

NOTE: This **2-2-26 Preliminary Draft Wetland Conservation Act Rule** is based on the 06/17/25 RD4356 draft created by the MN Office of the Revisor of Statutes. Changes to Revisor's RD4356 draft are shown in **color** (red strikeout/underline and yellow highlight). Red highlighted language that is both underlined and stricken indicates deletion of language previously proposed by BWSR or the Revisor's office. A detailed accounting of each change, along with the rationale for various changes, is contained in the "Line-by-Line Changes" document dated 2/2/26 that accompanies this preliminary draft rule.

1.1 **Board of Water and Soil Resources**

1.2 **Proposed Permanent Rules Relating to Wetland Conservation**

1.3 **8420.0100 PURPOSE.**

1.4 Subpart 1. **Purpose.** This chapter implements the regulatory provisions of the Wetland
1.5 Conservation Act of 1991, Laws 1991, chapter 354, as amended by ~~Laws 1993, chapter~~
1.6 ~~175; Laws 1994, chapter 627; Laws 1996, chapter 462; Laws 2000, chapter 382; Laws 2001,~~
1.7 ~~chapter 146; Laws 2002, chapter 220; Laws 2003, chapter 128; Laws 2004, chapters 221~~
1.8 ~~and 255; Laws 2007, chapters 57 and 131; and Laws 2008, chapter 368, and other relevant~~
1.9 ~~laws.~~ **This chapter shall must be interpreted to implement the The** purpose of the act, **which** is
1.10 to:

1.11 A. achieve no net loss in the quantity, quality, and biological diversity of
1.12 Minnesota's existing wetlands;

1.13 B. increase the quantity, quality, and biological diversity of Minnesota's wetlands
1.14 by restoring or enhancing diminished or drained wetlands;

1.15 C. avoid direct or indirect impacts from activities that destroy or diminish the
1.16 quantity, quality, and biological diversity of wetlands; and

1.17 D. replace wetland values where avoidance of activity is not feasible and prudent.

1.18 Subp. 2. **Method.** The regulatory provisions of the Wetland Conservation Act advance
1.19 the purpose in this part by requiring persons proposing to impact a wetland to first, attempt
1.20 to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted
1.21 area with another wetland of at least equal function and value. As specified in greater detail

1.22 in part 8420.0420, certain projects are exempt from the requirement for a replacement plan
1.23 under the Wetland Conservation Act.

1.24 Subp. 3. **Administration.** The Wetland Conservation Act is administered by local
1.25 government units with oversight provided by the Board of Water and Soil Resources.

2.1 Enforcement of the act is provided by Department of Natural Resources conservation officers
2.2 and other peace officers. The Wetland Conservation Act became effective on January 1,
2.3 1992, and this chapter and portions of Minnesota Statutes, chapters 103A, 103B, 103E,
2.4 103F, and 103G, govern its implementation. Persons seeking general information on wetlands
2.5 and the interpretation of this chapter may contact their local government unit or soil and
2.6 water conservation district.

2.7 **8420.0105 SCOPE.**

2.8 Subpart 1. **Scope; generally.** Wetlands must not be impacted unless replaced by
2.9 restoring or creating wetland areas of at least equal public value. This chapter regulates the
2.10 draining or filling of wetlands, wholly or partially, and excavation in **the** permanently and
2.11 semipermanently flooded **wetland** areas ~~of type 3, 4, or 5 wetlands,~~ and in all wetland ~~types~~
2.12 areas
if the excavation results in filling, draining, or conversion to nonwetland.

2.13 Subp. 2. **Applicability.**

2.14 A. This chapter does not prevent the use of the bed of wetlands for pasture or
2.15 cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed or
2.16 improved and the agricultural use does not impact the wetlands.

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

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

2.23 D. This chapter does not regulate impacts to incidental wetlands. "Incidental
2.24 wetlands" are wetland areas that the landowner can demonstrate, to the satisfaction of the
2.25 local government unit, were created in nonwetland areas solely by actions, the purpose of

3.1 which was not to create the wetland. Incidental wetlands include drainage ditches,
3.2 impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent
3.3 treatment, containment of waste material, stormwater retention or detention, drainage, soil
3.4 and water conservation practices, and water quality improvements and not as part of a
3.5 wetland replacement process that may, over time, take on wetland characteristics.

3.6 E. This chapter does not apply to the public waters and public waters wetlands as
3.7 defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a, which have been
3.8 inventoried by the commissioner according to Minnesota Statutes, section 103G.201, except
3.9 that:

3.10 (1) for projects affecting public waters wetlands, and for public transportation
3.11 projects affecting the wetland areas of public waters, when the commissioner waives the
3.12 requirement for a public waters work permit consistent with chapter 6115, the local
3.13 government unit must make replacement, banking, wetland boundary, wetland type, no-loss,
3.14 public road project notification, or exemption decisions; or

3.15 (2) for projects affecting both public waters and wetlands, the local
3.16 government unit may, by written agreement with the commissioner, waive the requirement
3.17 for a replacement plan, no-loss, or exemption decision if a public waters work permit is
3.18 required and the commissioner includes the provisions of this chapter in the public waters
3.19 work permit.

3.20 F. This chapter is in addition to other regulations and requirements, including
3.21 those of the United States Army Corps of Engineers, United States Department of
3.22 Agriculture, Minnesota state agencies, watershed districts, and local governments.

3.23 G. This chapter does not apply to peat mining as defined in Minnesota Statutes,
3.24 section 93.461, which is subject to the permit to mine and reclamation requirements of
3.25 Minnesota Statutes, sections 93.44 to 93.51, and the rules of the commissioner adopted
3.26 under those sections.

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

4.4 ~~I. In addition to the provisions of this chapter, governmental decisions on impacting~~
4.5 ~~wetlands are subject to Minnesota Statutes, chapters 116B and 116D, which provide that~~
4.6 ~~an action which is likely to have material adverse effects on natural resources must not be~~
4.7 ~~allowed if there is a feasible and prudent alternative consistent with the requirements of the~~
4.8 ~~public health, safety, and welfare and the state's paramount concern for the protection of its~~
4.9 ~~natural resources. Economic considerations alone do not justify adversely effective actions.~~

4.10 **8420.0111 DEFINITIONS.**

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

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

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

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

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

4.23 Subp. 6. **Agricultural land.** "Agricultural land" means land used for horticultural,
4.24 row, close grown, pasture, or hayland crops; growing nursery stocks; animal feedlots;
4.25 farmyards; or associated building sites and public and private drainage systems and field

5.1 roads located on any of these lands. Agricultural land must be used principally for the
5.2 cultivation or production of plants or farm animals and includes former agricultural land
5.3 that is presently enrolled in a conservation program under contract or easement.

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

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

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

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

5.14 Subp. 10a. **Bank service area.** "Bank service area" means a geographic area in which
5.15 replacement wetlands, including banking credits, can provide preferred replacement for
5.16 wetland impacts incurred in the same area according to part 8420.0522. Bank service areas
5.17 are established by the board according to part 8420.0702 8420.0510.

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

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

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

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

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

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

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

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

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

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

6.18 Subp. 19. **Degraded wetland.** "Degraded wetland" means a wetland that provides
6.19 minimal wetland function and value due to human activities such as drainage, diversion of
6.20 watershed, filling, excavating, pollutant runoff, and vegetative or adjacent upland
6.21 manipulation.

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

7.1 Subp. 21. **Ditch.** "Ditch" has the meaning given under Minnesota Statutes, section
7.2 103E.005, subdivision 8.

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

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

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

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

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

7.17 Subp. 26. **Fill.** "Fill" means any solid material added to or redeposited in a wetland
7.18 that would alter the wetland's cross-section or hydrological characteristics, obstruct flow
7.19 patterns, change the wetland boundary, or convert the wetland to a nonwetland. Fill does
7.20 not include posts and pilings for linear projects such as bridges, elevated walkways, or
7.21 powerline structures, or structures traditionally built on pilings such as docks and boathouses.
7.22 Fill includes posts and pilings that result in bringing the wetland into a nonaquatic use or
7.23 significantly altering the wetland's function and value, such as the construction of office
7.24 and industrial developments, parking structures, restaurants, stores, hotels, housing projects,
7.25 and similar structures. Fill does not include slash or woody vegetation, if the slash or woody

8.1 vegetation originated from vegetation growing in the wetland and does not impair the flow
8.2 or circulation of water or the reach of the wetland.

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

8.6 Subp. 28. **Greater than 80 percent area.** "Greater than 80 percent area" means a
8.7 county or watershed, or, for the purposes of wetland replacement, bank service area where
8.8 80 percent or more of the presettlement wetland acreage is intact and:

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

8.10 B. 50 percent or more of the current total land area is state or federal land.

8.11 Greater than 80 percent areas are provided in part 8420.0117.

8.12 Subp. 29. **Hayland.** "Hayland" means an area that was mechanically harvested or that
8.13 was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in
8.14 six of the last ten years.

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

8.18 ~~Subp. 30a. **Hydrogeomorphic class.** "Hydrogeomorphic class" means a category for~~
8.19 ~~assessing a wetland and characterizing the wetland functions based on its geomorphic~~
8.20 ~~position in the landscape and hydrologic characteristics, according to A Hydrogeomorphic~~
8.21 ~~Classification for Wetlands, incorporated by reference under part 8420.0112.~~

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

9.1 Subp. 32. **Impact.** "Impact" means a loss in the quantity, quality, or biological diversity
9.2 of a wetland caused by:

9.3 A. draining or filling of wetlands, wholly or partially, ~~or by;~~

9.4 B. excavation in ~~the~~ permanently and semipermanently flooded ~~wetland areas~~ **wetland areas** areas
9.5 of type 3,

9.6 4, or 5 wetlands, as defined in subpart 75, ~~and area of a wetland; and or~~

9.7 C. excavation in all any wetland types area if the excavation results in filling,
9.8 draining, or conversion to nonwetland.

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

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

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

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

9.20 Subp. 36. **Landowner.** "Landowner" means a person or entity having the rights
9.21 necessary to drain, excavate, or fill a wetland or to establish and maintain a replacement ~~or~~
9.22 ~~banked~~ wetland. Typically, the landowner is a fee title owner or a holder of an easement,
9.23 license, lease, or rental agreement providing the necessary rights. The right must not be
9.24 limited by a lien or other encumbrance that could override the obligations assumed with
9.25 the replacement or banking of a wetland.

10.1 Subp. 37. **Less than 50 percent area.** "Less than 50 percent area" means a county
10.2 ~~or, watershed, or, for the purposes of wetland replacement, bank service area~~ with less than
10.3 50 percent of the presettlement wetland acreage intact or any county ~~or, watershed, or bank~~
10.4 ~~service area~~ not defined as a greater than 80 percent area or 50 to 80 percent area, as provided
10.5 in part 8420.0117.

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

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

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

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

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

10.17 Subp. 39. **Local water plan.** "Local water plan" means a ~~watershed~~ board-approved
10.18 and locally adopted plan pursuant to Minnesota Statutes, ~~sections 103B.201 to 103B.255;~~
10.19 ~~a comprehensive local water management plan pursuant to Minnesota Statutes, sections~~
10.20 ~~103B.301 to 103B.355; or a watershed management plan pursuant to Minnesota Statutes,~~
10.21 ~~section 103D.401~~ chapter 103B or 103D.

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

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

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

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

11.8 Subp. 44. **Native vegetation.** "Native vegetation" means plant species that are
11.9 indigenous to Minnesota or that expand their range into Minnesota without being intentionally
11.10 or unintentionally introduced by human activity ~~and that are classified as native in the~~
11.11 ~~Minnesota Plant Database, incorporated by reference under part 8420.0112, item Q.~~

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

11.14 Subp. 46. **Nonwetland.** "Nonwetland" means ~~upland areas or previously converted~~
11.15 ~~areas that do not meet the criteria for classification as a jurisdictional wetland using the~~
11.16 ~~United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and~~
11.17 ~~deepwater habitats identified using Classification of Wetlands and Deepwater Habitats of~~
11.18 ~~the United States. Both documents are incorporated by reference under part 8420.0112,~~
11.19 ~~items B and C~~ other than those described in subpart 72.

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

11.21 Subp. 48. **Ordinance.** "Ordinance" means a body of regulations developed, approved,
11.22 and implemented by a county, city, or township as authorized by Minnesota Statutes, chapters
11.23 394, 462, and 366, respectively.

12.1 Subp. 49. **Pasture.** "Pasture" means an area that was grazed by domesticated livestock
 12.2 or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes
 12.3 in six of the last ten years.

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

Subp. 50a. Performance standards. "Performance standards" means observable or measurable physical, chemical, and/or biological attributes that are used to determine if a replacement wetland meets the replacement standards in part 8420.0522 and the objectives of the wetland replacement or banking plan.

12.6 Subp. 51. **Permanently and semipermanently flooded wetland area of a type 3, 4, or 5**

12.7 **wetland.** "Permanently and semipermanently flooded wetland area of a type 3, 4, or 5 wetland"

12.8 means the portion of a type 3, 4, or 5 wetland below the level where the water has been
 12.9 maintained for a sufficient period of time to leave evidence upon the landscape, commonly
 12.10 the point where the natural vegetation changes from predominantly aquatic to predominantly
 12.11 terrestrial covers the substrate throughout the year except in years of extreme drought or
 12.12 where surface water persists throughout the growing season in most years and, when absent,
 12.13 the water table is usually at or very near the land surface.

12.14 Subp. 52. **Plant community.** "Plant community" means a wetland plant community
 12.15 classified according to Wetland Plants and Plant Communities of Minnesota & Wisconsin
 12.16 Minnesota's Native Plant Community Classification, incorporated by reference under part
 12.17 8420.0112, item P.

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

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

12.23 ~~additional exemptions.~~

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

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

13.6 Subp. 57. **Public value of wetlands.** "Public value of wetlands" means the importance
13.7 and benefit to the public derived from the wetland functions listed in part 8420.0522, subpart
13.8 1.

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

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

Subp. 59a. Rare natural community. "Rare natural community" means a native plant
community in good or exceptional condition that is imperiled or vulnerable to extirpation in
the state due to a restricted range, few occurrences, steep declines in occurrences, or severe
threats.

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

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

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

13.21 Subp. 63. **Rule.** "Rule" means a body of regulations developed, approved, and
13.22 implemented by a watershed management organization as authorized under Minnesota

- 13.23 Statutes, chapter 103D, or administrative rules adopted by a state agency under Minnesota
- 13.24 Statutes, chapter 14.

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

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

14.5 (1) 1,000 feet from the ordinary high water level of a water basin that is a
14.6 public water identified in the shoreland management ordinance or the shoreland area approved
14.7 by the commissioner as provided in the shoreland management rules adopted under Minnesota
14.8 Statutes, section 103F.211, whichever is less; or

14.9 (2) 300 feet from the ordinary high water level of a watercourse identified in
14.10 the shoreland management ordinance or the shoreland area approved by the commissioner
14.11 as provided in the shoreland management rules adopted under Minnesota Statutes, section
14.12 103F.211, whichever is less.

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

14.16 (1) 1,000 feet from the ordinary high water level of a water basin that is a
14.17 public water that is at least ten acres in size within municipalities and at least 25 acres in
14.18 size in unincorporated areas; or

14.19 (2) 300 feet from the ordinary high water level of a watercourse identified
14.20 by the public waters inventory under Minnesota Statutes, section 103G.201.

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

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

15.1 Subp. 67. **State wetland banking system, wetland bank, or bank.** "State wetland
15.2 banking system," "wetland bank," or "bank" means a system of identifying wetlands restored
15.3 or created for replacement credit and providing for, facilitating, and tracking the exchange
15.4 of wetland banking credits for projects that require replacement plans or wetland mitigation
15.5 required by other local, state, or federal authorities.

15.6 Subp. 68. **Structure.** "Structure" means any object erected or placed in, under, or
15.7 over or anchored or attached to a wetland area.

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

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

15.14 Subp. 71. **Watershed management organization.** "Watershed management
15.15 organization" has the meaning given under Minnesota Statutes, section 103B.205, subdivision
15.16 13.

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

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

15.21 (1) have a predominance of hydric soils;

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

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

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

16.7 C. ~~Wetlands does~~ For purposes of **regulation under** this chapter, "wetlands," "a
16.8 wetland," "the
16.9 wetland," and "wetland area" do not include public waters wetlands and public waters unless
16.9 reclassified as wetlands by the commissioner under Minnesota Statutes, section 103G.201.

16.10 D. Notwithstanding items A and B, "wetlands," "a wetland," "the wetland," and
16.11 "wetland area" include deepwater aquatic habitats that are not public waters or public waters
16.12 wetlands. For purposes of this item, "deepwater aquatic habitats" has the meaning given in
16.13 United States Army Corps of Engineers Wetlands Delineation Manual, which is incorporated
16.14 by reference under part 8420.0112.

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

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

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

17.3 Subp. 75. **Wetland type or type.** "Wetland type" or "type" means a **wetland type**
17.4 **classified according to** Wetlands of the United States (1956 and 1971 editions), as
17.5 **summarized in this subpart category of wetland based on A Hydrogeomorphic Classification**
17.6 **for Wetlands.** Classification
17.7 of Wetlands and Deepwater Habitats of the United States is a separate, **parallel** wetland
17.8 typing system **that may be** used to characterize components of a wetland, **including**
17.9 **permanently and semi-permanently flooded wetland areas.** Both documents
17.10 are incorporated by reference under part 8420.0112, items A and B.

17.11 A. "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered
17.12 with water or is waterlogged during variable seasonal periods but usually is well drained
17.13 during much of the growing season. Type 1 wetlands are located in depressions and in
17.14 overflow bottomlands along watercourses. In type 1 wetlands, vegetation varies greatly
17.15 according to season and duration of flooding and includes bottomland hardwoods as well
17.16 as herbaceous growths.

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

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

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

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

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

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

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

19.1 **8420.0112 INCORPORATION BY REFERENCE.**

19.2 This chapter incorporates by reference the following documents and any subsequent
19.3 updates, addenda, supplements, replacements, or derivations related to them, as approved
19.4 unless specified otherwise by the board. The documents are not subject to frequent change
19.5 and are available online or through the Minitex interlibrary loan system.

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

19.9 B. United States Army Corps of Engineers Wetland Delineation Manual (January
19.10 1987) and supplementary guidance.

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

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

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

19.17 F. D. National Minnesota Wetland Inventory **database** maps (United States Fish and
19.18 Wildlife Service), Minnesota Department of Natural Resources.

19.19 G. E. Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective,
19.20 Anderson and Craig, (1984).

19.21 H. F. Minnesota Wetland Restoration Guide, Minnesota Board of Water and Soil
19.22 Resources (December 1982 January 2012).

19.23 I. ~~Vegetation in Restored and Created Wetlands, Minnesota Board of Water and~~
19.24 ~~Soil Resources, September 2000.~~

20.1 ~~J. Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water~~
20.2 ~~Conservation Districts and Local Government Units in Certifying and Approving Wetland~~
20.3 ~~Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December~~
20.4 ~~2000.~~

20.5 ~~K. Sustaining Minnesota Forest Resources: Voluntary Site Level Forest~~
20.6 ~~Management Guidelines for Landowners, Loggers and Resource Managers. Minnesota~~
20.7 ~~Forest Resources Council, St. Paul, 1999.~~

20.8 ~~L. Minnesota Construction Site Erosion and Sediment Control Planning Handbook.~~
20.9 ~~Minnesota Board of Water and Soil Resources and the Association of Metropolitan Soil~~
20.10 ~~and Water Conservation Districts, St. Paul, 1988.~~

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

20.13 ~~N. Storm Water and Wetlands: Planning and Evaluation Guidelines for Addressing~~
20.14 ~~Potential Impacts of Urban Storm Water and Snow Melt Runoff on Wetlands, Minnesota~~
20.15 ~~Storm Water Advisory Group, 1997.~~

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

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

20.20 G. Minnesota Stormwater Manual, Minnesota Pollution Control Agency (January
20.21 2008).

20.22 H. Agricultural BMP Handbook for Minnesota, Minnesota Department of
20.23 Agriculture (2017).

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

21.3 ~~Q. J. State of Minnesota Watershed Boundaries, 1979, Minnesota Department of~~
 21.4 ~~Natural Resources, St. Paul, (1979).~~

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

21.9 K. Minnesota's Native Plant Community Classification, Version 2.0, Minnesota
 21.10 Department of Natural Resources (2005).

21.11 ~~L. Field Office Technical Guide, Natural Resources Conservation Service, United~~
 21.12 ~~States Department of Agriculture (2024).~~

21.13 **8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.**

21.14 Subpart 1. **County classification.** For purposes of ~~this chapter~~ part 8420.0420, subpart
 21.15 8:

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

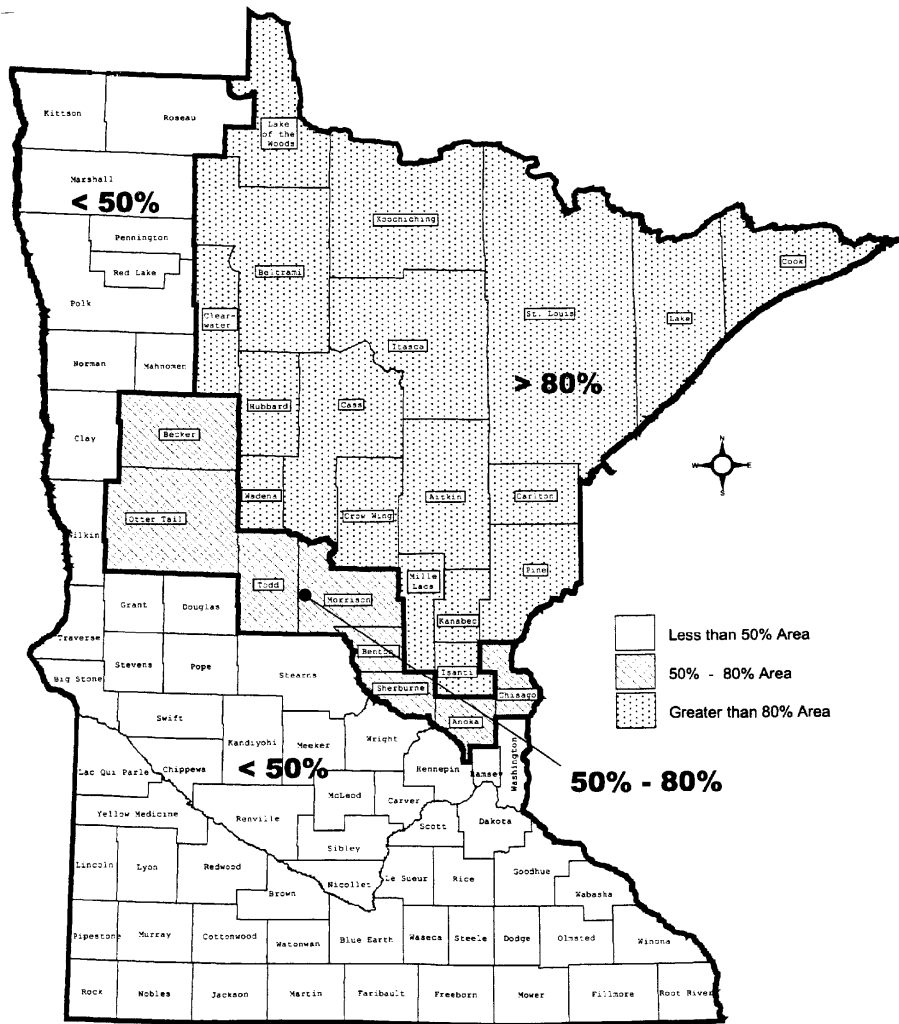
21.19 B. the following counties are 50 to 80 percent areas: Anoka; Becker; Benton;
 21.20 Chisago; Morrison; Otter Tail; Sherburne; and Todd; and

21.21 C. the following counties are less than 50 percent areas: Big Stone; Blue Earth;
 21.22 Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore;
 21.23 Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson; Lac Qui
 21.24 Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall; Martin; McLeod; Meeker; Mower;

- 22.1 Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey;
- 22.2 Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens;
- 22.3 Swift; Traverse; Wabasha; Waseca; Washington; Watonwan; Wilkin; Winona; Wright; and
- 22.4 Yellow Medicine.

22.5 **PRESETTLEMENT** WETLAND AREAS

**Minnesota Wetland Conservation Act
Pre - Statehood Wetland Areas**



23.1 Subp. 2. **County or watershed reclassification.**

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

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

23.19 Subp. 3. **Bank service area designation classification.** For purposes of wetland
 23.20 replacement, the each bank service area must be classified based on its percentage of
 23.21 presettlement wetland acres remaining.
 23.22 The board must designate classify bank service areas as greater than 80 percent areas or less
 23.23 than 50
 23.24 percent areas. The board must publish notice of bank service area designations classifications
 23.25 in the State
 23.26 Register and make them available on the board's website. The designations classifications take
 23.27 effect when
 23.28 specified in the State Register notice but no sooner than 120 days after publication. The
 23.29 designations classifications remain in effect unless superseded by subsequent statute, state
 23.30 administrative
 23.31 rule, or notice in the State Register.

23.23 **8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.**

23.24 Subpart 1. **Determining local government unit.** The local government unit responsible

23.25 for making decisions ~~must be~~ is determined according to items A to **J**.

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

24.3 B. In the seven-county metropolitan area, the local government unit is the city,
24.4 town board under Minnesota Statutes, section 368.01, or water management organization
24.5 regulating surface-water-related matters in the area in which the activity is located, or its
24.6 delegate. The watershed management plan adopted under Minnesota Statutes, section
24.7 103B.231, and related ~~board~~ rules will normally indicate the appropriate local government
24.8 unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

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

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

24.19 E. Implementation of this chapter and the act may be delegated from a county,
24.20 city, or town, as applicable according to item A or B, to a soil and water conservation district
24.21 or other governmental entity by the passage of resolutions by both parties. The delegation
24.22 becomes effective when resolutions have been passed by both parties, or on the date specified
24.23 in the resolutions, whichever is later. Both parties must provide notice to the board, the
24.24 commissioner, and the soil and water conservation district within 15 business days of
24.25 adoption of the resolution. The notice must include a copy of the resolution and a description
24.26 of the applicable geographic area.

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

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

25.11 H. For replacement plans where the project-specific replacement will occur in a
25.12 different local government unit than the impact, approval of all local government units
25.13 involved or as specified in items A to G constitutes final approval of the replacement plan
25.14 and is required before the project may proceed. The local government unit with jurisdiction
25.15 for over the impact site must approve all components of the replacement plan, following the
25.16 procedures required by this chapter. The local government unit with jurisdiction for over the
25.17 replacement site wetland must limit the review to evaluation of the replacement site wetland
25.18 and make a
25.19 decision accordingly. As part of the approval of the replacement plan, the local government
25.20 unit with jurisdiction for over the replacement site wetland assumes responsibility for ensuring
25.21 compliance
25.22 with monitoring provisions according to parts 8420.0800 to 8420.0820. The local government
25.23 unit with jurisdiction for over the replacement site wetland may enter into joint powers
25.24 agreements with
25.25 a local government unit with jurisdiction for over the impact site, assess fees, or develop
25.26 other
25.27 procedures considered necessary to facilitate the process.

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

25.26 local government units.

26.1 ~~J. Notwithstanding items A to I, the commissioner is the local government unit~~
26.2 ~~for activities associated with projects requiring permits to mine under Minnesota Statutes,~~
26.3 ~~section 93.481, and for projects affecting calcareous fens.~~

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

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

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

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

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

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

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

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

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

27.13 H. The local government unit and soil and water conservation district may charge
27.14 processing fees in amounts not greater than are necessary to cover the reasonable costs of
27.15 implementing this chapter and for technical and administrative assistance to landowners in
27.16 processing other applications for projects affecting wetlands.

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

27.21 **Subp. 3. Failure to apply law.**

27.22 A. If a local government unit fails to acknowledge in writing its responsibilities
27.23 under this chapter and the act, as required in subpart 2, the board must impose, in the local
27.24 government unit's jurisdiction, a 60-day moratorium on making decisions and implementing
27.25 this chapter and the act. The board must notify the local government unit in writing of the

28.1 start and end dates of the moratorium. The board must end the moratorium within the 60
28.2 days upon written agreement by the local government unit that it will assume, and is currently
28.3 capable of implementing, its duties under this chapter and the act. If at the end of the initial
28.4 60-day moratorium a written agreement has not been made for the local government unit
28.5 to apply the law, the board may extend the moratorium until the local government unit
28.6 agrees to apply the law.

28.7 B. If the board has information that a local government unit is not following this
28.8 chapter or the act in making decisions; if the local government unit does not have
28.9 knowledgeable and trained staff with experience in water resource management; or if the
28.10 local government unit fails to comply with the board's reporting requirements, the board
28.11 must notify the local government unit in writing of its concerns. The local government unit
28.12 must respond in writing within 60 days of being notified by the board. If not satisfied with
28.13 the local government unit's written response, or none is received, the board must ask the
28.14 local government unit to appear at a hearing before the board to discuss the matter. The
28.15 board may invite comments from other local governments or state and federal agencies. If
28.16 the board determines at the hearing that corrective action is necessary, the board must write
28.17 the local government unit directing specific corrective action to occur within 60 days of
28.18 receiving the board's decision. The notice must explain the reason for the action. If, after
28.19 the 60-day period, the local government unit has not corrected the problem to the satisfaction
28.20 of the board, the board must declare a moratorium as prescribed in item A or take other
28.21 appropriate legal action to ensure compliance.

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

29.1 local government unit to the applicant with an explanation and within 15 business days of
29.2 the local government unit's receipt of the application.

29.3 **8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

29.4 A. For each local government unit, there is a technical evaluation panel. Panel
29.5 membership consists of a technical professional employee of the board, a technical
29.6 professional employee of the soil and water conservation district of the county in which the
29.7 activity is occurring, and a technical professional with expertise in water resource
29.8 management appointed by the local government unit. For projects affecting public waters,
29.9 public waters wetlands, or wetlands within the shoreland protection zone, the panel also
29.10 includes a technical professional employee of the Department of Natural Resources. The
29.11 local government unit must coordinate the panel.

29.12 B. Two members of the technical evaluation panel must be knowledgeable and
29.13 trained in ~~applying methodologies of the United States Army Corps of Engineers Wetland~~
29.14 ~~Delineation Manual~~ (January 1987), ~~Wetland Plants and Plant Communities of Minnesota~~
29.15 ~~& Wisconsin~~ (S. Eggers and D. Reed 1997), ~~Wetlands of the United States~~ (United States
29.16 ~~Fish and Wildlife Service Circular 39, 1971 edition)~~, ~~A Hydrogeomorphic Classification~~
29.17 ~~for Wetlands, and Classification of Wetlands and Deepwater Habitats of the United States~~
29.18 ~~(Cowardin, et al., 1979 edition)~~, ~~including updates and supplements, or replacements~~
29.19 ~~according to part 8420.0112 and any modifications or guidance provided by the board. The~~
29.20 ~~panel must also be knowledgeable and trained in the identification of wetland boundaries and~~
29.21 ~~type, and in the~~ evaluation of wetland functions and the
29.22 resulting public value. The panel may seek advice and assistance from others with additional
29.23 expertise to help the panel in its work.

29.23 C. The technical evaluation panel, if requested to do so by the local government
29.24 unit, the landowner, or a member of the panel, must make technical findings and
29.25 recommendations regarding applications, the scope of this chapter and the act, the
29.26 applicability of exemption and no-loss standards, wetland functions and the resulting public

30.1 value, direct and indirect impacts, possible violations of this chapter and the act, enforcement
30.2 matters under part 8420.0900, comprehensive wetland protection and management plans
30.3 and implementing rules and ordinances, and other technical issues related to implementation
30.4 of this chapter. The panel must review applications for replacement of public road projects
30.5 submitted according to part 8420.0544, banking projects according to parts 8420.0700 to
30.6 8420.0755, and replacement wetland monitoring as provided in parts 8420.0800 to
30.7 8420.0820. The panel must provide its findings to the local government unit for consideration.
30.8 For violations of this chapter that may result in the issuance of an enforcement order, the
30.9 panel must consult with the enforcement authority.

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

30.19 E. Applicants must cooperate in providing local government unit staff and members
30.20 of the technical evaluation panel and their designated experts with access to proposed project
30.21 sites for investigation. Investigations must be preceded by notice to the landowner or
30.22 designated agent, unless prior approval has been granted. If an applicant refuses to allow
30.23 access, the local government unit may deny an application.

30.24 F. An individual member of the technical evaluation panel who has a financial
30.25 interest in a wetland bank or who has management responsibility to sell or make
30.26 recommendations in the member's official capacity to sell credits from a publicly owned

31.1 wetland bank must disclose that interest, in writing, to the panel and the local government
 31.2 unit.

31.3 **8420.0255 LOCAL GOVERNMENT UNIT APPLICATION, NOTICE, AND**
 31.4 **DECISION PROCEDURES.**

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

31.10 Subp. 2. **Determination of complete application.** The local government unit must
 31.11 determine ~~that whether~~ whether an application is complete based on parts 8420.0305 to 8420.0330.
 31.12 For incomplete applications, the local government unit must notify the applicant within 15
 31.13 business days of receipt of the application and list in writing what items or information is
 31.14 missing.

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

31.16 A. Within 15 business days of receipt of a complete application, the local
 31.17 government unit must send a copy of the application and a notice of application on a form
 31.18 provided by the board to members of the technical evaluation panel; the watershed district
 31.19 or water management organization, if there is one; the commissioner; ~~and~~ individual members
 31.20 of the public who request a copy; and, for activities within the exterior reservation boundary
 31.21 of a federally recognized Indian Tribe listed in Minnesota Statutes, section 10.65, subdivision
 31.22 2, clause (4), the lead official of the Tribal governing body or their designee. The notice
 31.23 must identify the type of application, the date the comment period ends, and where to submit
 31.24 comments. If requested, individual members of the public ~~who request a copy~~ must be sent
 31.25 a summary copy of the application that includes information to identify the applicant and
 31.26 the location and scope of the project. The comment period must ~~be at least~~ end no sooner

32.1 than 15 business days ~~from~~ after the date the notice of application is sent. Revisions of an
32.2 approved and valid replacement plan must be noticed according to this subpart by sending
32.3 a summary of the proposed revisions if:

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

32.5 (a) increased by more than ten percent;

32.6 (b) a different type;

32.7 (c) part of a different wetland; or

32.8 (d) more than 500 feet from the location of the previously approved
32.9 wetland impact; ~~or~~

32.10 (2) the project-specific replacement area wetland is:

32.11 (a) a different wetland type;

32.12 (b) more than 500 feet from the location of the previously approved
32.13 replacement; or

32.14 (c) a different action eligible for credit; or

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

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

33.1 Subp. 4. **Decision Decisions.** ~~The local government unit's decision must be based on~~
33.2 ~~the standards and procedures required by this chapter and on the technical evaluation panel's~~
33.3 ~~findings and recommendation, when provided. The local government unit must consider~~
33.4 ~~and include in its record of decision the technical evaluation panel's recommendation, when~~
33.5 ~~provided, to approve, modify, or deny the application. The local government unit must also~~
33.6 ~~consider any comments received from those required to receive notice. The local government~~
33.7 ~~unit's decision must be made in compliance with the time period prescribed by Minnesota~~
33.8 ~~Statutes, section 15.99, which, on the effective date of this part, generally requires a decision~~
33.9 ~~in 60 days. The local government unit may make on-site exemption and no-loss decisions~~
33.10 ~~if the decisions are noticed according to subpart 5 and project details are provided sufficient~~
33.11 ~~to document eligibility. The local government unit's decision is valid for three years or as~~
33.12 ~~otherwise specified in the local government unit's decision when the technical evaluation~~
33.13 ~~panel advises that a longer period is justified in accordance with the standards in parts~~
33.14 ~~8420.0100 to 8420.0935.~~

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

33.16 (1) make the decision based on the standards and procedures required under
33.17 this chapter and on the technical evaluation panel's findings and recommendation, when
33.18 provided;

33.19 (2) make the decision within the time prescribed by Minnesota Statutes,
33.20 section 15.99;

33.21 (3) consider and include in its record of decision the technical evaluation
33.22 panel's recommendation, when provided; and

33.23 (4) consider any comments received from those required to receive notice
33.24 under subpart 3, item A.

34.1 B. The local government unit may make on-site exemption and no-loss decisions
34.2 if:

34.3 (1) the decisions are noticed according to subpart 5; and

34.4 (2) project details are provided to document eligibility.

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

34.12 Subp. 5. **Notice of decision.** The local government unit's decision must be ~~mailed~~
34.13 sent to the landowner within ten ~~business~~ days of the decision. A summary of the local
34.14 government unit's decision, ~~in a format~~ on a form prescribed by the board, must be sent
34.15 within ten ~~business~~ days of the decision to those required to receive notice of the application.
34.16 The notice of decision must include information on the process and time period to appeal
34.17 the decision of the local government unit.

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

35.1 **8420.0305 GENERAL APPLICATION REQUIREMENTS.**

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

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

35.7 (1) the full name, post office address, and telephone number of the applicant;

35.8 (2) for corporations, the principal officers of the corporation, any parent
35.9 companies, owners, partners, and joint venturers, and a designated contact person;

35.10 (3) managing agents, subsidiaries, or consultants that are or may be involved
35.11 with the activity;

35.12 (4) the type of decision requested, as identified in parts 8420.0310 to
35.13 8420.0330;

35.14 (5) the location of the project by township, range, section, and quarter section;

35.15 (6) evidence of ownership of the project area or the requisite property rights
35.16 to perform the activity;

35.17 (7) an accurate map, survey, or recent aerial photograph showing the
35.18 boundaries of the project area and boundaries, size, and type of each wetland relevant to
35.19 the type of decision requested;

35.20 (8) if applicable to the type of decision requested, a written description of
35.21 the proposed project and project area, including its areal extent, with sufficient detail to
35.22 allow the local government unit to assess the amount and types of wetland to be affected;
35.23 and

36.1 (9) other information considered necessary for evaluation of the application
36.2 or project by the local government unit.

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

36.6 **8420.0310 APPLICATION FOR WETLAND BOUNDARY OR TYPE**
36.7 **APPLICATIONS OR IDENTIFICATION OF FLOODED AREAS APPLICATIONS.**

36.8 A. A landowner may apply for a wetland boundary or type decision from to the
36.9 local government unit **for a wetland boundary or type decision.** ~~The landowner is responsible~~
36.10 ~~for submitting proof necessary to make~~
~~the decision.~~ **for:**

36.11 **(1) a wetland boundary or type decision; and**

36.12 **(2) identification and delineation of a permanently or semipermanently flooded**
36.13 **area of a wetland.**

36.14 B. Applications for approval of wetland boundary or type must include information
36.15 according to the wetland delineation report submittal guidelines provided by the board.

36.16 C. ~~A wetland boundary or type~~ An application under this part may be submitted
36.17 independently or as part of a no-loss, exemption, sequencing, replacement plan, or banking
36.18 application. When an ~~independent wetland boundary or type~~ application is approved, and
36.19 the approval remains valid, the applicant may incorporate the approval in a subsequent
36.20 application for a no-loss, exemption, sequencing, replacement plan, or banking application.

36.21 **8420.0315 NO-LOSS APPLICATIONS.**

36.22 A. A landowner may apply to the local government unit for a no-loss decision. A
36.23 landowner who does not request a decision from the local government unit and proceeds
36.24 with the activity may be subject to the enforcement provisions under part ~~8420.0915~~
36.25 8420.0900 and Minnesota Statutes, section 103G.2372.

37.1 B. The landowner applying for a no-loss is responsible for submitting the ~~proof~~
37.2 information necessary to show qualification for the claim.

37.3 C. This part also applies to applications requesting a decision on whether an
37.4 activity or wetland falls within the scope of this chapter.

37.5 **8420.0320 EXEMPTION APPLICATIONS.**

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

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

8420.0325 SEQUENCING APPLICATIONS.

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

37.18 **8420.0330 REPLACEMENT PLAN APPLICATIONS.**

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

37.22 Subp. 2. **Preapplication conference and site visit.** Before preparation of a replacement
37.23 plan, it is recommended that the landowner meet with the local government unit for a
37.24 preapplication conference and site visit. The local government unit is encouraged to inform

38.1 the landowner of all sequencing requirements and the criteria used to evaluate replacement
38.2 plans.

38.3 Subp. 3. **Application contents.** ~~On an application form approved by the board in~~
38.4 ~~consultation with the commissioner, provided through the local government unit, and with~~
38.5 ~~required attachments supplied by the applicant, the following documentation must be~~
38.6 ~~provided in addition to the information required in part 8420.0305: The landowner applying~~
38.7 ~~for a replacement plan is responsible for submitting the information necessary, on a form~~
38.8 ~~provided by the board, to show that the proposed project satisfies the requirements and~~
38.9 ~~standards of parts 8420.0500 to 8420.0528 and, for project-specific replacement plans, part~~
38.10 ~~8420.0810.~~

38.11 A. ~~for the impacted wetland:~~

38.12 (1) ~~the amount, in square feet or acres, of wetland proposed to be impacted~~
38.13 ~~by type;~~

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

38.15 (3) ~~a soil survey map of the site showing soil type and identifying hydric~~
38.16 ~~soils, where available;~~

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

38.20 (5) ~~information known to the applicant or readily available concerning the~~
38.21 ~~special considerations criteria in part 8420.0515;~~

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

39.1 ~~(7) written documentation to demonstrate compliance with the sequencing~~
39.2 ~~standards in part 8420.0520, including identification of the project purpose and a detailed~~
39.3 ~~description of the project and alternatives considered;~~

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

39.5 ~~(1) the proposed action eligible for credit from part 8420.0526;~~

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

39.7 ~~(3) evidence of ownership or property rights to the replacement areas;~~

39.8 ~~(4) information known to the applicant or readily available concerning the~~
39.9 ~~special considerations criteria in part 8420.0515;~~

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

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

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

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

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

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

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

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

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

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

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

40.17 ~~(e) the replacement area was not, and will not be, restored or created~~
40.18 ~~using private funds other than those of the landowner unless the funds are paid back with~~
40.19 ~~interest to the individual or organization that funded the restoration or creation and the~~
40.20 ~~individual or organization notifies the local government unit in writing that the restored~~
40.21 ~~wetland may be considered for replacement; and~~

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

41.1 ~~(12) evidence that a person proposing to create or restore a wetland within~~
41.2 ~~the easement of a pipeline, as defined in Minnesota Statutes, section 299J.02, subdivision~~
41.3 ~~11, has first notified the easement holder and the director of the Office of Pipeline Safety~~
41.4 ~~in writing. The person may not create or restore the wetland if, within 90 days after receiving~~
41.5 ~~the required notice, the easement holder or the director of the Office of Pipeline Safety~~
41.6 ~~provides to the person a written notice of objection that includes the reasons for the objection;~~

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

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

41.11 ~~(15) a vegetation establishment and management plan according to part~~
41.12 ~~8420.0528, subpart 2, item D; and~~

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

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

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

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

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

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

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

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

42.4 A. for project-specific replacement that is not in advance according to part
42.5 8420.0522, subpart 8, item B, a financial assurance according to part 8420.0522, subpart
42.6 9, unless waived by the local government unit;

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

42.10 (1) the location of the replacement **area wetland**;

42.11 (2) that the replacement **area wetland** is subject to the act;

42.12 (3) that the fee title owner is responsible for the costs of repairs or
42.13 reconstruction and management, if necessary, or for replacement costs;

42.14 (4) that reasonable access to the replacement **area shall be wetland is** granted
42.15 to the

42.15 proper authorities for inspection, monitoring, and enforcement purposes;

42.16 (5) that costs of title review and document recording is the responsibility of
42.17 the fee title owner; and

42.18 (6) that the local government unit or board may require necessary repairs or
42.19 reconstruction and revegetation work to return the wetland to the specifications of the
42.20 approved replacement plan and require reimbursement of reasonable costs from the wetland
42.21 owner or may require replacement of the wetland according to this chapter; and

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

8420.0335 CONTRACTOR'S NOTIFICATION RESPONSIBILITY.

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

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

(1) obtained a signed statement from the landowner or landowner's agent stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and

(2) sent a copy of the statement to the local government unit with jurisdiction over the wetland.

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

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

43.1 **8420.0405 BOUNDARY OR TYPE.**

43.2 Subpart 1. **Wetland boundary.** Wetland boundaries must be determined using the
43.3 methodologies in the United States Army Corps of Engineers Wetlands Delineation Manual
43.4 (January 1987), ~~including subsequent updates and supplements, and guidance provided by~~
43.5 ~~the board which is incorporated by reference under part 8420.0112.~~

43.6 Subp. 2. **Wetland type.** Wetland type must be identified according to ~~United States~~
43.7 ~~Fish and Wildlife Service Circular No. 39 (1971 edition) Wetlands of the United States~~ **A**
43.8 ~~Hydrogeomorphic Classification for Wetlands, and components of the wetland must be~~
43.9 ~~described using Classification of Wetlands and Deepwater Habitats of the United States,~~
43.10 ~~including modifications or guidance provided by the board part 8420.0111, subpart 75.~~
Wetland type in relation to

43.11 ~~Wetland Plants and Plant Communities of Minnesota & Wisconsin is shown in the following~~
43.12 ~~table:~~

43.13	Wetland Plants and Plant Communities		
43.14	of Minnesota and Wisconsin (Eggers and		
43.15	Reed 1997), as modified by the Board of		
43.16	Water and Soil Resources United States	Classification of Wetlands	Fish and Wildlife
43.17	Army Corps of Engineers Wetland	and Deepwater Habitats	Service Circular 39
43.18	Mitigation Memorandum of	of the United States	(Shaw and Fredine
43.19	Understanding (May 2007)	(Cowardin et al. 1979)	1971)

43.20	Shallow, open water	Palustrine or lacustrine,	Type 5: Inland open
43.21		littoral; aquatic bed;	fresh water
43.22		submergent, floating, and	
43.23		floating-leaved	

43.24	Deep marsh	Palustrine or lacustrine,	Type 4: Inland deep
43.25		littoral; aquatic bed;	fresh marsh
43.26		submergent, floating, and	
43.27		floating-leaved; emergent;	
43.28		persistent and	
43.29		nonpersistent	

43.30	Shallow marsh	Palustrine; emergent;	Type 3: Inland
43.31		persistent and	shallow fresh marsh
43.32		nonpersistent	

44.1	Sedge meadow	Palustrine; emergent;	Type 2: Inland fresh
44.2		narrow leaved persistent	meadow
44.3	Fresh (wet) meadow	Palustrine; emergent;	Type 1: Seasonally
44.4		broad and narrow leaved	flooded basin or flat
44.5		persistent	Type 2: Inland fresh
44.6			meadow
44.7	Wet to wet mesic prairie	Palustrine; emergent;	Type 1: Seasonally
44.8		broad and narrow leaved	flooded basin or flat
44.9		persistent	Type 2: Inland fresh
44.10			meadow
44.11	Calcareous fen	Palustrine; emergent;	Type 2: Inland fresh
44.12		narrow leaved persistent;	meadow
44.13		scrub/shrub; broad leaved	Type 6: Shrub swamp
44.14		deciduous	
44.15	Open bog or coniferous bog	Palustrine; moss/lichen;	Type 8: Bog
44.16		scrub/shrub; broad leaved	
44.17		evergreen; forested;	
44.18		needle leaved evergreen	
44.19		and deciduous	
44.20	Shrub carr or alder thicket	Palustrine; scrub/shrub;	Type 6: Shrub swamp
44.21		broad leaved deciduous	
44.22	Hardwood swamp or coniferous swamp	Palustrine; forested;	Type 7: Wooded
44.23		broad leaved deciduous;	swamp
44.24		needle leaved evergreen	
44.25		and deciduous	
44.26	Floodplain forest	Palustrine; forested;	Type 1: Seasonally
44.27		broad leaved deciduous	flooded basin or flat
44.28	Seasonally flooded basin	Palustrine; flat; emergent;	Type 1: Seasonally
44.29		persistent and	flooded basin or flat
44.30		nonpersistent	

44.31 **8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.**

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

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

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

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

45.8 **8420.0415 NO-LOSS CRITERIA.**

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

45.11 A. an activity that will not impact a wetland;

45.12 B. excavation in wetlands when limited to removal of sediment or debris such as
45.13 trees, logs, stumps, beaver dams, blockage of culverts, and trash, provided the removal does
45.14 not result in alteration of the original cross-section of the wetland or watercourse. Wetland
45.15 areas created solely by beaver activities may be drained by removing those materials placed
45.16 by beaver. Drainage is permitted allowed by removing or moving materials blocking installed
45.17 roadway culverts and related drainage structures. Additional excavation or removal of other
45.18 materials is not permitted unless it can be shown by aerial photographs that the proposed
45.19 activity will not drain or fill must not impact wetland that was there existed before the beaver dam
45.20 was built or before
the culvert became plugged;

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

45.25 D. an activity;

46.1 (1) conducted as part of an approved replacement or banking plan;

46.2 (2) conducted or authorized by public agencies for the purpose of ~~wetland~~

46.3 ~~restoration~~ or fish and wildlife habitat restoration or improvement ~~according to~~ or wetland

46.4 restoration ~~in accordance consistent~~ with the ~~guidancee~~ guide referenced in part 8420.0112, ~~items J and H,~~

46.5 item F; or

46.6 (3) conducted for the repair and maintenance of earthen containment

46.7 structures;

46.8 E. excavation limited to removal of deposited sediment in wetlands that are

46.9 presently utilized as stormwater management basins, or excavation and removal of

46.10 contaminated substrate, when the excavated area is limited to the minimum dimensions

46.11 necessary for achieving the desired purpose and stabilized to prevent water quality

46.12 degradation;

46.13 F. an activity associated with the operation, routine maintenance, or emergency

46.14 repair of existing utilities and public works structures, including pipelines, provided the

46.15 activity does not result in additional wetland intrusion or additional impacts, either wholly

46.16 or partially;

46.17 G. temporarily crossing or entering a wetland to perform silvicultural activities,

46.18 including timber harvest as part of a forest management activity, so long as the activity

46.19 limits the impact on the hydrologic and biologic characteristics of the wetland; the activity

46.20 does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and

46.21 the timber harvesting and other silvicultural practices do not result in the drainage of the

46.22 wetland or public waters; or

46.23 H. a temporary impact that is rectified by repairing, rehabilitating, or restoring

46.24 the affected wetland. No-loss under this item only applies if all of the following conditions

46.25 are met:

47.1 (1) the physical characteristics of the affected wetland, including ground
47.2 elevations, contours, inlet dimensions, outlet dimensions, substrate, plant communities, and
47.3 hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject
47.4 functions are restored;

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

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

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

47.17 **8420.0420 EXEMPTION STANDARDS.**

47.18 Subpart 1. **Scope.**

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

48.1 B. No exemptions apply to:

48.2 (1) calcareous fens as identified by the commissioner;

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

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

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

48.10 C. ~~Exemptions may not be combined on a wetland that is impacted by a project. A~~
~~project may not be split into components or phases for the purpose of gaining~~
~~additional exemptions.~~

48.11 D. Present and future owners of wetlands impacted without replacement under
48.12 an exemption for agricultural activities in subpart 2 ~~or drainage in subpart 3~~ must make no
48.13 use of the wetland area after it is impacted, other than as agricultural land or other use
48.14 specified in subpart 2, for at least ten years after the impact unless it is first replaced according
48.15 to Minnesota Statutes, section 103G.222. Except for land in public ownership, at the time
48.16 of impact, the local government unit may require the landowner to record a notice of these
48.17 deed restrictions in the office of the county recorder for the county in which the project is
48.18 located if the local government unit determines the wetland area impacted is at risk of
48.19 conversion to a nonagricultural use or use other than that specified in subpart 2 within ten
48.20 years, based on the zoning classification, proximity to a municipality or full-service road,
48.21 or other criteria that may affect the risk of conversion to a nonagricultural use as determined
48.22 by the local government unit. ~~In~~ When making a decision under this item, the local
48.23 government unit must review the applicable comprehensive plan, if one exists, when
48.24 evaluating the risk of conversion to a nonagricultural use and monitor and enforce the
48.25 prohibition on using the area impacted for a nonagricultural purpose for at least ten years.
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49.1 At a minimum, the recorded document must contain the name or names of the landowners,
49.2 a legal description of the property to which the restrictions apply, a statement of the
49.3 restrictions, the date on which the restrictions expire, the name of the local government that
49.4 approved the exemption, if an exemption occurred, the signatures of all owners, and an
49.5 acknowledgment.

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

49.7 A. ~~impacts resulting from agricultural activities in a wetland that was planted with~~
49.8 ~~annually seeded crops or was in a crop rotation seeding of pasture grass or legumes in six~~
49.9 ~~of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs,~~
49.10 ~~United States Department of Agriculture records, or other applicable documentation may~~
49.11 ~~be used as evidence for this exemption. Impacts eligible for this exemption must be to type~~
49.12 ~~1 or 2 wetlands; impacts to wetlands on agricultural land labeled prior converted cropland~~
49.13 ~~and impacts to wetlands resulting from drainage maintenance activities authorized by the~~
49.14 ~~United States Department of Agriculture, Natural Resources Conservation Service, on areas~~
49.15 ~~labeled farmed wetland, farmed-wetland pasture, and wetland.~~

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

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

49.20 (b) in the absence of written confirmation under unit (a), the maintenance
49.21 activity does not exceed the scope and effect of drainage manipulations that occurred before
49.22 December 23, 1985.

49.23 (2) This item is subject to the following conditions:

49.24 (a) the prior converted cropland, farmed wetland, farmed-wetland pasture,
49.25 or wetland must be labeled on a valid final certified wetland determination issued by the

50.1 Natural Resources Conservation Service in accordance with Code of Federal Regulations,
50.2 title 7, part 12;

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

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

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

50.18 (e) impacts under this item must not exceed those allowed using the label
50.19 definitions and activities authorized under the version of Code of Federal Regulations, title
50.20 7, part 12, that was in effect on August 1, 2024. The board may issue orders to update the
50.21 criteria and application of this item if changes to Code of Federal Regulations, title 7, part
50.22 12, or its successor laws or United States Department of Agriculture implementation
50.23 standards are enacted.

50.24 ~~B. impacts resulting from agricultural activities in a type 1 wetland on agricultural~~
50.25 ~~pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands,~~

51.1 ~~and impacts resulting from agricultural activities in a type 2 or 6 wetland that is less than~~
51.2 ~~two acres in size and located on agricultural pasture land that remains in the same use;~~

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

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

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

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

51.22 ~~G. F.~~ impacts resulting from agricultural activities ~~that are subject to federal farm~~
51.23 ~~program restrictions that meet minimum state standards under this chapter and Minnesota~~
51.24 ~~Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board, the~~
51.25 ~~commissioners of natural resources and agriculture, and the Pollution Control Agency. An~~
51.26 ~~exemption under this item is not valid until such approval is obtained. If approved, the~~

52.1 ~~conditions and standards shall be noticed by the board to local government units and~~
 52.2 ~~published in the State Register. The conditions and standards take effect 30 days after~~
 52.3 ~~publication and remain in effect unless superseded by subsequent statute, rule, or notice in~~
 52.4 ~~the State Register. Upon taking effect, this exemption only applies to impacts on agricultural~~
 52.5 ~~land annually enrolled in the federal Farm Program that are not beyond what is: on~~
 52.6 ~~agricultural land that is subject to the wetland conservation compliance provisions of the~~
 52.7 ~~federal Food Security Act of 1985, as amended, consistent with a memorandum of~~
 52.8 ~~understanding and related agreements between the board and the United States Department~~
 52.9 ~~of Agriculture, Natural Resources Conservation Service.~~

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

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

52.13 (3) ~~replaced at a ratio of 1:1 or greater under United States Department of~~
 52.14 ~~Agriculture provisions as supported by documentation from the United States Department~~
 52.15 ~~of Agriculture, which must be included as evidence to support this exemption.~~

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

52.18 **Subp. 3. Drainage.**

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

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

52.23 (1) ~~impacts resulting from maintenance or repair of existing public drainage~~
 52.24 ~~systems conducted or authorized by a public drainage authority under Minnesota Statutes,~~

53.1 ~~chapter 103E, when the maintenance or repair does not drain type 3, 4, or 5 wetlands that~~
53.2 ~~have existed for more than 25 years before the proposed impact; or~~

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

53.8 For projects proposed under this item, the landowner must provide documentation that
53.9 the wetlands to be partially or completely impacted by the maintenance or repair have not
53.10 existed for more than 25 years. Documentation may include, but is not limited to: aerial
53.11 photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or
53.12 drainage system maintenance records.

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

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

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

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

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

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

- 54.1 ~~(a) during the 20-year period that ended January 1, 1992:~~
- 54.2 ~~i. there was an expenditure made from the drainage system account~~
- 54.3 ~~for the public drainage system;~~
- 54.4 ~~ii. the public drainage system was repaired or maintained as~~
- 54.5 ~~approved by the drainage authority; or~~
- 54.6 ~~iii. no repair or maintenance of the public drainage system was~~
- 54.7 ~~required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the~~
- 54.8 ~~public drainage authority; and~~

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

- 54.10 ~~i. platted lots;~~
- 54.11 ~~ii. planned unit, commercial, or industrial developments; or~~
- 54.12 ~~iii. any development with more than one residential unit per 40~~
- 54.13 ~~acres, except for parcels subject to local zoning standards that allow family members to~~
- 54.14 ~~establish an additional residence on the same 40 acres.~~

54.15 ~~If wetlands drained under this subitem are converted to prohibited uses during the~~

54.16 ~~ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes,~~

54.17 ~~section 103G.222.~~

54.18 ~~Documentation such as aerial photographs, United States Department of Agriculture~~

54.19 ~~records, or other applicable documentation may be used as evidence for the exemption under~~

54.20 ~~this item.~~

54.21 ~~D. B.~~ For projects completed under this subpart, spoil must be placed and stabilized

54.22 in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch

54.23 or contributing to the degradation of downstream water quality.

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

55.5 ~~F. Wetlands and public waters of all types that could be drained as a part of a~~
55.6 ~~public drainage repair project are eligible for the permanent wetlands preserve program~~
55.7 ~~established under Minnesota Statutes, section 103F.516. The board must give priority to~~
55.8 ~~acquisition of easements on type 3, 4, or 5 wetlands that have been in existence for more~~
55.9 ~~than 25 years on public drainage systems and other wetlands that have the greatest risk of~~
55.10 ~~drainage from a public drainage repair project.~~

55.11 Subp. 4. **Federal approvals.** A replacement plan is not required for impacts authorized
55.12 under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344,
55.13 or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section
55.14 403, and regulations that meet minimum state standards under this chapter and that have
55.15 been approved by the board, the Department of Agriculture, the Department of Natural
55.16 Resources, and the Pollution Control Agency. This exemption is not valid until such approval
55.17 is obtained. If approved, the board must provide notice of the conditions and standards ~~shall~~
55.18 ~~be noticed by the board~~ to local government units and ~~published~~ publish the conditions and
55.19 standards in the State Register. The exemption takes effect 30 days after publication and
55.20 remains in effect unless superseded by subsequent statute, state administrative rule, or notice
55.21 in the State Register.

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

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

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

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

56.13 Subp. 6. **Utilities.**

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

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

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

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

56.24 (2) repair or updating of existing subsurface sewage treatment systems
56.25 necessary to comply with local, state, and federal regulations. This exemption does not

57.1 apply if the wetland impacts are the result of the treatment system being expanded to
57.2 accommodate increased use.

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

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

57.16 Subp. 8. **De minimis.**

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

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

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

57.24 (b) ~~400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
57.25 ~~and tamarack wetland, outside of the building setback zone, as defined in the local shoreland~~

58.1 ~~management ordinance, but within the shoreland wetland protection zone. This amount may~~
58.2 ~~be increased to 1,000 square feet by the local government unit if the wetland is isolated and~~
58.3 ~~determined to have no direct surficial connection to the public water;~~

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

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

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

58.10 (a) ~~5,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
58.11 ~~and tamarack wetland, outside of the shoreland wetland protection zone and outside of the~~
58.12 ~~11-county metropolitan area;~~

58.13 (b) ~~2,500 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
58.14 ~~and tamarack wetland, outside of the shoreland wetland protection zone and inside the~~
58.15 ~~11-county metropolitan area;~~

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

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

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

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

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

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

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

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

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

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

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

59.21 D. Except as provided in items B, C, and E to I, a replacement plan is not required
 59.22 for up to 400 square feet of impacts to ~~the~~ permanently and semipermanently flooded ~~wetland~~
 59.23 ~~of wetlands~~ areas as part of a project.

59.24 B. E. The area amounts listed in ~~item~~ items A to D may not be combined on a
 59.25 project.

60.1 ~~C. The exemption under this subpart no longer applies to a landowner's portion~~
60.2 ~~of a wetland when the proposed project impact area and the cumulative area of the~~
60.3 ~~landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:~~

60.4 ~~(1) the applicable area listed in item A, if the landowner owns the entire~~
60.5 ~~wetland;~~

60.6 ~~(2) five percent of the landowner's portion of the wetland; or~~

60.7 ~~(3) 400 square feet.~~

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

60.10 G. The de minimis exemption under this subpart may not be combined with another
60.11 exemption in this part on a project.

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

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

60.16 ~~E. For purposes of this subpart, for wetlands greater than 40 acres, the wetland~~
60.17 ~~type may be determined to be the wetland type with the deepest water regime within the~~
60.18 ~~wetland and within 300 feet of the impact.~~

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

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

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

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

61.5 (2) the project does not have an adverse effect on any species designated as
 61.6 endangered or threatened under state or federal law; and

61.7 (3) the project will ~~provide improve~~ wildlife habitat ~~improvement~~ as ~~certified~~
~~determined~~ by the
 61.8 soil and water conservation district ~~or technical evaluation panel~~ using ~~Wildlife Habitat~~
 61.9 ~~Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local~~
 61.10 ~~Government Units in Certifying and Approving Wetland Conservation Act Exemption~~
 61.11 ~~Proposals, Minnesota Interagency Wetlands Group, December 2000, or similar criteria~~
 61.12 ~~approved by the board;~~ or

61.13 B. duck blinds.

61.14 **8420.0500 PURPOSE AND REQUIREMENT.**

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

61.18 Subp. 2. **Requirement.** No person may impact a wetland, wholly or partially, without
 61.19 being eligible for an exemption or no-loss, or first having a wetland replacement plan
 61.20 approved by the local government unit. Before approval of a replacement plan, the local
 61.21 government unit must ensure that the applicant has exhausted all possibilities to avoid and
 61.22 minimize wetland impacts according to sequencing in part 8420.0520. The applicant must
 61.23 demonstrate to the local government unit that the replacement plan complies with this part
 61.24 ~~and,~~ parts 8420.0515 to 8420.0528, ~~and,~~ for project-specific replacement plans, part
 61.25 8420.0810. A replacement plan that fails to meet the requirements of this chapter is

62.1 inadequate in replacing lost function and value and must be denied by the local government
62.2 unit.

62.3 Subp. 3. **Alternative evaluation methodologies.** The local government unit may
62.4 evaluate the replacement plan using a scientifically accepted methodology that evaluates
62.5 all wetland functions specified in Minnesota Statutes, section 103B.3355, for both the
62.6 impacted and replacement wetlands. The alternative methodologies must be approved and
62.7 listed by the board, in consultation with the commissioners of natural resources and
62.8 agriculture and local government units. When using alternative evaluation methodologies
62.9 to evaluate replacement plans, the ratio of replacement credit to impacted wetland must not
62.10 be less than the minimum requirements listed in part 8420.0522, subpart 4, except as provided
62.11 for in part 8420.0830.

8420.0510 ESTABLISHING BANK SERVICE AREAS.

Bank service areas are established by the board in consultation with the United States Army
Corps of Engineers and are publicly available on the board's website. The board must provide
notice of an established bank service area in the State Register. A bank service area takes
effect when specified in the notice, but no sooner than 120 days after publication, and remains
in effect unless superseded by a subsequent statute, state administrative rule, or notice in the
State Register. The board must consider watershed boundaries, ecological characteristics, land
use, wetland quality, historic wetland abundance and loss, restoration opportunities,
geographic size, and the economic viability of wetland banks when defining bank service
areas.

62.12 **8420.0515 SPECIAL CONSIDERATIONS.**

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

62.16 Subp. 2. **Endangered and threatened species.** A replacement plan for activities that
62.17 involve taking species listed as endangered or threatened in parts 6134.0200 to 6134.0400
8420.0705

62.18 must be denied unless the commissioner issues a permit under part 6212.1800 or Minnesota
 62.19 Statutes, section 84.0895, subdivision 7. Applicants may identify if there are known locations
 62.20 of listed species at a particular site by contacting the Department of Natural Resources'
 62.21 natural heritage and nongame research program.

62.22 Subp. 3. **Rare natural communities.**

62.23 ~~A. A replacement plan for activities that involve the modification of a rare natural~~
 62.24 ~~community as determined by the~~ Department of Natural Resources' natural heritage program

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

63.3 ~~B. The commissioner must consider the following when making a rare natural~~
63.4 ~~community determination:~~

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

63.7 ~~(2) the conservation status rank of the native plant community; and~~

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

63.9 ~~(a) the location of the community relative to surrounding native plant~~
63.10 ~~communities and land uses; and~~

63.11 ~~(b) the rarity of the community at local, regional, and statewide scales.~~

63.12 ~~C. The commissioner may request and consider additional data for areas that have~~
63.13 ~~not been mapped or surveyed.~~

63.14 ~~D. For projects potentially affecting a rare natural community, the local government~~
63.15 ~~unit must consult with the Department of Natural Resources. The local government unit~~
63.16 ~~must consider the following when determining whether the proposed activities will~~
63.17 ~~permanently adversely affect a rare natural community:~~

63.18 ~~(1) the permanence of the adverse effect;~~

63.19 ~~(2) the size of the area affected by the impact relative to overall size of the~~
63.20 ~~community and the extent to which the impact will alter the community's character and~~
63.21 ~~quality;~~

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

- 64.1 ~~(4) on site mitigation measures aimed at sustaining or enhancing the same~~
 64.2 ~~community type; and~~
 64.3 ~~(5) mitigation measures that permanently protect at risk rare natural~~
 64.4 ~~communities. Protection of a rare natural community must include permanent protection of~~
 64.5 ~~its native community attributes, preferably in the same watershed or ecological section.~~

A. A replacement plan for wetland impacts that result in a permanent adverse effect on a rare natural community must include provisions to replace the associated loss of public value.

B. A rare natural community is permanently adversely affected when a wetland impact results in a significant adverse change in the size or condition of the community. When determining whether a permanent adverse effect on the community exists, the local government unit must consider:

- (1) the size of the area affected by the impact relative to overall size of the community;
- (2) the extent to which the impact will alter the community's character and quality; and
- (3) any adverse effects to the community that are likely to occur after the initial impact.

C. Replacement for wetland impacts that permanently adversely affect a rare natural community must include credits obtained through:

- (1) the actions in part 8420.0526 when associated with the restoration or protection of a rare natural community or the restoration of a native plant community to an exceptional ecological condition; or
- (2) the restoration and protection of an exceptional natural resource under part 8420.0526, subpart 8.

A replacement plan that does not provide for adequate replacement of the public value lost as a result of a wetland impact that permanently adversely affects a rare natural community must be denied.

D. When making a decision on a replacement plan under this subpart, the local government unit must consult with the commissioner. Any comments received from the commissioner must be considered in accordance with part 8420.0255, Subp. 4A(4).

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

64.10 A. fish passage and spawning areas;

64.11 B. colonial water bird nesting colonies;

64.12 C. migratory waterfowl concentration areas;

64.13 D. deer wintering areas; and

64.14 E. wildlife travel corridors.

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

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

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

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

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

65.15 ~~Subp. 9. [See repealer.] Waste disposal sites. The local government unit must evaluate~~
~~the type and amount of waste material found at the site. Activities involving known or~~
~~potential hazardous wastes or contaminants must be conducted according to applicable~~
~~federal and state standards.~~

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

65.20 **8420.0520 SEQUENCING.**

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

65.24 descending order or priority:

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

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

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

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

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

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

66.14 Subp. 2. [Repealed, 34 SR 145]

66.15 Subp. 3. **Impact avoidance.**

66.16 A. Avoidance is required when indicated by part 8420.0515.

66.17 B. Wetland dependence determination:

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

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

67.1 C. Alternatives analysis:

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

67.10 (2) The local government unit must determine whether any proposed feasible
67.11 and prudent alternatives are available that would avoid impacts to wetlands. An alternative
67.12 is considered feasible and prudent if it meets all of the following requirements:

67.13 (a) it is capable of being done from an engineering point of view;

67.14 (b) it is in accordance with accepted engineering standards and practices;

67.15 (c) it is consistent with reasonable requirements of the public health,
67.16 safety, and welfare;

67.17 (d) it is an environmentally preferable alternative based on a review of
67.18 social, economic, and environmental impacts; and

67.19 (e) it would create no truly unusual problems.

67.20 (3) The local government unit must consider the following in evaluating
67.21 avoidance alternatives as applicable:

67.22 (a) whether the basic project purpose can be reasonably accomplished
67.23 using one or more other sites in the same general area that would avoid wetland impacts.

67.24 An alternate site must not be excluded from consideration only because it includes or requires

68.1 an area not owned by the applicant that could reasonably be obtained, used, expanded, or
68.2 managed to fulfill the basic purpose of the proposed project;

68.3 (b) the general suitability of the project site and alternate sites considered
68.4 by the applicant to achieve the purpose of the project;

68.5 (c) whether reasonable modification of the size, scope, configuration,
68.6 or density of the project would avoid impacts to wetlands;

68.7 (d) efforts by the applicant to accommodate or remove constraints on
68.8 alternatives imposed by zoning standards or infrastructure, including requests for conditional
68.9 use permits, variances, or planned unit developments;

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

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

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

68.20 Subp. 4. **Impact minimization.** The applicant shall demonstrate to the local
68.21 government unit's satisfaction that the activity will minimize impacts to wetlands. In
68.22 reviewing the sufficiency of the applicant's proposal to minimize wetland impacts, the local
68.23 government unit must consider all of the following:

68.24 A. the spatial requirements of the project;

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

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

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

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

69.8 F. individual and cumulative impacts; and

69.9 G. an applicant's efforts to:

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

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

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

69.14 (4) otherwise minimize impacts.

69.15 Subp. 5. **Impact rectification.** Temporary impacts must be rectified by repairing,
69.16 rehabilitating, or restoring the affected wetland according to the no-loss provisions of part
69.17 8420.0415, item H.

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

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

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

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

70.8 (1) the wetland to be impacted has been degraded to the point where
70.9 replacement of it would result in a certain gain in function and public value;

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

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

70.18 (a) demonstrates impact minimization to the wetland;

70.19 (b) agrees to perpetually preserve the designated upland site; and

70.20 (c) completely replaces the impacted wetland's functions and public
70.21 value; or

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

70.23 B. Sequencing flexibility ~~in the order and application of sequencing standards~~
70.24 must not be implemented unless alternatives have been considered and the proposed

71.1 replacement wetland is certain to provide equal or greater public value ~~as determined based~~
71.2 ~~on a functional assessment~~ an assessment of the wetland's functions reviewed by the technical
71.3 evaluation panel ~~using a methodology approved by the board~~. The applicant ~~must provide~~
71.4 ~~the necessary information and the~~ local government unit must document the application of
71.5 sequencing flexibility in the replacement plan approval.

71.6 Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated field
71.7 and will be replaced through restoration, then the priority order for sequencing in subpart
71.8 1 is not required. A wetland impacted under this subpart must not be converted to
71.9 nonagricultural land for ten years. As a condition of approval, a local government unit may
71.10 require the recording of a deed restriction prohibiting nonagricultural use for ten years on
71.11 a wetland replaced under this subpart when the local government unit determines that the
71.12 wetland is at risk of conversion to nonagricultural use. The determination must be based on
71.13 zoning classification, proximity to a municipality or full-service road, or other criteria as
71.14 determined by the local government unit. When included as a condition of approval, the
71.15 landowner must execute and record a notice of this requirement deed restriction in the office
71.16 of the county recorder for the county in which the property is located and, as a condition of
71.17 approval, provide documentation of the recording to the local government unit before
71.18 impacting the wetland.

71.19 Subp. 9. [Repealed, 34 SR 145]

71.20 **8420.0522 REPLACEMENT STANDARDS.**

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

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

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

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

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

72.11 E. fish, wildlife, and native plant habitats;

72.12 F. low-flow augmentation; and

72.13 G. carbon sequestration; and

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

72.18 Subp. 2. **Determining impacts of partial drainage.** ~~In cases where wetlands will be~~
72.19 ~~partially drained, the amount of wetland to be replaced must be determined according to~~
72.20 ~~this subpart. The area impacted by partially draining a wetland is determined in two parts.~~
72.21 ~~The wetland area where the hydrology will be totally removed must be considered an impact~~
72.22 ~~in its entirety. The amount of impact for the area that is partially drained must be at least~~
72.23 ~~50 percent of the acreage of the remaining wetland area determined by an assessment~~
72.24 ~~acceptable to the technical evaluation panel. At least 50 percent of a wetland area where the~~
~~hydrology is partially removed by drainage must be considered an impact. The percentage~~
~~must be greater than 50 percent when the local government unit determines, in consultation~~
~~with the technical evaluation panel, that a higher percentage is necessary to replace the~~

resulting loss of public value.

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

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

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

73.7 Subp. 4. **Replacement ratios.**

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

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

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

73.16 (3) withdrawal of available credit from an approved wetland bank site within the
 73.17 same

73.18 city or county as the impacted wetland when the bank owner and credit user are the same
 73.19 entity. This subitem does not apply to credits that have been transferred from one bank
 73.20 account to another.

Minimum Replacement Ratios: Banking		
Location of impact	Replacement	Minimum replacement ratio
>80% area or agricultural land	Outside bank service area	1.5:1
	Within bank service area	1.1 1:1
<50% area, 50-80% area, and nonagricultural land	Outside bank service area	2.5:1
	Within bank service area	2:1

74.1 Minimum Replacement Ratios: Project-Specific		
74.2 Location of impact	74.2 Replacement	74.2 Minimum replacement ratio
74.3 >80% area or agricultural	74.3 Outside major watershed or	74.3 1.5:1
74.4 land	74.4 out-of-kind	
74.5	74.5 Within major watershed and	74.5 1:1 1:1
74.6	74.6 in-kind	
74.7 <50% area, 50-80% area,	74.7 Outside major watershed or	74.7 2.5:1
74.8 and nonagricultural land	74.8 out-of-kind	
74.9	74.9 Within major watershed and	74.9 2:1
74.10	74.10 in-kind	

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

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

74.26 D. Wetland replacement must be of a size sufficient to ensure that it provides
 74.27 equal or greater public value than the impacted wetland it will replace. The actual replacement
 74.28 ratio required may be more than the ratio required in item A if the local government unit

75.1 determines that a higher ratio is necessary to replace the public value of the wetland lost.
75.2 In no case shall the replacement ratio be less than 1:1 in greater than 80 percent areas or
75.3 agricultural land, and 2:1 in all other areas.

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

75.11 F. The board may approve special replacement ratios based on data derived from
75.12 comprehensive inventories of replacement opportunities. The board must give notice of the
75.13 replacement ratios to local government units and must publish the ratios in the State Register.
75.14 The board must provide opportunities for public input and comment before publishing the
75.15 special replacement ratios. The conditions and standards take effect 30 days after publication
75.16 and remain in effect unless superseded by subsequent statute, state administrative rule, or
75.17 notice in the State Register.

75.18 G. For purposes of determining replacement ratios, a wetland bank is considered
75.19 within the same bank service area as the proposed impact if the bank was within the same
75.20 bank service area as the proposed impact when the local government unit approved the
75.21 bank.

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

75.23 A. The preferred method of replacement is that which takes advantage of naturally
75.24 occurring hydrogeomorphic conditions with minimal landscape alteration and is most likely
75.25 to result in a wetland **area** that functions wholly, perpetually, and naturally. ~~Wetland~~

76.1 ~~restoration is generally preferred over creation, and restoration of completely impacted~~
76.2 ~~wetlands is generally preferred over other methods of replacement.~~

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

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

76.14 D. In addition to items A to C, when determining the location, type, function, and
76.15 design of replacement **wetlands**, applicants and local government units must consider:

- 76.16 (1) landscape position;
76.17 (2) habitat requirements, development and of important species;
76.18 (3) habitat loss trends;
76.19 (4) sources of watershed impairment;
76.20 (5) current land development trends;
76.21 (6) protection and maintenance of upland resources and riparian areas; and
76.22 (7) providing how the replacement will provide a suite of functions.

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

77.2 A. Establishment or preservation of unmanicured vegetated ~~upland~~ buffer areas
77.3 is required adjacent and contiguous to replacement wetlands receiving credit under part
77.4 8420.0526, subparts 3 to 7.

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

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

77.13 Subp. 7. **Siting of replacement wetlands.**

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

77.17 (1) in the same minor watershed as the ~~affected~~ impacted wetland;

77.18 (2) in the same major watershed as the ~~affected~~ impacted wetland;

77.19 (3) in the same ~~county~~ wetland bank service area as the ~~affected~~ impacted
77.20 wetland; and

77.21 (4) ~~for replacement by wetland banking, in the same another~~ wetland bank
77.22 service area as the impacted wetland, except that impacts in a 50 to 80 percent area must
77.23 be replaced in a 50 to 80 percent area and impacts in a less than 50 percent area must be
77.24 replaced in a less than a 50 percent area; and.

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

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

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

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

78.16 ~~(3) statewide.~~

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

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

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

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

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

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

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

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

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

79.16 E. When wetland replacement wetland sites are identified in accordance with the
79.17 priority
79.18 order for replacement siting in item A as part of completing an environmental impact
79.19 statement determined adequate under chapter 4410, the replacement wetland sites may be
79.20 approved
79.21 for a replacement plan without further modification related to the priority order
79.22 notwithstanding the availability of new mitigation replacement wetland sites or the
79.23 availability of credits after
79.24 completing the adequate environmental impact statement. Wetland replacement plan
79.25 applications must be submitted within one year of the adequacy determination for the
79.26 environmental impact statement to be eligible for approval under this item.

80.1 F. For purposes of this subpart, a wetland bank is considered within the same bank
 80.2 service area as the proposed impact if the bank was within the same bank service area as
 80.3 the proposed impact when the local government unit approved the bank.

80.4 ~~LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA~~

- 80.5 1 ~~Lake Superior (north)~~
- 80.6 2 ~~Lake Superior (south)~~
- 80.7 3 ~~St. Louis River~~
- 80.8 4 ~~Cloquet River~~
- 80.9 5 ~~Nemadji River~~
- 80.10 7 ~~Mississippi River (Headwaters, Lake Winnibigoshish)~~
- 80.11 8 ~~Leech Lake River~~
- 80.12 9 ~~Mississippi River (Grand Rapids)~~
- 80.13 10 ~~Mississippi River (Brainerd)~~
- 80.14 11 ~~Pine River~~
- 80.15 12 ~~Crow Wing River~~
- 80.16 13 ~~Redeye River (Leaf River)~~
- 80.17 14 ~~Long Prairie River~~
- 80.18 15 ~~Mississippi River (Sartell)~~
- 80.19 16 ~~Sauk River~~
- 80.20 17 ~~Mississippi River (St. Cloud)~~
- 80.21 18 ~~North Fork Crow River~~
- 80.22 19 ~~South Fork Crow River~~
- 80.23 20 ~~Mississippi River (Metro)~~
- 80.24 21 ~~Rum River~~
- 80.25 22 ~~Minnesota River (Headwaters)~~
- 80.26 23 ~~Pomme de Terre River~~
- 80.27 24 ~~Lac qui Parle River~~
- 80.28 25 ~~Minnesota River (Granite Falls)~~

81.1	26	Chippewa River
81.2	27	Redwood River
81.3	28	Minnesota River (Mankato)
81.4	29	Cottonwood River
81.5	30	Blue Earth River
81.6	31	Watonwan River
81.7	32	Le Sueur River
81.8	33	Minnesota River (Shakopee)
81.9	34	St. Croix River (Upper)
81.10	35	Kettle River
81.11	36	Snake River
81.12	37	St. Croix River (Stillwater)
81.13	38	Mississippi River (Red Wing) and Lake Pepin
81.14	39	Cannon River
81.15	40	Mississippi River (Winona)
81.16	41	Zumbro River
81.17	42	Mississippi River (La Crescent)
81.18	43	Root River
81.19	44	Mississippi River (Reno)
81.20	46	Upper Iowa River
81.21	47	Wapsipinican River (Headwaters)
81.22	48	Cedar River
81.23	49	Shell Rock River
81.24	50	Winnebago River (Lime Creek)
81.25	51	West Fork des Moines River (Headwaters)
81.26	52	West Fork des Moines River (Lower)
81.27	53	East Fork des Moines River
81.28	54	Bois de Sioux River
81.29	55	Mustinka River

82.1	56	Otter Tail River
82.2	57	Red River of the North (Headwaters)
82.3	58	Buffalo River
82.4	59	Marsh River
82.5	60	Wild Rice River
82.6	61	Sandhill River
82.7	62	Upper and Lower Red Lake
82.8	63	Red Lake River
82.9	65	Thief River
82.10	66	Clearwater River
82.11	67	Grand Marais Creek (Red River of the North)
82.12	68	Snake River
82.13	69	Tamarack River (Red River of the North)
82.14	70	Two River
82.15	71	Roseau River
82.16	72	Rainy River (Headwaters)
82.17	73	Vermillion River
82.18	74	Rainy River (Rainy Lake)
82.19	75	Rainy River (Manitou)
82.20	76	Little Fork River
82.21	77	Big Fork River
82.22	78	Rapid River
82.23	79	Rainy River (Baudette)
82.24	80	Lake of the Woods
82.25	81	Big Sioux River (Medary Creek)
82.26	82	Big Sioux River (Pipestone)
82.27	83	Rock River
82.28	84	Little Sioux River

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

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

83.5 B. Replacement is in advance if the replacement is:

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

83.8 (2) project-specific replacement **wetlands** for which construction has been
83.9 ~~certified~~

83.9 verified, and the first monitoring report of the first full growing season following construction
83.10 ~~certification~~ verification has been submitted according to part 8420.0810, and the replacement
83.11 **wetland**

83.11 meets all goals and performance standards applicable to **that its stage of** development **stage of**
83.12 **the**
replacement site.

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

83.16 Subp. 9. **Financial assurance.**

83.17 A. For wetland replacement that is not in advance, a financial assurance acceptable
83.18 to the local government unit must be submitted to, and approved by, the local government
83.19 unit to ensure successful replacement. The local government unit may waive this requirement
83.20 if it determines the financial assurance is not necessary to ensure successful replacement.
83.21 The local government unit may incorporate this requirement into any financial assurance
83.22 required by the local government unit for other aspects of the project.

83.23 B. The financial assurance may be used to cover costs of actions necessary to
83.24 bring the project into compliance with the approved replacement plan specifications and
8420.0705

83.25 monitoring requirements. The financial assurance does not serve as an in-lieu fee and is not

84.1 a substitute for enforcement, but may be used for repair, construction, vegetation
84.2 establishment and management, maintenance, monitoring, or other actions the local
84.3 government unit determines necessary to ensure adequate replacement.

84.4 C. Before drawing on the financial assurance, the local government unit must
84.5 provide written notice to the landowner stating the actions necessary to bring the replacement
84.6 project into compliance and that the landowner has 30 days to complete the actions, after
84.7 which the local government unit will use the financial assurance to gain compliance. Use
84.8 of the financial assurance by the local government unit may be appealed by the landowner
84.9 within 30 days after the date on which the notice is mailed, according to part ~~8420.0910~~
84.10 8420.0905.

84.11 D. The local government unit may release a portion of the financial assurance
84.12 upon successful completion of construction, but must retain a sufficient amount to ensure
84.13 successful vegetative establishment and completion of the monitoring requirements. Within
84.14 60 days of ~~certification~~ determination of successful replacement and completion of
84.15 monitoring according to part 8420.0820, subpart 2, the local government unit must release
84.16 any remaining financial assurance submitted by the applicant, provided all other conditions
84.17 of the approval are met.

84.18 Subp. 10. Replacement **area wetland** limitations.

84.19 A. The replacement **area wetland** must not:

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

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

85.1 (3) be subject to any drainage or property rights potentially detrimental to
85.2 the replacement **area wetland** unless those rights have been acquired, subordinated, or
85.3 otherwise
85.4 eliminated.

85.4 B. If **any part of** the proposed replacement **area wetland** is within the easement of a
85.5 pipeline, as defined
85.6 in Minnesota Statutes, section 299J.02, subdivision 11, the applicant must notify the easement
85.7 holder and the director of the Office of Pipeline Safety in writing. The replacement must
85.8 not occur within the easement of the pipeline if, within 90 days after receiving the required
85.9 notice, the easement holder or the director of the Office of Pipeline Safety provides a written
85.10 notice of objection to the applicant that includes the reasons for the objection.

85.10 **8420.0526 ACTIONS ELIGIBLE FOR CREDIT.**

85.11 Subpart 1. **Scope.**

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

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

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

85.23 D. Modification **or conversion** of nondegraded wetlands **from one wetland type**
85.24 **to another** by damming, diking, impounding, or excavating does not constitute replacement
85.25 credit. Restoration of wetlands drained or filled in violation of this chapter is not eligible

86.1 for replacement credit. Except for wetlands affected by the maintenance and repair of existing
86.2 drainage systems under part 8420.0420, subpart 3, item A, wetlands impacted under an
86.3 exemption may not be restored for replacement credit for ten years after the impact.

86.4 Subp. 2. **Upland Buffer areas.**

86.5 A. ~~Up to ten percent of the buffer area is eligible for replacement credit for~~
86.6 ~~establishment or preservation of~~ Except as provided in item C, establishing and preserving
86.7 native, noninvasive vegetation within the buffer area is eligible for replacement credit in
86.8 an amount up to 25 percent of the area established or preserved. Preserving nonnative,
86.9 noninvasive vegetation and up to 25 percent of the buffer area is eligible for replacement
86.10 credit for establishment or preservation of native, noninvasive vegetation within the buffer
86.11 area is eligible for replacement credit in an amount up to 10 percent of the area preserved.
86.12 Establishing upland or preserving buffer around existing high value wetlands adjacent to
86.13 the replacement wetland is eligible for replacement credit only when the minimum widths
86.14 provided in part 8420.0522, subpart 6, are maintained and the maximum buffer area under
86.15 item B is not exceeded.

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

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

86.21 (2) the board determines that:

86.22 (a) a buffer area that exceeds the area of the replacement wetland is
86.23 necessary to provide for an implementable and enforceable easement boundary; and

86.24 (b) the additional buffer area is ecologically beneficial to the replacement
86.25 wetland.

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

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

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

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

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

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

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

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

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

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

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

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

88.23 B. up to 75 percent of the wetland area restored for wetlands in a cultivated field
88.24 where a majority of the area to be restored is moderately degraded as determined by the
88.25 technical evaluation panel using assessment criteria provided by the board; and

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

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

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

89.9 B. up to 90 percent of the area restored for wetland areas in bank service areas 2,
89.10 3, and 4 in a percentage equivalent to the percent of time the wetland areas were planted
89.11 with annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes,
89.12 or were required to be set aside to receive price supports or equivalent payments during the
89.13 20-year period prior to the date of application for a replacement or ~~bank~~ banking plan.

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

90.1 **Subp. 7. Wetland creations.**

90.2 A. A wetland created in an upland area is eligible for replacement credit in an
90.3 amount up to 75 percent of the total wetland area created.

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

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

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

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

90.22 (1) habitat for state-listed endangered or threatened species;

90.23 (2) rare native plant communities;

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

91.4 (4) sensitive surface waters; or

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

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

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

91.26 A. contains or benefits an exceptional resource identified in subpart 8;

92.1 B. is of a type or function that is rare, difficult to replace, or of high value to the
92.2 watershed;

92.3 C. contains a rare or declining plant community; or

92.4 D. is of a type that is not likely to regenerate, such as northern white cedar.

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

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

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

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

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

92.17 **8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.**

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

92.21 In evaluating a proposed replacement or banking plan application, the local government
92.22 unit must determine that the plan will adequately replace the public value of wetlands lost.
92.23 If the local government unit determines that the proposed replacement is not likely to result

93.1 in adequate replacement of function and public value, the local government must either
93.2 require modifications necessary to obtain adequate replacement or deny the application.

93.3 **Subp. 2. Design requirements.**

93.4 A. The standards in this subpart must be met for all replacement wetlands unless
93.5 the local government unit, with concurrence of the technical evaluation panel, determines
93.6 that a standard is clearly not appropriate.

93.7 B. Water control structures must be constructed using specifications provided in
93.8 the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be
93.9 subject to the Department of Natural Resources dam safety regulations.

93.10 C. Best management practices must be established and maintained at the
93.11 replacement **wetland** site as necessary to protect the replacement wetland and other
waterbodies.

93.12 Erosion control measures must be employed during construction and until permanent ground
93.13 cover is established.

93.14 D. Native, noninvasive vegetation must be established in restored and created
93.15 wetlands. Each replacement or banking plan involving wetland restoration or creation must
93.16 include a vegetation establishment and management plan. ~~The vegetation establishment and~~
93.17 ~~management plan must include a goal of, and~~ with specific provisions for, establishing ~~plant~~
93.18 ~~communities~~ native, noninvasive vegetation that correspond ~~corresponds~~ to the hydrology
93.19 and landscape position of the replacement **site wetland**. The plan must include actions to
restore the

93.20 native plant community or communities historically associated with wetlands of the
93.21 same **hydrogeomorphic class type** in the watershed, or other plant communities when the
local

93.22 government unit determines that establishing the historic native plant community is not
93.23 feasible or ecologically preferable. If the replacement wetland is seeded or planted, the seed
93.24 or planting stock should be from native, noninvasive species in accordance with the
93.25 Minnesota Wetland Restoration Guide. In evaluating the vegetation establishment and

93.26 management plan, the local government unit must determine that implementation of the

94.1 plan is likely to result in establishment of the appropriate native, noninvasive vegetation
94.2 within the monitoring period. During the monitoring period, the applicant must take
94.3 reasonable steps to control invasion by any nonnative or invasive species.

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

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

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

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

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

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

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

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

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

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

95.18 D. for all restored wetlands where the original organic substrate has been stripped
95.19 away and for all created wetlands, the organic substrate must be sufficient to establish a
95.20 functioning wetland and to accomplish the goals of the replacement or banking plan. When
95.21 feasible, organic soil used for backfill should be salvaged from the impacted wetland for
95.22 utilization in the replacement wetland. Organic soil for backfill from wetlands dominated
95.23 by nonnative or invasive species should be avoided.

95.24 **8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.**

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

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

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

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

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

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

96.18 D. A replacement plan is not required for individual public road projects that
96.19 impact wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently
96.20 serviceable existing state, city, county, or town public road necessary, as determined by the
96.21 public road authority, to meet state or federal design or safety standards or requirements.

96.22 This item only applies to authorities for public road projects that:

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

97.1 (2) provide project-specific plans and information, including project locations,
97.2 wetland boundaries, amount and type of wetlands impacted, demonstration of impact
97.3 minimization, and any changes or addenda, to the board's ~~bank~~ designated banking
97.4 administrator, the technical evaluation panel, the commissioner, and members of the public
97.5 requesting a copy:

97.6 (a) at least 30 days before construction;

97.7 (b) at an annual meeting of the parties required to receive notice,
97.8 convened to review projects to be commenced during the upcoming year; or

97.9 (c) within 30 days of commencing minor and emergency maintenance
97.10 work impacting less than 10,000 square feet.

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

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

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

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

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

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

98.9 J. Public road authorities, at their discretion, may deviate from federal and state
98.10 design standards on existing road projects when practical and reasonable to avoid impacts,
98.11 provided that public safety is not unreasonably compromised. The local road authority and
98.12 its officers and employees are exempt from liability for any tort claim for injury to persons
98.13 or property arising from travel on the highway and related to the deviation from the design
98.14 standards for construction or reconstruction under this item. This item does not preclude an
98.15 action for damages arising from negligence in construction or maintenance on a highway.

98.16 **8420.0700 PURPOSE OF WETLAND BANKING.**

98.17 The purpose of parts 8420.0700 to 8420.0755 is to provide standards for the
98.18 establishment and administration of a state wetland banking system, including individual
98.19 wetland bank sites, as authorized by Minnesota Statutes, section 103G.2242. The purpose
98.20 of the state wetland banking system is to provide a market-based structure that allows for
98.21 replacement of unavoidable impacts with preestablished replacement wetlands. The board
98.22 or the board's designee is responsible for management of the bank, including recording all
98.23 bank transactions, maintaining bank records, and ensuring that the operation of the bank
98.24 complies with ~~parts 8420.0700 to 8420.0755~~ this chapter.

99.1 ~~8420.0702 ESTABLISHING BANK SERVICE AREAS.~~

99.2 ~~Bank service areas are established by the board in consultation with the United States~~
99.3 ~~Army Corps of Engineers and are publicly available on the board's website. The board must~~
99.4 ~~provide notice of an established bank service area in the State Register. A bank service area~~
99.5 ~~takes effect when specified in the notice, but no sooner than 120 days after publication, and~~
99.6 ~~remains in effect unless superseded by a subsequent statute, state administrative rule, or~~
99.7 ~~notice in the State Register. The board must consider watershed boundaries, ecological~~
99.8 ~~characteristics, land use, wetland quality, historic wetland abundance and loss, restoration~~
99.9 ~~opportunities, geographic size, and the economic viability of wetland banks when defining~~
99.10 ~~bank service areas.~~

99.11 **8420.0705 ESTABLISHING A WETLAND BANK SITE SITES.**

99.12 Subpart 1. **Eligibility for wetland banking.** Replacement wetland credits that result
99.13 from any of the eligible actions in part 8420.0526, and that meet the standards of parts
99.14 ~~8420.0522 and 8420.0528,~~ requirements of this chapter may be deposited in the state wetland
99.15 bank for later use in replacing unavoidable impacts. To be eligible for deposit in the bank,
99.16 the credits must be specifically designated for wetland banking purposes prior to undertaking
99.17 the replacement actions ~~and certified by the local government unit prior to deposit.~~
99.18 Designation of credits for wetland banking is accomplished by approval of a wetland banking
99.19 plan by a local government unit. ~~Replacement actions completed or initiated without prior~~
99.20 ~~local government unit approval are not eligible for deposit in the wetland bank.~~

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

99.22 A. Based on a comprehensive local water or wetland protection and management
99.23 plan approved by the board, a local government unit may, by rule or ordinance, limit the
99.24 establishment of bank sites within its jurisdiction. The local government unit that approves
99.25 a banking plan application is responsible for construction ~~certification~~ verification according

100.1 to part 8420.0800, ensuring the monitoring provisions of part 8420.0810 are fulfilled, and
100.2 certifying credits for deposit according to part 8420.0725.

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

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

A. Before submitting a banking plan application to a local government unit under
subpart 3a, the applicant must submit a prospectus to the local government unit for review
according to subpart 3a.

A B. The prospectus must describe the location of the proposed bank, how the bank
will be established, associated land rights and ownership arrangements, and the actions proposed

to generate credits according to part 8420.0526 and must include other information required by the board.

B C. The local government unit must determine whether the prospectus is complete. If the prospectus is incomplete, the local government unit must notify the applicant within 15 business days of receiving the incomplete prospectus and specify, in writing, what information is missing.

€ D. Within 15 business days of receiving a complete prospectus, the local government unit must send a copy of the prospectus to members of the technical evaluation panel and the board's designated banking administrator.

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

Subp. 3a. Banking plan application and decision procedures.

- 100.24 A. All application information required in this subpart must be provided in a form
 100.25 prescribed by the board.

101.1 ~~B. Before submitting a banking plan application to a local government unit, the~~
101.2 ~~applicant must submit a prospectus to the local government unit for review according to~~
101.3 ~~subpart 3a.~~

101.4 **E B.** An applicant may submit a banking plan application to the local government
101.5 unit after completing the prospectus review under subpart 3a. A banking plan application
101.6 must include:

101.7 (1) the information specified in parts 8420.0305 and 8420.0330, subpart 3;

101.8 (2) a proposed conservation easement boundary;

101.9 (3) a credit release schedule with associated performance standards, as

101.10 applicable; and

101.11 (4) other information required by the board to determine whether the
101.12 application meets the requirements of this chapter.

101.12 **D C.** The local government unit must determine whether a banking plan application
101.13 is complete. If the banking plan application is incomplete, the local government unit must
101.14 notify the applicant within 15 business days after receiving the application and specify, in
101.15 writing, what items or information is missing.

101.16 **E D.** Within 15 business days after receiving a complete banking plan application,
101.17 the local government unit must send a copy of the application and a notice of application,
101.18 on a form provided by the board, to those required to receive notice under part 8420.0255,
101.19 subpart 3, and the board's designated banking administrator. The notice must designate a
101.20 comment period of 60 days, which begins on the date the notice is sent. Any comments
101.21 received by the local government unit must be shared with the technical evaluation panel
101.22 for consideration in developing the panel's findings and recommendations. The technical
101.23 evaluation panel must provide its findings and recommendations to the local government
101.24 unit within 90 days after the notice of application is issued sent.

102.1 **FE.** Decisions made by the local government unit must be based on the standards
102.2 and procedures prescribed in this chapter and any findings and recommendations provided
102.3 by the technical evaluation panel. Except as provided in item **H G**, or if extended under item
102.4 **E**, a local government unit's
102.5 decision to approve, approve with conditions, or deny a banking plan application must be
102.6 made within 140 days after receiving the complete application.

102.6 **GF.** The local government unit may extend the decision timeline in item **FE** for an
102.7 additional 60 days if additional field review is required or substantive plan details require
102.8 additional review by other experts. The applicant and the local government unit may agree
102.9 to further extend the decision timeline beyond the initial 60-day extension. All extensions
102.10 must be specified in writing.

102.11 **H G.** If a banking plan applicant notifies the local government unit in writing of the
102.12 applicant's intent to revise the banking plan application or respond to any findings and
102.13 recommendations provided, the decision timeline in item **FE** does not apply, and the local
102.14 government unit's decision must be made according to item **I H**.

102.15 **I H.** If substantive revisions to a banking plan application are received, the local
102.16 government unit must send a copy of the revised banking plan application and a notice of
102.17 application, on a form provided by the board, to the technical evaluation panel and the
102.18 board's designated banking administrator within 10 days after receiving the revisions. The
102.19 notice must designate a comment period of 60 days, which begins on the date the notice is
102.20 sent. The local government unit must make a decision on the revised banking plan application
102.21 within 100 days after receiving the revised application.

102.22 **J I.** Within ten days after the date of a decision, the local government unit must
102.23 send a notice of decision, on a form provided by the board, to those required to receive
102.24 notice of application under item **ED**. The notice must designate a 30-day appeal period
102.25 consistent with part 8420.0905.

103.1 ~~¶ J.~~ If the local government unit fails to make a decision on a banking plan
103.2 application within the timelines required under this subpart, the board must act on the
103.3 application in lieu of the local government unit or remand the matter to the local government
103.4 unit with instructions.

103.5 ~~Subp. 3a. Prospectus requirements and procedure.~~

103.6 ~~A. The prospectus must describe the location of the proposed bank, how the bank~~
103.7 ~~will be established, associated land rights and ownership arrangements, and the actions~~
103.8 ~~proposed to generate credits according to part 8420.0526 and must include other information~~
103.9 ~~required by the board.~~

103.10 ~~B. The local government unit must determine whether the prospectus is complete.~~
103.11 ~~If the prospectus is incomplete, the local government unit must notify the applicant within~~
103.12 ~~15 business days of receiving the incomplete prospectus and specify, in writing, what~~
103.13 ~~information is missing.~~

103.14 ~~C. Within 15 business days of receiving a complete prospectus, the local~~
103.15 ~~government unit must send a copy of the prospectus to members of the technical evaluation~~
103.16 ~~panel and the board's designated banking administrator.~~

103.17 ~~D. The technical evaluation panel must review the prospectus to determine the~~
103.18 ~~feasibility of the project and the potential of the proposed wetland bank to generate~~
103.19 ~~replacement credits in accordance with this chapter. The local government unit must send~~
103.20 ~~findings and recommendations to the applicant within 90 days after the local government~~
103.21 ~~unit receives the complete prospectus.~~

103.22 Subp. 4. **Combined banking and project-specific replacement.** When a banking
103.23 plan applicant wishes to use a portion of the credits generated from a banking project for
103.24 project-specific replacement, the banking plan must identify the project-specific impact and

103.25 the amount of credits to be used according to a corresponding replacement plan. The credits

104.1 must meet the requirements of parts 8420.0500 to 8420.0528 and the approved replacement
104.2 plan, and be deducted before deposit of any credits into the state wetland bank.

104.3 Subp. 5. **Conservation easement; ~~waiver~~.**

104.4 A. ~~No~~ Except as provided in item B, no credits may be deposited in the state
104.5 wetland bank until a perpetual
104.6 conservation easement, ~~in a format~~ meeting requirements prescribed by the board, is granted
104.7 to and accepted by the state. ~~The easement must encompass the entire replacement area,~~
104.8 ~~unless the local government unit and the board approve an alternate boundary at the time~~
104.9 ~~of bank application approval. The easement must provide for preservation of the banked~~
104.10 ~~wetland's functions by the fee owner and wetland banking plan applicant. The wetland~~
104.11 ~~banking plan applicant must also provide a title insurance policy that is acceptable to the~~
104.12 ~~state naming the state of Minnesota as the insured. If the conservation easement does not~~
104.13 ~~abut a public road, the fee owner and wetland banking plan applicant must also grant and~~
104.14 ~~record an access easement in favor of the board; the local government unit; and any other~~
104.15 ~~state, local, or federal regulatory authority that has authorized use of credits from the site~~
104.16 ~~for wetland replacement. The access easement does not confer a right of access to the general~~
104.17 ~~public. The boundary of bank areas must be clearly marked as prescribed in the conservation~~
104.18 ~~easement. This subpart does not apply to state land.~~

104.18 B. ~~If the board determines that adequate access to and long term protection of the~~
104.19 ~~bank site exists, the board must waive the requirement for a conservation easement on state~~
104.20 ~~or federal land or on land held in trust by the federal government for Tribal Nations. A~~
~~conservation easement is not required on state or Federal land, or land held in trust by the~~
~~federal government for Tribal Nations, when the board determines that:~~
~~1) a conservation easement is not feasible, and~~
~~2) adequate access to, and long-term protection of, the bank site exists.~~

104.21 Subp. 6. **Time limits for construction.** Replacement actions under an approved
104.22 banking plan must be initiated within three years of banking plan approval or the banking
104.23 plan must be resubmitted to the local government unit for consideration. Construction
104.24 ~~certification~~ verification according to part 8420.0800 must be gained within five years of
8420.0705

- 104.25 banking plan approval. The time limits under this subpart may be extended by the local
- 104.26 government unit in consultation with the technical evaluation panel.

105.1 **8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.**

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

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

105.19 (1) ~~name, address, and telephone number of the banking plan applicant;~~

105.20 (2) ~~a complete copy of the banking plan application and local government~~
105.21 ~~unit approval, supporting documents, and a legal boundary survey of the land area that will~~
105.22 ~~be subject to restrictions (for initial deposit only);~~

105.23 (3) ~~a copy of the deed for the property containing the wetland and any~~
105.24 ~~easement if the banking plan applicant is not the fee owner (for initial deposit only);~~

105.25 (4) ~~a copy of the recorded conservation easement according to part 8420.0705,~~

105.26 ~~subpart 5;~~

106.1 ~~(5) amount of replacement credit to be deposited, to the square foot, by~~
 106.2 ~~wetland type;~~

106.3 ~~(6) technical evaluation panel recommendation and local government unit~~
 106.4 ~~certification; and~~

106.5 ~~(7) other information required by the board.~~

106.6 ~~C B.~~ Up to 15 percent of the ~~potential banking~~ credits ~~proposed for specified in the~~
 106.7 ~~approved~~ banking ~~plan~~ are eligible for deposit in
 106.8 the bank ~~immediately after the certification of local government unit determines that the~~
 106.9 ~~construction specifications of replacement wetlands have been met according to part~~
 106.10 ~~8420.0820, subpart 2, 8420.0800 and recording of a conservation easement according to~~
 106.11 ~~that the requirements of part 8420.0705, subpart 5, have been met.~~

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

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

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

107.10 **8420.0735 MONITORING AND CORRECTIVE ACTIONS.**

107.11 Subpart 1. **Monitoring.**

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

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

107.21 Subp. 2. **Maintenance responsibilities.** The fee owner and the banking applicant, if
107.22 different from the fee owner, are jointly and severally responsible for the success of the
107.23 banking project according to the approved banking plan and for maintaining the banking
107.24 project according to the conditions of the conservation easement. The banking plan applicant,
107.25 if different from the fee owner, is not responsible for maintenance after the monitoring

108.1 requirements have been completed if the banking plan applicant no longer owns an easement
108.2 interest in the real estate or credits associated with the ~~banked~~ replacement wetland.

108.3 **Subp. 3. Corrective actions.**

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

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

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

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

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

109.1 **8420.0745 WITHDRAWALS AND TRANSFERS.**

109.2 Subpart 1. **General.**

109.3 A. Credits from the state wetland bank may only be used to replace wetland
109.4 impacts when:

109.5 (1) authorized by a local government ~~units~~ unit under this chapter or by other
109.6 local, state, and federal ~~regulatory~~ governmental authorities, ~~provided~~;

109.7 (2) the impacted wetland is within the state of Minnesota; and

109.8 (3) the credit withdrawal procedures of this chapter are followed.

109.9 B. No sale, withdrawal, transfer, or use of banking credits for replacement is valid
109.10 until the board debits the applicable bank account. **Banking** credits may be used only once to
109.11 replace wetland impacts. Bank accounts must maintain a positive balance. When all credits
109.12 have been withdrawn or transferred, the account is closed.

109.13 Subp. 2. **Withdrawals.** Replacement plan applicants ~~seeking to use~~ or others proposing
109.14 to withdraw banking credits for replacement are responsible for contacting and arranging
109.15 for acquisition of the credits from the holder of a bank account according to the ~~wetland~~
109.16 ~~replacement~~ requirements of this chapter. ~~The board shall supply information on wetland~~
109.17 ~~bank sites according to part 8420.0755, subpart 1, item B. Replacement plan applicants~~
109.18 ~~proposing the use of bank credits for replacement must complete a credit withdrawal form~~
109.19 ~~prescribed by the board and include it as part of the replacement plan application submitted~~
109.20 ~~to the local government unit.~~ If the local government unit approves the use of **banking** credits
109.21 for replacement, a representative of the local government unit must sign the completed
109.22 credit withdrawal form provided by the applicant and ~~notify the board's banking administrator~~
109.23 ~~according to part 8420.0255, subpart 5. The board shall not withdraw credits from a bank~~
109.24 ~~account unless a regulatory entity with authority over the use of the credits has approved~~
109.25 ~~the use of the subject credits for replacement of a specific wetland impact~~ return the form

110.1 to the applicant. The applicant must then submit the fully executed form and any required
110.2 fees to the board's designated banking administrator. Local government unit approval of
110.3 replacement plans involving the use of banking credits is conditional upon withdrawal of
110.4 the credits by the board. Impacts under replacement plans must not occur until the board
110.5 has notified the replacement plan applicant that the credits have been withdrawn.

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

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

110.18 **8420.0755 BANK ACCOUNT ADMINISTRATION AND MANAGEMENT.**

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

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

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

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

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

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

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

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

111.13 ~~(1) account holder name, address, telephone number, and email address, if~~
 111.14 ~~available;~~

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

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

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

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

112.1 ~~B. account deposit or transfer: 6.5 percent of the value of credits not to exceed~~
112.2 ~~\$1,000 per deposit or transfer; and~~

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

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

112.7 **8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION**
112.8 **VERIFICATION.**

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

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

112.20 A. surveyed elevations of slopes, contours, outlets, and dikes;

112.21 B. seed tags and contractor receipts or other documentation of seeding or planting;

112.22 C. a description of site preparation activities, such as mulching, seedbed
112.23 preparation, seeding methods, or initial weed control activities;

112.24 D. a survey map showing relevant areas of seeding and construction activities;

113.1 E. construction photos showing relevant restoration work;

113.2 F. evidence that, for projects including dams, dikes, or other ~~impoundment features~~
113.3 water control structures, the construction was designed, overseen, and certified by a ~~licensed~~
113.4 ~~professional engineer~~ an individual licensed to practice engineering in Minnesota; and

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

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

113.22 **8420.0810 REPLACEMENT WETLAND MONITORING.**

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

114.1 Subp. 2. **Responsibilities.**

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

114.7 B. Compliance with monitoring requirements for an approved replacement or
114.8 banking plan is determined by the local government unit. For project-specific replacement
114.9 in which the wetland impact site occurs in a different local government unit from the
114.10 replacement **site wetland**, the local government unit for the impact site may assume the
114.11 monitoring enforcement responsibility for the replacement **site wetland** upon written agreement between
114.12 the local government units.

114.13 Subp. 2a. **Monitoring plan.** Each replacement plan and banking plan involving
114.14 restoration or creation must include a monitoring plan that achieves the purpose in subpart
114.15 1. ~~The monitoring plan must conform to the requirements of this part and include information~~
114.16 ~~required by the board.~~ The monitoring plan must include **information on a description of**
114.17 ~~proposed~~ monitoring methods,
114.18 the frequency and timing of monitoring during the growing season, **and** the content and
114.19 submittal dates of monitoring reports, ~~and any other information required by the board.~~

114.19 Subp. 3. **Timing and duration of monitoring.**

114.20 A. ~~Monitoring may, at the discretion of the local government unit, begin upon~~
114.21 ~~construction certification, but must begin no later than the first full growing season following~~
114.22 ~~construction certification. Monitoring must continue for five full growing seasons or until~~
114.23 ~~the local government unit determines, with the concurrence of the technical evaluation~~
114.24 ~~panel, that the replacement is successful, but in no case may the determination be made~~

114.25 ~~before the end of the third full growing season.~~ Monitoring for a replacement wetland must

114.26 begin no later than the first full growing season after the local government unit determines

115.1 that the construction specifications of replacement wetlands have been met. The monitoring
115.2 plan must include a monitoring period that is sufficient to determine whether the replacement
115.3 wetland has met performance standards. For replacement wetlands involving actions under
115.4 part 8420.0526, subparts 3, 4, 5, 7, and 8, monitoring must continue for at least five full
115.5 growing seasons. If the technical evaluation panel determines that the replacement wetland
115.6 has met all performance standards in less than five full growing seasons, the local government
115.7 unit may waive the remaining monitoring requirements.

115.8 B. For wetland banking projects, the applicant may request additional time to
115.9 monitor the wetland and achieve performance standards. The local government unit may
115.10 extend the monitoring period when it determines, in consultation with the technical evaluation
115.11 panel, that more time is needed to achieve performance standards.

115.12 ~~B. C.~~ If the goals of the an approved project-specific replacement plan have not
115.13 been achieved after the fifth season of monitoring but, in the written opinion of the technical
115.14 evaluation panel, may be achieved with more time, the local government unit may, through
115.15 written notification of the applicant, extend the monitoring period for not more than an
115.16 additional five growing seasons. The local government unit's notification of extension must
115.17 specify the reasons for the extension and any corrective actions necessary to bring the
115.18 replacement wetland into compliance with the approved plan.

115.19 ~~C. D.~~ For project-specific replacement plans, if the local government unit
115.20 determines that, at any time during the monitoring period and based on the recommendation
115.21 of the technical evaluation panel, the goals of the approved replacement plan have not been
115.22 achieved, and will not be achieved with more time, the local government unit must pursue
115.23 one or more corrective actions identified in part 8420.0820, subpart 1.

115.24 **Subp. 4. Monitoring reports.**

115.25 ~~A. Following the first full growing season after construction certification, The~~
115.26 applicant must submit annual monitoring reports documenting the progress of toward and

116.1 achievement of performance standards for the replacement wetland during the required
116.2 monitoring period consistent with the approved monitoring plan. The first annual monitoring
116.3 report must include any preconstruction monitoring ~~required by the local government unit~~
116.4 ~~during the previous year~~ data collected. The applicant must submit the annual report to the
116.5 ~~appropriate~~ local government unit ~~on a date determined by the local government unit, but~~
116.6 ~~no later than December 31~~ according to the timelines identified in the approved monitoring
116.7 plan and before any credit deposit request. The local government unit must ensure that
116.8 copies of the monitoring report are distributed to the technical evaluation panel. ~~For wetland~~
116.9 ~~banking projects, the applicant must also submit the annual report to the board's wetland~~
116.10 ~~banking administrator.~~ The monitoring reports must be submitted annually, ~~or biannually~~
116.11 ~~if unless~~ the local government unit determines that, ~~after the third full growing season,~~
116.12 ~~biannual reports are sufficient~~ an alternative schedule is sufficient for long-term monitoring;
116.13 ~~until the local government unit determines the replacement has been successful~~ of the site.

116.14 **B.** ~~The purpose of the annual report is to describe actual wetland restoration or~~
116.15 ~~creation activities completed during the past year, activities planned for the upcoming year,~~
116.16 ~~and the success of the replacement activities in achieving identified goals and performance~~
116.17 ~~standards. The annual~~ **Each monitoring report must,** at a minimum, **include:** **information**
116.18 **sufficient to evaluate progress towards meeting performance standards and other information**
116.19 **required by the board.**

116.20 (1) ~~a project location map with legal description;~~

116.21 (2) ~~a description of replacement wetland goals and performance standards in~~
116.22 ~~terms of size, replacement credit amount, wetland types, hydrology, and wetland functions~~
116.23 ~~and a comparison of the current replacement wetland to these goals and standards;~~

116.24 (3) ~~a description of activities completed during the past year;~~

116.25 (4) ~~a description of activities planned for the upcoming year;~~

117.1 ~~(5) hydrology measurements during the growing season, including water~~
117.2 ~~level elevations at fixed, repeatable locations representative of the replacement wetland~~
117.3 ~~types or areal coverage measurements of inundation for replacement wetlands with deeper~~
117.4 ~~hydrologic regimes;~~

117.5 ~~(6) a map of plant communities within the boundaries of the replacement~~
117.6 ~~site, including estimates of square footage or acreage of each and identification of areas of~~
117.7 ~~invasive or nonnative vegetation;~~

117.8 ~~(7) color photographs of all replacement areas taken during the growing~~
117.9 ~~season from fixed, repeatable reference locations that are representative of each plant~~
117.10 ~~community type;~~

117.11 ~~(8) a delineation and survey of the replacement wetland areas, if applicable,~~
117.12 ~~for the final monitoring season; and~~

117.13 ~~(9) other information specified in the approved monitoring plan or~~
117.14 ~~subsequently requested by the local government unit.~~

117.15 **8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.**

117.16 **Subpart 1. Monitoring oversight.**

117.17 A. The local government unit must evaluate all monitoring reports for compliance
117.18 with report requirements and must determine if the goals of the approved plan can be met
117.19 within the specified monitoring period based on the current condition of the replacement
117.20 wetland and the applicant's proposed management activities for the following growing
117.21 season.

117.22 B. For project-specific replacement, if the local government unit determines that
117.23 the goals of the approved replacement plan will not be met, it must take one or more of the
117.24 following actions:

- 118.1 (1) ~~order require~~ specific corrective actions on the replacement wetlands;
- 118.2 (2) ~~order require~~ the applicant to prepare and implement a new or revised
- 118.3 replacement plan;
- 118.4 (3) ~~request the enforcement authority to issue a cease and desist order on the~~
- 118.5 ~~wetland impact activity if it has not been completed~~ pursue enforcement actions according
- 118.6 to part 8420.0900;
- 118.7 (4) ~~request the local soil and water conservation district and enforcement~~
- 118.8 ~~authority to order restoration of the impacted wetland;~~
- 118.9 (5) ~~(4)~~ use any financial assurance collected from the applicant to ~~replace the~~
- 118.10 ~~lost wetland function and value~~ satisfy the replacement requirements of this chapter;
- 118.11 (6) ~~(5)~~ pursue a district court order requiring the applicant to fulfill the
- 118.12 replacement plan; or
- 118.13 (7) ~~(6)~~ other actions that the local government unit determines necessary to
- 118.14 achieve the goals of the replacement plan.

118.15 C. If the landowner fails to submit the ~~annual~~ report associated with a

118.16 project-specific replacement plan in accordance with part 8420.0810, the local government

118.17 unit responsible for monitoring oversight must either pursue enforcement actions under

118.18 item B or prepare the ~~annual~~ report for the applicant. The local government unit may charge

118.19 fees for preparing the report or use any financial assurance the applicant had provided to

118.20 complete the monitoring requirements.

118.21 Subp. 2. **Certification Completion of monitoring and determination of successful**

118.22 **replacement and completion of monitoring.** Upon completion of the ~~minimum~~ required

118.23 monitoring period, ~~the applicant may request a field review by~~ the local government unit

118.24 and technical evaluation panel ~~of the success of the replacement~~ must determine whether

118.25 the wetland replacement is successful. If the replacement is determined successful, the local

119.1 government unit must ~~provide written notification to~~ notify the applicant in writing that the
119.2 replacement ~~has been certified and the monitoring~~ requirements have been fulfilled.

119.3 **8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND**
119.4 **MANAGEMENT PLANS.**

119.5 Subpart 1. **Purpose and eligibility.**

119.6 A. As an alternative to the rules adopted under Minnesota Statutes, section
119.7 103G.2242, subdivision 1, and the public value criteria established or approved under
119.8 Minnesota Statutes, section 103B.3355, a comprehensive wetland protection and management
119.9 plan may be developed by a local government unit, or one or more local government units
119.10 operating under a joint powers agreement, provided that the requirements of this part are
119.11 met. This part provides minimum standards. Local government units may require equivalent
119.12 or more stringent standards and procedures for wetland conservation, but not less stringent
119.13 standards and procedures.

119.14 B. The ultimate goal of a comprehensive wetland protection and management
119.15 plan is to maintain and improve the quality, quantity, and biological diversity of wetland
119.16 resources within watersheds through the prioritization of existing wetlands and the strategic
119.17 selection of replacement **wetland** sites. The purpose of developing a plan is to provide a
watershed
119.18 and ecosystem-based framework to make wetland impact and replacement decisions that
119.19 meet state standards and locally identified goals and support the sustainability or improvement
119.20 of wetland resources in watersheds while providing local flexibility as allowed under subpart
119.21 4.

119.22 C. Any local government unit opting to pursue development of a plan and
119.23 incorporating this chapter into local ordinance must provide documentation to the board
119.24 demonstrating local capacity to implement the plan.

119.25 Subp. 2. **Relationship to other plans.** To maximize effectiveness, the comprehensive
119.26 wetland protection and management plan should be developed as part of, or in coordination

120.1 with, other relevant local or regional plans and requirements. The plan should provide a
120.2 mechanism for integrating local land use decisions with wetland ecosystem management
120.3 goals at the watershed level.

120.4 Subp. 3. **Plan area.** To the extent practical and feasible, the comprehensive wetland
120.5 protection and management plan should be based on watershed boundaries. The size of
120.6 watershed addressed should not be larger than is appropriate to ensure that the wetland
120.7 resources provided through replacement will effectively compensate for approved impacts.
120.8 For local governments with multiple watersheds, a separate analysis should be completed
120.9 for each watershed substantially within the local government's jurisdiction. Local
120.10 governments should consider joint planning efforts for those watersheds that cross political
120.11 boundaries.

120.12 Subp. 4. **Flexibility options under local plan.** The comprehensive wetland protection
120.13 and management component of the local water plan may:

120.14 A. vary application of the sequencing standards in part 8420.0520, for projects
120.15 based on the classification and criteria in the plan;

120.16 B. vary the replacement standards of part 8420.0522, subparts 3 to 9, and the
120.17 actions eligible for credit under part 8420.0526, based on the classification and criteria in
120.18 the plan, so long as there is no net loss of public value within the area subject to the plan
120.19 and so long as:

120.20 (1) in a 50 to 80 percent area, a minimum acreage requirement of one acre
120.21 of replaced wetland for each acre of impacted wetland requiring replacement is met within
120.22 the area subject to the plan; and

120.23 (2) in a less than 50 percent area, a minimum acreage requirement of two
120.24 acres of replaced wetland for each acre of impacted wetland requiring replacement is met
120.25 within the area subject to the plan;

121.1 C. in a greater than 80 percent area, allow replacement credit, based on the
121.2 classification and criteria in the plan, for any project that increases the public value of
121.3 wetlands, including activities on adjacent upland acres;

121.4 ~~D. in a greater than 80 percent area, based on the classification and criteria in the~~
121.5 ~~plan, expand the application of the exemptions in part 8420.0420, subpart 2, item B, to also~~
121.6 ~~include nonagricultural land, provided there is no net loss of wetland value;~~

121.7 ~~E.~~ D. prescribe standards for size and location of replacement wetlands by
121.8 establishing type requirements, size and ratio requirements, functional quality requirements,
121.9 location requirements, and criteria for wetland mitigation fee in lieu of direct replacement.
121.10 Requirements for replacement must have a direct relationship with wetland classification
121.11 as defined in the plan and must result in no net loss of wetland quantity, quality, and
121.12 biological diversity over the life of the plan; and

121.13 ~~F.~~ E. allow exemptions based on ordinance or rule standards, eligibility criteria,
121.14 and processes that are not less restrictive than the requirements in parts 8420.0320 and
121.15 8420.0420 based on wetland classifications as defined in the plan.

121.16 Subp. 5. **Plan content.**

121.17 A. The comprehensive wetland protection and management plan must include the
121.18 establishment of watershed goals based on an analysis of the existing ecological conditions
121.19 of the plan area and the development of corresponding goals for maintaining and improving
121.20 those conditions. The ecological condition of the plan area should be based on inventories
121.21 of historic and existing wetland resources, including identification of degraded wetlands,
121.22 existing high-quality wetlands, and immediate and long-term resource needs within the plan
121.23 area. The analysis may be completed as part of the comprehensive wetland protection and
121.24 management plan or adopted from a relevant local or regional water plan, if one exists.

122.1 B. The plan may provide for the classification of wetlands in the plan area based
122.2 on:

122.3 (1) an inventory of existing wetlands in the plan area;

122.4 (2) an assessment of the wetland functions listed in part 8420.0522, subpart
122.5 1, using a methodology chosen by the technical evaluation panel and based on one of the
122.6 methodologies established or approved by the board;

122.7 (3) landscape position, adjacent habitats or buffers, connectivity with or
122.8 between important resources, projected land use, and other watershed-scale criteria; and

122.9 (4) the resulting public value.

122.10 C. The plan must include an inventory and prioritization of replacement **wetland**
sites

122.11 based on an analysis of the types and locations of replacement **wetland** projects that will
provide the

122.12 desired wetland functions, benefit the watershed from a landscape perspective, and best

122.13 offset losses of public value caused by approved impacts. The goal of the analysis is to

122.14 provide a framework from which replacement actions and locations will provide the greatest

122.15 value to the public based on the ecological needs of the watershed. Priority should be given

122.16 to naturally self-sustaining replacement that best achieves watershed goals and improves

122.17 the ecological condition of the watershed. The plan must include strategies for the promotion

122.18 and establishment of high-priority replacement **sites wetlands** that best meet the goals of the
plan.

122.19 D. Comprehensive wetland protection and management plans developed as part

122.20 of county, watershed district, or watershed management organization plan may identify

122.21 those areas that qualify as high-priority areas for wetland preservation, enhancement,

122.22 restoration, and establishment according to part 8420.0835.

122.23 E. The plan must include a provision for periodic assessment of the effectiveness

122.24 of the plan, and the local government unit's implementation of it, in achieving plan goals.

122.25 Updates to previously approved plans must include an analysis of the effectiveness of the

123.1 previous plan, including the identification of barriers to achieving identified goals and
123.2 development of strategies to overcome them.

123.3 F. The plan must specify the period covered by the plan, which must extend at
123.4 least five years but not more than ten years from the date the board approves the plan.

123.5 **Subp. 6. Plan development and review process.**

123.6 A. A notice of intent to plan must be sent, at the beginning of the planning process,
123.7 to the technical evaluation panel, the Department of Natural Resources, the Department of
123.8 Agriculture, the Pollution Control Agency, watershed management organizations within
123.9 the plan area, local government units within and adjacent to the plan area, and the St. Paul
123.10 district office of the United States Army Corps of Engineers with an invitation to actively
123.11 participate in the development of the plan. The notice should also include a general
123.12 description of the planning effort, the planning area, and an anticipated timeline.

123.13 B. The technical evaluation panel must be consulted in all components of plan
123.14 and ordinance development, including conducting wetland functional assessments,
123.15 establishing wetland management classifications and standards, prioritizing replacement
123.16 wetland sites, and identifying local reference standard wetlands.

123.17 C. The local government unit must implement a process for notifying and involving
123.18 local citizens in the development of the plan and determination of local value. Local citizen
123.19 involvement may include the formation of a citizen's advisory committee or utilization of
123.20 other existing citizen groups.

123.21 D. Upon completion, the local government unit must submit the draft
123.22 comprehensive wetland protection and management plan and ordinance or rule for a 60-day
123.23 review and comment period to those required to receive notice under item A. The local
123.24 government unit must respond in writing, within 30 days of the end of the review period,
123.25 to any comments received during the review period.

124.1 E. The local government unit must conduct a public hearing on the plan no sooner
124.2 than 30 days after the end of the 60-day review period but before submitting the final draft
124.3 plan to the board for approval.

124.4 F. After conducting the public hearing but before final adoption, the local
124.5 government unit must submit the plan and ordinance or rule, all written comments received,
124.6 a record of the public hearing, and a summary of responses to comments and changes
124.7 incorporated as a result of the review process to the board for review under subpart 7.

124.8 G. An organization that is invited to participate in the development of the draft
124.9 local plan, but declines to do so or fails to participate or to provide written comments during
124.10 the local review process, waives the right during the review under item D to submit
124.11 comments, except comments concerning consistency of the plan with laws and rules
124.12 administered by that agency. In determining the merit of an agency comment, the board
124.13 must consider the involvement of the agency in the development of the local plan.

124.14 H. Except as otherwise provided for in this part, all other requirements relating
124.15 to development of the plan must be consistent with the local water plan processes under
124.16 Minnesota Statutes, section 103B.231, 103B.311, or 103D.401. A plan developed as part
124.17 of a local water management plan may follow the review and approval process applicable
124.18 to the local water management plan instead of the review and approval process under items
124.19 D to F.

124.20 Subp. 7. **Board decision; mediation; judicial review.**

124.21 A. The board shall make a decision to approve or disapprove a comprehensive
124.22 wetland protection and management plan within 60 days of receipt of a complete and final
124.23 draft of the plan and ordinance or rule as required in subpart 6, item F. The board may
124.24 disapprove all or parts of the plan if the board determines the plan does not meet the
124.25 requirements of this part. If the board has not made a decision within 60 days of receipt of

125.1 the final plan, the plan is deemed approved. The 60-day period may be extended upon mutual
125.2 agreement of the board and the local government unit.

125.3 B. In its review of a plan, the board must advise the local government unit of those
125.4 elements of the plan that are more restrictive than this chapter and the act.

125.5 C. If the board disagrees with the plan or any elements of the plan, the board shall,
125.6 in writing, notify the local government unit of the plan deficiencies and suggested changes.
125.7 The board must include in the response to the local government unit the scientific
125.8 justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's
125.9 concerns with the plan, the local government unit has 60 days to revise the plan and resubmit
125.10 the plan to the board for reconsideration, or the local government unit may request a hearing
125.11 before the board. The board must hold a hearing within the boundaries of the jurisdiction
125.12 of the local government within 60 days of the request for hearing. After the hearing, the
125.13 board must, within 60 days, prepare a report of its decision and inform the local government
125.14 unit.

125.15 D. If, after the hearing, the board and local government unit disagree on the plan,
125.16 the board must, within 60 days, initiate mediation through a neutral party. If the board and
125.17 local government unit agree in writing not to use mediation or the mediation does not result
125.18 in a resolution of the differences between the parties, then the board may commence a
125.19 declaratory judgment action in the district court of the county where the local government
125.20 unit is located. If the board does not commence a declaratory judgment action within the
125.21 applicable 60-day period, the plan is deemed approved.

125.22 E. The declaratory judgment action must be commenced within 60 days after the
125.23 date of the written agreement not to use mediation or 60 days after conclusion of the
125.24 mediation. If the board commences a declaratory judgment action, the district court must
125.25 review the board's record of decision and the record of decision of the local government
125.26 unit. The district court must affirm the plan if it meets the requirements of this part.

126.1 Subp. 8. **Effective date and amendments.**

126.2 A. The comprehensive wetland protection and management plan is effective after
126.3 approval by the board as provided in subpart 7 and after adoption of the plan into the official
126.4 controls of the local government unit.

126.5 B. Comprehensive wetland protection and management plans remain in effect
126.6 according to subpart 5, item F, unless revised according to subpart 6 and approved by the
126.7 board. Plans that contain revision dates inconsistent with this part must comply with the
126.8 plan's date if the date is not more than ten years beyond the date of board approval. An
126.9 extension of the revision date of the plan may be granted by the board.

126.10 C. All amendments to the adopted plan and ordinance are effective upon
126.11 completion of the same process required for the original plan, except when the proposed
126.12 amendments constitute minor amendments and:

126.13 (1) a public hearing has been held to explain the amendments;

126.14 (2) the local government unit has sent copies of the amendments to those
126.15 required to receive notice under subpart 6; and

126.16 (3) the board has either agreed that the amendments are minor or failed to
126.17 act within 60 days of receipt of the amendments.

126.18 D. For the purposes of this subpart, "minor amendments" include clarifications,
126.19 updates to wetland or replacement **wetland** site inventories, and other changes that do not
substantially
126.20 alter the standards of the approved plan and ordinance or rule, as determined by the board.
126.21 Amendments required to bring the plan into conformance with revisions to this chapter are
126.22 also considered minor.

127.1 **Subp. 9. Implementation.**

127.2 A. The comprehensive wetland protection and management plan must be
127.3 implemented by ordinance as part of the local government unit's official controls under
127.4 Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city;
127.5 and Minnesota Statutes, chapter 366, for a town and by rules adopted under Minnesota
127.6 Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B, for
127.7 a watershed management organization.

127.8 B. After board approval and local government adoption, decisions made to
127.9 implement this chapter and the act must be made according to the plan and ordinance or
127.10 rule.

127.11 C. Noticing, appeals, and all other administrative processes under a local plan
127.12 must follow the requirements of this chapter.

127.13 **Subp. 10. Reporting.** In addition to and as part of the reporting requirements of part
127.14 8420.0200, subpart 2, item I, a local government unit with an approved and adopted
127.15 comprehensive wetland management plan must annually provide information to the board
127.16 regarding activities that vary from this chapter, this part notwithstanding, and documenting
127.17 compliance with the minimum plan standards developed according to subpart 4. Failure to
127.18 provide this information on an annual basis may subject the local government unit to penalties
127.19 under part 8420.0200, subpart 3.

127.20 **8420.0835 HIGH-PRIORITY REGIONS AND AREAS.**

127.21 **Subpart 1. High-priority regions.** Parts of the state that are high-priority regions for
127.22 preservation, enhancement, restoration, and establishment of wetlands include all major
127.23 watersheds with a majority of their land area contained within counties that have lost 50
127.24 percent or more of their presettlement wetland base, which are those listed in part 8420.0117,

128.1 subpart 1, item C. In all other major watersheds of the state, high-priority regions are
128.2 high-priority areas approved as such by the board according to subpart 2.

128.3 Subp. 2. **High-priority areas.**

128.4 A. Water management plans prepared by water management organizations in the
128.5 metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the
128.6 metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts
128.7 outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405,
128.8 may identify those areas that qualify as high-priority areas for wetland preservation,
128.9 enhancement, restoration, and establishment. To designate a high-priority area, the
128.10 preservation, enhancement, restoration, and establishment of wetlands must have or achieve
128.11 high public value based on the functions of wetlands listed in part 8420.0522, subpart 1,
128.12 and the goals of the water management plan.

128.13 B. High-priority areas should be designated by minor watershed or subwatershed.
128.14 Strong consideration should be given to identifying as high-priority areas minor watersheds
128.15 that have less than 50 percent of their original wetland acreages and where restoration of
128.16 previously impacted or degraded wetlands will contribute toward achieving watershed-based
128.17 goals. Consideration should also be given to watersheds that contain high-valued wetlands
128.18 that are at risk of degradation or loss, the protection of which is integral to maintaining the
128.19 ecology and condition of the watershed. Identification of high-priority watersheds should
128.20 be consistent with part 8420.0830, subpart 5, item A.

128.21 C. Local water plans may identify individual wetlands, or criteria to establish
128.22 individual wetlands, as high-priority areas. Individual wetlands identified as high-priority
128.23 areas should be of high local value, at risk of degradation or loss, and consistent with any
128.24 existing wetland classification criteria established under part 8420.0830, subpart 5, items
128.25 A and B. Plans may also identify individual sites as high-priority areas for wetland restoration

129.1 and establishment. High-priority restoration sites should be identified according to the
129.2 criteria in part 8420.0830, subpart 5, items A and C.

129.3 ~~D. Local water plans that identify high-priority areas and intend to accept~~
129.4 ~~applications for wetland preservation areas under part 8420.0840 should include criteria for~~
129.5 ~~eligibility and prioritization of applications.~~

129.6 ~~E.~~ D. The board shall review the inclusion of high-priority areas in plans as part
129.7 of the standard process for plan review. High-priority areas approved by the board that are
129.8 not in a high-priority region under subpart 1 become high-priority regions with board
129.9 approval.

129.10 **8420.0900 ENFORCEMENT PROCEDURES.**

129.11 Subpart 1. **Enforcement responsibilities and authorities.** The commissioner,
129.12 conservation officers, and other peace officers may issue cease and desist ~~orders and,~~
129.13 restoration, and replacement orders. The enforcement authority must serve an enforcement
129.14 order in person or by certified mail to the landowner or responsible party. The local
129.15 government unit is responsible for determining if an activity complies with this chapter.
129.16 The soil and water conservation district is responsible for preparing the plan under subpart
129.17 3 for inclusion in a restoration or replacement order.

129.18 Subp. 2. **Cease and desist orders.**

129.19 A. A ~~cease and desist orders~~ order may be issued only when the enforcement
129.20 authority has probable cause to believe that an activity is ~~being or will again be conducted~~
129.21 ~~that impacts a wetland, does not qualify for no-loss or an exemption under parts 8420.0415~~
129.22 ~~and 8420.0420, and is being or will again be conducted without prior approval of a~~
129.23 ~~replacement plan by a local government unit under part 8420.0255 or involving a decision~~
129.24 ~~stayed by the board pursuant to part 8420.0905~~ not in compliance with this chapter.

129.25 B. ~~A cease and desist order must not be issued if the landowner:~~

130.1 ~~(1) has, and is complying with, a valid replacement plan, exemption, or no-loss~~
130.2 ~~approved by the local government unit or a completed and submitted public road project~~
130.3 ~~notification that has not been stayed, remanded, or reversed on appeal under part 8420.0905;~~
130.4 ~~or~~

130.5 ~~(2) has sufficient evidence to support qualification for an exemption or no-loss.~~

130.6 ~~C. B. The enforcement authority must advise the landowner that the landowner's~~
130.7 ~~written application, if any, for a replacement plan, exemption, or no-loss should be made~~
130.8 ~~immediately to the local government unit and that any wetland that has been impacted may~~
130.9 ~~require restoration if the application for replacement plan, exemption, or no-loss is denied~~
130.10 ~~or reversed on appeal. When a cease and desist order is issued, the enforcement authority~~
130.11 ~~issuing a cease and desist order must promptly submit copies of the order to the soil and~~
130.12 ~~water conservation district, the local government unit, and Department of Natural Resources~~
130.13 ~~the commissioner.~~

130.14 ~~C. Upon receiving a cease and desist order from the enforcement authority, the~~
130.15 ~~local government unit must promptly determine whether the cease and desist order should~~
130.16 ~~remain in place and, if so, whether a restoration or replacement order is needed according~~
130.17 ~~to subpart 3. Within ten **business** days of receiving a cease and desist order issued for an~~
130.18 ~~activity occurring within the exterior reservation boundary of a federally recognized Indian~~
130.19 ~~Tribe listed in Minnesota Statutes, section 10.65, subdivision 2, the local government unit~~
130.20 ~~must notify the lead official of the Tribal governing body or their designee of the order.~~

130.21 ~~D. If an application for a replacement plan, exemption, or no-loss approval is~~
130.22 ~~triggered by a cease and desist order, the local government unit must make the decision~~
130.23 ~~according to part 8420.0255 and the standards and application procedures applicable to the~~
130.24 ~~type of application.~~

130.25 ~~E. D. If the decision is local government unit determines that the activity is exempt~~
130.26 ~~or qualifies as a no-loss, the local government unit must request that the enforcement~~

131.1 authority rescind the cease and desist order, pending the outcome of any appeal, ~~and notify~~
131.2 ~~the soil and water conservation district, the enforcement authority, and the landowner. The~~
131.3 enforcement authority must notify those required to receive a copy of the order under item
131.4 B when the order has been rescinded.

131.5 E. If the local government unit determines that the activity does not qualify for
131.6 an exemption or no-loss, the landowner's application for a replacement plan is denied, or
131.7 the landowner fails to submit an application for a replacement plan, the local government
131.8 unit must inform the soil and water conservation district of the need for a restoration or
131.9 replacement order.

131.10 ~~F. If the application is denied, the local government unit must immediately notify~~
131.11 ~~the soil and water conservation district, the enforcement authority, and the landowner.~~

131.12 ~~G. In cases where the cease and desist order has been issued to a local government~~
131.13 ~~unit, the decision of exemption or no-loss must be made by the board.~~

131.14 **Subp. 3. Restoration and replacement orders.**

131.15 A. The enforcement authority ~~must~~ may issue a restoration order or replacement
131.16 order when: an activity has impacted a wetland in violation of this chapter and the
131.17 enforcement authority receives an order under item F. If a cease and desist order is issued,
131.18 the landowner has 30 days to apply for a replacement plan, exemption, or no-loss before a
131.19 restoration or replacement order may be issued.

131.20 ~~(1) the impact has already been completed when discovered or, after a cease~~
131.21 ~~and desist order has been issued, the landowner does not apply for a replacement plan,~~
131.22 ~~exemption, or no-loss within three weeks;~~

131.23 ~~(2) the local government unit approves the application but it is reversed on~~
131.24 ~~appeal; or~~

131.25 ~~(3) the local government unit denies the application.~~

132.1 B. Promptly upon being informed by ~~the enforcement authority or the local~~
132.2 government unit of the need, a soil and water conservation district staff person must inspect
132.3 the site and prepare a plan in consultation with the ~~local government unit and the enforcement~~
132.4 ~~authority for restoring~~ technical evaluation panel to restore the site to its prealtered condition.

132.5 The plan must include:

132.6 (1) specific actions and standards necessary to restore the wetland and satisfy
132.7 the order;

132.8 (2) restoration methods and approaches, such as construction and revegetation
132.9 techniques;

132.10 (3) the date by which the landowner or responsible party must submit a
132.11 complete replacement plan, exemption, or no-loss application, if any, to the local government
132.12 unit in lieu of restoring the wetland, which must be at least 30 days after the date the order
132.13 is served; and

132.14 (4) the date by which the landowner or responsible party must restore the
132.15 wetland according to the plan and satisfy the order. The complexity of restoring the wetland,
132.16 any seasonal constraints associated with required restoration actions, and the availability
132.17 of required resources may be considered when specifying a date for completing the
132.18 restoration.

132.19 C. The soil and water conservation district may request assistance from the local
132.20 government unit or technical evaluation panel in inspecting the site and preparing the plan.
132.21 If the soil and water conservation district determines that a conflict of interest may exist, it
132.22 may request that a member of the technical evaluation panel who is not an employee of the
132.23 soil and water conservation district develop the plan.

133.1 D. Restoration must be ordered unless the soil and water conservation district, in
133.2 consultation with the technical evaluation panel, concludes that restoration is not possible
133.3 or prudent.

133.4 E. If a replacement order is required, the plan developed by the soil and water
133.5 conservation district, in consultation with the technical evaluation panel, must specify the
133.6 replacement actions to be completed. The order may provide more than one option for
133.7 replacement and may require a combination of restoration and replacement.

133.8 F. When the plan is completed, the soil and water conservation district must
133.9 incorporate its the plan into a restoration or replacement order and send it the order to the
133.10 enforcement authority for service in person or by certified mail to the landowner or
133.11 responsible party.

133.12 G. If a complete application for a replacement plan, exemption, or no-loss is not
133.13 submitted within the time specified in the restoration or replacement order, the landowner
133.14 or responsible party must restore or replace the wetland as specified in the order unless the
133.15 local government unit and the enforcement authority agrees to allow an extension or the
133.16 order is stayed upon appeal to allow for the submittal of or a decision on a complete
133.17 application.

133.18 H. A restoration or replacement order is completed when the soil and water
133.19 conservation district determines certifies that the landowner or responsible party has satisfied
133.20 the
133.21 requirements of the plan incorporated under item F and issues a certificate of satisfactory
133.22 restoration or replacement.

133.22 I. A certificate of satisfactory restoration or replacement may be issued with
133.23 conditions, such as requirements for wetland vegetation, weed control, inspections,
133.24 monitoring, or hydrology. Failure to comply with the conditions may result in the issuance
133.25 of a subsequent restoration or replacement order. If the soil and water conservation district
determines that the applicant has failed to comply with the conditions, a subsequent restoration
or replacement order must be issued to obtain compliance.

134.1 Subp. 4. **Contents of ~~order~~ orders.**

134.2 A. Each cease and desist, restoration, and replacement order must state that any
134.3 violation of the order is a misdemeanor.

134.4 B. Each cease and desist order must advise the landowner or responsible party
134.5 that an application for a replacement plan, exemption, or no-loss should be made promptly
134.6 to the local government unit and that any wetland that has been impacted may require
134.7 restoration if the application for a replacement plan, exemption, or no-loss is denied or
134.8 reversed on appeal.

134.9 A.C. A restoration order must ~~specify~~ incorporate the soil and water conservation

134.10 district plan to restore the wetland, including the dates by which the landowner or responsible

134.11 party must:

134.12 ~~(1) restore the wetland according to the soil and water conservation district~~

134.13 ~~plan and obtain a certificate of satisfactory restoration from the soil and water conservation~~

134.14 ~~district; or~~

134.15 ~~(2) submit a complete replacement plan, exemption, or no-loss application~~

134.16 ~~to the local government unit. The order must specify that, if the landowner or responsible~~

134.17 ~~party does not obtain approval by the local government unit of a replacement plan, exemption,~~

134.18 ~~or no-loss for the wetland impacts, the landowner or responsible party must restore the~~

134.19 ~~wetland as ordered.~~

134.20 ~~B. If an application submitted under item A, subitem (2), is denied, the landowner~~

134.21 ~~or responsible party must restore the wetland as specified in the order.~~

134.22 ~~C. The restoration order must be rescinded if the landowner or responsible party~~

134.23 ~~obtains approval of an after the fact replacement plan, exemption, or no-loss from the local~~

134.24 ~~government unit that is not reversed on appeal.~~

135.1 D. A replacement order must specify a date by which the landowner or responsible
135.2 party must submit a complete replacement plan application to the local government unit
135.3 and a subsequent date by which the landowner or responsible party must replace the wetland
135.4 according to the approved replacement plan and obtain a certificate of satisfactory
135.5 replacement from the soil and water conservation district. ~~The restoration or replacement~~
135.6 ~~order must specify a time period of at least 30 days for submittal of a complete application~~
135.7 ~~under this subpart.~~

135.8 E. ~~If a complete application is not submitted within the time period specified in~~
135.9 ~~the restoration order, or as properly extended, the landowner or responsible party must~~
135.10 ~~restore the wetland as specified in the order before submitting an application under item A,~~
135.11 ~~subitem (2), unless the local government unit and the enforcement authority agree otherwise~~
135.12 ~~or unless allowed under appeal.~~

135.13 F. ~~A certificate of satisfactory restoration or replacement may be issued with~~
135.14 ~~conditions that must be met in the future, such as for issues with wetland vegetation, weed~~
135.15 ~~control, inspections, monitoring, or hydrology. Failure to fully comply with any conditions~~
135.16 ~~that have been specified may result in the issuance of a new restoration or replacement~~
135.17 ~~order.~~

135.18 Subp. 5. [See repealer.]

135.19 Subp. 5a. **Applications submitted in response to enforcement orders.**

135.20 A. When an application for a replacement plan, exemption, or no-loss decision is
135.21 submitted to a local government unit by a landowner or responsible party in response to an
135.22 enforcement order, the application must comply with the requirements of this chapter. The
135.23 local government unit must make a decision on the application according to part 8420.0255.
135.24 In addition to those required to receive notice under part 8420.0255, the local government
135.25 unit must provide notice of the application and decision to the enforcement authority.

- 136.1 B. The enforcement authority must rescind the enforcement order when:
- 136.2 (1) the landowner or responsible party obtains approval of an after-the-fact
- 136.3 replacement plan, exemption, or no-loss from the local government unit that is not reversed
- 136.4 on appeal; and
- 136.5 (2) any required replacement is completed according to the approved plan.
- 136.6 C. When an enforcement order is issued to a local government unit, the decision
- 136.7 on an exemption, no-loss, or replacement plan application must be made by the board
- 136.8 according to item A.
- 136.9 D. When an application submitted in response to a cease and desist order under
- 136.10 item A is denied, the local government unit must immediately notify the soil and water
- 136.11 conservation district of the need for a restoration or replacement order.
- 136.12 E. If an application submitted in response to a restoration order under item A is
- 136.13 denied, the landowner or responsible party must restore the wetland as specified in the order.
- 136.14 **Subp. 6. After-the-fact replacement.** If a landowner or responsible party seeks
- 136.15 approval of a replacement plan after the proposed project has already impacted the wetland
- 136.16 or if an approved replacement plan has not been implemented in advance of or concurrent
- 136.17 with the impact, the local government unit must require the landowner or responsible party
- 136.18 to replace the impacted wetland at a ratio twice the replacement ratio otherwise required,
- 136.19 unless the local government unit and enforcement authority concur that a lesser ratio is
- 136.20 acceptable.
- 136.21 **Subp. 7. Misdemeanor.**
- 136.22 A. A violation of an order issued under this part is a misdemeanor and must be
- 136.23 prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

137.1 B. If a court orders restoration or replacement as part of a misdemeanor proceeding,
137.2 the soil and water conservation district staff must determine which is required according to
137.3 subpart 3, item D, and, if restoration is required, the method of restoration. If the court
137.4 orders replacement, the landowner or responsible party must follow the replacement plan
137.5 process under subpart 6 and part 8420.0330 and the wetland replacement, construction, and
137.6 monitoring requirements of this chapter.

137.7 Subp. 8. **Deed restriction.**

137.8 A. ~~A To obtain compliance, the enforcement authority may record a~~ restoration or
137.9 replacement order ~~may be recorded or filed~~ as a deed restriction
137.10 on the property that runs with the land and is binding on the owners, successors, and assigns
137.11 until the conditions of the order are met or the order is rescinded. The deed restriction must
137.12 be recorded or filed ~~by the commissioner, a conservation officer, or a peace officer~~ in the
137.13 office of the county recorder or registrar of titles in the county where the real property is
137.14 located.

137.15 B. A deed restriction filed or recorded under this subpart must be removed if:

- 137.16 (1) ~~the conditions of the order are met soil and water conservation district has~~
137.17 ~~issued a certificate of satisfactory restoration or replacement;~~
- 137.18 (2) ~~the order is rescinded; or~~
- 137.19 (3) ~~on homesteaded property, the owner requests that the deed restriction be~~
137.20 removed and a court ~~finds has found~~ that the owner of the property is not guilty ~~or that there~~
137.21 ~~has not~~ ~~been of~~ a violation of the restoration or replacement order. Within 30 days of receiving a valid
137.22 request for removal, the enforcement authority that recorded the order must contact, in
137.23 writing, the office of the county recorder or registrar of titles to have the deed restriction
removed and must inform the owner of the removal within 30 days of receiving confirmation
from the county recorder or registrar of titles that the deed restriction has been removed.

138.1 **8420.0905 APPEALS.**

138.2 Subpart 1. **Appeal of replacement and restoration orders to the board.** A landowner
138.3 or responsible party may appeal the terms and conditions of a restoration or replacement
138.4 order issued according to part 8420.0900 to the board's executive director within 30 days
138.5 of receipt of the order by filing a written request for review and paying a nonrefundable
138.6 filing fee to the board. The time frame for appeal may be extended beyond 30 days upon
138.7 mutual agreement, in writing, between the landowner or responsible party, the local
138.8 government unit, and the enforcement authority. The filing fee is an amount determined by
138.9 the board not to exceed \$1,000. If the written request is not submitted within 30 days, the
138.10 restoration or replacement order is final. The executive director must review the request
138.11 and supporting evidence and render a decision within ~~30~~ 60 days of the request for review.
138.12 The executive director may stay the restoration or replacement order until the appeal is
138.13 resolved.

138.14 Subp. 2. **Appeal of staff decision to local government unit ~~staff decisions~~.**

138.15 A. ~~A decision made by~~ If a local government unit staff is final if not appealed
138.16 establishes a local appeals process as provided in part 8420.0200, subpart 2, item C, an
138.17 appeal of a staff decision must be made to the local government unit within 30 days after
138.18 the date on which the notice of decision is sent to those required to receive ~~notice of the~~
138.19 ~~decision~~ it. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any
138.20 other law to the contrary, the local government unit must make a ruling within 30 days from
138.21 the date of the filing of the appeal, unless the appellant and local government unit mutually
138.22 agree, in writing, to an extension of time beyond the 30 days.

138.23 B. Appeal to the local government unit of a ~~final staff~~ decision ~~made by staff~~ may
138.24 be made by the landowner, by any of those required to receive notice of the decision, or by
138.25 100 residents of the county in which a majority of the wetland is located.

139.1 C. An appeal is effective upon ~~mailing~~ sending the petition and payment of any
139.2 applicable fees to the local government unit. A filing fee is not required for appeals petitioned
139.3 by state agencies or members of the technical evaluation panel.

139.4 D. Part 8420.0255, subpart 5, regarding notice of decisions applies to appeals
139.5 under this subpart. A local government unit's decision on an appeal under this subpart must
139.6 be noticed in accordance with part 8420.0255, subpart 5.

139.7 Subp. 3. **Appeal of local government unit decisions to the board.**

139.8 A. ~~The~~ A decision of a local government unit ~~to approve, approve with conditions,~~
139.9 ~~or deny an application, including a decision on an appeal to the local government unit of a~~
139.10 ~~staff decision under subpart 2, is final if not appealed to the board within 30 days after the~~
139.11 ~~date on which the notice of decision is sent to those required to receive notice of the decision~~
139.12 ~~it unless the applicant and local government unit mutually agree, in writing, to an extension~~
139.13 ~~of time beyond the 30 days. Appeals of decisions made by local government staff must be~~
139.14 ~~made to the local government unit as provided for in subpart 2. This subpart also applies to~~
139.15 ~~decisions made under comprehensive wetland protection and management plans and decisions~~
139.16 ~~made by public road authorities as provided in part 8420.0544.~~

139.17 B. Appeal of local government unit decisions to the board may be made by the
139.18 landowner, by any of those required to receive notice of the decision, or by 100 residents
139.19 of the county in which a majority of the wetland is located.

139.20 C. An appeal is effective upon ~~mailing the~~ sending a petition and payment of a
139.21 nonrefundable filing fee in an amount determined by the board, not to exceed \$1,000, to
139.22 the board with evidence that a copy of the petition has been ~~mailed~~ sent to the local
139.23 government unit. The petition ~~should~~ must include information ~~sufficient~~ sufficient
139.24 ~~sufficient~~ grounds significant merit for the appeal based on the requirements of this chapter. The filing
139.25 fee is not
139.26 required for appeals petitioned by state agencies or members of the technical evaluation
139.27 panel. Another filing fee is not required for appeals that have been remanded if the filing
139.28 8420.0705

139.26 fee was paid and the same party appeals the new decision made under remand. After receipt

140.1 of a petition, the ~~local government unit~~ board must send a copy of the petition to the local
140.2 government unit and all those ~~to whom it was~~ that were required to ~~send a~~ be sent the notice
140.3 of the decision.

140.4 **Subp. 4. Board appeal procedures.**

140.5 A. Within 30 days after receiving the petition, the board, its dispute resolution
140.6 committee, or its executive director must decide whether to grant the petition and hear the
140.7 appeal. After considering the size of the proposed impacts and the quality of the affected
140.8 wetland, any patterns of similar acts by the petitioner or responsible party or by the local
140.9 government unit in administration of this chapter and the act, and the consequences of the
140.10 delay resulting from the appeal, the board, its dispute resolution committee, or its executive
140.11 director shall grant the petition unless:

140.12 (1) the appeal is deemed to be without sufficient merit, trivial, or brought
140.13 solely for the purposes of delay;

140.14 (2) the petitioner has not exhausted all local administrative remedies; ~~or~~

140.15 (3) the petitioner has not submitted the required filing fee;

140.16 (4) expanded technical review is needed; or

140.17 (5) the local government unit's record is not adequate.

140.18 B. The board, its dispute resolution committee, or its executive director may stay
140.19 the local government unit decision until the appeal is resolved.

140.20 C. The board, its dispute resolution committee, or its executive director may
140.21 remand the appealed decision back to the local government unit if the petitioner has not
140.22 exhausted all local administrative remedies, such as a local government unit evidentiary
140.23 public hearing, if expanded technical review is needed, or if the local government unit's
140.24 record is not adequate. If an appeal is remanded, a new application is not required and

141.1 additional information may be submitted before a decision is made by the local government
141.2 unit. The local government unit must make a decision on an appeal that has been remanded
141.3 within 60 days unless the remand order, or a subsequent order, specifies a longer period.

141.4 D. After the petition is granted, the appeal must be heard by the dispute resolution
141.5 committee and decided by the board within 60 days after filing of the local government
141.6 unit's written record, submittal of written briefs for the appeal, and a hearing by the dispute
141.7 resolution committee. Parties to the appeal are the appellant, the landowner, the local
141.8 government unit, and those required to receive notice of the local government unit decision.

141.9 E. The board or its executive director may elect to combine related appeals and
141.10 process as one decision, either multiple appeals on the same project or appeals of different
141.11 local government unit decisions on the same project.

141.12 F. Within 30 days of the grant of the appeal, unless an extension of time is
141.13 approved by the board, the local government unit must forward to the board the written
141.14 record on which it based its decision. The board must forward one copy of the record to
141.15 each of the parties to the appeal. The board shall make its decision on the appeal after
141.16 hearing. The board must give the parties 30 days' notice of the hearing. The board must
141.17 base its review on the record and the argument presented to the board by the parties. However,
141.18 if the local government unit did not consider fundamental information, ~~such as aerial~~
141.19 ~~photographs, soil maps, or wetland maps,~~ or did not make formal findings contemporaneously
141.20 with its decision; ~~if there is not accurate verbatim transcript of the proceedings;~~ if the
141.21 proceedings of a local appeal were not fairly conducted; or if the record is otherwise
141.22 incomplete or deficient, the board may remand the matter or receive additional evidence.
141.23 If, before the date set for the hearing, application is made to the board for leave to present
141.24 additional evidence on the issues in the case and it is shown to the satisfaction of the board
141.25 that additional evidence is material and that there were good reasons for failure to present
141.26 it in the proceeding before the local government unit, the board may order that the additional

142.1 evidence be taken before the local government unit upon such conditions that the board
142.2 deems proper. The local government unit may modify its findings and decision by reason
142.3 of the additional evidence and must file with the board, to become a part of the record, the
142.4 additional evidence, together with any modifications or new findings or decision.

142.5 G. The board shall affirm the local government unit's decision if the local
142.6 government unit's findings of fact are not clearly erroneous; if the local government unit
142.7 correctly applied the law to the facts, including this chapter; and if the local government
142.8 unit made no procedural errors prejudicial to a party. Otherwise, the board shall reverse the
142.9 decision, amend it, or remand it with instructions for further proceedings. The board must
142.10 provide notice of its decision to the parties to the appeal.

142.11 Subp. 5. **Appeal of board decisions.** An appeal of a board decision may be ~~taken to~~
142.12 filed with the state court of appeals and must be considered an appeal from a contested case
142.13 decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

142.14 **8420.0930 MINING.**

142.15 Subpart 1. **Impacts from mining.** Wetlands must not be impacted as part of a project
142.16 for which a permit to mine is required by Minnesota Statutes, section 93.481, except as
142.17 approved by the commissioner.

142.18 A. Impacts to wetlands that the landowner can demonstrate, to the satisfaction of
142.19 ~~the local government unit~~ commissioner, were created by pits, stockpiles, or tailing basins,
142.20 and by actions the purpose of which was not to create the wetland according to part
142.21 8420.0105, subpart 2, item D, are not regulated under this chapter.

142.22 B. The commissioner must provide notice of an application for wetland
142.23 replacement under a permit to mine to the county in which the impact is proposed and the
142.24 county in which the replacement **site wetland** is proposed.

143.1 C. Wetland replacement plans required under this part must meet the same
143.2 requirements for replacing wetlands contained in parts 8420.0500 to 8420.0528 and provide
143.3 for construction verification and monitoring according to parts 8420.0800 and 8420.0810.

143.4 Subp. 2. **Mining operations; post-July 1, 1993.** For mining operations that are
143.5 permitted and initiated after July 1, 1993:

143.6 A. mining must not be conducted without first receiving a permit to mine issued
143.7 under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals;
143.8 and

143.9 B. the mining and reclamation operating plans or annual reports submitted by the
143.10 applicant as required in the permit to mine must include an approved wetland replacement
143.11 plan ~~that meets the same principles and standards for replacing wetlands under parts~~
143.12 ~~8420.0500 to 8420.0528 and provides for construction certification and monitoring according~~
143.13 ~~to parts 8420.0800 and 8420.0810.~~

143.14 Subp. 3. **Mining operations; pre-July 1, 1993.** For mining operations in existence
143.15 before July 1, 1993, and operated on or after that date under a permit to mine issued under
143.16 chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

143.17 A. wetlands for which impacts were approved but not initiated before July 1,
143.18 1993, must not be impacted until the operating plan or annual report as required in the permit
143.19 to mine includes an approved wetland replacement plan for the undisturbed wetlands. ~~The~~
143.20 ~~wetland replacement plan must meet the same principles and standards for replacing wetlands~~
143.21 ~~under parts 8420.0500 to 8420.0528 and provide for construction certification and monitoring~~
143.22 ~~according to parts 8420.0800 and 8420.0810;~~

143.23 B. for filling activities that were approved and initiated before July 1, 1993,
143.24 placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a
143.25 wetland filled before July 1, 1993, is allowed to continue within the areal extent, as it existed

144.1 on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the
144.2 requirement of a replacement plan or amendment of the permit to mine. An expansion of
144.3 the areal extent of the fill in the wetland requires an approved replacement plan in the
144.4 operating plan or annual report as required in the permit to mine, according to item A; and

144.5 C. for draining activities that were approved and initiated before July 1, 1993,
144.6 draining of a wetland to facilitate mining, using ditches and other drainage facilities that
144.7 existed on July 1, 1993, is allowed to continue without the requirement of a replacement
144.8 plan or amendment of the permit to mine. Maintenance of the ditches and structures are
144.9 allowed without the requirement of a replacement plan or amendment of the permit to mine,
144.10 provided that as a result of the maintenance, wetlands are not drained beyond the extent
144.11 that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide
144.12 for replacement according to item A.

144.13 Subp. 4. **Applicability.**

144.14 A. Replacement wetlands approved under this part must only be used for
144.15 mining-related impacts covered under a permit to mine unless the credits are approved and
144.16 deposited in the state wetland bank according to parts 8420.0700 to 8420.0755. A
144.17 project-specific wetland replacement plan submitted as part of a project for which a permit
144.18 to mine is required and approved by the commissioner on or after July 1, 1991, may include
144.19 surplus wetland credits to be allocated by the commissioner to offset future mining-related
144.20 wetland impacts under any permits to mine held by the permittee, the operator, the permittee's
144.21 or operator's parent, an affiliated subsidiary, or an assignee pursuant to an assignment under
144.22 Minnesota Statutes, section 93.481, subdivision 5.

144.23 B. Applicable procedures are those required for permits to mine.

144.24 C. This part does not apply to peat mining as defined under Minnesota Statutes,
144.25 section 93.461, that is subject to the mine permit and reclamation requirements under
144.26 Minnesota Statutes, sections 93.44 to 93.51, and the rules adopted thereunder.

145.1 **8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION,**
145.2 **~~AND MANAGEMENT OF~~ PROTECTING AND MANAGING CALCAREOUS FENS.**

145.3 Subpart 1. **Purpose.** The purpose of this part is to provide minimum standards and
145.4 criteria for identifying, protecting, and managing calcareous fens as authorized by Minnesota
145.5 Statutes, section 103G.223. ~~Calcareous fens, as identified by the commissioner, must not~~
145.6 ~~be impacted or otherwise altered or degraded, wholly or partially, by any action, unless the~~
145.7 ~~commissioner, under an approved management plan, decides some alteration is necessary.~~
145.8 ~~The exemptions under part 8420.0420 and the sequencing provisions under part 8420.0520~~
145.9 ~~do not apply to calcareous fens.~~

145.10 Subp. 2. [See repealer.]

145.11 Subp. 3. **Procedures to list calcareous fens.**

145.12 A. The commissioner must investigate wetlands to determine if the wetland is
145.13 properly identified as a calcareous fen.

145.14 B. The commissioner must, by written order published in the State Register,
145.15 maintain a current list of known calcareous fens in the state and their location.

145.16 C. The commissioner must provide an updated list of calcareous fens to the board
145.17 for further distribution.

145.18 Subp. 4. **Impacts and management plans.** Calcareous fens must not be impacted or
145.19 otherwise altered or degraded ~~except, wholly or partially, by any action, unless the~~
145.20 ~~commissioner decides some alteration is necessary~~ as provided for in a calcareous fen
145.21 management plan approved by the commissioner. The commissioner may allow water
145.22 appropriations that result in temporary reductions in groundwater resources on a seasonal
145.23 basis under an approved calcareous fen management plan. The commissioner must provide
145.24 technical assistance to landowners or project sponsors in the development of management
145.25 plans. The exemptions under part 8420.0420 and the sequencing provisions under part
145.26 8420.0520 do not apply to calcareous fens.

146.1 Subp. 5. **Restoration.** The commissioner may approve management plans to restore
146.2 or ~~upgrade~~ improve a previously damaged calcareous fen. The commissioner may order
146.3 restoration or replacement of a damaged calcareous fen in accordance with Minnesota
146.4 Statutes, section 103G.2372.

146.5 Subp. 6. **Appeals.**

146.6 A. A landowner or project proposer may challenge the commissioner's
146.7 determination that a wetland is a calcareous fen or the commissioner's calcareous fen
146.8 management plan by requesting a hearing. The hearing shall be conducted in the same
146.9 manner as water permit hearings under Minnesota Statutes, chapter 103G.

146.10 B. The determination that a wetland is a calcareous fen may be appealed ~~at any~~
146.11 ~~time~~ by requesting a hearing within 30 days after the commissioner publishes designation
146.12 of the calcareous fen in the State Register. For a decision under a management plan, the
146.13 hearing must be requested within 30 days after the notice of the commissioner's decision
146.14 was ~~mailed~~ sent to the project proposer; otherwise the decision becomes final and may not
146.15 be challenged by the project proposer.

146.16 C. Appeal of the commissioner's decision after the hearing must be done in the
146.17 manner provided for appeals from contested case decisions under Minnesota Statutes, chapter
146.18 14.

146.19 Subp. 7. **Enforcement procedures.** Enforcement procedures for calcareous fens must
146.20 be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372, except
146.21 that necessary restoration or replacement activities, if required, must be determined by the
146.22 commissioner, in consultation with the local soil and water conservation district.

146.23 **REPEALER.** Minnesota Rules, parts 8420.0515, subpart 9; 8420.0840; 8420.0900, subpart
146.24 5; and 8420.0935, subpart 2, are repealed.