

**WCA Rule Advisory Committee - 3/27/08 Meeting  
Draft Replacement Sections**

**STANDARDS AND PROCEDURES FOR EVALUATING WETLAND REPLACEMENT PLANS**

**8420.05000800 PURPOSE Replacement Plan Standards.**

Parts 8420.0500 to 8420.0890 specify the procedures and criteria for avoiding and minimizing wetland impacts and for ensuring adequate replacement of lost functions and public values for unavoidable wetland impacts through direct replacement or use of wetland bank credits.

~~**8420.0505 PREVIOUSLY APPROVED DETERMINATIONS.**~~

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

*This will be moved to the application section of rule. Language will also be added to clarify that local government decisions must be made according to the rules in place at the time of the decision.*

~~**8420.0510 REPLACEMENT PLAN PROCEDURES.**~~

~~Subpart 1. **Generally.**—No person shall drain, excavate in the permanent or semipermanently flooded areas of type 3, 4, or 5 wetlands, or fill impact a wetland, wholly or partially, or otherwise impact wetlands without first having a wetland replacement plan or other determination approved by the local government unit.~~

~~Subp. 2. **Preapplication conference and site visit.**—Before preparation of a wetland value 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. A landowner may submit the information required in part 8420.0520 and request a determination of compliance with the sequencing requirements from the local government unit before preparing a replacement plan.~~

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

*The language in gray highlight is proposed for relocation to the application section and edited there. The stricken language was removed as the requirements for 87 manual and the other technical standards were added into the application requirements section of the rule.*

**8420.0520 SEQUENCING.** *This section discussed separately and relocated.*

~~**8420.0530 REPLACEMENT PLAN COMPONENTS.**~~ *Relocated to Application Requirements section.*

**NOTE:** *While the entire section above is proposed for relocation, to save space and reduce confusion only the heading is shown here. This will be repeated for similar instances throughout this section.*

**8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.**

~~Subpart 1. Sequencing.~~ Before consideration or approval of a replacement plan, the local government unit must ensure that the applicant has exhausted all possibilities to avoid and minimize adverse 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 part [8420.0550](#).

~~Subp. 2. Type of replacement.~~

~~— A. The preference for the method of replacement is that which 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.~~

~~— B. Modification or conversion of nondegraded wetlands from one wetland type to another by damming, diking, impounding, or excavating does not constitute replacement credit. Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.~~

***The above subpart is relocated to 8420.0850 DETERMINING REPLACEMENT REQUIREMENTS, subpart 2 below.***

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

***This section was relocated here from .0850 subpart 8 below.***

**8420.0541 ACTIONS ELIGIBLE FOR CREDIT. Will be discussed separately at a later date.**

~~**8420.0542 TIMING OF REPLACEMENT. Relocated to .0850 subp. 4 below. See edits there.**~~

~~**8420.0543 WETLAND REPLACEMENT SITING. Relocated entirely to 8420.0850 subpart 1 F below.**~~

**8420.05440890 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.**

A. Wetlands impacted by public transportation projects may be replaced statewide, only for wetlands affected in greater than 80 percent areas and for public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven-county metropolitan area must be replaced at a ratio of two-to-one in:

- (1) 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.

Part [8420.0543](#), item A, subitem (6), does not apply to replacement completed using wetlands banking credits established by an applicant who submitted a complete wetland banking application to a local government unit by April 1, 1996.

~~B. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for in parts [8420.0700](#) to [8420.0760](#).~~

***Item B is proposed to be removed as it merely states that transportation impacts can be replaced with banking and is purely unnecessary language.***

C. For projects involving draining or filling of wetlands associated with a new public ~~transportation road~~ project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits.

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

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

(2)(a) submit, at least 30 days prior to construction, project-specific ~~plans and information including project locations, wetland boundaries, amount and type of wetlands impacted, demonstration of wetland impact minimization reports~~, and any changes or addenda, to the board ~~bank administrator~~, the technical evaluation panel, the commissioner of natural resources, and members of the public requesting a copy ~~that indicate the location, amount, and type of wetlands drained, excavated, or filled by the project~~;

(b) convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year ~~in which the information in item (a) is presented~~; or

***The changes above are intended to clarify the information that should be reported by including information currently requested in the existing application form. The last sentence was edited to clarify that, if an annual meeting is convened, the required information must be presented at that time.***

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

***The above change is intended to remove some redundancies in this part and make it clear that the road authority must submit the required information within 30 days.***

(c) Authorities that fail to follow the above process must submit a complete replacement plan application to the local government unit and provide for replacement.

***The addition above is intended to clarify that road authorities that do not meet the criteria for item (a) are subject to replacement plan procedures and may not be eligible for BWSR replacement.***

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

F. Those required to receive notice of public road projects may appeal minimization, delineation, and on-site mitigation decisions made by the public road authority to the board according to part 8420.0250.

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

H. Except for state public transportation projects, for which the state Department of Transportation is responsible, ~~and those that do not follow procedures in Item A. (2)~~, the board must replace public road project impacts to wetlands and wetland areas of public waters if authorized by the commissioner or a delegated authority, that are ~~drained, excavated, or filled~~ impacted by local government projects on existing roads. Replacement of the wetlands must occur in critical rural and urban watersheds.

I. Public road authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland ~~filling or draining~~ 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.

**NOTE: Edits to the road replacement section are shown above (in its current location of the rule), but as indicated in the title, the section will be relocated to .0890.**

~~8420.0545 PRESETTLEMENT WETLAND ACRES AND AREAS.~~ Relocated to 8420.0200.

~~8420.0546 SIZE OF REPLACEMENT WETLANDS.~~ Relocated to 8420.0850 subpart 3.

~~8420.0547 OTHER REQUIREMENTS.~~ Relocated to .0870, Replacement Wetland Standards, Subpart 2, items G and H.

~~8420.0548 SPECIAL CONSIDERATIONS.~~ Relocated to the Application Requirements section.

~~8420.05490850 EVALUATION OF WETLAND FUNCTIONS AND VALUES DETERMINING REPLACEMENT REQUIREMENTS.~~

Subpart 1. Replacement of Wetland Functions and Values.

A. Evaluation options. Replacement wetlands must replace the functions and values that are lost from a wetland that is ~~drained or filled~~ impacted. When environmentally preferable, a replacement wetland should replace the same combination of functions and values provided by the impacted wetland. Replacement of wetland functions and values may occur at more than one location. The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in Minnesota Statutes, section [103B.3355](#), with a scientifically accepted methodology in subparts 7 and 8.

~~Subp. 2.~~ B. Wetland types: For wetland replacement ratio determinations, wetland types shall be based on the ~~12~~ wetland plant community types as listed in this subpart.

Option #1:

**Fish and Wildlife Service Circular 39 Wetland Plant Community Types (Shaw and Fredine 1971)**

Type 1L: Floodplain Forest	Floodplain Forest
	Fresh (Wet) Meadow
Type 1: Seasonally flooded basin or flat	Wet to Wet-Mesic Prairie
	Seasonally Flooded Basin
	Sedge Meadow
Type 2: Inland fresh meadow	Wet to Wet-Mesic Prairie
	Calcareous Fen
	Fresh (Wet) Meadow
Type 3: Inland shallow fresh marsh	Shallow Marsh
Type 4: Inland deep fresh marsh	Deep Marsh
Type 5: Inland open fresh water	Shallow, Open Water
Type 6: Shrub swamp	Shrub-Carr or Alder Thicket
Type 7: Wooded Swamp	Hardwood Swamp or Coniferous Swamp
Type 8: Bog	Open Bog or Coniferous Bog

**Option #2:**

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)	<del>Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979)</del>	Fish and Wildlife Service Circular 39 (Shaw and Fredine 1971)
Shallow, open water	<del>Palustrine or lacustrine; littoral; aquatic bed; submergent, floating, and floating-leaved</del>	Type 5: Inland open fresh water
Deep marsh	<del>Palustrine or lacustrine; littoral; aquatic bed; submergent, floating, and floating-leaved; emergent; persistent and nonpersistent</del>	Type 4: Inland deep fresh marsh
Shallow marsh	<del>Palustrine; emergent; persistent and nonpersistent</del>	Type 3: Inland shallow fresh marsh
Sedge meadow	<del>Palustrine; emergent; narrow-leaved persistent</del>	Type 2: Inland fresh meadow
Fresh (wet) meadow	<del>Palustrine; emergent; broad and narrow-leaved persistent</del>	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Wet to wet-mesic prairie	<del>Palustrine; emergent; broad and narrow-leaved persistent</del>	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Calcareous fen	<del>Palustrine; emergent; narrow-leaved persistent; scrub/shrub; broad-leaved deciduous</del>	Type 2: Inland fresh meadow Type 6: Shrub swamp
Open bog or coniferous bog	<del>Palustrine; moss/lichen; scrub/shrub; broad-leaved evergreen; forested; needle-leaved evergreen and deciduous</del>	Type 8: Bog
Shrub-carr or alder thicket	<del>Palustrine; scrub/shrub; broad-leaved deciduous</del>	Type 6: Shrub swamp
Hardwood swamp or coniferous swamp	<del>Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and</del>	Type 7: Wooded swamp

Floodplain forest	<del>Palustrine; forested; broad-leaved deciduous</del>	deciduous	Type 1: Seasonally flooded basin or flat
Seasonally flooded basin	<del>Palustrine; flat; emergent; persistent and nonpersistent</del>		Type 1: Seasonally flooded basin or flat

**Two options for the wetland type conversion table were considered. Both options would use wetland plant community system for determining the actual wetland type, but how those types apply to policy would differ.**

***Option #1 lists Circular 39 types first with the corresponding plant community types second. This option would group the plant community types into eight categories that correspond to the Circular 39 wetland types for application to policy. This option would apply the same grouping of types to replacement as exemptions, so the table could be relocated to the Wetland Boundary and Type subsection of the Applications section (or a separate section) that would be utilized both for exemptions and replacement.***

***Option #2 lists plant community types first with the corresponding Circular 39 types second (as in the current rule and the BWSR-Corps MOU). This option would apply all 12 types to replacement policy (i.e. in-kind would be determined according to the 12 types). The table corresponding to this option above is the same as currently in the Exempt Rule with the conversion to the Cowardin system removed (both the BWSR Rule Team and the Technical Committee felt it was unnecessary).***

***The Technical Committee reviewed both of these options and recommended Option #1 be used in the WCA rule. Both options are presented here for additional review and comment by the Advisory Committee. See the Replacement Supplement for additional information.***

STATE OF MINNESOTA WATERSHED BOUNDARIES – 1979, Graphic not available - may be relocated.

***Subp. 3C. In-kind ~~wetland~~ replacement.*** Wetland replacement for ~~drainage, excavation, or fill impacts~~ shall be considered in-kind if the replacement wetland is of the same ~~type-wetland plant community~~ as the impacted wetland using “Wetland Plants and Plant Communities of Minnesota and Wisconsin”. (S. Eggers and D. Reed, 1997) as modified by the board.;

***Two alternatives for the In-Kind Replacement requirement are currently being considered.***

***Alternative #1 would keep the current type-for-type In-Kind requirement and its tie to the replacement ratios, but would add rule language that allows the LGU to consider other types of replacement as in-kind in certain circumstances. The additional language has not yet been developed.***

***Alternative #2 would eliminate the current in-kind requirement’s tie to the replacement ratio and replace it with a replacement standard that would make type-for-type the first priority, but would provide criteria where replacing with a different type would be allowed. General concepts for the criteria have been identified, but specific language has not yet been developed.***

***The Technical Committee has discussed the alternatives and recommended Alternative # 2 be adopted. See the Replacement Supplement for additional information. Also see below for replacement ratio tables corresponding to each alternative.***

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

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

**Subpart 4 is proposed to be deleted because it is unnecessary.**

**NOTE:** Subparts 4a (In advance replacement), 4b (In-place replacement), 4c (minimum wetland replacement ratios), 5 (Determining impacts of partial drainage), 6 (Alternative evaluation methodologies, 7 (Special cases or appeals), and 8 (Adequacy decision) and 8420.0550 (Wetland Replacement Standards) have not yet been reviewed by the Technical Committee and will be presented to the Advisory Committee at the next meeting. However, Subpart 4c is presented below to aid in the in-kind replacement discussion.

*The replacement ratio table shown below is as it currently exists in the Exempt Rule and the BWSR-Corps MOU, and corresponds to In-Kind Replacement alternative #1 (assuming no changes to in-place and in-advance).*

**Corresponding replacement table for In=kind alternative #1:**

**Subp. 4c. Minimum wetland replacement ratios:** The minimum wetland replacement ratios are based on the location of the impact and replacement, the wetland type, and the timing of the replacement, as determined by the table below.

Impact Location	Replacement Location (in place)	Type of Replacement Wetland (in type)	Replacement Process (in time)	Minimum Replacement Ratio
> 80% area (see Fig. 2) (or agricultural land – WCA)	In-Place	Same type as impact wetland	In advance	1:1
			Not in advance	1.25:1
		Different type	In advance	1.25:1
			Not in advance	1.5:1
	Not In-Place	Same type as impact wetland	In advance	1.25:1
			Not in advance	1.5:1
		Different type	In advance	1.5:1
			Not in advance	1.5:1
	In-Place		In advance	2:1

< 80% area (See Fig. 2) (and non- agricultur al land – WCA)			In advance	2:1
			Not in advance	2.5:1
		Same type as impact wetland	In advance	2.5:1
			Not in advance	2.5:1
	Not In-Place	Same type as impact wetland	In advance	2.5:1
			Not in advance	2.5:1
		Different type	In advance	2.5:1
			Not in advance	2.5:1

***Below is an example of what the replacement table would look like if In-Kind Replacement Alternative #2 is chosen (assuming no changes to the in-place and in-advance requirements and their corresponding replacement ratios). Another option for the table under Alternative #2 would be to eliminate it and simply state that the replacement ratios would be increased by .25 if not in-place or in-advance.***

**Corresponding replacement table for In-kind alternative #2:**

**Subp. 4c. Minimum wetland replacement ratios:** The minimum wetland replacement ratios are based on the location of the impact and replacement, ~~the wetland type,~~ and the timing of the replacement, as determined by the table below.

<b>Impact Location</b>	<b>Replacement Location</b>	<b>Replacement Process (in time)</b>	<b>Minimum Replacement Ratio</b>
> 80% area (see Fig. 2) or agricultural land	<b>(in place)</b> In-Place	In advance	1:1
		Not in advance	1.25:1
	Not In-Place	In advance	1.25:1
		Not in advance	1.5:1
		In advance	2:1
		Not in advance	2.25:1
		In advance	2.25:1
		Not in advance	2.5:1