

1 Board of Water and Soil Resources

2

3 Adopted Permanent Rules Relating to Wetland Conservation

4

5 Rules as Adopted

6 8420.0100 PURPOSE.

7 This chapter implements the Wetland Conservation Act of
8 1991, Laws of Minnesota 1991, chapter 354, as amended by Laws
9 1993, chapter 175. This chapter shall be interpreted to

10 implement the purpose of the act, which is to:

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

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

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

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

21 8420.0105 SCOPE.

22 After the effective date of this chapter, wetlands must not
23 be drained or filled wholly or partially unless replaced by
24 restoring or creating wetland areas of at least equal public
25 value, except that a local government unit may elect to operate
26 under Article 7 of the act, Minnesota Statutes, section
27 103G.2369, after July 1, 1993, but not beyond December 31, 1993.

28 This chapter does not prevent the use of the bed of
29 wetlands for pasture or cropland during dry periods if dikes,
30 ditches, tile lines, or buildings are not constructed and the
31 agricultural use does not result in the drainage of the
32 wetlands. This chapter does not prevent filling a wetland to
33 accommodate wheeled booms on irrigation devices if the fill does
34 not impede normal drainage. This chapter does not prevent
35 control of noxious weeds if the control does not drain or fill

Approved
by Revisor 

1 the wetland. This chapter does not prevent excavation in
2 wetlands if done in a manner such that the wetlands are not
3 wholly or partially drained or filled.

4 This chapter does not apply to the public waters and public
5 waters wetlands as defined in Minnesota Statutes, section
6 103G.005, subdivisions 15 and 18, which have been inventoried by
7 the commissioner according to Minnesota Statutes, section
8 103G.201. This chapter is in addition to other regulations
9 including those of the United States Army Corps of Engineers,
10 United States Department of Agriculture, Minnesota state
11 agencies, watershed districts, and local governments.

12 This chapter does not apply to peat mining as defined in
13 Minnesota Statutes, section 93.461, which is subject to the
14 permit to mine and reclamation requirements of Minnesota
15 Statutes, sections 93.44 to 93.51, and the rules of the
16 commissioner adopted under those sections.

17 This chapter does not require state agencies to obtain
18 local government unit approvals. However, state agencies shall
19 coordinate with local government units when conducting
20 activities in wetlands within the jurisdiction of the local
21 government unit. The state agencies shall follow the same
22 sequencing and replacement requirements as prescribed by this
23 chapter.

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

33 8420.0110 DEFINITIONS.

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

1 Subp. 2. **Act.** "Act," when not used in reference to a
2 specific state or federal act, means the Wetland Conservation
3 Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993,
4 chapter 175.

5 Subp. 3. **Activity.** "Activity" means draining or filling a
6 wetland wholly or partially.

7 Subp. 4. **Agricultural land.** "Agricultural land," for use
8 in part 8420.0120, subparts 7 and 8, means land devoted to the
9 production of horticultural, row, close grown, introduced
10 pasture, introduced hayland crops, and growing nursery stock.

11 For use in ~~determining-replacement-ratios~~ all other places
12 in this chapter, agricultural land means land devoted to the
13 production of horticultural, row, close grown, introduced
14 pasture, and introduced hayland crops, and to the pasturing of
15 livestock and dairy animals, growing nursery ~~steck~~ stocks, and
16 animal feedlots, and shall include contiguous land and buildings
17 under the same ownership associated with the production of the
18 above, for example, farmyards.

19 Subp. 5. **Agricultural Stabilization and Conservation**
20 **Service or ASCS.** "Agricultural Stabilization and Conservation
21 Service" or "ASCS" means an agency of the United States
22 Department of Agriculture.

23 Subp. 6. **Aquaculture.** "Aquaculture" means to cultivate
24 plants and animals in water for harvest, including hydroponics
25 and raising fish in fish farms.

26 Subp. 7. **Best management practices.** "Best management
27 practices" means state-approved ~~construction~~ and published
28 practices associated with draining, filling, or replacing
29 wetlands that are capable of preventing and minimizing
30 degradation of surface water and groundwater.

31 Subp. 8. **Board.** "Board" means the board of water and soil
32 resources under Minnesota Statutes, section 103B.101.

33 Subp. 9. **City.** "City" means a home rule charter or
34 statutory city.

35 Subp. 10. **Commissioner.** "Commissioner" means the
36 commissioner of the Department of Natural Resources.

1 Subp. 11. **Creation.** "Creation" means construction of
2 wetlands in an area that was not wetlands in the past.

3 Subp. 12. **Day.** "Day" means working days when used in a
4 time period of 15 days or less and calendar days when used in a
5 time period greater than 15 days. The day of the event shall
6 not be used in counting any period of time.

7 Subp. 13. **Department.** "Department" means the Department
8 of Natural Resources.

9 Subp. 14. **Ditch.** "Ditch" means an open channel to conduct
10 the flow of water, as defined in Minnesota Statutes, section
11 103E.005, subdivision 8.

12 Subp. 15. **Drain or drainage.** "Drain" or "drainage" means
13 any method for removing or diverting waters from wetlands. The
14 methods shall include, but are not limited to, excavation of an
15 open ditch, installation of subsurface drainage tile, filling,
16 diking, or pumping.

17 Subp. 16. **Drainage system.** "Drainage system" means a
18 system of ditch or tile, or both, to drain property, including
19 laterals, improvements, and improvements of outlets.

20 Subp. 17. **Excavation.** "Excavation" means the displacement
21 or removal of the sediment or other materials by any method.

22 Subp. 18. **Fill.** "Fill" means any solid material added to
23 or redeposited in a wetland that would alter its cross-section
24 or hydrological characteristics, obstruct flow patterns, change
25 the wetland boundary, or convert the wetland to a nonwetland.
26 It does not include posts and pilings for linear projects such
27 as bridges, elevated walkways, or powerline structures, or
28 structures traditionally built on pilings such as docks and
29 boathouses. It does include posts and pilings that result in
30 bringing the wetland into a nonaquatic use or significantly
31 altering the wetland's functions and values, such as the
32 construction of office and industrial developments, parking
33 structures, restaurants, stores, hotels, multifamily housing
34 projects, and similar structures. It does not include slash or
35 woody vegetation, if the slash or woody vegetation originated
36 from vegetation growing in the wetland and does not impair the

1 flow or circulation of water or the reach of the wetland.

2 Subp. 19. **Floodplain wetland.** "Floodplain wetland" means
3 a wetland located in the floodplain of a watercourse, with no
4 well defined inlets or outlets, including tile systems, ditches,
5 or natural watercourses. This may include the floodplain itself
6 when it exhibits wetland characteristics.

7 Subp. 20. **Flow-through wetland.** "Flow-through wetland"
8 means a wetland with both a well defined outlet and one or more
9 well defined inlets, including tile systems, ditches, or natural
10 watercourses.

11 Subp. 21. **Hydric soils.** "Hydric soils" means soils that
12 are saturated, flooded, or ponded long enough during the growing
13 season to develop anaerobic conditions in the upper part.

14 Subp. 22. **Hydrophytic vegetation.** "Hydrophytic vegetation"
15 means macrophytic plant life growing in water, soil, or on a
16 substrate that is at least periodically deficient in oxygen as a
17 result of excessive water content.

18 Subp. 23. **Impact.** "Impact" means a loss in the quantity,
19 quality, or biological diversity of a wetland caused by draining
20 or filling.

21 Subp. 24. **Impacted wetland.** "Impacted wetland" means a
22 wetland that has been drained or filled, partially or wholly,
23 and is subject to replacement.

24 Subp. 25. **Infrastructure.** "Infrastructure" means storm
25 water and sanitary sewer piping, outfalls, inlets, street
26 subbase, roads, and ditches, culverts, bridges, and any other
27 work defined specifically by a local government unit as
28 constituting a capital improvement.

29 Subp. 26. **Introduced hayland.** "Introduced hayland" means
30 an area devoted to the production of forage and cultivated in a
31 rotation of row crops or small grains or interseeded with
32 introduced or native species at least ~~once~~ twice during the
33 20-year ten-year period before January 1, 1991. The ten-year
34 period may be enlarged to the 20-year period before January 1,
35 1991, upon clear evidence of the qualifying practice in
36 Agricultural Stabilization and Conservation Service or other

1 aerial photographs or records, or the affidavit of a plant
 2 ecologist certified by the Ecological Society of America. These
 3 areas must be harvested by mechanical methods at least two years
 4 during the period January 1, ~~1981~~ 1986 to January 1, 1991.

5 These areas are considered to be in agricultural crop production.

6 Subp. 27. **Introduced pasture.** "Introduced pasture" means
 7 an area devoted to the production of forage and cultivated in a
 8 rotation of row crops or small grains or interseeded with
 9 introduced species at least ~~once~~ twice during the ~~20-year~~
 10 ten-year period before January 1, 1991. The ten-year period may
 11 be enlarged to the 20-year period before January 1, 1991, upon
 12 clear evidence of the qualifying practice in ASCS or other
 13 aerial photographs or records, or the affidavit of a plant
 14 ecologist certified by the Ecological Society of America. These
 15 areas must be harvested by grazing at least two years during the
 16 period January 1, ~~1981~~ 1986 to January 1, 1991. These areas are
 17 considered to be in agricultural crop production.

18 Subp. 28. **Isolated wetland.** "Isolated wetland" means a
 19 wetland without well defined inlets or outlets, including tile
 20 systems, ditches, or natural watercourses.

21 Subp. 29. **Landowner.** "Landowner" means a person or entity
 22 having the rights necessary to drain or fill a wetland, or to
 23 establish and maintain a replacement or banked wetland.
 24 Typically, the landowner is a fee title owner or a holder of an
 25 easement, license, lease, or rental agreement providing the
 26 necessary rights. The right must not be limited by a lien or
 27 other encumbrance that could override the obligations assumed
 28 with the replacement or banking of a wetland.

29 Subp. 30. **Local government unit.** "Local government unit"
 30 means:

31 A. outside of the seven-county metropolitan area, a
 32 city council or county board of commissioners or their delegate;

33 B. in the seven-county metropolitan area, a city
 34 council, town board, or watershed management organization under
 35 Minnesota Statutes, section 103B.205, subdivision 13, or their
 36 delegate; and

1 C. in those cases where an activity or replacement
2 will occur on state land, the agency with administrative
3 responsibility for that land.

4 Subp. 31. **Mining.** "Mining" means the removal of peat and
5 metallic minerals as provided in Minnesota Statutes, sections
6 93.461 and 93.481.

7 Subp. 32. **Nondegraded wetland.** "Nondegraded wetland"
8 means a wetland that has not been partially drained or filled by
9 human activities.

10 Subp. 33. **Pasture.** "Pasture" means land used for grazing
11 by domestic livestock.

12 Subp. 34. **Peace officer.** "Peace officer" has the meaning
13 given it in Minnesota Statutes, section 626.84.

14 Subp. 35. **Project.** "Project" means an action or series of
15 actions necessary to accomplish an ultimate purpose and that
16 will cause a physical manipulation of the environment, directly
17 or indirectly. Draining or filling of wetlands may be a
18 component of a project.

19 Subp. 36. **Project-specific.** "Project-specific" means the
20 applicant for the replacement plan approval will construct the
21 replacement as part of the project, rather than obtain the
22 replacement from a wetland bank.

23 Subp. 37. **Public transportation project.** "Public
24 transportation project" means a project conducted by a public
25 agency involving transportation facilities open to the public.

26 Subp. 38. **Public value of wetlands.** "Public value of
27 wetlands" means the public benefit and use of wetlands for water
28 quality, floodwater retention, public recreation, commercial
29 uses, and other public uses.

30 Subp. ~~38~~ 39. **Public waters wetlands.** "Public waters
31 wetlands" means all types 3, 4, and 5 wetlands, as defined in
32 United States Fish and Wildlife Service Circular No. 39 (1971
33 edition), that were inventoried by the department as public
34 waters under Minnesota Statutes, section 103G.201.

35 Subp. ~~39~~ 40. **Replacement wetland.** "Replacement wetland"
36 means a wetland restored or created to replace public values

1 lost at an impacted wetland.

2 Subp. ~~40~~ 41. **Restoration.** "Restoration" means
3 reestablishment of an area that was historically wetlands but
4 currently provides no or minimal wetland functions due
5 to manmade alteration such as filling or drainage.

6 Subp. ~~41~~ 42. **Right-of-way acreage.** "Right-of-way acreage"
7 has the meaning given it in Minnesota Statutes, section
8 103E.285, subdivision 6.

9 Subp. ~~42~~ 43. **Riverine wetland.** "Riverine wetland" means
10 a wetland contained within the banks of a channel that may
11 contain moving water or that forms a connecting link between two
12 bodies of standing water.

13 Subp. ~~43~~ 44. **Set aside.** "Set aside" means the cropland
14 acreage annually retired as a condition to landowner
15 participation in United States Department of Agriculture
16 commodity programs.

17 Subp. ~~44~~ 45. **Silviculture.** "Silviculture" means the
18 scientific management of forest trees.

19 Subp. ~~45~~ 46. **Soil and water conservation district.** "Soil
20 and water conservation district" means a legal subdivision of
21 state government under Minnesota Statutes, chapter 103C.

22 Subp. ~~46~~ 47. **Soil Conservation Service.** "Soil
23 Conservation Service" means an agency of the United States
24 Department of Agriculture.

25 Subp. ~~47~~ 48. **Tributary wetland.** "Tributary wetland"
26 means a wetland with a well defined outlet, including tile
27 systems, ditches, or natural watercourses, but without a well
28 defined inlet.

29 Subp. ~~48~~ 49. **Utility.** "Utility" means a sanitary sewer,
30 storm sewer, potable water distribution, and transmission,
31 distribution, or furnishing, at wholesale or retail, of natural
32 or manufactured gas, electricity, telephone, or radio service or
33 communications.

34 Subp. ~~49~~ 50. **Watershed.** "Watershed" means the 81 major
35 watershed units delineated by the map "State of Minnesota
36 Watershed Boundaries - 1979" as produced by the Minnesota

1 Department of Natural Resources, Office of Planning and
 2 Research, Water Policy Planning Program, with funding from the
 3 Legislative Commission on Minnesota Resources.

4 Subp. ~~50~~: 51. **Watershed management organization.**

5 "Watershed management organization" means a watershed district
 6 wholly within the metropolitan area or a joint powers entity
 7 established wholly or partly within the metropolitan area by
 8 special law or by agreement that performs some or all of the
 9 functions of a watershed district for a watershed and that has
 10 the characteristics and the authority specified under Minnesota
 11 Statutes, section 103B.211. Lake improvement or conservation
 12 districts are not watershed management organizations.

13 Subp. ~~51~~: 52. **Wetlands, a wetland, the wetland, or wetland**
 14 **area.**

15 A. "Wetlands" means lands transitional between
 16 terrestrial and aquatic systems where the water table is usually
 17 at or near the surface or the land is covered by shallow water.

18 For purposes of this subpart, wetlands must:

- 19 (1) have a predominance of hydric soils;
 20 (2) be inundated or saturated by surface water or
 21 groundwater at a frequency and duration sufficient to support a
 22 prevalence of hydrophytic vegetation typically adapted for life
 23 in saturated soil conditions; and
 24 (3) under normal circumstances, support a
 25 prevalence of hydrophytic vegetation.

26 B. "A wetland" or "the wetland" means a distinct
 27 hydrologic feature with characteristics of item A, surrounded by
 28 nonwetland and including all contiguous wetland types, except
 29 those connected solely by riverine wetlands. "Wetland area"
 30 means a portion of "a wetland" or "the wetland."

31 C. Wetlands does not include public waters wetlands
 32 and public waters that are designated on the public waters
 33 inventory maps prepared under Minnesota Statutes, section
 34 103G.201.

35 Subp. ~~52~~: 53. **Wetlands in a cultivated field.** "Wetlands
 36 in a cultivated field" means a wetland where greater than 50

1 percent of its boundary abuts land that was in agricultural crop
2 production in six of the ten years before January 1, 1991.

3 Subp. ~~53~~ 54. Wetlands located on agricultural land.

4 "Wetlands located on agricultural land" means a wetland where
5 greater than 50 percent of its boundary abuts agricultural land
6 ~~that-was-in-agricultural-crop-production-in-six-of-the-ten-years~~
7 ~~before-January-1,-1991.~~

8 8420.0112 INCORPORATION BY REFERENCE.

9 This rule incorporates by reference the following documents:

10 United States Fish and Wildlife Service Circular No. 39
11 (1971 edition).

12 Federal Manual for Identifying and Delineating
13 Jurisdictional Wetlands (January 1989).

14 Cowardin, et al. 1979, Classification of Wetlands and
15 Deepwater Habitats of the United States.

16 Criteria and Guidelines for Assessing Geologic Sensitivity
17 of Groundwater Resources in Minnesota (Minnesota Department of
18 Natural Resources, 1991).

19 United States Geological Survey Hydrologic Unit Map for
20 Minnesota.

21 Minnesota Wetland Evaluation Methodology.

22 State of Minnesota Watershed Boundaries - 1979 (a map).

23 National Wetland Inventory maps (United States Fish and
24 Wildlife Service).

25 Anderson and Craig, 1984, ~~Distribution-of-Remaining-Acreage~~
26 ~~of-Pre-settlement-Wetlands-in-Minnesota~~ Growing Energy Crops on
27 Minnesota Wetlands: The Land Use Perspective.

28 These documents are available through the Minitex
29 interlibrary loan system, except the National Wetland Inventory
30 maps, which are available at Minnesota soil and water
31 conservation district offices. None of the documents are
32 subject to frequent change.

33 8420.0115 SCOPE OF EXEMPTION STANDARDS.

34 When considering if a drain or fill activity qualifies for
35 an exemption listed in a specified clause of Minnesota Statutes,

1 section 103G.2241, subdivision 1, the exemption standards in
2 part 8420.0120 apply.

3 An activity is exempt if it qualifies for any one of the
4 exemptions, even though it may be indicated as not exempt under
5 another exemption.

6 These exemptions do not apply to calcareous fens as
7 identified by the commissioner.

8 No exemptions apply to wetlands that have been previously
9 restored or created as a result of an approved replacement
10 plan. All such wetlands are subject to replacement on
11 subsequent drainage or filling.

12 ~~In cases where drain or fill activities convert only a~~
13 ~~portion of a nonexempt wetland to nonwetland~~ Nonexempt wetlands
14 cannot be partially drained or filled in order to claim an
15 exemption or no-loss determination on the remainder. Therefore,
16 no exemptions or no-loss determinations can be applied to the
17 remaining wetland that would not have been applicable before the
18 impact.

19 Present and future owners of wetlands drained or filled
20 without replacement under an exemption in part 8420.0120,
21 subparts 1, 2, 4, 7, 8, and 23, can make no use of the wetland
22 area after it is drained or filled, other than as agricultural
23 land, for ten years after the draining or filling, unless it is
24 first replaced under the requirements of Minnesota Statutes,
25 section 103G.222, paragraph (g). Also, for ten years the
26 wetland may not be restored for replacement credit. At the time
27 of draining or filling, the landowner shall record a notice of
28 these restrictions in the office of the county recorder for the
29 county in which the project is located. At a minimum, the
30 recorded document must contain the name or names of the
31 landowners, a legal description of the property to which the
32 restrictions apply, a statement of the restrictions, the date on
33 which the ten-year period expires, the name of the local
34 government which certified the exemption, if such occurred, the
35 signatures of all owners, and an acknowledgment.

36 A person conducting an activity in a wetland under an

1 exemption in part 8420.0120 shall ensure that:

2 A. appropriate erosion control measures are taken to
3 prevent sedimentation of the water;

4 B. the activity does not block fish activity in a
5 watercourse; and

6 C. the activity is conducted in compliance with all
7 other applicable federal, state, and local requirements,
8 including best management practices and water resource
9 protection requirements established under Minnesota Statutes,
10 chapter 103H.

11 8420.0120 EXEMPTION STANDARDS.

12 Subpart 1. Exemption (1). A replacement plan for wetlands
13 is not required for:

14 (1) activities in a wetland that was planted with annually
15 seeded crops, was in a crop rotation seeding of pasture grasses
16 or legumes, or was required to be set aside to receive price
17 support or other payments under United States Code, title 7,
18 sections 1421 to 1469, in six of the last ten years prior to
19 January 1, 1991.

20 Documentation, such as Agricultural Stabilization and
21 Conservation Service aerial photographs, Agricultural
22 Stabilization and Conservation Service form 578 or equivalent,
23 United States Department of Agriculture records, or affidavit of
24 landowner must be required by the local government unit to show
25 and use as evidence for this exemption.

26 Set aside land used for this exemption must be wetland
27 types 1 and 2.

28 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~
29 ~~area-after-it-is-altered, other than as agricultural land for~~
30 ~~ten-years, unless it is first replaced under the requirements of~~
31 ~~Minnesota Statutes, section 103G.222, paragraph (g).--If the~~
32 ~~local government unit approves an exemption, the landowner must~~
33 ~~execute and the local government unit must record a notice of~~
34 ~~this restriction if the wetland is in a city.~~

35 Subp. 2. Exemption (2). A replacement plan for wetlands

1 is not required for:

2 (2) activities in a wetland that is or has been enrolled in
3 the federal conservation reserve program under United States
4 Code, title 16, section 3831, that:

5 (i) was planted with annually seeded crops, was in a crop
6 rotation seeding, or was required to be set aside to receive
7 price support or payment under United States Code, title 7,
8 sections 1421 to 1469, in six of the last ten years prior to
9 being enrolled in the program; and

10 (ii) has not been restored with assistance from a public or
11 private wetland restoration program.

12 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~
13 ~~area-after-it-is-altered,-other-than-as-agricultural-land-for~~
14 ~~ten-years,-unless-it-is-first-replaced-under-the-requirements-of~~
15 ~~Minnesota-Statutes,-section-103G.222,-paragraph-(g).--If-the~~
16 ~~local-government-unit-approves-an-exemption,-the-landowner-must~~
17 ~~execute-and-the-local-government-unit-must-record-a-notice-of~~
18 ~~this-restriction-if-the-wetland-is-in-a-city.~~

19 Federal documentation that the wetland is or has been
20 enrolled in the federal conservation reserve program may be used
21 as evidence for the exemption. The landowner must also meet the
22 same requirements of subpart 2 for the exemption stated in
23 Minnesota Statutes, section 103G.2241, subdivision 1, clause
24 (1), except that the years required are at least six of the ten
25 years preceding the year of enrollment in the conservation
26 reserve program. The landowner must also state in writing that
27 the wetland was not restored with assistance from a public or
28 private wetland restoration fund, or that the restoration was
29 done under a contract or easement providing the landowner with
30 the right to drain the restored wetland.

31 Subp. 3. Exemption (3). A replacement plan for wetlands
32 is not required for:

33 (3) activities necessary to repair and maintain existing
34 public or private drainage systems as long as wetlands that have
35 been in existence for more than 20 years are not drained.

36 This exemption allows maintenance which fills wetlands that

1 have been in existence for more than 20 years when the wetlands
2 are located within the right-of-way acreage of the ditch or
3 within a one rod width on either side of the top of the ditch,
4 whichever is greater, and the filling is limited to the side
5 casting of spoil materials resulting from the maintenance and
6 the spoil deposition area is permanently seeded into grass after
7 maintenance activities are completed.

8 The owner must provide documentation that the wetlands
9 which will be partially or completely drained by the maintenance
10 have not existed for more than 20 years.

11 Aerial photographs from two years of normal or wetter than
12 normal water level conditions showing no wetland are one form of
13 acceptable documentation. If aerial photographs are
14 unavailable, a sworn affidavit may be submitted. Otherwise, the
15 landowner must show that the maintenance will not reduce the
16 wetland from what it was 20 years ago or more.

17 This exemption includes lowering the elevation of
18 previously placed tile when made necessary by land subsidence
19 provided the lowering does not drain wetlands.

20 Subp. 4. **Exemption (4).** A replacement plan for wetlands
21 is not required for:

22 (4) activities in a wetland that has received a commenced
23 drainage determination provided for by the federal Food Security
24 Act of 1985, that was made to the county agricultural
25 stabilization and conservation service office prior to September
26 19, 1988, and a ruling and any subsequent appeals or reviews
27 have determined that drainage of the wetland had been commenced
28 prior to December 23, 1985.

29 The landowner must provide Agricultural Stabilization and
30 Conservation Service documents confirming that the county
31 agricultural stabilization and conservation service office
32 determined before September 19, 1988, that drainage had begun
33 before December 23, 1985, and that the determination has not
34 been overturned by subsequent appeal or review and is not
35 currently under administrative review.

36 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~

~~1 area-after-it-is-altered,--other-than-as-agricultural-land-for
2 ten-years,--unless-it-is-first-replaced-under-Minnesota-Statutes,
3 section-1036.222,--paragraph-(g).--If-the-local-government-unit
4 approves-an-exemption,--the-landowner-must-execute-and-the-local
5 government-unit-must-record-a-notice-of-this-restriction-if-the
6 wetland-is-in-a-city.~~

7 Subp. 5. Exemption (5). A replacement plan for wetlands
8 is not required for:

9 (5) activities exempted from federal regulation under
10 United States Code, title 33, section 1344(f).

11 The local government unit may certify the exemption only if
12 the landowner furnishes proof of qualification for one of the
13 exemptions from the United States Army Corps of Engineers.

14 This exemption does not apply ~~when-the-activity-is-part-of~~
15 an-activity to a project with the purpose of converting a
16 wetland to a nonwetland, either immediately or gradually, or
17 converting the wetland to another use, or when the fill will
18 result in significant discernible change to the flow or
19 circulation of water in the wetland, or partly draining it, or
20 reducing the wetland area.

21 Subp. 6. Exemption (6). A replacement plan for wetlands
22 is not required for:

23 (6) activities authorized under, and conducted in
24 accordance with, an applicable general permit issued by the
25 United States Army Corps of Engineers under section 404 of the
26 federal Clean Water Act, United States Code, title 33, section
27 1344, except the nationwide permit in Code of Federal
28 Regulations, title 33, section 330.5, paragraph (a), clause
29 (14), limited to when a new road crosses a wetland, and all of
30 clause (26).

31 This exemption is for nationwide permits 3, 4, 5, 6, 7, 12,
32 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25 issued under Code of
33 Federal Regulations, title 33, section 330.5. The local
34 government unit may certify such an exemption only if the
35 applicant furnishes proof of qualification for one of these
36 nationwide permits from the United States Army Corps of

1 Engineers. Nationwide permit 14 for a new road does not qualify
2 for this exemption, nor do nationwide permits under numbers not
3 listed in this exemption.

4 To qualify for a nationwide permit, the applicant for a
5 United States Army Corps of Engineers permit must meet any
6 regional conditions imposed by the United States Army Corps of
7 Engineers, and must obtain from the Minnesota Pollution Control
8 Agency an individual section 401 certification when required.

9 Subp. 7. **Exemption (7).** A replacement plan for wetlands
10 is not required for:

11 (7) activities in a type 1 wetland on agricultural land, as
12 defined in United States Fish and Wildlife Circular No. 39 (1971
13 edition) except for bottomland hardwood type 1 wetlands.

14 The landowner must provide the same proofs required by the
15 first paragraph of subpart 1, for lands abutting at least 50
16 percent of the wetland's boundary. The local government unit
17 may seek the advice of the technical panel as to whether the
18 wetland is a type 1 wetland not of the bottomland hardwood type.

19 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~
20 ~~area-after-it-is-altered,-other-than-as-agricultural-land-for~~
21 ~~ten-years,-unless-it-is-first-replaced-under-the-requirements-of~~
22 ~~Minnesota-Statutes,-section-1036.222,-paragraph-(g).--If-the~~
23 ~~local-government-unit-approves-an-exemption,-the-landowner-must~~
24 ~~execute-and-the-local-government-unit-must-record-a-notice-of~~
25 ~~this-restriction-if-the-wetland-is-in-a-city.~~

26 The type of the wetland must be determined according to
27 United States Fish and Wildlife Service Circular No. 39 (1971
28 edition). Alternatively, the type of the wetland can be
29 determined from the Cowardin (et al. 1979) classification shown
30 ~~on-the-National-Wetland-Inventory-map~~ system: PEM1A, PEMA,
31 PEMJ, and PEM1J may be considered to be a type 1 wetland.

32 This exemption applies if the wetland is all type 1
33 wetland, or is a combination of types 1 and 2 wetlands, on
34 agricultural land, and the type 2 wetland area is less than two
35 acres.

36 Subp. 8. **Exemption (8).** A replacement plan for wetlands

1 is not required for:

2 (8) activities in a type 2 wetland that is two acres in
3 size or less located on agricultural land.

4 The landowner must provide the same material as required
5 from the landowner by subpart 7. The local government unit may
6 seek the advice of the technical panel as to whether the wetland
7 is a type 2 wetland, two acres or less in size.

8 The wetland size is the area within its boundary. The
9 boundary must be determined according to the "Federal Manual for
10 Identifying and Delineating Jurisdictional Wetlands" (January
11 1989). The type of the wetland must be determined according to
12 United State Fish and Wildlife Service Circular No. 39 (1971
13 edition). Alternatively, type can be determined from the
14 Cowardin (et al. 1979) classification shown on the National
15 Wetland-Inventory-map system: PEM1B and PEMB may be considered
16 to be a type 2 wetland.

17 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~
18 ~~area-after-it-is-altered,-other-than-as-agricultural-land-for~~
19 ~~ten-years,-unless-it-is-first-replaced-under-the-requirements-of~~
20 ~~Minnesota-Statutes,-section-103G.222,-paragraph-(g).--If-the~~
21 ~~local-government-unit-approves-an-exemption,-the-landowner-must~~
22 ~~execute-and-the-local-government-unit-must-record-a-notice-of~~
23 ~~this-restriction-if-the-wetland-is-in-a-city.~~

24 This exemption applies if the wetland is a type 2 wetland,
25 or is a combination of types 1 and 2 wetlands, on agricultural
26 land, and the type 2 wetland area is less than two acres.

27 Subp. 9. Exemption (9). A replacement plan for wetlands
28 is not required for:

29 (9) activities in a wetland restored for conservation
30 purposes under a contract or easement providing the landowner
31 with the right to drain the restored wetland.

32 The landowner must provide a contract or easement
33 conveyance or affidavit demonstrating that the landowner or a
34 predecessor restored the wetland for conservation purposes but
35 retained the right to subsequently drain the restored wetland.

36 Subp. 10. Exemption (10). A replacement plan for wetlands

1 is not required for:

2 (10) activities in a wetland created solely as a result of:

3 (i) beaver dam construction;

4 (ii) blockage of culverts through roadways maintained by a
5 public or private entity;

6 (iii) actions by public entities that were taken for a
7 purpose other than creating the wetland; or

8 (iv) any combination of (i) to (iii).

9 Wetland areas created by beaver activities may be drained
10 by removing those materials placed by beaver. Drainage is
11 permitted by removing or moving materials blocking installed
12 roadway culverts and drainage structures. Additional excavation
13 or removal of other materials is not permitted unless it can be
14 shown by aerial photographs that the proposed activity will not
15 drain or fill wetland that was there before the beaver dam was
16 built or the culvert became plugged.

17 Wetlands may be drained or filled if the landowner can show
18 that the wetland was created solely by actions the purpose of
19 which was not to create the wetland and were approved,
20 permitted, funded, or overseen by a public entity.

21 Impoundments or excavations constructed in nonwetlands
22 solely for the purpose of effluent treatment, storm water
23 retention, soil and water conservation practices, and water
24 quality improvements, and not as part of a compensatory wetland
25 mitigation process that may, over time, take on wetland
26 characteristics, are also exempted.

27 Subp. 11. **Exemption (11)**. A replacement plan for wetlands
28 is not required for:

29 (11) placement, maintenance, repair, enhancement, or
30 replacement of utility or utility-type service, including the
31 transmission, distribution, or furnishing, at wholesale or
32 retail, of natural or manufactured gas, electricity, telephone,
33 or radio service or communications if:

34 (i) the impacts of the proposed project on the hydrologic
35 and biological characteristics of the wetland have been avoided
36 and minimized to the extent possible; and

1 (ii) the proposed project significantly modifies or alters
2 less than one-half acre of wetlands.

3 For new ~~replacement~~ placement and enhancement of existing
4 facilities, the utility must demonstrate that the character and
5 extent of the impacts of the proposed project on the wetlands
6 have been minimized and that the entire project will,
7 cumulatively, drain or fill less than one-half acre of wetland.

8 For maintenance, repair, and replacement, the local
9 government unit may issue a seasonal or annual exemption
10 certification or the utility may proceed without local
11 government unit certification if it is carrying out the work
12 according to best management practices. Work of an emergency
13 nature may proceed as necessary and any drain or fill activities
14 shall be addressed with the local government unit after the
15 emergency work has been completed.

16 Subp. 12. **Exemption (12).** A replacement plan for wetlands
17 is not required for:

18 (12) activities associated with routine maintenance of
19 utility and pipeline rights-of-way, provided the activities do
20 not result in additional intrusion into the wetland.

21 This exemption is for maintenance, but not expansion, of
22 the rights-of-way in which utilities are located. Spill
23 remediation is not routine maintenance.

24 The local government unit may issue a seasonal or annual
25 exemption certification or the utility may proceed if it is
26 carrying out the work according to best management practices.
27 Work of an emergency nature may proceed as necessary and any
28 drain or fill activities shall be addressed with the local
29 government unit after the emergency work has been completed.

30 Subp. 13. **Exemption (13).** A replacement plan for wetlands
31 is not required for:

32 (13) alteration of a wetland associated with the operation,
33 maintenance, or repair of an interstate pipeline within all
34 existing or acquired interstate pipeline rights-of-way.

35 This exemption includes construction activities.

36 Subp. 14. **Exemption (14).** A replacement plan for wetlands

1 is not required for:

2 (14) temporarily crossing or entering a wetland to perform
3 silvicultural activities, including timber harvest as part of a
4 forest management activity, so long as the activity limits the
5 impact on the hydrologic and biologic characteristics of the
6 wetland; the activities do not result in the construction of
7 dikes, drainage ditches, tile lines, or buildings; and the
8 timber harvesting and other silvicultural practices do not
9 result in the drainage of the wetland or public waters.

10 This exemption is for temporary-use roads constructed for
11 the primary purpose of providing access for the conduct of
12 silvicultural activities.

13 Subp. 15. **Exemption (15).** A replacement plan for wetlands
14 is not required for:

15 (15) permanent access for forest roads across wetlands so
16 long as the activity limits the impact on the hydrologic and
17 biologic characteristics of the wetland; the construction
18 activities do not result in the access becoming a dike, drainage
19 ditch or tile line; with filling avoided wherever possible; and
20 there is no drainage of the wetland or public waters.

21 This exemption is the same as the exemption in subpart 14,
22 except that it is for permanent forest roads.

23 ~~This exemption is for~~ which are roads constructed for the
24 primary purpose of providing access for the conduct of
25 silvicultural activities.

26 Subp. 16. **Exemption (16).** A replacement plan for wetlands
27 is not required for:

28 (16) activities associated with routine maintenance or
29 repair of existing public highways, roads, streets, and bridges,
30 provided the activities do not result in additional intrusion
31 into the wetland ~~and do not result in the draining or filling,~~
32 ~~wholly or partially, of a wetland~~ outside of the existing
33 right-of-way.

34 This exemption does not prevent repairing washouts or
35 adding material to the driving surface provided the road's
36 occupancy of the wetland outside of the existing right-of-way

1 does not increase.

2 Subp. 17. **Exemption (17).** A replacement plan for wetlands
3 is not required for:

4 (17) emergency repair and normal maintenance and repair of
5 existing public works, provided the activity does not result in
6 additional intrusion of the public works into the wetland and do
7 not result in the draining or filling, wholly or partially, of a
8 wetland.

9 This exemption applies to public works other than roads,
10 such as buildings and bridges.

11 Subp. 18. **Exemption (18).** A replacement plan for wetlands
12 is not required for:

13 (18) normal maintenance and minor repair of structures
14 causing no additional intrusion of an existing structure into
15 the wetland, and maintenance and repair of private crossings
16 that do not result in the draining or filling, wholly or
17 partially, of a wetland.

18 This exemption applies to private structures, such as
19 buildings and road crossings.

20 Subp. 19. **Exemption (19).** A replacement plan for wetlands
21 is not required for:

22 (19) duck blinds.

23 This exemption allows floating duck blinds and blinds on
24 poles or pilings. This exemption does not allow fill other than
25 poles or pilings.

26 Subp. 20. **Exemption (20).** A replacement plan for wetlands
27 is not required for:

28 (20) ~~aquaculture activities, except building or altering of~~
29 ~~docks and activities involving the draining or filling, wholly~~
30 ~~or partially, of a wetland~~ including pond excavation and
31 associated access roads and dikes authorized under, and
32 conducted in accordance with, a permit issued by the United
33 States Army Corps of Engineers under section 404 of the federal
34 Clean Water Act, United States Code, title 33, section 1344, but
35 not including buildings.

36 Subp. 21. **Exemption (21).** A replacement plan for wetlands

1 is not required for:

2 (21) wild rice production activities, including necessary
3 diking and other activities authorized under a permit issued by
4 the United State Army Corps of Engineers under section 404 of
5 the federal Clean Water Act, United States Code, title 33,
6 section 1344.

7 Documentation demonstrating that the exemption applies may
8 include showing possession of a United States Army Corps of
9 Engineers permit for the project.

10 Subp. 22. **Exemption (22)**. A replacement plan for wetlands
11 is not required for:

12 (22) normal agricultural practices to control pests or
13 weeds, defined by rule as either noxious or secondary weeds, in
14 accordance with applicable requirements under state and federal
15 law, including established best management practices.

16 This exemption does not allow diking, ditching, tiling, or
17 filling, or other control practices that would result in the
18 conversion of wetlands.

19 Subp. 23. **Exemption (23)**. A replacement plan for wetlands
20 is not required for:

21 (23) activities in a wetland that is on agricultural land
22 annually enrolled in the federal Food, Agricultural,
23 Conservation, and Trade Act of 1990, United States Code, title
24 16, section 3821, subsection (a), clauses (1) to (3), as
25 amended, and is subject to sections 1421 to 1424 of the federal
26 act in effect on January 1, 1991, except that land enrolled in a
27 federal farm program is eligible for easement participation for
28 those acres not already compensated under a federal program.

29 Documentation such as a written statement from the local
30 Agricultural Stabilization and Conservation Service office that
31 the proposed activity would not result in loss of eligibility
32 for benefits under the farm program may be used as evidence for
33 this exemption. If the activity would result in loss of
34 eligibility, the landowner cannot qualify for the exemption by
35 withdrawing from the program.

36 ~~Present-and-future-owners-can-make-no-use-of-the-wetland~~

1 ~~area after it is altered, other than as agricultural land for~~
 2 ~~ten years, unless it is first replaced under the requirements of~~
 3 ~~Minnesota Statutes, section 103G.222, paragraph (g).--If the~~
 4 ~~local government unit approves an exemption, the landowner must~~
 5 ~~execute and the local government unit must record a notice of~~
 6 ~~this restriction if the wetland is in a city.~~

7 Subp. 24. Exemption (24). A replacement plan for wetlands
 8 is not required for:

9 (24) development projects and ditch improvement projects in
 10 the state that have received preliminary or final plat approval,
 11 or infrastructure that has been installed, or having local site
 12 plan approval, conditional use permits, or similar official
 13 approval by a governing body or government agency, within five
 14 years before July 1, 1991. In the seven-county metropolitan
 15 area and in cities of the first and second class, plat approval
 16 must be preliminary as approved by the appropriate governing
 17 body.

18 Subdividers who obtained preliminary plat approval in the
 19 specified time period, and other project developers with one of
 20 the listed approvals timely obtained, provided approval has not
 21 expired and the project remains active, may drain and fill
 22 wetlands, to the extent documented by the approval, without
 23 replacement. Those elements of the project that can be carried
 24 out without changing the approved plan and without draining or
 25 filling must be done in that manner. If wetlands can be avoided
 26 within the terms of the approved plan, they must be avoided.

27 For county, joint county, and watershed district ditch
 28 projects, this exemption applies to projects that received final
 29 approval in the specified time period.

30 Subp. 25. Exemption (25). A replacement plan for wetlands
 31 is not required for:

32 (25) activities that result in the draining or filling of
 33 less than 400 square feet of wetlands.

34 This exemption applies if the total wetland loss by
 35 draining and filling will be less than 400 square feet per year
 36 per landowner, and the cumulative impact by all persons on a

1 wetland over time without replacement after January 1, 1992,
2 does not exceed five percent of the wetland's area.

3 PROCEDURES

4 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

5 The local government unit responsible for making exemption
6 and no-loss determinations and approving replacement plans shall
7 be determined according to items A to C.

8 A. Outside the seven-county metropolitan area, the
9 local government unit is the county or city in which the drain
10 or fill activity is located, or its delegate.

11 B. In the seven-county metropolitan area, the local
12 government unit is the city, town, or water management
13 organization regulating surface-water-related matters in the
14 area in which the drain or fill activity is located, or its
15 delegate. The watershed management plan adopted under Minnesota
16 Statutes, section 103B.231, and related board rules will
17 normally indicate the appropriate local government unit.
18 Lacking an indication, the local government unit must be the
19 city, town, or its delegate.

20 C. If the activity in a wetland is located in two
21 jurisdictions, the local government unit shall be the one
22 exercising zoning authority over the project or if both have
23 zoning authority, the one in which most of the wetland loss will
24 occur. If no zoning permits are required, the local government
25 unit shall be the one in which most of the wetland loss will
26 occur. If an activity will affect wetlands in more than one
27 local government unit, the board will coordinate the project
28 review to ensure consistency and consensus among the local
29 government units involved.

30 The board will resolve all questions as to which government
31 entity is the responsible authority, applying the guidelines in
32 items A to C.

33 Notwithstanding items A to C, the department shall be the
34 approving authority for activities associated with projects
35 requiring permits to mine under Minnesota Statutes, section

1 93.481.

2 8420.0210 EXEMPTION DETERMINATIONS.

3 A landowner intending to drain or fill a wetland without
4 replacement, claiming exemption under part 8420.0120, may
5 contact the local government unit before beginning draining or
6 filling activities for determination whether or not the activity
7 is exempt. A landowner who does not request a determination may
8 be subject to the enforcement provisions in part 8420.0290 and
9 Minnesota Statutes, section 103G.2372. The local government
10 unit must keep on file all documentation and findings of fact
11 concerning exemption determinations for a period of ten years.

12 Local government units may offer exemption certificates as
13 part of the wetland program within their jurisdiction. An
14 exemption applies whether or not the local government unit
15 chooses to issue certificates of exemption. If the wetland
16 qualifies for an exemption, and the landowner requests a
17 certificate of exemption, then the local government unit must
18 issue one.

19 The landowner applying for exemption is responsible for
20 submitting the proof necessary to show qualification for the
21 particular exemption claimed.

22 The local government unit may place the decision authority
23 for exemption applications with the zoning administrator, or
24 establish other procedures it considers appropriate.

25 The local government unit decision shall be based on the
26 exemptions standards in part 8420.0120. If the decision
27 requires a finding of wetland size or type, the local government
28 unit should seek the advice of the technical panel as described
29 in part 8420.0240.

30 A landowner draining or filling a wetland under an
31 exemption shall ensure that appropriate erosion control measures
32 are taken to prevent sedimentation of the water, the drain or
33 fill does not block fish passage, and the drain or fill is
34 conducted in compliance with all other applicable federal,
35 state, and local requirements, including best management

1 practices and water resource protection requirements established
2 under Minnesota Statutes, chapter 103H.

3 8420.0220 NO-LOSS DETERMINATIONS.

4 A landowner unsure if proposed work will result in a loss
5 of wetland may apply to the local government unit for a
6 determination. A landowner who does not request a determination
7 may be subject to the enforcement provisions in part 8420.0290
8 and Minnesota Statutes, section 103G.2372. The local government
9 unit must keep on file all documentation and findings of fact
10 concerning no-loss determinations for a period of ten years.

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

14 The local government unit may place the decision authority
15 for no-loss applications with the zoning administrator, or
16 establish other procedures it considers appropriate.

17 The local government unit shall issue a no-loss certificate
18 if the landowner requests and if either:

- 19 A. the work will not drain or fill a wetland;
- 20 B. water level management activities will not result
21 in the conversion of a wetland to another land use;

22 C. the activities are in a surface impoundment for
23 containment of fossil fuel combustion waste or water retention,
24 and are not part of a compensatory wetland mitigation
25 program; or

26 D. the activity is being conducted as part of an
27 approved replacement plan or is conducted or authorized by
28 public agencies for the purpose of wetland restoration and the
29 activity is restricted to placing fill in a previously excavated
30 drainage system to restore a wetland to its original condition;
31 or.

32 ~~E. the draining or filling will be minimal and not~~
33 ~~warrant replacement. This item is applicable if the total~~
34 ~~wetland loss will be less than 100 square feet per year per~~
35 ~~landowner, and the cumulative impact on a wetland over time~~

1 ~~without-replacement-after-January-17-1992-of-draining-and~~
2 ~~filling-by-all-persons-does-not-exceed-five-percent-of-the~~
3 ~~wetland's-area.~~

4 8420.0230 REPLACEMENT PLAN DETERMINATIONS.

5 A landowner intending to drain or fill a wetland who does
6 not qualify for an exemption or no-loss determination shall
7 obtain approval of a replacement plan from the local government
8 unit before beginning draining or filling. A person who does
9 not do so is subject to the enforcement provisions in this
10 chapter and Minnesota Statutes, section 103G.2372.

11 The local government unit may use its usual notice and
12 comment procedures on the application for approval of a
13 replacement plan if, within ten days of receipt of the
14 application, the local government unit mails a copy of the
15 application and an invitation to submit comments to the board,
16 which will publish it in the Environmental Quality Board
17 Monitor; members of the public who have requested a copy; the
18 soil and water conservation district; the watershed district or
19 water management organization, if there is one; the county
20 board; mayors of cities within the watershed; and the
21 commissioners of agriculture and natural resources. At the same
22 time, the local government unit shall publish notice of the
23 application with an invitation for comment in a general
24 circulation newspaper in the area affected.

25 The local government unit shall not make its decision
26 before 30 days and not more than 60 days have elapsed from the
27 mailing of notice, publication in the Environmental Quality
28 Board Monitor, when required, or publication in the newspaper,
29 whichever is later. The local government unit decision shall
30 not be effective until 30 days after a copy of the decision has
31 been mailed to the Environmental Quality Board Monitor for
32 publication, when required, and mailed to the same list
33 specified above for notice of the application, and to the
34 applicant. The mailing to the applicant shall be by registered
35 mail and must advise that the decision is not effective for 30

1 days, and is stayed if it is appealed.

2 Publication in the Environmental Quality Board Monitor of
3 replacement plan applications and decisions is required, except
4 for the fill activities described in the next paragraph, when
5 the local government unit publishes a general notice in the
6 Environmental Quality Board Monitor that it will not be
7 publishing notice of such individual activities, but will
8 instead provide mailed notice of each project to anyone asking
9 to be put on the local government unit's mailing list for such
10 projects. This notice must be published not less often than
11 once every year. The notice must advise how persons may submit
12 their names and addresses to be put on the mailing list.

13 Projects eligible for this form of Environmental Quality
14 Board Monitor notice are all those which will fill less than
15 one-tenth acre of wetland; and all those which will fill less
16 than one-quarter acre of wetland, and result from a private road
17 fill or the construction or expansion of a single-family
18 dwelling unit or a farm building when the project cannot be
19 modified so as to avoid the fill.

20 The local government unit decision shall be based on the
21 replacement standards in parts 8420.0500 to 8420.0630, and on
22 the technical determination of the technical evaluation panel
23 concerning the public values, location, size, and type of the
24 wetland being altered. The local government unit shall consider
25 the recommendation of the technical evaluation panel to approve,
26 modify, or reject the proposed replacement plan.

27 For wetland replacement plans involving more than one local
28 government unit, approval of all local government units involved
29 or as specified in part 8420.0200 shall constitute final
30 approval of the replacement plan and is required before the
31 project may proceed. The local government unit with
32 jurisdiction for the impact site must approve all components of
33 the replacement plan, following the procedures in parts
34 8420.0500 to 8420.0630. The local government unit with
35 jurisdiction for the replacement site shall limit the review to
36 evaluation of the replacement site as in parts 8420.0540 to

1 8420.0630 and make a decision accordingly.

2 As part of the approval of the replacement plan, the local
3 government unit with jurisdiction for the replacement site
4 assumes responsibility for ensuring compliance with monitoring
5 provisions according to parts 8420.0600 to 8420.0630. The local
6 government unit with jurisdiction for the replacement site may
7 enter into joint powers agreements with a local government unit
8 with jurisdiction for the impact site, assess fees, or develop
9 other procedures considered necessary to facilitate the process.

10 8420.0235 WETLAND BANKING PROCEDURES.

11 For wetland banking procedures, refer to parts 8420.0700 to
12 8420.0760. Appeals of the local government unit banking
13 decisions are taken according to part 8420.0250.

14 8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

15 For each local government unit, there is a technical
16 evaluation panel of three persons: a technical professional
17 employee of the board, a technical professional employee of the
18 soil and water conservation district of the county in which
19 ~~the local-government-unit-is-located~~ activity is occurring, and
20 ~~an-engineer-for~~ a technical professional with expertise in water
21 resources management appointed by the local government
22 unit. The-soil-and-water-conservation-district One
23 member selected by the local government unit shall act as the
24 contact person and coordinator for the panel. Two members of
25 the panel must be knowledgeable and trained in applying
26 methodologies of the "Federal Manual for Identifying and
27 Delineating Jurisdictional Wetlands" (January 1989), and
28 evaluation of public values. The technical evaluation panel may
29 invite additional wetland experts to help the panel in its work.
30 The panel shall make technical determinations on questions
31 of public values, location, size, and type for ~~all-wetlands-for~~
32 ~~which-an-application-for~~ replacement plan approval has been
33 ~~submitted-to~~ plans if requested to do so by the local government
34 unit, the landowner, or a member of the technical evaluation
35 panel. The panel ~~shall~~ may review replacement plans and

1 recommend to the local government unit either approval, approval
 2 with changes or conditions, or rejection. The panel shall make
 3 no determinations or recommendations without at least one member
 4 having made an on-site inspection. Panel determinations and
 5 recommendations must be endorsed by at least two of the three
 6 members.

7 If the local government unit has a comprehensive wetland
 8 management plan that delineates location, size, and type for all
 9 wetlands, approved by the technical evaluation panel, and
 10 subsequently incorporated into local ordinance, then the local
 11 government unit can make determinations in place of the
 12 technical evaluation panel.

13 The panel, or one of its members when so authorized by all
 14 of the members, may assist the local government unit in making
 15 wetland size and type determinations when asked to do so by the
 16 local government unit as part of making an exemption or no-loss
 17 determination.

18 If requested by the local government unit, the landowner,
 19 or a member of the technical evaluation panel, the panel shall
 20 monitor answer technical questions or participate in the
 21 monitoring of replacement wetlands as-provided-in according to
 22 parts 8420.0600 to 8420.0630, and shall review-and-monitor
 23 similarly participate in the monitoring of banked wetlands as
 24 provided-fer-in according to parts 8420.0700 to 8420.0760.

25 8420.0245 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND
 26 ORDINANCES.

27 This chapter and the act provide minimum standards. Local
 28 government units may require more procedures and more wetland
 29 protection, but not less.

30 8420.0250 APPEAL OF LOCAL GOVERNMENT UNIT DECISIONS.

31 Subpart 1. Appeal of replacement plan decisions. The
 32 decision of a local government unit to approve ~~or deny a~~
 33 ~~certificate of exemption or no-loss, or to~~ approve with
 34 conditions, or reject a replacement plan, becomes final if not
 35 appealed to the board within 30 days after the date on which the

1 decision is mailed to those required to receive notice of the
2 decision.

3 ~~Appeals of decisions arising from provisions of a local~~
4 ~~ordinance that are more restrictive than these standards, shall~~
5 ~~be taken to the district court in the same manner as an appeal~~
6 ~~of a zoning decision.~~

7 ~~Before an exemption or no-loss determination may be~~
8 ~~appealed to the board, it must first be appealed to the local~~
9 ~~government unit's board of adjustment and appeals, if there is~~
10 ~~one, or otherwise to the governing body. If the governing body~~
11 ~~made the initial decision, the landowner must ask the governing~~
12 ~~body to reconsider before appealing to the board.~~

13 Appeal may be made by the landowner, by any of those
14 required to receive notice of the decision, or by 100 residents
15 of the county in which a majority of the wetland is located.

16 Appeal is effective upon mailing of the notice of appeal to
17 the board with an affidavit that a copy of the notice of appeal
18 has been mailed to the local government unit. The local
19 government unit shall then mail a copy of the notice of the
20 appeal to all those to whom it was required by part 8420.0230 to
21 mail a copy of the notice of decision.

22 Subp. 2. Appeal of exemption and no-loss determinations.

23 A. An exemption or no-loss determination may be
24 appealed to the board by the landowner after first exhausting
25 all local administrative appeal options.

26 B. Those required to receive notice of replacement
27 plan decisions as provided for in part 8420.0230 may petition
28 the board to hear an appeal from an exemption or no-loss
29 determination. The board shall grant the petition unless it
30 finds that the appeal is meritless, trivial, or brought solely
31 for the purposes of delay. In determining whether to grant the
32 appeal, the board shall also give consideration to the size of
33 the wetland, other factors in controversy, any patterns of
34 similar acts by the local government unit or landowner or
35 petitioner, and the consequences of the delay.

36 C. The determination of the local government unit on

1 the exemption or no-loss application is final unless an appeal
 2 or petition is mailed to the board within 30 days after the
 3 decision is mailed to the landowner. The appeal or petition
 4 must be accompanied by an affidavit that a copy has been sent to
 5 the local government unit, and to the landowner if it is a
 6 petition.

7 Subp. 3. Board appeal procedures. The appeal will be
 8 decided by the board within 60 days after receiving the notice
 9 of appeal and affidavit or granting the petition. Parties to
 10 the appeal are the appellant, the local government unit, and in
 11 the case of replacement plan appeals, all those required to
 12 receive notice of the local government unit decision.

13 Upon appeal, the local government unit shall forward to the
 14 board the record on which it based its decision. The board will
 15 make its decision on the appeal after hearing. Thirty days'
 16 notice of the hearing shall be given by the board to the
 17 parties. The parties may present written and oral argument.
 18 When the local government unit has made formal findings
 19 contemporaneously with its decision and there is an accurate
 20 verbatim transcript of the proceedings and the proceedings were
 21 fairly conducted, the board will base its review on the record.
 22 Otherwise it may take additional evidence, or remand the matter.

23 The board will affirm the local government unit's decision
 24 if the local government unit's findings of fact are not clearly
 25 erroneous; if the local government unit correctly applied the
 26 law to the facts, including this chapter; and if the local
 27 government unit made no procedural errors prejudicial to a
 28 party. Otherwise, the board will reverse the decision, amend
 29 it, or remand it with instructions for further proceedings.

30 8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

31 The board shall send copies of this chapter to all local
 32 government units at least 60 days before July 1, 1993. By ~~July~~
 33 ~~17-1993~~ January 1, 1994, each local government unit of the
 34 state, except tribal lands, shall acknowledge to the board that
 35 it is assuming its responsibilities under this chapter and the

1 act. Local government units from which an affirmative response
2 is not received will be given notice by the board that there is
3 a 60-day moratorium in the local government unit's jurisdiction
4 on exemption, no-loss, replacement plan, and banking
5 determinations. The board will end the moratorium within the 60
6 days upon agreement by the local government unit that it will
7 assume its duties under this chapter and the act. If at the end
8 of the initial 60-day moratorium an agreement has not been made
9 for the local government unit to apply the law, the board can
10 extend the moratorium until the local government unit agrees to
11 apply the law.

12 If the board has information that a local government unit
13 is not following this chapter or the act in making exemption,
14 no-loss, replacement plan, or banking determinations, the board
15 shall notify the local government unit of its concerns. If not
16 satisfied with the local government unit's response, the board
17 shall ask the local government unit to appear at a hearing
18 before the board to discuss the matter. ~~After~~ If it is
19 determined at the hearing, that corrective action is necessary,
20 the board shall write the local government unit ~~asking-for~~
21 directing specific corrective action within 60 days. The notice
22 shall explain the reason for the action.

23 If, after the 60-day period described in this part the
24 local government unit has not corrected the problem to the
25 satisfaction of the board, the board shall take appropriate
26 legal action to ensure compliance.

27 8420.0270 COMPENSATION.

28 Replacement plan applicants who have completed the local
29 government unit process and the board appeal process, and the
30 plan has not been approved as submitted, may apply to the board
31 for compensation under Minnesota Statutes, section 103G.237.

32 The application must identify the applicant, locate the
33 wetland, and refer the board to its appeal file in the matter.

34 The application must include an agreement that in exchange
35 for compensation the applicant will convey to the state a

1 perpetual conservation easement in the form required by
2 Minnesota Statutes, section 103F.516. The applicant must
3 provide an abstract of title demonstrating the ability to convey
4 the easement free of any prior title, lien, or encumbrance.
5 Failure to provide marketable title negates the state's
6 obligation to compensate.

7 The applicant must submit official documentation from the
8 United States Army Corps of Engineers, the Minnesota Pollution
9 Control Agency, the watershed district or water management
10 organization if any, the county, and the town or city, as
11 applicable, that the proposed drain or fill activity and the
12 proposed subsequent use of the wetland are lawful under their
13 respective legal requirements.

14 The landowner must demonstrate that the proposed drain or
15 fill is a feasible and prudent project and that the replacement
16 plan as proposed is a reasonable good faith effort to fulfill
17 the replacement requirements of parts 8420.0500 to 8420.0630 and
18 the act.

19 If the plan was approved, but with conditions or
20 modifications, the applicant must show that the conditions or
21 modifications make the replacement unworkable or not feasible.
22 A plan is unworkable or not feasible if the replacement must be
23 on land that the applicant does not own, the applicant has made
24 good faith efforts to acquire a replacement site and not
25 succeeded, and there is not a qualifying replacement available
26 in a wetland bank. A plan is also unworkable or not feasible if
27 it is not possible to carry out for engineering reasons. The
28 applicant must show that not going ahead with the proposed
29 project will cause the applicant damages and that disallowing
30 the proposed use will enhance the public values of the wetland.

31 The applicant must submit the requirements in this part in
32 writing, by certified mail, to the board. If the applicant
33 wants to make oral argument to the board, it must be indicated
34 as part of the application. The board may require that the
35 applicant appear before the board.

36 If the board finds that the applicant has submitted a

1 complete application and proved the requirements in this part,
2 the board shall compensate the applicant as required by law
3 within 90 days after the board received a completed application,
4 provided that within the same time period the applicant must
5 convey to the board a conservation easement in the form required
6 by Minnesota Statutes, section 103F.516. If the board does not
7 provide the required compensation in exchange for the
8 conservation easement, the applicant may drain or fill the
9 wetland in the manner proposed, without replacement.

10 8420.0280 APPEAL FROM BOARD DECISIONS.

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

15 8420.0290 ENFORCEMENT PROCEDURES.

16 Subpart 1. **Enforcing authorities.** The commissioner,
17 conservation officers, and other peace officers ~~issuing~~
18 ~~authorities~~ may issue cease and desist orders and restoration
19 and replacement orders.

20 Subp. 2. **Cease and desist orders.** Site-specific cease and
21 desist orders may be issued when the enforcement authority has
22 probable cause that a drain or fill activity is being or has
23 been conducted in a wetland and does not qualify for an
24 exemption or a no-loss determination under parts 8420.0210 and
25 8420.0220 and is being or has been conducted without prior
26 approval of a replacement plan by a local government unit under
27 part 8420.0230.

28 A cease and desist order must not be issued if the
29 landowner has a valid certificate of exemption or no-loss from
30 the local government unit, or has evidence to support an
31 exemption. Otherwise:

32 A. the enforcement authority may issue a cease and
33 desist order upon discovery of the drain or fill activity;

34 B. the order may be withheld to give the landowner
35 time to produce the evidence required by part 8420.0120 to the

1 enforcement authority of qualification for an exemption or
2 no-loss determination; or

3 C. a cease and desist order may be issued with an
4 effective date three weeks from the date of issuance. The
5 enforcement authority shall exercise this option when the
6 enforcement authority cannot readily make a determination on the
7 facts and circumstances to deny a landowner's claim of exemption
8 or no-loss, and continued drain or fill activity would not cause
9 irreparable harm to the wetland.

10 The enforcement authority shall advise the landowner that
11 the landowner's application, if any, for an exemption or no-loss
12 determination, should be made immediately to the local
13 government unit and that whatever drain and fill work the
14 landowner has done may require restoration according to a
15 restoration plan designed by the soil and water conservation
16 district, if the application for exemption or no-loss
17 determination is denied.

18 The enforcement authority issuing a cease and desist order
19 shall promptly submit copies to the soil and water conservation
20 district, local government unit, and department.

21 If an application for an exemption or no-loss determination
22 is triggered by a cease and desist order, the local government
23 unit or the technical evaluation panel shall make a decision
24 within three weeks from the date of the application ~~or-sooner-if~~
25 ~~the-landowner-requests~~. The local government unit or technical
26 evaluation panel shall review evidence of exemption or no-loss
27 produced by the landowner, inspect the site if necessary, and
28 determine:

- 29 (1) if the area in question is a wetland; and
30 (2) if the activity qualifies for an exemption or
31 no-loss determination under parts 8420.0210 and 8420.0220.

32 In cases where the cease and desist order has been issued
33 to a local government unit, the determination of exemption or
34 no-loss shall be made by the board.

35 If the decision is that the activity is exempt or results
36 in a no-loss determination, the decision maker shall issue a

1 certificate of exemption or no-loss, request that the
2 enforcement authority rescind the cease and desist order, and
3 notify the soil and water conservation district, the department,
4 and the landowner.

5 If the application is denied, the decision-maker shall
6 immediately notify the soil and water conservation district, the
7 department, the enforcement authority, and the landowner.

8 Subp. 3. **Restoration and replacement orders.** The
9 enforcement authority shall issue a restoration order or
10 replacement order when the drain or fill has already been
11 completed when discovered, or after a cease and desist order has
12 been issued and the landowner does not seek an exemption or
13 no-loss determination within three weeks, or the local
14 government unit denies the application.

15 Promptly upon being informed by the enforcement authority
16 of the need, the soil and water conservation district staff
17 person shall inspect the site and prepare a plan in consultation
18 with the local government unit for restoring the site to its
19 prealtered condition, unless the soil and water conservation
20 district person concludes that restoration is impossible. The
21 soil and water conservation district shall incorporate its plan
22 into a restoration or replacement order and send it to the
23 enforcement authority for service in person or by certified mail
24 to the landowner.

25 The restoration order must specify a date by which the
26 landowner must either:

27 A. restore the wetland according to the soil and
28 water conservation district plan and obtain a certificate of
29 satisfactory restoration from the soil and water conservation
30 district; or

31 B. submit a replacement plan to the local government
32 unit.

33 The order shall state that it will be canceled when the
34 landowner obtains a certificate of exemption or no-loss from the
35 local government unit, or a certificate that restoration has
36 been completed according to an approved restoration plan.

1 Otherwise, the landowner must restore the wetland in the manner
2 required by the restoration order.

3 If the soil and water conservation district determines that
4 restoration will not restore all the loss caused by the drain or
5 fill activity, the enforcement authority may order a combination
6 of restoration and replacement, or may order replacement rather
7 than restoration, as determined by the soil and water
8 conservation district. The order must direct the landowner to
9 obtain replacement plan approval from the local government
10 unit. The order must specify that if replacement plan approval
11 is not obtained, the landowner must restore the wetland in a
12 manner determined by the soil and water conservation district.

13 Each cease and desist, restoration, and replacement order
14 shall tell the landowner that violation of the order is a
15 misdemeanor.

16 If, as part of a misdemeanor proceeding, the court orders
17 restoration or replacement, the soil and water conservation
18 district shall determine which is appropriate, and if it is
19 restoration, the method of restoration. If the court orders
20 replacement, the landowner must follow the replacement plan
21 process in parts 8420.0500 to 8420.0630 unless the court orders
22 otherwise.

23 MINING

24 8420.0300 MINING.

25 Wetlands may not be drained or filled as part of a project
26 for which a permit to mine is required by Minnesota Statutes,
27 section 93.481, except as approved by the commissioner.
28 Draining or filling of wetlands created by pits, stockpiles, or
29 tailing basins by actions whose purpose was not to create the
30 wetland are exempt under part 8420.0120, subpart 10.

31 A. For new mining operations that are permitted and
32 initiated after July 1, 1993:

33 (1) mining shall not be conducted without first
34 receiving a permit to mine issued under chapter 6130 for iron
35 ore and taconite or chapter 6132 for nonferrous metallic

1 minerals; and

2 (2) the mining and reclamation operating plans or
3 annual reports submitted by the applicant as required in the
4 permit to mine shall include an approved wetland replacement
5 plan that meets the same principles and standards for replacing
6 wetlands under parts 8420.0500 to 8420.0630.

7 B. For mining operations in existence before July 1,
8 1993, and operated on or after that date under a permit to mine
9 issued under chapter 6130 for iron ore and taconite or chapter
10 6132 for nonferrous metallic minerals:

11 (1) no draining or filling activities shall be
12 conducted within wetlands for which these activities were
13 approved but not initiated before July 1, 1993, until the
14 operating plan or annual report as required in the permit to
15 mine includes an approved wetland replacement plan for the
16 undisturbed wetlands. The wetland replacement plan shall meet
17 the same principles and standards for replacing wetlands under
18 parts 8420.0500 to 8420.0630;

19 (2) for filling activities that were approved and
20 initiated before July 1, 1993, the placement of fill atop a
21 stockpile, roadway, or other mining-related facility that
22 occupies a wetland filled before July 1, 1993, shall be allowed
23 to continue within the areal extent, as it existed on July 1,
24 1993, of the stockpile, roadway, or other mining-related
25 facility without the requirement of a replacement plan or
26 amendment of the permit to mine. An expansion of the areal
27 extent of the fill in the wetland requires an approved
28 replacement plan in the operating plan or annual report as
29 required in the permit to mine, according to subitem (1);

30 (3) for draining activities that were approved
31 and initiated before July 1, 1993, the draining of a wetland to
32 facilitate mining, using ditches and other drainage facilities
33 that existed on July 1, 1993, shall be allowed to continue
34 without the requirement of a replacement plan or amendment of
35 the permit to mine. Maintenance of the ditches and structures
36 shall be allowed without the requirement of a replacement plan

1 or amendment of the permit to mine, provided that as a result of
2 the maintenance, wetlands are not drained beyond the extent that
3 existed as of July 1, 1993. Otherwise, the permit to mine must
4 be amended to provide for replacement according to subitem (1).

5 C. Applicable procedures are those required for
6 permits to mine.

7 D. This part shall not apply to peat mining as
8 defined under Minnesota Statutes, section 93.461, that is
9 subject to the mine permit and reclamation requirements under
10 Minnesota Statutes, sections 93.44 to 93.51 and the rules of the
11 commissioner adopted under those sections.

12 E. Mining that is not subject to the permit and
13 reclamation requirements under Minnesota Statutes, sections
14 93.44 to 93.51, must replace drained and filled wetlands
15 according to parts 8420.0500 to 8420.0630.

16 HIGH PRIORITY REGIONS AND AREAS

17 8420.0350 HIGH PRIORITY REGIONS AND AREAS.

18 Subpart 1. **High priority regions.** Parts of the state that
19 are high priority regions for preservation, enhancement,
20 restoration, and establishment of wetlands include all of the
21 counties that have lost 50 percent or more of their
22 presettlement wetland base, which are those listed in part
23 8420.0540, subpart 5, item B.

24 In all other counties of the state, high priority regions
25 are high priority areas approved as such by the board according
26 to subpart 2.

27 Subp. 2. **High priority areas.**

28 A. Water management plans prepared by water
29 management organizations in the metropolitan area under
30 Minnesota Statutes, section 103B.231, by counties outside the
31 metropolitan area under Minnesota Statutes, section 103B.311,
32 and by watershed districts outside the metropolitan area under
33 Minnesota Statutes, sections 103D.401 and 103D.405, must
34 identify those areas that qualify as high priority areas for
35 wetland preservation, enhancement, restoration, and

1 establishment. These priority areas shall be included in the
2 next scheduled water management plan update.

3 B. Plans should give strong consideration to
4 identifying as high priority areas minor watersheds having less
5 than 50 percent of their original wetland acreages, and intact
6 wetlands, diminished wetlands, and the areas once occupied by
7 wetlands that have been diminished or eliminated and could
8 feasibly be restored taking into account the present hydrology
9 and use of the area. Plans should give strong consideration to
10 identifying as high priority areas all type 1 or 2 wetlands, and
11 other wetlands at risk of being lost by permanent conversion to
12 other uses. When individual wetlands are identified as high
13 priority for preservation and restoration, the high priority
14 area shall include the wetland and an adjacent buffer strip not
15 less than 16.5 feet wide around the perimeter of the wetland and
16 may include up to four acres of upland for each wetland acre.

17 C. In all counties, plans may identify additional
18 high priority areas where preservation, enhancement,
19 restoration, and establishment of wetlands would have high
20 public value by providing benefits for water quality, flood
21 water retention, public recreation, commercial use, and other
22 public uses. High priority areas should be delineated by minor
23 or major watershed. For the purposes of this part, "watershed"
24 means major or minor watershed or subwatershed. To identify
25 high priority areas, the local government unit shall consider at
26 least the landscape characteristics in subitems (1) to (11).

27 (1) Land use and cover types. Wetlands located
28 in watersheds having a high proportion of cultivated land,
29 developed areas, or other intensive land use are likely to have
30 high value for water quality, flood water retention, and public
31 recreation. Watersheds with high proportions of intensive land
32 use should be considered as priority preservation and
33 restoration areas.

34 (2) Wetland and watershed ratio. Wetlands
35 located in watersheds having a low proportion of wetlands
36 relative to the size of the watershed are likely to have high

1 value for water quality, flood water retention, and public
2 recreation. Watersheds with a low wetland and watershed ratio
3 should be considered as priority preservation and restoration
4 areas.

5 (3) Soil erosion rates. Wetlands located in
6 watersheds where erosion rates are high are likely to have high
7 value for water quality. Watersheds with high erosion rates
8 should be considered as priority preservation and restoration
9 areas.

10 (4) Watershed gradient. Wetlands in watersheds
11 where the difference between the highest and lowest points of
12 the watershed is great are likely to have high value for flood
13 water retention and water quality. Watersheds with a high
14 gradient should be considered as priority preservation and
15 restoration areas.

16 (5) Surface water retention. Wetlands in
17 watersheds where direct runoff is high are likely to have high
18 value for flood water retention and water quality. Watersheds
19 with high levels of direct runoff should be considered as high
20 priority preservation and restoration areas.

21 (6) Soil fertility. Wetlands in watersheds where
22 soil fertility is high are likely to have high value for
23 wildlife habitat and commercial uses. Watersheds with high soil
24 fertility should be considered as high priority preservation and
25 restoration areas.

26 (7) Geology. Wetlands in watersheds with high
27 subsurface permeability are likely to have high value for
28 groundwater recharge and water quality. Watersheds with high
29 subsurface permeability should be considered as high priority
30 preservation and restoration areas.

31 (8) Wetland complexes. Wetlands in watersheds
32 where a diversity of wetland types and sizes are or were
33 historically present are likely to have high value for public
34 recreation. Watersheds with an existing or historical high
35 diversity of wetland types should be considered as priority
36 preservation and restoration areas.

1 (9) Proximity to population centers. Wetlands in
2 watersheds that are close to population centers are likely to
3 have high value for water quality, flood water retention, public
4 recreation, and commercial uses. Watersheds near population
5 centers should be considered as high priority preservation and
6 restoration areas.

7 (10) Public ownership. Wetlands in watersheds
8 with a high proportion of land in public ownership are likely to
9 have high value for public recreation. These watersheds should
10 be considered as high priority preservation and restoration
11 areas.

12 (11) Significant wildlife use. Wetlands in
13 watersheds with current or historical records of use by
14 significant numbers or species of wildlife or fish are likely to
15 have high value for public recreation and commercial uses.
16 Watersheds with records of significant fish or wildlife use
17 should be considered as high priority preservation and
18 restoration areas.

19 D. The board will review the inclusion of high
20 priority areas in plans as part of the standard process for plan
21 review established in statute. High priority areas approved by
22 the board that are not in a high priority region listed in item
23 C become high priority regions with board approval.

24 WETLAND PRESERVATION AREAS

25 8420.0400 WETLAND PRESERVATION AREAS.

26 Subpart 1. Purpose. Wetlands located in areas that are
27 both high priority regions and high priority areas as identified
28 in part 8420.0350 are eligible for enrollment as wetland
29 preservation areas. A wetland so enrolled is exempt from
30 property tax.

31 Subp. 2. Landowner application for wetland preservation
32 area. A landowner may apply to the county for designation of a
33 wetland as a wetland preservation area on forms provided by the
34 board. The applicant must include a strip of upland 16.5 feet
35 wide around the perimeter of the wetland. The applicant may

1 include up to four acres of upland for each acre of wetland.

2 The application must be accompanied by a restrictive
3 covenant on a form provided by the board. The covenant will
4 contain the same limitations on use that are provided in
5 Minnesota Statutes, section 103F.515, subdivision 4, including a
6 covenant that the enrolled upland area will be vegetated by the
7 landowner to permanent vegetation other than noxious weeds. The
8 covenant must be signed, acknowledged, and ready for recording.

9 Subp. 3. **County review of application.** The county shall
10 accept the application if the wetland is in a high priority
11 region and high priority area, if it includes the 16.5 foot
12 strip, and is accompanied by the proper covenant.

13 The county may limit or reject additional upland proposed
14 to be included according to standards the county establishes.

15 The county may reject the application if the application
16 does not qualify, or send it back for modification and
17 resubmittal if that is appropriate. If the application
18 qualifies, the county shall approve it and mark the date of
19 approval on the application.

20 Within five days of approval of the application, the county
21 shall forward it to the county recorder for recording of the
22 restrictive covenant or memorialization of the application on
23 the certificate of title. The county shall also send a copy of
24 the approved application to the county assessor for entry in the
25 assessor's records as a wetland preservation area. The county
26 shall also send copies of the approved application to the soil
27 and water conservation district, the regional development
28 commission, the local government unit, and the board.

29 Subp. 4. **Applicable statutes.** In addition to this
30 chapter, wetland preservation areas are subject to Minnesota
31 Statutes, sections ~~103F.611~~ 103F.612 to ~~103F.616~~ 103F.616, and
32 the property tax provisions of Minnesota Statutes, section
33 272.02, subdivision 1, clause (10).

34 STANDARDS AND PROCEDURES FOR EVALUATING

35 WETLAND REPLACEMENT PLANS

1 8420.0500 PURPOSE.

2 Parts 8420.0500 to 8420.0630 specify the procedures and
3 criteria for avoiding and minimizing wetland impacts and for
4 ensuring adequate replacement of lost public values for
5 unavoidable wetland impacts.

6 8420.0505 INTERIM REPLACEMENT PLANS.

7 Replacement plans approved under the interim guidelines in
8 Minnesota Statutes, section 103G.2369, must be completed in
9 entirety by June 30, 1995. If the replacement plan is not
10 completed by June 30, 1995, replacement of the impacted wetland
11 becomes subject to the process and provisions in parts 8420.0500
12 to 8420.0630. This does not apply to phased projects approved
13 during the interim period. Phased projects may be completed
14 under the conditions and guidelines for which they were approved.

15 8420.0510 PROCEDURES.

16 Subpart 1. **Generally.** No person shall drain or fill a
17 wetland, wholly or partially, without first having a wetland
18 value replacement plan approved by the governing body of the
19 local government unit, or the lead local government unit if so
20 designated by the board, consistent with parts 8420.0120 to
21 8420.0290, and provided that the activity is not prohibited
22 under the special considerations provisions in part 8420.0540,
23 subpart 9.

24 Subp. 2. **Preapplication conference and site visit.** Before
25 preparation of a wetland value replacement plan, it is
26 recommended that the landowner meet with the local government
27 unit for a preapplication conference and site visit. The local
28 government unit is encouraged to inform the landowner of all
29 sequencing requirements and the criteria used to evaluate
30 replacement plans. A landowner may submit the information
31 required in part 8420.0520 and request a determination of
32 compliance with the sequencing requirements from the local
33 government unit before preparing a replacement plan.

34 Subp. 3. **Evaluation.** As provided for in part 8420.0240,
35 technical questions concerning the public value, location, size,

1 ~~or~~ and type of wetland shall be submitted to the technical
2 evaluation panel. The local government unit may use a technical
3 evaluation panel to predetermine public value, location, size,
4 or type of wetlands under its jurisdiction and use this
5 determination in administering the act. Wetland boundaries must
6 be determined using the methodologies in the federal Manual for
7 Identifying and Delineating Jurisdictional Wetlands (January
8 1989). Wetland type must be identified according to Cowardin,
9 et al., 1979, Classification of Wetlands and Deepwater Habitats
10 of the United States and according to United States Fish and
11 Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the
12 United States." The technical evaluation panel shall provide
13 its determinations to the local government unit for
14 consideration.

15 8420.0520 SEQUENCING.

16 Subpart 1. **Requirement.** Except for wetlands located in
17 cultivated fields that are subject to subpart 8, and calcareous
18 fens that are subject to subpart 9, the local government unit
19 may not consider or approve a wetland replacement plan unless
20 the local government unit finds that the applicant has
21 demonstrated that the activity impacting a wetland has complied
22 with all of the following principles in descending order or
23 priority:

24 A. avoids direct or indirect impacts to the wetland
25 that may destroy or diminish the wetland under the criteria in
26 subpart 3;

27 B. minimizes the impact to the wetland by limiting
28 the degree or magnitude of the wetland activity and its
29 implementation under the criteria in subpart 4;

30 C. rectifies the impact by repairing, rehabilitating,
31 or restoring the affected wetland under the criteria in subpart
32 5;

33 D. reduces or eliminates the impact to the wetland
34 over time by preservation and maintenance operations under the
35 criteria in subpart 6; and

1 E. ~~compensates-for~~ replaces unavoidable impacts to
2 the wetland by ~~replacing~~ restoring or ~~providing~~ creating
3 substitute wetland areas having equal or greater public value as
4 provided for in parts 8420.0530 to 8420.0630.

5 Subp. 2. **Application options.** An applicant may either
6 submit the information required for sequencing analysis as part
7 of the application for replacement plan approval or apply for a
8 preliminary sequencing determination from the local government
9 unit before preparing a replacement plan. ~~Each-half-of-a-split~~
10 ~~application-will-receive-the-same-notice-and-comment-procedures~~
11 ~~as-a-unitary-application.~~ The local government unit may request
12 additional information needed to make a determination. For
13 projects impacting wetland areas less than 0.1 acres the local
14 government unit may provide an on-site sequencing determination
15 without written documentation from the applicant; except for
16 projects which are located in wetlands adjacent to and within
17 1,000 feet of outstanding resource value waters as defined in
18 chapter 7050; trout streams as designated in Commissioner's
19 Order Number 2294; and trout lakes as designated in
20 Commissioner's Order Number 2230.

21 Subp. 3. **Determination of impact avoidance.**

22 A. Avoidance must be required when indicated by part
23 8420.0540, subpart 9.

24 B. Wetland dependence determination:

25 (1) Based on information provided by the
26 applicant, the local government unit shall determine if the
27 proposed project is wetland dependent. A project is wetland
28 dependent if wetland features, functions, or values are
29 essential to fulfill the basic purpose of the project. A
30 wetland present at the site of a proposed project does not make
31 that project wetland dependent.

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

35 C. Alternatives analysis:

36 (1) The applicant shall provide the local

1 government unit with documentation describing at least two
2 alternatives in addition to the proposed project, one of which
3 may be the no-build alternative, that would avoid impacts to
4 wetlands. The alternatives may include consideration of
5 alternate sites or alternative project configurations on the
6 proposed site. The alternatives must be judged by the local
7 government unit as good faith efforts, or the local government
8 unit may require the applicant to redraft them for
9 reconsideration.

10 (2) The local government unit shall determine
11 whether any feasible and prudent alternatives are available that
12 would avoid impacts to wetlands. An alternative shall be
13 considered feasible and prudent if it is capable of being done
14 from an engineering point of view, is in accordance with
15 accepted engineering standards and practices, is consistent with
16 reasonable requirements of the public health, safety, and
17 welfare, is an environmentally preferable alternative based on a
18 review of social, economic, and environmental impacts, and would
19 create no truly unusual problems. The local government unit
20 shall consider the following in evaluating alternatives as
21 applicable:

22 (a) whether the basic project purpose can be
23 reasonably accomplished using one or more other sites in the
24 same general area that would avoid wetland impacts. An
25 alternate site may not be excluded from consideration only
26 because it includes or requires an area not owned by the
27 applicant that could reasonably be obtained, used, expanded, or
28 managed to fulfill the basic purpose of the proposed project;

29 (b) the general suitability of alternate
30 sites considered by the applicant;

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

34 (d) efforts by the applicant to accommodate
35 or remove constraints on alternatives imposed by zoning
36 standards or infrastructure, including requests for conditional

1 use permits, variances, or planned unit developments; and

2 (e) the physical, economic, and demographic
3 requirements of the project. Economic considerations alone do
4 not make an alternative not feasible and prudent.

5 (3) If the local government unit determines that
6 a feasible and prudent alternative exists that would avoid
7 impacts to wetlands, it shall deny the replacement plan. If no
8 feasible and prudent alternative is available that would avoid
9 impacts to wetlands, the local government unit shall evaluate
10 the replacement plan for compliance with subparts 4 to 6.

11 Subp. 4. Determination of impact minimization.

12 A. The applicant shall demonstrate to the local
13 government unit's satisfaction that the activity will minimize
14 impacts to wetlands. In reviewing the sufficiency of the
15 applicant's efforts to minimize wetland impacts, the local
16 government unit must consider:

17 (1) the spatial requirements of the project;

18 (2) the location of existing structural or
19 natural features that may dictate the placement or configuration
20 of the project;

21 (3) the purpose of the project and how the
22 purpose relates to placement, configuration, or density;

23 (4) the sensitivity of the site design to
24 the natural features of the site, including topography,
25 hydrology, and existing vegetation;

26 (5) the value, function, and spatial
27 distribution of the wetlands on the site;

28 (6) individual and cumulative impacts; and

29 (7) an applicant's efforts to:

30 (a) modify the size, scope,
31 configuration, or density of the project;

32 (b) remove or accommodate site
33 constraints including zoning, infrastructure, access, or natural
34 features; and

35 (c) otherwise minimize impacts.

36 B. If the local government unit finds that an

1 applicant has not complied with the requirements to minimize
2 wetland impacts, the local government unit shall list, in
3 writing, its objections to the project. If, within 30 days, the
4 applicant does not withdraw the project proposal or indicate
5 intent to submit an amended project proposal satisfying the
6 local government unit's objections, the statement of objections
7 shall constitute a denial.

8 Subp. 5. **Determination of impact rectification.** Temporary
9 impacts to a wetland must be rectified by repairing,
10 rehabilitating, or restoring the affected wetland.

11 A. Activities may qualify for a no-loss determination
12 in part 8420.0220 by meeting all of the following conditions:

13 (1) the physical characteristics of the affected
14 wetland, including ground elevations, contours, inlet
15 dimensions, outlet dimensions, substrate, and hydrologic regime,
16 are restored to preproject conditions sufficient to ensure that
17 all preproject functions and values are restored;

18 (2) the activity is completed and the physical
19 characteristics of the wetland are restored within six months of
20 the start of the activity; and

21 (3) the party responsible for the activity
22 provides a performance bond to the local government unit for an
23 amount sufficient to cover the estimated cost to restore the
24 wetland to preproject conditions. The local government unit
25 shall return the performance bond to the responsible party upon
26 a determination by the local government unit that the conditions
27 in this item and item B have been met.

28 B. An applicant shall be granted a no-loss
29 determination under the criteria in item A once in a ten-year
30 period for a particular site within a wetland, except that
31 repairs to the original project shall be allowed under the
32 no-loss determination, if the local government unit determines
33 the request to be necessary and reasonable.

34 C. Wetland impacts that do not qualify for a no-loss
35 determination according to the criteria in item A are subject to
36 replacement under the criteria in parts 8420.0530 to 8420.0630.

1 Subp. 6. Determination of reduction or elimination of
 2 impacts over time. After an activity is completed, further
 3 wetland impacts from the draining or filling must be reduced or
 4 eliminated by maintaining, operating, and managing the project
 5 in a manner that preserves and maintains remaining wetland
 6 functions and values. The local government unit must require
 7 applicants to implement best management practices to protect
 8 wetland functions and values.

9 Subp. 7. Unavoidable impacts. Unavoidable wetland impacts
 10 that remain after efforts to minimize, rectify, or reduce or
 11 eliminate them must be ~~compensated-for~~ replaced according to
 12 parts 8420.0530 to 8420.0630.

13 Subp. 8. Wetlands on cultivated fields. If the wetland is
 14 located on a cultivated field, replacement must be accomplished
 15 through restoration without regard to the priority order in
 16 subpart 17-~~provided-that-a-deed-restriction-in-favor-of-the~~
 17 ~~local-government-unit-is-made-part-of-the-approved-wetland~~
 18 ~~replacement-plan-and-is-placed-on-the-altered-wetland~~
 19 prohibiting. A wetland drained or filled under this provision
 20 must not be converted to nonagricultural use land for at least
 21 ten years. The landowner must execute and record a notice of
 22 this requirement in the office of the county recorder for the
 23 county in which the property is located.

24 Subp. 9. Calcareous fens. Calcareous fens, as identified
 25 by the commissioner, may not be filled, drained, or otherwise
 26 degraded, wholly or partially, by any ~~activity~~ action, unless
 27 the commissioner, under an approved management plan, decides
 28 some alteration is necessary, as provided in part 8420.1010.

29 8420.0530 REPLACEMENT PLAN COMPONENTS.

30 On an application form provided by the local government
 31 unit, and with needed attachments supplied by the applicant, the
 32 following documentation must be provided, except that for
 33 replacement plans utilizing the wetland bank in parts 8420.0700
 34 to 8420.0760, items B and D do not apply; instead the applicant
 35 shall submit the credit transfer form prescribed in part

1 8420.0740, subpart 2, item E:

2 A. organizational information, including the
3 following:

4 (1) the post office address of the applicant;

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

8 (3) managing agents, subsidiaries, or consultants
9 that are or may be involved with the wetland draining or filling
10 project;

11 B. either an affidavit confirming that the wetland
12 values will be replaced before or concurrent with the actual
13 draining or filling of a wetland or an irrevocable bank letter
14 of credit or other security acceptable to the local government
15 unit to guarantee the successful completion of the wetland value
16 replacement;

17 C. for the impacted wetland:

18 (1) a recent aerial photograph or accurate map of
19 the impacted wetland area;

20 (2) the location of the wetland, including the
21 county, ~~department~~ watershed name or number, legal-description,
22 and ~~Universal-Transverse-Mercator~~ public land survey coordinate
23 of approximate wetland center;

24 (3) the size of the wetland, in acres or square
25 feet, ~~as-measured-from-aerial-photography-or-legal-survey~~;

26 (4) the type of wetland using United States Fish
27 and Wildlife Service Circular No. 39 (1971 edition) and National
28 Wetland Inventory mapping conventions (Cowardin et al., 1979);

29 (5) a list of the dominant vegetation in the
30 impacted wetland area, including ~~genera~~ common names of the
31 vegetation exceeding 20 percent coverage and an estimate of
32 coverage, for example, 50 percent ~~Salix~~ willow, 20 percent ~~Typha~~
33 cattails, and 30 percent ~~Carex~~ sedge;

34 (6) a soils map of the site showing soil type and
35 substrate, where available;

36 (7) the size of the watershed that drains surface

1 water into the wetland as determined from a United States
 2 Government Survey topographical map or other suitable
 3 topographical survey;

4 (8) the locations of any surface inlets or
 5 outlets, natural or otherwise, draining into or out of the
 6 wetlands, and if the wetland is within the floodplain of a
 7 stream, river, or other watercourse, the distance and direction
 8 to the watercourse;

9 (9) a map ~~or~~, photograph, or written description
 10 of the land use of the immediate watershed within one mile of
 11 the impacted wetland. ~~Land-use-categories-to-be-used-include:~~
 12 ~~residential,-industrial,-commercial,-tillable-cropland,~~
 13 ~~permanent-pasture,-livestock-facilities,-for-example,-feedlots,~~
 14 ~~idle-grassland,-timber,-wetlands,-and-public-natural-resource~~
 15 ~~lands.~~ The surrounding land use information shall also indicate
 16 the presence and location, if any, of wetland preservation
 17 regions and areas, wetland development avoidance regions and
 18 areas, and wetland deficient regions and areas as identified in
 19 the comprehensive water plan;

20 (10) the nature of the proposed project, its
 21 areal extent, and the impact on the wetland must be shown in
 22 sufficient detail to allow the local government unit to
 23 determine the amount and types of wetland to be impacted and to
 24 demonstrate compliance with the replacement sequencing criteria
 25 in part 8420.0520, if applicable;

26 (11) evidence of ownership or rights to the
 27 affected areas, including a legal description. When two or more
 28 landowners are involved, including both the impact site and the
 29 proposed replacement site, a contract or other evidence of
 30 agreement signed by all landowners and notarized must be
 31 included with the replacement plan. The contract or agreement
 32 must contain an acknowledgment of the covenant provisions in
 33 item D, subitem ~~(7)~~ (6), by landowners on which a replacement
 34 wetland is proposed and the location and acreage of replacement
 35 wetlands. The contract becomes binding upon final approval of
 36 the replacement plan;

1 (12) a list of all other local, state, and
2 federal permits and approvals required for the activity; and

3 (13) other information considered necessary by
4 the local government unit for evaluation of the activity;

5 D. for the replacement wetland, item C, subitems (1)
6 to (9) and (11) to (13), and:

7 (1) an explanation of the size and type of
8 wetland that will result from successful completion of the
9 replacement plan;

10 (2) scale drawings showing plan and profile views
11 of the replacement wetland and fixed photo-reference points for
12 monitoring purposes. Photo-reference points should include
13 views of any control structures and enough additional points to
14 adequately depict the entire project;

15 (3) how the replacement wetland shall be
16 constructed, for example, excavation or restoration by blocking
17 an existing tile; the type, size, and specifications of outlet
18 structures; elevations, relative to Mean Sea Level or
19 established bench mark, of key features, for example, sill,
20 emergency overflow, and structure height; and best management
21 practices that will be implemented to prevent erosion or site
22 degradation;

23 (4) for created wetlands only, additional soils
24 information, ~~such as borings of the site,~~ sufficient to
25 determine the capability of the site to produce and maintain
26 wetland characteristics;

27 (5) a timetable that clearly states how and when
28 implementation of the replacement plan shall proceed, and when
29 construction of the replacement wetland shall be finalized;

30 ~~(6) the approximate distance and direction of the~~
31 ~~replacement wetland location in relation to the impacted~~
32 ~~wetland;~~

33 ~~(7)~~ a notice in a form provided by the board
34 attached to and recorded with the deed for lands containing a
35 replacement wetland, specifying the following:

36 (a) the location of the replacement wetland;

1 (b) that the wetland is subject to the act;

2 (c) that the fee title owner is responsible
3 for the costs of repairs or reconstruction, if necessary, or for
4 replacement costs;

5 (d) that reasonable access to the
6 replacement wetland shall be granted to the proper authorities
7 for inspection, monitoring, and enforcement purposes;

8 (e) that costs of title review and document
9 recording is the responsibility of the fee title owner; and

10 (f) that the local government unit or board
11 can require necessary repairs or reconstruction work to return
12 the wetland to the specifications of the approved replacement
13 plan and require reimbursement of reasonable costs from the
14 wetland owner, or can require replacement of the wetland
15 according to the act;

16 ~~(8)~~ (7) a statement that the replacement wetland
17 was not previously restored or created under a prior approved
18 replacement plan;

19 ~~(9)~~ (8) a statement that the replacement wetland
20 was not drained or filled under an exemption during the previous
21 ten years;

22 ~~(10)~~ (9) a statement that the replacement wetland
23 was not restored with financial assistance from public
24 conservation programs;

25 ~~(11)~~ (10) a statement that the replacement
26 wetland was not restored using private funds other than those of
27 the landowner unless the funds are paid back with interest to
28 the individual or organization that funded the restoration and
29 the individual or organization notifies the local government
30 unit in writing that the restored wetland may be considered for
31 replacement;

32 ~~(12)~~ (11) a plan for monitoring the success of
33 the replacement plan in meeting the project goal in subitem (1),
34 and as specified in parts 8420.0610 and 8420.0620; and

35 ~~(13)~~ (12) other information considered necessary
36 for evaluation of the project by the local government unit.

1 E. The applicant must provide information known to
2 the applicant or readily available concerning the special
3 considerations criteria in part 8420.0540, subpart 9.

4 8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

5 Subpart 1. **Sequencing.** Before consideration or approval
6 of a replacement plan, the local government unit must ensure
7 that the applicant has exhausted all possibilities to avoid and
8 minimize adverse wetland impacts according to sequencing in part
9 8420.0520.

10 The applicant must demonstrate to the local government unit
11 that the replacement plan complies with this part and part
12 8420.0550.

13 Subp. 2. **Type of replacement.** The order of preference for
14 the method of replacement, from most preferred to least
15 preferred, is project-specific restoration, project-specific
16 creation, then wetland banking. Modification or conversion of
17 nondegraded wetlands from one wetland type to another, for
18 example by impoundment of additional water, does not constitute
19 adequate replacement. Wetlands drained or filled under an
20 exemption may not be restored for replacement credit for ten
21 years after draining or filling.

22 ~~A-wetland-area-converted-to-another-type-by-impoundment-of~~
23 ~~additional-water-on-nondegraded-wetlands-does-not-constitute~~
24 ~~replacement.~~

25 Subp. 3. **Timing of replacement.** Replacement of wetland
26 values must be completed before or concurrent with the actual
27 draining or filling of a wetland, unless an irrevocable bank
28 letter of credit or other security acceptable to the responsible
29 government unit ~~must-be-given~~ is submitted to the responsible
30 government unit ~~until~~ to guarantee successful completion of the
31 replacement. All wetlands to be restored or created for
32 replacement must be designated for replacement before
33 restoration or creation. Submission to the local government
34 unit of the information required in part 8420.0530 and
35 subsequent approval shall be considered evidence of designation

1 for replacement, provided the information is submitted before
2 the actual restoration or creation.

3 Subp. 4. **Location of replacement wetlands.** Replacement
4 wetlands shall be located within the same watershed or county as
5 the impacted wetlands, except that counties or watersheds in
6 which 80 percent or more of the presettlement acreage is intact
7 may accomplish replacement in counties or watersheds in which 50
8 percent or more of the presettlement wetland acreage has been
9 filled, drained, or otherwise degraded. Replacement wetlands
10 should be located as close to the impacted wetland as possible,
11 preferably in the same watershed.

12 Subp. 5. **Statewide replacement for public transportation**
13 **projects.** Wetlands impacted by public transportation projects
14 may be replaced statewide, provided they are approved by the
15 commissioner under an established wetland banking system, or
16 under the rules in parts 8420.0700 to 8420.0760.

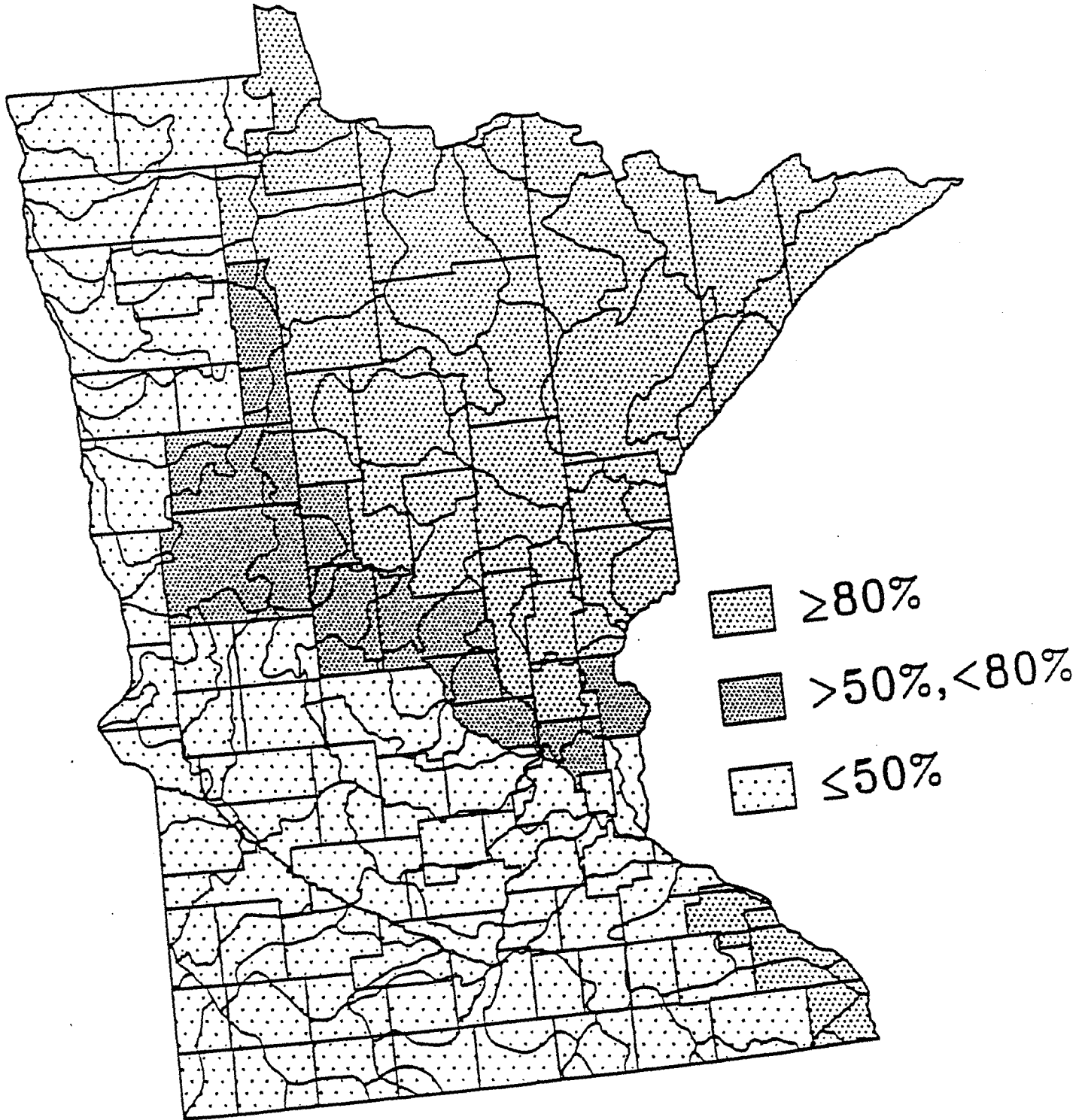
17 A. For purposes of this part, the following counties
18 have 80 percent or more of their presettlement wetland acreage
19 intact: Aitkin; Beltrami; Carlton; Cass; Cook; Crow Wing;
20 Houston; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake;
21 Lake of the Woods; Mille Lacs; Pine; St. Louis; Wabasha; and
22 Winona.

23 B. For purposes of this part, the following counties
24 have 50 percent or less of their presettlement acreage intact:
25 Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay;
26 Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore;
27 Freeborn; Goodhue; Grant; Hennepin; Jackson; Kandiyohi; Kittson;
28 Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall;
29 Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman;
30 Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake;
31 Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns;
32 Steele; Stevens; Swift; Traverse; Waseca; Washington; Watonwan;
33 Wilkin; Wright; and Yellow Medicine.

06/09/93

REMAINING ACREAGE OF PRESETTLEMENT WETLANDS

- 1
- 2 Figure 1. Distribution of remaining acreage of presettlement
- 3 wetlands by county with watersheds super-imposed. Adapted from:
- 4 Anderson and Craig, 1984.



1 Subp. 6. **Size of replacement wetlands.** Replacement
2 wetlands must be of a size sufficient to ensure that they
3 provide equal or greater public value than the wetland that was
4 drained or filled. Except for counties or watersheds in which
5 80 percent or more of the presettlement wetland acreage exists,
6 for a wetland located on nonagricultural land, the minimum size
7 of the replacement wetland must be in the ratio of two acres of
8 replaced wetland for each acre of drained or filled wetland.
9 For a wetland located on agricultural land, or in counties or
10 watersheds in which 80 percent or more of the presettlement
11 wetland acreage exists, the minimum size of the replacement
12 wetland must be in the ratio of one acre of replaced wetland for
13 each acre of drained or filled wetland. The actual replacement
14 ratios required for a replacement wetland may be more than the
15 minimum, subject to the evaluation of wetland functions and
16 values in subpart 10.

17 Except for counties or watersheds in which 80 percent or
18 more of the presettlement wetland acreage exists, future owners
19 may make no use of the wetland after it is altered, other than
20 as agricultural land for a period of ten years unless future
21 replacement to achieve a 2:1 ratio occurs. The landowner shall
22 record a notice of this restriction in the office of the county
23 recorder in which the project is located.

24 Subp. 7. **Carbon balance.** When it is necessary to replace
25 a drained or filled peatland, the replacement wetland must be
26 revegetated with planted or naturally invading vegetation
27 established within three growing seasons.

28 Subp. 8. **Ecological consistency.** Restoration and
29 replacement of wetlands must be accomplished according to the
30 ecology of the landscape area affected. A replacement plan that
31 would result in wetlands or wetland characteristics that do not
32 naturally occur in the landscape area in which the replacement
33 will occur will not be approved.

34 Subp. 9. **Special considerations.** The factors in items A
35 to I, when identified as being applicable to an impact site or a
36 replacement site, must be considered by the local government

1 unit in the review of replacement plans.

2 A. Federal or state-listed endangered species. A
3 replacement plan for activities that involve sites where species
4 listed in parts 6134.0200 to 6134.0400 are known to be present
5 will not be approved if ~~the local government unit determines it~~
6 is determined that the proposed activities will constitute a
7 taking of those listed species under Minnesota Statutes, section
8 84.0895. Limited information on the presence of listed species
9 at a particular site is available from the department's natural
10 heritage program. Activities that involve taking listed species
11 are subject to Minnesota Statutes, section 84.0895.

12 B. Rare natural communities. A replacement plan for
13 activities that involve the modification of a rare natural
14 community as determined by the department's natural heritage
15 program will not be approved if the local government unit
16 determines that the proposed activities will permanently
17 adversely affect the natural community.

18 C. Special fish and wildlife resources. A
19 replacement plan for activities that would have a significant
20 adverse impact that cannot be mitigated on a special or locally
21 significant fish and wildlife resource will not be approved.
22 These activities include, but are not limited to:

- 23 (1) fish passage and spawning areas;
24 (2) colonial waterbird nesting colonies;
25 (3) migratory waterfowl concentration areas;
26 (4) deer wintering areas; and/or
27 (5) wildlife travel corridors.

28 Activities involving streams must not block fish passage
29 unless approved by the department.

30 D. Archaeological or historic sites. A replacement
31 plan for activities that involve the modification of known
32 archaeological or historical sites on or eligible for the
33 National Register of Historic Places, as designated by the state
34 historic preservation officer, will not be approved if the local
35 government unit determines that the proposed activities will
36 have a significant adverse impact on the archaeological or

1 historical value of the site.

2 E. Groundwater sensitivity. A replacement plan for
3 activities will not be approved if the local government unit
4 determines the activities would have a significant adverse
5 impact on groundwater quality. The publication "Criteria and
6 Guidelines for Assessing Geologic Sensitivity of Ground Water
7 Resources in Minnesota" (MDNR, 1991) may be used as a guide in
8 determining potential impacts.

9 F. Sensitive surface waters. A replacement plan will
10 not be approved if the local government unit determines the
11 activities will have a significant adverse impact on the water
12 quality of outstanding resource value waters listed in part
13 7050.0180 or on trout waters designated by the commissioner.

14 G. Education or research use. Wetlands known to be
15 used for educational or research purposes must be maintained or
16 adequately replaced.

17 H. Waste disposal sites. The local government unit
18 must evaluate the type and amount of waste material found at the
19 site. Activities involving known or potential hazardous wastes
20 or contaminants must be conducted according to applicable
21 federal and state standards.

22 I. Consistency with other plans. The local
23 government unit must consider the extent to which proposed
24 activities are consistent with other plans, such as watershed
25 management plans, land use plans, zoning, and master plans.

26 Subp. 10. Evaluation of wetland functions and values.

27 A. Evaluation options. Replacement wetlands must
28 replace the functions and values that are lost from a wetland
29 that is drained or filled. A replacement wetland should replace
30 the same combination of functions and values provided by the
31 impacted wetland. The wetland type index system in items B-to D
32 and E uses relative values of wetland functions compared across
33 wetland types to evaluate the adequacy of wetland replacement.
34 The local government unit may allow the evaluation of wetlands
35 by measuring and comparing public values specified in Minnesota
36 Statutes, section 103B.3355, with the current version of the

1 Minnesota wetland evaluation methodology or another
 2 scientifically accepted methodology in item E G.

3 B.--Wetland-types;-abbreviated-Cowardin
 4 classification;--For-purposes-of-this-part,-an-abbreviated
 5 version-of-the-wetland-classification-system-developed-by-the
 6 United-States-Fish-and-Wildlife-Service-(Cowardin-et-al;-1979)
 7 and-used-to-indicate-wetland-types-on-the-National-Wetland
 8 Inventory-maps-is-described-in-subitems-(1)-to-(18);--The-United
 9 States-Fish-and-Wildlife-Service-Circular-No.-39-(1971-edition)
 10 classification-is-indicated-in-parentheses:

11 (1)-"PFA"-includes-all-PFO-wetlands-in-the-A-and
 12 J-water-regimes-(type-1):

13 (2)-"PFB"-includes-all-PFO-wetlands-in-the-B
 14 water-regime-(type-7):

15 (3)-"PFC"-includes-all-PFO-wetlands-in-the-C-and
 16 wetter-water-regimes-(type-7):

17 (4)-"PSA"-includes-all-PSS-wetlands-in-the-A-and
 18 J-water-regimes-(type-6):

19 (5)-"PSB"-includes-all-PSS-wetlands-in-the-B
 20 water-regime,-except-type-PSS3B-wetlands-(type-6):

21 (6)-"PSC"-includes-all-PSS-wetlands-in-the-C-and
 22 wetter-water-regimes-(type-6):

23 (7)-"PSX"-includes-all-PSS3b-and-PMB-wetlands
 24 (type-8):

25 (8)-"PEA"-includes-all-PEM-wetlands-in-the-A-and
 26 J-water-regimes-(type-1):

27 (9)-"PEB"-includes-all-PEM-wetlands-in-the-B
 28 water-regime-(type-2):

29 (10)-"PEC"-includes-all-PEM-wetlands-in-the-C
 30 water-regime-(type-3):

31 (11)-"PEF"-includes-all-PEM-wetlands-in-the-F-and
 32 wetter-water-regimes-(type-4):

33 (12)-"PA"-includes-all-PAB-wetlands-(type-5):

34 (13)-"PU"-includes-all-PUB-wetlands-(type-5):

35 (14)-"B1"-includes-all-B1-wetlands-(lacustrine
 36 bimnetic)-(type-5):

1 ~~{15}-"B2"-includes-all-B2-wetlands-(lacustrine~~
2 ~~littoral)-(type-5)-~~

3 ~~{16}-"R2"-includes-all-R2-wetlands-(Riverine--~~
4 ~~lower-perennial)-(no-equivalent)-~~

5 ~~{17}-"R3"-includes-all-R3-wetlands-(Riverine--~~
6 ~~upper-perennial)-(no-equivalent)-~~

7 ~~{18}-"R4"-includes-all-R4-wetlands-(Riverine--~~
8 ~~intermittent)-(no-equivalent)-~~

9 B. Wetland types: wetlands classification

10 equivalency chart. For purposes of this part, the following
11 table serves as a key for using Table 2 (part 8420.0540, subpart
12 10, item D, subitem (1)) and Table 4 (part 8420.0550, subpart 3)
13 and as a wetland classification equivalency chart for the
14 wetland classification developed by the United States Fish and
15 Wildlife Service (Cowardin et al. 1979), and the approximate
16 wetland type from the United States Fish and Wildlife Service
17 Circular No. 39 (1971 edition).

18 Table 1. Wetland Classification Equivalency Chart.

19 Cowardin System	Table 2 and 4 Row	Approximate
20 Class or Subsystem	and Column Headings	Circular 39 Type
21 and Water Regime		
22 PEMA	PEA	1
23 PEMB	PEB	2
24 PEMC	PEC	3
25 PEMD	PEC	3
26 PEME	PEC	3
27 PEMF	PEF	4
28 PEMG	PEF	4
29 PEMH	PEF	4
30 PEMJ	PEA	1
31 PEMK	PEF	4
32 PEMW	PEA	1
33 PEMY	PEB	2
34 PEMZ	PEF	4
35 PEMU	PEF	4
36		
37 PSSA	PSA	6
38 PSSB (except PSS3B)	PSB	6
39 PSS3B	PSX	8
40 PSSC	PSC	6
41 PSSD	PSC	6
42 PSSE	PSC	6
43 PSSF	PSC	6
44 PSSG	PSC	6
45 PSSH	PSC	6
46 PSSJ	PSA	6
47 PSSK	PSC	6
48 PSSW	PSA	6
49 PSSY	PSB	6
50 PSSZ	PSC	6
51 PSSU	PSC	6
52		
53 PFOA	PFA	1

1	<u>PFOB</u>	<u>PFB</u>	<u>7</u>
2	<u>PFOC</u>	<u>PFC</u>	<u>7</u>
3	<u>PFOD</u>	<u>PFC</u>	<u>7</u>
4	<u>PFOE</u>	<u>PFC</u>	<u>7</u>
5	<u>PFOF</u>	<u>PFC</u>	<u>7</u>
6	<u>PFOG</u>	<u>PFC</u>	<u>7</u>
7	<u>PFOH</u>	<u>PFC</u>	<u>7</u>
8	<u>PFOJ</u>	<u>PFA</u>	<u>1</u>
9	<u>PFOK</u>	<u>PFC</u>	<u>7</u>
10	<u>PFOW</u>	<u>PFA</u>	<u>1</u>
11	<u>PFOY</u>	<u>PFB</u>	<u>7</u>
12	<u>PFOZ</u>	<u>PFC</u>	<u>7</u>
13	<u>PFOU</u>	<u>PFC</u>	<u>7</u>
14			
15	<u>PML (all)</u>	<u>PSX</u>	<u>8</u>
16			
17	<u>PAB (all)</u>	<u>PA</u>	<u>5</u>
18			
19	<u>PUB (all)</u>	<u>PU</u>	<u>5</u>
20			
21	<u>PRB (all)</u>	<u>PU</u>	<u>5</u>
22			
23	<u>POW (all)</u>	<u>PU</u>	<u>5</u>
24			
25	<u>PUS (all)</u>	<u>PU</u>	<u>5</u>
26			
27	<u>L1 (all)</u>	<u>L1</u>	<u>5*</u>
28	<u>L2 (all)</u>	<u>L2</u>	<u>5</u>
29			
30	<u>R2 (all)</u>	<u>R2</u>	<u>**</u>
31	<u>R3 (all)</u>	<u>R3</u>	<u>**</u>
32	<u>R4 (all)</u>	<u>R4</u>	<u>**</u>
33			

34 * Circular No. 39 does not classify deep water as a wetland
 35 type, but for purposes of this table, these areas can be
 36 approximated as a type 5.

37 ** No equivalent. Circular No. 39 does not address riverine
 38 wetlands.

39 NOTE: In the case of wetland identified using the Cowardin
 40 system with both numerator and denominator wetland types, the
 41 numerator type is considered the dominant wetland type, with the
 42 exception that the denominator wetland type is to be used when
 43 the numerator wetland type vegetation is dead.

44 Table 4, in item-D7-subitem-(1) part 8420.0550, provides
 45 technical specifications for constructing wetland types. In
 46 evaluating a wetland replacement plan, the local government unit
 47 must determine whether the wetland type stated as the
 48 replacement plan goal will result from the replacement plan
 49 specifications. If a wetland type other than the replacement
 50 plan goal is likely to result, the local government unit must
 51 evaluate the plan based on this determination.

52 The local government unit may consider allowing constructed

1 storm water detention basins for replacement credit if the basin
2 conforms to the following specifications:

3 (a) the basin design uses a two-cell system
4 in which the upstream cell has a 24-hour retention time for a
5 two-year storm event;

6 (b) the downstream cell is designed for a
7 maximum 12-inch ~~bounce~~ rise in water level for a ten-year storm
8 event;

9 (c) the standards in part 8420.0550 are
10 followed; and

11 (d) the design goal is a PEM palustrine
12 emergent wetland that meets all statutory definitions of a
13 wetland, for example, soils, hydrology, and vegetation.

14 Only the downstream cell can be counted for wetland credit,
15 and the replacement plan must include a plan and schedule for
16 maintenance of the storm water basin system. Storm water basins
17 which allowed for replacement are not eligible for the exemption
18 in part 8420.0120, subpart 10, and are subject to parts
19 8420.0500 to 8420.0630.

20 Stormwater management basins constructed for the primary
21 purpose of controlling or treating stormwater runoff from
22 impervious surfaces or developed areas, not conforming to the
23 specifications in units (a) to (d), are not considered
24 wetlands. These are therefore exempt from replacement plan
25 requirements when constructed in nonwetlands, and also cannot be
26 considered for credit as part of a replacement plan, regardless
27 of their location.

28 C. Replacement ratios for in-kind replacement. When
29 wetland functions lost as a result of drainage or filling are
30 replaced by restoring a wetland of the same type and in the same
31 watershed and with the same inlet and outlet characteristics as
32 described in item D, subitem (3), and related definitions, the
33 replacement shall be considered to be in-kind and the minimal
34 replacement ratio shall be used to determine the necessary size
35 of the replacement wetland. For impacted wetlands on
36 agricultural land, or in counties or watersheds in which 80

1 percent or more of the presettlement wetland acreage exists, the
2 ~~minimal~~ minimum replacement ratio is 1:1, requiring an equal
3 area be replaced for the area impacted. Except for counties or
4 watersheds in which 80 percent or more of the presettlement
5 wetland acreage exists, for impacted wetlands on nonagricultural
6 land, the ~~minimal~~ minimum replacement ratio is 2:1, requiring
7 two times the impacted area be replaced.

8 D. Out-of-kind replacement ratios. If the wetland
9 functions lost as a result of drainage or filling are to be
10 replaced by creating a wetland or restoring a wetland of a
11 different type than the impacted wetland, or if the replacement
12 wetland is in a watershed other than the impacted wetland or had
13 different inlet and outlet characteristics than the impacted
14 wetland, the replacement shall be considered to be out-of-kind
15 and the local government unit shall use the replacement ratios
16 in this subpart to determine the amount of replacement wetland
17 needed to replace the lost wetland values.

18 (1) Wetland type ratio. Differences in wetland
19 functions and values among wetland types are to be evaluated and
20 replaced using the wetland type ratio table in this part, to be
21 applied as specified in subitem (5). The wetland type ratio
22 table incorporates an evaluation of public values as specified
23 in Minnesota Statutes, section 103B.3355, for the purposes of
24 comparison among wetland types.

25 If a wetland to be drained or filled exhibits more than one
26 wetland type as determined by the technical evaluation panel,
27 and more than one wetland type is proposed to be drained or
28 filled, the local government unit shall use the following
29 procedure to determine needed replacement. The acreage of each
30 wetland type to be converted to nonwetland shall be determined.
31 The wetland type ratio table shall then be used to determine the
32 amount of replacement wetland for each wetland type. The sum of
33 the replacement for each wetland type shall be the resultant
34 acreage requirement for the wetland type ratio.

1 Table 2. Wetland type ratio values for use in determining
 2 wetland replacement ratios for the act out-of-kind replacement.

IMPACTED WETLAND	REPLACEMENT WETLAND																		
	PFA	PFB	PFC	PSA	PSB	PSC	PSX	PEA	PEB	PEC	PEF	PA	PU	L1	L2	R2	R3	R4	
PFA	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PFB	1.5	1.0	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PFC	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSA	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSB	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSC	1.5	1.5	1.0	1.0	1.0	1.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PSX	1.0	1.5	1.0	2.0	1.0	2.0	1.0	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PEA	1.5	1.5	1.0	2.0	1.0	2.0	1.5	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEB	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEC	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEF	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PA	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
PU	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
L1	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
L2	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.0	2.0	1.0	2.0	
R2	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.5	
R3	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
R4	1.5	1.5	1.5	3.0	3.0	3.0	2.0	2.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.0	

21 ~~*Abbreviated-Cowardin-et-al:-wetland-classification-(See text of~~
 22 ~~subpart 10), item B, for wetland classification equivalency.~~

23 NOTE: Wetland types L1, L2, and R2 are generally not subject to
 24 this chapter and cannot be used for wetland replacement, but are
 25 included for ~~illustrative~~ possible future coordination purposes.

26 (2) Hydrologic unit ratio.

27 (a) Except as noted in unit (b), when a
 28 replacement wetland is located in a different hydrologic unit
 29 than the impacted wetland, as indicated by the United States
 30 Geological Survey Hydrologic Unit Map for Minnesota (Figure 2),
 31 the following ratios must be applied, as specified in subitem

32 (5):

33	Location of sites	Replacement ratio
34	Within same watershed	0.0
35	Different watershed	0.1
36	Different accounting unit	0.3
37	Different subregion	0.5
38	Different region	1.0

1 (b) The hydrologic unit ratio does not apply
 2 when replacement for impacts within counties or watersheds
 3 having 80 percent or more of their presettlement wetland acreage
 4 intact is accomplished in counties or watersheds in which 50
 5 percent or more of the presettlement acreage has been drained or
 6 filled.

7 (3) Inlet and outlet characteristics ratio. If
 8 the inlet and outlet characteristics of a replacement wetland
 9 differ from those of the impacted wetland, the following ratios
 10 shall be applied, as specified in subitem (5).

11 The inlet and outlet characteristics ratio does not apply
 12 when replacement for impacts within counties or watersheds
 13 having 80 percent or more of their presettlement wetland acreage
 14 intact is accomplished in counties or watersheds in which 50
 15 percent or more of the presettlement acreage has been drained or
 16 filled.

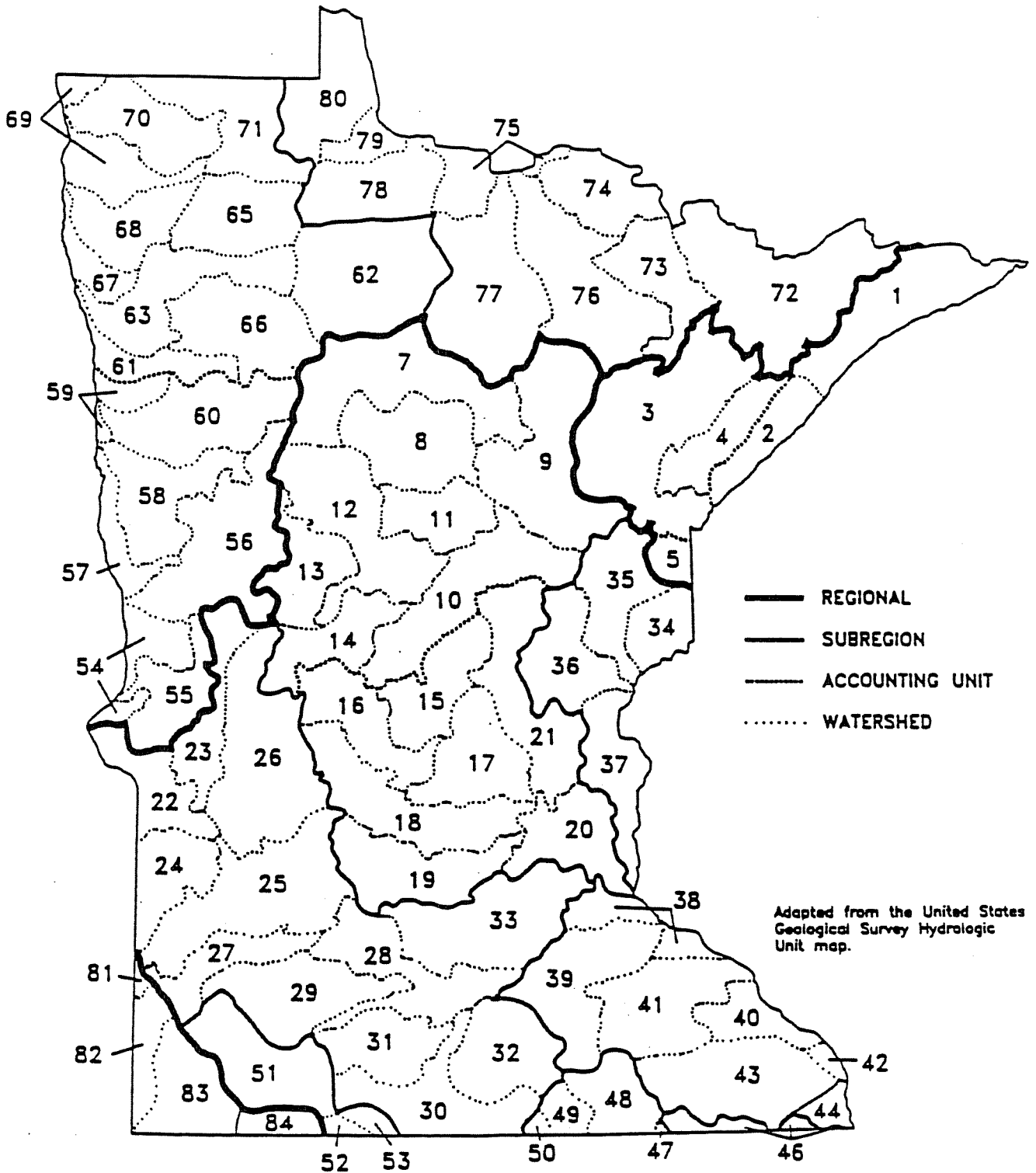
17 Table 2- 3. Inlet and Outlet Characteristics.

18 Impact 19 Wetland	20 Replacement 21 Wetland 22 Riverine	23 Flow- 24 Through	25 Tributary	26 Floodplain	Isolated
Riverine	0.0	0.2	0.4	0.6	1.0
Flow- Through	0.2	0.0	0.4	0.6	0.8
Tributary	0.4	0.2	0.0	0.2	0.4
Floodplain	0.6	0.6	0.2	0.0	0.2
Isolated	1.0	0.8	0.4	0.2	0.0

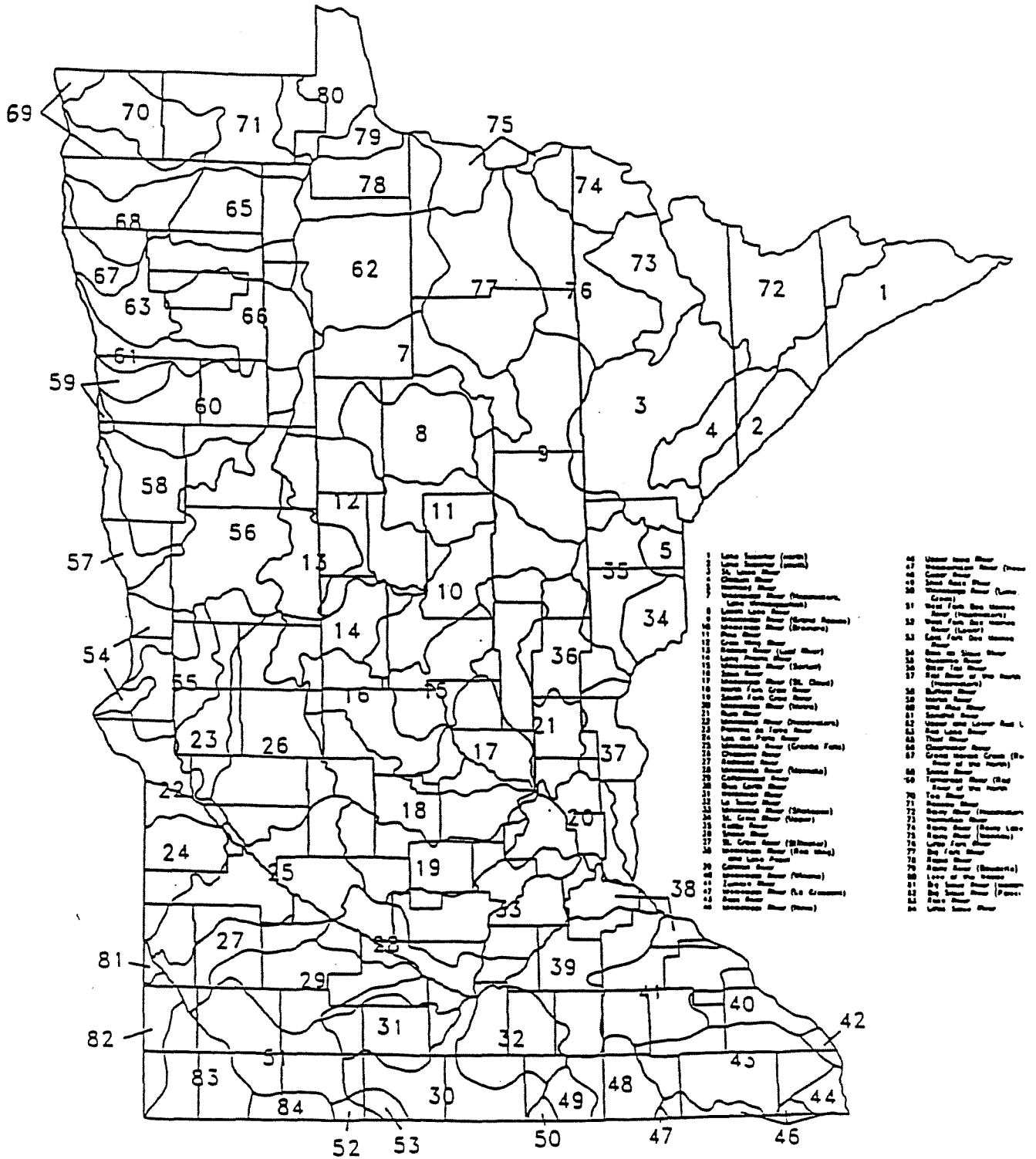
1

HYDROLOGIC UNITS

2 Figure 2.



1 STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979
 2 (81 MAJOR WATERSHED UNITS)
 3 Figure 3.



1 (4) Local public value ratio. A local government
 2 unit may by ordinance establish additional local public value
 3 ratios to address wetland conservation or preservation issues of
 4 local concern. These ratios must have a minimum value of zero
 5 and should be based on wetland management objectives of a local
 6 water management plan adopted under Minnesota Statutes, chapter
 7 103B or 103D. The local preservation ratios must be applied as
 8 specified in subitem (5).

9 (5) Application of replacement ratios. The
 10 required replacement ratio for out-of-kind replacement shall be
 11 the sum of the wetland type ratio plus the hydrologic unit ratio
 12 plus the inlet and outlet characteristics ratio plus the local
 13 public value ratio. When this ratio is less than the minimum
 14 in-kind ratio of 1:1 for wetlands on agricultural land or in
 15 counties or watersheds in which 80 percent or more of the
 16 presettlement wetland acreage exists, or 2:1 for wetlands on
 17 nonagricultural lands in counties where 50 percent or less of
 18 presettlement wetlands exist, the minimum in-kind ratio shall be
 19 the required replacement ratio.

20 E. Determining impacts of partial drainage. In cases
 21 where wetlands will be partially or incompletely drained, the
 22 amount of wetland to be replaced must be determined according to
 23 the following formula:

24 Where: $NI = OA - \frac{1}{RR}(RA)$
 25
 26 NI = Net impact (acres of original wetland type to be
 27 replaced)
 28 OA = Original acreage of original wetland type
 29 RR = Replacement ratio, determined from table
 30 1, using the original wetland type as the
 31 impacted wetland type and the wetland type
 32 resulting from the partial drainage as the
 33 replacement wetland type
 34 RA = Remaining acres of the original wetland
 35
 36

37 Calculation of partial drainage credit is explained by the
 38 following example:

39 A ten-acre type 3 (PEE PEMC) wetland is partially
 40 drained resulting in a five-acre type 1 (PEA PEMA)
 41 wetland. (NI = 10 - 1/3(5) = 8 1/3) Eight and
 42 one-third acres of type 3 wetland is needed-as the net

1 impact subject to replacement.

2 F. Determining credit for restoration of partially
3 drained wetlands. In cases where partially drained wetlands are
4 restored to their former state, the acres credited for restoring
5 a partially drained wetland is in two parts. The first is the
6 new wetland credit (NWC) caused by the restoration (for example,
7 if the prerestoration wetland is one acre and postrestoration
8 will be three acres, the new wetland credit is two acres). The
9 second credit is for the change in value of the prerestoration
10 wetland acres. This is the public value credit (PVC) and must
11 be computed as follows:

$$12 \quad PVC = \left(\frac{RR - 1}{RR} \right) OA$$

13
14
15 Where: PVC = Public value credit
16 RR = Replacement ratio, determined from table
17 1, using the prerestoration wetland type
18 as the replacement wetland type, and the
19 postrestoration type as the impacted wetland
20 type
21 OA = Wetland acreage before restoration
22

23 The credit for increase in new acres can be used in its
24 entirety. The public value credit can only be used for that
25 portion of wetland replacement requiring greater than a 1:1
26 ratio.

27 Calculation of partial restoration credits is explained by
28 the following example:

29 A partially drained five-acre type 1 (PEA PEMA) wetland is
30 to be restored to a ten-acre type 3 (PEE PEMC) wetland.

$$31 \quad \left(\frac{3 - 1}{3} \right) 5 = 3 \frac{1}{3} \text{ PVC}$$

32
33
34 This restoration is proposed as replacement for a ten-acre
35 type 6 (PSSA) wetland. The wetland is located on
36 nonagricultural land in a "less than 80 percent county or
37 watershed" so the minimum replacement ratio is 2:1. This means
38 20 acres of replaced wetland is needed.

39 From the wetland type value in table ± 2, the replacement
40 ratio is 1. The replacement is located in the same watershed,
41 so the hydrologic unit ratio is 0.0. The inlet and outlet
42 characteristics are isolated for the impacted wetland and
43 tributary for the replacement wetland, so the inlet and outlet

1 characteristics ratio is 0.4. The out-of-kind replacement ratio
2 is the sum of $1.0 + 0.0 + 0.4 = 1.4$. This is less than the
3 minimum of 2:1, so additional acreage is needed.

4 To ensure no-net loss of wetlands, at least ten acres of
5 new wetland credit must be used to offset the ten acres of
6 wetland lost. The remaining ten acres of required replacement
7 can use either new wetland credit or public value credit.

8 The proposed restoration is insufficient to replace the
9 proposed impact, therefore an identical site is also selected
10 for restoration. From site one, new wetland credit equals five;
11 from site two, new wetland credit equals five; ($5 + 5 = 10$ acres
12 of NWC). The no-net loss wetland acreage requirement is
13 satisfied. Ten acres must still be found to satisfy the 2:1
14 requirement. Site one still has three and one-third acres of
15 public value credit, as does site two; ($3 \frac{1}{3} + 3 \frac{1}{3} = 6 \frac{2}{3}$).
16 An additional three and one-third acres of either new wetland
17 credit or public value credit must be found to meet the
18 additional acreage requirements.

19 G. Special cases or appeals. For projects of unusual
20 complexity, or replacement plans that have been denied and are
21 being appealed, and for which the local government unit believes
22 an alternative evaluation process may produce a substantially
23 different replacement requirement, the local government unit may
24 evaluate the replacement plan using the current version of the
25 Minnesota wetland evaluation methodology or another
26 scientifically accepted ~~method~~ methodology approved by the
27 board, in consultation with the commissioner, that evaluates all
28 wetland functions and values for both the impacted and
29 replacement wetlands.

30 When using the Minnesota wetland evaluation methodology or
31 another board, in consultation with the commissioner, approved
32 methodology to evaluate replacement plans, the ratio of impact
33 wetland to replacement wetland must not be less than the minimum
34 acreage requirements as listed in part 8420.0540, subpart 6.
35 Further, the hydrologic unit ratio in item D, subitem (2), the
36 inlet and outlet characteristics ratio in item D, subitem (3),

1 and the local public value ratio, if any, in item D, subitem
 2 (4), must also be ~~added-to~~ considered when using the Minnesota
 3 wetland evaluation methodology ~~ratio-as-in-item-D,--subitem~~
 4 ~~(5)~~ or another board, in consultation with the commissioner,
 5 approved methodology.

6 H. Adequacy decision. A replacement plan that fails
 7 to meet the requirements in items A to G must be considered
 8 inadequate in replacing lost functions and values and shall not
 9 be approved by the local government unit. A replacement plan
 10 that has been considered by the local government unit and not
 11 approved may be revised and resubmitted for consideration by the
 12 local government unit. As required by part 8420.0250, the
 13 decision of a local government unit to approve, approve with
 14 conditions, or not approve a replacement plan becomes final if
 15 not appealed to the board within 30 days after the date on which
 16 the decision is mailed to those required to receive notice of
 17 the decision. Before construction of the replacement wetland
 18 may proceed, the notice specified in part 8420.0530, item D,
 19 subitem ~~(7)~~ (6), must be recorded and proof of recording
 20 provided to the local government unit.

21 I. Replacement wetlands eligible for RIM. A
 22 landowner who drains or fills a wetland and replaces it by
 23 restoring an impacted wetland on the landowner's property under
 24 an approved replacement plan may apply to the board for
 25 enrollment of the replacement wetland into the Reinvest in
 26 Minnesota program no sooner than one year after completion of
 27 the replacement project.

28 8420.0550 WETLAND REPLACEMENT STANDARDS.

29 Subpart 1. General requirements. The standards and
 30 guidelines in this part shall be used in wetland creation and
 31 restoration efforts to ensure adequate replacement of wetland
 32 functions and values.

33 ~~The Table in-subpart-3~~ 4 provides general guidelines for
 34 the physical characteristics that each type of replacement
 35 wetland should have.

1 Subp. 2. **Specific requirements.** The standards in items A
2 to ~~D~~ H shall be followed in all wetland replacements unless the
3 technical evaluation panel determines that a standard is clearly
4 not appropriate.

5 A. Water control structures must be constructed using
6 specifications provided in the ~~RIM-Reserve~~ Minnesota Wetland
7 Restoration ~~Manual~~ Guide or their equivalent. Control
8 structures may be subject to the department dam safety
9 regulations.

10 B. ~~A-minimum-one-red-strip,-16.5-feet-wide,-of~~
11 ~~vegetation-sufficient-to-control-erosion~~ Best management
12 practices must be established and maintained adjacent to the
13 entire perimeter of all replacement wetlands.

14 C. For replacement wetlands where the dominant
15 vegetation of the wetland type identified as the replacement
16 goal in part ~~8420.0540~~ 8420.0530, ~~subpart-10~~ item D, subitem
17 (1), is not likely to recover naturally in a five-year period,
18 wooded and shrub wetlands especially, the replacement wetland
19 must be seeded or planted with appropriate species, as
20 determined by the soil and water conservation district, in
21 coordination with the department. If the replacement wetland is
22 seeded or planted, the seed or planting stock should be of local
23 wetland origin to preserve local genotypes. During the
24 monitoring period, the applicant must take reasonable steps to
25 prevent invasion by any species, for example, purple loosestrife
26 and Eurasian water milfoil, that would defeat the revegetation
27 goal of the replacement plan.

28 D. Erosion control measures as determined by the soil
29 and water conservation district must be employed during
30 construction and until permanent ground cover is established to
31 prevent siltation of the replacement wetland or nearby water
32 bodies.

33 E. For all restored wetlands where the original
34 organic substrate has been stripped away and for all created
35 wetlands, ~~the-basin~~ provisions must be ~~excavated-one-foot-below~~
36 ~~final-grade-elevation-and-backfilled-with-one-foot-of~~ made for

1 providing an organic soil substrate. When feasible, the organic
2 soil used for backfill should be taken from the drained or
3 filled wetland.

4 F. The bottom contours of created types 3, 4, and 5
5 wetlands ~~must~~ should be undulating, rather than flat, to provide
6 a variety of water depths to be consistent with part 8420.0540,
7 subpart 8.

8 G. Sideslopes of created wetlands and buffer strip
9 must not be steeper than 5:1, five feet horizontally for every
10 one foot vertically as averaged around the wetland. Sideslopes
11 of 10:1 to 15:1 are preferred.

12 H. Created wetlands ~~must~~ should have an irregular
13 edge to create points and bays to be consistent with part
14 8420.0540, subpart 8.

- 1 Subp. 3. Table 3 4. Physical characteristics of wetlands
- 2 using-an-abbreviated-Cowardin referencing the wetland
- 3 classification equivalency chart found in part 8420.0540,
- 4 subpart 10, item B.

WETLAND TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
FORESTED				
PFA (T1)	INTMTNT	--	TREES	SOMETIMES
PFB (T7)	SATUR'D	>= 3:1	TREES	YES
PFC (T7)	6" - 3'	>= 5:1	TREES	YES
SCRUB-SHRUB				
PSA (T6)	INTMTNT	--	SHRUBS	YES
PSB (T6)	SATUR'D	>= 3:1	SHRUBS	YES
PSX (T8)	SATUR'D	>= 3:1	SHRUBS	SOMETIMES
PSC (T6)	SAT. - INT.	--	SHRUBS	YES
EMERGENT				
PEA (T1)	INTMTNT	--	HERB/EMERG	YES
PEB (T2)	SATUR'D	>= 3:1	HERB/EMERG	YES
PEC (T3)	6" - 2'	>= 5:1	HERB/EMERG	YES
PEF (T4)	2' - 4'	>= 10:1	HERB/EMERG	YES
DEEP MARSH				
PA (T5)	4' - 6'	>= 15:1	AQUATIC BED	YES
PU (T5)	4' - 6'	>= 15:1	ALGAE/FLOATG	YES
LAKES				
L1 (T5)	>= 6'	>= 25:1	ALGAE/FLOATG	YES
L2 (T5)	<= 6'	>= 25:1	HERBACEOUS	YES
RIVERINE				
R2 (NA)	>= 2'	--	ALGAE, SUB	FLOWAGE
R3 (NA)	6" - 2'	--	ALGAE, SUB	FLOWAGE
R4 (NA)	INTMTNT	--	RIPARIAN	FLOWAGE

* INTMTNT = INTERMITTENT OR TEMPORARILY FLOODED, SATUR'D = SATURATED IN THE ROOTING ZONE.
 ** HERB = HERBACEOUS, EMERG = EMERGENT, SUB = SUBMERGENT, FLOATG = FLOATING-LEAVED

1 8420.0600 MONITORING.

2 The purpose of wetland value replacement monitoring is to
3 ensure that the replacement wetland achieves the goal of
4 replacing lost functions and values.

5 8420.0610 DURATION OF MONITORING.

6 Monitoring shall be by means of an annual report as
7 specified in part 8420.0620 and shall continue for five years
8 following completion of the wetland replacement project.
9 Through written notification to the applicant, the local
10 government unit may extend the required monitoring period for
11 not more than an additional five-year period if, at the end of
12 the initial five-year period, the goal of the replacement plan
13 has not been achieved, but may be achieved with more time.

14 8420.0620 MONITORING ANNUAL REPORT.

15 Subpart 1. Purpose. The purpose of the annual report is
16 to describe actual wetland restoration or creation activities
17 completed during the past year, activities planned for the
18 upcoming year, and the information in subpart 2. The applicant
19 shall submit the annual report to the local government unit on a
20 date determined by the local government unit until the applicant
21 has fulfilled all of the requirements of the local government
22 unit. The local government unit, at its discretion, may prepare
23 the annual report for the applicant.

24 Subp. 2. Report content. The annual report shall include
25 the following information and other site-specific information
26 identified by the local government unit:

27 A. a description of the project location, size,
28 current wetland type (Cowardin classification), and desired
29 wetland type (goal);

30 B. a comparison of the as-built specifications versus
31 the design specifications (first annual plan only) and a
32 rationale for significant changes;

33 C. hydrology measurements: ~~monthly~~ seasonal water
34 level elevations during the period April through October

1 (msl, or referenced to a known bench mark);

2 D. a list of the dominant vegetation in the wetland,
3 including ~~genera~~ common names of the vegetation exceeding 20
4 percent coverage and an estimate of coverage, for example, 50
5 percent ~~Salix~~ willow, 20 percent ~~Typha~~ cattail, and 30
6 percent ~~Carex~~ sedge; and

7 E. color photographs of the project area taken
8 anytime during the period June through August, referenced to the
9 fixed photo-reference points identified on the wetland
10 replacement plan and labeled accordingly.

11 8420.0630 MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT.

12 The local government unit responsible for monitoring as
13 determined under part 8420.0230:

14 A. must inspect the project when construction is
15 complete and certify compliance with construction
16 specifications, and may inspect the project at any time during
17 the construction and monitoring period, and any time after that
18 to assess the long-term viability of the replaced wetland. When
19 the local government unit certifies that the construction
20 specifications have been met, the local government unit shall so
21 advise the applicant and return any bond or other security that
22 the applicant had provided;

23 B. may order corrective action at any time during the
24 required monitoring period if it determines that the goal of the
25 approved replacement plan will not be met, and may require the
26 applicant to prepare an amended wetland value replacement plan
27 for review and approval by the local government unit, which
28 describes in detail the corrective measures to be taken to
29 achieve the goal of replacing lost wetland functions and values;

30 C. shall make a finding based on a site visit at the
31 end of the monitoring period as to whether the goal of the
32 replacement plan has been met. If the goal of the replacement
33 plan has not been met, the local government unit shall order
34 corrective action and extend the monitoring period; and

35 D. shall require one or more of the following actions

1 if during the monitoring period the local government unit finds
2 that the goal of the replacement plan will not be met:

3 (1) order the applicant to prepare and implement
4 a new replacement plan;

5 (2) issue a cease and desist order on the
6 draining and filling activity if it has not been completed;

7 (3) order restoration of the impacted wetland;

8 (4) obtain forfeiture of a bond or other security
9 and use the proceeds to replace the lost wetland values;

10 (5) ask the district court to order the applicant
11 to fulfill the replacement plan; or

12 (6) other actions that the local government unit
13 determines necessary to achieve the goal of the replacement plan.

14 STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

15 8420.0700 PURPOSE.

16 The purpose of parts 8420.0700 to 8420.0760 is to provide
17 standards for the establishment and administration of a state
18 wetland banking system as authorized by Minnesota Statutes,
19 section 103G.2242.

20 8420.0710 DEFINITIONS.

21 Subpart 1. **Scope.** For purposes of parts 8420.0700 to
22 8420.0760, the terms in this part have the meanings given them.

23 Subp. 2. **Account or wetland bank account.** "Account" or
24 "wetland bank account" means a record of wetland debits and
25 credits established by an account holder within the state
26 wetland banking system.

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

30 Subp. 4. **Applicant.** "Applicant" is a person, corporation,
31 government agency, or organization that makes an application to
32 withdraw wetland credits from the wetland bank.

33 Subp. 5. **Credits or wetland credits.** "Credits" or
34 "wetland credits" means acres or tenths parts of acres of
35 restored or created wetland, catalogued by abbreviated Cowardin,

1 et al. wetland type from part 8420.0540, subpart 10, item B, and
2 inlet and outlet characteristics deposited in the wetland bank.

3 Subp. 6. **State wetland banking system, wetland bank, or**
4 **bank.** "State wetland banking system," "wetland bank," or "bank"
5 means a system of identifying wetlands restored or created for
6 replacement credit, providing for, and facilitating and tracking
7 the exchange of wetland credits for projects that require
8 replacement plans.

9 8420.0720 PRINCIPLES OF WETLAND BANKING.

10 Subpart 1. **Goal.** Implementation of a wetland banking
11 system must comply with the purposes and goals of the act by
12 achieving a no-net loss in the quantity, quality, and biological
13 diversity of Minnesota's existing wetlands.

14 Subp. 2. **Sequencing prerequisite.** The state wetland
15 banking system may only be used for replacement of drained or
16 filled wetlands when the local government unit determines that
17 the applicant has complied with all of the sequencing
18 requirements of part 8420.0520; that the project would otherwise
19 be allowed if adequate replacement could be secured by the
20 applicant; that project-specific replacement is not reasonable
21 or desirable; and that the owner of the account agrees to the
22 withdrawal of credits from the account.

23 Subp. 3. **Geographic limitations.** In counties having
24 greater than 80 percent of their presettlement wetlands intact,
25 wetland banking is allowed for any impact. Wetland banking in
26 counties with less than 80 percent of their presettlement
27 wetlands intact can be considered only in situations involving
28 impacts of less than five acres, except in certain circumstances
29 as noted in part 8420.0740, subpart 2, item B, subitem (2).

30 Subp. 4. **Restoration-only Eligible wetlands.** ~~Only~~
31 Restored wetlands are eligible for deposit into the wetland
32 bank. Created wetlands are ~~not~~ eligible for deposit in the
33 wetland bank in counties in which 80 percent or more of the
34 presettlement wetlands are intact. In other counties, created
35 wetlands are eligible for deposit in the bank only if they are

1 created by excavation in nonwetlands, by dikes or dams along
2 public or private drainage ditches, or by dikes or dams
3 associated with the restoration of previously drained or filled
4 wetlands. Modification or conversion of nondegraded naturally
5 occurring wetlands from one type to another are not eligible for
6 enrollment in a statewide wetlands bank.

7 Subp. 5. **Exempt Ineligible wetlands.** Wetlands that are
8 drained or filled under an exemption in part 8420.0120 and
9 subsequently restored are not eligible for deposit in the
10 wetland bank.

11 Subp. 6. **Account balance.** Accounts must maintain a
12 positive balance. A wetland bank account shall specify acreage
13 by wetland type deposited by the account holder minus subsequent
14 withdrawals.

15 Subp. 7. **Credit transfers.** Wetland credits may be
16 transferred to another account holder providing the fee title or
17 easement or license is transferred also, and providing all the
18 remaining credit for a wetland remains in one account. Wetland
19 credits may be withdrawn by an applicant and partial withdrawals
20 are allowed. The account holder is responsible for the success
21 of the wetland until completion of monitoring. After completion
22 of monitoring, the fee title owner or easement or license holder
23 and anyone who has contracted with the owner is responsible for
24 maintaining the wetland and replacing it according to this
25 chapter if the wetland is subsequently drained or filled, by
26 structural failure, or otherwise.

27 Subp. 8. **Deed recording.** For wetlands proposed for
28 deposit, a deed covenant must be recorded stating that the
29 subject wetland was or will be restored or created for
30 mitigation banking purposes.

31 Subp. 9. **Qualification.** A wetland cannot be deposited for
32 credit that cannot, under parts 8420.0500 to 8420.0630, be used
33 for replacement.

34 8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

35 Subpart 1. **Establishment.** The board shall establish a

1 state wetland bank. The board or the board's assignee is
2 responsible for management of the bank including recording all
3 bank transactions, maintaining bank records, and ensuring that
4 the operation of the bank complies with parts 8420.0700 to
5 8420.0760. The board shall notify all local government units
6 upon establishment of the bank. Any banking system including
7 those established by local governments must comply with parts
8 8420.0700 to 8420.0760 and must be approved by the board and the
9 commissioner.

10 Subp. 2. **Deposit prerequisites.** To be deposited into the
11 wetland bank, a ~~restored~~ wetland must be certified as eligible
12 for deposit by the local government unit in which it is located,
13 according to part 8420.0740, subpart 1. The method of
14 certification by local government units is optional, but wetland
15 credits may not be deposited into the bank within that local
16 government units jurisdiction without certification. If a local
17 government unit elects to certify ~~restored~~ wetlands for the
18 wetland bank, the local government unit is also responsible for
19 ensuring that the monitoring provisions in part 8420.0750 are
20 fulfilled. A local government unit may decline to certify all
21 ~~restored~~ wetlands within its jurisdiction or, based on a
22 comprehensive local water plan, a local government unit may
23 elect to certify ~~restored~~ wetlands for deposit into the wetland
24 bank only in selected areas, for example, high priority regions
25 and areas. If the local government unit elects to reject or
26 limit banking, it must do so by rule or ordinance, as applicable.

27 Subp. 3. **Annual report.** Each local government unit
28 participating in the wetland bank shall submit an annual report
29 to the board on a form prescribed by the board.

30 8420.0740 PROCEDURES.

31 Subpart 1. **Deposits and credits.**

32 A. ~~Only~~ Restored wetlands are eligible for deposit
33 into the wetland bank. Created wetlands are ~~not~~ eligible for
34 deposit. in the wetland bank in counties in which 80 percent or
35 more of the presettlement wetlands are intact. In other

1 counties, created wetlands are eligible for deposit in the bank
 2 only if they are created by excavation in nonwetlands, by dikes
 3 or dams along public or private drainage ditches, or by dikes or
 4 dams associated with the restoration of previously drained or
 5 filled wetlands. Modification or conversion of nondegraded
 6 naturally occurring wetlands from one type to another are not
 7 eligible for enrollment in a statewide wetlands bank.

8 B. Wetland replacement credits approved before the
 9 ~~date-that-a-statewide-wetland-banking-system-is-established~~
 10 is July 1, 1993, are eligible for deposit into the state wetland
 11 bank banking system if the wetland replacement ~~has-been~~ credit
 12 was authorized by a public agency specifically for ~~an-existing a~~
 13 wetland bank that has been approved by the commissioner. Also,
 14 wetland replacement credits that have been deposited in a local
 15 government unit bank before July 1, 1993, and after January 1,
 16 1992, are eligible for deposit into the state wetland banking
 17 system if the deposit meets all the criteria in parts 8420.0700
 18 to 8420.0760 based on a site inspection and review by the board
 19 and the commissioner.

20 C. ~~After the-date-that-a-statewide-wetland-banking~~
 21 ~~system-is-established~~ July 1, 1993, wetlands restored or created
 22 without prior local government unit approval as specified in
 23 this part are not eligible for deposit into the wetland bank.

24 D. The minimum wetland acreage eligible to establish
 25 an account in the wetland bank is ~~0.5~~ 0.1 acres.

26 E. There is no maximum wetland acreage eligible for
 27 deposit in the wetland bank. The local government unit, upon
 28 recommendation of the technical evaluation panel, must identify
 29 the acreage that will receive credit. As an incentive to
 30 encourage the ~~restoration~~ deposit of small wetlands, the local
 31 government unit shall assign credit to ~~restored~~ wetland acreage
 32 as follows:

33	Restored Wetland	Credit
34	<u>Acreage</u>	
35	0 to 10 acres	100 percent
36	over 10 acres	90 percent
37		

38 The local government unit may modify the credit given, up

1 to a maximum of 100 percent, if ~~unanimously~~ agreed to by the
2 technical evaluation panel.

3 F. The initial deposit of wetland credits ~~from a~~
4 ~~wetland-restoration-in-the-wetland-bank~~ must be done by the fee
5 title owner or easement or license holder of the ~~restored~~
6 wetland.

7 G. Except as provided for in item B, in order to
8 deposit wetland acres into the wetland bank, the depositor must
9 notify the local government unit in writing, before
10 restoration or creation, that the proposed wetland ~~proposed-for~~
11 ~~restoration~~ is specifically designated for deposit into the
12 wetland bank. This notification may be part of the
13 documentation requested in item H. In cases where excess
14 wetland acreage is expected to result from a specific
15 replacement plan according to parts 8420.0530 to 8420.0550, the
16 owner must indicate on the replacement plan that the excess
17 acreage is to be considered available for wetland banking.

18 H. In cases where a wetland is proposed to be
19 restored or created solely for wetland banking purposes, that
20 is, the wetland is not part of a project-specific wetland
21 replacement plan, the depositor must submit to the local
22 government unit a bank plan containing the information required
23 in part 8420.0530, items A and D.

24 A copy of the bank plan is-subject-to-the-notice-and
25 comment-provisions-in-part-8420.0230 shall be mailed to members
26 of the technical evaluation panel, members of the public who
27 have requested a copy, and members of the watershed district or
28 watershed management organization if there is one. Based on
29 input from the technical evaluation panel and other comments
30 received, the local government unit must determine the
31 likelihood that the restoration or creation will be successful
32 and, if affirmative, approve the plan and advise the depositor
33 of the wetland acreage likely to be accepted into the wetland
34 bank. Approval of the plan shall be considered official
35 acknowledgment that the ~~restored~~ wetland is designated for
36 replacement.

1 I. In cases where a wetland is to be restored or
2 created by an agency, department, or subdivision of the local
3 government unit for deposit into the wetland bank, the local
4 government unit must prepare the information required in part
5 8420.0530, items A and D, and notice this information according
6 to ~~the notice and comment provisions in~~ part
7 ~~8420.0230~~ 8420.0740, subpart 1, item H.

8 J. The proposed wetland must be restored or created
9 within two years of approval or the bank plan must be
10 resubmitted for consideration. Upon approval, the depositor
11 shall restore or create the wetland and notify the local
12 government unit when construction has been completed. The
13 technical evaluation panel shall inspect the site when
14 construction is completed to ensure that construction
15 specifications have been followed. Failure to follow approved
16 construction specifications is sufficient grounds for the local
17 government unit to deny consideration of the wetland for banking.

18 K. No sooner than six months after construction has
19 been completed and approved for restored wetlands, and no sooner
20 than one year after construction has been completed and approved
21 for created wetlands, the depositor shall contact the local
22 government unit to request a final determination of wetland bank
23 acceptability and approved quantities of wetland credits for
24 deposit. The technical evaluation panel shall ensure that
25 sufficient time has been allowed for the ~~restored~~ wetland to
26 become established, especially vegetation and hydrology, before
27 making this determination. If the technical evaluation panel
28 has reason to believe that the wetland characteristics may
29 change substantially, the panel must postpone its recommendation
30 to the local government unit until the wetland has stabilized.

31 Based on a site visit, the technical evaluation panel will
32 determine the size and type of wetland, using the abbreviated
33 Cowardin et al. classification in part 8420.0540, subpart
34 10, item B, as well as inlet and outlet characteristics
35 resulting from the ~~restored~~ to be deposited wetland. The
36 technical evaluation panel will provide the information to the

1 local government unit.

2 L. The local government unit shall notify the
3 depositor of its findings as to the suitability of the wetland
4 and approved wetland credits. If the depositor chooses to
5 proceed with a deposit into the bank, the depositor must record
6 the notice specified in part 8420.0530, item D, subitem ~~(7)~~ (6),
7 and submit proof of the recording to the local government unit
8 for the wetlands to be deposited. If the depositor chooses not
9 to proceed with the deposit, the depositor may return the
10 wetland to its preconstruction condition without replacement
11 within five years. At any time within the five-year period, the
12 depositor may request certification for deposit into the bank or
13 may amend the bank plan and submit the plan to the local
14 government unit for approval and subsequent certification.
15 After five years, any activity in the wetland is subject to this
16 chapter.

17 M. To be deposited into the bank, the following
18 information concerning the ~~restored~~ wetland must be submitted to
19 the board by the local government unit in which the wetland is
20 located:

21 (1) name, address, and telephone number of the
22 depositor;

23 (2) location of the ~~restored~~ wetland, including
24 legal description, ~~UTM~~ public land survey coordinates, county,
25 and watershed;

26 (3) a copy of the deed for the property
27 containing the ~~restored~~ wetland with the required covenant
28 recorded;

29 (4) size of the wetland acreage to be deposited,
30 to the 0.1 acre, by wetland type, using the abbreviated
31 Cowardin, et al. classification in part 8420.0540, subpart
32 10, item B, and inlet and outlet characteristics; and

33 (5) certification that the wetland is approved
34 for deposit into the bank.

35 N. The board shall acknowledge the deposit to the
36 depositor and local government unit and officially enter the

1 information in item M into the wetland bank. Information on
2 deposited wetlands shall be available from the board on request
3 according to subpart 2, item E D.

4 O. Wetlands deposited into the wetland bank, on which
5 withdrawals have occurred, are subject to replacement for any
6 subsequent drainage or filling.

7 P. Wetlands deposited into the wetland bank are
8 subject to the monitoring provisions in part 8420.0750.

9 Subp. 2. **Withdrawals.**

10 A. Before consideration of use of the wetland bank,
11 applicants must satisfy the requirements of part 8420.0520. It
12 must be clearly demonstrated that the applicant has made a good
13 faith effort to avoid, minimize, rectify, or reduce or eliminate
14 over time the impact on the wetland, and that no feasible and
15 prudent alternative to the impact exists. The local government
16 unit must certify that the project would otherwise be allowed if
17 adequate replacement could be secured by the applicant and that
18 the applicant has made a good faith effort to do so and has not
19 succeeded in locating a site.

20 B. The use of the wetland bank is limited to:

21 (1) projects occurring in counties having greater
22 than 80 percent of their presettlement wetlands;

23 (2) counties with less than 80 percent of their
24 presettlement wetlands remaining, with the use of the wetland
25 bank limited to:

26 (a) linear-type transportation or utility
27 projects with impacts less than five acres per basin, minus any
28 project-specific replacement acreage;

29 (b) other projects with a cumulative impact
30 of less than five acres, minus any project-specific replacement
31 acreage; or

32 (c) whenever the local government unit
33 determines that the use of the wetland bank is reasonable and
34 desirable.

35 C. When using the wetland bank to replace drained or
36 filled wetlands, the replacement must comply with part 8420.0540.

1 D. The board, on request, will provide the following
2 information to persons making inquiries concerning available
3 wetland bank deposits with a local government unit jurisdiction,
4 county, or watershed:

5 (1) account holder: name, address, and telephone
6 number;

7 (2) available wetlands: wetland acres by
8 abbreviated Cowardin et al. classification type and inlet and
9 outlet characteristics;

10 (3) location: section, township, range, county,
11 and watershed.

12 E. The applicant may then contact, negotiate, and
13 purchase the required wetland acreage from the account holder.
14 When the account holder and applicant come to agreement, the
15 applicant will provide requested information on a notarized
16 credit transfer form developed by the board, and include the
17 credit transfer form as part of the wetland replacement plan
18 transmitted to the local government unit. The credit transfer
19 form will include information indicating the wetland type by
20 acres for transferal, location of ~~restored-wetlands~~ banked
21 wetland, and the inlet and outlet characteristics of the banked
22 wetland.

23 F. The local government unit must circulate the
24 applicant's wetland replacement plan and the credit transfer
25 form to identify specific wetland bank credits as the applicable
26 replacement wetland, using the public comment and review process
27 in part 8420.0230 and to the local government unit whose
28 jurisdiction covers the location of the wetland bank acreage.
29 The local government unit must contact the board to verify that
30 replacement credits indicated on the credit transfer form are
31 available before final approval of wetland bank withdrawals.

32 ~~The comment and review process initiated in this item may~~
33 ~~be limited to the bank transaction only, if public comment and~~
34 ~~review has already taken place for all other aspects of the~~
35 ~~proposed development and its impact.~~

36 G. Wetlands impacted by public transportation

1 projects may be replaced statewide, provided the replacements
2 are approved by the commissioner under an established wetland
3 banking system or under the rules for wetland banking as
4 provided for in parts 8420.0700 to 8420.0760.

5 The commissioner shall notify the local government unit and
6 the board of the decision within 30 days of the date that the
7 ~~notice-of-the~~ replacement plan is ~~published-in~~ received by the
8 ~~EQB-Monitor~~ commissioner. If the commissioner does not approve
9 the replacement plan, the local government unit shall not
10 approve the replacement plan.

11 H. On approval of the applicant's wetland replacement
12 plan using wetland bank acreage as wetland replacement, the
13 local government unit shall notify the board to debit the
14 appropriate banked wetland by type and acreage. The board will
15 complete the accounting transactions and send a notice of credit
16 transfer to the account holder.

17 I. The applicant shall not be allowed to begin
18 proposed drain or fill activities until the local government
19 unit formally approves the wetland replacement plan using the
20 acknowledged wetland bank credits as replacement.

21 J. An individual, corporation, local government unit,
22 or other organization may buy and hold credits from account
23 holders in the bank for later use or resale. Transfer of
24 credits must be accomplished through use of a board credit
25 transfer form, and must be maintained in an account in the state
26 wetland banking system. An account will be established for the
27 individual or organization on presentation to the board of a
28 credit transfer form, and required organization information.
29 The board will notify both account holders on transfer of the
30 wetland credits. An account transfer must be accompanied by
31 transfer of the fee title or easement or license. A credit for
32 a wetland may not be split between accounts. Wetland credits
33 may also be transferred between banks approved by the board.

34 8420.0750 AUDITING AND MONITORING.

35 Subpart 1. Annual report and audit.

1 A. The board will develop wetland bank deposit,
2 withdrawal, and credit transfer forms and distribute them to
3 local government units indicating a desire to certify restored
4 wetland acreage for deposit in the wetland bank.

5 B. The wetland bank data file maintained by the board
6 will contain at least the following information:

7 (1) wetland acres by abbreviated Cowardin et al.
8 classification type, inlet and outlet characteristics,
9 restoration or creation date, and bank acceptance date, fee
10 owner, location by (UTM public land survey coordinates, section
11 township, range, local government unit, county, and watershed of
12 the banked wetland); and

13 (2) previous withdrawals against each banked
14 wetland by impact wetland (wetland acres by abbreviated
15 Cowardin, et al. classification type, inlet and outlet
16 characteristics, date of wetland impact), ownership (fee owner,
17 address, telephone number) and location (UTM public land survey
18 coordinates, section, township, range, local government unit,
19 county, and watershed of the impacted wetland).

20 C. The board may periodically inspect wetland bank
21 records and correspondence maintained by a local government unit
22 to determine compliance with this part.

23 D. An annual wetland bank report shall be prepared
24 and distributed by the board to applicable local government
25 units, soil and water conservation districts, watershed
26 districts, watershed management organizations, the department,
27 and on request.

28 Subp. 2. **Monitoring.**

29 A. After the wetland is entered into the bank, the
30 local government unit responsible for monitoring under part
31 8420.0230 and the account holder shall continue monitoring
32 according to parts 8420.0600 to 8420.0630. The account holder
33 is responsible for the success of the wetland until completion
34 of monitoring, even after all the credit has been withdrawn.

35 B. The board shall inspect ~~restored~~ wetlands
36 deposited into the wetland bank at least once each five years to

1 ensure that the wetlands conform to conditions specified in the
2 approved ~~restoration~~ bank plan, and to make a determination of
3 needed corrective action.

4 8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.

5 A. Enforcement of parts 8420.0700 to 8420.0750 is
6 governed by part 8420.0290 and Minnesota Statutes, section
7 103G.2372.

8 B. If, on inspection, the board determines that
9 wetlands deposited in the wetland bank are not in compliance
10 with this chapter, the board must prescribe corrective measures
11 to the local government unit to bring the wetland into
12 compliance.

13 C. If satisfactory remediation does not result, the
14 board may refuse future wetland bank certifications by the local
15 government unit and require all wetland replacements to be on a
16 project-specific basis.

17 D. If a local government unit determines that a
18 banked wetland does not substantially meet the specifications in
19 the approved bank plan, the local government unit must notify
20 the board, and the board shall restrict further withdrawals from
21 the account until the local government unit notifies the board
22 that the wetland has been brought into compliance. The board
23 may also restrict withdrawals when a local government unit is
24 the account holder and the board determines that a banked
25 wetland does not substantially meet the specifications in the
26 approved bank plan.

27 E. The local government unit or the board can
28 undertake reconstruction work and require reimbursement of
29 reasonable costs from the fee title owner or easement or license
30 holder.

31 STANDARDS AND CRITERIA FOR IDENTIFICATION,
32 PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS

33 8420.1010 PURPOSE.

34 The purpose of parts 8420.1010 to 8420.1060 is to provide
35 minimum standards and criteria for the identification,

1 protection, and management of calcareous fens as authorized by
2 Minnesota Statutes, section 103G.223. Calcareous fens may not
3 be drained or filled or otherwise altered or degraded except as
4 provided for in a management plan approved by the commissioner.

5 Part 8420.0120 does not apply to calcareous fens.

6 8420.1020 IDENTIFYING CALCAREOUS FENS.

7 A calcareous fen is a peat-accumulating wetland dominated
8 by distinct groundwater inflows having specific chemical
9 characteristics. The water is characterized as circumneutral to
10 alkaline, with high concentrations of calcium and low dissolved
11 oxygen content. The chemistry provides an environment for
12 specific and often rare hydrophytic plants.

13 8420.1030 PROCEDURES TO LIST CALCAREOUS FENS.

14 A. The commissioner shall investigate wetlands to
15 determine if the wetland is properly identified as a calcareous
16 fen.

17 B. The commissioner shall maintain a current list of
18 known calcareous fens in the state and their location.

19 C. The commissioner shall provide an updated list of
20 calcareous fens to the board for further distribution.

21 8420.1040 MANAGEMENT PLANS.

22 Calcareous fens may not be drained or filled or otherwise
23 altered or degraded except as provided for in a management plan
24 approved by the commissioner.

25 8420.1050 RESTORATION.

26 The commissioner may approve management plans to restore or
27 upgrade a previously damaged calcareous fen.

28 8420.1060 APPEALS.

29 A. A landowner or project proposer may challenge the
30 commissioner's determination that a wetland is a calcareous fen
31 or the commissioner's calcareous fen management plan by
32 demanding a hearing. The hearing will be carried out in the
33 same manner as water permit hearings under Minnesota Statutes,

1 chapter 103G.

2 B. The hearing must be demanded within 30 days after
3 mailed notice of the commissioner's decision to the project
4 proposer, otherwise the decision becomes final and may not be
5 challenged by the project proposer.

6 C. Appeal of the commissioner's decision after the
7 hearing must be done in the manner provided for appeals from
8 contested case decisions in Minnesota Statutes, chapter 14.