

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER c: ENDANGERED SPECIES

PART 1090  
IMPLEMENTATION PROCEDURES FOR THE  
INTERAGENCY WETLANDS POLICY ACT

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AUTHORITY: Implementing and authorized by the Interagency Wetland Policy Act of 1989 [20 ILCS 830].

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**Section 1090.10 Definitions**

The following terms will be used throughout this Part:

"Act" - The Interagency Wetland Policy Act of 1989 [20 ILCS 830].

"Agricultural Activity" - Includes, but is not limited to, normal farming, ranching, horticulture, silviculture, grazing, haying, production of tree fruits or nuts, raising of livestock, production of row crops, and other farming activities including but not limited to tillage, seeding, irrigation, spraying, cultivating, and harvesting for the production of food and fiber products.

"Best Technology Currently Available" - The term includes, but is not limited to, devices, systems, methods, techniques, construction practices, siting requirements, vegetative selection, planting requirements, scheduling of activities and design of structures that are currently available.

"Buffer Area" - A portion of the supportive upland or related essential environmental area adjacent to a wetland that serves as an integral component of the wetland ecosystem and helps to protect the wetland's functional values.

"Compensation Ratios" - Relationship between the amount of compensation required as compared with the amount of adverse impact to a wetland.

"Converted Wetland" - The alteration of wetland hydrology, plants or soil such that the area no longer meets the definition of a wetland.

"Department" - The Department of Natural Resources.

"Destruction" - An adverse wetland impact that does not meet the criteria to be defined as a programmatic action and that causes either:

The removal or loss of 2 or more acres of wetland vegetation; or

The alteration of preexisting hydrology or soils of more than 0.5 acres of a wetland for more than 12 months. This includes, but is not limited to, the placement of dredge or fill material into a wetland, the drainage of a wetland, filling in of a wetland through sedimentation, etc.

"Essential Habitat" - As defined in 17 Ill. Adm. Code 1075 - Consultation Procedures for Assessing Impacts of Agency Actions on Endangered and Threatened Species and Natural Areas, the physical and biological environment that is required to maintain viable populations of a listed species in order to ensure the survival and recovery of that species.

"Fisheries Management Activities" - Activities that preserve, restore, maintain, control or enhance aquatic resources. This includes biological, chemical, mechanical, or physical management of aquatic life and their habitats.

"Forestry Activity" - Planting, cultivating, thinning, harvesting, or any other silvicultural activity undertaken to use forest resources or to improve their quality or productivity. This does not include the clearing of trees to convert forest to another land use.

"Hydrologic Unit" - The drainage area of a river or stream as identified in Exhibit A.

"Level of Impact" - Refers to amount of adverse impact a project will have on a wetland and is expressed in terms of minimal alteration, significant alteration or wetland destruction.

"Listed Species" - Those species declared threatened or endangered by the Illinois Endangered Species Protection Board.

"Minimal alteration" - An adverse wetland impact that:

Meets the criteria to be defined as a programmatic action; or

Causes the removal or loss of 0.5 acre or less of wetland vegetation but that does not alter the preexisting hydrology of the wetland for a period of more than 12 months.

"Normal Circumstances" - Determined on the basis of an area's characteristics and use, at present and in the recent past. If an area is abandoned and over time regains wetland characteristics such that it meets the definition of wetland, then jurisdiction has been restored.

"Off the Site" - A wetland compensation area located within the same Hydrologic Unit boundary (as identified in Exhibit A), but more than one mile, from the site of the proposed project for which the wetland compensation is required.

"On the Site" - When a wetland compensation area is located within the same Hydrologic Unit boundary (as identified in Exhibit A) and within one mile of the site of the proposed project for which the wetland compensation is required.

"Out of the Drainage Basin" - When a wetland compensation area is located outside the Hydrologic Unit boundary (as identified in Exhibit A) which includes the site of the proposed project for which the wetland compensation is required.

"Performance Standards" - Predetermined goals for achieving and measuring the success of a wetland compensation project.

"Programmatic Actions" - Actions defined in an agency Action Plan that will result in the establishment of coordination procedures between the agency and Department that will reduce the amount of time, correspondence and documentation required to fulfill an agency's obligations under this Part.

"Progressive Levels of Compensation" - Refers to a system which requires increasing levels of compensation based upon the level of adverse impact to an affected wetland and the location of a compensation wetland in relationship to the adversely impacted wetland.

"Significant Alteration" - An adverse wetland impact that does not meet the criteria to be defined as a programmatic action and that causes either:

The removal or loss of more than 0.5 acre but less than 2 acres of wetland vegetation but that does not alter the preexisting hydrology of the wetland for a period of more than 12 months; or

The alteration of preexisting hydrology or soils of 0.5 acre or less of a wetland for more than 12 months. This includes, but is not limited to the placement of dredge or fill material into a wetland, the drainage of a wetland, filling in of a wetland through sedimentation, etc.

"State Jurisdictional Wetland" - Land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. Areas that are restored or created as the result of mitigation or planned construction projects and that function as a wetland are included within this definition even when all 3 wetland parameters are not present.

"Value" - Unit of measure (i.e., acres, wetland functions, or dollars) that is multiplied by the appropriate wetland compensation ratio to determine the amount of wetland compensation that is required.

"Wetland Compensation" - The required planning and implementation process that results in the replacement of wetland function and area to offset an adverse wetland impact; or providing funding for wetland research, acquisition, etc.

"Wetland Compensation Account" - A system of accounting for wetland loss and compensation; can include one or more wetland compensation account sites.

"Wetland Creation" - The establishment of a wetland where a wetland does not currently exist.

"Wetland Enhancement" - Wetland management or other activity that increases one or more natural or artificial wetland functions while minimizing adverse impacts to other wetland functions.

"Wetland Management Practices" - Activities that maintain, control and enhance wetland wildlife habitat. This includes the chemical and/or mechanical control of undesirable vegetation.

### **Section 1090.20 Actions Requiring Review**

Any construction, land management or other activity performed by, or for which financial assistance is administered or provided by, a State agency that will result in an adverse impact to a wetland shall be subject to compliance with this Part. This includes but is not limited to the following:

- a) The alteration, removal, excavation, or dredging of soil, sand, gravel, minerals,

- organic matter, vegetation, or naturally occurring materials of any kind from a wetland;
- b) The discharge or deposit of fill material or dredged material into a wetland;
  - c) The alteration of existing drainage characteristics, sedimentation patterns, or flood retention characteristics of a wetland;
  - d) The disturbance of the water level or water table of a wetland;
  - e) The destruction or removal of plant life that would alter the character of a wetland, except for activities undertaken in accordance with the Illinois Noxious Weed Act;
  - f) The transfer of State owned wetlands to any entity other than another State agency; and
  - g) Other actions that cause or may cause adverse wetland impacts.

### **Section 1090.30 Actions Exempted**

Any construction, land management, or other activity funded or performed by a State agency that will not result in an adverse impact to a wetland and the following actions are exempt from this Part:

- a) Established and continuous agricultural and forestry production activities, including the distribution of water for agricultural activity as defined. Maintenance and operation of existing residences and facilities; upland soil and water conservation practices, causeways, bridges, or water control structures; provided that these activities do not adversely impact wetlands on which agricultural and forestry activities were not conducted prior to the effective date of this Part. Activities on areas lying fallow as part of a conventional rotational cycle or as the result of participation in a State or federal farm program are part of an established and continuous operation. Activities that bring an area into farming or ranching use are not part of an established and continuous operation. An operation ceases to be established and continuous when the area in which the agricultural or forestry activity was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation;
- b) Activities involving the repair, in-kind replacement, maintenance, or emergency reconstruction of recently damaged portions of currently serviceable structures including dikes, dams, levees, groins, riprap, breakwaters, bridge abutments, piers, appurtenances or approaches, culverts, storm sewers, field tiles, retaining walls and appurtenant structures, water control structures, and transportation structures

provided that such activities do not adversely impact or cause the conversion of a wetland. Maintenance does not include any modification that changes the character, scope, or size of the original fill design;

- c) Activities undertaken for the maintenance of existing ponds, stormwater detention basins and channels, drainage ditches or navigation channels;
- d) Wetland management practices on lands that are used primarily for the management of waterfowl, other migratory water birds or furbearers if such practices took place on these lands prior to the effective date of this Part.
  - 1) This includes vegetation management which may include the use of fire, chemical and/or mechanical (hydro-axe, bulldozer, rone disk, or similar equipment) removal of invading woody and/or herbaceous vegetation to maintain a preferred successional stage. Use of chemicals will be by a certified applicator and chemicals will be registered for appropriate use.
  - 2) Clearing or removal of woody vegetation will be limited to 4-inch dbh or smaller material for the purpose of establishing and/or maintaining the successional stage of a wetland as a herbaceous wetland vegetated by native moist soil plants and/or selected wildlife food plants.
- e) The following actions which take place within existing maintained rights-of-way including the installation and maintenance of signs, lighting and fences and the mowing of vegetation. Provided such actions do not jeopardize the existence of a threatened or endangered species, Illinois Natural Inventory Site or the essential habitat of a threatened or endangered species;
- f) Routine resurfacing, rehabilitative maintenance or application of oil and gravel to existing roads and highways that does not increase the number of traffic lanes, provided that such activities do not adversely impact a wetland;
- g) Repair and maintenance of existing buildings, facilities, lawns, and ornamental plantings;
- h) Issuance of permits and licenses;
- i) A change in land use from agriculture to wetland habitat, consistent with this Part;
- j) Fisheries management activities in lakes, ponds, reservoirs, rivers, and streams that are for the management and enhancement of the aquatic resource where such

practices took place prior to the effective date of this Part;

- k) Construction projects which were let for bidding prior to the effective date of this Part;
- l) Application of media (including deicing) on the surface of existing roads for purposes of public safety; and
- m) Non-surface disturbing surveys and investigations for construction, planning, maintenance or location of environmental resources.

#### **Section 1090.40 Agency Action Plans and Memorandums of Agreement**

- a) State agencies represented on the Interagency Wetlands Committee shall comply through the development and implementation of their Agency Action Plan (AAPs).
- b) State agencies who are not members of the Interagency Wetlands Committee may comply with the Act by:
  - 1) Development of a Memorandum of Agreement with the Department that is consistent with the minimum provisions required for Agency Action Plans; or
  - 2) Development of an Agency Action Plan.
- c) The State agency or unit of State government that funds, administers pass-through funding, provides or supports any construction, land management, land acquisition, land transfer or other activity that will result in an adverse impact to a wetland shall be responsible to ensure that the unit receiving the assistance complies with the provisions of this Part. The State agency or unit of State government providing assistance may require the agency or applicant receiving assistance to furnish all information and perform all compliance tasks as defined in this Part.
- d) Agency Action Plans and Memorandums of Agreement shall be valid for a period of 4 years. During that period, the agency shall submit a biennial report to the Department on or before June 30 describing actions taken to implement the AAP or Memorandum of Agreement. Renewal of the Agency Action Plan shall be initiated by a letter from the Department to the agency. The agency may request that an Agency Action Plan be renewed with no modifications or with modifications.
  - 1) If no modifications are requested or required, the Agency Action Plan or

Memorandum of Agreement shall be automatically renewed for 4 years by the Department, provided that biennial reports are timely and complete and that the Agency has not had a change in legislative authority that would alter the terms of the AAP.

- 2) If modifications are requested or required the agency and Department shall initiate discussions to modify the Agency Action Plan or Memorandum of Agreement and it shall follow the same review and approval process as provided in the Act.
- e) All Agency Action Plans shall include provisions indicating that the agency shall use or require the use of technical procedures adopted in accordance with Section 1090.80 of this Part.

#### **Section 1090.50 Wetland Review Process**

Actions that require coordination under this Part shall not be commenced until completion of the wetland review process and a wetland compensation plan has been approved for any unavoidable adverse wetlands impacts. Coordination with the Department shall be accomplished through the wetland review process as defined in this Section or as provided in Agency Action Plans or Memorandums of Agreement (MOA) approved in accordance with Section 1090.40 of this Part. The wetland review process shall consist of the following:

- a) Wetland Impact Determination
  - 1) When an action covered by this Part is proposed, the agency initiating or supporting the action shall cause to have completed and submitted a Wetland Action Report to the Department. This Report shall be submitted as early in the planning process as practicable. The purpose of this report is to identify the specific location of a proposed project in order to determine if a wetland is likely to be adversely impacted by the proposed action. The Wetland Action Report shall include but not be limited to the following:
    - A) Name and address of the agency proposing the action;
    - B) Sufficient detail (field reports, surveys, site inventories, maps and/or photographs) to determine the presence or absence of a State jurisdictional wetland;
    - C) The precise location of the proposed action sufficient to show the relationship of the State jurisdictional wetland to the proposed action;

- D) An accurate description of the proposed action in sufficient detail to allow a thorough review of the potential impact to a State jurisdictional wetland. This may include a site plan, soil erosion control plan, an assessment of the benefits to the wetland, or similar information. Sufficient detail is not intended to include final design level drawings or calculations;
  - E) Anticipated starting and ending dates of the proposed action (e.g., land clearing, project construction, etc.); and
  - F) Discussion of alternative actions considered and supporting justification of the selected alternative if that alternative will or is likely to have an adverse wetland impact.
- 2) Unless otherwise stated in the AAP or MOA, the Department shall, within 30 days after the receipt of a wetland action report inform the applicant in writing of any deficiencies in the report or of further information the Department needs in order to evaluate the report. In the event no such request is made by the Department, the report shall be deemed filed on the expiration of the thirtieth day. The Department shall notify the agency in writing of the date the report is deemed filed. Unless otherwise stated in the AAP or MOA, from the date the report is deemed filed, the Department shall have 60 days to complete its review. The 60 day review period may be extended by written agreement between the applicant and Department. Unless otherwise stated in the AAP or MOA, the Department shall provide one of 3 responses to the agency or applicant proposing the action within 60 days after receipt of a wetland action report which is deemed filed:
- A) If no adverse impacts to a State jurisdictional wetland will or are likely to occur, a letter shall be sent indicating that further coordination with the Department is not necessary and that the proposed action may be carried out as planned.
  - B) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action do not exist, a letter shall be sent approving the proposed action with restrictions or limitations as the Department concludes are necessary in order to meet the purpose of the Act.
  - C) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action exist, a letter shall be sent indicating that the proposed action shall not be

carried out as planned.

D) The agency or applicant may request a reevaluation of the Department's response to a Wetland Action Report. The Department shall have 30 days to complete a reevaluation. The 30 day period can be extended by a written agreement between the agency or applicant and Department.

3) A wetland impact determination is valid for a period of 3 years following the issuance of a written notice to the agency or applicant submitting the request. The Department shall grant an extension upon demonstration by the agency or applicant that the project is being pursued in good faith and that conditions of the site have remained substantially unchanged.

b) Emergencies

Two types of emergency conditions that require special treatment:

1) Where emergency circumstances pose an immediate threat to human life, or severe loss of property is imminent from situations involving natural or man-made disasters, casualties, or national defense or security emergencies, and the action must be taken immediately, the agency can proceed without notifying the Department prior to taking action. A wetland action report shall be filed and a wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 days. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.

2) Where emergency circumstances pose a threat to human life or severe loss of property and the action must commence within 30 days, the agency shall contact the Department prior to commencing the action and explain the nature of the problem. The wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 days. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.

c) Wetland Compensation Plans

1) If the wetland impact determination establishes that the proposed action is likely to have an adverse impact on a State jurisdictional wetland, the agency or applicant is responsible for the development and implementation of a wetland compensation plan. A wetland compensation plan shall be submitted

either:

- A) Along with the request for a wetland impact determination; or
  - B) After the Department submits its formal written response to the wetland impact determination.
- 2) If the wetland compensation plan is submitted as part of the wetland impact determination it shall be used in the evaluation of that material. However, formal review and response to the wetland compensation plan shall not occur until after the Department and agency or applicant have resolved all issues related to the wetland impact determination.
- 3) The wetland compensation plan shall include but not be limited to the following:
- A) Name and address of the agency or applicant responsible for the development and implementation of the wetland compensation plan;
  - B) Description of the proposed replacement project including a clear statement of goals;
  - C) Identification of the wetland type which will be adversely impacted and the wetland type that is to be established;
  - D) A description of the wetland that will be adversely impacted and an evaluation of the current land use, biological, hydrological, and soil characteristics of the site where the replacement wetland is to be established;
  - E) The precise location of the wetland that is to be established including a map, legal description, and distance from the wetland that will be adversely impacted;
  - F) Site plan that includes the plant materials and methods to establish those plant materials, proposed contours of the wetland and surrounding buffer to be established, source(s) of water, anticipated hydro-period(s) of the proposed wetland and any water control structures, the watershed draining into the proposed wetland, and relationship of the site to surrounding land uses;
  - G) Operation, management and maintenance plan for the site including

procedures to restrict further adverse impacts to the site, such as the use of buffer areas, restricting future construction within the wetland compensation area, etc.;

- H) The monitoring plan to evaluate the success and/or failure of the wetland establishment effort, including the use of measures to correct identified deficiencies or problems;
- I) Anticipated starting and ending dates of the wetland compensation plan.

If the applicant is unable to develop a wetland compensation plan, a request for consideration of other compensation alternatives may be made. The request for consideration of other compensation alternatives must be a written proposal detailing why a form of wetland compensation other than the establishment of a replacement wetland is being requested and specific details describing the proposed action.

- 4) The Department shall review the wetland compensation plan and determine if the plan is likely to result in the successful establishment of a replacement wetland and meets the overall goals of the Act. Unless otherwise stated in the AAP, the Department will provide one of 2 responses to the agency or applicant proposing the action within 45 days after receipt of the wetland compensation plan:
  - A) That the plan meets the overall goal of the Act, is likely to result in the successful establishment of a replacement wetland and provides the proper wetland compensation in accordance with this Part. A letter will be sent indicating that the agency or applicant may proceed with implementation of the plan.
  - B) That the plan does not meet the overall goal of the Act and/or will not likely result in the successful establishment of a replacement wetland. The Department shall notify the applicant in writing that the plan fails to meet the intent of the Act. The Department may include recommendations that, if implemented, will bring the plan into compliance with the Act. It shall be the agency's or applicant's responsibility to revise the plan and submit a plan that complies with the Act and this Part. The Department shall not unreasonably withhold approval of an applicant's wetland compensation plan.
- 5) Department approval of a wetland compensation plan is valid for a period of

3 years following the issuance of written Department approval to proceed. The Department shall grant an extension without modification to the plan upon demonstration by the agency or applicant that conditions at the site have remained substantially unchanged. A wetland compensation plan is not complete until after all elements of the plan have been successfully implemented by the agency or applicant and approved by the Department.

- 6) The agency or applicant shall submit status reports to the Department to demonstrate progress towards implementation of the wetland compensation plan. These reports shall include:
  - A) Post construction site evaluation report. This report shall be submitted within 90 days after the initial construction, planting and all associated work on the site plan have been completed;
  - B) Status reports. Up to 4 annual reports on the status of the replacement wetlands and associated buffer as provided for in the wetland compensation plan shall be provided to the Department;
  - C) Final report. A final report on the status of the replacement wetland and associated buffer. The final report is due 5 years after implementation of the wetland compensation plan; and
  - D) Transfer report. If the replacement wetland is to be transferred to another entity, a transfer report shall be submitted to the Department for approval. This report shall provide all details associated with the transfer.
- 7) Unless the Department otherwise allows, compensation shall occur either prior to or concurrently with the activity for which a wetland impact determination is sought. Compensation for adverse impacts to a wetland, its functions, or associated buffer area shall be accomplished using best technology currently available, performance standards and effective monitoring. The Department shall establish guidance for locating and developing wetland compensation plans and standards to ensure that a wetland compensation project is completed as planned to measure the success of compensation projects and correct compensation projects that fail. Use of uplands for wetland compensation sites are generally less suitable than lower lying lands and their use is discouraged. Every effort should be made to avoid the use of upland sites classified as "Prime farmland" by the USDA Natural Resources Conservation Service.

- 8) The compensation rate for adverse wetland impacts has been developed based upon wetland quality, function, type, degree of adverse impact, and location of the compensation site. Compensation ratios have been made progressively higher to encourage avoidance and minimization of adverse impacts to wetlands. The following table of wetland compensation ratios shall be used to determine the final value of compensation required for an action that causes an adverse wetland impact.

Degree of Adverse Impact	Location of the Replacement Wetland		
	On-Site	Off-Site	Out-of-Basin
Min.*	1.0:1****	1.5:1	2.0:1
Alt.	1.5:1*****		
Sig.**	1.5:1	2.0:1	3.0:1
Alt.			
Dest.***	2.5:1	4.0:1	5.5:1

The following explanations are provided for the abbreviations used in the above table:

\* Min. Alt. equals minimal alteration;

\*\* Sig. Alt. equals significant alteration; and

\*\*\* Dest. equals destruction.

\*\*\*\* The 1.0:1 ratio applies to all other types of wetland vegetation, substrate, or wetland type except those wetlands that have woody vegetation.

\*\*\*\*\*This ratio applies if the vegetation of the adversely impacted wetland is woody.

The ratios in the above table apply, unless the adversely impacted wetland has one or more of the following situations present: This includes:

- A) The presence of a State or federally listed endangered and threatened

species. (Listed plants or mussels shall be deemed "present" if individuals or populations occur within the area that is to be adversely impacted by a proposed action. For mobile species, "presence" shall be based on the existence of confirmed nesting or breeding sites in the area to be adversely impacted by the proposed action).

- B) The presence of essential habitat of a State or federally listed endangered and threatened species.
- C) The presence of an Illinois Natural Area Inventory Site (INAI). The INAI is maintained and updated by the Department following the criteria and methodology described by Jack White, 1978, in the Illinois Natural Area Inventory - Technical Report, University of Illinois Department of Landscape Architecture, p 426.
- D) A wetland that is comprised of a plant community that receives a floristic quality native index score of 20 or more and/or a native mean coefficient of conservatism of 4.0 or greater using the procedure described in Plants of the Chicago Region (Swink and Wilhelm 94).
- E) If any of the situations described in subsection 1090.50(c)(8)(A) through (D) of this Section occur, the compensation ratio used to determine the amount of wetland compensation required is always 5.5:1.
- F) Compensation ratios refer to replacement area, quantified wetland functions, or dollar value when compared to the wetland area that is adversely impacted. The procedure for computing wetland compensation requirements shall be to multiply the appropriate wetland compensation ratio by the unit of compensation (replacement area, function and/or monetary contribution). Replacement area refers to the amount of wetland compensation required and is computed by multiplying the wetland area that is adversely impacted by the appropriate compensation ratio. Wetland function refers to one or more of the physical processes identified in 20 ILCS 830/1-2. Use of this alternative is dependent upon adoption of a scientifically valid procedure as provided in Section 1090.80 of this Part. Functional units shall be computed separately for each adversely impacted wetland type. These units shall be multiplied by the appropriate wetland compensation ratio. Compensation requirements for each wetland type shall then be aggregated to determine the total amount of wetland compensation required. If this procedure is used,

in no instance shall the replacement amount of a wetland be less than the amount of compensation computed using replacement area. Determination of dollar value shall be based upon the fair market value of the adversely impacted wetland, normal and customary cost for the establishment of a replacement wetland (including all planning, engineering, construction, planting and monitoring cost), and operation and maintenance cost of the area for a minimum of 10 years. Dollar value shall be established for an acre of replacement wetland. This dollar value shall be multiplied by the number of wetland acres adversely impacted and the appropriate compensation ratio to determine the total monetary compensation required.

- G) The agency or applicant shall request the approval of the Department in the method of compensation to be used. The Department shall not unreasonably withhold its approval. The first priority method of wetland compensation shall be to use replacement area. The second priority methods of wetland compensation shall be to use wetland function and dollar value. Use of the wetland function method is dependant upon the development and adoption of scientifically valid procedures for the identification and quantification of wetland functions.
  - H) An agency or applicant may request approval to use existing public lands for wetland compensation projects. The Department shall have the final approval on the use of existing public lands for this purpose.
- 9) If an agency or applicant is not able to develop a sound wetland compensation plan that meets the objectives of the Act or if unique opportunities exist to further the goals of the Act through another means, an agency or applicant may make a formal request to the Department to not require the establishment of the same type of wetland or a replacement wetland as a component of a wetland compensation plan. The Department shall consider such request and may approve:
- A) The acquisition of high quality wetlands and associated buffer;
  - B) The funding of needed relevant research; or
  - C) Development of a wetland compensation plan that includes replacement of the same and different wetland types as the wetland that was adversely impacted. If either the alternative in subsections

(9)(A) or (B) is approved, the Department shall determine the dollar value that must be provided to meet the compensation requirement.

- d) The Department may revoke its approval of a wetland determination or a wetland compensation plan for cause, including violation of conditions of approval, obtaining approval by misrepresentation or failing to disclose a relevant or material fact. The Department shall notify the agency or applicant in writing and provide an opportunity for response.
- e) An agency may request development of a category of actions called Programmatic Actions for inclusion in an Agency Action Plan. Actions must meet the following criteria in order to be placed in the category of Programmatic Actions:
  - 1) They must be repetitive actions for the repair, maintenance, or improvement of existing structures or rights-of-way; and
  - 2) Have no practicable alternatives that would avoid an adverse wetland impact. Actions included in this category may involve the acquisition of additional land to accommodate the work, provided that it is contiguous to the property on which an existing structure is located and it meets the criteria prescribed in subsections (e)(1) and (2) of this Section. Adverse wetland impacts resulting from projects carried out under this subsection shall require compensation according the wetland compensation matrix defined in subsection (c)(8) of this Section.

#### **Section 1090.60 Analysis of Alternatives**

- a) The Department shall not approve a wetland impact determination unless the Department finds that the agency or applicant has demonstrated that the activity:
  - 1) Is water dependent and has no other practicable alternative; or is not water dependent and that alternative designs and alternative sites are not available;
  - 2) Minimizes alteration or impairment of the wetland and its associated buffer area;
  - 3) Is in compliance with the Illinois Endangered Species Act and the Illinois Natural Areas Preservation Act; and
- b) In considering whether a practicable alternative to the proposed activity exists, the Department shall consider whether:

- 1) A modification in the size, scope, configuration, or density of the project for which the wetland impact determination is sought and all alternative designs that would result in a less adverse impact on the wetland have been considered consistent with applicable established minimum standards for safe design and operation of the project;
  - 2) The basic purpose of the project would still be accomplished if the project is modified, and whether the basic purpose has been so narrowly defined as to disqualify all but a single site; and
  - 3) The agency or applicant has made reasonable attempts to remove or accommodate constraints, such as inadequate zoning, infrastructure, or parcel size.
- c) For all project actions, it is presumed that a practicable alternative that does not adversely impact a wetland exists. It is the responsibility of the agency or applicant to demonstrate that practicable alternatives do not exist for projects that will cause an adverse wetland impact.

#### **Section 1090.70 Wetland Compensation Accounts**

- a) The establishment of a wetland compensation account, the determination of a project's eligibility for use of an account, and the selection of wetland compensation account sites shall be approved by the Department in compliance with this Part. The consolidation of multiple small compensatory mitigation projects for adverse impacts to degraded wetlands allows for economies of scale in planning, implementation, and maintenance. Wetland compensation accounts are a form of compensatory mitigation that results in the establishment of large-scale wetland complexes that will be professionally managed and maintained in perpetuity for the benefit of the general public.
- b) Management of a wetland compensation account shall include both operation and maintenance of individual wetland sites and a system of accounting to establish account credits and debits. Credits and debits shall be the currency of the account and shall be measured in either replacement area, quantified wetland functions or dollar value by wetland type. The unit of measure shall be standard for all wetland compensation accounts.
  - 1) The Department shall make a formal determination of all credits and debits to the wetland compensation account.
  - 2) Perpetual maintenance of a replacement wetland is the responsibility of the agency or applicant implementing a wetland compensation plan. This

responsibility shall be transferred to the unit responsible for managing the wetland compensation site(s). The minimum dollar value of a credit or debit shall be based upon the factors listed in Section 1090.50(c)(8) of this Part.

- c) The Department shall make a formal determination of compensation account credits that have been generated and are available for use at each wetland compensation account site. This formal determination is known as credit certification. Credit certification shall be based upon units within a compensation account site meeting defined performance standards. Account credits shall be placed into one of the 3 following categories:
- 1) Certified credit - A credit that meets all performance standards;
  - 2) Conditionally certified credit - A credit that shows reasonable progress towards becoming a certified credit; or
  - 3) Uncertified credit - Credit that is anticipated to become a certified credit as part of a planned wetland compensation account site but which does not meet the performance standards for either a certified or conditionally certified credit. Uncertified credits are used to anticipate the amount and availability of future certified credits.
- d) Wetland compensation accounts are a means of establishing wetlands and generating compensation account credits in advance of adverse wetland impacts from a specific project. An agency or applicant must request approval from the Department in order to use uncertified credits at an individual wetland compensation site. The Department shall consider this request and shall only approve the use of up to 30% of the total anticipated certified credits of an individual wetland compensation site. Use of uncertified credits shall be limited to circumstances where the agency has no practicable alternative for developing an individual wetland compensation site and in which it would serve the best interest of the wetland resource.
- e) Preservation of wetlands shall be considered for wetland compensation account credit only in exceptional circumstances such as an existing wetland of extremely high functional value, where incorporation of the wetland into the compensation account further enhances or protect its natural resource value, and where the existing wetland comprises less than 50% of the wetland compensation account site.
- f) Compensation account sites are an aggregation of multiple wetland compensation projects and are generally larger in size than individual wetland compensation projects. Therefore these areas shall be held to a higher performance standard than individual wetland compensation projects.

- g) An established wetland compensation account site must be dedicated to maintaining the designated wetland functions and values to the exclusion of other conflicting uses.
- h) In cooperation with the Interagency Wetland Committee, the Department shall develop guidelines and policies for the establishment, implementation, and management of wetland compensation accounts that are compatible with federal policies on wetland mitigation banking.
- i) In cooperation with the Interagency Wetland Committee, the Department shall develop a statewide plan for the establishment of a wetland compensation accounting (mitigation banking) system. The development of all compensation accounting sites shall be compatible with the goals of this plan.

#### **Section 1090.80 Technical Procedures**

The Interagency Wetlands Committee may request of the Department, or the Department may initiate actions to develop, standardized technical procedures for the implementation of this Part. Both the Department and the Committee will receive and consider public comment on proposed technical procedures, and the Department will attempt to notify associations whose members will be expected to utilize any new technical procedures. Technical procedures shall be recommended by the Department and receive concurrence by the Interagency Wetlands Committee. Technical procedures adopted for implementation of the Act may include but are not limited to the following:

- a) Jurisdictional wetland delineation procedures;
- b) Restoration and creation procedures;
- c) Performance standards for certifying and conditionally certifying account credits; and
- d) Process to evaluate the positive and negative impacts that may result from a project action.

#### **Section 1090.90 Transfer and Management of Wetland Compensation Areas**

- a) Wetland Compensation Areas

The transfer of wetland compensation areas, associated buffers and the responsibility for operation and maintenance is subject to approval by the Department. Prior to the transfer of responsibilities, the agency or applicant must submit a written request to the Department. The Department shall approve all requests for the transfer of

wetland compensation areas unless deficiencies are found in one or more of the conditions outlined below:

- 1) That the entity has the legal authority to receive, hold, and manage the site;
- 2) That the entity has the ability to provide competent professional management of the site; and
- 3) That the entity has executed a legally binding agreement that will fulfill all obligations of the agency or applicant related to the approved wetland compensation plan and provisions of this Part.

b) Transfer to the Department

An agency may request that the Department accept fee simple or easement transfer of a wetland compensation area and an associated buffer area along with the responsibility of managing, operating and maintaining a site. Acceptance of these sites will be at the discretion of the Department. Criteria which the Department may use to decide on the acceptance of a site shall include but is not limited to the following:

- 1) Proximity to existing Department owned/managed lands;
- 2) Size;
- 3) Development of a site management agreement;
- 4) Compatibility with existing and long term site management objectives;
- 5) Amount of funding provided for the long term operation and maintenance; and
- 6) Compatibility with Department regional objectives.

c) Transfer of other wetlands to non-State agencies

- 1) If State-owned property intended for sale, exchange, or release contains wetlands that are not compensation wetlands, the agency proposing the sale, exchange, or release shall require that the buyer grant a conservation easement, which shall contain provisions to protect the wetlands and associated buffer areas from adverse impacts. Such easements shall be written and recorded pursuant to the Real Property Conservation Rights Act

[765 ILCS 120].

- 2) The agency proposing the sale, exchange, or release shall attempt to have a unit of local government be the grantee of the easement. If a unit of local government cannot be obtained, the agency shall attempt to have an acceptable not-for profit corporation or charitable trust be the grantee. The grantee shall agree to monitor and enforce the easement pursuant to the procedure in Section 4 of the Real Property Conservation Rights Act [765 ILCS 120/4]. If the grantee brings a successful action against a violating landowner, neither the agency that sold, exchanged, or released the property nor the Department shall share in the damages.
- 3) If a unit of local government or a not-for-profit entity cannot be obtained, the agency proposing the sale, exchange, or release shall reserve conservation rights in its deed or release document and transfer those rights to the Department. The Department shall not be prevented from entering into additional agreements with other agencies or entities in complying with its obligations as grantee.
- 4) Prior to the sale, exchange, or release of these lands, the agency must submit a written request to the Department. The Department shall approve all requests for the sale, exchange or release of these lands, unless deficiencies are found in ability of the grantee to monitor and enforce its obligations. The Department shall provide a decision on a request for the sale, exchange or release of lands within 60 days after receiving the request.

### **Section 1090.100 Appeals**

An agency or applicant may appeal a decision made by the Department, as the result of this Part, through the Administrative Appeals process pursuant to 17 Ill. Adm. Code 2530 - Department Formal Hearings Conducted for Rulemaking and Contested Cases.

**Section 1090.EXHIBIT A Drainage Basins for the Evaluation of Wetland Resources**

Drainage Basins for the Evolution of Wetland Resources  
(Approved by the Interagency Wetlands Committee Sept. 1994)

