009 rule and revised to clarify that it applies to all enforcement orders issued to LGUs, not just CDOs.

D. When an application submitted in response to a cease and desist order under item A is denied, the local government unit must immediately notify the soil and water conservation district of the need for a restoration or replacement order.

Explanation: This language is relocated here from Subp. 2F of the 2009 rule and revised to clarify what is to be communicated to the SWCD and enforcement authority. In addition, “landowner” is removed from the 2009 rule language as they will be notified under Item A of this draft rule.

E. If an application submitted in response to a restoration order under item A is denied, the landowner or responsible party must restore the wetland as specified in the order.

Explanation: This language is relocated here from Subp. 4B of the 2009 rule.

Subp. 6. **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 or if an approved replacement plan has not been implemented in advance of or concurrent with the impact, the local government unit must require the landowner or responsible party to replace the impacted wetland at a ratio twice the replacement ratio otherwise required, unless the local government unit and enforcement authority concur that a lesser ratio is acceptable.

Subp. 7. **Misdemeanor.**

A. 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.

B. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district staff must determine which is required in accordance with subpart 3, item D, 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 under subpart 6 and part 8420.0330, and the wetland replacement, construction, and monitoring requirements of this chapter.

Explanation: This language is relocated here from Subp. 5C of the 2009 rule. The language is unchanged except for replacing “technical evaluation panel” (2009 rule) with “soil and water conservation district staff” (this draft rule) to clarify roles consistent with 103G.2372, Subdivision 1(b).

Subp. 8. Deed restriction.

A. Restoration or replacement orders may be recorded or filed as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. The deed restriction must be recorded or filed by the commissioner, a conservation officer, or a peace officer in the office of the county recorder or registrar of titles in the county where the real property is located.

Explanation: The above language is added to the draft rule to improve transparency relating to the authority to record ROs as a deed restriction consistent with Minn. Stat. 103G.2372, Subd. 1(b).

B. A deed restriction filed or recorded under this subpart must be removed if:

(1) the conditions of the order are met;

(2) the order is rescinded; or

(3) on homesteaded property, the owner requests that it be removed and a court has found that the owner of the property is not guilty or that there has not been a violation of the restoration or replacement order. Within 30 days of receiving a valid request for removal, the enforcement authority that recorded the order must contact, in writing, the office of the county recorder or registrar of titles to have the order removed and must inform the owner of such removal within 30 days of receiving confirmation from the county recorder or registrar of titles that the order has been removed.

Note: See the “April 25, 2025 Preliminary Draft WCA Rule Companion Document” for a direct comparison of the above language with that of the 11/12/24 Preliminary Draft Rule.

Explanation: Item B is added to this draft rule for clarity and transparency regarding the removal of deed restrictions recorded under Item A, consistent with Minn. Stat. 103G.2372, Subd. 1(b) and Subd. 1(d) which was added to statute in 2017.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0905 APPEALS.

Subpart 1. **Appeal of replacement and restoration orders to the board.** A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued according to part 8420.0900 to the board's executive director within 30 days of receipt of the order by filing a written request for review and paying a nonrefundable filing fee to the board. The time frame for appeal may be extended beyond 30 days upon mutual agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. The filing fee is an amount determined by the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order is final. The executive director must review the request and supporting evidence and render a decision within ~~30~~ 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

Reason for change: Amended to conform the WCA rule with amendments to MN Statutes 103G.2242, subdivision 9.

Subp. 2. **Appeal ~~of~~ to the local government unit ~~of a~~ staff decisions.**

A. ~~A decision made by~~ If a local government unit has established a local appeals process as provided in part 8420.0200, subpart 2, item C, an appeal of a staff decision must be made ~~staff is final if not appealed~~ to the local government unit within 30 days after the date on which the notice of decision is sent to those required to receive notice of the decision ~~it~~. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days.

B. Appeal to the local government unit of a final staff decision ~~made by staff~~ 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.

C. An appeal is effective upon ~~mailing~~ sending the petition and payment of any applicable fees to the local government unit. A filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel.

Reason for change: Amended to conform the WCA rule to statutory amendments that have occurred since the current rule was adopted. Additional minor clarifications also provided.

Subp. 3. Appeal of local government unit decisions to the board.

A. ~~The A~~ decision of a local government unit, including a decision on an appeal to the local government unit of a staff decision under subpart 2, to approve, approve with conditions, or deny an application is final if not appealed to the board within 30 days after the date on which the notice of decision is sent to those required to receive ~~it notice of the decision~~ unless the applicant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days. ~~Appeals of decisions made by local government staff must be made to the local government unit as provided for in subpart 2.~~ This subpart also applies to decisions made under comprehensive wetland protection and management plans and decisions made by public road authorities as provided in part 8420.0544.

B. Appeal of local government unit decisions to the board 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.

C. An appeal is effective upon ~~mailing the~~ sending a petition to appeal and payment of a nonrefundable filing fee in an amount determined by the board, not to exceed \$1,000, to the board with evidence that a copy of the petition has been ~~mailed sent~~ to the local government unit. The petition should include information sufficient to establish ~~sufficient grounds merit~~ for the appeal based on the requirements of this chapter. 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. After receipt of a petition, the ~~local government unit board~~ must send a copy of the petition to the local government unit and all those ~~to whom it was that were~~ required to ~~send a be sent the~~ notice of the decision.

Reason for change: Amended to conform the WCA rule with amendments to MN Statutes 103G.2242, subdivision 9. Additional minor clarifications also provided.

Subp. 4. Board appeal procedures.

A. Within 30 days after receiving the petition, the board, its dispute resolution committee, or its executive director must decide whether to grant the petition and hear the appeal. After considering the size of the proposed impacts and the quality of the affected wetland, any patterns of similar acts by the petitioner or responsible party or by the local government unit in administration of this chapter and the act, and the consequences of the delay resulting from the appeal, the board, its dispute resolution committee, or its executive director shall grant the petition unless:

(1) the appeal is deemed to be without sufficient merit, trivial, or brought solely for the purposes of delay;

(2) the petitioner has not exhausted all local administrative remedies;

(3) ~~or~~ the petitioner has not submitted the required filing fee;

(4) expanded technical review is needed; or

(5) the local government unit's record is not adequate.

Reason for change: The list of exceptions is converted to list form for clarity and consistency with current rulemaking guidance. Additional relevant criteria are also added for consistency with MN Statutes 103G.2242, subdivision 9.

B. The board, its dispute resolution committee, or its executive director may stay the local government unit decision until the appeal is resolved.

C. The board, its dispute resolution committee, 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 evidentiary public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, a new application is not required and additional information may be submitted before a decision is made by the local government unit. The local government unit must make a decision on an appeal that has been remanded within 60 days unless the remand order, or a subsequent order, specifies a longer period.

D. After the petition is granted, the appeal must be heard by the dispute resolution committee and decided by the board within 60 days after filing of the local government unit's written record, submittal of written briefs for the appeal, and a hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and those required to receive notice of the local government unit decision.

E. 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.

F. Within 30 days of the grant of the appeal, unless an extension of time is approved by the board, the local government unit must forward to the board the written record on which it based its decision. The board must forward one copy of the record to each of the parties to the appeal. The board shall make its decision on the appeal after hearing. The board must give the parties 30 days' notice of the hearing. The board must base its review on the record and the argument presented to the board by the parties. However, if the local government unit did not consider fundamental information, ~~such as aerial photographs, soil maps, or wetland maps,~~ or did not make formal findings contemporaneously with its decision; ~~if there is not accurate verbatim transcript of the proceedings;~~ if the proceedings of a local appeal were not fairly conducted; or if the record is otherwise incomplete or deficient, the board may remand the matter or receive additional evidence. If, before the date set for the hearing, application is made to the board for leave to present additional evidence on the issues in the case and it is shown to the satisfaction of the board that additional evidence is material and that there were good reasons for failure to present it in the proceeding before the local government unit, the board may order that the additional evidence be taken before the local government unit upon such conditions that the board deems proper. The local government unit may modify its findings and decision by reason of the additional evidence and must file with the board, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

Reason for change: Revised to remove the examples of “fundamental information,” as there now are many more fundamental sources of information and excluding some from the list can imply that they are not included. The verbatim transcript language is deleted for legal reasons as there is rarely a verbatim transcript and minor errors in a transcript can be a source of debate. If the record is not sufficient, it can be covered under the “if the record is otherwise incomplete or deficient” clause. Finally, “of a local appeal” is added to address statute changes that have occurred since the adoption of the current rule.

G. The board shall 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 shall reverse the decision, amend it, or remand it with instructions for further proceedings. The board must provide notice of its decision to the parties to the appeal.

Subp. 5. **Appeal of board decisions.** An appeal of a board decision may be ~~taken to~~ filed with the state Court of Appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

Reason for change: Revised to incorporate accurate terminology.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0910 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

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

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

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

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

8420.0915 COMPENSATION TO LANDOWNERS.

Subpart 1. **Eligibility.** Replacement plan applicants who have completed the local government unit process and the board appeal process, and the replacement plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

Subp. 2. **Application requirements.**

A. An application for compensation under this part must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

B. An application must include an agreement that, in exchange for compensation, the applicant shall convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title, lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

C. The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization, if any, the county, and the town or city, as applicable, that the proposed impact and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

D. The landowner must demonstrate that the proposed impact is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the wetland replacement, construction, and monitoring requirements of this chapter and the act.

E. If the replacement plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if it is not possible to carry out for engineering reasons. The applicant must show that forgoing the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public value of the wetland.

F. The applicant must submit to the board the requirements in this part in writing, by certified mail. The applicant must indicate on the application whether the applicant wants to make oral argument to the board. The board may require that the applicant appear before the board.

Subp. 3. **Board action.** If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board must compensate the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant conveys to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the

conservation easement, the applicant may impact the wetland in the manner proposed, without replacement.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Posted: *August 26, 2009*

ACTIVITIES UNDER DEPARTMENT OF NATURAL RESOURCES AUTHORITY

8420.0930 MINING.

Subpart 1. **Impacts from mining.** Wetlands must not be impacted 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.

A. Impacts to wetlands that the landowner can demonstrate, to the satisfaction of the ~~local government unit~~ commissioner, were created by pits, stockpiles, or tailing basins, and by actions the purpose of which was not to create the wetland according to part 8420.0105, subpart 2, item D, are not regulated under this chapter.

B. The commissioner must provide notice of an application for wetland replacement under a permit to mine to the county in which the impact is proposed and the county in which the replacement site is proposed.

C. Wetland replacement plans required under this part must meet the same principles and standards for replacing wetlands contained in parts 8420.0500 to 8420.0528 and provide for construction verification and monitoring according to parts 8420.0800 and 8420.0810.

Subp. 2. **Mining operations; post-July 1, 1993.** For mining operations that are permitted and initiated after July 1, 1993:

A. mining must not be conducted without first receiving a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals; and

B. the mining and reclamation operating plans or annual reports submitted by the applicant as required in the permit to mine must include an approved wetland replacement plan ~~that meets the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0528 and provides for construction certification and monitoring according to parts 8420.0800 and 8420.0810.~~

Subp. 3. **Mining operations; pre-July 1, 1993.** 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:

A. wetlands for which impacts were approved but not initiated before July 1, 1993, must not be impacted 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 must meet the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0528 and~~

~~provide for construction certification and monitoring according to parts 8420.0800 and 8420.0810;~~

B. for filling activities that were approved and initiated before July 1, 1993, placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a wetland filled before July 1, 1993, is allowed to continue within the areal extent, as it existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the requirement of a replacement plan or amendment of the permit to mine. An expansion of the areal extent of the fill in the wetland requires an approved replacement plan in the operating plan or annual report as required in the permit to mine, according to item A; and

C. for draining activities that were approved and initiated before July 1, 1993, draining of a wetland to facilitate mining, using ditches and other drainage facilities that existed on July 1, 1993, is allowed to continue without the requirement of a replacement plan or amendment of the permit to mine. Maintenance of the ditches and structures are allowed without the requirement of a replacement plan or amendment of the permit to mine, provided that as a result of the maintenance, wetlands are not drained beyond the extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide for replacement according to item A.

Subp. 4. Applicability.

A. Replacement wetlands approved under this part must only be used for mining-related impacts covered under a permit to mine unless the credits are approved and deposited in the state wetland bank according to parts 8420.0700 to 8420.0755. A project-specific wetland replacement plan submitted as part of a project for which a permit to mine is required and approved by the commissioner on or after July 1, 1991, may include surplus wetland credits to be allocated by the commissioner to offset future mining-related wetland impacts under any permits to mine held by the permittee, the operator, the permittee's or operator's parent, an affiliated subsidiary, or an assignee pursuant to an assignment under Minnesota Statutes, section 93.481, subdivision 5.

B. Applicable procedures are those required for permits to mine.

C. This part does 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 adopted thereunder.

Reason for change: Revisions to part 8420.0930 related to the use of "surplus wetland credits" by permittees under a Permit to Mine and the requirement for DNR to provide notice to counties are added to conform the rule with amendments to MN Statutes 103G.222, subdivision 1 (a). Additional organizational changes were made to reduce redundancy, and "local government unit" was replaced with "commissioner" for accuracy as the commissioner is generally not acting as an LGU as defined in WCA when regulating wetland impacts under the permit-to-mine program.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

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8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION, THE PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS.

Subpart 1. **Purpose.** The purpose of this part is to provide minimum standards and criteria for identifying, protecting, and managing calcareous fens as authorized by Minnesota Statutes, section 103G.223. ~~Calcareous fens, as identified by the commissioner, must not be impacted or otherwise altered or degraded, wholly or partially, by any action, unless the commissioner, under an approved management plan, decides some alteration is necessary. The exemptions under part 8420.0420 and the sequencing provisions under part 8420.0520 do not apply to calcareous fens.~~

Reason for change: The deleted language above is now addressed in Subp. 4 for applicability and clarity.

~~Subp. 2. **Identifying calcareous fens.** A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.~~

Reason for change: Subp. 2 is relocated to the Definitions part of the rule (8420.0111, Subp. 13a). It is more appropriately included in Definitions as the term is used in multiple locations in the rule.

Subp. ~~3~~ 2. **Procedures to list calcareous fens.**

A. The commissioner must investigate wetlands to determine if the wetland is properly identified as a calcareous fen.

B. The commissioner must, by written order published in the State Register, maintain a current list of known calcareous fens in the state and their location.

C. The commissioner must provide an updated list of calcareous fens to the board for further distribution.

Subp. ~~4~~ 3. **Impacts and Management plans.** Calcareous fens must not be impacted or otherwise altered or degraded ~~except, wholly or partially, by any action, unless the commissioner decides some alteration is necessary~~ as provided for in a calcareous fen management plan approved by the commissioner. The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan. The commissioner must provide technical assistance to landowners or project sponsors in the development of management plans. The exemptions under part 8420.0420 and the sequencing provisions under part 8420.0520 do not apply to calcareous fens.

Reason for change: Two provisions from Subp. 1 are relocated here for applicability and clarity. The language addressing water appropriations is added to conform the rule with amendments to MN Statutes 103G.223 (b).

Subp. ~~5~~ 4. **Restoration.** The commissioner may approve management plans to restore or upgrade improve a previously damaged calcareous fen. The commissioner may order restoration or replacement of

a damaged calcareous fen in accordance with Minnesota Statutes, section 103G.2372.

Reason for change: “Upgrade” was changed to “improve” to more clearly and accurately describe the goal of a typical management plan for a previously damaged calcareous fen. “Upgrade” can imply replacing something with a newer or better version. The term “improve” means making something better in general, without necessarily replacing it. Language is also added to clarify the DNR’s statutory enforcement authority for unauthorized impacts to calcareous fens.

Subp. ~~6~~ 5. **Appeals.**

A. A landowner or project proposer may challenge the commissioner's determination that a wetland is a calcareous fen or the commissioner's calcareous fen management plan by requesting a hearing. The hearing shall be conducted in the same manner as water permit hearings under Minnesota Statutes, chapter 103G.

B. The determination that a wetland is a calcareous fen may be appealed at any time within 30 days of the publication of the commissioner’s designation of the calcareous fen in the State Register by requesting a hearing. For a decision under a management plan, the hearing must be requested within 30 days after the notice of the commissioner's decision was mailed sent to the project proposer; otherwise the decision becomes final and may not be challenged by the project proposer.

Reason for change: A clear timeline is added for the appeal of a DNR calcareous fen designation, as the existing rule language is open-ended. “Mailed” was changed to “sent” to allow for electronic transmission in accordance with statutory amendments that have occurred since the current rule was adopted.

C. Appeal of the commissioner's decision after the hearing must be done in the manner provided for appeals from contested case decisions under Minnesota Statutes, chapter 14.

Subp. ~~7~~ 6. **Enforcement procedures.** Enforcement procedures for calcareous fens must be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372, except that necessary restoration or replacement activities, if required, must be determined by the commissioner, in consultation with the local soil and water conservation district.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

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