

Chapter NR 191

LAKE PROTECTION GRANTS

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NR 191.01 Purpose. The purpose of this chapter is to establish procedures for implementing a lake protection and improvement grant program as provided for in s. 144.254, Stats. Grants made under this program will assist lake protection and restoration projects. They will assist lake management organizations by helping to provide protection and improvement of critical watershed areas and lake use activities which benefit the quality of water in lakes or the natural ecosystem of lakes.

History: Cr Register, September, 1993, No. 453, eff. 10-1-93; am., Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.02 Applicability. This chapter applies to all counties, cities, towns, villages, tribes, qualified lake associations as defined in s. 144.253 (1), Stats., town sanitary districts, other local governmental units as defined in s. 66.299 (1) (a), Stats., which are established for the purpose of lake management, public inland lake protection and rehabilitation districts and qualified nonprofit conservation organizations, as defined in s. 23.0955 (1), Stats., which are applying for financial assistance under s. 144.254, Stats., for a protection project for a public inland lake.

Note: Under s. 144.253 (1), Stats., a qualified lake association means a group incorporated under ch. 181, Stats., that meets all of the following conditions:

a. Specifies in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.

b. Demonstrates that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.

c. Allows to be a member any individual who for at least one month of the year resides on or within one mile of an inland lake for which the association was incorporated.

d. Allows to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.

e. Does not limit or deny the right of any member or any class of members to vote as provided under s. 181.16 (1), Stats.

f. Has been in existence for at least one year.

g. Has at least 25 members.

h. Requires payment of an annual membership fee of not less than \$10 nor more than \$25.

History: Cr Register, September, 1993, No. 453, eff. 10-1-93; am., Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.03 Definitions. The following definitions are applicable to terms used in this chapter:

(1) "Acquisition cost" means the fair market value of the property and reasonable costs related to the purchase of the property but limited to the costs of appraisals, legal fees associated with closing, land survey fees, relocation payments, land stabilization costs, title evidence costs, title insurance costs, closing insurance costs, recording fees and the cost of environmental inspections and audits. It does not include environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes, or any other cost not identified in this subsection.

(2) "Department" means the Wisconsin department of natural resources.

(3) "Grant contract" means a contract between the sponsor and the department detailing how lands acquired with grants under this chapter will be managed.

(4) "Grant period" means the time period stated in the grant agreement during which the sponsor is eligible to expend program grant funds for a project.

(5) "Lake restoration grants" for the purposes of this chapter and s. NR 1.91 (2) (d) mean funding in-lake improvement activities which increase the recreational or environmental values of a lake. They include funding for the following natural resource enhancement activities: aeration, aquatic plant management, alum or lime treatments, artificial circulation, biomanipulation, dilution/flushing, drawdown, fishery rehabilitation, habitat restoration, harvesting lake plants, hypolimnetic withdrawal, and sediment covers, oxidation, removal or tilling.

(6) "Local share" means that portion of the cost of the project other than state funds administered by the department.

(7) "Management unit" means a county, town, village, city, tribe, qualified lake association as defined in s. 144.253 (1), Stats., town sanitary district, and other local governmental units as defined in s. 66.299 (1) (a), Stats., that are established for the purpose of lake management, and public inland lake protection and rehabilitation district.

(8) "Nonprofit conservation organization" has the meaning in s. 23.0955 (1), Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

(9) "Parcel" means one contiguous block of land under one ownership.

(10) "Property" means fee title ownership or a conservation easement as defined in s. 700.40 (1) (a), Stats., in perpetuity in the land.

(11) "Protection project" or "project" means a specific activity or set of activities to provide for protection or improvement of the quality of water in public inland lakes or their natural ecosystems, their shorelands, or their watershed areas that have, or could have, an effect on the quality of lakes or natural ecosystems, or public or private use activities on the lakes that will benefit the quality of water in public inland lakes or the natural lake ecosystems.

(12) "Protection project priority list" means a ranking by the department of eligible lake protection projects in the order of their scheduled receipt of funds.

(13) "Public inland lake" or "lake" means a lake, reservoir or flowage, or millpond, or portion thereof, within the boundaries of the state that is presently accessible to the public by contiguous public lands or easements giving public access or which has been listed by the department as a public inland lake in Wisconsin Lakes, Publ-FM-800-91.

Note: Publ-FM-800-91 is available from the Department of Natural Resources, Bureau of Fish Management, P.O. Box 7921, Madison, WI 53707.

(14) "Sponsor" means the management unit or nonprofit organization that is applying for and receiving a grant under s. 144.254, Stats., and this chapter.

(15) "Wetlands" means any area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions as defined in s. 23.32 (1), Stats.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; renum. (5) to (13) to be (7) and (9) to (15), am. (11), (14), (15), cr. (5) and (8), Register, June, 1995, No. 474, eff. 7-1-95

NR 191.04 Eligible activities. Eligible activities are:

(1) Lake protection, which includes:

(a) The purchase of property which will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

(b) The restoration of a wetland or lands draining to a wetland which will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

(c) The development of local regulations or ordinances, which will prevent degradation of a lake's water quality or its natural ecosystem, including limitations on the uses made of a lake, and the educational activities necessary for the initiation of their implementation.

(2) Lake improvement activities that are recommended in a department-approved plan. Activities may include, but are not limited to:

(a) Diagnostic/feasibility studies, engineering or landscape design plans and the preparation of construction plans and specifications which are necessary to determine appropriate options and recommendations for lake protection or improvement.

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(b) In-lake restoration activities, as defined in s. NR 191.03 (5), and watershed management including pollution prevention and control practices.

(3) The department will only participate in a project that is specified in a department approved plan and which the department determines meets all of the following criteria.

1. The sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to in-lake improvement activities.

2. The proposed activities have a good likelihood of successfully meeting the project plan objectives.

3. All the necessary permits and approvals for the project have been obtained.

(4) Activities not eligible for funding under this section include: dam repair or operation or removal or the purchase of property on which a dam is located; dredging; design, installation, operation or maintenance of sanitary sewers; the routine chemical treatments or mechanical harvesting of aquatic plants and water safety patrols.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; cr. (intro.), r. and recr. (1) (intro.), am. (1) (c), renum. (2) to be (4) and am., cr. (2) and (3), Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.05 General provisions. (1) Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the sponsor in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was made. All financial records, including invoices and canceled checks, that support all project costs claimed by the sponsor shall be kept and made available for inspection for 3 years after final payment.

(2) The sponsor shall submit to the department a claim for payment on forms provided by the department at any time but not later than 3 months after the end of the grant period. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative to expenditures being made within the grant period, within the scope of work, and within estimated costs.

(3) The sponsor may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement prior to the end of the grant period.

(4) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek reimbursement of the state share or a portion of the state share previously distributed to the sponsor.

(5) All of the sponsor's records pertaining to the project are subject to audit. Claims made for payment may be adjusted by audit.

(6) Any requests for extensions of the grant period shall be made prior to the end of the grant period.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

NR 191.06 Applications. (1) Applications from management units for funding of projects shall be made on forms provided by the department and shall be submitted to the

district director for the district in which the project is located. The department shall review the application within 30 days of receipt of the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until such additional information requested by the department has been received.

Note: The DNR district headquarters are located at:

1. Southeast — 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. Southern — 3911 Fish Hatchery Road, Fitchburg 53711
3. Lake Michigan — 1125 N. Military Ave., Box 10448, Green Bay 54307
4. North Central — 107 Sutliff Ave., Box 818, Rhinelander 54501
5. Western — 1300 W. Clairemont Ave., Call Box 4001, Eau Claire 54702
6. Northwest — Hwy 70 West, Box 309, Spooner 54801

(2) The application shall consist of 2 parts.

(a) *Organizational - part I.* The organizational application part is required only for qualified lake associations, nonprofit conservation organizations or for management units organized under s. 66.299 (1) (a), Stats. It may be submitted at any time to obtain prior approval of the organization's eligibility to obtain a protection grant. This part shall include:

1. Information on the sponsor's purposes and ability to acquire and manage lands for protection and improvement of lakes. If the sponsor is a qualified lake association, the sponsor shall provide evidence that the organization meets the requirements as described in s. 144.253 (1), Stats.

2. A resolution officially adopted by the management unit requesting that the organization be recognized as an eligible sponsor and which authorizes a representative to apply for such grants on its behalf and which provides the name, address and telephone number of that representative.

3. Nonprofit conservation organizations shall follow the application instructions in s. NR 51.05 (4) (a).

(b) *Project - part II.* The project application part may be submitted at any time to obtain approval of the grant eligibility of the project. It shall contain the following information:

1. A description of the project including a description of how the results of the project will protect or improve lake water quality or a lake's natural ecosystem.

2. An estimate of the cost of the project including land acquisition, land stabilization, wetland restoration and construction, labor, supplies and materials, laboratory costs, sub-contracts and annual maintenance, education or management costs, and a general time frame for project implementation and completion.

3. Identification of any other groups or management units that will be involved and their roles.

4. A description of the availability of public access to, and public use of, the lake.

5. A description of how the proposed project complements other lake management efforts.

6. A description of the level of support for the project from other affected management units.

7. A description of how long-term management will be provided.

8. For projects involving acquisition of land a proposed land management plan for the property including a list of any owner occupants or tenants that occupy the land or buildings to be acquired.

9. For projects involving development of local regulations or ordinances or land acquisition, an acknowledgment of the long-term enforcement, ownership and management responsibilities associated with the project.

10. For lake improvement projects, a department approved project plan.

Note: Assistance in developing a scope of study is available through the department. A written request to the department from the sponsor may be made anytime before the application process described herein. The department will review the request and respond to the sponsor within 30 days as to its availability to assist.

(3) Project applications shall be received by the department by November 1 of each year to be eligible for grant awards made by March 1.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; am. (2) (a) (intro.), (b) 2., cr. (2) (a) 3., (b) 10., Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.07 Determination of protection project eligibility.

(1) Following receipt of a complete application, the department shall make a determination of project eligibility within 45 days. The department may accept the application and include the project in the project priority list, or deny the request for funding based on consideration of the factors identified in s. 144.254 (3) or (4), Stats.

(2) The total state share of the cost of a project may not exceed \$100,000.

(3) The department may only provide lake restoration grants for lakes which meet the minimum public boating access criteria to qualify for resource enhancement services under s. NR 1.91 (4).

(4) The department shall state the basis for the determination of ineligibility in writing to the affected management unit.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; renum. (3) to be (4), cr. (3), Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.08 Priorities. (1) A project priority list shall be prepared or updated by the department each year. Projects to be included in the project priority list will be those projects which have been determined to be eligible by the department. Any projects previously accepted but which were not funded because of lack of funds may be included if a request is made in writing by the sponsor prior to November 1 of each year.

(2) Priorities shall be set on a statewide basis.

(3) Lakes which have not previously received a lake protection grant award shall receive a higher priority.

(4) Lake protection activities shall receive first priority.

(5) Applications for lakes which meet the minimum boating access criteria of s. NR 1.91 (4) shall receive first priority.

(6) The department shall consider the following factors when developing a project priority list:

(a) The degree to which the project provides for the protection or improvement of water quality.

(b) The degree to which the project provides for protection or improvement of other aspects of the natural ecosystem such as fish, wildlife or natural beauty.

(c) The availability of public access to, and public use of, the lake.

(d) The degree to which the proposed project complements other lake and watershed management efforts.

(e) The level of support for the project from other affected management units.

(f) The level of financial support provided by the sponsor.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93; renum. (4) to be (6), cr. (4), (5), Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.09 Grant awards for wetland restoration and development of local regulations and ordinances. (1) The department shall issue grant awards by March 1 of each year for projects based upon the project priority list.

(2) The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application. Estimated costs may include:

(a) Labor costs required to carry out activities identified in the grant agreement provided they require additional staff or increased hours of existing staff. Work hours of additional staff may be used to offset the work hours spent by existing staff on the activities identified in the grant agreement. Costs of additional staff positions or increased staff hours shall be based on management unit rates for the position including salary, fringe benefits and other items determined to be appropriate by the department;

(b) Direct costs for construction activities, surveys, newsletters, brochures, mailings, professional services contracts and similar items;

(c) Other costs determined by the department to be necessary to carry out an adequate wetland restoration project or regulation or ordinance development project.

(3) The local share of the project cost may not be less than 50% of the eligible project costs.

(4) The department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(5) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

NR 191.10 Grant awards for acquisition of property. (1) The department shall issue grant awards by March 1 of each year for projects based upon the project priority list.

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(2) The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application.

(3) Grants shall be issued for 50% of the acquisition cost of the property. Where contributions of property are part of the local share as provided under s. NR 191.10 (6), the grant may not exceed the actual cash outlay from the sponsor.

(4) The local share of the project cost may not be less than 50% of the eligible project costs.

(5) Property transactions shall be subject to approval by the department and the following provisions:

(a) Property shall be acquired by the sponsor pursuant to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. ILHR 202.

Note: The following information is from ch. ILHR 202 which describes relocation assistance procedures to use when individuals presently reside on the property being purchased.

Under s. ILHR 202.01 (33), relocation assistance will apply to all project grants where the total of project grants and all other public financial assistance or direct government acquisition costs in a project are greater than \$5,000 for a project with total costs of less than \$50,000; or greater than 10% of total project costs that exceed \$50,000.

Under s. ILHR 202.01 (7), "an owner occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power" is not a displaced person and is not entitled to relocation assistance. Tenants who occupy a property are entitled to relocation assistance even if the owner is voluntarily selling the property.

Under s. ILHR 202.01 (14) (b) 4, a "tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project" but who can remain on the property subject to normal rental conditions and provisions may not be a displaced person who qualifies for relocation assistance so long as they are not required by the sponsor to move.

(b) Sponsors are required to obtain appraisals for all grants under this section.

(c) Appraisals of property required for grant eligibility under this chapter shall be subject to department review and approval.

(d) Appraisers shall be state licensed, certified "residential", or "general" appraisers and meet all applicable state laws and rules for appraisers.

(e) The department may require a second appraisal if the property presents a difficult appraisal problem or if the first appraisal is unacceptable under department established criteria.

(6) Sponsors and subsequent owners shall acquire and manage property acquired with a grant in accordance with all applicable state, local and federal laws, rules and regulations.

(7) Property acquired with a grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

(8) Any property that is subject to a reversionary right or has restrictions or covenants which would prevent the property from being managed for purposes consistent with this grant program is not eligible for a grant.

(9) Grants may not be made for any property owned by a management unit prior to August 15, 1991.

(10) Grants may not be made for property acquired prior to a grant application without prior written approval of the department unless the property was included in part II of an approved application.

(11) When the sponsor is purchasing property, the department may distribute the entire state share of the purchase cost to a non-interest bearing escrow account, subject to a department approved title insurance commitment for each property, to be released upon completion of an insured closing and conveyance of the property to the sponsor. If the closing has not occurred within 90 days from the time funds are distributed to the escrow account, the department may cause the funds in the escrow account to be returned to the department.

(12) The department may consider the value of contributions of property, as determined by appraisal made under this section, as part of the local share.

(13) No grant may be awarded prior to receipt of an environmental inspection report showing the property contains no undesirable environmental conditions or liabilities or potential liability or hazards that are unacceptable to the department.

(14) Any grant award which involves the purchase of property will be subject to a grant contract under s. NR 191.11.

(15) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract. If the grant is terminated, funds awarded to the sponsor shall be returned to the department or any interest in or title to the property shall be subject to s. NR 191.11 (2) (f).

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

NR 191.105 Grant awards for lake improvement projects.

(1) The department shall issue grant awards by March 1 of each year for projects based upon the project priority list.

(2) The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application. Estimated costs may include:

(a) Labor costs for activities identified in the grant agreement if the activities require additional staff or increased hours of existing staff. Labor costs of additional staff needed to offset the work hours spent by existing staff on the activities identified in the grant agreement. Costs of additional staff positions or increased staff hours shall be based on the sponsor's rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for construction activities, surveys, newsletters, brochures, mailings, professional services contracts and other items approved by the department.

(c) Other costs determined by the department to be necessary to carry out an adequate diagnostic/feasibility study or lake improvement project.

(3) Lake improvement projects shall require the preparation of a project plan based upon a recommended alternative in a department approved diagnostic/feasibility study subject to the following conditions:

(a) Diagnostic/feasibility studies shall follow specifications provided by the department to ensure that sufficient information exists for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent changes. Studies previously developed under ch. NR 190 lake management planning grants or for other purposes may qualify as feasibility studies with the written approval of the department.

(b) Upon the department's written approval of the feasibility study, the sponsor may select and adopt, subject to the provisions of s. NR 191.11 (5) (b) and (c), a proposed project plan based upon the recommended alternatives of the diagnostic/feasibility study.

(c) Following selection of the proposed lake improvement project plan by the sponsor, the sponsor shall submit the project plan to the department for approval.

(d) The department shall provisionally indicate if the proposed plan requires the preparation of an environmental impact report (EIR) by the applicant or an environmental assessment (EA) by the department, or both. If an EA is required, the sponsor's formal adoption of a proposed plan by resolution cannot take place until the EA has been completed and circulated; the period for public comment has ended; and the EA has been certified as being in compliance with the Wisconsin environmental policy act (WEPA) s. 1.11, Stats.

(e) When the department certifies that a lake improvement project plan complies with the provisions of WEPA, the sponsor may submit the lake improvement project plan to the department for its approval.

(f) The department may hold a public informational meeting on the project plan. The department will set a time and place for the public meeting in the project vicinity within 10 days after receipt of the proposed plan and convene the meeting within 90 days after notice of meeting. The meeting will be for the purpose of receiving testimony regarding:

1. The environmental assessment prepared by the department if required, and the project plan;
2. The issuance of required permits;
3. The potential for long-range environmental pollution if the project is implemented;
4. Views of the appropriate land conservation board;
5. Views of the appropriate regional planning commission;
6. The likelihood that sources of continuing lake degradation will be substantially eliminated.

(g) If necessary to an orderly presentation, the department may receive testimony on applications for permits independently of the other issues specified in par. (e).

(h) The department shall approve with modification or disapprove the project plan within 60 days of receipt or within 60 days after public meeting. The department shall state the reasons if a plan is disapproved and provide alternatives if modification is recommended. For approved

plans, the department will concurrently issue its decision on the applications for permits.

(i) Following department approval of a project plan, the sponsor may by resolution adopt the approved or modified project plan, and a copy of the plan and resolution shall be submitted to the department. The adopted project plan may then be implemented, subject to any conditions in the grant agreement where an offer of financial assistance has been made by the department and accepted by the sponsor.

(4) Only lake improvement project activities approved by the department shall be considered for lake protection grants.

(5) The local share of the project cost may not be less than 50% of the eligible project costs.

(6) The department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(7) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract.

History: Cr., Register, June, 1995, No. 474, eff. 7-1-95.

NR 191.11 Grant contracts (1) The department may require that the purchase of property be subject to an executed grant contract prior to disbursement of any state funds for the purchase of property. The sponsor shall provide the following information to the department for each parcel to be acquired:

(a) Topographic, zoning and local land use, and tax maps showing the property to be acquired.

(b) Legal description of the property including the owner's name and address, size of the property and a physical description of the property.

(c) Name, phone number and address of the sponsor's negotiator and legal counsel if different than the authorized representative.

(d) The sponsor's plans for long term management of the parcel.

(e) An estimate of the total acquisition costs.

(f) Current status of negotiations, offer or option to purchase, appraisal and title work.

(g) Copies of any proposed or executed option or offer to purchase.

(h) Relocation information if the property is used as a residence, farm or business. The name of any tenant occupying any residence and the plans of the sponsor and tenants about future occupancy.

(i) Plans for and assurances that any proposed development and management of the property will be completed.

(j) A statement that information provided in parts I and II of the application has not changed. An amended parts I and II application will be required if changes have occurred.

(k) Any other information the department determines is necessary for purposes of this grant program.

(2) Any grant contract shall contain but not be limited to provisions which:

(a) Provide for long term management of the property.

(b) Prohibit using the property as security for any debt unless the department previously approves the incurring of the debt.

(c) Prohibit closing the purchased property to the public except where the department has made a determination closure is necessary to protect wild animals, plants or other natural features or for property acquired through a conservation easement.

(d) Require that any subsequent sale or transfer of the property to a third party is subject to prior approval by the department and that any transfer remains subject to all requirements contained in the initial grant contract.

(e) Require that the instrument conveying the property to the recipient state the interest of the state under par. (f) and be recorded together with the grant contract in the office of the register of deeds of each county in which the property is located.

(f) Require that, should the recipient violate any essential provision of the grant or grant contract, interest in or title to the acquired property shall vest in the state, without necessity of reentry.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.

NR 191.12 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor, financial hardship and landowner demands. The department may not grant variances from statutory requirements, nor from appraisal and environmental inspection and audit requirements.

History: Cr. Register, September, 1993, No. 453, eff. 10-1-93.