

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Wetland Conservation

AGENCY: Board of Water and Soil Resources

REVISOR ID: R-4356

MINNESOTA RULES: Chapter 8420

INCORPORATIONS BY REFERENCE: [See attached]

The attached rules are approved for
publication in the State Register

Cindy K. Maxwell

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INCORPORATIONS BY REFERENCE:

Part 8420.0112:

A Hydrogeomorphic Classification for Wetlands, United States Army Corps of Engineers (August 1993);

United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and supplementary guidance;

Classification of Wetlands and Deepwater Habitats of the United States, Wetlands Subcommittee, Federal Geographic Data Committee and United States Fish and Wildlife Service (2013);

Minnesota Wetland Inventory database, Minnesota Department of Natural Resources;

Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective, Anderson and Craig (1984);

Minnesota Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (January 2012);

Minnesota Stormwater Manual, Minnesota Pollution Control Agency (January 2008);

Agricultural BMP Handbook for Minnesota, Minnesota Department of Agriculture (2017);

Best Management Practices and Data Needs for Groundwater Protection, Minnesota Pollution Control Agency (April 2019);

State of Minnesota Watershed Boundaries, Minnesota Department of Natural Resources (1979); and

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

The documents are not subject to frequent change and are available online or through the Minitex interlibrary loan system.

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. This chapter shall~~
1.9 ~~be interpreted to implement, and other relevant laws.~~ The purpose of the act, ~~which~~ is to:

1.10 *[For text of items A to D, see Minnesota Rules]*

1.11 *[For text of subparts 2 and 3, see Minnesota Rules]*

1.12 **8420.0105 SCOPE.**

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

1.18 Subp. 2. **Applicability.**

1.19 *[For text of items A to E, see Minnesota Rules]*

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

1.23 *[For text of items G and H, see Minnesota Rules]*

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

8420.0111 DEFINITIONS.

[For text of subparts 1 and 2, see Minnesota Rules]

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

[For text of subparts 4 to 7, see Minnesota Rules]

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

[For text of subparts 9 and 10, see Minnesota Rules]

Subp. 10a. **Bank service area.** "Bank service area" means a geographic area in which replacement wetlands, including banking credits, can provide preferred replacement for wetland impacts incurred in the same area according to part 8420.0522. Bank service areas are established by the board according to part 8420.0512.

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

3.1 [For text of subparts 12 and 13, see Minnesota Rules]

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

3.7 [For text of subparts 14 to 16, see Minnesota Rules]

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

3.11 [For text of subparts 17 to 19, see Minnesota Rules]

3.12 Subp. 20. **Determination or determine.** "Determination" or "determine" refers to a
3.13 conclusion or technical finding by the technical evaluation panel or local government the
3.14 applicable governmental unit staff or their designee.

3.15 [For text of subparts 21 to 23, see Minnesota Rules]

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

3.18 Subp. 24. [See repealer.]

3.19 [For text of subparts 25 to 27, see Minnesota Rules]

3.20 Subp. 28. **Greater than 80 percent area.** "Greater than 80 percent area" means a
3.21 county or watershed, or, for the purposes of wetland replacement, bank service area where
3.22 80 percent or more of the presettlement wetland acreage is intact and:

3.23 [For text of items A and B, see Minnesota Rules]

4.1 [For text of subpart 29, see Minnesota Rules]

4.2 Subp. 30. [See repealer.]

4.3 [For text of subpart 31, see Minnesota Rules]

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

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

4.7 B. excavation in the permanently and semipermanently flooded wetland areas of
4.8 ~~type 3, 4, or 5 wetlands, as defined in subpart 75, and; or~~

4.9 C. excavation in ~~all~~ any wetland ~~types~~ area if the excavation results in filling,
4.10 draining, or conversion to nonwetland.

4.11 [For text of subparts 33 to 35, see Minnesota Rules]

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

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

4.21 Subp. 37. **Less than 50 percent area.** "Less than 50 percent area" means a county
4.22 ~~or, watershed, or, for the purposes of wetland replacement, bank service area~~ with less than
4.23 50 percent of the presettlement wetland acreage intact or any county ~~or, watershed, or bank~~

5.1 service area not defined as a greater than 80 percent area or 50 to 80 percent area, as provided
5.2 in part 8420.0117.

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

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

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

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

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

5.14 Subp. 39. **Local water plan.** "Local water plan" means a watershed board-approved
5.15 and locally adopted plan pursuant to Minnesota Statutes, ~~sections 103B.201 to 103B.255;~~
5.16 ~~a comprehensive local water management plan pursuant to Minnesota Statutes, sections~~
5.17 ~~103B.301 to 103B.355; or a watershed management plan pursuant to Minnesota Statutes,~~
5.18 ~~section 103D.401~~ chapter 103B or 103D.

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

5.22 [For text of subpart 41, see Minnesota Rules]

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

[For text of subpart 43, see Minnesota Rules]

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

[For text of subpart 45, see Minnesota Rules]

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

[For text of subparts 47 to 50, see Minnesota Rules]

Subp. 50a. **Performance standards.** "Performance standards" means observable or measurable physical, chemical, 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.

Subp. 51. **Permanently and semipermanently flooded wetland area of a type 3, 4, or 5 wetland.** "Permanently and semipermanently flooded wetland area of a type 3, 4, or 5 wetland" means the portion of a type 3, 4, or 5 wetland ~~below the level where the water has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to~~

7.1 ~~predominantly terrestrial~~ covers the substrate throughout the year except in years of extreme
7.2 drought or where surface water persists throughout the growing season in most years and,
7.3 when absent, the water table is usually at or very near the land surface.

7.4 Subp. 52. **Plant community.** "Plant community" means a wetland plant community
7.5 classified according to ~~Wetland Plants and Plant Communities of Minnesota & Wisconsin~~
7.6 Minnesota's Native Plant Community Classification, incorporated by reference under part
7.7 8420.0112, ~~item P.~~

7.8 *[For text of subpart 53, see Minnesota Rules]*

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

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

7.16 *[For text of subparts 56 to 59, see Minnesota Rules]*

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

7.21 *[For text of subpart 60, see Minnesota Rules]*

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

8.1 [For text of subpart 62, see Minnesota Rules]

8.2 Subp. 63. **Rule.** "Rule" means a body of regulations developed, approved, and
8.3 implemented by a watershed management organization as authorized under Minnesota
8.4 Statutes, chapter 103D, or administrative rules adopted by a state agency under Minnesota
8.5 Statutes, chapter 14.

8.6 [For text of subparts 64 to 71, see Minnesota Rules]

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

8.8 [For text of item A, see Minnesota Rules]

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

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

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

8.22 ~~D. The wetland size is the area within its boundary. The boundary must be~~
8.23 ~~determined according to the United States Army Corps of Engineers Wetland Delineation~~
8.24 ~~Manual (January 1987). The wetland type must be determined according to Wetlands of~~
8.25 ~~the United States, (1971 edition). Both documents are incorporated by reference under part~~

~~8420.0112, items A and B. The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.~~

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

[For text of subpart 74, see Minnesota Rules]

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

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

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

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

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

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

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

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

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

8420.0112 INCORPORATION BY REFERENCE.

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

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

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

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

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

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

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

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

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

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

12.7 ~~J. Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water~~
12.8 ~~Conservation Districts and Local Government Units in Certifying and Approving Wetland~~
12.9 ~~Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December~~
12.10 ~~2000.~~

12.11 ~~K. Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest~~
12.12 ~~Management Guidelines for Landowners, Loggers and Resource Managers. Minnesota~~
12.13 ~~Forest Resources Council, St. Paul, 1999.~~

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

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

12.19 ~~N. Storm Water and Wetlands: Planning and Evaluation Guidelines for Addressing~~
12.20 ~~Potential Impacts of Urban Storm Water and Snow-Melt Runoff on Wetlands, Minnesota~~
12.21 ~~Storm Water Advisory Group, 1997.~~

12.22 ~~O. Minnesota Plant Database, Minnesota Department of Natural Resources, St.~~
12.23 ~~Paul, 2002.~~

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

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

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

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

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

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

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

8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.

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

[For text of items A and B, see Minnesota Rules]

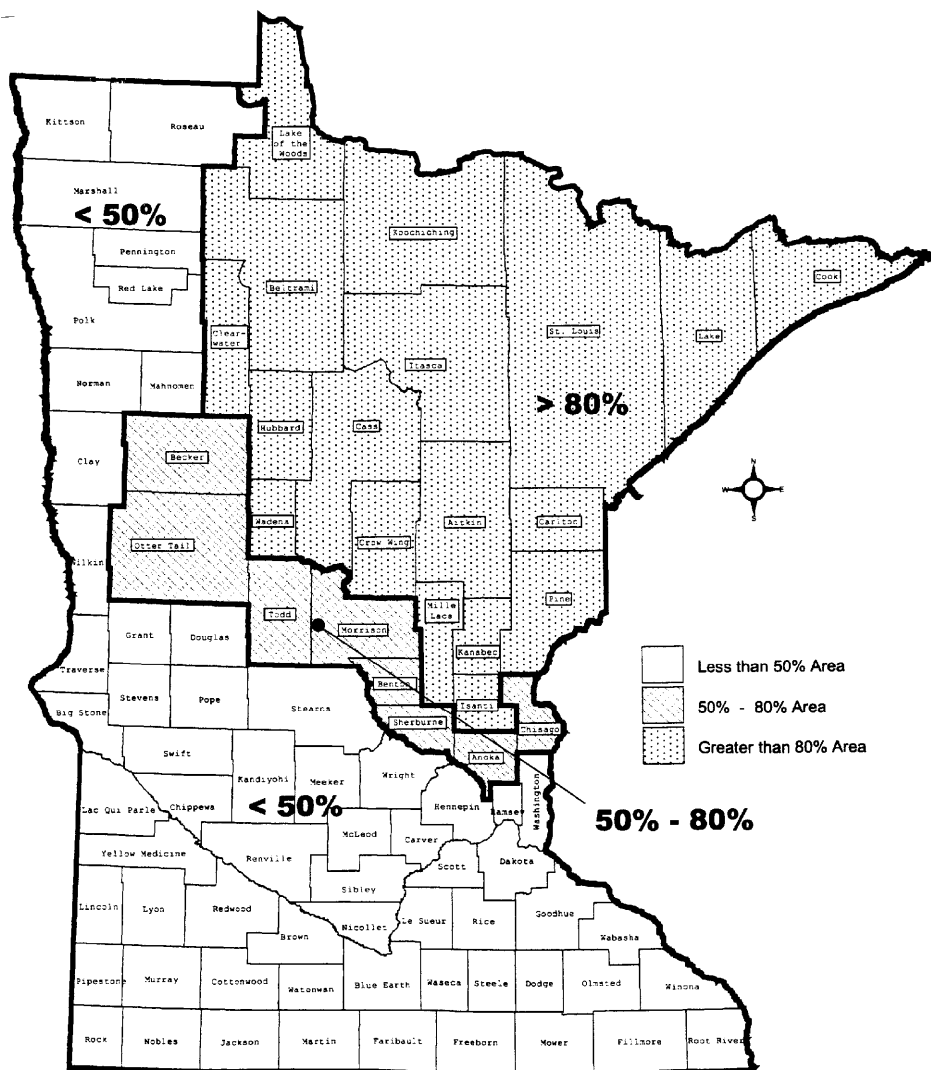
C. the following counties are less than 50 percent areas: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall;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

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

14.5

PRESETTLEMENT WETLAND AREAS

Minnesota Wetland Conservation Act Pre - Statehood Wetland Areas



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

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

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

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

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. **Determining local government unit.** The local government unit responsible for making decisions ~~must be~~ is determined according to items A to J.

16.1 [For text of item A, see Minnesota Rules]

16.2 B. In the seven-county metropolitan area, the local government unit is the city,
16.3 town board under Minnesota Statutes, section 368.01, or water management organization
16.4 regulating surface-water-related matters in the area in which the activity is located, or its
16.5 delegate. The watershed management plan adopted under Minnesota Statutes, section
16.6 103B.231, and related ~~board~~ rules will normally indicate the appropriate local government
16.7 unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

16.8 [For text of item C, see Minnesota Rules]

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

16.15 [For text of item E, see Minnesota Rules]

16.16 F. If the activity is located in two jurisdictions, the local government unit is the
16.17 one exercising zoning authority over the project or, if both have zoning authority, the one
16.18 in which most of the wetland impacts will occur. If no zoning permits are required, the local
16.19 government unit is the one in which most of the wetland impacts will occur. If an activity
16.20 will affect or an application involves wetlands in more than one local government unit, the
16.21 board may coordinate the project review to ensure consistency and consensus among the
16.22 local government units involved. Local government units may maintain separate jurisdiction
16.23 if mutually agreed upon.

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

17.1 H. For replacement plans where the project-specific replacement will occur in a
17.2 different local government unit than the impact, approval of all local government units
17.3 involved or as specified in items A to G constitutes final approval of the replacement plan
17.4 and is required before the project may proceed. The local government unit with jurisdiction
17.5 ~~for~~ over the impact site must approve all components of the replacement plan, following
17.6 the procedures required by this chapter. The local government unit with jurisdiction ~~for~~
17.7 over the replacement ~~site~~ wetland must limit the review to evaluation of the replacement
17.8 ~~site~~ wetland and make a decision accordingly. As part of the approval of the replacement
17.9 plan, the local government unit with jurisdiction ~~for~~ over the replacement ~~site~~ wetland
17.10 assumes responsibility for ensuring compliance with monitoring provisions according to
17.11 parts 8420.0800 to 8420.0820. The local government unit with jurisdiction ~~for~~ over the
17.12 replacement ~~site~~ wetland may enter into joint powers agreements with a local government
17.13 unit with jurisdiction ~~for~~ over the impact site, assess fees, or develop other procedures
17.14 considered necessary to facilitate the process.

17.15 *[For text of item I, see Minnesota Rules]*

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

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

17.19 *[For text of item A, see Minnesota Rules]*

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

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

[For text of items D to I, see Minnesota Rules]

[For text of subpart 3, see Minnesota Rules]

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

[For text of item A, see Minnesota Rules]

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

[For text of items C to E, see Minnesota Rules]

F. An individual member of the technical evaluation panel who has a financial interest in a wetland bank or who has management responsibility to sell or make recommendations in the member's official capacity to sell credits from a publicly owned wetland bank must disclose that interest, in writing, to the panel and the local government unit.

19.1 **8420.0255 LOCAL GOVERNMENT UNIT APPLICATION, NOTICE, AND**
19.2 **DECISION PROCEDURES.**

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

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

19.13 Subp. 3. **Notice of application.**

19.14 A. Within 15 business days of receipt of a complete application, the local
19.15 government unit must send a copy of the application and a notice of application on a form
19.16 provided by the board to members of the technical evaluation panel; the watershed district
19.17 or water management organization, if there is one; the commissioner; ~~and~~ individual members
19.18 of the public who request a copy; and, for activities within the exterior reservation boundary
19.19 of a federally recognized Indian Tribe listed in Minnesota Statutes, section 10.65, subdivision
19.20 2, clause (4), the lead official of the Tribal governing body or their designee. The notice
19.21 must identify the type of application, the date the comment period ends, and where to submit
19.22 comments. If requested, individual members of the public ~~who request a copy~~ must be sent
19.23 ~~a summary~~ copy of the application that includes information to identify the applicant and
19.24 the location and scope of the project. The comment period must ~~be at least~~ end no sooner
19.25 than 15 business days from after the date the notice of application is sent. Revisions of an
19.26 approved and valid replacement plan must be noticed according to this subpart by sending
19.27 a summary of the proposed revisions if:

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

[For text of units (a) to (c), see Minnesota Rules]

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

(2) the project-specific replacement wetland is:

(a) a different wetland type;

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

(c) a different action eligible for credit; or

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

[For text of item B, see Minnesota Rules]

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

~~otherwise specified in the local government unit's decision when the technical evaluation panel advises that a longer period is justified in accordance with the standards in parts 8420.0100 to 8420.0935.~~

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

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

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

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

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

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

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

(2) project details are provided to document eligibility.

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

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

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

8420.0305 GENERAL APPLICATION REQUIREMENTS.

[For text of items A and B, see Minnesota Rules]

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

8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.

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

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

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

23.6 **8420.0315 NO-LOSS APPLICATIONS.**

23.7 A. A landowner may apply to the local government unit for a no-loss decision. A
23.8 landowner who does not request a decision from the local government unit and proceeds
23.9 with the activity may be subject to the enforcement provisions under part ~~8420.0915~~
23.10 8420.0900 and Minnesota Statutes, section 103G.2372.

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

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

23.15 **8420.0320 EXEMPTION APPLICATIONS.**

23.16 A. A landowner intending to impact a wetland without replacement, claiming
23.17 exemption under part 8420.0420, may apply to the local government unit for an exemption
23.18 decision or request an on-site exemption decision before beginning the activity to verify
23.19 whether the proposed impact is exempt. A landowner who does not request a decision from
23.20 the local government unit and proceeds with the activity may be subject to the enforcement
23.21 provisions under part ~~8420.0915~~ 8420.0900 and Minnesota Statutes, section 103G.2372.
23.22 An exemption may apply whether or not the local government unit has made an exemption
23.23 decision. If the landowner requests an exemption decision, then the local government unit
23.24 must make one.

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

8420.0330 REPLACEMENT PLAN APPLICATIONS.

[For text of subparts 1 and 2, see Minnesota Rules]

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

~~A. for the impacted wetland:~~

- ~~(1) the amount, in square feet or acres, of wetland proposed to be impacted by type;~~
- ~~(2) the minor watershed, major watershed, county, and bank service area;~~
- ~~(3) a soil survey map of the site showing soil type and identifying hydric soils, where available;~~
- ~~(4) a map showing the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetland and, if the wetland is within the shoreland wetland protection zone or floodplain, the distance and direction to the nearest watercourse;~~
- ~~(5) information known to the applicant or readily available concerning the special considerations criteria in part 8420.0515;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[For text of item A, see Minnesota Rules]

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

(1) the location of the replacement ~~area~~ wetland;

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

[For text of subitem (3), see Minnesota Rules]

(4) that reasonable access to the replacement ~~area shall be~~ wetland is granted to the proper authorities for inspection, monitoring, and enforcement purposes;

[For text of subitems (5) and (6), see Minnesota Rules]

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

8420.0405 BOUNDARY OR TYPE.

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

Subp. 2. **Wetland type.** Wetland type must be identified according to ~~United States Fish and Wildlife Service Circular No. 39 (1971 edition) Wetlands of the United States and Classification of Wetlands and Deepwater Habitats of the United States, including~~

29.1 ~~modifications or guidance provided by the board. Wetland type in relation to Wetland Plants~~
 29.2 ~~and Plant Communities of Minnesota & Wisconsin is shown in the following table: part~~
 29.3 ~~8420.0111, subpart 75.~~

29.4	Wetland Plants and Plant Communities		
29.5	of Minnesota and Wisconsin (Eggers and		
29.6	Reed 1997), as modified by the Board of		
29.7	Water and Soil Resources United States	Classification of Wetlands	Fish and Wildlife
29.8	Army Corps of Engineers Wetland	and Deepwater Habitats	Service Circular 39
29.9	Mitigation Memorandum of	of the United States	(Shaw and Fredine
29.10	Understanding (May 2007)	(Cowardin et al. 1979)	1971)
29.11	Shallow, open water	Palustrine or lacustrine;	Type 5: Inland open
29.12		littoral; aquatic bed;	fresh water
29.13		submergent, floating, and	
29.14		floating-leaved	
29.15	Deep marsh	Palustrine or lacustrine;	Type 4: Inland deep
29.16		littoral; aquatic bed;	fresh marsh
29.17		submergent, floating, and	
29.18		floating-leaved; emergent;	
29.19		persistent and	
29.20		nonpersistent	
29.21	Shallow marsh	Palustrine; emergent;	Type 3: Inland
29.22		persistent and	shallow fresh marsh
29.23		nonpersistent	
29.24	Sedge meadow	Palustrine; emergent;	Type 2: Inland fresh
29.25		narrow-leaved persistent	meadow
29.26	Fresh (wet) meadow	Palustrine; emergent;	Type 1: Seasonally
29.27		broad- and narrow-leaved	flooded basin or flat
29.28		persistent	Type 2: Inland fresh
29.29			meadow
29.30	Wet to wet-mesic prairie	Palustrine; emergent;	Type 1: Seasonally
29.31		broad- and narrow-leaved	flooded basin or flat
29.32		persistent	Type 2: Inland fresh
29.33			meadow
29.34	Calcareous fen	Palustrine; emergent;	Type 2: Inland fresh
29.35		narrow-leaved persistent;	meadow
29.36		scrub/shrub; broad-leaved	Type 6: Shrub swamp
29.37		deciduous	

30.1	Open bog or coniferous bog	Palustrine; moss/lichen;	Type 8: Bog
30.2		scrub/shrub; broad-leaved	
30.3		evergreen; forested;	
30.4		needle-leaved evergreen	
30.5		and deciduous	
30.6	Shrub-oak or alder thicket	Palustrine; scrub/shrub;	Type 6: Shrub swamp
30.7		broad-leaved deciduous	
30.8	Hardwood swamp or coniferous swamp	Palustrine; forested;	Type 7: Wooded
30.9		broad-leaved deciduous;	swamp
30.10		needle-leaved evergreen	
30.11		and deciduous	
30.12	Floodplain forest	Palustrine; forested;	Type 1: Seasonally
30.13		broad-leaved deciduous	flooded basin or flat
30.14	Seasonally flooded basin	Palustrine; flat; emergent;	Type 1: Seasonally
30.15		persistent and	flooded basin or flat
30.16		nonpersistent	

30.17 **8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.**

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

30.20 *[For text of items A and B, see Minnesota Rules]*

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

30.25 **8420.0415 NO-LOSS CRITERIA.**

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

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

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

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

D. an activity:

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

(2) conducted or authorized by public agencies for the purpose of ~~wetland restoration or~~ fish and wildlife habitat restoration or improvement ~~according to~~ or wetland restoration consistent with the guidance guide referenced in part 8420.0112, ~~items J and H,~~ item F; or

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

[For text of items E to G, see Minnesota Rules]

H. a temporary impact that is rectified by repairing, rehabilitating, or restoring the affected wetland. No-loss under this item only applies if all of the following conditions are met:

32.1 [For text of subitem (1), see Minnesota Rules]

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

32.5 (3) the landowner provides sufficient financial assurance acceptable to the
32.6 local government unit to cover the estimated cost to restore the wetland to preproject
32.7 conditions. The local government unit must return any remaining financial assurance to the
32.8 landowner upon a determination by the local government unit that the conditions in this
32.9 item have been met by the landowner; and.

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

32.14 **8420.0420 EXEMPTION STANDARDS.**

32.15 Subpart 1. **Scope.**

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

32.23 [For text of item B, see Minnesota Rules]

32.24 C. ~~Exemptions may not be combined on~~ A project may not be split into components
32.25 or phases for the purpose of gaining additional exemptions.

33.1 D. Present and future owners of wetlands impacted without replacement under
33.2 an exemption for agricultural activities in subpart 2 ~~or drainage in subpart 3~~ must make no
33.3 use of the wetland area after it is impacted, other than as agricultural land or other use
33.4 specified in subpart 2, for at least ten years after the impact unless it is first replaced according
33.5 to Minnesota Statutes, section 103G.222. Except for land in public ownership, at the time
33.6 of impact, the local government unit may require the landowner to record a notice of these
33.7 deed restrictions in the office of the county recorder for the county in which the project is
33.8 located if the local government unit determines the wetland area impacted is at risk of
33.9 conversion to a nonagricultural use or use other than that specified in subpart 2 within ten
33.10 years, based on the zoning classification, proximity to a municipality or full-service road,
33.11 or other criteria that may affect the risk of conversion to a nonagricultural use as determined
33.12 by the local government unit. ~~In~~ When making a decision under this item, the local
33.13 government unit must review the applicable comprehensive plan, if one exists, when
33.14 evaluating the risk of conversion to a nonagricultural use and monitor and enforce the
33.15 prohibition on using the area impacted for a nonagricultural purpose for at least ten years.
33.16 At a minimum, the recorded document must contain the name or names of the landowners,
33.17 a legal description of the property to which the restrictions apply, a statement of the
33.18 restrictions, the date on which the restrictions expire, the name of the local government that
33.19 approved the exemption, if an exemption occurred, the signatures of all owners, and an
33.20 acknowledgment.

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

33.22 A. ~~impacts resulting from agricultural activities in a wetland that was planted with~~
33.23 ~~annually seeded crops or was in a crop rotation seeding of pasture grass or legumes in six~~
33.24 ~~of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs,~~
33.25 ~~United States Department of Agriculture records, or other applicable documentation may~~
33.26 ~~be used as evidence for this exemption. Impacts eligible for this exemption must be to type~~
33.27 ~~1 or 2 wetlands;~~ A replacement plan is not required for impacts to wetlands on agricultural

34.1 land labeled prior converted cropland and impacts to wetlands resulting from drainage
34.2 maintenance activities authorized by the United States Department of Agriculture, Natural
34.3 Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture,
34.4 and wetland.

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

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

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

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

34.13 (a) the prior converted cropland, farmed wetland, farmed-wetland pasture,
34.14 or wetland must be labeled on a valid final certified wetland determination issued by the
34.15 Natural Resources Conservation Service in accordance with Code of Federal Regulations,
34.16 title 7, part 12;

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

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

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

35.7 (e) impacts under this item must not exceed those allowed using the label
35.8 definitions and activities authorized under the version of Code of Federal Regulations, title
35.9 7, part 12, that was in effect on August 1, 2024.

35.10 ~~B. impacts resulting from agricultural activities in a type 1 wetland on agricultural~~
35.11 ~~pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands,~~
35.12 ~~and impacts resulting from agricultural activities in a type 2 or 6 wetland that is less than~~
35.13 ~~two acres in size and located on agricultural pasture land that remains in the same use;~~

35.14 B. A replacement plan is not required for:

35.15 ~~C. (1) impacts resulting from soil and water conservation projects that are certified~~
35.16 ~~approved by the soil and water conservation district technical staff after review by the~~
35.17 ~~technical evaluation panel, if the project minimizes adverse effects on the hydrologic and~~
35.18 ~~biologic characteristics of the wetland. For purposes of this item, examples of soil and water~~
35.19 ~~conservation projects include those identified in the State Cost Share Program Manual,~~
35.20 ~~available from the board or soil and water conservation districts, and federally funded~~
35.21 ~~demonstration, research, and cost share programs and projects;~~

35.22 ~~D. (2) filling a wetland to accommodate wheeled booms on irrigation devices if~~
35.23 ~~the fill does not impede normal drainage;~~

35.24 ~~E. (3) impacts resulting from aquaculture activities, including pond excavation~~
35.25 ~~and construction and maintenance of associated access roads and dikes, authorized under~~

and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

~~F. (4)~~ impacts resulting from wild rice production activities, including necessary diking and other activities authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or

~~G. (5)~~ impacts resulting from agricultural activities ~~that are subject to federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board, the commissioners of natural resources and agriculture, and the Pollution Control Agency. An exemption under this item is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. Upon taking effect, this exemption only applies to impacts on agricultural land annually enrolled in the federal Farm Program that are not beyond what is:~~ on agricultural land that is subject to the wetland conservation compliance provisions of the federal Food Security Act of 1985, as amended, consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service.

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

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

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

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

Subp. 3. Drainage.

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

B. A replacement plan is not required for:

(1) impacts resulting from maintenance or repair of existing public drainage systems conducted or authorized by a public drainage authority under Minnesota Statutes, chapter 103E, when the maintenance or repair does not drain type 3, 4, or 5 wetlands that have existed for more than 25 years before the proposed impact; or

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

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

C. A replacement plan is not required for:

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

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

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

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

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

38.13 ~~(a) during the 20-year period that ended January 1, 1992:~~

38.14 ~~i. there was an expenditure made from the drainage system account~~
38.15 ~~for the public drainage system;~~

38.16 ~~ii. the public drainage system was repaired or maintained as~~
38.17 ~~approved by the drainage authority; or~~

38.18 ~~iii. no repair or maintenance of the public drainage system was~~
38.19 ~~required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the~~
38.20 ~~public drainage authority; and~~

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

38.22 ~~i. platted lots;~~

38.23 ~~ii. planned unit, commercial, or industrial developments; or~~

39.1 iii. ~~any development with more than one residential unit per 40~~
39.2 ~~acres, except for parcels subject to local zoning standards that allow family members to~~
39.3 ~~establish an additional residence on the same 40 acres.~~

39.4 ~~If wetlands drained under this subitem are converted to prohibited uses during the~~
39.5 ~~ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes,~~
39.6 ~~section 103G.222.~~

39.7 ~~Documentation such as aerial photographs, United States Department of Agriculture~~
39.8 ~~records, or other applicable documentation may be used as evidence for the exemption under~~
39.9 ~~this item.~~

39.10 ~~D. B.~~ For projects completed under this subpart, spoil must be placed and stabilized
39.11 in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch
39.12 or contributing to the degradation of downstream water quality.

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

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

39.23 Subp. 4. **Federal approvals.** A replacement plan is not required for impacts authorized
39.24 under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344,
39.25 or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section

403, and regulations that meet minimum state standards under this chapter and that have been approved by the board, the Department of Agriculture, the Department of Natural Resources, and the Pollution Control Agency. This exemption is not valid until such approval is obtained. If approved, the board must provide notice of the conditions and standards shall be noticed by the board to local government units and published publish the conditions and standards in the State Register. The exemption takes effect 30 days after publication and remains in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register.

[For text of subpart 5, see Minnesota Rules]

Subp. 6. Utilities.

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

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

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

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

[For text of subitem (2), see Minnesota Rules]

B. ~~For maintenance, repair, and replacement, a local government unit may issue a seasonal or annual exemption approval or the utility may proceed without local government unit approval if the utility is carrying out the work according to approved best management practices.~~ Utility work of an emergency nature may proceed as necessary and any impacts

41.1 must be addressed with the local government unit after the emergency work has been
41.2 completed.

41.3 *[For text of subpart 7, see Minnesota Rules]*

41.4 Subp. 8. **De minimis.**

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

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

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

41.12 (b) ~~400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
41.13 ~~and tamarack wetland, outside of the building setback zone, as defined in the local shoreland~~
41.14 ~~management ordinance, but within the shoreland wetland protection zone. This amount may~~
41.15 ~~be increased to 1,000 square feet by the local government unit if the wetland is isolated and~~
41.16 ~~determined to have no direct surficial connection to the public water;~~

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

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

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

42.1 (a) ~~5,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
42.2 ~~and tamarack wetland, outside of the shoreland wetland protection zone and outside of the~~
42.3 ~~11-county metropolitan area;~~

42.4 (b) ~~2,500 square feet, except for type 3, 4, 5, or 8 wetland or white cedar~~
42.5 ~~and tamarack wetland, outside of the shoreland wetland protection zone and inside the~~
42.6 ~~11-county metropolitan area;~~

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

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

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

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

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

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

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

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

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

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

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

43.12 D. Except as provided in items B, C, and E to I, a replacement plan is not required
43.13 for up to 400 square feet of impacts to permanently and semipermanently flooded wetland
43.14 areas as part of a project.

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

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

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

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

43.23 ~~(3) 400 square feet.~~

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

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

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

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

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

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

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

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

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

44.22 *[For text of subitem (2), see Minnesota Rules]*

44.23 (3) the project will ~~provide~~ improve wildlife habitat ~~improvement~~ as ~~certified~~
44.24 determined by the soil and water conservation district ~~or technical evaluation panel using~~

~~Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000, or similar criteria approved by the board; or~~

B. duck blinds.

8420.0500 PURPOSE AND REQUIREMENT.

[For text of subpart 1, see Minnesota Rules]

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

[For text of subpart 3, see Minnesota Rules]

8420.0512 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.

8420.0515 SPECIAL CONSIDERATIONS.

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

[For text of subpart 2, see Minnesota Rules]

Subp. 3. **Rare natural communities.** ~~A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.~~

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 the overall size of the community;

(2) the extent to which the impact will alter the community's character and quality; and

47.1 (3) any adverse effects to the community that are likely to occur after the
47.2 initial impact.

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

47.5 (1) the actions in part 8420.0526 when associated with the restoration or
47.6 protection of a rare natural community or the restoration of a native plant community to an
47.7 exceptional ecological condition; or

47.8 (2) the restoration and protection of an exceptional natural resource under
47.9 part 8420.0526, subpart 8.

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

47.13 E. When making a decision on a replacement plan under this subpart, the local
47.14 government unit must consult with the commissioner and consider the commissioner's
47.15 comments, if any, in accordance with part 8420.0255.

47.16 [For text of subparts 4 and 5, see Minnesota Rules]

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

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

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

Subp. 9. [See repealer.]

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

8420.0520 SEQUENCING.

Subpart 1. **Requirement.** The local government unit must not approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland complies with all of the following principles in descending order ~~or~~ of priority:

[For text of items A to D, see Minnesota Rules]

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

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

[For text of subparts 2 to 7, see Minnesota Rules]

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

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

[For text of subitems (1) to (4), see Minnesota Rules]

B. ~~Sequencing flexibility in the order and application of sequencing standards~~ must not be implemented unless alternatives have been considered and the proposed replacement wetland is certain to provide equal or greater public value ~~as determined based on a functional assessment~~ an assessment of the wetland's functions reviewed by the technical evaluation panel ~~using a methodology approved by the board~~. The applicant ~~must provide the necessary information and~~ the local government unit must document the application of sequencing flexibility in the replacement plan approval.

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

Subp. 9. [Repealed, 34 SR 145]

50.1 **8420.0522 REPLACEMENT STANDARDS.**

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

50.6 *[For text of items A to E, see Minnesota Rules]*

50.7 F. low-flow augmentation; ~~and~~

50.8 G. carbon sequestration; and

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

50.13 Subp. 2. **Determining impacts of partial drainage.** ~~In cases where wetlands will be~~
50.14 ~~partially drained, the amount of wetland to be replaced must be determined according to~~
50.15 ~~this subpart. The area impacted by partially draining a wetland is determined in two parts.~~
50.16 ~~The wetland area where the hydrology will be totally removed must be considered an impact~~
50.17 ~~in its entirety. The amount of impact for the area that is partially drained must be at least~~
50.18 ~~50 percent of the acreage of the remaining wetland area determined by an assessment~~
50.19 ~~acceptable to the technical evaluation panel. At least 50 percent of a wetland area where~~
50.20 ~~the hydrology is partially removed by drainage must be considered an impact. The percentage~~
50.21 ~~must be greater than 50 percent when the local government unit determines, in consultation~~
50.22 ~~with the technical evaluation panel, that a higher percentage is necessary to replace the~~
50.23 ~~resulting loss of public value.~~

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

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

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

Subp. 4. **Replacement ratios.**

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

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

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

(3) withdrawal of available credit from an approved wetland bank within the same city or county as the impacted wetland when the bank owner and credit user are the same entity. This subitem does not apply to credits that have been transferred from one bank 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

52.1	Minimum Replacement Ratios: Project-Specific		
52.2	Location of impact	Replacement	Minimum replacement ratio
52.3	>80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
52.4		Within major watershed and in-kind	1.5 1:1
52.5	<50% area, 50-80% area, and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
52.6		Within major watershed and in-kind	2:1
52.7			
52.8			
52.9			
52.10			

52.11 [For text of item B, see Minnesota Rules]

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

52.22 [For text of item D, see Minnesota Rules]

52.23 E. Owners of wetlands impacted for use as agricultural land may make no use of
 52.24 the wetland area after it is impacted, other than as agricultural land, for a period of ten years
 52.25 unless future replacement to achieve a ratio equaling or exceeding the appropriate ratio for
 52.26 nonagricultural land in item A occurs. The local government unit may require the landowner
 52.27 ~~must~~ to record a notice of this deed restriction in the office of the county recorder in which

53.1 the project is located; and, as a condition of ~~local government unit~~ approval, provide
53.2 documentation of the recording to the local government unit.

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

53.10 G. For purposes of determining replacement ratios, a wetland bank is considered
53.11 within the same bank service area as the impact if the bank:

53.12 (1) is within the same bank service area as the impact; or

53.13 (2) was within the same bank service area as the impact when the local
53.14 government unit approved the bank.

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

53.16 A. The preferred method of replacement is that which takes advantage of naturally
53.17 occurring hydrogeomorphic conditions with minimal landscape alteration and is most likely
53.18 to result in a wetland area that functions wholly, perpetually, and naturally. ~~Wetland~~
53.19 ~~restoration is generally preferred over creation, and restoration of completely impacted~~
53.20 ~~wetlands is generally preferred over other methods of replacement.~~

53.21 B. Restoration and replacement of wetlands must be accomplished according to
53.22 the ecology of the landscape area. The replacement site wetland must be ecologically suitable
53.23 for providing the desired functions and compatible with adjacent land uses. A replacement
53.24 or banking plan that would result in wetland types or characteristics that do not naturally
53.25 occur in the landscape area in which the replacement will occur must be denied. Replacement

54.1 must not adversely affect other ~~habitat types~~ habitats or ecological communities that are
54.2 important in maintaining the overall biological diversity of the area.

54.3 *[For text of item C, see Minnesota Rules]*

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

54.6 (1) landscape position;

54.7 (2) habitat requirements, ~~development and~~ of important species;

54.8 (3) habitat loss trends;

54.9 (4) sources of watershed impairment;

54.10 (5) current land development trends;

54.11 (6) protection and maintenance of upland resources and riparian areas; and

54.12 (7) ~~providing~~ how the replacement will provide a suite of functions.

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

54.14 A. Establishment or preservation of unmanicured vegetated ~~upland~~ buffer areas
54.15 is required adjacent and contiguous to replacement wetlands receiving credit under part
54.16 8420.0526, subparts 3 to 7.

54.17 *[For text of item B, see Minnesota Rules]*

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

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

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

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

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

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

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

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

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

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

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

~~(3) statewide.~~

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

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

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

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

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

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

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

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

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

57.4 E. When replacement wetland sites are identified in accordance with the priority
 57.5 order for siting replacement wetlands in item A as part of completing an environmental
 57.6 impact statement determined adequate under chapter 4410, the replacement wetland sites
 57.7 may be approved for a replacement plan without further modification related to the priority
 57.8 order notwithstanding the availability of new replacement wetland sites or the availability
 57.9 of credits after completing the adequate environmental impact statement. Wetland
 57.10 replacement plan applications must be submitted within one year of the adequacy
 57.11 determination for the environmental impact statement to be eligible for approval under this
 57.12 item.

57.13 F. For purposes of this subpart, a wetland bank is considered within the same bank
 57.14 service area as the impact if the bank:

57.15 (1) is within the same bank service area as the impact; or

57.16 (2) was within the same bank area as the impact when the local government
 57.17 unit approved the bank.

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

57.19 ~~1 Lake Superior (north)~~

57.20 ~~2 Lake Superior (south)~~

57.21 ~~3 St. Louis River~~

57.22 ~~4 Cloquet River~~

57.23 ~~5 Nemadji River~~

57.24 ~~7 Mississippi River (Headwaters, Lake Winnibigoshish)~~

57.25 ~~8 Leech Lake River~~

57.26 ~~9 Mississippi River (Grand Rapids)~~

58.1	10	Mississippi River (Brainerd)
58.2	11	Pine River
58.3	12	Crow Wing River
58.4	13	Redeye River (Leaf River)
58.5	14	Long Prairie River
58.6	15	Mississippi River (Sartell)
58.7	16	Sauk River
58.8	17	Mississippi River (St. Cloud)
58.9	18	North Fork Crow River
58.10	19	South Fork Crow River
58.11	20	Mississippi River (Metro)
58.12	21	Rum River
58.13	22	Minnesota River (Headwaters)
58.14	23	Pomme de Terre River
58.15	24	Lac qui Parle River
58.16	25	Minnesota River (Granite Falls)
58.17	26	Chippewa River
58.18	27	Redwood River
58.19	28	Minnesota River (Mankato)
58.20	29	Cottonwood River
58.21	30	Blue Earth River
58.22	31	Watonwan River
58.23	32	Le Sueur River
58.24	33	Minnesota River (Shakopee)
58.25	34	St. Croix River (Upper)
58.26	35	Kettle River
58.27	36	Snake River
58.28	37	St. Croix River (Stillwater)
58.29	38	Mississippi River (Red Wing) and Lake Pepin

59.1	39	Cannon River
59.2	40	Mississippi River (Winona)
59.3	41	Zumbro River
59.4	42	Mississippi River (La Cresecent)
59.5	43	Root River
59.6	44	Mississippi River (Reno)
59.7	46	Upper Iowa River
59.8	47	Wapsipinican River (Headwaters)
59.9	48	Cedar River
59.10	49	Shell Rock River
59.11	50	Winnebago River (Lime Creek)
59.12	51	West Fork des Moines River (Headwaters)
59.13	52	West Fork des Moines River (Lower)
59.14	53	East Fork des Moines River
59.15	54	Bois de Sioux River
59.16	55	Mustinka River
59.17	56	Otter Tail River
59.18	57	Red River of the North (Headwaters)
59.19	58	Buffalo River
59.20	59	Marsh River
59.21	60	Wild Rice River
59.22	61	Sandhill River
59.23	62	Upper and Lower Red Lake
59.24	63	Red Lake River
59.25	65	Thief River
59.26	66	Clearwater River
59.27	67	Grand Marais Creek (Red River of the North)
59.28	68	Snake River
59.29	69	Tamarack River (Red River of the North)

- 60.1 ~~70 Two River~~
60.2 ~~71 Roseau River~~
60.3 ~~72 Rainy River (Headwaters)~~
60.4 ~~73 Vermillion River~~
60.5 ~~74 Rainy River (Rainy Lake)~~
60.6 ~~75 Rainy River (Manitou)~~
60.7 ~~76 Little Fork River~~
60.8 ~~77 Big Fork River~~
60.9 ~~78 Rapid River~~
60.10 ~~79 Rainy River (Baudette)~~
60.11 ~~80 Lake of the Woods~~
60.12 ~~81 Big Sioux River (Medary Creek)~~
60.13 ~~82 Big Sioux River (Pipestone)~~
60.14 ~~83 Rock River~~
60.15 ~~84 Little Sioux River~~

60.16 Subp. 8. **Timing of replacement.**

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

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

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

60.23 (2) project-specific replacement wetlands for which construction has been
60.24 ~~certified and verified~~, the first monitoring report of the first full growing season following
60.25 construction ~~certification~~ verification has been submitted according to part 8420.0810, and

61.1 the replacement wetland meets all goals and performance standards applicable to ~~that~~ its
61.2 stage of development stage of the replacement site.

61.3 *[For text of item C, see Minnesota Rules]*

61.4 Subp. 9. **Financial assurance.**

61.5 *[For text of items A and B, see Minnesota Rules]*

61.6 C. Before drawing on the financial assurance, the local government unit must
61.7 provide written notice to the landowner stating the actions necessary to bring the replacement
61.8 project into compliance and that the landowner has 30 days to complete the actions, after
61.9 which the local government unit will use the financial assurance to gain compliance. Use
61.10 of the financial assurance by the local government unit may be appealed by the landowner
61.11 within 30 days after the date on which the notice is mailed, according to part ~~8420.0910~~
61.12 8420.0905.

61.13 D. The local government unit may release a portion of the financial assurance
61.14 upon successful completion of construction, but must retain a sufficient amount to ensure
61.15 successful vegetative establishment and completion of the monitoring requirements. Within
61.16 ~~60 days of certification~~ after a determination of successful replacement and completion of
61.17 monitoring according to part 8420.0820, subpart 2, the local government unit must release
61.18 any remaining financial assurance submitted by the applicant, provided all other conditions
61.19 of the approval are met.

61.20 Subp. 10. **Replacement wetland limitations.**

61.21 A. The replacement wetland must not:

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

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

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

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

8420.0526 ACTIONS ELIGIBLE FOR CREDIT.

Subpart 1. Scope.

[For text of item A, see Minnesota Rules]

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

[For text of item C, see Minnesota Rules]

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

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

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

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

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

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

(2) the board determines that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66.9 B. up to 90 percent of the area restored for wetland areas in bank service areas 2,
66.10 3, and 4 in a percentage equivalent to the percent of time the wetland areas were planted
66.11 with annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes,
66.12 or were required to be set aside to receive price supports or equivalent payments during the
66.13 20-year period prior to the date of application for a replacement or ~~bank~~ banking plan.

66.14 Subp. 6. **Protection of wetlands previously restored via conservation easements**
66.15 **programs.** Permanently protecting wetlands previously restored or created for conservation
66.16 purposes under a contract or easement, when the contract or easement has expired and gives
66.17 the landowner the right to drain or fill the wetland upon termination, is eligible for
66.18 replacement credit where the area receiving credit meets the replacement wetland construction
66.19 standards of part 8420.0528. The maximum replacement credit is 75 percent of the area
66.20 created or restored under the conservation contract or easement. Alternatively, credit may
66.21 be allocated according to the other subparts in this part as applied prior to initiation of the
66.22 contract or easement, when the applicant can document eligible credit yield to the satisfaction
66.23 of the local government unit.

66.24 [For text of subparts 7 and 8, see Minnesota Rules]

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

[For text of items A to D, see Minnesota Rules]

[For text of subpart 10, see Minnesota Rules]

8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Design requirements.**

[For text of items A and B, see Minnesota Rules]

C. Best management practices must be established and maintained at the replacement wetland site as necessary to protect the replacement wetland and other waterbodies. Erosion control measures must be employed during construction and until permanent ground cover is established.

D. Native, noninvasive vegetation must be established in restored and created wetlands. Each replacement or banking plan involving wetland restoration or creation must include a vegetation establishment and management plan. ~~The vegetation establishment and~~

68.1 ~~management plan must include a goal of, and~~ with specific provisions for, establishing ~~plant~~
68.2 ~~communities~~ native, noninvasive vegetation that correspond corresponds to the hydrology
68.3 and landscape position of the replacement ~~site~~ wetland. The plan must include actions to
68.4 restore (1) the native plant community or communities historically associated with wetlands
68.5 of the same type in the watershed or (2) other plant communities when the local government
68.6 unit determines that establishing the historic native plant community is not feasible or
68.7 ecologically preferable. If the replacement wetland is seeded or planted, the seed or planting
68.8 stock should be from native, noninvasive species in accordance with the Minnesota Wetland
68.9 Restoration Guide. In evaluating the vegetation establishment and management plan, the
68.10 local government unit must determine that implementation of the plan is likely to result in
68.11 establishment of the appropriate native, noninvasive vegetation within the monitoring period.
68.12 During the monitoring period, the applicant must take reasonable steps to control invasion
68.13 by any nonnative or invasive species.

68.14 E. The bottom contours of permanently and semipermanently flooded wetland
68.15 areas of created types 3, 4, and 5 wetlands must provide a variety of water depths, comparable
68.16 to natural wetlands in the vicinity of the replacement, and be consistent with part 8420.0522,
68.17 subpart 5.

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

68.25 G. Treatment of runoff before discharge to replacement ~~areas~~ wetlands is required
68.26 to improve sustainability and minimize degradation of the wetland over time. The

69.1 replacement ~~area~~ wetland must be physically separated from any water quality treatment
69.2 system. "Treatment of runoff" under this part means:

69.3 *[For text of subitems (1) and (2), see Minnesota Rules]*

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

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

69.11 *[For text of item A, see Minnesota Rules]*

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

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

69.19 *[For text of item D, see Minnesota Rules]*

69.20 **8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.**

69.21 *[For text of item A, see Minnesota Rules]*

69.22 B. ~~Wetlands impacted by public transportation projects:~~ Siting wetland replacement
69.23 for public transportation projects must comply with part 8420.0522, subpart 7, except that
69.24 wetland banking credits approved according to a complete wetland banking application

70.1 submitted to a local government unit by April 1, 1996, may be used to replace wetland
70.2 impacts resulting from public transportation projects statewide.

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

70.6 ~~(2) in the seven-county metropolitan area must be replaced in the seven-county~~
70.7 ~~metropolitan area or in one of the major watersheds that are wholly or partially within the~~
70.8 ~~seven-county metropolitan area, but at least one-to-one must be replaced within the~~
70.9 ~~seven-county metropolitan area.~~

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

70.13 *[For text of item C, see Minnesota Rules]*

70.14 D. A replacement plan is not required for individual public road projects that
70.15 impact wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently
70.16 serviceable existing state, city, county, or town public road necessary, as determined by the
70.17 public road authority, to meet state or federal design or safety standards or requirements.
70.18 This item only applies to authorities for public road projects that:

70.19 *[For text of subitem (1), see Minnesota Rules]*

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

70.25 *[For text of units (a) to (c), see Minnesota Rules]*

71.1 [For text of items E to H, see Minnesota Rules]

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

71.8 [For text of item J, see Minnesota Rules]

71.9 **8420.0700 PURPOSE OF WETLAND BANKING.**

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

71.18 **8420.0705 ESTABLISHING WETLAND ~~BANK SITE~~ BANKS.**

71.19 Subpart 1. **Eligibility for wetland banking.** Replacement wetland credits that result
71.20 from any of the eligible actions in part 8420.0526, and that meet the ~~standards of parts~~
71.21 ~~8420.0522 and 8420.0528,~~ requirements of this chapter may be deposited in the state wetland
71.22 bank for later use in replacing unavoidable impacts. To be eligible for deposit in the bank,
71.23 the credits must be specifically designated for wetland banking purposes prior to undertaking
71.24 the replacement actions ~~and certified by the local government unit prior to deposit~~.
71.25 Designation of credits for wetland banking is accomplished by approval of a wetland banking

72.1 plan by a local government unit. ~~Replacement actions completed or initiated without prior~~
72.2 ~~local government unit approval are not eligible for deposit in the wetland bank.~~

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

72.4 A. Based on a comprehensive local water or wetland protection and management
72.5 plan approved by the board, a local government unit may, by rule or ordinance, limit the
72.6 establishment of bank sites within its jurisdiction. The local government unit that approves
72.7 a banking plan application is responsible for construction ~~certification~~ verification according
72.8 to part 8420.0800, ensuring the monitoring provisions of part 8420.0810 are fulfilled, and
72.9 certifying credits for deposit according to part 8420.0725.

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

72.15 Subp. 3. **Application Prospectus requirements and procedures.** ~~When replacement~~
72.16 ~~actions are proposed for banking purposes, the applicant must submit to the local government~~
72.17 ~~unit a banking plan application, in a form prescribed by the board, containing the information~~
72.18 ~~identified in parts 8420.0305, item B, and 8420.0330, subpart 3, item B, and other information~~
72.19 ~~required by the board. The banking plan must also contain specific performance standards~~
72.20 ~~and a proposed credit release schedule based upon achievement of those standards. The~~
72.21 ~~local government unit is responsible for ensuring that a copy of the banking plan application~~
72.22 ~~is sent to the administrator of the state wetland bank, to the St. Paul District Office of the~~
72.23 ~~United States Army Corps of Engineers, and to those required to receive a copy of an~~
72.24 ~~application in part 8420.0255, subpart 3. The technical evaluation panel must review the~~
72.25 ~~banking plan application and may recommend changes or additions to the performance~~
72.26 ~~standards and credit allocation schedule. The wetland banking plan applicant must be advised~~

~~of any panel recommendations. Based on the panel's findings and recommendations and other comments received, the local government unit must determine the likelihood that the 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.

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.

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 after 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.

E. The technical evaluation panel must review the prospectus to determine the feasibility of the project and its potential 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.

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

74.1 B. An applicant may submit a banking plan application to the local government
74.2 unit after completing the prospectus review under subpart 3. A banking plan application
74.3 must include:

- 74.4 (1) the information specified in parts 8420.0305 and 8420.0330, subpart 3;
74.5 (2) a proposed conservation easement boundary;
74.6 (3) a credit release schedule with associated performance standards, as
74.7 applicable; and
74.8 (4) any other information requested by the board to determine whether the
74.9 application meets the requirements of this chapter.

74.10 C. The local government unit must determine whether a banking plan application
74.11 is complete. If the banking plan application is incomplete, the local government unit must
74.12 notify the applicant within 15 business days after receiving the application and specify, in
74.13 writing, what items or information is missing.

74.14 D. Within 15 business days after receiving a complete banking plan application,
74.15 the local government unit must send a copy of the application and a notice of application,
74.16 on a form provided by the board, to those required to receive notice under part 8420.0255,
74.17 subpart 3, and the board's designated banking administrator. The notice must designate a
74.18 comment period of 60 days, which begins on the date the notice is sent. Any comments
74.19 received by the local government unit must be shared with the technical evaluation panel
74.20 for consideration in developing the panel's findings and recommendations. The technical
74.21 evaluation panel must provide its findings and recommendations to the local government
74.22 unit within 90 days after the notice of application is sent.

74.23 E. Decisions made by the local government unit must be based on the standards
74.24 and procedures prescribed in this chapter and any findings and recommendations provided
74.25 by the technical evaluation panel. Except as provided in item G or if extended under item

75.1 F, a local government unit's decision to approve, approve with conditions, or deny a banking
75.2 plan application must be made within 140 days after receiving the complete application.

75.3 F. The local government unit may extend the decision timeline in item E for an
75.4 additional 60 days if additional field review is required or substantive plan details require
75.5 additional review by other experts. The applicant and the local government unit may agree
75.6 to further extend the decision timeline beyond the initial 60-day extension. All extensions
75.7 must be specified in writing.

75.8 G. If a banking plan applicant notifies the local government unit in writing of the
75.9 applicant's intent to revise the banking plan application or respond to any findings and
75.10 recommendations provided, the decision timeline in item E does not apply, and the local
75.11 government unit's decision must be made according to item H.

75.12 H. If substantive revisions to a banking plan application are received, the local
75.13 government unit must send a copy of the revised banking plan application and a notice of
75.14 application, on a form provided by the board, to the technical evaluation panel and the
75.15 board's designated banking administrator within ten days after receiving the revisions. The
75.16 notice must designate a comment period of 60 days, which begins on the date the notice is
75.17 sent. The local government unit must make a decision on the revised banking plan application
75.18 within 100 days after receiving the revised application.

75.19 I. Within ten days after the date of a decision, the local government unit must
75.20 send a notice of decision, on a form provided by the board, to those required to receive
75.21 notice of application under item D. The notice must designate a 30-day appeal period
75.22 consistent with part 8420.0905.

75.23 J. If the local government unit fails to make a decision on a banking plan
75.24 application within the timelines required under this subpart, the board must act on the
75.25 application in lieu of the local government unit or remand the matter to the local government
75.26 unit with instructions.

76.1 [For text of subpart 4, see Minnesota Rules]

76.2 Subp. 5. **Conservation easement.**

76.3 A. Except as provided in item B, no credits may be deposited in the state wetland
76.4 bank until a perpetual conservation easement, in a format meeting requirements prescribed
76.5 by the board, is granted to and accepted by the state. The easement must encompass the
76.6 entire replacement area, unless the local government unit and the board approve an alternate
76.7 boundary at the time of bank application approval. The easement must provide for
76.8 preservation of the banked wetland's functions by the fee owner and wetland banking plan
76.9 applicant. The wetland banking plan applicant must also provide a title insurance policy
76.10 that is acceptable to the state naming the state of Minnesota as the insured. If the conservation
76.11 easement does not abut a public road, the fee owner and wetland banking plan applicant
76.12 must also grant and record an access easement in favor of the board; the local government
76.13 unit; and any other state, local, or federal regulatory authority that has authorized use of
76.14 credits from the site for wetland replacement. The access easement does not confer a right
76.15 of access to the general public. The boundary of bank areas must be clearly marked as
76.16 prescribed in the conservation easement. This subpart does not apply to state land.

76.17 B. A conservation easement is not required for a bank established on state or
76.18 federal land or on land held in trust by the federal government for Tribal Nations when the
76.19 board determines that:

76.20 (1) a conservation easement is not feasible; and

76.21 (2) long-term protection, access, and maintenance provisions comparable to
76.22 those contained in an easement established under item A exist for the bank site.

76.23 Subp. 6. **Time limits for construction.** Replacement actions under an approved
76.24 banking plan must be initiated within three years of banking plan approval or the banking
76.25 plan must be resubmitted to the local government unit for consideration. Construction

77.1 ~~certification~~ verification according to part 8420.0800 must be gained within five years of
77.2 banking plan approval. The time limits under this subpart may be extended by the local
77.3 government unit in consultation with the technical evaluation panel.

77.4 **8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.**

77.5 A. To be deposited into the state wetland bank, replacement credits must be
77.6 certified for deposit by the local government unit ~~in which they are located. Certification~~
77.7 ~~of credits by~~ The wetland banking plan applicant may, on a form provided by the board,
77.8 request the certification and deposit of credits by the local government unit ~~is requested by~~
77.9 ~~the banking plan applicant and may occur at any time during the monitoring period according~~
77.10 to the credit release schedule and associated performance standards contained in the approved
77.11 banking plan. The certification must be based on the findings and recommendation of the
77.12 technical evaluation panel and must identify the ~~area by type, area of buffer, and number~~
77.13 of credits eligible for deposit by area. The technical evaluation panel must ensure that
77.14 ~~sufficient time has passed for the wetland to become established, especially vegetation and~~
77.15 ~~hydrology, the applicable performance standards contained in the approved banking plan~~
77.16 have been met before recommending certification. ~~The area certified must be based on A~~
77.17 ~~land survey or comparable method of field measurement must be used to define the extent~~
77.18 of the area on which the credit certification is requested. ~~The person making the measurement~~
77.19 ~~must verify in writing as to~~ credit release request must identify the method and accuracy of
77.20 the measurement. Failure to follow the approved construction specifications or vegetation
77.21 management plan is sufficient grounds for the local government unit to deny certification
77.22 of credits for deposit.

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

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

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

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

78.6 ~~(4) a copy of the recorded conservation easement according to part 8420.0705,~~
78.7 ~~subpart 5;~~

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

78.10 ~~(6) technical evaluation panel recommendation and local government unit~~
78.11 ~~certification; and~~

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

78.13 ~~€.~~ B. Up to 15 percent of the potential banking credits proposed for specified in
78.14 the approved banking plan are eligible for deposit in the bank ~~immediately~~ after the
78.15 ~~certification of local government unit determines that the construction specifications of~~
78.16 replacement wetlands have been met according to part ~~8420.0820, subpart 2,~~ 8420.0800
78.17 ~~and recording of a conservation easement according to that the requirements of part~~
78.18 8420.0705, subpart 5, have been met.

78.19 ~~Ð.~~ C. After the initial deposit, the remaining credits proposed for banking are
78.20 eligible for deposit in accordance with the credit release schedule and performance standards
78.21 included in the approved banking plan, subject to review by the technical evaluation panel
78.22 and certification by the local government unit. ~~If the approved banking plan does not contain~~
78.23 ~~a credit release schedule and associated performance standards, remaining credits will be~~
78.24 ~~eligible for deposit based on the findings and recommendation of the technical evaluation~~
78.25 ~~panel regarding the success of the proposed replacement action.~~

79.1 ~~E. D.~~ After certifying the credits for deposit, a representative of the local
79.2 government unit must forward the signed request for sign the banking credit deposit form
79.3 to the board's banking administrator and promptly forward it to the banking plan applicant.
79.4 The banking plan applicant must then send the fully executed banking credit deposit form
79.5 and any required fees to the board's designated banking administrator. No credits will may
79.6 be deposited until receipt of the board receives the completed and approved request to
79.7 deposit form by the board. The board must acknowledge the deposit to notify the banking
79.8 plan applicant and local government unit of the deposit and enter record the information in
79.9 item B into the wetland bank account.

79.10 ~~F. E.~~ If the banking plan applicant chooses not to proceed with the initial deposit,
79.11 the banking plan applicant may return the site to its preconstruction condition without
79.12 replacement. If credits have been deposited but none have been withdrawn, the banking
79.13 plan applicant may request the board vacate the conservation easement at the applicant's
79.14 expense. If the board vacates the conservation easement, the account will be closed and the
79.15 site may be returned to preconstruction condition without replacement. Replacement ~~areas~~
79.16 wetlands wholly or partially deposited into the bank, on which withdrawals have occurred
79.17 or which otherwise have been used for replacement, are subject to this chapter, including
79.18 replacement for any subsequent impacts.

79.19 **8420.0735 MONITORING AND CORRECTIVE ACTIONS.**

79.20 Subpart 1. **Monitoring.**

79.21 *[For text of item A, see Minnesota Rules]*

79.22 B. After completion of the required monitoring period, the board ~~shall periodically~~
79.23 ~~inspect wetlands deposited into the bank at a frequency sufficient to ensure that easement~~
79.24 ~~conditions are being met~~ is responsible for assessing a wetland bank site to ensure that the
79.25 site continues to function consistent with the approved banking plan.

Subp. 2. **Maintenance responsibilities.** The fee owner and the banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the banking project according to the approved banking plan and for maintaining the banking project according to the conditions of the conservation easement. The banking plan applicant, if different from the fee owner, is not responsible for maintenance after the monitoring requirements have been completed if the banking plan applicant no longer owns an easement interest in the real estate or credits associated with the ~~banked~~ replacement wetland.

Subp. 3. **Corrective actions.**

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

[For text of items B to E, see Minnesota Rules]

8420.0745 WITHDRAWALS AND TRANSFERS.

Subpart 1. **General.**

A. Credits from the state wetland bank may only be used to replace wetland impacts when:

(1) authorized by a local government ~~units~~ unit under this chapter or by other local, state, and federal ~~regulatory~~ governmental authorities; ~~provided~~;

(2) the impacted wetland is within the state of Minnesota; and

(3) the credit withdrawal procedures of this chapter are followed.

81.1 B. No sale, withdrawal, transfer, or use of banking credits for replacement is valid
81.2 until the board debits the applicable bank account. ~~Bank~~ Banking credits may be used only
81.3 once to replace wetland impacts. Bank accounts must maintain a positive balance. When
81.4 all credits have been withdrawn or transferred, the account is closed.

81.5 Subp. 2. **Withdrawals.** Replacement plan applicants ~~seeking to use~~ or others proposing
81.6 to withdraw banking credits for replacement are responsible for contacting and arranging
81.7 for acquisition of the credits from the holder of a bank account according to the ~~wetland~~
81.8 ~~replacement~~ requirements of this chapter. ~~The board shall supply information on wetland~~
81.9 ~~bank sites according to part 8420.0755, subpart 1, item B. Replacement plan applicants~~
81.10 ~~proposing the use of bank credits for replacement must complete a credit withdrawal form~~
81.11 ~~prescribed by the board and include it as part of the replacement plan application submitted~~
81.12 ~~to the local government unit. If the local government unit approves the use of bank~~ banking
81.13 credits for replacement, a representative of the local government unit must sign the completed
81.14 credit withdrawal form provided by the applicant and notify the board's banking administrator
81.15 ~~according to part 8420.0255, subpart 5. The board shall not withdraw credits from a bank~~
81.16 ~~account unless a regulatory entity with authority over the use of the credits has approved~~
81.17 ~~the use of the subject credits for replacement of a specific wetland impact~~ return the form
81.18 to the applicant. The applicant must then submit the fully executed form and any required
81.19 fees to the board's designated banking administrator. Local government unit approval of
81.20 replacement plans involving the use of banking credits is conditional upon withdrawal of
81.21 the credits by the board. Impacts under replacement plans must not occur until the board
81.22 has notified the replacement plan applicant that the credits have been withdrawn.

81.23 Subp. 3. **Transfers.** Wetland credits deposited in the state wetland bank may be
81.24 transferred from one account to another. If the recipient of the credits does not already have
81.25 an account, one must be established. To transfer credits, a credit transfer form provided by
81.26 the board must be completed and submitted to the board's ~~bank~~ designated banking

82.1 administrator. The board ~~shall~~ must notify all affected account holders upon transfer of the
82.2 credits.

82.3 Subp. 4. **Reporting credit transactions.** Upon the sale, use, or transfer of credits,
82.4 the owner of the account must immediately report the transaction to the board's designated
82.5 banking administrator on withdrawal or transfer forms provided by the board and include
82.6 a copy of the bill of sale when applicable. The board ~~shall~~ must complete the accounting
82.7 transactions and send a notice of credit withdrawal to the local government unit, the account
82.8 holder, and the applicant. Failure to report the sale, use, or transfer of credit may result in
82.9 restrictions on withdrawals until the account is reconciled.

82.10 **8420.0755 BANK ACCOUNT ADMINISTRATION AND MANAGEMENT.**

82.11 Subpart 1. **Account information.** The board must maintain ownership and credit
82.12 transaction information for each wetland bank account. If requested by the account owner,
82.13 the board must make account contact information and credit balances publicly available.

82.14 ~~A. For each wetland bank site, the board shall maintain at least the following~~
82.15 ~~information:~~

82.16 ~~(1) the fee owner's name, address, and telephone number;~~

82.17 ~~(2) the location, including public land survey coordinates, local government~~
82.18 ~~unit, county, major watershed, and bank service area;~~

82.19 ~~(3) replacement acres by amount and replacement action, the restoration or~~
82.20 ~~creation date, and bank acceptance date;~~

82.21 ~~(4) withdrawals made from the bank site including, for each impacted wetland,~~
82.22 ~~the amount of wetland; fee owner, address, telephone number; and public land survey~~
82.23 ~~coordinates, local government unit, county, and watershed; and~~

83.1 ~~(5) the original copy of the recorded conservation easement for the site and~~
83.2 ~~a title insurance policy naming the state as an insured party.~~

83.3 ~~B. The board shall provide the following information to persons inquiring about~~
83.4 ~~available bank credits within a local government unit, county, major watershed, or bank~~
83.5 ~~service area:~~

83.6 ~~(1) account holder name, address, telephone number, and email address, if~~
83.7 ~~available;~~

83.8 ~~(2) acres or square feet of available credit; and~~

83.9 ~~(3) location by section, township, range, county, major watershed, and bank~~
83.10 ~~service area.~~

83.11 Subp. 2. **Administrative fees.** The board may collect administrative fees for
83.12 establishing, protecting, and managing bank sites and related accounts in accordance with
83.13 Minnesota Statutes, sections 103B.103 and 103G.2242, subdivision 14, and any other
83.14 applicable statutes. ~~The following fees must be paid to the board to be used for administering~~
83.15 ~~and monitoring the wetland bank:~~

83.16 ~~A. account maintenance annual fee: one percent of the value of credits not to~~
83.17 ~~exceed \$500 for any year the account is active;~~

83.18 ~~B. account deposit or transfer: 6.5 percent of the value of credits not to exceed~~
83.19 ~~\$1,000 per deposit or transfer; and~~

83.20 ~~C. withdrawal fee: 6.5 percent of the value of credits withdrawn.~~

83.21 Subp. 3. **Audit.** The board may periodically inspect wetland bank records and
83.22 correspondence maintained by a local government unit to determine compliance with this
83.23 part chapter.

84.1 **8420.0800 REPLACEMENT WETLAND CONSTRUCTION ~~CERTIFICATION~~**
84.2 **VERIFICATION.**

84.3 Subpart 1. **Purpose General requirement.** This part applies to both wetland banking
84.4 and project-specific replacement. The local government unit must ~~certify the initial~~ determine
84.5 that the construction specifications of replacement wetlands have been met before
84.6 replacement wetland monitoring ~~begins~~ may begin. The local government unit may require
84.7 a preconstruction meeting before replacement wetland construction begins and may inspect
84.8 the replacement wetland at any time during construction. ~~This part applies to both wetland~~
84.9 ~~banking and project-specific replacement.~~

84.10 Subp. 2. **Construction as-built documentation.** Upon completion of initial
84.11 construction or restoration activities, the landowner must provide the local government unit
84.12 with as-built information that documents compliance with the approved replacement or
84.13 banking plan construction specifications. As-built information includes:

84.14 *[For text of items A to E, see Minnesota Rules]*

84.15 F. evidence that, for projects including dams, dikes, or other ~~impoundment features~~
84.16 water control structures, the construction was designed, overseen, and certified by a ~~licensed~~
84.17 ~~professional engineer~~ an individual licensed to practice engineering in Minnesota; and

84.18 *[For text of item G, see Minnesota Rules]*

84.19 Subp. 3. **Construction inspection and ~~certification~~ verification.** Upon receipt of
84.20 as-built documentation from the landowner, the local government unit must inspect the
84.21 replacement wetland to determine whether the as-built conditions comply with the
84.22 construction specifications of the approved replacement or banking plan. The local
84.23 government unit may inspect the replacement wetland at any time during the construction
84.24 and monitoring periods to assess its ~~long-term viability~~ condition. If the local government
84.25 unit determines that the construction is not in compliance with the approved plan, it must
84.26 promptly notify the landowner of the deficiencies and actions required to gain compliance.

For projects involving the practice of engineering, the local government unit must ensure ~~an engineer~~ that an individual licensed to practice engineering in Minnesota has certified the construction. When the local government unit ~~certifies~~ determines that the construction specifications have been met, the local government unit must notify the applicant and technical evaluation panel. ~~Upon construction certification, the local government unit and~~ may release a portion of any financial assurance the applicant had provided, while retaining ~~a sufficient~~ an amount necessary to ensure compliance with monitoring and replacement requirements.

8420.0810 REPLACEMENT WETLAND MONITORING.

Subpart 1. **Purpose.** The purpose of replacement wetland monitoring is to measure replacement wetland success relative to the goals and associated performance standards of the approved replacement or banking plan and to identify any needed corrective actions during the monitoring period.

Subp. 2. **Responsibilities.**

[For text of item A, see Minnesota Rules]

B. Compliance with monitoring requirements for an approved replacement or banking plan is determined by the local government unit. For project-specific replacement in which the wetland impact site occurs in a different local government unit from the replacement ~~site~~ wetland, the local government unit for the impact site may assume the monitoring enforcement responsibility for the replacement ~~site~~ wetland upon written agreement between the local government units.

Subp. 2a. **Monitoring plan.** Each replacement plan and banking plan involving restoration or creation must include a monitoring plan that achieves the purpose in subpart 1. The monitoring plan must include a description of the proposed monitoring methods, the

frequency and timing of monitoring during the growing season, and the content and submittal dates of monitoring reports.

Subp. 3. **Timing and duration of monitoring.**

~~A. Monitoring may, at the discretion of the local government unit, begin upon construction certification, but must begin no later than the first full growing season following construction certification. Monitoring must continue for five full growing seasons or until the local government unit determines, with the concurrence of the technical evaluation panel, that the replacement is successful, but in no case may the determination be made before the end of the third full growing season.~~ Monitoring for a replacement wetland must begin no later than the first full growing season after the local government unit determines that the construction specifications of replacement wetlands have been met. The monitoring plan must include a monitoring period that is sufficient to determine whether the replacement wetland has met performance standards. For replacement wetlands involving actions under part 8420.0526, subparts 3, 4, 5, 7, and 8, monitoring must continue for at least five full growing seasons. If the technical evaluation panel determines that the replacement wetland has met all performance standards in less than five full growing seasons, the local government unit may waive the remaining monitoring requirements.

B. For wetland banking projects, the applicant may request additional time to monitor the wetland and achieve performance standards. The local government unit may extend the monitoring period when it determines, in consultation with the technical evaluation panel, that more time is needed to achieve performance standards.

~~B. C.~~ If the goals of the an approved project-specific replacement plan have not been achieved after the fifth season of monitoring but, in the written opinion of the technical evaluation panel, may be achieved with more time, the local government unit may, through written notification of the applicant, extend the monitoring period for not more than an additional five growing seasons. The local government unit's notification of extension must

87.1 specify the reasons for the extension and any corrective actions necessary to bring the
87.2 replacement wetland into compliance with the approved plan.

87.3 ~~€.~~ D. For project-specific replacement plans, if the local government unit
87.4 determines that, at any time during the monitoring period and based on the recommendation
87.5 of the technical evaluation panel, the goals of the approved replacement plan have not been
87.6 achieved, and will not be achieved with more time, the local government unit must pursue
87.7 one or more corrective actions identified in part 8420.0820, subpart 1.

87.8 Subp. 4. **Monitoring reports.** ~~A. Following the first full growing season after~~
87.9 ~~construction certification,~~ The applicant must submit ~~annual~~ monitoring reports documenting
87.10 the progress ~~of~~ toward and achievement of performance standards for the replacement
87.11 wetland during the required monitoring period consistent with the approved monitoring
87.12 plan. The first ~~annual~~ monitoring report must include any preconstruction monitoring
87.13 ~~required by the local government unit during the previous year~~ data collected. The applicant
87.14 must submit the ~~annual~~ report to the ~~appropriate~~ local government unit ~~on a date determined~~
87.15 ~~by the local government unit, but no later than December 31~~ according to the timelines
87.16 identified in the approved monitoring plan and before any credit deposit request. The local
87.17 government unit must ensure that copies of the monitoring report are distributed to the
87.18 technical evaluation panel. ~~For wetland banking projects, the applicant must also submit~~
87.19 ~~the annual report to the board's wetland banking administrator.~~ The monitoring reports must
87.20 be submitted annually, ~~or biannually if~~ unless the local government unit determines that,
87.21 ~~after the third full growing season, biannual reports are sufficient~~ an alternative schedule
87.22 is sufficient for long-term monitoring, ~~until the local government unit determines the~~
87.23 ~~replacement has been successful~~ of the site.

87.24 ~~B. The purpose of the annual report is to describe actual wetland restoration or~~
87.25 ~~creation activities completed during the past year, activities planned for the upcoming year,~~

88.1 ~~and the success of the replacement activities in achieving identified goals and performance~~
88.2 ~~standards. The annual report must, at a minimum, include:~~

88.3 ~~(1) a project location map with legal description;~~

88.4 ~~(2) a description of replacement wetland goals and performance standards in~~
88.5 ~~terms of size, replacement credit amount, wetland types, hydrology, and wetland functions~~
88.6 ~~and a comparison of the current replacement wetland to these goals and standards;~~

88.7 ~~(3) a description of activities completed during the past year;~~

88.8 ~~(4) a description of activities planned for the upcoming year;~~

88.9 ~~(5) hydrology measurements during the growing season, including water~~
88.10 ~~level elevations at fixed, repeatable locations representative of the replacement wetland~~
88.11 ~~types or areal coverage measurements of inundation for replacement wetlands with deeper~~
88.12 ~~hydrologic regimes;~~

88.13 ~~(6) a map of plant communities within the boundaries of the replacement~~
88.14 ~~site, including estimates of square footage or acreage of each and identification of areas of~~
88.15 ~~invasive or nonnative vegetation;~~

88.16 ~~(7) color photographs of all replacement areas taken during the growing~~
88.17 ~~season from fixed, repeatable reference locations that are representative of each plant~~
88.18 ~~community type;~~

88.19 ~~(8) a delineation and survey of the replacement wetland areas, if applicable,~~
88.20 ~~for the final monitoring season; and~~

88.21 ~~(9) other information specified in the approved monitoring plan or~~
88.22 ~~subsequently requested by the local government unit.~~

89.1 **8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.**

89.2 Subpart 1. **Monitoring oversight.**

89.3 *[For text of item A, see Minnesota Rules]*

89.4 B. For project-specific replacement, if the local government unit determines that
89.5 the goals of the approved replacement plan will not be met, it must take one or more of the
89.6 following actions:

89.7 (1) ~~order~~ require specific corrective actions on the replacement wetlands;

89.8 (2) ~~order~~ require the applicant to prepare and implement a new or revised
89.9 replacement plan;

89.10 (3) ~~request the enforcement authority to issue a cease and desist order on the~~
89.11 ~~wetland impact activity if it has not been completed~~ pursue enforcement actions according
89.12 to part 8420.0900;

89.13 (4) ~~request the local soil and water conservation district and enforcement~~
89.14 ~~authority to order restoration of the impacted wetland;~~

89.15 (5) ~~(4)~~ use any financial assurance collected from the applicant to ~~replace the~~
89.16 ~~lost wetland function and value~~ satisfy the replacement requirements of this chapter;

89.17 (6) ~~(5)~~ pursue a district court order requiring the applicant to fulfill the
89.18 replacement plan; or

89.19 (7) ~~(6)~~ other actions that the local government unit determines necessary to
89.20 achieve the goals of the replacement plan.

89.21 C. If the landowner fails to submit the ~~annual~~ report associated with a
89.22 project-specific replacement plan in accordance with part 8420.0810, the local government
89.23 unit responsible for monitoring oversight must either pursue enforcement actions under
89.24 item B or prepare the ~~annual~~ report for the applicant. The local government unit may charge

fees for preparing the report or use any financial assurance the applicant had provided to complete the monitoring requirements.

Subp. 2. ~~Certification~~ **Completion of monitoring and determination of successful replacement and completion of monitoring.** Upon completion of the ~~minimum~~ required monitoring period, ~~the applicant may request a field review by the local government unit and technical evaluation panel of the success of the replacement~~ must determine whether the wetland replacement is successful. If the replacement is determined successful, the local government unit must ~~provide written notification to~~ notify the applicant in writing that the replacement ~~has been certified and the monitoring~~ requirements have been fulfilled.

8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. Purpose and eligibility.

[For text of item A, see Minnesota Rules]

B. The ultimate goal of a comprehensive wetland protection and management plan is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through the prioritization of existing wetlands and the strategic selection of replacement wetland sites. The purpose of developing a plan is to provide a watershed and ecosystem-based framework to make wetland impact and replacement decisions that meet state standards and locally identified goals and support the sustainability or improvement of wetland resources in watersheds while providing local flexibility as allowed under subpart 4.

[For text of item C, see Minnesota Rules]

[For text of subparts 2 and 3, see Minnesota Rules]

Subp. 4. **Flexibility options under local plan.** The comprehensive wetland protection and management component of the local water plan may:

[For text of items A to C, see Minnesota Rules]

~~D. in a greater than 80 percent area, based on the classification and criteria in the plan, expand the application of the exemptions in part 8420.0420, subpart 2, item B, to also include nonagricultural land, provided there is no net loss of wetland value;~~

~~E.~~ D. prescribe standards for size and location of replacement wetlands by establishing type requirements, size and ratio requirements, functional quality requirements, location requirements, and criteria for wetland ~~mitigation~~ fee in lieu of direct replacement. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan; and

~~F.~~ E. allow exemptions based on ordinance or rule standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts 8420.0320 and 8420.0420 based on wetland classifications as defined in the plan.

Subp. 5. Plan content.

[For text of items A and B, see Minnesota Rules]

C. The plan must include an inventory and prioritization of replacement wetland sites based on an analysis of the types and locations of replacement wetland projects that will provide the desired wetland functions, benefit the watershed from a landscape perspective, and best offset losses of public value caused by approved impacts. The goal of the analysis is to provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to naturally self-sustaining replacement that best achieves watershed goals and improves the ecological condition of the watershed. The plan must include strategies for the promotion and establishment of high-priority replacement ~~sites~~ wetlands that best meet the goals of the plan.

92.1 [For text of items D to F, see Minnesota Rules]

92.2 Subp. 6. **Plan development and review process.**

92.3 [For text of item A, see Minnesota Rules]

92.4 B. The technical evaluation panel must be consulted in all components of plan
92.5 and ordinance development, including conducting wetland functional assessments,
92.6 establishing wetland management classifications and standards, prioritizing replacement
92.7 wetland sites, and identifying local reference standard wetlands.

92.8 [For text of items C to H, see Minnesota Rules]

92.9 [For text of subpart 7, see Minnesota Rules]

92.10 Subp. 8. **Effective date and amendments.**

92.11 [For text of items A to C, see Minnesota Rules]

92.12 D. For the purposes of this subpart, "minor amendments" include clarifications,
92.13 updates to wetland or replacement wetland site inventories, and other changes that do not
92.14 substantially alter the standards of the approved plan and ordinance or rule, as determined
92.15 by the board. Amendments required to bring the plan into conformance with revisions to
92.16 this chapter are also considered minor.

92.17 [For text of subparts 9 and 10, see Minnesota Rules]

92.18 **8420.0835 HIGH-PRIORITY REGIONS AND AREAS.**

92.19 [For text of subpart 1, see Minnesota Rules]

92.20 Subp. 2. **High-priority areas.**

92.21 [For text of items A to C, see Minnesota Rules]

~~D. Local water plans that identify high-priority areas and intend to accept applications for wetland preservation areas under part 8420.0840 should include criteria for eligibility and prioritization of applications.~~

~~E.~~ D. The board ~~shall~~ must review the inclusion of high-priority areas in plans as part of the standard process for plan review. High-priority areas approved by the board that are not in a high-priority region under subpart 1 become high-priority regions with board approval.

8420.0900 ENFORCEMENT PROCEDURES.

Subpart 1. **Enforcement responsibilities and authorities.** The commissioner, conservation officers, and ~~other~~ peace officers may issue cease and desist ~~orders and~~, restoration, and replacement orders. The enforcement authority must serve an enforcement order in person or by certified mail to the landowner or responsible party. The local government unit is responsible for determining if an activity complies with this chapter. The soil and water conservation district is responsible for preparing the plan under subpart 3 for inclusion in a restoration or replacement order.

Subp. 2. Cease and desist orders.

A. A ~~A~~ cease and desist ~~orders~~ order may be issued only when the enforcement authority has probable cause to believe that an activity is ~~being or will again be conducted that impacts a wetland, does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and is being or will again be conducted without prior approval of a replacement plan by a local government unit under part 8420.0255 or involving a decision stayed by the board pursuant to part 8420.0905~~ not in compliance with this chapter.

~~B. A cease and desist order must not be issued if the landowner:~~

~~(1) has, and is complying with, a valid replacement plan, exemption, or no-loss approved by the local government unit or a completed and submitted public road project~~

94.1 ~~notification that has not been stayed, remanded, or reversed on appeal under part 8420.0905;~~
94.2 ~~or~~

94.3 (2) ~~has sufficient evidence to support qualification for an exemption or no-loss.~~

94.4 ~~C. B. The enforcement authority must advise the landowner that the landowner's~~
94.5 ~~written application, if any, for a replacement plan, exemption, or no-loss should be made~~
94.6 ~~immediately to the local government unit and that any wetland that has been impacted may~~
94.7 ~~require restoration if the application for replacement plan, exemption, or no-loss is denied~~
94.8 ~~or reversed on appeal. When a cease and desist order is issued, the enforcement authority~~
94.9 ~~issuing a cease and desist order must promptly submit copies of the order to the soil and~~
94.10 ~~water conservation district, the local government unit, and Department of Natural Resources~~
94.11 ~~the commissioner.~~

94.12 C. Upon receiving a cease and desist order from the enforcement authority, the
94.13 local government unit must promptly determine whether the cease and desist order should
94.14 remain in place and, if so, whether a restoration or replacement order is needed according
94.15 to subpart 3. Within ten days of receiving a cease and desist order issued for an activity
94.16 occurring within the exterior reservation boundary of a federally recognized Indian Tribe
94.17 listed in Minnesota Statutes, section 10.65, subdivision 2, the local government unit must
94.18 notify the lead official of the Tribal governing body or their designee of the order.

94.19 ~~D. If an application for a replacement plan, exemption, or no-loss approval is~~
94.20 ~~triggered by a cease and desist order, the local government unit must make the decision~~
94.21 ~~according to part 8420.0255 and the standards and application procedures applicable to the~~
94.22 ~~type of application.~~

94.23 E. D. If the decision is local government unit determines that the activity is exempt
94.24 or qualifies as a no-loss, the local government unit must request that the enforcement
94.25 authority rescind the cease and desist order, pending the outcome of any appeal, and notify
94.26 the soil and water conservation district, the enforcement authority, and the landowner. The

95.1 enforcement authority must notify those required to receive a copy of the order under item
95.2 B when the order has been rescinded.

95.3 E. If the local government unit determines that the activity does not qualify for
95.4 an exemption or no-loss, the landowner's application for a replacement plan is denied, or
95.5 the landowner fails to submit an application for a replacement plan, the local government
95.6 unit must inform the soil and water conservation district of the need for a restoration or
95.7 replacement order.

95.8 ~~F. If the application is denied, the local government unit must immediately notify~~
95.9 ~~the soil and water conservation district, the enforcement authority, and the landowner.~~

95.10 ~~G. In cases where the cease and desist order has been issued to a local government~~
95.11 ~~unit, the decision of exemption or no-loss must be made by the board.~~

95.12 **Subp. 3. Restoration and replacement orders.**

95.13 A. The enforcement authority ~~must~~ may issue a restoration order or replacement
95.14 order when: an activity has impacted a wetland in violation of this chapter and the
95.15 enforcement authority receives an order under item F. If a cease and desist order is issued,
95.16 the landowner has 30 days to apply for a replacement plan, exemption, or no-loss before a
95.17 restoration or replacement order may be issued.

95.18 ~~(1) the impact has already been completed when discovered or, after a cease~~
95.19 ~~and desist order has been issued, the landowner does not apply for a replacement plan,~~
95.20 ~~exemption, or no-loss within three weeks;~~

95.21 ~~(2) the local government unit approves the application but it is reversed on~~
95.22 ~~appeal; or~~

95.23 ~~(3) the local government unit denies the application.~~

96.1 B. Promptly upon being informed by ~~the enforcement authority or the local~~
96.2 government unit of the need, a soil and water conservation district staff person must inspect
96.3 the site and prepare a plan in consultation with the ~~local government unit and the enforcement~~
96.4 ~~authority for restoring~~ technical evaluation panel to restore the site to its prealtered condition.

96.5 The plan must include:

96.6 (1) specific actions and standards necessary to restore the wetland and satisfy
96.7 the order;

96.8 (2) restoration methods and approaches, such as construction and revegetation
96.9 techniques;

96.10 (3) the date by which the landowner or responsible party must submit a
96.11 complete replacement plan, exemption, or no-loss application, if any, to the local government
96.12 unit in lieu of restoring the wetland, which must be at least 30 days after the date the order
96.13 is served; and

96.14 (4) the date by which the landowner or responsible party must restore the
96.15 wetland according to the plan and satisfy the order. The complexity of restoring the wetland,
96.16 any seasonal constraints associated with required restoration actions, and the availability
96.17 of required resources may be considered when specifying a date for completing the
96.18 restoration.

96.19 C. The soil and water conservation district may request assistance from the local
96.20 government unit or technical evaluation panel in inspecting the site and preparing the plan.
96.21 If the soil and water conservation district determines that a conflict of interest may exist, it
96.22 may request that a member of the technical evaluation panel who is not an employee of the
96.23 soil and water conservation district develop the plan.

97.1 D. Restoration must be ordered unless the soil and water conservation district, in
97.2 consultation with the technical evaluation panel, concludes that restoration is not possible
97.3 or prudent.

97.4 E. If a replacement order is required, the plan developed by the soil and water
97.5 conservation district, in consultation with the technical evaluation panel, must specify the
97.6 replacement actions to be completed. The order may provide more than one option for
97.7 replacement and may require a combination of restoration and replacement.

97.8 F. When the plan is completed, the soil and water conservation district must
97.9 incorporate its the plan into a restoration or replacement order and send it the order to the
97.10 enforcement authority for service in person or by certified mail to the landowner or
97.11 responsible party.

97.12 G. If a complete application for a replacement plan, exemption, or no-loss is not
97.13 submitted within the time specified in the restoration or replacement order, the landowner
97.14 or responsible party must restore or replace the wetland as specified in the order unless the
97.15 local government unit agrees to allow an extension or the order is stayed upon appeal to
97.16 allow for the submittal of or a decision on a complete application.

97.17 H. A restoration or replacement order is completed when the soil and water
97.18 conservation district certifies that the landowner or responsible party has satisfied the
97.19 requirements of the plan incorporated under item F and issues a certificate of satisfactory
97.20 restoration or replacement.

97.21 I. A certificate of satisfactory restoration or replacement may be issued with
97.22 conditions, such as requirements for wetland vegetation, weed control, inspections,
97.23 monitoring, or hydrology. If the soil and water conservation district determines that the
97.24 landowner or responsible party has failed to comply with the conditions, a subsequent
97.25 restoration or replacement order must be issued to obtain compliance.

Subp. 4. **Contents of ~~order~~ orders.**

A. Each cease and desist, restoration, and replacement order must state that any violation of the order is a misdemeanor.

B. Each cease and desist order must advise the landowner or responsible party that an application for a replacement plan, exemption, or no-loss should be made promptly to the local government unit and that any wetland that has been impacted may require restoration if the application for a replacement plan, exemption, or no-loss is denied or reversed on appeal.

A. C. A restoration order must ~~specify~~ incorporate the soil and water conservation district plan to restore the wetland, including the dates by which the landowner or responsible party must:

~~(1) restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or~~

~~(2) submit a complete replacement plan, exemption, or no-loss application to the local government unit. The order must specify that, if the landowner or responsible party does not obtain approval by the local government unit of a replacement plan, exemption, or no-loss for the wetland impacts, the landowner or responsible party must restore the wetland as ordered.~~

~~B. If an application submitted under item A, subitem (2), is denied, the landowner or responsible party must restore the wetland as specified in the order.~~

~~C. The restoration order must be rescinded if the landowner or responsible party obtains approval of an after-the-fact replacement plan, exemption, or no-loss from the local government unit that is not reversed on appeal.~~

99.1 D. A replacement order must specify a date by which the landowner or responsible
99.2 party must submit a complete replacement plan application to the local government unit
99.3 and a subsequent date by which the landowner or responsible party must replace the wetland
99.4 according to the approved replacement plan and obtain a certificate of satisfactory
99.5 replacement from the soil and water conservation district. ~~The restoration or replacement~~
99.6 ~~order must specify a time period of at least 30 days for submittal of a complete application~~
99.7 ~~under this subpart.~~

99.8 ~~E. If a complete application is not submitted within the time period specified in~~
99.9 ~~the restoration order, or as properly extended, the landowner or responsible party must~~
99.10 ~~restore the wetland as specified in the order before submitting an application under item A,~~
99.11 ~~subitem (2), unless the local government unit and the enforcement authority agree otherwise~~
99.12 ~~or unless allowed under appeal.~~

99.13 ~~F. A certificate of satisfactory restoration or replacement may be issued with~~
99.14 ~~conditions that must be met in the future, such as for issues with wetland vegetation, weed~~
99.15 ~~control, inspections, monitoring, or hydrology. Failure to fully comply with any conditions~~
99.16 ~~that have been specified may result in the issuance of a new restoration or replacement~~
99.17 ~~order.~~

99.18 Subp. 5. [See repealer.]

99.19 Subp. 5a. **Applications submitted in response to enforcement orders.**

99.20 A. When an application for a replacement plan, exemption, or no-loss decision is
99.21 submitted to a local government unit by a landowner or responsible party in response to an
99.22 enforcement order, the application must comply with the requirements of this chapter. The
99.23 local government unit must make a decision on the application according to part 8420.0255.
99.24 In addition to those required to receive notice under part 8420.0255, the local government
99.25 unit must provide notice of the application and decision to the enforcement authority.

B. The enforcement authority must rescind the enforcement order when:

(1) the landowner or responsible party obtains approval of an after-the-fact replacement plan, exemption, or no-loss from the local government unit that is not reversed on appeal; and

(2) any required replacement is completed according to the approved plan.

C. When an enforcement order is issued to a local government unit, the decision on an exemption, no-loss, or replacement plan application must be made by the board according to item A.

D. When an application submitted in response to a cease and desist order under item A is denied, the local government unit must immediately notify the soil and water conservation district of the need for a restoration or replacement order.

E. If an application submitted in response to a restoration order under item A is denied, the landowner or responsible party must restore the wetland as specified in the order.

[For text of subpart 6, see Minnesota Rules]

Subp. 7. Misdemeanor.

A. A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

B. If a court orders restoration or replacement as part of a misdemeanor proceeding, the soil and water conservation district staff must determine which is required according to subpart 3, item D, and, if restoration is required, the method of restoration. If the court orders replacement, the landowner or responsible party must follow the replacement plan process under subpart 6 and part 8420.0330 and the wetland replacement, construction, and monitoring requirements of this chapter.

Subp. 8. Deed restriction.

A. To obtain compliance, the enforcement authority may record a restoration or replacement order as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. The deed restriction must be recorded or filed in the office of the county recorder or registrar of titles in the county where the real property is located.

B. A deed restriction filed or recorded under this subpart must be removed if:

(1) the soil and water conservation district has issued a certificate of satisfactory restoration or replacement;

(2) the order is rescinded; or

(3) on homesteaded property, the owner requests that the deed restriction be removed and a court has found that the owner of the property is not guilty of a violation of the restoration or replacement order. Within 30 days of receiving a valid request for removal, the enforcement authority that recorded the order must contact, in 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.

8420.0905 APPEALS.

Subpart 1. Appeal of replacement and restoration orders to the board. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued according to part 8420.0900 to the board's executive director within 30 days of receipt of the order by filing a written request for review and paying a nonrefundable filing fee to the board. The time frame for appeal may be extended beyond 30 days upon mutual agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. The filing fee is an amount determined by

the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order is final. The executive director must review the request and supporting evidence and render a decision within ~~30~~ 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

Subp. 2. **Appeal of staff decision to local government unit ~~staff decisions~~.**

A. ~~A decision made by~~ If a local government unit staff is final if not appealed, establishes a local appeals process as provided in part 8420.0200, subpart 2, item C, an appeal of a staff decision must be made to the local government unit within 30 days after the date on which the notice of decision is sent to those required to receive ~~notice of the decision~~ it. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days.

B. Appeal to the local government unit of a ~~final~~ staff decision ~~made by staff~~ may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

C. An appeal is effective upon ~~mailing~~ sending the petition and payment of any applicable fees to the local government unit. A filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel.

D. A local government unit's decision on an appeal under this subpart must be noticed in accordance with part 8420.0255, subpart 5.

Subp. 3. **Appeal of local government unit decisions to the board.**

A. ~~The~~ A decision of a local government unit ~~to approve, approve with conditions, or deny an application,~~ including a decision on an appeal to the local government unit of a

103.1 staff decision under subpart 2, is final if not appealed to the board within 30 days after the
103.2 date on which the notice of decision is sent to those required to receive ~~notice of the decision~~
103.3 it unless the applicant and local government unit mutually agree, in writing, to an extension
103.4 of time beyond the 30 days. ~~Appeals of decisions made by local government staff must be~~
103.5 ~~made to the local government unit as provided for in subpart 2.~~ This subpart also applies to
103.6 decisions made under comprehensive wetland protection and management plans and decisions
103.7 made by public road authorities as provided in part 8420.0544.

103.8 B. Appeal of local government unit decisions to the board may be made by the
103.9 landowner, by any of those required to receive notice of the decision, or by 100 residents
103.10 of the county in which a majority of the wetland is located.

103.11 C. An appeal is effective upon ~~mailing the~~ sending a petition and payment of a
103.12 nonrefundable filing fee in an amount determined by the board, not to exceed \$1,000, to
103.13 the board with evidence that a copy of the petition has been ~~mailed~~ sent to the local
103.14 government unit. The petition ~~should~~ must include information to establish ~~sufficient grounds~~
103.15 significant merit for the appeal based on the requirements of this chapter. The filing fee is
103.16 not required for appeals petitioned by state agencies or members of the technical evaluation
103.17 panel. Another filing fee is not required for appeals that have been remanded if the filing
103.18 fee was paid and the same party appeals the new decision made under remand. After receipt
103.19 of a petition, the ~~local government unit~~ board must send a copy of the petition to the local
103.20 government unit and all those to whom it was that were required to ~~send a~~ be sent the notice
103.21 of the decision.

103.22 Subp. 4. **Board appeal procedures.**

103.23 A. Within 30 days after receiving the petition, the board, its dispute resolution
103.24 committee, or its executive director must decide whether to grant the petition and hear the
103.25 appeal. After considering the size of the proposed impacts and the quality of the affected
103.26 wetland, any patterns of similar acts by the petitioner or responsible party or by the local

104.1 government unit in administration of this chapter and the act, and the consequences of the
104.2 delay resulting from the appeal, the board, its dispute resolution committee, or its executive
104.3 director ~~shall~~ must grant the petition unless:

104.4 (1) the appeal is deemed to be without sufficient merit, trivial, or brought
104.5 solely for the purposes of delay;

104.6 (2) the petitioner has not exhausted all local administrative remedies; ~~or~~

104.7 (3) the petitioner has not submitted the required filing fee;

104.8 (4) expanded technical review is needed; or

104.9 (5) the local government unit's record is not adequate.

104.10 [For text of items B to E, see Minnesota Rules]

104.11 F. Within 30 days of the grant of the appeal, unless an extension of time is
104.12 approved by the board, the local government unit must forward to the board the written
104.13 record on which it based its decision. The board must forward one copy of the record to
104.14 each of the parties to the appeal. The board ~~shall~~ must make its decision on the appeal after
104.15 hearing. The board must give the parties 30 days' notice of the hearing. The board must
104.16 base its review on the record and the argument presented to the board by the parties. However,
104.17 if the local government unit did not consider fundamental information, ~~such as aerial~~
104.18 ~~photographs, soil maps, or wetland maps,~~ or did not make formal findings contemporaneously
104.19 with its decision; ~~if there is not accurate verbatim transcript of the proceedings;~~ if the
104.20 proceedings of a local appeal were not fairly conducted; or if the record is otherwise
104.21 incomplete or deficient, the board may remand the matter or receive additional evidence.
104.22 If, before the date set for the hearing, application is made to the board for leave to present
104.23 additional evidence on the issues in the case and it is shown to the satisfaction of the board
104.24 that additional evidence is material and that there were good reasons for failure to present
104.25 it in the proceeding before the local government unit, the board may order that the additional

evidence be taken before the local government unit upon such conditions that the board deems proper. The local government unit may modify its findings and decision by reason of the additional evidence and must file with the board, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

[For text of item G, see Minnesota Rules]

Subp. 5. **Appeal of board decisions.** An appeal of a board decision may be ~~taken to~~ filed with the state court of appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

8420.0930 MINING.

Subpart 1. **Impacts from mining.** Wetlands must not be impacted as part of a project for which a permit to mine is required by Minnesota Statutes, section 93.481, except as approved by the commissioner.

A. Impacts to wetlands that the landowner can demonstrate, to the satisfaction of ~~the local government unit~~ commissioner, were created by pits, stockpiles, or tailing basins, and by actions the purpose of which was not to create the wetland according to part 8420.0105, subpart 2, item D, are not regulated under this chapter.

B. The commissioner must provide notice of an application for wetland replacement under a permit to mine to the county in which the impact is proposed and the county in which the replacement wetland is proposed.

C. Wetland replacement plans required under this part must meet the same requirements for replacing wetlands contained in parts 8420.0500 to 8420.0528 and provide for construction verification and monitoring according to parts 8420.0800 and 8420.0810.

Subp. 2. **Mining operations; post-July 1, 1993.** For mining operations that are permitted and initiated after July 1, 1993:

106.1 [For text of item A, see Minnesota Rules]

106.2 B. the mining and reclamation operating plans or annual reports submitted by the
106.3 applicant as required in the permit to mine must include an approved wetland replacement
106.4 plan ~~that meets the same principles and standards for replacing wetlands under parts~~
106.5 ~~8420.0500 to 8420.0528 and provides for construction certification and monitoring according~~
106.6 ~~to parts 8420.0800 and 8420.0810.~~

106.7 Subp. 3. **Mining operations; pre-July 1, 1993.** For mining operations in existence
106.8 before July 1, 1993, and operated on or after that date under a permit to mine issued under
106.9 chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

106.10 A. wetlands for which impacts were approved but not initiated before July 1,
106.11 1993, must not be impacted until the operating plan or annual report as required in the permit
106.12 to mine includes an approved wetland replacement plan for the undisturbed wetlands. ~~The~~
106.13 ~~wetland replacement plan must meet the same principles and standards for replacing wetlands~~
106.14 ~~under parts 8420.0500 to 8420.0528 and provide for construction certification and monitoring~~
106.15 ~~according to parts 8420.0800 and 8420.0810;~~

106.16 [For text of items B and C, see Minnesota Rules]

106.17 Subp. 4. **Applicability.**

106.18 A. Replacement wetlands approved under this part must only be used for
106.19 mining-related impacts covered under a permit to mine unless the credits are approved and
106.20 deposited in the state wetland bank according to parts 8420.0700 to 8420.0755. A
106.21 project-specific wetland replacement plan submitted as part of a project for which a permit
106.22 to mine is required and approved by the commissioner on or after July 1, 1991, may include
106.23 surplus wetland credits to be allocated by the commissioner to offset future mining-related
106.24 wetland impacts under any permits to mine held by the permittee, the operator, the permittee's

107.1 or operator's parent, an affiliated subsidiary, or an assignee pursuant to an assignment under
107.2 Minnesota Statutes, section 93.481, subdivision 5.

107.3 *[For text of items B and C, see Minnesota Rules]*

107.4 **8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION,**
107.5 **AND MANAGEMENT OF PROTECTING AND MANAGING CALCAREOUS FENS.**

107.6 Subpart 1. **Purpose.** The purpose of this part is to provide minimum standards and
107.7 criteria for identifying, protecting, and managing calcareous fens as authorized by Minnesota
107.8 Statutes, section 103G.223. ~~Calcareous fens, as identified by the commissioner, must not~~
107.9 ~~be impacted or otherwise altered or degraded, wholly or partially, by any action, unless the~~
107.10 ~~commissioner, under an approved management plan, decides some alteration is necessary.~~
107.11 ~~The exemptions under part 8420.0420 and the sequencing provisions under part 8420.0520~~
107.12 ~~do not apply to calcareous fens.~~

107.13 Subp. 2. [See repealer.]

107.14 *[For text of subpart 3, see Minnesota Rules]*

107.15 Subp. 4. **Impacts and management plans.** Calcareous fens must not be impacted or
107.16 otherwise altered or degraded ~~except~~, wholly or partially, by any action, unless the
107.17 commissioner decides some alteration is necessary as provided for in a calcareous fen
107.18 management plan approved by the commissioner. The commissioner may allow water
107.19 appropriations that result in temporary reductions in groundwater resources on a seasonal
107.20 basis under an approved calcareous fen management plan. The commissioner must provide
107.21 technical assistance to landowners or project sponsors in the development of management
107.22 plans. The exemptions under part 8420.0420 and the sequencing provisions under part
107.23 8420.0520 do not apply to calcareous fens.

107.24 Subp. 5. **Restoration.** The commissioner may approve management plans to restore
107.25 or ~~upgrade~~ improve a previously damaged calcareous fen. The commissioner may order

108.1 restoration or replacement of a damaged calcareous fen in accordance with Minnesota
108.2 Statutes, section 103G.2372.

108.3 Subp. 6. **Appeals.**

108.4 *[For text of item A, see Minnesota Rules]*

108.5 B. The determination that a wetland is a calcareous fen may be appealed ~~at any~~
108.6 ~~time~~ by requesting a hearing within 30 days after the commissioner publishes designation
108.7 of the calcareous fen in the State Register. For a decision under a management plan, the
108.8 hearing must be requested within 30 days after the notice of the commissioner's decision
108.9 was ~~mailed~~ sent to the project proposer; otherwise the decision becomes final and may not
108.10 be challenged by the project proposer.

108.11 *[For text of item C, see Minnesota Rules]*

108.12 *[For text of subpart 7, see Minnesota Rules]*

108.13 **REPEALER.** Minnesota Rules, parts 8420.0111, subparts 24 and 30; 8420.0515, subpart
108.14 9; 8420.0840; 8420.0900, subpart 5; and 8420.0935, subpart 2, are repealed.