Board of Water and Soil Resources

Adopted Permanent Rules Relating to Wetland Conservation

PURPOSE ~~AND~~, SCOPE, AND DEFINITIONS

8420.0100 PURPOSE.

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

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

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

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

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

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

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

8420.0105 SCOPE.

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

Subp. 2. **Applicability.**

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

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

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

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

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

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

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

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

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

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

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

8420.0111 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Greater than 80 percent areas are provided in part 8420.0117.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) have a predominance of hydric soils;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8420.0112 INCORPORATION BY REFERENCE.

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

A. Wetlands of the United States (United States Fish and Wildlife Service Circular No. 39, 1956 and 1971 editions).

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

C. Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition).

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

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

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

G. Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective, Anderson and Craig, 1984.

H. Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982).

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

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

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

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

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

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

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

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

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

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

8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.

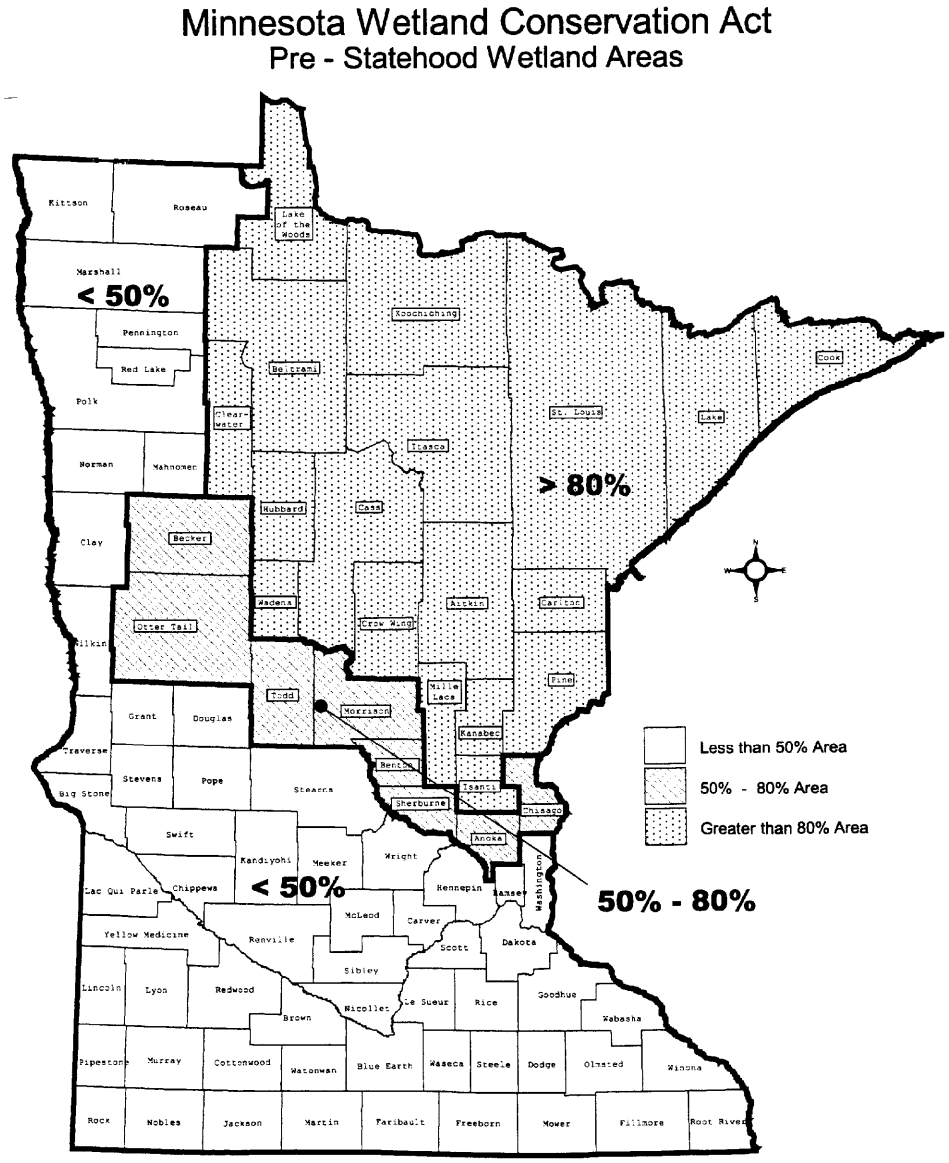
Subpart 1. **County classification.** For purposes of this chapter:

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

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

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

WETLAND AREAS



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

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

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

LOCAL GOVERNMENT UNIT DUTIES AND PROCEDURES

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8420.0233 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.

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

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

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

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

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

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

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

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

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

8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES.

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

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

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

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

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

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

(a) increased by more than ten percent;

(b) a different type;

(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. <u>However,</u>
30.9 <u>a local government unit may issue a notice for an exemption or no-loss application</u>
30.10 <u>following the requirements in this part when the local government unit believes that input</u>
30.11 <u>from those required to receive notice will be useful in determining whether an exemption</u>
30.12 <u>or no-loss applies.</u>

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.

8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.

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

8420.0315 NO-LOSS APPLICATIONS.

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

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

8420.0320 EXEMPTION APPLICATIONS.

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

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

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

8420.0325 SEQUENCING APPLICATIONS.

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

8420.0330 REPLACEMENT PLAN APPLICATIONS.

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

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

Subp. 3. **Application contents.** On an application form approved by the board in consultation with the commissioner, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information required in part 8420.0305:

A. for the impacted wetland:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) statements signed by the applicant confirming that:

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

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

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

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

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

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

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

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;

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

(1) the location of the replacement area;

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

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

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

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

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

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

8420.0335 CONTRACTOR'S NOTIFICATION RESPONSIBILITY.

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

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

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

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

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

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

BOUNDARY OR TYPE, NO-LOSS, AND EXEMPTION STANDARDS

8420.0405 BOUNDARY OR TYPE.

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

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

Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed 1997), as modified by the Board of Water and Soil Resources-United States Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (May 2007)	Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979)	Fish and Wildlife Service Circular 39 (Shaw and Fredine 1971)
Shallow, open water	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved	Type 5: Inland open fresh water
Deep marsh	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved; emergent; persistent and nonpersistent	Type 4: Inland deep fresh marsh
Shallow marsh	Palustrine; emergent; persistent and nonpersistent	Type 3: Inland shallow fresh marsh
Sedge meadow	Palustrine; emergent; narrow-leaved persistent	Type 2: Inland fresh meadow
Fresh (wet) meadow	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Wet to wet-mesic prairie	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Calcareous fen	Palustrine; emergent; narrow-leaved persistent; scrub/shrub; broad-leaved deciduous	Type 2: Inland fresh meadow Type 6: Shrub swamp

Open bog or coniferous bog	Palustrine; moss/lichen; scrub/shrub; broad-leaved evergreen; forested; needle-leaved evergreen and deciduous	Type 8: Bog
Shrub-carr or alder thicket	Palustrine; scrub/shrub; broad-leaved deciduous	Type 6: Shrub swamp
Hardwood swamp or coniferous swamp	Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and deciduous	Type 7: Wooded swamp
Floodplain forest	Palustrine; forested; broad-leaved deciduous	Type 1: Seasonally flooded basin or flat
Seasonally flooded basin	Palustrine; flat; emergent; persistent and nonpersistent	Type 1: Seasonally flooded basin or flat

8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.

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

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

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

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

8420.0415 NO-LOSS CRITERIA.

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

A. an activity that will not impact a wetland;

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

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

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

E. excavation limited to removal of deposited sediment in wetlands that are presently utilized as storm water management basins, or excavation and removal of contaminated substrate, when the excavated area is limited to the minimum dimensions

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

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

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

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

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

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

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

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

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

8420.0420 EXEMPTION STANDARDS.

Subpart 1. **Scope.**

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

B. No exemptions apply to:

(1) calcareous fens as identified by the commissioner;

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

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

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

C. Exemptions may not be combined on a project.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 3. **Drainage.**

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

B. A replacement plan is not required for:

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

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

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

C. A replacement plan is not required for:

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

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

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

(c) enrolled in a state or federal land conservation program and met the 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.

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

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

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

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

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

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

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

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

Subp. 6. **Utilities.**

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

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

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

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

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

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

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

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

Subp. 8. **De minimis.**

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

(1) in a greater than 80 percent area:

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

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

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

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

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

(2) in a 50 to 80 percent area:

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

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

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

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

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

(3) in a less than 50 percent area:

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

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

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

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

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

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

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

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

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

(3) 400 square feet.

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

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

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

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

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

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

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

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

B. duck blinds.

WETLAND REPLACEMENT

8420.0500 PURPOSE AND REQUIREMENT.

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

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

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

8420.0515 SPECIAL CONSIDERATIONS.

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

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

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

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

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

A. fish passage and spawning areas;

B. colonial water bird nesting colonies;

C. migratory waterfowl concentration areas;

D. deer wintering areas; and

E. wildlife travel corridors.

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

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

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

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

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

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

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

8420.0520 SEQUENCING.

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

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

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

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

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

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

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

Subp. 2. [See repealer.]

Subp. 3. **Impact avoidance.**

A. Avoidance is required when indicated by part 8420.0515.

B. Wetland dependence determination:

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

(2) A project that has been determined by the local government unit to be 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

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

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

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

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

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

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

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

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

A. the spatial requirements of the project;

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

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

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

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

F. individual and cumulative impacts; and

G. an applicant's efforts to:

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

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

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

(4) otherwise minimize impacts.

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

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

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

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

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

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

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

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

(a) demonstrates impact minimization to the wetland;

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

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

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

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

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

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

Subp. 9. [See repealer.]

8420.0522 REPLACEMENT STANDARDS.

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

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

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

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

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

E. fish, wildlife, and native plant habitats;

F. low-flow augmentation; and

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

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

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

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

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

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

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

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

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

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

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~~ and 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~~ and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Within major watershed and in-kind	2:1

B. For replacement via banking, impacts in bank service area 10 that are replaced in bank service area 9 or the Des Moines River Basin in bank service area 8 and impacts in bank service area 1 that are replaced in bank service area 2 count as replacement within the same bank service area for the purpose of reducing the minimum 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in the affected county;

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

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

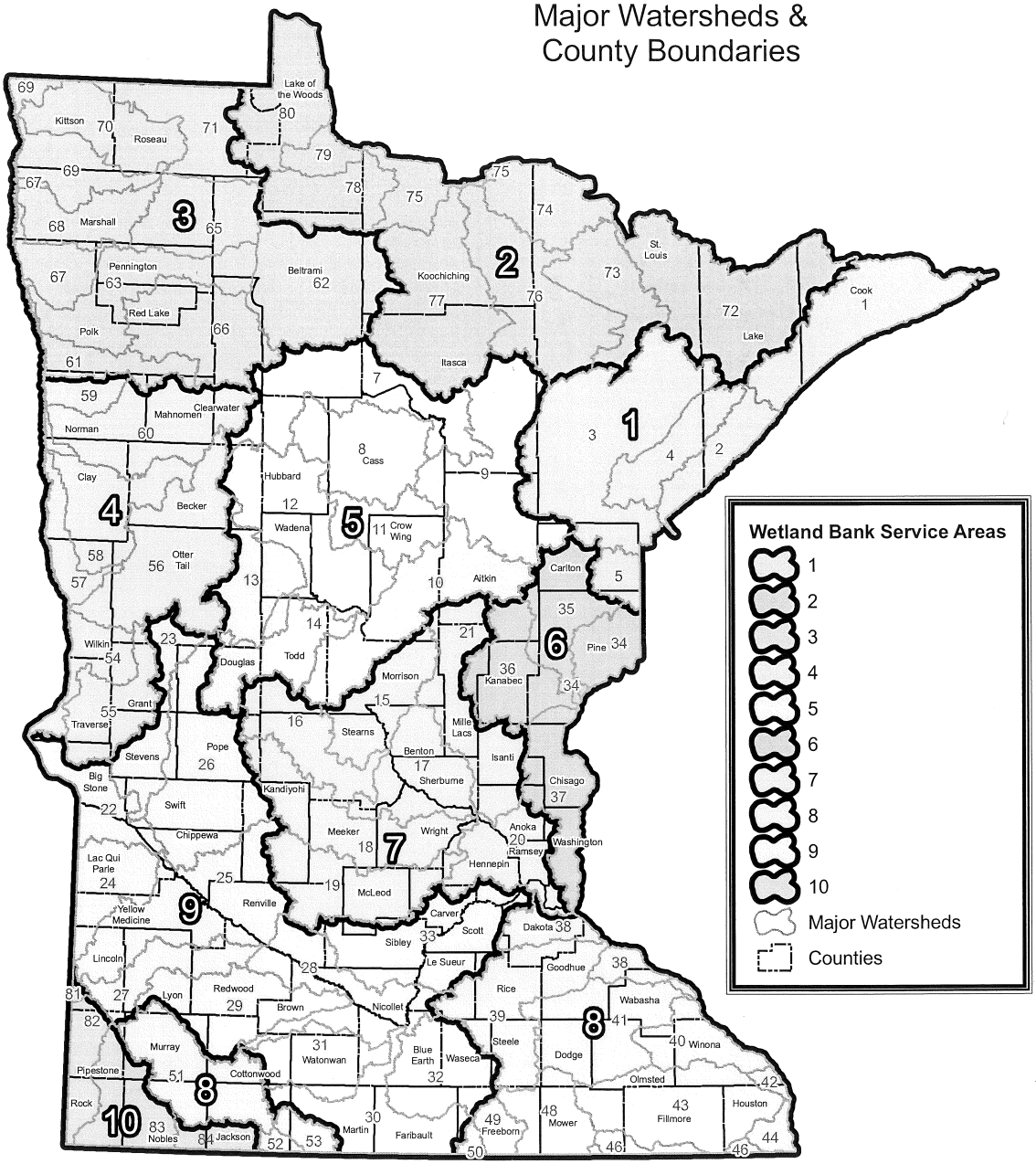
D. Siting wetland replacement for public transportation projects must comply with part 8420.0544.

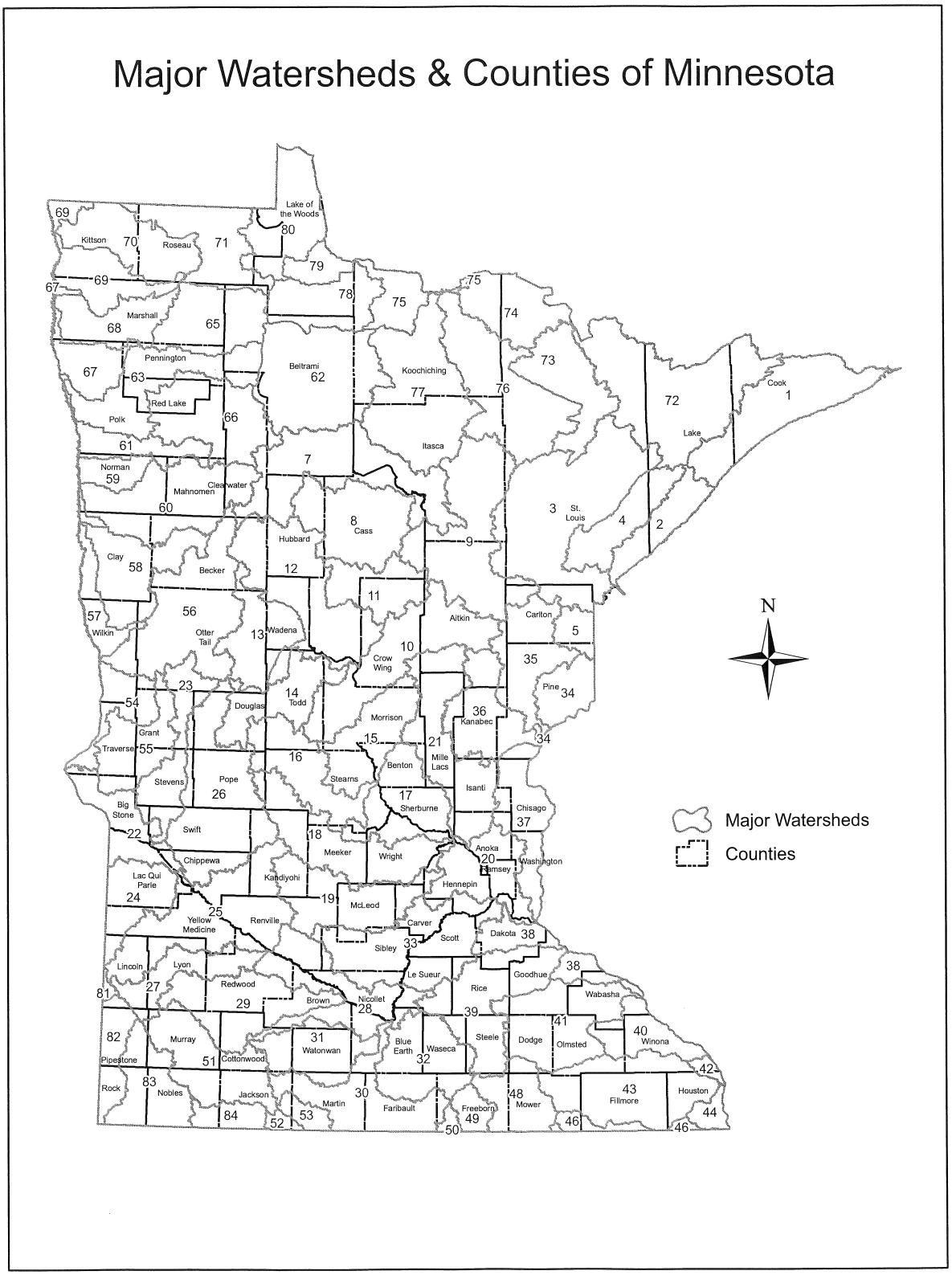
E. When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in items A to D, the applicant may seek opportunities at the next level. For the purposes of this item, "reasonable, practicable, and environmentally beneficial replacement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

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

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

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


Wetland Bank Service Areas
With
Major Watersheds &
County Boundaries
Wetland Bank Service Areas
1
2
3
4
5
6
7
8
9
10
Major Watersheds
Counties
Lake of the Woods
Kittson
Roseau
Marshall
Pennington
Red Lake
Polk
Beltrami
Koochiching
St. Louis
Cook
Lake
Itasca
Mahnomen
Clearwater
Norman
Clay
Becker
Hubbard
Cass
Wadena
Crow Wing
Otter Tail
Aitkin
Carlton
Pine
Wilkin
Douglas
Todd
Morrison
Kanabec
Grant
Traverse
Stevens
Pope
Stearns
Mille Lacs
Benton
Isanti
Big Stone
Sherburne
Chisago
Kandiyohi
Swift
Chippewa
Meeker
Wright
Anoka
Ramsey
Washington
Hennepin
Lac Qui Parle
Yellow Medicine
Renville
McLeod
Carver
Scott
Dakota
Sibley
Le Sueur
Goodhue
Lincoln
Lyon
Redwood
Brown
Nicollet
Rice
Wabasha
Steele
Dodge
Winona
Murray
Watonwan
Blue Earth
Waseca
Olmsted
Pipestone
Cottonwood
Rock
Nobles
Jackson
Martin
Faribault
Freeborn
Mower
Fillmore
Houston



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

76.2 33 Minnesota River (Shakopee)
76.3 34 St. Croix River (Upper)
76.4 35 Kettle River
76.5 36 Snake River
76.6 37 St. Croix River (Stillwater)
76.7 38 Mississippi River (Red Wing) and Lake Pepin
76.8 39 Cannon River
76.9 40 Mississippi River (Winona)
76.10 41 Zumbro River
76.11 42 Mississippi River (La Crescent)
76.12 43 Root River
76.13 44 Mississippi River (Reno)
76.14 46 Upper Iowa River
76.15 47 Wapsipinican River (Headwaters)
76.16 48 Cedar River
76.17 49 Shell Rock River
76.18 50 Winnebago River (Lime Creek)
76.19 51 West Fork des Moines River (Headwaters)
76.20 52 West Fork des Moines River (Lower)
76.21 53 East Fork des Moines River
76.22 54 Bois de Sioux River
76.23 55 Mustinka River
76.24 56 Otter Tail River
76.25 57 Red River of the North (Headwaters)
76.26 58 Buffalo River
76.27 59 Marsh River
76.28 60 Wild Rice River
76.29 61 Sandhill River
76.30 62 Upper and Lower Red Lake
77.1 63 Red Lake River

77.2 65 Thief River
77.3 66 Clearwater River
77.4 67 Grand Marais Creek (Red River of the North)
77.5 68 Snake River
77.6 69 Tamarack River (Red River of the North)
77.7 70 Two River
77.8 71 Roseau River
77.9 72 Rainy River (Headwaters)
77.10 73 Vermillion River
77.11 74 Rainy River (Rainy Lake)
77.12 75 Rainy River (Manitou)
77.13 76 Little Fork River
77.14 77 Big Fork River
77.15 78 Rapid River
77.16 79 Rainy River (Baudette)
77.17 80 Lake of the Woods
77.18 81 Big Sioux River (Medary Creek)
77.19 82 Big Sioux River (Pipestone)
77.20 83 Rock River
77.21 84 Little Sioux River

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

by the landowner within 30 days after the date on which the notice is mailed, according to part 8420.0910.

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

8420.0526 ACTIONS ELIGIBLE FOR CREDIT.

Subpart 1. **Scope.**

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

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

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

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

not eligible for replacement credit. Wetlands impacted under an exemption may not be restored for replacement credit for ten years after the impact.

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

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

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

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

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

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

(3) provide important habitat connections; or

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

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

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

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

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

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

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

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

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

Subp. 7. **Wetland creations.**

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

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

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

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

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

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

(2) rare native plant communities;

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

(4) sensitive surface waters; or

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

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

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

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

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

C. contains a rare or declining plant community; or

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

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

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

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

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

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

8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.

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

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

Subp. 2. **Design requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.

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

B. Wetlands impacted by public transportation projects:

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

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

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

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

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

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

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

(a) at least 30 days before construction;

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

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

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

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

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

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

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

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

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

~~STANDARDS AND CRITERIA FOR STATE~~ WETLAND BANKING

8420.0700 PURPOSE OF WETLAND BANKING.

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

8420.0705 ESTABLISHING WETLAND BANK SITE.

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

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

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

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

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

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

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

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

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

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

8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.

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

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

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

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

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

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

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

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

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

(7) other information required by the board.

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

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

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

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

8420.0735 MONITORING AND CORRECTIVE ACTIONS.

Subpart 1. **Monitoring.**

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

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

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

Subp. 3. **Corrective actions.**

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

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

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

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

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

8420.0745 WITHDRAWALS AND TRANSFERS.

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

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

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

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

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

8420.0755 BANK ACCOUNT ADMINISTRATION.

Subpart 1. **Account information.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INSPECTION AND MONITORING OF REPLACEMENT WETLANDS

8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION.

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

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

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

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

C. a description of site preparation activities, such as mulching, seedbed preparation, seeding methods, or initial weed control activities;

D. a survey map showing relevant areas of seeding and construction activities;

E. construction photos showing relevant restoration work;

F. evidence that, for projects including dams, dikes, or other impoundment features, the construction was designed, overseen, and certified by a ~~registered~~ licensed professional engineer; and

G. a comparison of the as-built documentation versus the design specifications and a description and rationale for any significant changes.

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

8420.0810 REPLACEMENT WETLAND MONITORING.

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

Subp. 2. **Responsibilities.**

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

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

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

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

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

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

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

Subp. 4. **Monitoring reports.**

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

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

(1) a project location map with legal description;

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

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

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

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

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

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

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

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

8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.

Subpart 1. **Monitoring oversight.**

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

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

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

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

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

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

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

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

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

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

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

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

WETLAND PLANNING

8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. **Purpose and eligibility.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 5. **Plan content.**

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

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

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

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

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

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

(4) the resulting public value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 9. **Implementation.**

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

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

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

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

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

areas should be of high local value, at risk of degradation or loss, and consistent with any existing wetland classification criteria established under part 8420.0830, subpart 5, items A and B. Plans may also identify individual sites as high-priority areas for wetland restoration and establishment. High-priority restoration sites should be identified according to the criteria in part 8420.0830, subpart 5, items A and C.

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

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

8420.0840 WETLAND PRESERVATION AREAS.

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

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, if the county or watershed district chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation

area on forms provided by the board. The applicant must include a buffer strip that meets the minimum width requirements of part 8420.0522, subpart 6, around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland. The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant must contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area must be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

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

to the county assessor for entry in the assessor's records as a wetland preservation area. The county or watershed district must also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

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

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

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

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

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

ENFORCEMENT, APPEALS, AND COMPENSATION

8420.0900 ENFORCEMENT PROCEDURES.

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

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

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

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

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

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

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

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

D. If an application for a replacement plan, exemption, or no-loss approval is triggered by a cease and desist order ~~or notice of potential violation~~, the local government

unit must make the decision according to part 8420.0255 and the standards and application procedures applicable to the type of application.

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

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

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

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

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

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

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

(3) the local government unit denies the application.

B. Promptly upon being informed by the enforcement authority or the local government unit of the need, a soil and water conservation district staff person must inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its prealtered condition. The soil and water conservation district may request assistance from the local government unit or technical

evaluation panel in inspecting the site and preparing the plan. Restoration must be ordered unless the technical evaluation panel concludes that restoration is not possible or prudent. The soil and water conservation district must incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner or responsible party.

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

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

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

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

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

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

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

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

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

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

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

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

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

C. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the technical evaluation panel must determine which is appropriate, and if it

is restoration, the method of restoration. If the court orders replacement, the landowner or responsible party must follow the replacement plan process under subpart 6 and part 8420.0330, and the wetland replacement, construction, and monitoring requirements of this chapter.

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

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

8420.0905 APPEALS.

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

~~60~~ 30 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

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

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

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

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

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

A. The decision of a local government unit to approve, approve with conditions, or deny an application is final if not appealed to the board within 30 days after the date on which the decision is sent to those required to receive notice of the decision unless the applicant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days. Appeals of decisions made by local government staff must be made to the local government unit as provided for in subpart 2. This subpart also applies to decisions made under comprehensive wetland protection and management plans.

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

C. An appeal is effective upon mailing the petition and payment of a nonrefundable filing fee in an amount determined by the board, not to exceed $1,000, to the board with evidence that a copy of the petition has been mailed to the local government unit. The petition should include information to establish sufficient grounds for the appeal. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. After receipt of a petition, the local government unit must send a copy of the petition to all those to whom it was required to send a notice of the decision.

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

A. Within 30 days after receiving the petition, the board, its dispute resolution committee, or its executive director must decide whether to grant the petition and hear the appeal. After considering the size of the proposed impacts and the quality of the affected wetland, any patterns of similar acts by the petitioner or responsible party or by the local government unit in administration of this chapter and the act, and the consequences of the delay resulting from the appeal, the board, its dispute resolution committee, or its executive director shall grant the petition unless the appeal is deemed to be without sufficient merit, trivial, or brought solely for the purposes of delay; the petitioner has not exhausted all local administrative remedies; or the petitioner has not submitted the required filing fee.

B. The board, its dispute resolution committee, or its executive director may stay the local government unit decision until the appeal is resolved.

C. The board, its dispute resolution committee, or its executive director may remand the appealed decision back to the local government unit if the petitioner has not

exhausted all local administrative remedies, such as a local government unit evidentiary public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, a new application is not required and additional information may be submitted before a decision is made by the local government unit. The local government unit must make a decision on an appeal that has been remanded within 60 days unless the remand order, or a subsequent order, specifies a longer period.

D. After the petition is granted, the appeal must be heard by the dispute resolution committee and decided by the board within 60 days after filing of the local government unit's written record, submittal of written briefs for the appeal, and a hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and those required to receive notice of the local government unit decision.

E. The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

F. Within 30 days of the grant of the appeal, unless an extension of time is approved by the board, the local government unit must forward to the board the written record on which it based its decision. The board must forward one copy of the record to each of the parties to the appeal. The board shall make its decision on the appeal after hearing. The board must give the parties 30 days' notice of the hearing. The board must base its review on the record and the argument presented to the board by the parties. However, if the local government unit did not consider fundamental information, such as aerial photographs, soil maps, or wetland maps, or did not make formal findings contemporaneously with its decision; if there is not accurate verbatim transcript of the proceedings; if the proceedings were not fairly conducted; or if the record is otherwise

incomplete or deficient, the board may remand the matter or receive additional evidence. If, before the date set for the hearing, application is made to the board for leave to present additional evidence on the issues in the case and it is shown to the satisfaction of the board that additional evidence is material and that there were good reasons for failure to present it in the proceeding before the local government unit, the board may order that the additional evidence be taken before the local government unit upon such conditions that the board deems proper. The local government unit may modify its findings and decision by reason of the additional evidence and must file with the board, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

G. The board shall affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board shall reverse the decision, amend it, or remand it with instructions for further proceedings. The board must provide notice of its decision to the parties to the appeal.

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

8420.0910 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

Subpart 1. **Intervention.** At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G.237, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, must intervene in the action on behalf of the local government unit and is thereafter considered a defendant in the action. A local government unit making a

request under this subpart must provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court must grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

Subp. 2. **Liability of state for certain costs.** The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

Subp. 3. **Definition.** For purposes of this part, "compensation action" means an action in which the plaintiff seeks compensation for taking private property under the state or federal constitution.

8420.0915 COMPENSATION TO LANDOWNERS.

Subpart 1. **Eligibility.** Replacement plan applicants who have completed the local government unit process and the board appeal process, and the replacement plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

Subp. 2. **Application requirements.**

A. An application for compensation under this part must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

B. An application must include an agreement that, in exchange for compensation, the applicant shall convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title,

lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

C. The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization, if any, the county, and the town or city, as applicable, that the proposed impact and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

D. The landowner must demonstrate that the proposed impact is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the wetland replacement, construction, and monitoring requirements of this chapter and the act.

E. If the replacement plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if it is not possible to carry out for engineering reasons. The applicant must show that forgoing the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public value of the wetland.

F. The applicant must submit to the board the requirements in this part in writing, by certified mail. The applicant must indicate on the application whether the applicant wants to make oral argument to the board. The board may require that the applicant appear before the board.

Subp. 3. **Board action.** If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board must compensate

the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant conveys to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the conservation easement, the applicant may impact the wetland in the manner proposed, without replacement.

ACTIVITIES UNDER DEPARTMENT OF NATURAL RESOURCES AUTHORITY

8420.0930 MINING.

Subpart 1. **Impacts from mining.** Wetlands must not be impacted as part of a project for which a permit to mine is required by Minnesota Statutes, section 93.481, except as approved by the commissioner. Impacts to wetlands that the landowner can demonstrate, to the satisfaction of the local government unit, were created by pits, stockpiles, or tailing basins, and by actions the purpose of which was not to create the wetland according to part 8420.0105, subpart 2, item D, are not regulated under this chapter.

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

A. mining must not be conducted without first receiving a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals; and

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

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

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

B. for filling activities that were approved and initiated before July 1, 1993, placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a wetland filled before July 1, 1993, is allowed to continue within the areal extent, as it existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the requirement of a replacement plan or amendment of the permit to mine. An expansion of the areal extent of the fill in the wetland requires an approved replacement plan in the operating plan or annual report as required in the permit to mine, according to item A; and

C. for draining activities that were approved and initiated before July 1, 1993, draining of a wetland to facilitate mining, using ditches and other drainage facilities that existed on July 1, 1993, is allowed to continue without the requirement of a replacement plan or amendment of the permit to mine. Maintenance of the ditches and structures are allowed without the requirement of a replacement plan or amendment of the permit to mine, provided that as a result of the maintenance, wetlands are not drained beyond the extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide for replacement according to item A.

Subp. 4. **Applicability.**

A. Replacement wetlands approved under this part must only be used for mining-related impacts covered under a permit to mine unless the credits are approved and deposited in the state wetland bank according to parts 8420.0700 to 8420.0755.

B. Applicable procedures are those required for permits to mine.

C. This part does not apply to peat mining as defined under Minnesota Statutes, section 93.461, that is subject to the mine permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51, and the rules adopted thereunder.

8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS.

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

Subp. 2. **Identifying calcareous fens.** A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

Subp. 3. **Procedures to list calcareous fens.**

A. The commissioner must investigate wetlands to determine if the wetland is properly identified as a calcareous fen.

B. The commissioner must, by written order published in the State Register, maintain a current list of known calcareous fens in the state and their location.

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

Subp. 4. **Management plans.** Calcareous fens must not be impacted or otherwise altered or degraded except as provided for in a management plan approved by the commissioner. The commissioner must provide technical assistance to landowners or project sponsors in the development of management plans.

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

Subp. 6. **Appeals.**

A. A landowner or project proposer may challenge the commissioner's determination that a wetland is a calcareous fen or the commissioner's calcareous fen management plan by requesting a hearing. The hearing shall be conducted in the same manner as water permit hearings under Minnesota Statutes, chapter 103G.

B. The determination that a wetland is a calcareous fen may be appealed at any time by requesting a hearing. For a decision under a management plan, the hearing must be requested within 30 days after the notice of the commissioner's decision was mailed to the project proposer; otherwise the decision becomes final and may not be challenged by the project proposer.

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

Subp. 7. **Enforcement procedures.** Enforcement procedures for calcareous fens must be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372,

except that necessary restoration or replacement activities, if required, must be determined by the commissioner, in consultation with the local soil and water conservation district.

REPEALER. Minnesota Rules, parts 8420.0102; 8420.0103; 8420.0110, subparts 1, 1a, 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, 22, 23, 24, 25, 28, 29, 29a, 30, 30a, 31, 31a, 31b, 31c, 31d, 32, 32a, 32b, 32c, 33, 34, 34a, 34b, 35, 36, 37, 37a, 38, 39, 39a, 40, 40a, 41, 42, 43, 44a, 44b, 45, 46, 47a, 47b, 48, 49, 50, 51, 51a, 52, 53, 54, and 54a; 8420.0115; 8420.0122, subparts 1, 2, 3, 4, 5, 6, 7, 9, and 10; 8420.0210; 8420.0220; 8420.0225; 8420.0230; 8420.0245; 8420.0250, subparts 1, 3, and 4; 8420.0260; 8420.0268; 8420.0270; 8420.0280; 8420.0290; 8420.0300; 8420.0350; 8420.0400; 8420.0505; 8420.0510; 8420.0520, subparts 2 and 9; 8420.0530; 8420.0540, subparts 1 and 2; 8420.0541; 8420.0542; 8420.0543; 8420.0545; 8420.0546; 8420.0547; 8420.0548; 8420.0549; 8420.0550, subparts 1 and 2; 8420.0600; 8420.0610; 8420.0620; 8420.0630; 8420.0650, subparts 1, 2, 2a, 3, 4, 7, and 8; 8420.0720, subparts 1, 2, 3, 4, 5, 6, 7, 8, 8a, 10, 11, 12, 13, and 14; 8420.0730, subparts 1 and 2; 8420.0740; 8420.0750; 8420.0760; 8420.1010; 8420.1020; 8420.1030; 8420.1040; 8420.1050; 8420.1060; and 8420.1070, are repealed.