

FRIDLEY CITY CODE
205.29. 0-4 WETLAND DISTRICT

1. PURPOSE AND INTENT

It is the purpose and intent of this section to establish special controls to protect the unique and valuable wetland resources within the City of Fridley.

2. DISTRICT BOUNDARIES

The boundaries of the 0-4 district shall be located on the official overlay map of the City of Fridley and shall encompass all areas delineated within the Wetland Delineation and Evaluation Study, Westwood Engineering 1993. The boundaries of the 0-4 district are subject to change due to site-specific delineations accepted by the City.

3. POLICY

- A. The preservation and use of significant wetlands is critical to the environment. The City will coordinate with federal, state and local agencies in order to achieve no net loss of wetlands.
- B. Significant wetlands will be maintained in their natural condition or improved to provide more benefits for water quality management, with consideration for other amenities.
- C. The City encourages sound, contemporary land use development that incorporates grassed, open, and wetland spaces to allow infiltration of precipitation in all land use categories.
- D. The City proposes to preserve and enhance wetlands within the community through implementation of development regulations that will ensure the design and construction of adequate on-site storm water sedimentation and retention and detention basins, flow control devices, and implementation of effective erosion control techniques.
- E. The City will comply with I and implement the 1991 Wetland Conservation Act and the accompanying rules of the Minnesota Board of Water and Soil Resources.

4. INCORPORATION BY REFERENCE

- A. The 1991 Wetland Conservation Act (the Act) and Minnesota Rules, 8420.
- B. The Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 1989, with appropriate amendments.
- C. The United States Fish and Wildlife Service Classification of Wetlands and Designation Habitats, Table 4.
- D. Wetlands and Deep water Habitats of the United States.

E. Minnesota Statutes, Chapter 103.

5. WETLAND OVERLAY DISTRICT REGULATIONS

A. No development shall be allowed within a wetland overlay district without first:

- (1) Having the City or the Local Government Unit certify that the activity is exempt as defined in Section 205.27.04, or
- (2) Having the City or the Local Government Unit certify an acceptable wetland replacement plan submitted by the applicant for compliance with the Act.

B. Prior to the issuance of a City permit, the petitioner must show proof of compliance or exemption from the DNR and Corps of Engineers regulations concerning drainage, grading, or filling of wetlands. In addition, the application must show consideration of the affected wetland values for stormwater runoff storage and detention, sedimentation and nutrient trapping and retention, fish and wildlife habitat, and the recreation and open space needs of the community.

C. Sequencing

- (1) The following principles of wetland mitigation are listed in descending priority. A wetland replacement plan shall not be approved unless the applicant has demonstrated that the activity impacting a wetland has complied with the highest priority possible:
 - (a) Avoids direct or indirect impacts to the wetland that may destroy or diminish the wetland;
 - (b) Minimizes the impact to the wetland by limiting the degree or magnitude of the wetland activity and its implementation;
 - (c) Rectifies the impact by repairing, rehabilitating, or restoring the affected wetland;
 - (d) Reduces or eliminates the impact to the wetland over time by preservation and maintenance operations; and
 - (e) Replaces unavoidable impacts to the wetland by restoring or creating substitute wetland areas having equal or greater public value.
- (2) The applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the City. For projects impacting wetland areas less than 4,356 square feet, the City may provide on-site sequencing determinations without written documentation from the applicant.

D. Sequencing Determinations

- (1) The City shall determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall be considered feasible and prudent if:
 - (a) It is in accordance with accepted engineering standards and practices;
 - (b) It is consistent with reasonable requirements of the public health, safety and general welfare;
 - (c) It is an environmentally preferable alternative based on a review of social, economic, and environmental impacts; and
 - (d) It would create no truly unusual problems.
- (2) The City shall consider the following in evaluating alternatives:
 - (a) The basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site may not be excluded from consideration only because it includes or requires an area not owned by the applicant that could be easily obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;
 - (b) The general suitability of alternate sites considered by the applicant;
 - (c) Whether reasonable modification of the size, scope, configuration, or density of the project would avoid impacts to wetlands;
 - (d) Efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for special use permits, variances, or planned unit developments; and
 - (e) The physical, economic, and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.
- (3) If the City determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it shall deny the replacement plan.

- (4) If no feasible and prudent alternative is available that would avoid impacts to wetlands, the City shall evaluate the replacement plan to determine that it will minimize impacts to wetlands. The City shall use the following criteria to determine the sufficiency of the applicant's efforts to minimize impacts to wetlands:
 - (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 the 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 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 other features; and
 - ((3)) Minimize other impacts.
- (5) If the City finds that an applicant has not complied with the requirements to minimize wetland impacts, the City shall list, in writing, its objections to the project. If, within 30 days, the applicant does not withdraw the project proposal or indicate intent to submit an amended project proposal satisfying the City's objections, the statement of objections shall constitute a denial.
- (6) Temporary impacts to a wetland shall be rectified by repairing, rehabilitating, or restoring the affected wetlands. The City may determine that an applicant's activity may qualify for a no-loss determination if the following criteria are met:
 - (a) The physical characteristics of the affected wetlands including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, hydrologic regime, are restored to pre-project conditions sufficient to ensure that all pre-project functions and values are restored;

- (b) The activity is completed and the physical characteristics of the wetland are restored within six months-of the start of the activity;
 - (c) The party responsible for the activity provides a performance bond to the City for an amount sufficient to cover the estimated cost to restore the wetland to preproject conditions. The City shall return the performance bond to the responsible party upon a determination by the City that the conditions in Section 205.27.5.D. (6). (c) and Section 205.27.5.D.(4).
 - (d) An applicant shall be granted a no-loss determination under the criteria a through c above once in a ten-year period for a particular site within a wetland, except that repairs to the original project shall be allowed under the no-loss determination, if the City determines the request to be necessary and reasonable.
- (7) After an activity is completed, further wetland impacts from the draining or filling must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions and values. The City will require applicants to implement best management practices to protect wetland functions and values.
- (8) Unavoidable wetland impacts that remain after efforts to minimize, rectify, reduce, or eliminate them must be replaced.

6. EXEMPTIONS

A. The following activities are exempt from the 0-4. Wetland Overlay District regulations:

- (1) Activities in a wetland created solely as a result of:
 - (a) Beaver dam construction;
 - (b) Blockage of culverts through roadways maintained by a public or private entity;
 - (c) Actions by public entities that were taken for a purpose other than creating the wetland;
 - (d) Any combination of (a) to (c).
- (2) Impoundments or excavations constructed in non-wetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process, that may, over time, take on wetland characteristics, are also exempted.

- (3) Placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications;
- (4) Activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;
- (5) Activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities so not result in additional intrusion into the wetland outside of the existing right of way;
- (6) Emergency repair and normal maintenance of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland.
- (7) Normal maintenance and repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland. This exemption applies to private structures, such as buildings or road crossings;
- (8) Activities that result in the draining or filling of less than 400 square feet of wetlands. This exemption applies if the total wetland loss by draining and filling will be less than 400 square feet per year per landowner, and the cumulative impact by all persons on a wetland over time after January 1, 1992, does not exceed five percent of the wetland's area.

7. REPLACEMENT PLAN DETERMINATIONS

- A. A landowner intending to drain or fill a wetland who does not qualify for in exemption in Section 14 or a no-loss determination in Section 205.27.5D.(6). (a-d) shall obtain approval of a replacement plan from the City or local government unit before beginning draining or filling.
- B. The City shall, within ten days of receipt of the application, mail a copy of the application and an invitation to submit comments to the Board of Water and Soil Resources (the board), which will publish it in the Environmental Quality Board Monitor; members of the public who have requested a copy; the soil and water conservation district; the watershed district or watershed management organization; the county board; mayors of cities within the watershed; and the commissioners of agriculture and natural resources. At the same time, the City shall publish notice of the application with an invitation for comment in the City's official newspaper.

- C. The City shall not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice, publication in the Environmental Quality Board Monitor, when required, or publication in the newspaper, whichever is later. The City's decision shall not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, when required, and mailed to the same list specified above for notice of the application, and to the applicant. The mailing to the applicant shall be by registered mail and shall advise that the decision is not effective for 30 days and is stayed if it is appealed.
- D. The City's decision shall be based on the replacement standards in Section 205.27.8 and on the determination of the Technical Evaluation Panel concerning the public values, location, size, and type of wetland being altered. The City shall consider the recommendation of the Technical Evaluation Panel to approve, modify, or reject the proposed replacement plan.

8. REPLACEMENT PLAN COMPONENTS

- A. On a Combined Joint Notification form provided by the City, and with needed attachments supplied by the applicant, the following documentation shall be provided:
 - (1) Organizational information, including the following:
 - (a) The post office address of the applicant;
 - (b) For corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint ventures, and a designated contact person;
 - (c) Managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;
 - (2) An affidavit confirming that the wetland values will be replaced before or concurrent with the actual draining or filling of a wetlands The City may require an irrevocable bank letter of credit or other security acceptable to the City to guarantee the successful completion of the project;
 - (3) For the impacted wetland:
 - (a) A recent aerial photograph or accurate map of the impacted wetland area;
 - (b) The location of the wetland, including the county, watershed name or number, and public land survey with the coordinate of the approximate wetland center;
 - (c) The size of the wetland, in acres or square feet;

- (d) The type of wetland using USFWS Circular 39, and NWI mapping conventions;
- (e) A list of the dominant vegetation in the impacted wetland area, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage;
- (f) A soils map of the site showing soil type and substrate, where available;
- (g) The size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;
- (h) 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 floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;
- (i) A map, photograph, or written description of the land use of the immediate watershed within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;
- (j) The nature of the proposed project, its areal extent, and the impact on the wetland must be shown in sufficient detail to allow the City to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in Section 5D;
- (k) Evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgement of the covenant provisions in Section 205.27.7.4.9, by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan;
- (l) A list of all other local, state, and federal permits and approvals required for the activity; and
- (m) Other information considered necessary by the City for evaluation of the activity.

(4) For the replacement wetland:

- (a) A recent aerial photograph or accurate map of the replacement wetland area;
- (b) The location of the wetland, including the county, watershed name or number, and public land survey coordinate of the approximate wetland center;
- (c) The size of the wetland, in acres or square feet;
- (d) The type of wetland using USFWS Circular 39, and NWI mapping conventions;
- (e) A list of the dominant vegetation in the impacted wetland area, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage;
- (f) A soils map of the site showing soil type and substrate, where available;
- (g) The size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;
- (h) 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 floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;
- (i) A map, photograph, or written description of the land use of the immediate watershed within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;
- (j) Evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgement of the covenant provisions in paragraph 9, by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands, The contract becomes binding upon final approval of the replacement plan;

- (k) A list of all other local, state, and federal permits and approvals required for the activity;
- (l) An explanation of the size and type of wetland that will result from successful completion of the replacement plan;
- (m) Scale drawings showing plan and profile views of the replacement wetland and fixed photo-reference points for monitoring purposes. Photo-reference points should include views of any control structures and enough additional points to accurately depict the entire project;
- (n) How the replacement wetland shall be constructed, including the best management practices that will be implemented to prevent erosion or site degradation;
- (o) For created wetlands only, additional soils information sufficient to determine the capability of the site to produce and maintain wetland characteristics;
- (p) A timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;
- (q) A notice in a form provided by the BWSR attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:
 - ((1)) The location of the replacement wetland;
 - ((2)) That the wetland is subject to the act;
 - ((3)) That the fee title owner is responsible for the costs of repairs or reconstruction, if necessary, or for replacement costs;
 - ((4)) That reasonable access to the replacement wetland 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 title owner; and
 - ((6)) That the City or board can require necessary repairs or reconstruction work to return the wetland to the specifications of the approved replacement plan and require reimbursement or reasonable costs from the wetland owner, or can require! replacement of the wetland according to the Act;

- (r) A statement that the replacement wetland was not previously restored or created under a prior approved replacement plan;
 - (s) A statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;
 - (t) A statement that the replacement wetland was not restored with financial assistance from public conservation programs;
 - (u) A statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the City in writing that the restored wetland may be considered for replacement;
 - (v) A plan for monitoring the success of the replacement plan in meeting the project goal in paragraph I and as specified in Section 205.27.12; and
 - (w) Other information considered for evaluation of the project by the City.
- (5) The applicant must provide information considering the special considerations criteria in Section 205.27.8.G.

9. REPLACEMENT PLAN EVALUATION CRITERIA

- A. Before consideration or approval of the replacement plan, the City shall ensure that the applicant has exhausted all possibilities to avoid and minimize possibilities to avoid and minimize adverse impacts according to sequencing in Section 5D.
- B. The order of preference for the method of replacement, from the most preferred to least preferred:
 - (1) Project-specific restoration;
 - (2) Project-specific creation;
 - (3) Wetland banking.

Modification or conversion of non-degraded wetland from one wetland type to another does not constitute adequate replacement. Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

- C. Replacement of wetland values shall be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the City is submitted to the City to guarantee successful completion of the replacement. All wetlands to be restored or created as part of an approved replacement plan shall be clearly designated prior to approval of the replacement plan by the City.
- D. Replacement wetlands shall be located in the same watershed as the impacted wetlands, or the ratio in Section 205.27.10 shall apply.
- E. Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. The minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions in Section 9. Future owners may make no use of the wetland after it is altered for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the county recorder in which the project is located.
- F. Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.
- G. The following factors when, applicable to an impact or replacement site, shall be considered by the City:
 - (1) The site contains endangered species listed in Minnesota Rules, parts 6134.0200 to 6134.0400 and the proposed activities would take those species, the replacement plan shall not be approved.
 - (2) The site contains a rare natural community, and the proposed activity would adversely affect the community, the replacement plan shall not be approved.
 - (3) The site contains a significant fish and wildlife resource; including but not limited to fish passage and spawning areas, colonial waterbird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, or wildlife travel corridors, and the proposed activity would adversely impact those resources, the replacement plan shall not be approved.
 - (4) The site contains archaeological or historic areas, and the activity would adversely affect those areas, the replacement plan shall not be approved.
 - (5) The proposed activity would have significant adverse impact on the groundwater quality, the replacement plan shall not be approved.

- (6) The proposed activity would have significant adverse impact on the water quality of outstanding resource value waters as listed in Minnesota Rules, 7050.0180 or on trout waters, the replacement plan shall not be approved.
- (7) Wetlands used for educational or research purposes shall be maintained or adequately replaced.
- (8) The proposed activity involves known or potential hazardous wastes. Such activities shall be conducted in accordance with applicable federal or state standards.
- (9) The proposed activity shall be consistent with other plans, including, but not limited to zoning, comprehensive, watershed management, and land use plans.

10. EVALUATION OF WETLAND FUNCTIONS AND VALUES

- A. Replacement wetlands shall replace the functions and values that are lost that are lost from a wetland that is drained or killed. A replacement wetland should replace the same combination or functions and values provided by the impacted wetland. The wetland type index system in Minnesota Rules 8420.0540, subpt 10, item B, uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement. The City may allow the evaluation of wetlands by measuring and comparing public values specified in Minnesota Statutes, section 103b. 3355, with the current version of the Minnesota wetland evaluation methodology or another scientifically acceptable methodology.
- B. Table 4, Minnesota Rules, part 8420.0550, provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the City shall determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the City shall evaluate the plan based on this determination.
- C. The City may consider allowing constructed stormwater detention basins for replacement credit if the basin conforms to the following specifications:
 - (1) The basin design uses a two-cell system in which the upstream cell has a 24-hour retention time for a two-year storm event;
 - (2) The downstream cell is designed for a maximum 12-inch rise in water level for a ten-year storm event;
 - (3) The standards in Minnesota Rules, part 8420.0550 are followed;

- (4) The design goal is a palustrine emergent wetland that meets all statutory definitions of a wetland, for example, soils, hydrology, and vegetation. Only the downstream cell can be counted for wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water basins which allowed for replacement are not eligible for an exemption; and
 - (5) Storm water management basins constructed for the primary purpose of controlling or treating stormwater runoff from impervious surfaces or developed areas, not conforming to the units in 1-4 above, are not considered wetlands. These are therefore exempt from replacement plan requirements when constructed in non-wetlands, and also cannot be considered for credit as part of a replacement plan, regardless of their location.
- D. When wetland functions lost as a result of drainage or filling are replaced by restoring a wetland of the same type and in the same watershed with the same inlet and outlet characteristics as described in Section 205.27.9.E, and related definitions, the replacement shall be considered to be in-kind and the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland. The minimum replacement ratio is 2:1, requiring two times the impacted area be replaced.
- E. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics than the impacted wetland, the replacement shall be considered out of kind, and the City shall use the replacement ratios in Minnesota Rules, 8420.0540, subpt b, item D, Table 2, to determine the amount of replacement wetland needed to replace the lost wetland values.
- (1) Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table located and, to be applied as specified in Administrative Rules, 8420.0540, subpt 10, Table 2. The wetland type ratio table incorporates an evaluation of public values as specified in Minnesota Statutes, section 103B.3355, for the purposes of comparison among wetland types.
 - (2) 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 City shall use the following procedure to determine needed replacement. The acreage of each wetland type to be converted to non-wetland shall be determined. The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type. The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio.

- (3) When a replacement wetland is located in a different hydrologic unit than the impacted wetland, as indicated by-the USGS Hydrologic Unit Map for Minnesota, the ratios in Minnesota Rules 8420.0540 must be followed.
- (4) If the inlet and outlet characteristics of a replacement wetland differ from those of the impacted wetland, the ratios in Minnesota Rules 8420.0540 Table 3 shall be applied.
- (5) The City may, by local ordinance, establish additional local public value to address wetland conservation or preservation issues of local concern. These ratios shall have a minimum value of zero and shall be based on wetland management objectives of a local water management plan adopted under Minnesota Statutes, Chapter 103B or 1036.
- (6) The required replacement ratio for out-of kind replacement shall be the sum of the wetland type ratio plus the hydrologic unit ratio plus the inlet and outlet characteristic ratio plus the local public value ratio. If this ratio is less than the minimum in-kind ratio, the minimum in-kind ratio shall be the required replacement ratio.
- (7) In cases of partial drainage, the amount of wetland to be replaced shall be calculated using the formulas in Minnesota Rules 8420.0540, Item E.
- (8) In cases where partially drained wetlands are restored to their former state, credit may be received as calculated in Administrative Rules 8420.0540, Item F.
- (9) For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the City believes an alternative evaluation process may produce a substantially different replacement requirement, the City may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the Commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using the Minnesota wetland evaluation methodology or another board, in consultation with the Commissioner, approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland shall not be less than the minimum required. Further, the hydrologic unit ratio, the inlet and outlet characteristics ration, and the local public value ratio, shall also be considered when using the Minnesota wetland evaluation methodology or another board, in consultation with the Commissioner, approved methodology.

- (10) A replacement plan that fails to meet the requirements in items 1-8 shall be considered inadequate in replacing lost functions and values and shall not be approved by the City. A replacement plan that has been considered by the City and not approved may be revised and resubmitted for consideration by the City. The decision of the City to approve, approve with conditions, or not approve 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. Before construction of the wetland, a notice as required in Section 205.27.7.4.9 must be recorded and proof of recording provided to the City.

11. WETLAND REPLACEMENT STANDARDS

- A. The standards and guidelines in this part shall be used in wetland creation wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values. Minnesota Rules 8420.0540, Table 4 provides general guidelines for the physical characteristics that each type of replacement wetland should have
- B. The standards in items 1 to 8 shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.
- (1) Water control structures must be constructed using specification provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the department dam safety regulations.
 - (2) Best management practices must be established and maintained to the entire perimeter of all replacement wetlands.
 - (3) For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal in Section 205.27.7.A.4.1, is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate wetland origin species, as determined by the soil and water conservation district, the seed or planting stock should be of local to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the re-vegetation goal of the replacement plan.
 - (4) Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.
 - (5) For all restored wetlands where the original organic substrate has been striped away and for all created wetlands, provisions must be made for providing an organic substrate. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland.

- (6) The bottom contours of created types 3, 4, and 5 wetlands should be undulating, rather than flat, to provide a variety of water depth.
- (7) Sideslopes of created wetlands and buffer strip must not be steeper than 5:1, five feet horizontal for every one foot vertical as averaged around the wetlands Sideslopes of 10:1 and 15:1 are preferred.
- (8) Created wetlands should have an irregular edge to create points and bays to be consistent with Section 205.27.8.F.

12. MONITORING ANNUAL REPORT

- A. The purpose of wetland value replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.
- B. The applicant shall submit the annual report to the City on a date determined by the City until the applicant has fulfilled all of the requirements of the City.
- C. The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in Section B.
- D. The annual report shall include the following information and other site-specific information identified by the City:
 - (1) A description of the project location, size, current wetland type (Cowardin classification), and desired wetland type (goal);
 - (2) A comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes;
 - (3) Hydrology measurements: seasonal water level elevations during the period April through October (msl or referenced to a known benchmark);
 - (4) A list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage.
 - (5) Color photographs of the project area taken anytime during the period June through August, referenced to the fixed photo reference points identified on the wetland replacement plan and labeled accordingly.

13. MONITORING DETERMINATIONS BY THE CITY

The City:

- A. Shall inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the City certifies that the construction specifications have been met, the City shall so advise the applicant and return any bond or other security that the applicant had provided;
- B. May order corrective action at any time during the required monitoring period if it determines that the goal of the approved replacement plan will not be met, and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the City, which describes in detail the corrective measures to be taken to achieve the goal of replacing the lost wetland functions and values;
- C. Shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the City shall order corrective action and extend the monitoring period; and
- D. Shall require one or more of the following actions if, during the monitoring period, the City finds that the goal of the replacement plan will not be met:
 - (1) Order the applicant to prepare and implement a new replacement plan;
 - (2) Issue a cease and desist order on the draining and filling activity if it has not been completed;
 - (3) Order restoration of the impacted wetland;
 - (4) Obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland values;
 - (5) Ask the district court to order the applicant to fulfill the replacement plan; or
 - (6) Other actions that the City determines necessary to achieve the goal of the replacement plan.
- E. A landowner intending to drain or fill a wetland without replacement, claiming exemption under Section 205.27.14, shall contact the City before beginning draining or filling activities for determination whether or not the activity is exempt. The City shall keep in file all documentation and findings of fact concerning exemption determinations for a period of ten years.

- F. The City shall issue a certificate of exemption to the landowner.
- G. The landowner requesting the exemption is responsible for submitting the proof necessary to show qualifications for the particular exemption claimed. The landowner shall ensure that proper erosion control measures are taken to prevent sedimentation in the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, Chapter 103H.

14. NO LOSS DETERMINATIONS

A landowner unsure if the proposed work will result in a loss of wetland shall apply to the City for a determination. The City shall keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

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

The City shall issue a no-loss certificate if:

- A. The work will not drain or fill a wetland;
- B. Water level management activities will not result in the conversion of a wetland to another use;
- C. The activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program; or
- D. The activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.
- E. The activity meets the conditions in Section 205.27.5.D.6.

15. TECHNICAL EVALUATION PANEL PROCEDURES

For the City, there is a Technical Evaluation Panel of three persons a technical professional employee of the board, a technical professional employee of the soil and professional employee of the soil and water conservation district of Anoka county, and a technical professional with expertise in water resources management appointed by the City. One member selected by the City shall act as the contact person and coordinator for the panel. Two members of the panel must be knowledgeable and trained in applying methodologies of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, and evaluation of public values. The Technical Evaluation Panel may invite additional wetland experts in its work.

The panel shall make technical determinations on questions of public values, location, size, and type for replacement plans if requested to do so by the City, the landowner, or a member of the Technical Evaluation Panel. The panel may review replacement plans and recommend to the City either approval, approval with changes or conditions or rejection. The panel shall make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

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

If requested by the City, the landowner, or a member of the Technical Evaluation Panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to Section 205.27.13.

16. APPEAL OF CITY DECISIONS

- A. The decision of the City to approve, approve with conditions, or reject a replacement plan, or determination of exemption or no loss, 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.
- B. Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.
- C. Appeal is effective upon mailing of the notice of appeal to the board with an affidavit that a copy of the notice of appeal has been mailed to the City. The City shall then mail a copy of the notice of the appeal to all those to whom it was required by Section 205.27.6.B to mail a copy of the notice of decision.
- D. An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all local administrative appeal options.
- E. Those required to receive notice of replacement plan decisions as provided for in Section 205.27.6.B may petition the board to hear an appeal from an exemption or no-loss determination. The board shall grant the petition unless it finds that the appeal is merit-less, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board shall give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the City or landowner of petition, and the consequences of the delay.

17. APPEAL FROM BOARD DECISION

An appeal of a board decision is taken to the state court of appeals and must be considered and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, section 14.63 to 14.69.

18. COMPENSATION

- A. Replacement plan applicants who have completed the City's process and the board appeal process, and the plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.
- B. The application must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.
- C. The application must include an agreement that in exchange for compensation the applicant will 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.
- D. The applicant must submit official documentation from the US Army Corps of engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization if any, the county, and the City, as applicable, that the proposed drain or fill activity and the proposed subsequent use of the wetland are lawful under their respective legal requirements.
- E. The landowner must demonstrate that the proposed drain or fill is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the replacement requirements of Sections 205.27.7 to 205.27.10 and the Act.
- F. If the 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 not going ahead with the project will cause the applicant damages and that disallowing the proposed use will enhance the public values of the wetland.
- G. The applicant must submit the requirements of this Section in writing, by certified mail, to the board. If the applicant wants to make oral argument to the board, it must be indicated at the time of the application. The board may require that the applicant appear before the board.

H. If the board finds that the applicant has submitted a complete application and proved the requirements in this Section, the board shall 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 must convey 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 drain or fill the wetland in the manner proposed, without replacement.

19. WETLAND BANKING

The applicant may use wetland banking credits if the project complies with Minnesota Rules 8420.0740 subparagraph 2 if no alternative site is available.

20. PENALTIES

Any violation of this Chapter is a misdemeanor and is subject to all penalties provided for such violations under the provisions of Chapter 901 of this Code.