

1.1 **Board of Water and Soil Resources**

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

1.3 **PURPOSE AND SCOPE, AND DEFINITIONS**

1.4 **8420.0100 PURPOSE.**

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

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

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

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

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

1.19 Subp. 2. **Method.** The regulatory provisions of the Wetland Conservation Act
1.20 advance the purpose in this part by requiring persons proposing to impact a wetland to
1.21 first, attempt to avoid the impact; second, attempt to minimize the impact; and finally,
1.22 replace any impacted area with another wetland of at least equal function and value.
1.23 As specified in greater detail in part 8420.0420, certain projects are exempt from the
1.24 requirement for a replacement plan under the Wetland Conservation Act.

2.1 Subp. 3. **Administration.** The Wetland Conservation Act is administered by local
2.2 government units with oversight provided by the Board of Water and Soil Resources.
2.3 Enforcement of the act is provided by Department of Natural Resources conservation
2.4 officers and other peace officers. The Wetland Conservation Act became effective on
2.5 January 1, 1992, and this chapter and portions of Minnesota Statutes, chapters 103A,
2.6 103B, 103E, 103F, and 103G, govern its implementation. ~~The public is encouraged to~~
2.7 ~~contact their local government unit or soil and water conservation district for general~~
2.8 ~~information on wetlands and the interpretation of this chapter.~~ Persons seeking general
2.9 information on wetlands and the interpretation of this chapter may contact their local
2.10 government unit or soil and water conservation district.

2.11 **8420.0105 SCOPE.**

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

2.17 Subp. 2. **Applicability.**

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

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

3.1 C. This chapter does not prevent control of noxious weeds if the control does
3.2 not impact the wetland.

3.3 D. This chapter does not regulate impacts to incidental wetlands. "Incidental
3.4 wetlands" are wetland areas that the landowner can demonstrate, to the satisfaction of the
3.5 local government unit, were created in nonwetland areas solely by actions, the purpose
3.6 of which was not to create the wetland. Incidental wetlands include drainage ditches,
3.7 impoundments, or excavations constructed in nonwetlands solely for the purpose of
3.8 effluent treatment, containment of waste material, storm water retention or detention,
3.9 drainage, soil and water conservation practices, and water quality improvements and not as
3.10 part of a wetland replacement process that may, over time, take on wetland characteristics.

3.11 E. This chapter does not apply to the public waters and public waters wetlands
3.12 as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a, which
3.13 have been inventoried by the commissioner according to Minnesota Statutes, section
3.14 103G.201, except that:

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

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

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

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

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

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

4.18 **8420.0111 DEFINITIONS.**

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

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

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

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

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

5.9 Subp. 6. **Agricultural land.** "Agricultural land" means land used for horticultural,
5.10 row, close grown, pasture, or hayland crops; growing nursery stocks; animal feedlots;
5.11 farmyards; or associated building sites and public and private drainage systems and field
5.12 roads located on any of these lands. Agricultural land must be used principally for the
5.13 cultivation or production of plants or farm animals and includes former agricultural land
5.14 that is presently enrolled in a conservation easements program under contract or easement.

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

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

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

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

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

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

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

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

6.10 Subp. 15. **Commissioner.** "Commissioner" means the commissioner of natural
6.11 resources.

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

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

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

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

6.22 Subp. 20. **Determination or determine.** "Determination" or "determine" refers to a
6.23 technical finding by the technical evaluation panel or local government unit staff.

6.24 Subp. 21. **Ditch.** "Ditch" has the meaning given under Minnesota Statutes, section
6.25 103E.005, subdivision 8.

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

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

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

7.12 Subp. ~~24.~~ 25. **Excavation.** "Excavation" means the displacement or removal of
7.13 substrate, sediment, or other materials by any method.

7.14 Subp. ~~25.~~ 26. **Fill.** "Fill" means any solid material added to or redeposited in a
7.15 wetland that would alter the wetland's cross-section or hydrological characteristics,
7.16 obstruct flow patterns, change the wetland boundary, or convert the wetland to a
7.17 nonwetland. Fill does not include posts and pilings for linear projects such as bridges,
7.18 elevated walkways, or powerline structures, or structures traditionally built on pilings such
7.19 as docks and boathouses. Fill includes posts and pilings that result in bringing the wetland
7.20 into a nonaquatic use or significantly altering the wetland's function and value, such as the
7.21 construction of office and industrial developments, parking structures, restaurants, stores,
7.22 hotels, housing projects, and similar structures. Fill does not include slash or woody
7.23 vegetation, if the slash or woody vegetation originated from vegetation growing in the
7.24 wetland and does not impair the flow or circulation of water or the reach of the wetland.

8.1 Subp. ~~26.~~ 27. **50 to 80 percent area.** "50 to 80 percent area" means a county or
8.2 watershed with at least 50 percent but less than 80 percent of the presettlement wetland
8.3 acreage intact, as provided in part 8420.0117.

8.4 Subp. ~~27.~~ 28. **Greater than 80 percent area.** "Greater than 80 percent area" means
8.5 a county or watershed where 80 percent or more of the presettlement wetland acreage
8.6 is intact and:

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

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

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

8.10 Subp. ~~28.~~ 29. **Hayland.** "Hayland" means an area that was mechanically harvested
8.11 or that was planted with annually seeded crops in a crop rotation seeded to grasses or
8.12 legumes in six of the last ten years.

8.13 Subp. ~~29.~~ 30. **Hydric soils.** "Hydric soils" means soils that are saturated, flooded,
8.14 or ponded long enough during the growing season to develop anaerobic conditions in
8.15 the upper part.

8.16 Subp. ~~30.~~ 31. **Hydrophytic vegetation.** "Hydrophytic vegetation" means
8.17 macrophytic plant life growing in water, soil, or on a substrate that is at least periodically
8.18 deficient in oxygen as a result of excessive water content.

8.19 Subp. ~~31.~~ 32. **Impact.** "Impact" means a loss in the quantity, quality, or biological
8.20 diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or
8.21 by excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5
8.22 wetlands, as defined in subpart 74, and in all wetland types if the excavation results in
8.23 filling, draining, or conversion to nonwetland.

8.24 Subp. ~~32.~~ 33. **Impacted wetland.** "Impacted wetland" means a wetland that has
8.25 been partially or wholly subjected to an impact.

9.1 Subp. ~~33.~~ 34. **Indirect impact.** "Indirect impact" means an impact that is the result
9.2 of an activity that occurs outside of the wetland boundary.

9.3 Subp. ~~34.~~ 35. **Infrastructure.** "Infrastructure" means public water facilities, storm
9.4 water and sanitary sewer piping, outfalls, inlets, street subbase, roads, ditches, culverts,
9.5 bridges, and any other work defined specifically by a local government unit as constituting
9.6 a capital improvement within the context of an approved development plan.

9.7 Subp. ~~35.~~ 36. **Landowner.** "Landowner" means a person or entity having the rights
9.8 necessary to drain, excavate, or fill a wetland or to establish and maintain a replacement or
9.9 banked wetland. Typically, the landowner is a fee title owner or a holder of an easement,
9.10 license, lease, or rental agreement providing the necessary rights. The right must not be
9.11 limited by a lien or other encumbrance that could override the obligations assumed with
9.12 the replacement or banking of a wetland.

9.13 Subp. ~~36.~~ 37. **Less than 50 percent area.** "Less than 50 percent area" means a
9.14 county or watershed with less than 50 percent of the presettlement wetland acreage intact
9.15 or any county or watershed not defined as a greater than 80 percent area or 50 to 80
9.16 percent area, as provided in part 8420.0117.

9.17 Subp. ~~37.~~ 38. **Local government unit.** "Local government unit" means:

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

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

9.23 C. in those cases where an activity or replacement will occur on state land, the
9.24 agency with administrative responsibility for the land.

10.1 Subp. ~~38.~~ 39. **Local water plan.** "Local water plan" means a watershed plan
10.2 pursuant to Minnesota Statutes, sections 103B.201 to 103B.255; a comprehensive local
10.3 water management plan pursuant to Minnesota Statutes, sections 103B.301 to 103B.355;
10.4 or a watershed management plan pursuant to Minnesota Statutes, section 103D.401.

10.5 Subp. ~~39.~~ 40. **Major watershed.** "Major watershed" means the 81 major watershed
10.6 units delineated by the map State of Minnesota Watershed Boundaries, 1979, incorporated
10.7 by reference under part 8420.0112, item Q.

10.8 Subp. ~~40.~~ 41. **Mining.** "Mining" means the removal of peat and metallic minerals as
10.9 provided in Minnesota Statutes, sections 93.461 and 93.481.

10.10 Subp. ~~41.~~ 42. **Minor watershed.** "Minor watershed" means one of the 5,600 minor
10.11 watersheds delineated by the map State of Minnesota Watershed Boundaries, 1979,
10.12 incorporated by reference under part 8420.0112, item Q.

10.13 Subp. ~~42.~~ 43. **Municipal Municipality.** ~~"Municipal" means within a municipality as~~
10.14 ~~defined~~ "Municipality" has the meaning given in Minnesota Statutes, section 103G.005,
10.15 subdivision 12.

10.16 Subp. ~~43.~~ 44. **Native vegetation.** "Native vegetation" means plant species that
10.17 are indigenous to Minnesota or that expand their range into Minnesota without being
10.18 intentionally or unintentionally introduced by human activity and that are classified as
10.19 native in the Minnesota Plant Database, incorporated by reference under part 8420.0112,
10.20 item O.

10.21 Subp. ~~44.~~ 45. **Noninvasive vegetation.** "Noninvasive vegetation" means plant
10.22 species that do not typically invade or rapidly colonize existing, stable plant communities.

10.23 Subp. ~~45.~~ 46. **Nonwetland.** "Nonwetland" means upland areas or previously
10.24 converted areas that do not meet the criteria for classification as a jurisdictional wetland
10.25 using the United States Army Corps of Engineers Wetland Delineation Manual (January

11.1 1987) and deepwater habitats identified using Classification of Wetlands and Deepwater
11.2 Habitats of the United States. Both documents are incorporated by reference under part
11.3 8420.0112, items B and C.

11.4 Subp. ~~46.~~ 47. **On-site.** "On-site" means within or directly adjacent to a project.

11.5 Subp. ~~47.~~ 48. **Ordinance.** "Ordinance" means a body of regulations developed,
11.6 approved, and implemented by a county, city, or township as authorized by Minnesota
11.7 Statutes, chapters 394, 462, and 366, respectively.

11.8 Subp. ~~48.~~ 49. **Pasture.** "Pasture" means an area that was grazed by domesticated
11.9 livestock or that was planted with annually seeded crops in a crop rotation seeded to
11.10 grasses or legumes in six of the last ten years.

11.11 Subp. ~~49.~~ 50. **Peace officer.** "Peace officer" has the meaning given under Minnesota
11.12 Statutes, section 626.84.

11.13 Subp. ~~50.~~ 51. **Permanently and semipermanently flooded area of a type 3, 4,**
11.14 **or 5 wetland.** "Permanently and semipermanently flooded area of a type 3, 4, or 5
11.15 wetland" means the portion of a type 3, 4, or 5 wetland below the level where the water
11.16 has been maintained for a sufficient period of time to leave evidence upon the landscape,
11.17 commonly the point where the natural vegetation changes from predominantly aquatic to
11.18 predominantly terrestrial.

11.19 Subp. ~~51.~~ 52. **Plant community.** "Plant community" means a wetland plant
11.20 community classified according to Wetland Plants and Plant Communities of Minnesota &
11.21 Wisconsin, incorporated by reference under part 8420.0112, item P.

11.22 Subp. ~~52.~~ 53. **Presettlement wetland.** "Presettlement wetland" means a wetland or
11.23 public waters wetland that existed in Minnesota at the time of statehood in 1858.

11.24 Subp. ~~53.~~ 54. **Project.** "Project" means a specific plan, contiguous activity, proposal,
11.25 or design necessary to accomplish a goal as defined by a local government unit. As used

12.1 in this chapter, a project may not be split into components or phases for the purpose of
12.2 gaining additional exemptions.

12.3 Subp. ~~54.~~ 55. **Project-specific.** "Project-specific" means the applicant for a
12.4 replacement plan approval provides the replacement as part of the project, rather than
12.5 ~~obtain~~ attain the replacement from a wetland bank.

12.6 Subp. ~~55.~~ 56. **Public transportation project.** "Public transportation project"
12.7 means a project conducted by a public agency involving transportation facilities open
12.8 to the public.

12.9 Subp. ~~56.~~ 57. **Public value of wetlands.** "Public value of wetlands" means the
12.10 importance and benefit to the public derived from the wetland functions listed in part
12.11 8420.0522, subpart 1.

12.12 Subp. ~~57.~~ 58. **Public waters wetlands.** "Public waters wetlands" has the meaning
12.13 given under part 6115.0170.

12.14 Subp. ~~58.~~ 59. **Public waters.** "Public waters" has the meaning given under part
12.15 6115.0170.

12.16 Subp. ~~59.~~ 60. **Replacement wetland.** "Replacement wetland" means a wetland
12.17 restored or created or an area designated in part 8420.0526, or the equivalent, to replace
12.18 wetland area or the public value of wetland functions lost at an impacted wetland.

12.19 Subp. ~~60.~~ 61. **Responsible party.** "Responsible party" means an individual,
12.20 business, or other organization causing draining, excavation, or filling of wetlands on the
12.21 property of another, with or without the landowner's permission or approval.

12.22 Subp. ~~61.~~ 62. **Restoration.** "Restoration" means reestablishment of an area as
12.23 wetlands that was historically wetlands and that is no longer wetlands or remains as a
12.24 degraded wetland.

13.1 Subp. ~~62.~~ 63. **Rule.** "Rule" means a body of regulations developed, approved, and
13.2 implemented by a watershed management organization as authorized under Minnesota
13.3 Statutes, chapter 103D.

13.4 Subp. ~~63.~~ 64. **Shoreland or shoreland wetland protection zone.**

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

13.8 (1) 1,000 feet from the ordinary high water level of a water basin that is
13.9 a public water identified in the shoreland management ordinance or the shoreland area
13.10 approved by the commissioner as provided in the shoreland management rules adopted
13.11 under Minnesota Statutes, section 103F.211, whichever is less; or

13.12 (2) 300 feet from the ordinary high water level of a watercourse identified in
13.13 the shoreland management ordinance or the shoreland area approved by the commissioner
13.14 as provided in the shoreland management rules adopted under Minnesota Statutes, section
13.15 103F.211, whichever is less.

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

13.19 (1) 1,000 feet from the ordinary high water level of a water basin that is a
13.20 public water that is at least ten acres in size within municipalities and at least 25 acres in
13.21 size in unincorporated areas; or

13.22 (2) 300 feet from the ordinary high water level of a watercourse identified
13.23 by the public waters inventory under Minnesota Statutes, section 103G.201.

13.24 Subp. ~~64.~~ 65. **Silviculture.** "Silviculture" means management of forest trees.

14.1 Subp. ~~65.~~ 66. **Soil and water conservation district.** "Soil and water conservation
14.2 district" means a legal subdivision of state government under Minnesota Statutes, chapter
14.3 103C.

14.4 Subp. ~~66.~~ 67. **State wetland banking system, wetland bank, or bank.** "State
14.5 wetland banking system," "wetland bank," or "bank" means a system of identifying
14.6 wetlands restored or created for replacement credit and providing for, facilitating, and
14.7 tracking the exchange of wetland banking credits for projects that require replacement
14.8 plans or wetland mitigation required by other local, state, or federal authorities.

14.9 Subp. ~~67.~~ 68. **Structure.** "Structure" means any object erected or placed in, under,
14.10 or over or anchored or attached to a wetland area.

14.11 Subp. ~~68.~~ 69. **Utility.** "Utility" means a sanitary sewer; a storm sewer; potable
14.12 water distribution; or transmission, distribution, or furnishing, at wholesale or retail, of
14.13 natural or manufactured gas, petroleum products, electricity, telephone, or radio service
14.14 or communications.

14.15 Subp. ~~69.~~ 70. **Watershed.** "Watershed" means a land area that drains to a common
14.16 waterway, such as a stream, lake, estuary, or wetland.

14.17 Subp. ~~70.~~ 71. **Watershed management organization.** "Watershed management
14.18 organization" has the meaning given under Minnesota Statutes, section 103B.205,
14.19 subdivision 13.

14.20 Subp. ~~71.~~ 72. **Wetlands, a wetland, the wetland, or wetland area.**

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

14.24 (1) have a predominance of hydric soils;

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

15.4 (3) under normal circumstances, support a prevalence of hydrophytic
15.5 vegetation.

15.6 B. "A wetland" or "the wetland" means a distinct hydrologic feature with
15.7 characteristics of item A, surrounded by nonwetland and including all contiguous wetland
15.8 types, except those connected solely by riverine wetlands. "Wetland area" means a portion
15.9 of a wetland or the wetland.

15.10 C. Wetlands does not include public waters wetlands and public waters unless
15.11 reclassified as wetlands by the commissioner under Minnesota Statutes, section 103G.201.

15.12 D. The wetland size is the area within its boundary. The boundary must be
15.13 determined according to the United States Army Corps of Engineers Wetland Delineation
15.14 Manual (January 1987). The wetland type must be determined according to Wetlands of
15.15 the United States, (1971 edition). Both documents are incorporated by reference under
15.16 part 8420.0112, items A and B. The local government unit may seek the advice of the
15.17 technical evaluation panel as to the wetland size and type.

15.18 Subp. ~~72.~~ 73. **Wetlands in a cultivated field.** "Wetlands in a cultivated field" means
15.19 a wetland where greater than 50 percent of its boundary abuts land that was in agricultural
15.20 crop production in six of the ten years before January 1, 1991.

15.21 Subp. ~~73.~~ 74. **Wetlands located on agricultural land.** "Wetlands located on
15.22 agricultural land" means a wetland where greater than 50 percent of its boundary abuts
15.23 agricultural land.

15.24 Subp. ~~74.~~ 75. **Wetland type or type.** "Wetland type" or "type" means a wetland
15.25 type classified according to Wetlands of the United States (1956 and 1971 editions), as

16.1 summarized in this subpart. Classification of Wetlands and Deepwater Habitats of the
16.2 United States is a separate, parallel wetland typing system that may be used to characterize
16.3 components of a wetland. Both documents are incorporated by reference under part
16.4 8420.0112, items A and B.

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

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

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

16.22 D. "Type 4 wetlands" are inland deep fresh marshes in which soil is usually
16.23 covered with six inches to three feet or more of water during the growing season.
16.24 Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas,
16.25 pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, water lilies, or

17.1 spatterdocks may occur. These deep marshes may completely fill shallow lake basins,
17.2 potholes, limestone sinks, and sloughs or may border open water in such depressions.

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

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

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

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

17.23 **8420.0112 INCORPORATION BY REFERENCE.**

17.24 This chapter incorporates by reference the following documents and any subsequent
17.25 updates, addenda, or derivations related to them, as approved by the board:

- 18.1 A. Wetlands of the United States (United States Fish and Wildlife Service
18.2 Circular No. 39, 1956 and 1971 editions).
- 18.3 B. United States Army Corps of Engineers Wetland Delineation Manual
18.4 (January 1987).
- 18.5 C. Classification of Wetlands and Deepwater Habitats of the United States
18.6 (Cowardin, et al., 1979 edition).
- 18.7 D. Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater
18.8 Resources in Minnesota (Minnesota Department of Natural Resources, 1991).
- 18.9 E. United States Geological Survey Hydrologic Unit Map for Minnesota (1974).
- 18.10 F. National Wetland Inventory maps (United States Fish and Wildlife Service).
- 18.11 G. Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective,
18.12 Anderson and Craig, 1984.
- 18.13 H. Wetland Restoration Guide, Minnesota Board of Water and Soil Resources
18.14 (December 1982).
- 18.15 I. Vegetation in Restored and Created Wetlands, Minnesota Board of Water and
18.16 Soil Resources, September 2000.
- 18.17 J. Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water
18.18 Conservation Districts and Local Government Units in Certifying and Approving
18.19 Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group,
18.20 December 2000.
- 18.21 K. Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest
18.22 Management Guidelines for Landowners, Loggers and Resource Managers. Minnesota
18.23 Forest Resources Council, St. Paul, 1999.

19.1 L. Minnesota Construction Site Erosion and Sediment Control Planning
19.2 Handbook. Minnesota Board of Water and Soil Resources and the Association of
19.3 Metropolitan Soil and Water Conservation Districts, St. Paul, 1988.

19.4 M. Agriculture and Water Quality: Best Management Practices for Minnesota,
19.5 Minnesota Pollution Control Agency, St. Paul, 1991.

19.6 N. Storm-Water and Wetlands: Planning and Evaluation Guidelines for
19.7 Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands,
19.8 Minnesota Storm-Water Advisory Group, 1997.

19.9 O. Minnesota Plant Database, Minnesota Department of Natural Resources,
19.10 St. Paul, 2002.

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

19.13 Q. State of Minnesota Watershed Boundaries, 1979, Minnesota Department of
19.14 Natural Resources, St. Paul, 1979.

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

19.19 **8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.**

19.20 Subpart 1. **County classification.** For purposes of this chapter:

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

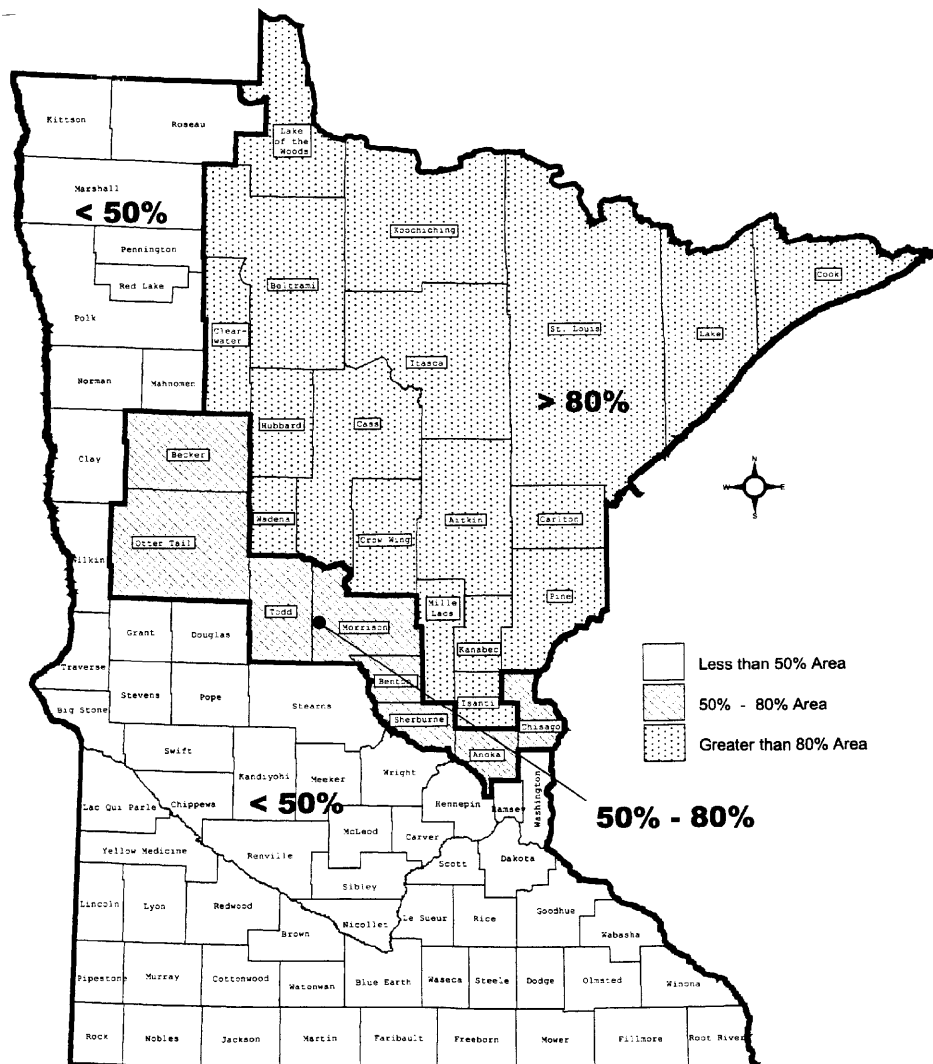
19.24 B. the following counties are 50 to 80 percent areas: Anoka; Becker; Benton;
19.25 Chisago; Morrison; Otter Tail; Sherburne; and Todd; and

20.1 C. the following counties are less than 50 percent areas: Big Stone; Blue Earth;
 20.2 Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault;
 20.3 Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson;
 20.4 Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahanomen; Marshall; Martin; McLeod; Meeker;
 20.5 Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope;
 20.6 Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns;
 20.7 Steele; Stevens; Swift; Traverse; Wabasha; Waseca; Washington; Watonwan; Wilkin;
 20.8 Winona; Wright; and Yellow Medicine.

20.9

WETLAND AREAS

Minnesota Wetland Conservation Act Pre - Statehood Wetland Areas



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

21.2 A. A local government unit may request the board to reclassify a county or
21.3 major watershed wholly or partly within its jurisdiction on the basis of its percentage of
21.4 presettlement wetlands remaining. After receipt of satisfactory documentation from the
21.5 local government, the board must change the classification of a county or major watershed.
21.6 If requested by the local government unit, the board must assist in developing the
21.7 documentation. Within 30 days of its action to approve a change of wetland classifications,
21.8 the board must publish a notice of the change in the Environmental Quality Board Monitor.

21.9 B. One hundred citizens who reside within the jurisdiction of the local
21.10 government unit may request the local government unit to reclassify the county or
21.11 major watershed on the basis of its percentage of presettlement wetlands remaining. In
21.12 support of the petition, the citizens must provide satisfactory documentation to the local
21.13 government unit. The local government unit must consider the petition and forward the
21.14 request to the board or provide a reason why the petition is denied.

21.15 **LOCAL GOVERNMENT UNIT DUTIES AND PROCEDURES**

21.16 **8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.**

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

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

21.21 B. In the seven-county metropolitan area, the local government unit is the
21.22 city, town, or water management organization regulating surface-water-related matters
21.23 in the area in which the activity is located, or its delegate. The watershed management
21.24 plan adopted under Minnesota Statutes, section 103B.231, and related board rules will

22.1 normally indicate the appropriate local government unit. Lacking an indication, the local
22.2 government unit must be the city, town, or its delegate.

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

22.8 D. Notwithstanding items A to G, the Department of Natural Resources is the
22.9 approving authority for activities associated with projects requiring permits to mine under
22.10 Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

22.11 E. ~~Delegation of~~ Implementation of this chapter and the act may be delegated
22.12 from a county, city, or town, as applicable according to item A or B, to a soil and water
22.13 conservation district or other governmental entity ~~must occur~~ by the passage of resolutions
22.14 by both parties. The delegation becomes effective when resolutions have been passed by
22.15 both parties, or on the date specified in the resolutions, whichever is later. Both parties
22.16 must provide notice to the board, the commissioner, and the soil and water conservation
22.17 district within 15 business days of adoption of the resolution. The notice must include a
22.18 copy of the resolution and a description of the applicable geographic area.

22.19 F. If the activity is located in two jurisdictions, the local government unit is the
22.20 one exercising zoning authority over the project or, if both have zoning authority, the
22.21 one in which most of the wetland impacts will occur. If no zoning permits are required,
22.22 the local government unit is the one in which most of the wetland impacts will occur.
22.23 If an activity will affect wetlands in more than one local government unit, the board
22.24 may coordinate the project review to ensure consistency and consensus among the local
22.25 government units involved. Local government units may maintain separate jurisdiction
22.26 if mutually agreed upon.

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

23.3 H. For replacement plans where the project-specific replacement will occur in a
23.4 different local government unit than the impact, approval of all local government units
23.5 involved or as specified in items A to G constitutes final approval of the replacement
23.6 plan and is required before the project may proceed. The local government unit with
23.7 jurisdiction for the impact site must approve all components of the replacement plan,
23.8 following the procedures required by this chapter. The local government unit with
23.9 jurisdiction for the replacement site must limit the review to evaluation of the replacement
23.10 site and make a decision accordingly. As part of the approval of the replacement plan, the
23.11 local government unit with jurisdiction for the replacement site assumes responsibility
23.12 for ensuring compliance with monitoring provisions according to parts 8420.0800 to
23.13 8420.0820. The local government unit with jurisdiction for the replacement site may enter
23.14 into joint powers agreements with a local government unit with jurisdiction for the impact
23.15 site, assess fees, or develop other procedures considered necessary to facilitate the process.

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

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

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

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

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

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

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

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

24.22 F. ~~The local government unit may evaluate evidence for a no-loss, an exemption,~~
24.23 ~~or sequencing without making a decision.~~ In the absence of an application, the local
24.24 government unit may evaluate information related to a potential activity upon the request
24.25 of a landowner. The evaluation provided does not constitute a decision for the purposes of
24.26 parts 8420.0100 to 8420.0935.

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

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

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

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

25.13 A. If a local government unit fails to acknowledge in writing its responsibilities
25.14 under this chapter and the act, as required in subpart 2, the board must impose, in the
25.15 local government unit's jurisdiction, a 60-day moratorium on making decisions and
25.16 implementing this chapter and the act. The board must notify the local government unit in
25.17 writing of the start and end dates of the moratorium. The board must end the moratorium
25.18 within the 60 days upon written agreement by the local government unit that it will
25.19 assume, and is currently capable of implementing, its duties under this chapter and the act.
25.20 If at the end of the initial 60-day moratorium a written agreement has not been made for
25.21 the local government unit to apply the law, the board may extend the moratorium until the
25.22 local government unit agrees to apply the law.

25.23 B. If the board has information that a local government unit is not following
25.24 this chapter or the act in making decisions; if the local government unit does not have
25.25 knowledgeable and trained staff with experience in water resource management; or if the
25.26 local government unit fails to comply with the board's reporting requirements, the board

26.1 must notify the local government unit in writing of its concerns. The local government
26.2 unit must respond in writing within 60 days of being notified by the board. If not satisfied
26.3 with the local government unit's written response, or none is received, the board must ask
26.4 the local government unit to appear at a hearing before the board to discuss the matter. The
26.5 board may invite comments from other local governments or state and federal agencies.
26.6 If the board determines at the hearing that corrective action is necessary, the board must
26.7 write the local government unit directing specific corrective action to occur within 60 days
26.8 of receiving the board's decision. The notice must explain the reason for the action. If,
26.9 after the 60-day period, the local government unit has not corrected the problem to the
26.10 satisfaction of the board, the board must declare a moratorium as prescribed in item A or
26.11 take other appropriate legal action to ensure compliance.

26.12 C. When a moratorium is declared as prescribed in item A or B, a decision
26.13 cannot be made on an application because a local government unit authorized to
26.14 implement this chapter does not exist while the moratorium is in effect. An application
26.15 pending a local government unit decision when a moratorium is declared must be returned
26.16 by the local government unit to the applicant within 15 business days of the moratorium
26.17 being placed in effect. An application submitted while a moratorium is in effect must be
26.18 returned by the local government unit to the applicant with an explanation and within 15
26.19 business days of the local government unit's receipt of the application.

26.20 **8420.0233 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND**
26.21 **ORDINANCES.**

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

26.24 **8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

26.25 A. For each local government unit, there is a technical evaluation panel. Panel
26.26 membership consists of: a technical professional employee of the board, a technical

27.1 professional employee of the soil and water conservation district of the county in which
27.2 the activity is occurring, and a technical professional with expertise in water resource
27.3 management appointed by the local government unit. For projects affecting public waters,
27.4 public waters wetlands, or wetlands within the shoreland protection zone, the panel also
27.5 includes a technical professional employee of the Department of Natural Resources. The
27.6 local government unit must coordinate the panel.

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

27.17 C. The technical evaluation panel, if requested to do so by the local government
27.18 unit, the landowner, or a member of the panel, must make technical findings and
27.19 recommendations regarding applications, the scope of this chapter and the act, the
27.20 applicability of exemption and no-loss standards, wetland functions and the resulting
27.21 public value, direct and indirect impacts, possible violations of this chapter and the
27.22 act, enforcement matters under part 8420.0900, comprehensive wetland protection
27.23 and management plans and implementing rules and ordinances, and other technical
27.24 issues related to implementation of this chapter. The panel must review applications for
27.25 replacement of public road projects submitted according to part 8420.0544, banking
27.26 projects according to parts 8420.0700 to 8420.0755, and replacement wetland monitoring
27.27 as provided in parts 8420.0800 to 8420.0820. The panel must provide its findings to the

28.1 local government unit for consideration. For violations of this chapter that may result in the
28.2 issuance of an enforcement order, the panel must consult with the enforcement authority.

28.3 D. ~~The panel may recommend to the local government unit approval, approval~~
28.4 ~~with changes or conditions, or denial of an application. The panel's recommendation to the~~
28.5 local government unit may recommend approval, approval with changes or conditions, or
28.6 denial of an application. When a technical evaluation panel assembles findings or makes a
28.7 recommendation, the local government unit must consider the findings or recommendation
28.8 of the panel in its approval or denial of an application. The panel shall make no findings
28.9 or recommendations without at least one member having made an on-site inspection.
28.10 Panel findings and recommendations must be documented and endorsed by a majority of
28.11 the members. If the local government unit does not agree with the panel's findings and
28.12 recommendation, the detailed reasons for the disagreement must be part of the local
28.13 government unit's record of decision.

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

28.19 **8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION**
28.20 **PROCEDURES.**

28.21 Subpart 1. **General.** Notices and local government unit decisions made under this
28.22 chapter must be in compliance with Minnesota Statutes, section 15.99.

28.23 Subp. 2. **Determination of complete application.** ~~If, within 15 business days of~~
28.24 ~~receipt of an application, the local government unit finds that an application is incomplete,~~
28.25 ~~the local government unit must notify the applicant and list in writing what items or~~
28.26 ~~information is missing. Parts 8420.0305 to 8420.0330 must be the basis for determining a~~

29.1 ~~complete application. The local government unit may determine an application incomplete~~
29.2 ~~when seasonal constraints prevent on-site review and verification of the application,~~
29.3 ~~provided the notification to the applicant includes a date, no later than the average start~~
29.4 ~~to the growing season, when the application will be considered complete. When an~~
29.5 ~~application contains a previously approved wetland boundary for which the approval~~
29.6 ~~remains valid, the wetland boundary may not serve as the basis for determining an~~
29.7 ~~application incomplete. The local government unit must determine that an application~~
29.8 is complete based on parts 8420.0305 to 8420.0330. For incomplete applications, the
29.9 local government unit must notify the applicant within 15 business days of receipt of the
29.10 application and list in writing what items or information is missing.

29.11 **Subp. 3. Notice of application.**

29.12 A. Within 15 business days of receipt of a complete application, the local
29.13 government unit must send a copy of the application and a notice of application on a
29.14 form provided by the board to members of the technical evaluation panel; the watershed
29.15 district or water management organization, if there is one; the commissioner; and
29.16 individual members of the public who request a copy. The notice must identify the type of
29.17 application, the date the comment period ends, and where to submit comments. Individual
29.18 members of the public who request a copy must be sent a summary of the application
29.19 that includes information to identify the applicant and the location and scope of the
29.20 project. The comment period must be at least 15 business days from the date the notice of
29.21 application is sent. Revisions of an approved and valid replacement plan must be noticed
29.22 according to this subpart by sending a summary of the proposed revisions if:

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

29.24 (a) increased by more than ten percent;

29.25 (b) a different type;

29.26 (c) part of a different wetland; or

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

30.3 (2) the replacement is:

30.4 (a) a different type;

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

30.7 (c) a different action eligible for credit.

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

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

31.1 ~~technical evaluation panel.~~ when the technical evaluation panel advises that a longer
31.2 period is justified in accordance with the standards in parts 8420.0100 to 8420.0935.

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

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

31.17 **8420.0265 PREVIOUSLY APPROVED APPLICATIONS.**

31.18 Activities for which an application was approved may be completed under the laws,
31.19 rules, conditions, and guidelines in effect when they were approved, provided the local
31.20 government unit's approval is still valid.

31.21 **APPLICATION PROCEDURES**

31.22 **8420.0305 GENERAL APPLICATION REQUIREMENTS.**

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

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

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

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

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

32.8 (4) the type of decision requested, as identified in parts 8420.0310 to
32.9 8420.0330;

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

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

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

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

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

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

33.1 **8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.**

33.2 A landowner may apply for a wetland boundary or type decision from the local
33.3 government unit. The landowner is responsible for submitting proof necessary to make the
33.4 decision. Applications for approval of wetland boundary or type must include information
33.5 according to the wetland delineation report submittal guidelines provided by the board.
33.6 A wetland boundary or type application may be submitted independently or as part of a
33.7 no-loss, exemption, sequencing, replacement plan, or banking application. When an
33.8 independent wetland boundary or type application is approved, and the approval remains
33.9 valid, ~~it may be incorporated~~ the applicant may incorporate the approval in a subsequent
33.10 application for a no-loss, exemption, sequencing, replacement plan, or banking application.

33.11 **8420.0315 NO-LOSS APPLICATIONS.**

33.12 A. A landowner may apply to the local government unit for a no-loss decision.
33.13 A landowner who does not request a decision from the local government unit and proceeds
33.14 with the activity may be subject to the enforcement provisions under part 8420.0915 and
33.15 Minnesota Statutes, section 103G.2372.

33.16 B. The landowner applying for a no-loss is responsible for submitting the proof
33.17 necessary to show qualification for the claim. ~~The local government unit may require that~~
33.18 ~~a wetland delineation report or functional assessment be submitted if the local government~~
33.19 ~~unit determines that the report or assessment is necessary to make a decision on the~~
33.20 ~~no-loss application.~~ This part also applies to applications requesting a decision on whether
33.21 an activity or wetland falls within the scope of this chapter.

33.22 **8420.0320 EXEMPTION APPLICATIONS.**

33.23 A. A landowner intending to impact a wetland without replacement, claiming
33.24 exemption under part 8420.0420, may apply to the local government unit for an exemption
33.25 decision or request an on-site exemption decision before beginning the activity to verify
33.26 whether the proposed impact is exempt. A landowner who does not request a decision

34.1 from the local government unit and proceeds with the activity may be subject to the
34.2 enforcement provisions under part 8420.0915 and Minnesota Statutes, section 103G.2372.
34.3 An exemption may apply whether or not the local government unit has made an exemption
34.4 decision. If the landowner requests an exemption decision, then the local government
34.5 unit must make one.

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

34.8 **8420.0325 SEQUENCING APPLICATIONS.**

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

34.16 **8420.0330 REPLACEMENT PLAN APPLICATIONS.**

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

34.20 Subp. 2. **Preapplication conference and site visit.** Before preparation of a
34.21 replacement plan, it is recommended that the landowner meet with the local government
34.22 unit for a preapplication conference and site visit. The local government unit is encouraged
34.23 to inform the landowner of all sequencing requirements and the criteria used to evaluate
34.24 replacement plans.

35.1 Subp. 3. **Application contents.** On an application form approved by the board in
35.2 consultation with the commissioner, provided through the local government unit, and with

35.3 required attachments supplied by the applicant, the following documentation must be
35.4 provided in addition to the information required in part 8420.0305:

35.5 A. for the impacted wetland:

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

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

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

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

35.15 (5) information known to the applicant or readily available concerning the
35.16 special considerations criteria in part 8420.0515;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37.18 (12) evidence that a person proposing to create or restore a wetland within
37.19 the easement of a pipeline, as defined in Minnesota Statutes, section 299J.02, subdivision
37.20 11, has first notified the easement holder and the director of the Office of Pipeline Safety
37.21 in writing. The person may not create or restore the wetland if, within 90 days after
37.22 receiving the required notice, the easement holder or the director of the Office of Pipeline
37.23 Safety provides to the person a written notice of objection that includes the reasons for
37.24 the objection;

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

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

38.5 (15) a vegetation establishment and management plan according to part
38.6 8420.0528, subpart 2, item D; and

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

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

38.11 (1) the wetland bank account number;

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

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

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

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

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

38.22 A. for project-specific replacement that is not in advance according to part
38.23 8420.0522, subpart 8, item B, a financial assurance according to part 8420.0522, subpart
38.24 9, unless waived by the local government unit;

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

39.4 (1) the location of the replacement area;

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

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

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

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

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

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

39.19 **8420.0335 CONTRACTOR'S NOTIFICATION RESPONSIBILITY.**

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

39.23 B. A contractor must not drain, excavate, or fill a wetland, wholly or partially,
39.24 unless the contractor has, ~~on a form provided by the board:~~

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

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

40.6 C. ~~Work in violation of this part is a misdemeanor.~~ A form shall be provided by
40.7 the board for use in complying with this part.

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

40.10 **BOUNDARY OR TYPE, NO-LOSS, AND EXEMPTION STANDARDS**

40.11 **8420.0405 BOUNDARY OR TYPE.**

40.12 Subpart 1. **Wetland boundary.** Wetland boundaries must be determined using the
40.13 methodologies in the United States Army Corps of Engineers Wetlands Delineation
40.14 Manual (January 1987), including subsequent updates and supplements, and guidance
40.15 provided by the board.

40.16 Subp. 2. **Wetland type.** Wetland type must be identified according to United States
40.17 Fish and Wildlife Service Circular No. 39 (1971 edition) Wetlands of the United States
40.18 and Classification of Wetlands and Deepwater Habitats of the United States, including
40.19 modifications or guidance provided by the board. Wetland type in relation to Wetland
40.20 Plants and Plant Communities of Minnesota & Wisconsin is shown in the following table:

41.1	Wetland Plants and Plant Communities		
41.2	of Minnesota and Wisconsin (Eggers and		
41.3	Reed 1997), as modified by the Board	Classification of	
41.4	of Water and Soil Resources-United	Wetlands and Deepwater	Fish and Wildlife
41.5	States Army Corps of Engineers	Habitats of the United	Service Circular 39
41.6	Wetland Mitigation Memorandum of	States (Cowardin et al.	(Shaw and Fredine
41.7	Understanding (May 2007)	1979)	1971)
41.8	Shallow, open water	Palustrine or lacustrine,	Type 5: Inland open
41.9		littoral; aquatic bed;	fresh water
41.10		submergent, floating, and	
41.11		floating-leaved	
41.12	Deep marsh	Palustrine or lacustrine,	Type 4: Inland deep
41.13		littoral; aquatic bed;	fresh marsh
41.14		submergent, floating,	
41.15		and floating-leaved;	
41.16		emergent; persistent and	
41.17		nonpersistent	
41.18	Shallow marsh	Palustrine; emergent;	Type 3: Inland
41.19		persistent and	shallow fresh marsh
41.20		nonpersistent	
41.21	Sedge meadow	Palustrine; emergent;	Type 2: Inland fresh
41.22		narrow-leaved persistent	meadow
41.23	Fresh (wet) meadow	Palustrine; emergent;	Type 1: Seasonally
41.24		broad- and narrow-leaved	flooded basin or flat
41.25		persistent	Type 2: Inland fresh
41.26			meadow
41.27	Wet to wet-mesic prairie	Palustrine; emergent;	Type 1: Seasonally
41.28		broad- and narrow-leaved	flooded basin or flat
41.29		persistent	Type 2: Inland fresh
41.30			meadow
41.31	Calcareous fen	Palustrine; emergent;	Type 2: Inland fresh
41.32		narrow-leaved	meadow
41.33		persistent; scrub/shrub;	Type 6: Shrub
41.34		broad-leaved deciduous	swamp

42.1	Open bog or coniferous bog	Palustrine; moss/lichen;	Type 8: Bog
42.2		scrub/shrub;	
42.3		broad-leaved evergreen;	
42.4		forested; needle-leaved	
42.5		evergreen and deciduous	
42.6	Shrub-carr or alder thicket	Palustrine; scrub/shrub;	Type 6: Shrub
42.7		broad-leaved deciduous	swamp
42.8	Hardwood swamp or coniferous swamp	Palustrine; forested;	Type 7: Wooded
42.9		broad-leaved deciduous;	swamp
42.10		needle-leaved evergreen	
42.11		and deciduous	
42.12	Floodplain forest	Palustrine; forested;	Type 1: Seasonally
42.13		broad-leaved deciduous	flooded basin or flat
42.14	Seasonally flooded basin	Palustrine; flat;	Type 1: Seasonally
42.15		emergent; persistent	flooded basin or flat
42.16		and nonpersistent	

42.17 **8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.**

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

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

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

42.25 C. the activity is conducted in compliance with all other applicable federal,
42.26 state, and local requirements, including best management practices according to the
42.27 documents referenced in part 8420.0112, items L, M, and N, and water resource protection
42.28 requirements established under Minnesota Statutes, chapter 103H.

42.29 **8420.0415 NO-LOSS CRITERIA.**

43.1 "No-loss" means no permanent loss of, or impact to, wetlands from an activity
43.2 according to the criteria in this part. ~~Activities that do not qualify for no-loss according to~~
43.3 ~~this part may be subject to the replacement requirements of this chapter.~~ The following
43.4 qualify for a no-loss:

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

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

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

43.19 D. an activity conducted as part of an approved replacement or banking plan,
43.20 conducted or authorized by public agencies for the purpose of wetland restoration or fish
43.21 and wildlife habitat restoration or improvement according to the guidance referenced
43.22 in part 8420.0112, items J and H, or repair and maintenance of earthen containment
43.23 structures;

43.24 E. excavation limited to removal of deposited sediment in wetlands that are
43.25 presently utilized as storm water management basins, or excavation and removal of

43.26 contaminated substrate, when the excavated area is limited to the minimum dimensions
44.1 necessary for achieving the desired purpose and stabilized to prevent water quality
44.2 degradation;

44.3 F. an activity associated with the operation, routine maintenance, or emergency
44.4 repair of existing utilities and public works structures, including pipelines, provided
44.5 the activity does not result in additional wetland intrusion or additional impacts, either
44.6 wholly or partially;

44.7 G. temporarily crossing or entering a wetland to perform silvicultural activities,
44.8 including timber harvest as part of a forest management activity, so long as the activity
44.9 limits the impact on the hydrologic and biologic characteristics of the wetland; the activity
44.10 does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and
44.11 the timber harvesting and other silvicultural practices do not result in the drainage of
44.12 the wetland or public waters; or

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

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

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

44.23 (3) the landowner provides sufficient financial assurance acceptable to the
44.24 local government unit to cover the estimated cost to restore the wetland to preproject
44.25 conditions. The local government unit must return any remaining financial assurance to

45.1 the landowner upon a determination by the local government unit that the conditions in
45.2 this item have been met by the landowner; and

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

45.7 **8420.0420 EXEMPTION STANDARDS.**

45.8 Subpart 1. **Scope.**

45.9 A. ~~Certain impacts may qualify for an exemption from replacement~~
45.10 ~~requirements. An impact is exempt from replacement if it qualifies for any one of the~~
45.11 ~~exemptions, even though it may be indicated as not exempt under another exemption.~~
45.12 ~~Persons proposing to conduct an exempt activity are encouraged to contact the local~~
45.13 ~~government unit to verify eligibility for an exemption and to evaluate alternatives to avoid~~
45.14 ~~or minimize wetland impacts. If the total amount of impact exceeds the amount allowed~~
45.15 ~~under the applicable exemption, the impact is not exempt and the entire amount of impact~~
45.16 ~~must be replaced. An impact is exempt from replacement if it qualifies for any one of the~~
45.17 ~~listed exemptions. An impact is not disqualified when it is indicated as not exempt under a~~
45.18 ~~different exemption. Persons proposing to conduct an exempt activity may contact the~~
45.19 ~~local government unit to verify eligibility for an exemption and to evaluate alternatives~~
45.20 ~~to avoid or minimize wetland impacts. When the total amount of impact exceeds the~~
45.21 ~~amount allowed under the applicable exemption, the impact is not exempt and the entire~~
45.22 ~~amount of impact must be replaced.~~

45.23 B. No exemptions apply to:

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

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

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

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

46.7 C. Exemptions may not be combined on a project.

46.8 D. Present and future owners of wetlands impacted without replacement under
46.9 an exemption for agricultural activities in subpart 2 or drainage in subpart 3 must
46.10 make no use of the wetland area after it is impacted, other than as agricultural land or
46.11 other use specified in subpart 2, for at least ten years after the impact unless it is first
46.12 replaced according to Minnesota Statutes, section 103G.222. Except for land in public
46.13 ownership, at the time of impact, the local government unit may require the landowner
46.14 to record a notice of these restrictions in the office of the county recorder for the county
46.15 in which the project is located if the local government unit determines the wetland
46.16 area impacted is at risk of conversion to a nonagricultural use or use other than that
46.17 specified in subpart 2 within ten years, based on the zoning classification, proximity to a
46.18 municipality or full-service road, or other criteria as determined by the local government
46.19 unit. In making a decision under this item, the local government unit must review the
46.20 applicable comprehensive plan, if one exists, when evaluating the risk of conversion to a
46.21 nonagricultural use and monitor and enforce the prohibition on using the area impacted for
46.22 a nonagricultural purpose for at least ten years. At a minimum, the recorded document
46.23 must contain the name or names of the landowners, a legal description of the property
46.24 to which the restrictions apply, a statement of the restrictions, the date on which the
46.25 restrictions expire, the name of the local government that approved the exemption, if an
46.26 exemption occurred, the signatures of all owners, and an acknowledgment.

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

47.2 A. impacts resulting from agricultural activities in a wetland that was planted
47.3 with annually seeded crops or was in a crop rotation seeding of pasture grass or legumes
47.4 in six of the last ten years prior to January 1, 1991. Documentation, such as aerial
47.5 photographs, United States Department of Agriculture records, or other applicable
47.6 documentation may be used as evidence for this exemption. Impacts eligible for this
47.7 exemption must be to type 1 or 2 wetlands;

47.8 B. impacts resulting from agricultural activities in a type 1 wetland on
47.9 agricultural pasture land that remains in the same use, except for bottomland hardwood
47.10 type 1 wetlands, and impacts resulting from agricultural activities in a type 2 or 6 wetland
47.11 that is less than two acres in size and located on agricultural pasture land that remains in
47.12 the same use;

47.13 C. impacts resulting from soil and water conservation projects that are certified
47.14 by soil and water conservation district technical staff after review by the technical
47.15 evaluation panel, if the project minimizes adverse effects on the hydrologic and biologic
47.16 characteristics of the wetland. For purposes of this item, examples of soil and water
47.17 conservation projects include those identified in the State Cost Share Program Manual,
47.18 available from the board or soil and water conservation districts, and federally funded
47.19 demonstration, research, and cost share programs and projects;

47.20 D. filling a wetland to accommodate wheeled booms on irrigation devices if
47.21 the fill does not impede normal drainage;

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

48.1 F. impacts resulting from wild rice production activities, including necessary
48.2 diking and other activities authorized under a permit issued by the United States Army
48.3 Corps of Engineers under section 404 of the federal Clean Water Act, United States Code,
48.4 title 33, section 1344; or

48.5 G. impacts resulting from agricultural activities that are subject to federal farm
48.6 program restrictions that meet minimum state standards under this chapter and Minnesota
48.7 Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board,
48.8 the commissioners of natural resources and agriculture, and the Pollution Control Agency.
48.9 An exemption under this item is not valid until such approval is obtained. If approved,
48.10 the conditions and standards shall be noticed by the board to local government units
48.11 and published in the State Register. The conditions and standards take effect 30 days
48.12 after publication and remain in effect unless superseded by subsequent statute, rule, or
48.13 notice in the State Register. Upon taking effect, this exemption only applies to impacts on
48.14 agricultural land annually enrolled in the federal Farm Program that are not beyond what is:

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

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

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

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

48.23 Subp. 3. **Drainage.**

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

49.1 B. A replacement plan is not required for:

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

49.6 (2) impacts resulting from maintenance or repair of existing drainage
49.7 systems other than public drainage systems, when the maintenance or repair does not drain
49.8 wetlands that have existed for more than 25 years before the proposed impact.

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

49.14 C. A replacement plan is not required for:

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

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

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

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

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

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

50.5 i. there was an expenditure made from the drainage system
50.6 account for the public drainage system;

50.7 ii. the public drainage system was repaired or maintained as
50.8 approved by the drainage authority; or

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

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

50.13 i. platted lots;

50.14 ii. planned unit, commercial, or industrial developments; or

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

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

50.21 Documentation such as aerial photographs, United States Department of Agriculture
50.22 records, or other applicable documentation may be used as evidence for the exemption
50.23 under this item.

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

51.4 E. A public drainage authority may, as part of a repair, install control structures,
51.5 realign a ditch, construct dikes along a ditch, or make other modifications as necessary
51.6 to prevent drainage of a wetland.

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

51.13 Subp. 4. **Federal approvals.** A replacement plan is not required for impacts
51.14 authorized under section 404 of the federal Clean Water Act, United States Code, title
51.15 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States
51.16 Code, title 33, section 403, and regulations that meet minimum state standards under this
51.17 chapter and that have been approved by the board, the Department of Agriculture, the
51.18 Department of Natural Resources, and the Pollution Control Agency. This exemption is
51.19 not valid until such approval is obtained. If approved, the conditions and standards shall
51.20 be noticed by the board to local government units and published in the State Register. The
51.21 exemption takes effect 30 days after publication and remains in effect unless superseded
51.22 by subsequent statute, rule, or notice in the State Register.

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

51.24 A. ~~impacts to~~ draining a wetland that was restored or created for conservation
51.25 purposes under a contract or easement providing the landowner with the right to drain
51.26 the restored or created wetland to preproject hydrologic conditions. The landowner

52.1 must provide a contract or easement conveyance demonstrating that the landowner or a
52.2 predecessor restored or created the wetland for conservation purposes but retained the
52.3 right to subsequently drain the restored or created wetland to the conditions that existed
52.4 before restoration or creation; or

52.5 B. impacts to a wetland that was restored or created by a landowner without any
52.6 assistance or financing from public agencies or private entities other than the landowner,
52.7 if the wetland has not been used for wetland replacement or deposited in the state
52.8 wetland bank. For purposes of this item, assistance by public agencies does not include
52.9 consultation on project design or advice on the project's relationship to state or federal
52.10 programs. The landowner must provide a contract, billing statements, or other evidence
52.11 sufficient to demonstrate that the landowner or a predecessor restored or created the
52.12 wetland without any assistance or financing from public agencies or private entities other
52.13 than the landowner or predecessor. The landowner must also provide sufficient information
52.14 to determine that the area was not wetland before restoration or creation activity.

52.15 Subp. 6. **Utilities.**

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

52.17 (1) installation, maintenance, repair, or replacement of utility lines,
52.18 including pipelines, if:

52.19 (a) the impacts have been avoided and minimized to the extent
52.20 possible; and

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

52.23 (2) repair or updating of existing subsurface sewage treatment systems
52.24 necessary to comply with local, state, and federal regulations. This exemption does

53.1 not apply if the wetland impacts are the result of the treatment system being expanded
53.2 to accommodate increased use.

53.3 B. For maintenance, repair, and replacement, a local government unit may
53.4 issue a seasonal or annual exemption approval or the utility may proceed without local
53.5 government unit approval if the utility is carrying out the work according to approved
53.6 best management practices. Work of an emergency nature may proceed as necessary
53.7 and any impacts must be addressed with the local government unit after the emergency
53.8 work has been completed.

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

53.16 Subp. 8. **De minimis.**

53.17 A. Except as provided in items B and C, a replacement plan is not required for
53.18 projects that impact up to the following amounts of wetlands:

53.19 (1) in a greater than 80 percent area:

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

53.22 (b) 400 square feet, except for type 3, 4, 5, or 8 wetland or white
53.23 cedar and tamarack wetland, outside of the building setback zone, as defined in the local
53.24 shoreland management ordinance, but within the shoreland wetland protection zone. This

54.1 amount may be increased to 1,000 square feet by the local government unit if the wetland
54.2 is isolated and determined to have no direct surficial connection to the public water;

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

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

54.8 (2) in a 50 to 80 percent area:

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

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

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

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

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

54.23 (3) in a less than 50 percent area:

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

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

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

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

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

55.10 B. The amounts listed in item A may not be combined on a project.

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

55.14 (1) the applicable area listed in item A, if the landowner owns the entire
55.15 wetland;

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

55.17 (3) 400 square feet.

55.18 D. Property may not be divided to increase the amounts listed in item A or to
55.19 gain an exemption.

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

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

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

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

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

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

56.13 (3) the project will provide wildlife habitat improvement as certified by the
56.14 soil and water conservation district or technical evaluation panel using Wildlife Habitat
56.15 Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local
56.16 Government Units in Certifying and Approving Wetland Conservation Act Exemption
56.17 Proposals, Minnesota Interagency Wetlands Group, December 2000, or similar criteria
56.18 approved by the board; or

56.19 B. duck blinds.

56.20 **WETLAND REPLACEMENT**

56.21 **8420.0500 PURPOSE AND REQUIREMENT.**

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

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

57.10 Subp. 3. **Alternative evaluation methodologies.** The local government unit may
57.11 evaluate the replacement plan using a scientifically accepted methodology that evaluates
57.12 all wetland functions specified in Minnesota Statutes, section 103B.3355, for both the
57.13 impacted and replacement wetlands. The alternative methodologies must be approved
57.14 and listed by the board, in consultation with the commissioners of natural resources and
57.15 agriculture and local government units. When using alternative evaluation methodologies
57.16 to evaluate replacement plans, the ratio of replacement credit to impacted wetland must
57.17 not be less than the minimum requirements listed in part 8420.0522, subpart 34, except as
57.18 provided for in part 8420.0830.

57.19 **8420.0515 SPECIAL CONSIDERATIONS.**

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

57.23 Subp. 2. **Endangered and threatened species.** A replacement plan for activities
57.24 that involve taking species listed as endangered or threatened in parts 6134.0200 to
57.25 6134.0400 must be denied unless the commissioner issues a permit under part 6212.1800
57.26 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may identify if there

58.1 are known locations of listed species at a particular site by contacting the Department of
58.2 Natural Resources' natural heritage and nongame research program.

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

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

- 58.12 A. fish passage and spawning areas;
- 58.13 B. colonial water bird nesting colonies;
- 58.14 C. migratory waterfowl concentration areas;
- 58.15 D. deer wintering areas; and
- 58.16 E. wildlife travel corridors.

58.17 Activities involving streams must not block fish passage unless approved by the
58.18 commissioner.

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

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

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

59.10 Subp. 8. **Education or research use.** A replacement plan for impacts to wetlands
59.11 known to be used for educational or research purposes must be denied if the local
59.12 government unit determines that those uses will not be maintained or adequately replaced.

59.13 Subp. 9. **Waste disposal sites.** The local government unit must evaluate the type
59.14 and amount of waste material found at the site. Activities involving known or potential
59.15 hazardous wastes or contaminants must be conducted according to applicable federal
59.16 and state standards.

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

59.21 **8420.0520 SEQUENCING.**

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

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

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

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

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

60.9 E. replaces unavoidable impacts by restoring or, if wetland restoration
60.10 opportunities are not reasonably available, creating replacement wetland areas having
60.11 equal or greater public value as provided for in parts 8420.0500 and 8420.0522 to
60.12 8420.0528.

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

60.15 Subp. 2. [See repealer.]

60.16 Subp. 3. **Impact avoidance.**

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

60.18 B. Wetland dependence determination:

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

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

61.1 C. Alternatives analysis:

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

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

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

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

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

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

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

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

61.23 (a) whether the basic project purpose can be reasonably accomplished
61.24 using one or more other sites in the same general area that would avoid wetland impacts.
61.25 An alternate site must not be excluded from consideration only because it includes or

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

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

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

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

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

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

62.16 (4) If the local government unit determines that a feasible and prudent
62.17 alternative exists that would avoid impacts to wetlands, it must deny the replacement
62.18 plan. If no feasible and prudent alternative is available that would avoid impacts to
62.19 wetlands, the local government unit must evaluate the replacement plan for compliance
62.20 with subparts 4 to 8.

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

62.25 A. the spatial requirements of the project;

- 63.1 B. the location of existing structural or natural features that may dictate the
63.2 placement or configuration of the project;
- 63.3 C. the purpose of the project and how the purpose relates to placement,
63.4 configuration, or density;
- 63.5 D. the sensitivity of the site design to the natural features of the site, including
63.6 topography, hydrology, and existing vegetation;
- 63.7 E. the value, function, and spatial distribution of the wetlands on the site;
- 63.8 F. individual and cumulative impacts; and
- 63.9 G. an applicant's efforts to:
- 63.10 (1) modify the size, scope, configuration, or density of the project;
- 63.11 (2) remove or accommodate site constraints including zoning,
63.12 infrastructure, access, or natural features;
- 63.13 (3) confine impacts to the fringe or periphery of the wetland; and
- 63.14 (4) otherwise minimize impacts.
- 63.15 Subp. 5. **Impact rectification.** Temporary impacts must be rectified by repairing,
63.16 rehabilitating, or restoring the affected wetland according to the no-loss provisions of
63.17 part 8420.0415, item H.
- 63.18 Subp. 6. **Reduction or elimination of impacts over time.** After an activity is
63.19 completed, further impacts must be reduced or eliminated by maintaining, operating,
63.20 and managing the project in a manner that preserves and maintains remaining wetland
63.21 functions. The local government unit must require applicants to implement best
63.22 management practices to protect wetland functions.

64.1 Subp. 7. **Unavoidable impacts.** Unavoidable impacts that remain after efforts
64.2 to minimize, rectify, or reduce or eliminate them must be replaced according to parts
64.3 8420.0522 to 8420.0528.

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

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

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

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

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

64.18 (a) demonstrates impact minimization to the wetland;

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

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

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

64.23 B. Flexibility in the order and application of sequencing standards must not be
64.24 implemented unless alternatives have been considered and the proposed replacement
64.25 wetland is certain to provide equal or greater public value as determined based on a

65.1 functional assessment reviewed by the technical evaluation panel using a methodology
65.2 approved by the board. The applicant must provide the necessary information and the
65.3 local government unit must document the application of sequencing flexibility in the
65.4 replacement plan approval.

65.5 Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated
65.6 field and will be replaced through restoration, then the priority order for sequencing in
65.7 subpart 1 is not required. A wetland impacted under this subpart must not be converted to
65.8 nonagricultural land for ten years. The landowner must execute and record a notice of
65.9 this requirement in the office of the county recorder for the county in which the property
65.10 is located and, as a condition of approval, provide documentation of the recording to
65.11 the local government unit.

65.12 Subp. 9. [See repealer.]

65.13 **8420.0522 REPLACEMENT STANDARDS.**

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

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

65.21 B. flood water and storm water retention, including the potential for flooding in
65.22 the watershed, the value of property subject to flooding, and the reduction in potential
65.23 flooding by the wetland;

65.24 C. public recreation and education, including hunting and fishing areas, wildlife
65.25 viewing areas, and nature areas;

66.1 D. commercial uses, including wild rice and cranberry growing and harvesting
66.2 and aquaculture;

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

66.4 F. low-flow augmentation; and

66.5 G. other functions and public uses as identified in ~~board-approved~~ wetland
66.6 evaluation methods demonstrated to reasonably identify appropriate candidates for
66.7 wetland replacement. The board shall maintain a publicly available list of ~~preapproved~~
66.8 ~~wetland evaluation methods~~ the methods that have been approved for wetland evaluation
66.9 under the standards set out in this item.

66.10 Subp. 2. **Determining impacts of partial drainage.** In cases where wetlands will
66.11 be partially drained, the amount of wetland to be replaced must be determined according
66.12 to this subpart. The area impacted by partially draining a wetland is determined in two
66.13 parts. The wetland area where the hydrology will be totally removed must be considered
66.14 an impact in its entirety. The amount of impact for the area that is partially drained must
66.15 be at least 50 percent of the acreage of the remaining wetland area determined by an
66.16 assessment acceptable to the technical evaluation panel.

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

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

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

66.23 Subp. ~~3-~~ 4. **Replacement ratios.**

66.24 A. The replacement ratio is 2.5 replacement credits for each acre of wetland
66.25 impacted, except in greater than 80 percent areas ~~and~~ or on agricultural land the

67.1 replacement ratio is 1.5 replacement credits for each acre of wetland impacted. The
 67.2 replacement ratio may be reduced by 0.5:1 when the replacement consists of:

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

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

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

Minimum Replacement Ratios: Project-Specific		
Location of impact	Replacement	Minimum replacement ratio
>80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
	Within major watershed and in-kind	1.1
<50% area, 50-80% area, or <u>and</u> nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Within major watershed and in-kind	2:1

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

68.1 C. For purposes of determining project-specific replacement ratios, the local
68.2 government unit may authorize the use of out-of-kind wetland replacement in the same
68.3 ratio allowed for in-kind replacement. Out-of-kind replacement may qualify for the same
68.4 ratio as in-kind when it consists of a type or plant community that has been significantly
68.5 lost in the watershed or that will provide important functional benefits to the watershed in
68.6 accordance with the principles described in part 8420.0830, subpart 5, as determined by the
68.7 technical evaluation panel based on a review of available evidence or according to a local
68.8 plan approved by the board. A reduced ratio for out-of-kind replacement is typically not
68.9 appropriate for wetlands that are difficult to replace, such as white cedar swamps or bogs.

68.10 ~~C.~~ D. Wetland replacement must be of a size sufficient to ensure that it provides
68.11 equal or greater public value than the impacted wetland it will replace. The actual
68.12 replacement ratio required may be more than the ratio required in item A if the local
68.13 government unit determines that a higher ratio is necessary to replace the public value of
68.14 the wetland lost. In no case shall the replacement ratio be less than 1:1 in greater than 80
68.15 percent areas or agricultural land, and 2:1 in all other areas.

68.16 ~~D.~~ E. Owners of wetlands impacted for use as agricultural land may make no use
68.17 of the wetland area after it is impacted, other than as agricultural land, for a period of ten
68.18 years unless future replacement to achieve a ratio equaling or exceeding the appropriate
68.19 ratio for nonagricultural land in item A occurs. The landowner must record a notice of this
68.20 restriction in the office of the county recorder in which the project is located, and, as a
68.21 condition of local government unit approval, provide documentation of the recording to
68.22 the local government unit.

68.23 ~~E.~~ F. The board may approve special replacement ratios based on data derived
68.24 from comprehensive inventories of replacement opportunities. The board must give
68.25 notice of the replacement ratios to local government units and must publish the ratios in
68.26 the State Register. The board must provide opportunities for public input and comment

69.1 before publishing the special replacement ratios. The conditions and standards take effect
69.2 30 days after publication and remain in effect unless superseded by subsequent statute,
69.3 rule, or notice in the State Register.

69.4 ~~Subp. 4. **In-kind wetland replacement.** In-kind wetland replacement refers to~~
69.5 ~~replacement of the functions lost to an impact. Wetland replacement is in-kind if it is:~~

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

69.9 ~~B. the same hydrologic conditions and landscape setting as the impacted~~
69.10 ~~wetland; or~~

69.11 ~~C. a type that has been significantly lost in the watershed or that will provide~~
69.12 ~~important functional benefits to the watershed as determined by the technical evaluation~~
69.13 ~~panel based on a review of available evidence or according to a local plan approved~~
69.14 ~~by the board.~~

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

69.16 A. The preferred method of replacement is that which takes advantage of
69.17 naturally occurring hydrogeomorphic conditions with minimal landscape alteration and is
69.18 most likely to result in a wetland area that functions wholly, perpetually, and naturally.
69.19 Wetland restoration is generally preferred over creation, and restoration of completely
69.20 impacted wetlands and is generally preferred over other methods of replacement.

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

70.1 Replacement must not adversely affect other habitat types or ecological communities that
70.2 are important in maintaining the overall biological diversity of the area.

70.3 C. Replacement projects must be located and designed, to the maximum
70.4 extent practicable, to be self-sustaining once performance standards have been achieved.
70.5 "Self-sustaining" refers to the ~~sustainability of resource functions and the ability of type~~
70.6 ~~and location~~ a wetland to provide the desired functions over time in a changing landscape
70.7 without human intervention.

70.8 D. In addition to items A to C, when determining the location, type, function,
70.9 and design of replacement, applicants and local government units must consider:
70.10 landscape position, habitat requirements, development and habitat loss trends, sources
70.11 of watershed impairment, protection and maintenance of upland resources and riparian
70.12 areas, and providing a suite of functions.

70.13 Subp. 6. **Required upland buffer.**

70.14 A. Establishment or preservation of unmanicured vegetated upland buffer areas
70.15 is required adjacent and contiguous to replacement wetlands receiving credit under part
70.16 8420.0526, subparts 3 to 7.

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

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

71.1 Subp. 7. **Siting of replacement.**

71.2 A. Siting wetland replacement must follow this priority order:

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

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

71.5 (3) in the same county as the affected wetland;

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

71.10 (5) for project-specific replacement, in an adjacent major watershed to
71.11 the affected wetland or, for replacement by wetland banking, in an adjacent wetland
71.12 bank service area, except that impacts in a 50 to 80 percent area must be replaced in a
71.13 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a
71.14 less than 50 percent area.

71.15 B. Notwithstanding item A, siting wetland replacement in greater than 80
71.16 percent areas may follow the priority order under this item:

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

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

71.22 (3) statewide.

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

- 72.1 (1) in the affected county;
- 72.2 (2) in another of the seven metropolitan counties; or
- 72.3 (3) in one of the major watersheds that are wholly or partially within the
- 72.4 seven-county metropolitan area, but at least one-to-one must be replaced within the
- 72.5 seven-county metropolitan area.

72.6 D. Siting wetland replacement for public transportation projects must comply

72.7 with part 8420.0544.

72.8 E. When reasonable, practicable, and environmentally beneficial replacement

72.9 opportunities are not available in siting priorities listed in items A to D, the applicant may

72.10 seek opportunities at the next level. For the purposes of this item, "reasonable, practicable,

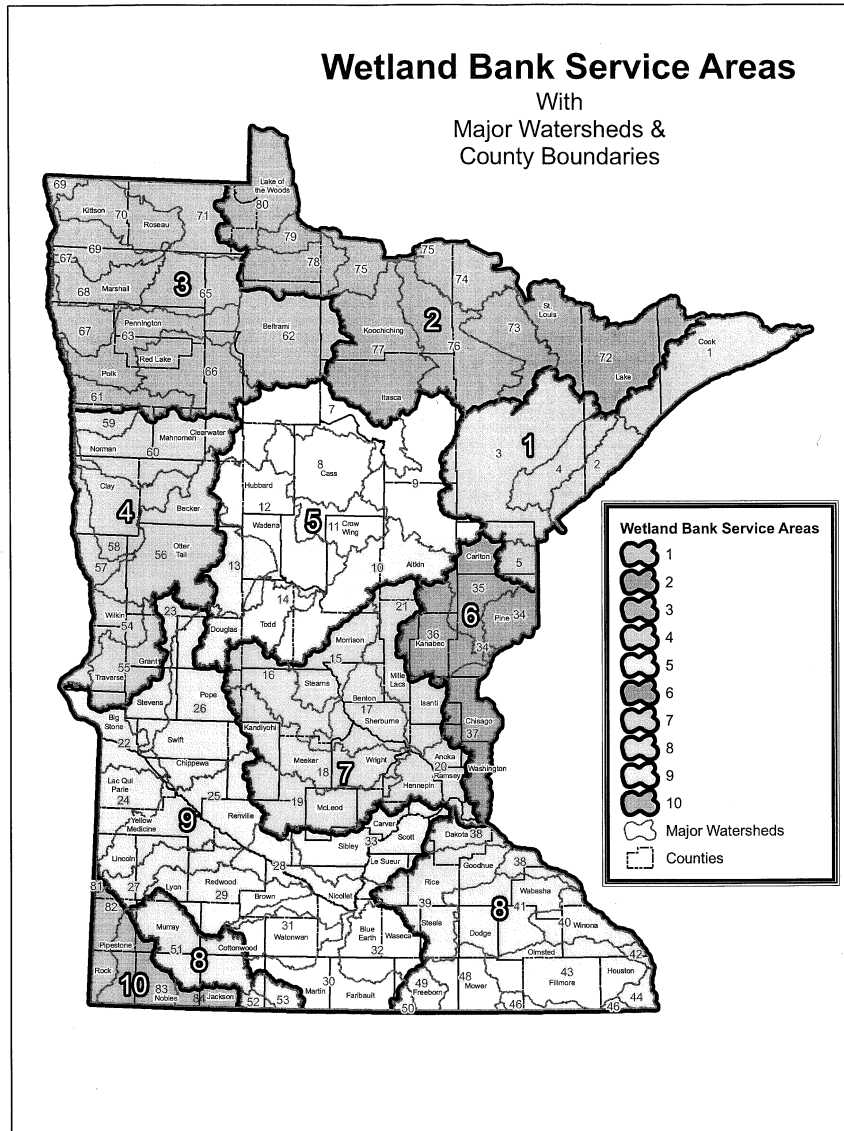
72.11 and environmentally beneficial replacement opportunities" means opportunities that are:

- 72.12 (1) ecologically suitable and sustainable according to subpart 5; and
- 72.13 (2) available and capable of being done after taking into consideration cost,
- 72.14 existing technology, and logistics consistent with overall project purposes. The cost of
- 72.15 replacement credits alone is not sufficient reason to conclude that reasonable, practicable,
- 72.16 or environmentally beneficial replacement opportunities are not available.

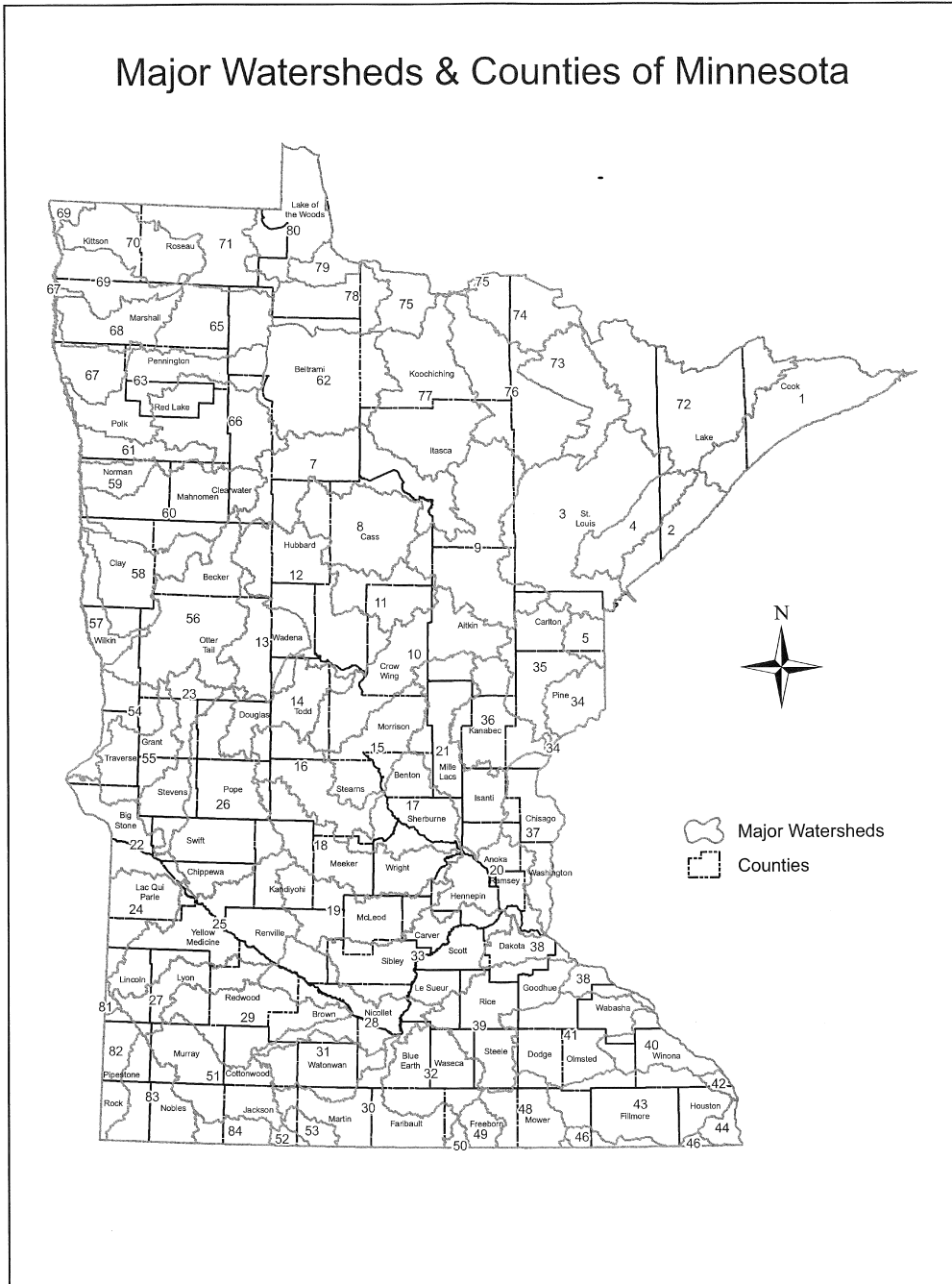
72.17 F. Regulatory agencies, local government units, and other entities involved in

72.18 wetland restoration must collaborate to identify potential replacement opportunities in

72.19 watersheds within their jurisdictional areas.



Major Watersheds & Counties of Minnesota



74.1 LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

- 75.1 1 Lake Superior (north)
- 75.2 2 Lake Superior (south)
- 75.3 3 St. Louis River
- 75.4 4 Cloquet River

75.5	<u>5</u>	<u>Nemadji River</u>
75.6	<u>7</u>	<u>Mississippi River (Headwaters, Lake Winnibigoshish)</u>
75.7	<u>8</u>	<u>Leech Lake River</u>
75.8	<u>9</u>	<u>Mississippi River (Grand Rapids)</u>
75.9	<u>10</u>	<u>Mississippi River (Brainerd)</u>
75.10	<u>11</u>	<u>Pine River</u>
75.11	<u>12</u>	<u>Crow Wing River</u>
75.12	<u>13</u>	<u>Redeye River (Leaf River)</u>
75.13	<u>14</u>	<u>Long Prairie River</u>
75.14	<u>15</u>	<u>Mississippi River (Sartell)</u>
75.15	<u>16</u>	<u>Sauk River</u>
75.16	<u>17</u>	<u>Mississippi River (St. Cloud)</u>
75.17	<u>18</u>	<u>North Fork Crow River</u>
75.18	<u>19</u>	<u>South Fork Crow River</u>
75.19	<u>20</u>	<u>Mississippi River (Metro)</u>
75.20	<u>21</u>	<u>Rum River</u>
75.21	<u>22</u>	<u>Minnesota River (Headwaters)</u>
75.22	<u>23</u>	<u>Pomme de Terre River</u>
75.23	<u>24</u>	<u>Lac qui Parle River</u>
75.24	<u>25</u>	<u>Minnesota River (Granite Falls)</u>
75.25	<u>26</u>	<u>Chippewa River</u>
75.26	<u>27</u>	<u>Redwood River</u>
75.27	<u>28</u>	<u>Minnesota River (Mankato)</u>
75.28	<u>29</u>	<u>Cottonwood River</u>
75.29	<u>30</u>	<u>Blue Earth River</u>
75.30	<u>31</u>	<u>Watonwan River</u>
76.1	<u>32</u>	<u>Le Sueur River</u>
76.2	<u>33</u>	<u>Minnesota River (Shakopee)</u>
76.3	<u>34</u>	<u>St. Croix River (Upper)</u>
76.4	<u>35</u>	<u>Kettle River</u>

76.5	<u>36</u>	<u>Snake River</u>
76.6	<u>37</u>	<u>St. Croix River (Stillwater)</u>
76.7	<u>38</u>	<u>Mississippi River (Red Wing) and Lake Pepin</u>
76.8	<u>39</u>	<u>Cannon River</u>
76.9	<u>40</u>	<u>Mississippi River (Winona)</u>
76.10	<u>41</u>	<u>Zumbro River</u>
76.11	<u>42</u>	<u>Mississippi River (La Crescent)</u>
76.12	<u>43</u>	<u>Root River</u>
76.13	<u>44</u>	<u>Mississippi River (Reno)</u>
76.14	<u>46</u>	<u>Upper Iowa River</u>
76.15	<u>47</u>	<u>Wapsipinican River (Headwaters)</u>
76.16	<u>48</u>	<u>Cedar River</u>
76.17	<u>49</u>	<u>Shell Rock River</u>
76.18	<u>50</u>	<u>Winnebago River (Lime Creek)</u>
76.19	<u>51</u>	<u>West Fork des Moines River (Headwaters)</u>
76.20	<u>52</u>	<u>West Fork des Moines River (Lower)</u>
76.21	<u>53</u>	<u>East Fork des Moines River</u>
76.22	<u>54</u>	<u>Bois de Sioux River</u>
76.23	<u>55</u>	<u>Mustinka River</u>
76.24	<u>56</u>	<u>Otter Tail River</u>
76.25	<u>57</u>	<u>Red River of the North (Headwaters)</u>
76.26	<u>58</u>	<u>Buffalo River</u>
76.27	<u>59</u>	<u>Marsh River</u>
76.28	<u>60</u>	<u>Wild Rice River</u>
76.29	<u>61</u>	<u>Sandhill River</u>
76.30	<u>62</u>	<u>Upper and Lower Red Lake</u>
77.1	<u>63</u>	<u>Red Lake River</u>
77.2	<u>65</u>	<u>Thief River</u>
77.3	<u>66</u>	<u>Clearwater River</u>
77.4	<u>67</u>	<u>Grand Marais Creek (Red River of the North)</u>

77.5	<u>68</u>	<u>Snake River</u>
77.6	<u>69</u>	<u>Tamarack River (Red River of the North)</u>
77.7	<u>70</u>	<u>Two River</u>
77.8	<u>71</u>	<u>Roseau River</u>
77.9	<u>72</u>	<u>Rainy River (Headwaters)</u>
77.10	<u>73</u>	<u>Vermillion River</u>
77.11	<u>74</u>	<u>Rainy River (Rainy Lake)</u>
77.12	<u>75</u>	<u>Rainy River (Manitou)</u>
77.13	<u>76</u>	<u>Little Fork River</u>
77.14	<u>77</u>	<u>Big Fork River</u>
77.15	<u>78</u>	<u>Rapid River</u>
77.16	<u>79</u>	<u>Rainy River (Baudette)</u>
77.17	<u>80</u>	<u>Lake of the Woods</u>
77.18	<u>81</u>	<u>Big Sioux River (Medary Creek)</u>
77.19	<u>82</u>	<u>Big Sioux River (Pipestone)</u>
77.20	<u>83</u>	<u>Rock River</u>
77.21	<u>84</u>	<u>Little Sioux River</u>

77.22 Subp. 8. **Timing of replacement.**

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

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

77.27 (1) approved wetland bank credits withdrawn before the impact; or

78.1 (2) project-specific replacement for which construction has been certified
78.2 and the first monitoring report of the first full growing season following construction
78.3 certification has been submitted according to part 8420.0810, and the replacement

78.4 meets all goals and performance standards applicable to that development stage of the
78.5 replacement site.

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

78.9 Subp. 9. **Financial assurance.**

78.10 A. For wetland replacement that is not in advance, a financial assurance
78.11 acceptable to the local government unit must be submitted to, and approved by, the local
78.12 government unit to ensure successful replacement. The local government unit may
78.13 waive this requirement if it determines the financial assurance is not necessary to ensure
78.14 successful replacement. The local government unit may incorporate this requirement
78.15 into any financial assurance required by the local government unit for other aspects of
78.16 the project.

78.17 B. The financial assurance may be used to cover costs of actions necessary to
78.18 bring the project into compliance with the approved replacement plan specifications and
78.19 monitoring requirements. The financial assurance does not serve as an in-lieu fee and is
78.20 not a substitute for enforcement, but may be used for repair, construction, vegetation
78.21 establishment and management, maintenance, monitoring, or other actions the local
78.22 government unit determines necessary to ensure adequate replacement.

78.23 C. Before drawing on the financial assurance, the local government unit
78.24 must provide written notice to the landowner stating the actions necessary to bring the
78.25 replacement project into compliance and that the landowner has 30 days to complete the
78.26 actions, after which the local government unit will use the financial assurance to gain
79.1 compliance. Use of the financial assurance by the local government unit may be appealed
79.2 by the landowner within 30 days after the date on which the notice is mailed, according
79.3 to part 8420.0910.

79.4 D. The local government unit may release a portion of the financial assurance
79.5 upon successful completion of construction, but must retain a sufficient amount to ensure
79.6 successful vegetative establishment and completion of the monitoring requirements.
79.7 Within 60 days of certification of successful replacement and completion of monitoring
79.8 according to part 8420.0720, subpart 2, the local government unit must release any
79.9 remaining financial assurance submitted by the applicant, provided all other conditions
79.10 of the approval are met.

79.11 **8420.0526 ACTIONS ELIGIBLE FOR CREDIT.**

79.12 Subpart 1. **Scope.**

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

79.17 B. This part identifies the amount of credit allowed for each action, however, the
79.18 actual amount may be less as determined by the local government unit. When the local
79.19 government unit allows less replacement credit than the amounts described in this part, the
79.20 local government unit must provide justification for the lower credit allocation.

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

79.23 D. Modification or conversion of nondegraded wetlands from one wetland
79.24 type to another by damming, diking, impounding, or excavating does not constitute
79.25 replacement credit. Restoration of wetlands drained or filled in violation of this chapter is
80.1 not eligible for replacement credit. Wetlands impacted under an exemption may not be
80.2 restored for replacement credit for ten years after the impact.

80.3 Subp. 2. **Upland buffer areas.**

80.4 A. Up to ten percent of the buffer area is eligible for replacement credit ~~may be~~
80.5 ~~granted for ten percent of the buffer area~~ for establishment or preservation of nonnative
80.6 vegetation and up to 25 percent of the buffer area is eligible for replacement credit for
80.7 establishment or preservation of native, noninvasive vegetation. ~~Credit may be allowed~~
80.8 ~~for~~ Establishing upland buffer around existing high value wetlands adjacent to the
80.9 replacement wetland is eligible for replacement credit only when the minimum widths
80.10 provided in part 8420.0522, subpart 6, are maintained and the maximum buffer area under
80.11 item B is not exceeded.

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

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

80.19 (1) extend upstream in the watershed, provide slope and soil stability, and
80.20 otherwise protect and improve water quality;

80.21 (2) protect valuable native plant communities or habitats that could
80.22 otherwise be lost or degraded;

80.23 (3) provide important habitat connections; or

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

81.1 Subp. 3. **Restoration of completely drained or filled wetland areas.** Restoration of
81.2 both the natural hydrology regime and native, noninvasive vegetation on wetlands that
81.3 have been completely drained or filled ~~may receive~~ is eligible for replacement credit in an

81.4 amount up to 100 percent of the wetland area hydrologically and vegetatively restored.
81.5 To be eligible for replacement credit, the vegetation establishment and management
81.6 plan must set a goal of restoring the historic native ~~vegetation~~ plant community typical
81.7 of the wetland being restored unless determined to be, or other plant community when
81.8 the technical evaluation panel determines that establishment of the historic native plant
81.9 community is not ecologically feasible by the technical evaluation panel.

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

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

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

81.24 Subp. 5. **Vegetative restoration of farmed wetlands.** Reestablishment of permanent
81.25 native, noninvasive vegetative cover on farmed wetland areas that have not been affected
81.26 by prior drainage or filling ~~may receive~~ is eligible for replacement credit for:

82.1 A. up to 50 percent of the area restored for wetland areas that were planted with
82.2 annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes, or

82.3 were required to be set aside to receive price supports or equivalent payments in at least
82.4 ten of the last 20 years before the date of application for a replacement or bank plan; or

82.5 B. up to 90 percent of the area restored for wetland areas in bank service areas 2,
82.6 3, and 4 ~~based on~~ in a percentage equivalent to the percent of time the wetland areas were
82.7 planted with annually seeded crops, were in a crop rotation seeded to pasture grasses or
82.8 legumes, or were required to be set aside to receive price supports or equivalent payments
82.9 during the 20-year period prior to the date of application for a replacement or bank plan.

82.10 Subp. 6. **Protection of wetlands previously restored via conservation easements.**

82.11 ~~Replacement credit may be granted for~~ Permanently protecting wetlands previously
82.12 restored or created for conservation purposes under a contract or easement, when the
82.13 contract or easement has expired and gives the landowner the right to drain or fill the
82.14 wetland upon termination. ~~The area receiving credit must meet,~~ is eligible for replacement
82.15 credit where the area receiving credit meets the replacement wetland construction
82.16 standards of part 8420.0528. Replacement credit may be granted for up to The maximum
82.17 replacement credit is 75 percent of the area created or restored under the conservation
82.18 contract or easement. Alternatively, credit may be allocated according to the other subparts
82.19 in this part as applied prior to initiation of the contract or easement, when the applicant
82.20 can document eligible credit yield to the satisfaction of the local government unit.

82.21 Subp. 7. **Wetland creations.**

82.22 A. ~~Wetlands~~ A wetland created in an upland areas may receive area is eligible
82.23 for replacement credit in an amount up to 75 percent of the total wetland area created.

82.24 B. ~~Wetlands~~ A wetland created due to mineral extraction activities ~~may receive~~
82.25 is eligible for replacement credit under this subpart only for those areas actively mined
82.26 within ten years prior to the application for credit.

83.1 C. ~~Wetlands~~ A wetland created as part of a water quality treatment systems may
83.2 receive system is eligible for replacement credit under this subpart only if the wetland

83.3 area receiving credit is a functioning wetland designed for a maximum 24-inch rise in
83.4 water level for the ten-year critical storm event and treatment of runoff is provided
83.5 before discharge into the replacement wetland area according to part 8420.0528, subpart
83.6 2, item G. Any portions of water quality treatment systems allowed for replacement are
83.7 not eligible for the exemptions in part 8420.0420 and are subject to the replacement
83.8 requirements under parts 8420.0500 to 8420.0544 and the monitoring requirements under
83.9 parts 8420.0800 to 8420.0820.

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

83.11 A. ~~Replacement credit may be granted for activities that restore and protect~~
83.12 ~~wetlands and adjacent areas that improve or directly contribute to the function and~~
83.13 ~~sustainability of exceptional natural resources.~~ Restoration and protection of calcareous
83.14 fens, white cedar swamps, floodplain or riparian wetlands and upland buffers, habitat
83.15 corridors with other important resources, wetlands adjacent to designated trout waters
83.16 or other actions that restore and protect wetlands and adjacent areas are eligible for
83.17 replacement credit when the action improves or directly contributes to the function and
83.18 sustainability of an exceptional natural resource. For purposes of this subpart, exceptional
83.19 natural resources are:

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

83.21 (2) rare native plant communities;

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

83.25 (4) sensitive surface waters; or

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

84.4 B. ~~Restoration and protection of calcareous fens, white cedar swamps, floodplain~~
84.5 ~~or riparian wetlands and upland buffers, habitat corridors with other important resources,~~
84.6 ~~or wetlands adjacent to designated trout waters are examples of potential qualifying~~
84.7 ~~activities.~~ Project eligibility and the allocation of credit under this subpart is determined
84.8 by the local government unit with concurrence of the technical evaluation panel based on
84.9 the qualification of the resource as exceptional, the actions proposed, and the resulting
84.10 contribution to the value and sustainability of the exceptional resource. Areas receiving
84.11 credit must be protected by a permanent conservation easement, in a format prescribed
84.12 by the board, that is granted to and accepted by the state.

84.13 Subp. 9. **Preservation of wetlands owned by the state or a local unit of**
84.14 **government.** In greater than 80 percent areas, ~~replacement credit may be granted for~~
84.15 up to 12.5 percent of wetland areas and adjacent buffer owned by the state or a local
84.16 unit of government and protected by a permanent conservation easement is eligible
84.17 for replacement credit. The easement must be in a format prescribed by the board and
84.18 granted to and accepted by the board after approval of the replacement or banking plan
84.19 application. Replacement credit for wetland preservation may only be granted after
84.20 considering replacement as provided under subparts 3 to 8. To be eligible for credit under
84.21 this subpart, the technical evaluation panel must determine that there is a high probability
84.22 the wetland will be degraded or impacted and the wetland:

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

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

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

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

85.2 Subp. 10. **Replacement credit conversion.**

85.3 A. Replacement plans and banking plans approved after the effective date of this
85.4 part must determine replacement credit according to subparts 2 to 9. Public value credit
85.5 that has been deposited in the state wetland bank or approved as part of a banking plan
85.6 application before the effective date of this part must be converted as follows:

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

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

85.11 B. Previously approved public value credit must be converted according to this
85.12 subpart on the effective date of this part for deposited credits and at the time of deposit for
85.13 future deposits resulting from a previously approved banking plan.

85.14 **8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.**

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

85.18 In evaluating a proposed replacement or banking plan application, the local
85.19 government unit must determine that the plan will adequately replace the public value
85.20 of wetlands lost. If the local government unit determines that the proposed replacement
85.21 is not likely to result in adequate replacement of function and public value, the local
85.22 government must either require modifications necessary to obtain adequate replacement
85.23 or deny the application.

85.24 Subp. 2. **Design requirements.**

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

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

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

86.11 D. Native, noninvasive vegetation must be established in restored and created
86.12 wetlands. Each replacement or banking plan must include a vegetation establishment and
86.13 management plan. The vegetation establishment and management plan must include a
86.14 goal of, and specific provisions for, establishing plant communities that correspond to the
86.15 hydrology and landscape position of the replacement site. If the replacement wetland is
86.16 seeded or planted, the seed or planting stock should be from native, noninvasive species in
86.17 accordance with the Minnesota Wetland Restoration Guide. In evaluating the vegetation
86.18 establishment and management plan, the local government unit must determine that
86.19 implementation of the plan is likely to result in establishment of the appropriate native,
86.20 noninvasive vegetation within the monitoring period. During the monitoring period, the
86.21 applicant must take reasonable steps to control invasion by any nonnative or invasive
86.22 species.

86.23 E. The bottom contours of created types 3, 4, and 5 wetlands must provide a
86.24 variety of water depths, comparable to natural wetlands in the vicinity of the replacement,
86.25 and be consistent with part 8420.0522, subpart 5.

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

87.8 G. Treatment of runoff before discharge to replacement areas is required
87.9 to improve sustainability and minimize degradation of the wetland over time. The
87.10 replacement area must be physically separated from any water quality treatment system.
87.11 "Treatment of runoff" under this part means:

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

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

87.18 H. For projects that contain elements that include dams, dikes, or other
87.19 impoundment features, the construction plans must be designed, overseen, and certified by
87.20 a registered professional engineer.

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

87.24 A. restored wetlands should emulate the hydrology and vegetation of the
87.25 presettlement wetland condition;

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

88.5 C. measures should be taken to manage hydraulic bounce as indicated in the
88.6 guidance document under part 8420.0112, item N; and

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

88.13 **8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.**

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

88.16 B. Wetlands impacted by public transportation projects:

88.17 (1) outside the seven-county metropolitan area may be replaced statewide,
88.18 except that impacts in less than 50 percent areas must be replaced in less than 50 percent
88.19 areas; and

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

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

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

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

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

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

89.13 (2) provide project-specific plans and information, including project
89.14 locations, wetland boundaries, amount and type of wetlands impacted, demonstration of
89.15 impact minimization, and any changes or addenda, to the board's bank administrator, the
89.16 technical evaluation panel, the commissioner, and members of the public requesting a
89.17 copy:

89.18 (a) at least 30 days before construction;

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

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

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

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

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

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

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

90.15 I. Except for state public transportation projects, for which the state Department
90.16 of Transportation is responsible, and public road authority projects that do not meet the
90.17 requirements of item D, the board must replace public road project impacts, including
90.18 impacts to public waters if authorized by the commissioner or a delegated authority, that
90.19 result from local government projects on existing roads.

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

91.1 **~~STANDARDS AND CRITERIA FOR STATE WETLAND BANKING~~**

91.2 **8420.0700 PURPOSE OF WETLAND BANKING.**

91.3 The purpose of parts 8420.0700 to 8420.0755 is to provide standards for the
91.4 establishment and administration of a state wetland banking system, including individual
91.5 wetland bank sites, as authorized by Minnesota Statutes, section 103G.2242. The purpose
91.6 of the state wetland banking system is to provide a market-based structure that allows for
91.7 replacement of unavoidable impacts with preestablished replacement wetlands. The board
91.8 or the board's designee is responsible for management of the bank, including recording all
91.9 bank transactions, maintaining bank records, and ensuring that the operation of the bank
91.10 complies with parts 8420.0700 to 8420.0755.

91.11 **8420.0705 ESTABLISHING WETLAND BANK SITE.**

91.12 Subpart 1. **Eligibility for wetland banking.** Replacement wetland credits that result
91.13 from any of the eligible actions in part 8420.0526, and that meet the standards of parts
91.14 8420.0522 and 8420.0528, may be deposited in the state wetland bank for later use in
91.15 replacing unavoidable impacts. To be eligible for deposit in the bank, the credits must be
91.16 specifically designated for wetland banking purposes prior to undertaking the replacement
91.17 actions and certified by the local government unit prior to deposit. Designation of
91.18 credits for wetland banking is accomplished by approval of a wetland banking plan by a
91.19 local government unit. Replacement actions completed or initiated without prior local
91.20 government unit approval are not eligible for deposit in the wetland bank.

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

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

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

92.3 B. The board may reject or modify an application for deposit if, during its
92.4 review, any part of the bank application or plan is missing, incorrect, or inconsistent
92.5 with this chapter.

92.6 Subp. 3. **Application procedures.** When replacement actions are proposed for
92.7 banking purposes, the applicant must submit to the local government unit a banking
92.8 plan application, in a form prescribed by the board, containing the information identified
92.9 in parts 8420.0305, item B, and 8420.0330, subpart 3, item B, and other information
92.10 required by the board. The banking plan must also contain specific performance standards
92.11 and a proposed credit release schedule based upon achievement of those standards.
92.12 The local government unit is responsible for ensuring that a copy of the banking plan
92.13 application is sent to the administrator of the state wetland bank, to the St. Paul District
92.14 Office of the United States Army Corps of Engineers, and to those required to receive
92.15 a copy of an application in part 8420.0255, subpart 3. The technical evaluation panel
92.16 must review the banking plan application and may recommend changes or additions to
92.17 the performance standards and credit allocation schedule. The wetland banking plan
92.18 applicant must be advised of any panel recommendations. Based on the panel's findings
92.19 and recommendations and other comments received, the local government unit must
92.20 determine the likelihood that the replacement actions will be successful and approve,
92.21 approve with modifications, or deny the banking plan application.

92.22 Subp. 4. **Combined banking and project-specific replacement.** When a banking
92.23 plan applicant wishes to use a portion of the credits generated from a banking project for
92.24 project-specific replacement, the banking plan must identify the project-specific impact
92.25 and the amount of credits to be used according to a corresponding replacement plan. The

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

93.3 Subp. 5. **Conservation ~~and~~ access easement.** No credits may be deposited in the
93.4 state wetland bank until a perpetual conservation easement, in a format prescribed by the
93.5 board, is granted to and accepted by the state. The easement must encompass the entire
93.6 replacement area, unless the local government unit and the board approve an alternate
93.7 boundary at the time of bank application approval. The easement must provide for
93.8 preservation of the banked wetland's functions by the fee owner and wetland banking
93.9 plan applicant. The wetland banking plan applicant must also provide a title insurance
93.10 policy that is acceptable to the state naming the state of Minnesota as the insured. If the
93.11 conservation easement does not abut a public road, the fee owner and wetland banking
93.12 plan applicant must also grant and record an access easement in favor of the board; the
93.13 local government unit; and any other state, local, or federal regulatory authority that has
93.14 authorized use of credits from the site for wetland replacement. The access easement
93.15 does not confer a right of access to the general public. The boundary of bank areas must
93.16 be clearly marked as prescribed in the conservation ~~and~~ access easement. This subpart
93.17 does not apply to state land.

93.18 Subp. 6. **Time limits for construction.** Replacement actions under an approved
93.19 banking plan must be initiated within three years of banking plan approval or the banking
93.20 plan must be resubmitted to the local government unit for consideration. Construction
93.21 certification according to part 8420.0800 must be gained within five years of banking
93.22 plan approval.

93.23 **8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.**

93.24 A. To be deposited into the state wetland bank, replacement credits must be
93.25 certified for deposit by the local government unit in which they are located. Certification
93.26 of credits by the local government unit is requested by the banking plan applicant and may

94.1 occur at any time during the monitoring period. The certification must be based on the
94.2 findings and recommendation of the technical evaluation panel and must identify the
94.3 area by type, area of buffer, and credits eligible for deposit. The technical evaluation
94.4 panel must ensure that sufficient time has passed for the wetland to become established,
94.5 especially vegetation and hydrology, before recommending certification. The area certified
94.6 must be based on a land survey or comparable method of field measurement. The person
94.7 making the measurement must verify in writing as to the method and accuracy of the
94.8 measurement. Failure to follow the approved construction specifications or vegetation
94.9 management plan is sufficient grounds for the local government unit to deny certification
94.10 of credits for deposit.

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

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

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

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

94.19 (4) a copy of the recorded conservation ~~and access~~ easement according to
94.20 part 8420.0705, subpart 5;

94.21 (5) amount of replacement credit to be deposited, to the square foot, by
94.22 wetland type;

94.23 (6) technical evaluation panel recommendation and local government unit
94.24 certification; and

94.25 (7) other information required by the board.

95.1 C. Up to 15 percent of the credits proposed for banking are eligible for
95.2 deposit in the bank immediately after the certification of construction according to part
95.3 8420.0820, subpart 2, and recording of a conservation ~~and access~~ easement according to
95.4 part 8420.0705, subpart 5.

95.5 D. After the initial deposit, the remaining credits proposed for banking are
95.6 eligible for deposit in accordance with the credit release schedule and performance
95.7 standards included in the approved banking plan, subject to review by the technical
95.8 evaluation panel and certification by the local government unit. If the approved banking
95.9 plan does not contain a credit release schedule and associated performance standards,
95.10 remaining credits will be eligible for deposit based on the findings and recommendation of
95.11 the technical evaluation panel regarding the success of the proposed replacement action.

95.12 E. After certifying the credits for deposit, the local government unit must
95.13 forward the signed request for deposit form to the ~~board~~ board's banking administrator.
95.14 No credits will be deposited until receipt of the completed and approved request to deposit
95.15 form by the board. The board must acknowledge the deposit to the banking plan applicant
95.16 and local government unit and enter the information in item B into the wetland bank.

95.17 F. If the banking plan applicant chooses not to proceed with the initial deposit,
95.18 the banking plan applicant may return the site to its preconstruction condition without
95.19 replacement. If credits have been deposited but none have been withdrawn, the banking
95.20 plan applicant may request the board vacate the conservation ~~and access~~ easement at
95.21 the applicant's expense. If the board vacates the conservation ~~and access~~ easement, the
95.22 account will be closed and the site may be returned to preconstruction condition without
95.23 replacement. Replacement areas wholly or partially deposited into the bank, on which
95.24 withdrawals have occurred or which otherwise have been used for replacement, are subject
95.25 to this chapter, including replacement for any subsequent impacts.

95.26 **8420.0735 MONITORING AND CORRECTIVE ACTIONS.**

96.1 Subpart 1. **Monitoring.**

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

96.6 B. After completion of the required monitoring period, the board shall
96.7 periodically inspect wetlands deposited into the bank at a frequency sufficient to ensure
96.8 that easement conditions are being met.

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

96.17 Subp. 3. **Corrective actions.**

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

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

97.5 C. If satisfactory remediation does not result under item A or B, the
97.6 local government unit or the board may undertake reconstruction work ~~and require~~
97.7 ~~reimbursement of reasonable costs from the fee owner or banking plan applicant.~~ to
97.8 bring the site into compliance. Alternatively, when credits have not been withdrawn or
97.9 transferred, the board may vacate the conservation and access easement and close the
97.10 account. The board and local government unit may require reimbursement of reasonable
97.11 costs of bringing the site into compliance or vacating the conservation and access
97.12 easement.

97.13 D. Fee owners, banking plan applicants, or account holders may appeal
97.14 restrictions on credit deposits, withdrawals, and transfers or demands for reimbursement
97.15 of reconstruction costs to the board.

97.16 E. Noncompliance with easement conditions or impacts to bank sites are subject
97.17 to enforcement under part 8420.0900.

97.18 **8420.0745 WITHDRAWALS AND TRANSFERS.**

97.19 Subpart 1. **General.** Credits from the state wetland bank may be used to replace
97.20 wetland impacts authorized by local government units under this chapter or by other
97.21 local, state, and federal regulatory authorities, provided the impacted wetland is within
97.22 the state of Minnesota and the credit withdrawal procedures of this chapter are followed.
97.23 No sale, withdrawal, transfer, or use of banking credits for replacement is valid until the
97.24 board debits the applicable bank account. Bank credits may be used only once to replace
97.25 wetland impacts. Bank accounts must maintain a positive balance. When all credits have
97.26 been withdrawn or transferred, the account is closed.

98.1 Subp. 2. **Withdrawals.** Replacement plan applicants seeking to use banking credits
98.2 for replacement are responsible for contacting and arranging for acquisition of the credits
98.3 from the holder of a bank account according to the wetland replacement requirements
98.4 of this chapter. The board shall supply information on wetland bank sites according to
98.5 part 8420.0755, subpart 1, item B. Replacement plan applicants proposing the use of
98.6 bank credits for replacement must complete a credit withdrawal form prescribed by
98.7 the board and include it as part of the replacement plan application submitted to the
98.8 local government unit. If the local government unit approves the use of bank credits for
98.9 replacement, the local government unit must sign the credit withdrawal form and notify
98.10 the board's banking administrator according to part 8420.0255, subpart 5. The board shall
98.11 not withdraw credits from a bank account unless a regulatory entity with authority over the
98.12 use of the credits has approved the use of the subject credits for replacement of a specific
98.13 wetland impact. Local government unit approval of replacement plans involving the use
98.14 of banking credits is conditional upon withdrawal of the credits by the board. Impacts
98.15 under replacement plans must not occur until the board has notified the replacement plan
98.16 applicant that the credits have been withdrawn.

98.17 Subp. 3. **Transfers.** Wetland credits deposited in the state wetland bank may be
98.18 transferred from one account to another. If the recipient of the credits does not already
98.19 have an account, one must be established. To transfer credits, a credit transfer form
98.20 provided by the board must be completed and submitted to the board's bank administrator.
98.21 The board shall notify all affected account holders upon transfer of the credits.

98.22 Subp. 4. **Reporting credit transactions.** Upon the sale, use, or transfer of credits,
98.23 the owner of the account must immediately report the transaction to the board's banking
98.24 administrator on withdrawal or transfer forms provided by the board and include a copy of
98.25 the bill of sale when applicable. The board shall complete the accounting transactions and
98.26 send a notice of credit withdrawal to the local government unit, the account holder, and

99.1 the applicant. Failure to report the sale, use, or transfer of credit may result in restrictions
99.2 on withdrawals until the account is reconciled.

99.3 **8420.0755 BANK ACCOUNT ADMINISTRATION.**

99.4 Subpart 1. **Account information.**

99.5 A. For each wetland bank site, the board shall maintain at least the following
99.6 information:

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

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

99.10 (3) replacement acres by amount and replacement action, the restoration or
99.11 creation date, and bank acceptance date;

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

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

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

99.20 (1) account holder name, address, telephone number, and e-mail address, if
99.21 available;

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

99.23 (3) location by section, township, range, county, major watershed, and
99.24 bank service area.

100.1 Subp. 2. **Administrative fees.** The board may collect administrative fees for
100.2 managing bank accounts. The following fees must be paid to the board to be used for
100.3 administering and monitoring the wetland bank:

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

100.6 B. account deposit or transfer: 6.5 percent of the value of credits not to exceed
100.7 \$1,000 per deposit or transfer; and

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

100.9 Subp. 3. **Audit.** The board may periodically inspect wetland bank records and
100.10 correspondence maintained by a local government unit to determine compliance with
100.11 this part.

100.12 **INSPECTION AND MONITORING OF REPLACEMENT WETLANDS**

100.13 **8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION.**

100.14 Subpart 1. **Purpose.** The local government unit must certify the initial construction
100.15 of replacement wetlands before replacement wetland monitoring begins. The local
100.16 government unit may require a preconstruction meeting before replacement wetland
100.17 construction begins and may inspect the replacement wetland at any time during
100.18 construction. This part applies to both wetland banking and project-specific replacement.

100.19 Subp. 2. **Construction as-built documentation.** Upon completion of initial
100.20 construction or restoration activities, the landowner must provide the local government
100.21 unit with as-built information that documents compliance with the approved replacement
100.22 plan. As-built information includes:

100.23 A. surveyed elevations of slopes, contours, outlets, and dikes;

101.1 B. seed tags and contractor receipts or other documentation of seeding or
101.2 planting;

- 101.3 C. a description of site preparation activities, such as mulching, seedbed
101.4 preparation, seeding methods, or initial weed control activities;
- 101.5 D. a survey map showing relevant areas of seeding and construction activities;
- 101.6 E. construction photos showing relevant restoration work;
- 101.7 F. evidence that, for projects including dams, dikes, or other impoundment
101.8 features, the construction was designed, overseen, and certified by a ~~registered~~ licensed
101.9 professional engineer; and
- 101.10 G. a comparison of the as-built documentation versus the design specifications
101.11 and a description and rationale for any significant changes.

101.12 Subp. 3. **Construction inspection and certification.** Upon receipt of as-built
101.13 documentation from the landowner, the local government unit must inspect the
101.14 replacement wetland to determine whether the as-built conditions comply with the
101.15 construction specifications of the approved replacement plan. The local government unit
101.16 may inspect the replacement wetland at any time during the construction and monitoring
101.17 periods to assess its long-term viability. If the local government unit determines
101.18 that the construction is not in compliance with the approved plan, it must promptly
101.19 notify the landowner of the deficiencies and actions required to gain compliance. For
101.20 projects involving the practice of engineering, the local government unit must ensure an
101.21 engineer has certified the construction. When the local government unit certifies that
101.22 the construction specifications have been met, the local government unit must notify
101.23 the applicant and technical evaluation panel. Upon construction certification, the local
101.24 government unit may release a portion of any financial assurance the applicant had
101.25 provided, while retaining a sufficient amount to ensure compliance with monitoring and
101.26 replacement requirements.

102.1 **8420.0810 REPLACEMENT WETLAND MONITORING.**

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

102.5 Subp. 2. **Responsibilities.**

102.6 A. Monitoring of replacement wetlands is the responsibility of the landowner
102.7 of the property where the replacement wetland is located. Any agreement to transfer
102.8 monitoring responsibilities from the landowner to a local government unit or other party
102.9 must be in writing and signed by both parties and does not release the applicant from the
102.10 responsibility to provide replacement as specified in the approved replacement plan.

102.11 B. For project-specific replacement in which the wetland impact site occurs in a
102.12 different local government unit from the replacement site, the local government unit for
102.13 the impact site may assume the monitoring enforcement responsibility for the replacement
102.14 site upon written agreement between the local government units.

102.15 Subp. 3. **Duration of monitoring.**

102.16 A. Monitoring may, at the discretion of the local government unit, begin upon
102.17 construction certification, but must begin no later than the first full growing season
102.18 following construction certification. Monitoring must continue for five full growing
102.19 seasons or until the local government unit determines, with the concurrence of the
102.20 technical evaluation panel, that the replacement is successful, but in no case may the
102.21 determination be made before the end of the third full growing season.

102.22 B. If the goals of the approved plan have not been achieved after the fifth
102.23 season of monitoring but, in the written opinion of the technical evaluation panel, may be
102.24 achieved with more time, the local government unit may, through written notification of
102.25 the applicant, extend the monitoring period for not more than an additional five growing

103.1 seasons. The local government unit's notification of extension must specify the reasons
103.2 for the extension and any corrective actions necessary to bring the replacement wetland
103.3 into compliance with the approved plan.

103.4 C. For project-specific replacement plans, if the local government unit
103.5 determines that, at any time during the monitoring period and based on the recommendation
103.6 of the technical evaluation panel, the goals of the approved replacement plan have not
103.7 been achieved, and will not be achieved with more time, the local government unit must
103.8 pursue one or more corrective actions identified in part 8420.0820, subpart 1.

103.9 Subp. 4. **Monitoring reports.**

103.10 A. Following the first full growing season after construction certification,
103.11 the applicant must submit annual monitoring reports documenting the progress of the
103.12 replacement wetland during the monitoring period. The first annual monitoring report must
103.13 include any monitoring required by the local government unit during the previous year.
103.14 The applicant must submit the annual report to the appropriate local government unit on a
103.15 date determined by the local government unit, but no later than December 31. The local
103.16 government unit must ensure that copies of the monitoring report are distributed to the
103.17 technical evaluation panel. For wetland banking projects, the applicant must also submit
103.18 the annual report to the board's wetland banking administrator. The monitoring reports
103.19 must be submitted annually, or biannually if the local government unit determines that,
103.20 after the third full growing season, biannual reports are sufficient for long-term monitoring,
103.21 until the local government unit determines the replacement has been successful.

103.22 B. The purpose of the annual report is to describe actual wetland restoration or
103.23 creation activities completed during the past year, activities planned for the upcoming
103.24 year, and the success of the replacement activities in achieving identified goals and
103.25 performance standards. The annual report must, at a minimum, include:

103.26 (1) a project location map with legal description;

104.1 (2) a description of replacement wetland goals and performance standards in
104.2 terms of size, replacement credit amount, wetland types, hydrology, and wetland functions
104.3 and a comparison of the current replacement wetland to these goals and standards;

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

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

104.6 (5) hydrology measurements during the growing season, including water
104.7 level elevations at fixed, repeatable locations representative of the replacement wetland
104.8 types or areal coverage measurements of inundation for replacement wetlands with deeper
104.9 hydrologic regimes;

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

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

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

104.18 (9) other information specified in the approved monitoring plan or
104.19 subsequently requested by the local government unit.

104.20 **8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.**

104.21 **Subpart 1. Monitoring oversight.**

104.22 A. The local government unit must evaluate all monitoring reports for
104.23 compliance with report requirements and must determine if the goals of the approved
104.24 plan can be met within the specified monitoring period based on the current condition

105.1 of the replacement wetland and the applicant's proposed management activities for the
105.2 following growing season.

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

105.6 (1) order specific corrective actions on the replacement wetlands;

105.7 (2) order the applicant to prepare and implement a new or revised
105.8 replacement plan;

105.9 (3) request the enforcement authority to issue a cease and desist order on
105.10 the wetland impact activity if it has not been completed;

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

105.13 (5) use any financial assurance collected from the applicant to replace the
105.14 lost wetland function and value;

105.15 (6) pursue a district court order requiring the applicant to fulfill the
105.16 replacement plan; or

105.17 (7) other actions that the local government unit determines necessary to
105.18 achieve the goals of the replacement plan.

105.19 C. If the ~~applicant~~ landowner fails to submit the annual report associated with a
105.20 project-specific replacement plan in accordance with part 8420.0810, the local government
105.21 unit responsible for monitoring oversight must either pursue enforcement actions under
105.22 item B or prepare the annual report for the applicant. The local government unit may
105.23 charge fees for preparing the report or use any financial assurance the applicant had
105.24 provided to complete monitoring requirements.

106.1 Subp. 2. **Certification of successful replacement and completion of monitoring.**

106.2 Upon completion of the minimum monitoring period, the applicant may request a field
106.3 review by the local government unit and technical evaluation panel of the success of the
106.4 replacement wetland. If the replacement is determined successful, the local government
106.5 unit must provide written notification to the applicant that the replacement has been
106.6 certified and the monitoring requirements have been fulfilled.

106.7 **WETLAND PLANNING**

106.8 **8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND**
106.9 **MANAGEMENT PLANS.**

106.10 Subpart 1. **Purpose and eligibility.**

106.11 A. As an alternative to the rules adopted under Minnesota Statutes, section
106.12 103G.2242, subdivision 1, and the public value criteria established or approved under
106.13 Minnesota Statutes, section 103B.3355, a comprehensive wetland protection and
106.14 management plan may be developed by a local government unit, or one or more
106.15 local government units operating under a joint powers agreement, provided that the
106.16 requirements of this part are met. This part provides minimum standards. Local
106.17 government units may require equivalent or more stringent standards and procedures for
106.18 wetland conservation, but not less stringent standards and procedures.

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

107.1 C. Any local government unit opting to pursue development of a plan and
107.2 incorporating this chapter into local ordinance must provide documentation to the board
107.3 demonstrating local capacity to implement the plan.

107.4 Subp. 2. **Relationship to other plans.** To maximize effectiveness, the
107.5 comprehensive wetland protection and management plan should be developed as part of,
107.6 or in coordination with, other relevant local or regional plans and requirements. The
107.7 plan should provide a mechanism for integrating local land use decisions with wetland
107.8 ecosystem management goals at the watershed level.

107.9 Subp. 3. **Plan area.** To the extent practical and feasible, the comprehensive wetland
107.10 protection and management plan should be based on watershed boundaries. The size of
107.11 watershed addressed should not be larger than is appropriate to ensure that the wetland
107.12 resources provided through replacement will effectively compensate for approved
107.13 impacts. For local governments with multiple watersheds, a separate analysis should be
107.14 completed for each watershed substantially within the local government's jurisdiction.
107.15 Local governments should consider joint planning efforts for those watersheds that cross
107.16 political boundaries.

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

107.19 A. vary application of the sequencing standards in part 8420.0520, for projects
107.20 based on the classification and criteria in the plan;

107.21 B. vary the replacement standards of part 8420.0522, subparts 3 to 9, and the
107.22 actions eligible for credit under part 8420.0526, based on the classification and criteria
107.23 in the plan, so long as there is no net loss of public value within the area subject to the
107.24 plan and so long as:

108.1 (1) in a 50 to 80 percent area, a minimum acreage requirement of one acre
108.2 of replaced wetland for each acre of impacted wetland requiring replacement is met within
108.3 the area subject to the plan; and

108.4 (2) in a less than 50 percent area, a minimum acreage requirement of two
108.5 acres of replaced wetland for each acre of impacted wetland requiring replacement is met
108.6 within the area subject to the plan;

108.7 C. in a greater than 80 percent area, allow replacement credit, based on the
108.8 classification and criteria in the plan, for any project that increases the public value of
108.9 wetlands, including activities on adjacent upland acres;

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

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

108.19 F. allow exemptions based on ordinance or rule standards, eligibility criteria,
108.20 and processes that are not less restrictive than the requirements in parts 8420.0320 and
108.21 8420.0420 based on wetland classifications as defined in the plan.

108.22 Subp. 5. **Plan content.**

108.23 A. The comprehensive wetland protection and management plan must include
108.24 the establishment of watershed goals based on an analysis of the existing ecological
108.25 conditions of the plan area and the development of corresponding goals for maintaining

109.1 and improving those conditions. The ecological condition of the plan area should be
109.2 based on inventories of historic and existing wetland resources, including identification of
109.3 degraded wetlands, existing high-quality wetlands, and immediate and long-term resource
109.4 needs within the plan area. The analysis may be completed as part of the comprehensive
109.5 wetland protection and management plan or adopted from a relevant local or regional
109.6 water plan, if one exists.

109.7 B. The plan may provide for the classification of wetlands in the plan area
109.8 based on:

109.9 (1) an inventory of existing wetlands in the plan area;

109.10 (2) an assessment of the wetland functions listed in part 8420.0522, subpart
109.11 1, using a methodology chosen by the technical evaluation panel and based on one of the
109.12 methodologies established or approved by the board;

109.13 (3) landscape position, adjacent habitats or buffers, connectivity with or
109.14 between important resources, projected land use, and other watershed-scale criteria; and

109.15 (4) the resulting public value.

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

110.1 D. Comprehensive wetland protection and management plans developed as part
110.2 of county, watershed district, or watershed management organization plan may identify
110.3 those areas that qualify as high-priority areas for wetland preservation, enhancement,
110.4 restoration, and establishment according to part 8420.0835.

110.5 E. The plan must include a provision for periodic assessment of the effectiveness
110.6 of the plan, and the local government unit's implementation of it, in achieving plan goals.
110.7 Updates to previously approved plans must include an analysis of the effectiveness of the
110.8 previous plan, including the identification of barriers to achieving identified goals and
110.9 development of strategies to overcome them.

110.10 F. The plan must specify the period covered by the plan, which must extend at
110.11 least five years but not more than ten years from the date the board approves the plan.

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

110.13 A. A notice of intent to plan must be sent, at the beginning of the planning
110.14 process, to the technical evaluation panel, the Department of Natural Resources, the
110.15 Department of Agriculture, the Pollution Control Agency, watershed management
110.16 organizations within the plan area, local government units within and adjacent to the
110.17 plan area, and the St. Paul district office of the United States Army Corps of Engineers
110.18 with an invitation to actively participate in the development of the plan. The notice
110.19 should also include a general description of the planning effort, the planning area, and
110.20 an anticipated timeline.

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

110.25 C. The local government unit must implement a process for notifying and
110.26 involving local citizens in the development of the plan and determination of local value.

111.1 Local citizen involvement may include the formation of a citizen's advisory committee or
111.2 utilization of other existing citizen groups.

111.3 D. Upon completion, the local government unit must submit the draft
111.4 comprehensive wetland protection and management plan and ordinance or rule for a
111.5 60-day review and comment period to those required to receive notice under item A. The
111.6 local government unit must respond in writing, within 30 days of the end of the review
111.7 period, to any comments received during the review period.

111.8 E. The local government unit must conduct a public hearing on the plan no
111.9 sooner than 30 days after the end of the 60-day review period but before submitting the
111.10 final draft plan to the board for approval.

111.11 F. After conducting the public hearing but before final adoption, the local
111.12 government unit must submit the plan and ordinance or rule, all written comments
111.13 received, a record of the public hearing, and a summary of responses to comments and
111.14 changes incorporated as a result of the review process to the board for review under
111.15 subpart 7.

111.16 G. An organization that is invited to participate in the development of the draft
111.17 local plan, but declines to do so or fails to participate or to provide written comments
111.18 during the local review process, waives the right during the review under item D to submit
111.19 comments, except comments concerning consistency of the plan with laws and rules
111.20 administered by that agency. In determining the merit of an agency comment, the board
111.21 must consider the involvement of the agency in the development of the local plan.

111.22 H. Except as otherwise provided for in this part, all other requirements relating
111.23 to development of the plan must be consistent with the local water plan processes under
111.24 Minnesota Statutes, section 103B.231, 103B.311, or 103D.401. A plan developed as part
111.25 of a local water management plan may follow the review and approval process applicable

112.1 to the local water management plan instead of the review and approval process under
112.2 items D to F.

112.3 Subp. 7. **Board decision; mediation; judicial review.**

112.4 A. The board shall make a decision to approve or disapprove a comprehensive
112.5 wetland protection and management plan within 60 days of receipt of a complete and final
112.6 draft of the plan and ordinance or rule as required in subpart 6, item F. The board may
112.7 disapprove all or parts of the plan if the board determines the plan does not meet the
112.8 requirements of this part. If the board has not made a decision within 60 days of receipt of
112.9 the final plan, the plan is deemed approved. The 60-day period may be extended upon
112.10 mutual agreement of the board and the local government unit.

112.11 B. In its review of a plan, the board must advise the local government unit of
112.12 those elements of the plan that are more restrictive than this chapter and the act.

112.13 C. If the board disagrees with the plan or any elements of the plan, the board
112.14 shall, in writing, notify the local government unit of the plan deficiencies and suggested
112.15 changes. The board must include in the response to the local government unit the scientific
112.16 justification, if applicable, for the board's concerns with the plan. Upon receipt of the
112.17 board's concerns with the plan, the local government unit has 60 days to revise the plan
112.18 and resubmit the plan to the board for reconsideration, or the local government unit may
112.19 request a hearing before the board. The board must hold a hearing within the boundaries
112.20 of the jurisdiction of the local government within 60 days of the request for hearing. After
112.21 the hearing, the board must, within 60 days, prepare a report of its decision and inform
112.22 the local government unit.

112.23 D. If, after the hearing, the board and local government unit disagree on the
112.24 plan, the board must, within 60 days, initiate mediation through a neutral party. If the
112.25 board and local government unit agree in writing not to use mediation or the mediation
112.26 does not result in a resolution of the differences between the parties, then the board may

113.1 commence a declaratory judgment action in the district court of the county where the local
113.2 government unit is located. If the board does not commence a declaratory judgment action
113.3 within the applicable 60-day period, the plan is deemed approved.

113.4 E. The declaratory judgment action must be commenced within 60 days after
113.5 the date of the written agreement not to use mediation or 60 days after conclusion of the
113.6 mediation. If the board commences a declaratory judgment action, the district court must
113.7 review the board's record of decision and the record of decision of the local government
113.8 unit. The district court must affirm the plan if it meets the requirements of this part.

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

113.10 A. The comprehensive wetland protection and management plan is effective
113.11 after approval by the board as provided in subpart 7 and after adoption of the plan into the
113.12 official controls of the local government unit.

113.13 B. Comprehensive wetland protection and management plans remain in effect
113.14 according to subpart 5, item F, unless revised according to subpart 6 and approved by the
113.15 board. Plans that contain revision dates inconsistent with this part must comply with the
113.16 plan's date if the date is not more than ten years beyond the date of board approval. An
113.17 extension of the revision date of the plan may be granted by the board.

113.18 C. All amendments to the adopted plan and ordinance are effective upon
113.19 completion of the same process required for the original plan, except when the proposed
113.20 amendments constitute minor amendments and:

113.21 (1) a public hearing has been held to explain the amendments;

113.22 (2) the local government unit has sent copies of the amendments to those
113.23 required to receive notice under subpart 6; and

113.24 (3) the board has either agreed that the amendments are minor or failed to
113.25 act within 60 days of receipt of the amendments.

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

114.6 Subp. 9. **Implementation.**

114.7 A. The comprehensive wetland protection and management plan must be
114.8 implemented by ordinance as part of the local government unit's official controls under
114.9 Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city;
114.10 and Minnesota Statutes, chapter 366, for a town and by rules adopted under Minnesota
114.11 Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B,
114.12 for a watershed management organization.

114.13 B. After board approval and local government adoption, decisions made to
114.14 implement this chapter and the act must be made according to the plan and ordinance or
114.15 rule.

114.16 C. Noticing, appeals, and all other administrative processes under a local plan
114.17 must follow the requirements of this chapter.

114.18 Subp. 10. **Reporting.** In addition to and as part of the reporting requirements of part
114.19 8420.0200, subpart 2, item I, a local government unit with an approved and adopted
114.20 comprehensive wetland management plan must annually provide information to the board
114.21 regarding activities that vary from this chapter, this part notwithstanding, and documenting
114.22 compliance with the minimum plan standards developed according to subpart 4. Failure
114.23 to provide this information on an annual basis may subject the local government unit to
114.24 penalties under part 8420.0200, subpart 3.

114.25 **8420.0835 HIGH-PRIORITY REGIONS AND AREAS.**

115.1 Subpart 1. **High-priority regions.** Parts of the state that are high-priority regions
115.2 for preservation, enhancement, restoration, and establishment of wetlands include all
115.3 major watersheds with a majority of their land area contained within counties that have
115.4 lost 50 percent or more of their presettlement wetland base, which are those listed in part
115.5 8420.0117, subpart 1, item C. In all other major watersheds of the state, high-priority
115.6 regions are high-priority areas approved as such by the board according to subpart 2.

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

115.8 A. Water management plans prepared by water management organizations in
115.9 the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside
115.10 the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed
115.11 districts outside the metropolitan area under Minnesota Statutes, sections 103D.401
115.12 and 103D.405, may identify those areas that qualify as high-priority areas for wetland
115.13 preservation, enhancement, restoration, and establishment. To designate a high-priority
115.14 area, the preservation, enhancement, restoration, and establishment of wetlands must have
115.15 or achieve high public value based on the functions of wetlands listed in part 8420.0522,
115.16 subpart 1, and the goals of the water management plan.

115.17 B. High-priority areas should be designated by minor watershed or
115.18 subwatershed. Strong consideration should be given to identifying as high-priority areas
115.19 minor watersheds that have less than 50 percent of their original wetland acreages and
115.20 where restoration of previously impacted or degraded wetlands will contribute towards
115.21 achieving watershed-based goals. Consideration should also be given to watersheds that
115.22 contain high-valued wetlands that are at risk of degradation or loss, the protection of
115.23 which is integral to maintaining the ecology and condition of the watershed. Identification
115.24 of high priority watersheds should be consistent with part 8420.0830, subpart 5, item A.

115.25 C. Local water plans may identify individual wetlands, or criteria to establish
115.26 individual wetlands, as high-priority areas. Individual wetlands identified as high-priority
116.1 areas should be of high local value, at risk of degradation or loss, and consistent with
116.2 any existing wetland classification criteria established under part 8420.0830, subpart
116.3 5, items A and B. Plans may also identify individual sites as high-priority areas for
116.4 wetland restoration and establishment. High-priority restoration sites should be identified
116.5 according to the criteria in part 8420.0830, subpart 5, items A and C.

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

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

116.13 **8420.0840 WETLAND PRESERVATION AREAS.**

116.14 Subpart 1. **Purpose and eligibility.** The purpose of this part is to provide local
116.15 governments with a tool to promote the preservation of high-valued wetlands and the
116.16 restoration and enhancement of wetland areas that will contribute towards meeting
116.17 watershed-based goals identified in a local water management plan. Wetlands located in
116.18 high-priority areas as identified in part 8420.0835 and a local water plan are eligible for
116.19 enrollment as wetland preservation areas. A wetland so enrolled is exempt from property
116.20 tax. Sites identified as high-priority areas for wetland restoration and establishment are
116.21 eligible for wetland preservation area designation only after restoration of the wetland.
116.22 Wetland areas receiving replacement credit are not eligible for designation as a wetland
116.23 preservation area.

116.24 Subp. 2. **Landowner application for wetland preservation area.** A landowner
116.25 may apply to the county or watershed district, if the county or watershed district chooses to
116.26 accept wetland preservation areas, for designation of a wetland as a wetland preservation
117.1 area on forms provided by the board. The applicant must include a buffer strip that meets
117.2 the minimum width requirements of part 8420.0522, subpart 6, around the perimeter of the
117.3 wetland. The applicant may include up to four acres of upland for each acre of wetland.
117.4 The application must be accompanied by a restrictive covenant on a form provided by
117.5 the board. The covenant must contain the same limitations on use that are provided in
117.6 Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled
117.7 upland area must be vegetated by the landowner to permanent vegetation other than
117.8 noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

117.9 Subp. 3. **County or watershed district review of application.** Upon receipt of a
117.10 complete application, the county or watershed district must send a copy of the application
117.11 to the county assessor, the board, and the soil and water conservation district where the
117.12 land is located. The soil and water conservation district must prepare an advisory statement
117.13 of existing and potential preservation problems or conflicts and send the statement to the
117.14 owner of record and to the county or watershed district. The county or watershed district
117.15 may accept the application if the wetland is in a high-priority region and high-priority
117.16 area, the application provides for the minimum required buffer strip, and the application
117.17 is accompanied by the proper covenant. The county or watershed district may limit or
117.18 reject additional upland proposed to be included according to criteria identified in the
117.19 approved plan and standards the county may establish. The county or watershed district
117.20 may reject the application if the application does not qualify or may require modification
117.21 and resubmittal of the application. If the application qualifies, the county or watershed
117.22 district may approve it and mark the date of approval on the application. The county or
117.23 watershed district must notify the landowner of the acceptance or denial of the application
117.24 within 60 days from the date of the application. Within five business days of approval of

117.25 the application, the county or watershed district must forward it to the county recorder for
117.26 recording of the restrictive covenant or memorialization of the application on the certificate
117.27 of title. The county or watershed district must also send a copy of the approved application
118.1 to the county assessor for entry in the assessor's records as a wetland preservation area.
118.2 The county or watershed district must also send copies of the approved application to the
118.3 soil and water conservation district, the local government unit, and the board.

118.4 Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas
118.5 are subject to Minnesota Statutes, sections 103F.612 to 103F.616, and the property tax
118.6 provisions of Minnesota Statutes, section 272.02, subdivision 11.

118.7 Subp. 5. **Commencement of wetland preservation area.** A wetland is a wetland
118.8 preservation area commencing 30 days after the date the county notifies the landowner of
118.9 acceptance of the application under subpart 3.

118.10 Subp. 6. **Fee.** The county or watershed district may require an application fee to
118.11 defray administrative costs of the program.

118.12 Subp. 7. **Maps.** Counties having approved wetland preservation areas within their
118.13 legal boundaries must maintain maps illustrating land covenanted as wetland preservation
118.14 areas.

118.15 Subp. 8. **Reimbursement of unpaid taxes.** A county or watershed district with an
118.16 approved wetland preservation area shall be reimbursed for lost tax revenue according
118.17 to Minnesota Statutes, section 275.295.

118.18 **ENFORCEMENT, APPEALS, AND COMPENSATION**

118.19 **8420.0900 ENFORCEMENT PROCEDURES.**

118.20 Subpart 1. **Enforcement authorities.** The commissioner, conservation officers, and
118.21 other peace officers may issue cease and desist orders, ~~notices of potential violation,~~
118.22 and restoration and replacement orders.

118.23 Subp. 2. **Cease and desist orders; ~~notices of potential violation.~~**

119.1 A. Cease and desist orders may be issued when the enforcement authority has
119.2 probable cause that an activity is being or will again be conducted that impacts a wetland,
119.3 does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and
119.4 is being or will again be conducted without prior approval of a replacement plan by a
119.5 local government unit under part 8420.0255 or involving a decision stayed by the board
119.6 pursuant to part 8420.0905. ~~Alternatively, when the activity has been completed and is not~~
119.7 ~~likely to resume, the enforcement authority may issue a notice of potential violation.~~

119.8 B. A cease and desist order ~~or notice of potential violation~~ must not be issued if
119.9 the landowner:

119.10 (1) has, and is complying with, a valid replacement plan, exemption,
119.11 or no-loss approved by the local government unit or a completed and submitted public
119.12 road project notification that has not been stayed, remanded, or reversed on appeal under
119.13 part 8420.0905; or

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

119.16 ~~The enforcement authority must consult with the local government unit to determine~~
119.17 ~~whether the landowner is in compliance before issuing a notice of potential violation.~~

119.18 C. The enforcement authority must advise the landowner that the landowner's
119.19 written application, if any, for a replacement plan, exemption, or no-loss should be made
119.20 immediately to the local government unit and that any wetland that has been impacted
119.21 may require restoration if the application for replacement plan, exemption, or no-loss is
119.22 denied or reversed on appeal. The enforcement authority issuing a cease and desist order
119.23 must promptly submit copies to the soil and water conservation district, local government
119.24 unit, and Department of Natural Resources.

119.25 D. If an application for a replacement plan, exemption, or no-loss approval is
119.26 triggered by a cease and desist order ~~or notice of potential violation~~, the local government
120.1 unit must make the decision according to part 8420.0255 and the standards and application
120.2 procedures applicable to the type of application.

120.3 E. If the decision is that the activity is exempt or qualifies as a no-loss, the local
120.4 government unit must request that the enforcement authority rescind the cease and desist
120.5 order ~~or notice of potential violation~~, pending the outcome of any appeal, and notify the
120.6 soil and water conservation district, the enforcement authority, and the landowner.

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

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

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

120.13 A. The enforcement authority must issue a restoration order or replacement
120.14 order when:

120.15 (1) the impact has already been completed when discovered or, after a cease
120.16 and desist order ~~or notice of potential violation~~ has been issued, the landowner does not
120.17 apply for a replacement plan, exemption, or no-loss within three weeks;

120.18 (2) the local government unit approves the application but it is reversed
120.19 on appeal; or

120.20 (3) the local government unit denies the application.

120.21 B. Promptly upon being informed by the enforcement authority or the local
120.22 government unit of the need, a soil and water conservation district staff person must
120.23 inspect the site and prepare a plan in consultation with the local government unit and the

120.24 enforcement authority for restoring the site to its prealtered condition. The soil and water
120.25 conservation district may request assistance from the local government unit or technical
121.1 evaluation panel in inspecting the site and preparing the plan. Restoration must be ordered
121.2 unless the technical evaluation panel concludes that restoration is not possible or prudent.
121.3 The soil and water conservation district must incorporate its plan into a restoration or
121.4 replacement order and send it to the enforcement authority for service in person or by
121.5 certified mail to the landowner or responsible party.

121.6 Subp. 4. **Contents of order.**

121.7 A. A restoration order must specify dates by which the landowner or responsible
121.8 party must:

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

121.12 (2) submit a complete replacement plan, exemption, or no-loss application
121.13 to the local government unit.

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

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

121.19 D. A replacement order must specify a date by which the landowner or
121.20 responsible party must submit a complete replacement plan application to the local
121.21 government unit and a subsequent date by which the landowner or responsible party must
121.22 replace the wetland according to the approved replacement plan and obtain a certificate
121.23 of satisfactory replacement from the soil and water conservation district. The restoration

121.24 or replacement order must specify a time period of at least 30 days for submittal of a
121.25 complete application under this subpart.

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

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

122.11 ~~F. A landowner or responsible party who fails to submit a complete application~~
122.12 ~~within the time period specified in the restoration order, or as properly extended, must~~
122.13 ~~comply with the order before an application under this chapter may be submitted, unless~~
122.14 ~~the local government unit and the enforcement authority agree otherwise or unless allowed~~
122.15 ~~under appeal.~~

122.16 Subp. 5. **Enforcement authority orders.**

122.17 A. If the technical evaluation panel determines that restoration will not restore
122.18 all the loss caused by the impact, the order may require a combination of restoration and
122.19 replacement or may require replacement rather than restoration. The order must direct
122.20 the landowner or responsible party to obtain replacement plan approval from the local
122.21 government unit. The order must specify that if replacement plan approval is not obtained,
122.22 the landowner or responsible party must restore the wetland as ordered.

122.23 B. Each cease and desist, restoration, and replacement order must state that
122.24 violation of the order is a misdemeanor.

122.25 C. If, as part of a misdemeanor proceeding, the court orders restoration or
122.26 replacement, the technical evaluation panel must determine which is appropriate, and if it
123.1 is restoration, the method of restoration. If the court orders replacement, the landowner
123.2 or responsible party must follow the replacement plan process under subpart 6 and part
123.3 8420.0330, and the wetland replacement, construction, and monitoring requirements
123.4 of this chapter.

123.5 Subp. 6. **After-the-fact replacement.** If a landowner or responsible party seeks
123.6 approval of a replacement plan after the proposed project has already impacted the
123.7 wetland or if an approved replacement plan has not been implemented in advance of or
123.8 concurrent with the impact, the local government unit must require the landowner or
123.9 responsible party to replace the impacted wetland at a ratio twice the replacement ratio
123.10 otherwise required, unless the local government unit and enforcement authority concur
123.11 that a lesser ratio is acceptable.

123.12 Subp. 7. **Misdemeanor.** A violation of an order issued under this part is a
123.13 misdemeanor and must be prosecuted by the county attorney where the wetland is located
123.14 or the illegal activity occurred.

123.15 **8420.0905 APPEALS.**

123.16 Subpart 1. **Appeal of replacement and restoration orders to the board.** A
123.17 landowner or responsible party may appeal the terms and conditions of a restoration or
123.18 replacement order issued according to part 8420.0900 to the board's executive director
123.19 within 30 days of receipt of ~~written notice~~ the order by filing a written request for review
123.20 and paying a nonrefundable filing fee to the board. The time frame for appeal may be
123.21 extended beyond 30 days upon mutual agreement, in writing, between the landowner or
123.22 responsible party, the local government unit, and the enforcement authority. The filing
123.23 fee is an amount determined by the board not to exceed \$1,000. If the written request is
123.24 not submitted within 30 days, the restoration or replacement order is final. The executive

123.25 director must review the request and supporting evidence and render a decision within
124.1 ~~60~~ 30 days of the request for review. The executive director may stay the restoration or
124.2 replacement order until the appeal is resolved.

124.3 **Subp. 2. Appeal of local government unit staff decisions.**

124.4 A. A decision made by local government unit staff is final if not appealed to
124.5 the local government unit within 30 days after the date on which the decision is sent to
124.6 those required to receive notice of the decision. Notwithstanding the time frames of
124.7 Minnesota Statutes, section 15.99, or any other law to the contrary, the local government
124.8 unit must make a ruling within 30 days from the date of the filing of the appeal, unless
124.9 the appellant and local government unit mutually agree, in writing, to an extension of
124.10 time beyond the 30 days.

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

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

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

124.18 A. The decision of a local government unit to approve, approve with conditions,
124.19 or deny an application is final if not appealed to the board within 30 days after the date on
124.20 which the decision is sent to those required to receive notice of the decision unless the
124.21 applicant and local government unit mutually agree, in writing, to an extension of time
124.22 beyond the 30 days. Appeals of decisions made by local government staff must be made
124.23 to the local government unit as provided for in subpart 2. This subpart also applies to
124.24 decisions made under comprehensive wetland protection and management plans.

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

125.4 C. An appeal is effective upon mailing the petition and payment of a
125.5 nonrefundable filing fee in an amount determined by the board, not to exceed \$1,000, to
125.6 the board with evidence that a copy of the petition has been mailed to the local government
125.7 unit. The petition should include information to establish sufficient grounds for the appeal.
125.8 The filing fee is not required for appeals petitioned by state agencies or members of the
125.9 technical evaluation panel. Another filing fee is not required for appeals that have been
125.10 remanded if the filing fee was paid and the same party appeals the new decision made
125.11 under remand. After receipt of a petition, the local government unit must send a copy of
125.12 the petition to all those to whom it was required to send a notice of the decision.

125.13 Subp. 4. **Board appeal procedures.**

125.14 A. Within 30 days after receiving the petition, the board, its dispute resolution
125.15 committee, or its executive director must decide whether to grant the petition and hear the
125.16 appeal. After considering the size of the proposed impacts and the quality of the affected
125.17 wetland, any patterns of similar acts by the petitioner or responsible party or by the local
125.18 government unit in administration of this chapter and the act, and the consequences of the
125.19 delay resulting from the appeal, the board, its dispute resolution committee, or its executive
125.20 director shall grant the petition unless the appeal is deemed to be without sufficient merit,
125.21 trivial, or brought solely for the purposes of delay; the petitioner has not exhausted all
125.22 local administrative remedies; or the petitioner has not submitted the required filing fee.

125.23 B. The board, its dispute resolution committee, or its executive director may
125.24 stay the local government unit decision until the appeal is resolved.

125.25 C. The board, its dispute resolution committee, or its executive director may
125.26 remand the appealed decision back to the local government unit if the petitioner has not

126.1 exhausted all local administrative remedies, such as a local government unit evidentiary
126.2 public hearing, if expanded technical review is needed, or if the local government unit's
126.3 record is not adequate. If an appeal is remanded, a new application is not required
126.4 and additional information may be submitted before a decision is made by the local
126.5 government unit. The local government unit must make a decision on an appeal that has
126.6 been remanded within 60 days unless the remand order, or a subsequent order, specifies a
126.7 longer period.

126.8 D. After the petition is granted, the appeal must be heard by the dispute
126.9 resolution committee and decided by the board within 60 days after filing of the local
126.10 government unit's written record, submittal of written briefs for the appeal, and a hearing
126.11 by the dispute resolution committee. Parties to the appeal are the appellant, the landowner,
126.12 the local government unit, and those required to receive notice of the local government
126.13 unit decision.

126.14 E. The board or its executive director may elect to combine related appeals and
126.15 process as one decision, either multiple appeals on the same project or appeals of different
126.16 local government unit decisions on the same project.

126.17 F. Within 30 days of the grant of the appeal, unless an extension of time is
126.18 approved by the board, the local government unit must forward to the board the written
126.19 record on which it based its decision. The board must forward one copy of the record to
126.20 each of the parties to the appeal. The board shall make its decision on the appeal after
126.21 hearing. The board must give the parties 30 days' notice of the hearing. The board must
126.22 base its review on the record and the argument presented to the board by the parties.
126.23 However, if the local government unit did not consider fundamental information, such
126.24 as aerial photographs, soil maps, or wetland maps, or did not make formal findings
126.25 contemporaneously with its decision; if there is not accurate verbatim transcript of the
126.26 proceedings; if the proceedings were not fairly conducted; or if the record is otherwise

127.1 incomplete or deficient, the board may remand the matter or receive additional evidence.
127.2 If, before the date set for the hearing, application is made to the board for leave to present
127.3 additional evidence on the issues in the case and it is shown to the satisfaction of the board
127.4 that additional evidence is material and that there were good reasons for failure to present it
127.5 in the proceeding before the local government unit, the board may order that the additional
127.6 evidence be taken before the local government unit upon such conditions that the board
127.7 deems proper. The local government unit may modify its findings and decision by reason
127.8 of the additional evidence and must file with the board, to become a part of the record, the
127.9 additional evidence, together with any modifications or new findings or decision.

127.10 G. The board shall affirm the local government unit's decision if the local
127.11 government unit's findings of fact are not clearly erroneous; if the local government unit
127.12 correctly applied the law to the facts, including this chapter; and if the local government
127.13 unit made no procedural errors prejudicial to a party. Otherwise, the board shall reverse
127.14 the decision, amend it, or remand it with instructions for further proceedings. The board
127.15 must provide notice of its decision to the parties to the appeal.

127.16 Subp. 5. **Appeal of board decisions.** An appeal of a board decision may be taken
127.17 to the state Court of Appeals and must be considered an appeal from a contested case
127.18 decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

127.19 **8420.0910 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT**
127.20 **UNITS.**

127.21 Subpart 1. **Intervention.** At the request of a local government unit against which
127.22 a compensation action is brought based at least in part on the local government unit's
127.23 application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G.237,
127.24 or 103G.2372, or rules adopted by the board to implement these sections, the state, through
127.25 the attorney general, must intervene in the action on behalf of the local government unit
127.26 and is thereafter considered a defendant in the action. A local government unit making a

128.1 request under this subpart must provide the attorney general with a copy of the complaint
128.2 as soon as possible after being served. If requested by the attorney general, the court must
128.3 grant additional time to file an answer equal to the time between service of the complaint
128.4 on the local government unit and receipt of the complaint by the attorney general.

128.5 Subp. 2. **Liability of state for certain costs.** The state is liable for costs, damages,
128.6 fees, and compensation awarded in the action based on the local government unit's
128.7 adoption or implementation of standards that are required by state law, as determined by
128.8 the court. The local government unit is liable for costs, damages, fees, and compensation
128.9 awarded in the action based on local standards that are more restrictive than state law
128.10 and rules.

128.11 Subp. 3. **Definition.** For purposes of this part, "compensation action" means an
128.12 action in which the plaintiff seeks compensation for taking private property under the
128.13 state or federal constitution.

128.14 **8420.0915 COMPENSATION TO LANDOWNERS.**

128.15 Subpart 1. **Eligibility.** Replacement plan applicants who have completed the local
128.16 government unit process and the board appeal process, and the replacement plan has not
128.17 been approved as submitted, may apply to the board for compensation under Minnesota
128.18 Statutes, section 103G.237.

128.19 Subp. 2. **Application requirements.**

128.20 A. An application for compensation under this part must identify the applicant,
128.21 locate the wetland, and refer the board to its appeal file in the matter.

128.22 B. An application must include an agreement that, in exchange for compensation,
128.23 the applicant shall convey to the state a perpetual conservation easement in the form
128.24 required by Minnesota Statutes, section 103F.516. The applicant must provide an
128.25 abstract of title demonstrating the ability to convey the easement free of any prior title,

129.1 lien, or encumbrance. Failure to provide marketable title negates the state's obligation
129.2 to compensate.

129.3 C. The applicant must submit official documentation from the United States
129.4 Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district
129.5 or water management organization, if any, the county, and the town or city, as applicable,
129.6 that the proposed impact and the proposed subsequent use of the wetland are lawful under
129.7 their respective legal requirements.

129.8 D. The landowner must demonstrate that the proposed impact is a feasible and
129.9 prudent project and that the replacement plan as proposed is a reasonable good faith
129.10 effort to fulfill the wetland replacement, construction, and monitoring requirements of
129.11 this chapter and the act.

129.12 E. If the replacement plan was approved, but with conditions or modifications,
129.13 the applicant must show that the conditions or modifications make the replacement
129.14 unworkable or not feasible. A plan is unworkable or not feasible if the replacement must
129.15 be on land that the applicant does not own, the applicant has made good faith efforts to
129.16 acquire a replacement site and not succeeded, and there is not a qualifying replacement
129.17 available in a wetland bank. A plan is also unworkable or not feasible if it is not possible
129.18 to carry out for engineering reasons. The applicant must show that forgoing the proposed
129.19 project will cause the applicant damages and that disallowing the proposed use will
129.20 enhance the public value of the wetland.

129.21 F. The applicant must submit to the board the requirements in this part in
129.22 writing, by certified mail. The applicant must indicate on the application whether the
129.23 applicant wants to make oral argument to the board. The board may require that the
129.24 applicant appear before the board.

129.25 Subp. 3. **Board action.** If the board finds that the applicant has submitted a
129.26 complete application and proved the requirements in this part, the board must compensate

130.1 the applicant as required by law within 90 days after the board received a completed
130.2 application, provided that within the same time period the applicant conveys to the
130.3 board a conservation easement in the form required by Minnesota Statutes, section
130.4 103F.516. If the board does not provide the required compensation in exchange for the
130.5 conservation easement, the applicant may impact the wetland in the manner proposed,
130.6 without replacement.

130.7 **ACTIVITIES UNDER DEPARTMENT OF NATURAL RESOURCES**
130.8 **AUTHORITY**

130.9 **8420.0930 MINING.**

130.10 Subpart 1. **Impacts from mining.** Wetlands must not be impacted as part of a project
130.11 for which a permit to mine is required by Minnesota Statutes, section 93.481, except as
130.12 approved by the commissioner. Impacts to wetlands that the landowner can demonstrate,
130.13 to the satisfaction of the local government unit, were created by pits, stockpiles, or tailing
130.14 basins, and by actions the purpose of which was not to create the wetland according to part
130.15 8420.0105, subpart 2, item D, are not regulated under this chapter.

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

130.18 A. mining must not be conducted without first receiving a permit to mine issued
130.19 under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic
130.20 minerals; and

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

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

131.4 A. wetlands for which impacts were approved but not initiated before July
131.5 1, 1993, must not be impacted until the operating plan or annual report as required in
131.6 the permit to mine includes an approved wetland replacement plan for the undisturbed
131.7 wetlands. The wetland replacement plan must meet the same principles and standards for
131.8 replacing wetlands under parts 8420.0500 to 8420.0528 and provide for construction
131.9 certification and monitoring according to parts 8420.0800 and 8420.0810;

131.10 B. for filling activities that were approved and initiated before July 1, 1993,
131.11 placement of fill atop a stockpile, roadway, or other mining-related facility that occupies
131.12 a wetland filled before July 1, 1993, is allowed to continue within the areal extent, as it
131.13 existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without
131.14 the requirement of a replacement plan or amendment of the permit to mine. An expansion
131.15 of the areal extent of the fill in the wetland requires an approved replacement plan in the
131.16 operating plan or annual report as required in the permit to mine, according to item A; and

131.17 C. for draining activities that were approved and initiated before July 1, 1993,
131.18 draining of a wetland to facilitate mining, using ditches and other drainage facilities that
131.19 existed on July 1, 1993, is allowed to continue without the requirement of a replacement
131.20 plan or amendment of the permit to mine. Maintenance of the ditches and structures are
131.21 allowed without the requirement of a replacement plan or amendment of the permit to
131.22 mine, provided that as a result of the maintenance, wetlands are not drained beyond the
131.23 extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to
131.24 provide for replacement according to item A.

131.25 Subp. 4. **Applicability.**

132.1 A. Replacement wetlands approved under this part must only be used for
132.2 mining-related impacts covered under a permit to mine unless the credits are approved and
132.3 deposited in the state wetland bank according to parts 8420.0700 to 8420.0755.

132.4 B. Applicable procedures are those required for permits to mine.

132.5 C. This part does not apply to peat mining as defined under Minnesota Statutes,
132.6 section 93.461, that is subject to the mine permit and reclamation requirements under
132.7 Minnesota Statutes, sections 93.44 to 93.51, and the rules adopted thereunder.

132.8 **8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION,**
132.9 **PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS.**

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

132.17 Subp. 2. **Identifying calcareous fens.** A calcareous fen is a peat-accumulating
132.18 wetland dominated by distinct groundwater inflows having specific chemical
132.19 characteristics. The water is characterized as circumneutral to alkaline, with high
132.20 concentrations of calcium and low dissolved oxygen content. The chemistry provides an
132.21 environment for specific and often rare hydrophytic plants.

132.22 Subp. 3. **Procedures to list calcareous fens.**

132.23 A. The commissioner must investigate wetlands to determine if the wetland
132.24 is properly identified as a calcareous fen.

133.1 B. The commissioner must, by written order published in the State Register,
133.2 maintain a current list of known calcareous fens in the state and their location.

133.3 C. The commissioner must provide an updated list of calcareous fens to the
133.4 board for further distribution.

133.5 Subp. 4. **Management plans.** Calcareous fens must not be impacted or otherwise
133.6 altered or degraded except as provided for in a management plan approved by the
133.7 commissioner. The commissioner must provide technical assistance to landowners or
133.8 project sponsors in the development of management plans.

133.9 Subp. 5. **Restoration.** The commissioner may approve management plans to restore
133.10 or upgrade a previously damaged calcareous fen.

133.11 Subp. 6. **Appeals.**

133.12 A. A landowner or project proposer may challenge the commissioner's
133.13 determination that a wetland is a calcareous fen or the commissioner's calcareous fen
133.14 management plan by requesting a hearing. The hearing shall be conducted in the same
133.15 manner as water permit hearings under Minnesota Statutes, chapter 103G.

133.16 B. The determination that a wetland is a calcareous fen may be appealed at any
133.17 time by requesting a hearing. For a decision under a management plan, the hearing must
133.18 be requested within 30 days after the notice of the commissioner's decision was mailed
133.19 to the project proposer; otherwise the decision becomes final and may not be challenged
133.20 by the project proposer.

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

133.24 Subp. 7. **Enforcement procedures.** Enforcement procedures for calcareous fens
133.25 must be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372,

134.1 except that necessary restoration or replacement activities, if required, must be determined
134.2 by the commissioner, in consultation with the local soil and water conservation district.

134.3 **REPEALER.** Minnesota Rules, parts 8420.0102; 8420.0103; 8420.0110, subparts 1, 1a,
134.4 1b, 2, 3, 4, 5a, 6, 7, 8, 9, 10, 10a, 11, 12, 13a, 14, 15, 16, 17, 18, 18a, 19, 20, 20a, 20b, 21,
134.5 22, 23, 24, 25, 28, 29, 29a, 30, 30a, 31, 31a, 31b, 31c, 31d, 32, 32a, 32b, 32c, 33, 34, 34a,
134.6 34b, 35, 36, 37, 37a, 38, 39, 39a, 40, 40a, 41, 42, 43, 44a, 44b, 45, 46, 47a, 47b, 48, 49,
134.7 50, 51, 51a, 52, 53, 54, and 54a; 8420.0115; 8420.0122, subparts 1, 2, 3, 4, 5, 6, 7, 9, and
134.8 10; 8420.0210; 8420.0220; 8420.0225; 8420.0230; 8420.0245; 8420.0250, subparts 1, 3,
134.9 and 4; 8420.0260; 8420.0268; 8420.0270; 8420.0280; 8420.0290; 8420.0300; 8420.0350;
134.10 8420.0400; 8420.0505; 8420.0510; 8420.0520, subparts 2 and 9; 8420.0530; 8420.0540,
134.11 subparts 1 and 2; 8420.0541; 8420.0542; 8420.0543; 8420.0545; 8420.0546; 8420.0547;
134.12 8420.0548; 8420.0549; 8420.0550, subparts 1 and 2; 8420.0600; 8420.0610; 8420.0620;
134.13 8420.0630; 8420.0650, subparts 1, 2, 2a, 3, 4, 7, and 8; 8420.0720, subparts 1, 2, 3, 4, 5,
134.14 6, 7, 8, 8a, 10, 11, 12, 13, and 14; 8420.0730, subparts 1 and 2; 8420.0740; 8420.0750;
134.15 8420.0760; 8420.1010; 8420.1020; 8420.1030; 8420.1040; 8420.1050; 8420.1060; and
134.16 8420.1070, are repealed.