

1.1 **PURPOSE, SCOPE, AND DEFINITIONS**

1.2 **8420.0100 PURPOSE.**

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

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

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

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

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

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

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

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

2.6 **8420.0105 SCOPE.**

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

2.12 Subp. 2. **Applicability.**

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

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

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

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

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

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

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

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

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

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

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

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

4.11 **8420.0111 DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.15 Subp. 21. **Ditch.** "Ditch" has the meaning given under Minnesota Statutes, section
6.16 103E.005, subdivision 8.

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

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

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

7.1 determined on a case-by-case basis, applying the standards set out in parts 8420.0100
7.2 to 8420.0935.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.23 Subp. 36. **Landowner.** "Landowner" means a person or entity having the rights
8.24 necessary to drain, excavate, or fill a wetland or to establish and maintain a replacement or
8.25 banked wetland. Typically, the landowner is a fee title owner or a holder of an easement,

9.1 license, lease, or rental agreement providing the necessary rights. The right must not be
9.2 limited by a lien or other encumbrance that could override the obligations assumed with
9.3 the replacement or banking of a wetland.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.23 Subp. 57. **Public value of wetlands.** "Public value of wetlands" means the
11.24 importance and benefit to the public derived from the wetland functions listed in part
11.25 8420.0522, subpart 1.

12.1 Subp. 58. **Public waters wetlands.** "Public waters wetlands" has the meaning given
12.2 under part 6115.0170.

12.3 Subp. 59. **Public waters.** "Public waters" has the meaning given under part
12.4 6115.0170.

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

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

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

12.14 Subp. 63. **Rule.** "Rule" means a body of regulations developed, approved, and
12.15 implemented by a watershed management organization as authorized under Minnesota
12.16 Statutes, chapter 103D.

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

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

12.21 (1) 1,000 feet from the ordinary high water level of a water basin that is
12.22 a public water identified in the shoreland management ordinance or the shoreland area
12.23 approved by the commissioner as provided in the shoreland management rules adopted
12.24 under Minnesota Statutes, section 103F.211, whichever is less; or

13.1 (2) 300 feet from the ordinary high water level of a watercourse identified in
13.2 the shoreland management ordinance or the shoreland area approved by the commissioner
13.3 as provided in the shoreland management rules adopted under Minnesota Statutes, section
13.4 103F.211, whichever is less.

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

13.8 (1) 1,000 feet from the ordinary high water level of a water basin that is a
13.9 public water that is at least ten acres in size within municipalities and at least 25 acres in
13.10 size in unincorporated areas; or

13.11 (2) 300 feet from the ordinary high water level of a watercourse identified
13.12 by the public waters inventory under Minnesota Statutes, section 103G.201.

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

13.14 Subp. 66. **Soil and water conservation district.** "Soil and water conservation
13.15 district" means a legal subdivision of state government under Minnesota Statutes, chapter
13.16 103C.

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

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

13.24 Subp. 69. **Utility.** "Utility" means a sanitary sewer; a storm sewer; potable water
13.25 distribution; or transmission, distribution, or furnishing, at wholesale or retail, of natural

14.1 or manufactured gas, petroleum products, electricity, telephone, or radio service or
14.2 communications.

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

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

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

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

14.12 (1) have a predominance of hydric soils;

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

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

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

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

14.24 D. The wetland size is the area within its boundary. The boundary must be
14.25 determined according to the United States Army Corps of Engineers Wetland Delineation

15.1 Manual (January 1987). The wetland type must be determined according to Wetlands of
15.2 the United States, (1971 edition). Both documents are incorporated by reference under
15.3 part 8420.0112, items A and B. The local government unit may seek the advice of the
15.4 technical evaluation panel as to the wetland size and type.

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

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

15.11 Subp. 75. **Wetland type or type.** "Wetland type" or "type" means a wetland type
15.12 classified according to Wetlands of the United States (1956 and 1971 editions), as
15.13 summarized in this subpart. Classification of Wetlands and Deepwater Habitats of the
15.14 United States is a separate, parallel wetland typing system that may be used to characterize
15.15 components of a wetland. Both documents are incorporated by reference under part
15.16 8420.0112, items A and B.

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

15.23 B. "Type 2 wetlands" are inland fresh meadows in which soil is usually without
15.24 standing water during most of the growing season but is waterlogged within at least
15.25 a few inches of the surface. Vegetation includes grasses, sedges, rushes, and various

16.1 broad-leafed plants. Meadows may fill shallow basins, sloughs, or farmland sags or may
16.2 border shallow marshes on the landward side.

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

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

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

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

16.22 G. "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least
16.23 to within a few inches of the surface during the growing season and is often covered
16.24 with as much as one foot of water. This type occurs mostly along sluggish streams, on
16.25 floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae,
16.26 black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually

17.1 have a thick ground cover of mosses. Deciduous swamps frequently support beds of
17.2 duckweeds and smartweeds.

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

17.9 **8420.0112 INCORPORATION BY REFERENCE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.24 These documents are available through the State Law Library, except the National
18.25 Wetland Inventory maps, which are available at Minnesota soil and water conservation

19.1 district offices. Except for the Minnesota Plant Database in item O, none of the documents
19.2 are subject to frequent change.

19.3 **8420.0117 PRESETTLEMENT WETLAND ACRES AND AREAS.**

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

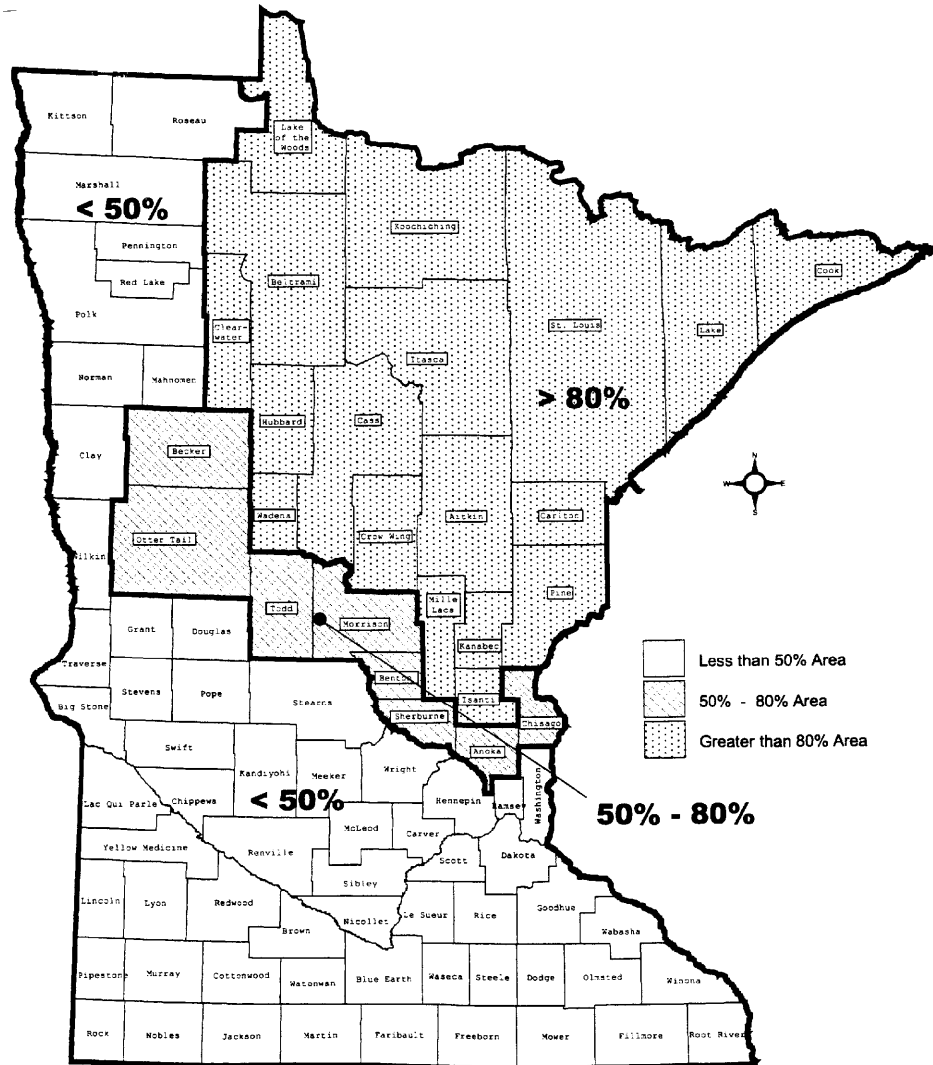
19.5 A. the following counties are greater than 80 percent areas: Aitkin; Beltrami;
19.6 Carlton; Cass; Clearwater; Cook; Crow Wing; Hubbard; Isanti; Itasca; Kanabec;
19.7 Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; St. Louis; and Wadena;

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

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

19.18 WETLAND AREAS

Minnesota Wetland Conservation Act Pre - Statehood Wetland Areas



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

20.2 A. A local government unit may request the board to reclassify a county or

20.3 major watershed wholly or partly within its jurisdiction on the basis of its percentage of

20.4 presettlement wetlands remaining. After receipt of satisfactory documentation from the

20.5 local government, the board must change the classification of a county or major watershed.

20.6 If requested by the local government unit, the board must assist in developing the

20.7 documentation. Within 30 days of its action to approve a change of wetland classifications,

20.8 the board must publish a notice of the change in the Environmental Quality Board Monitor.

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

21.7 **LOCAL GOVERNMENT UNIT DUTIES AND PROCEDURES**

21.8 **8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.**

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

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

21.13 B. In the seven-county metropolitan area, the local government unit is the
21.14 city, town, or water management organization regulating surface-water-related matters
21.15 in the area in which the activity is located, or its delegate. The watershed management
21.16 plan adopted under Minnesota Statutes, section 103B.231, and related board rules will
21.17 normally indicate the appropriate local government unit. Lacking an indication, the local
21.18 government unit must be the city, town, or its delegate.

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

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

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

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

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

22.22 H. For replacement plans where the project-specific replacement will occur in a
22.23 different local government unit than the impact, approval of all local government units
22.24 involved or as specified in items A to G constitutes final approval of the replacement
22.25 plan and is required before the project may proceed. The local government unit with
22.26 jurisdiction for the impact site must approve all components of the replacement plan,

23.1 following the procedures required by this chapter. The local government unit with
23.2 jurisdiction for the replacement site must limit the review to evaluation of the replacement
23.3 site and make a decision accordingly. As part of the approval of the replacement plan, the
23.4 local government unit with jurisdiction for the replacement site assumes responsibility
23.5 for ensuring compliance with monitoring provisions according to parts 8420.0800 to
23.6 8420.0820. The local government unit with jurisdiction for the replacement site may enter
23.7 into joint powers agreements with a local government unit with jurisdiction for the impact
23.8 site, assess fees, or develop other procedures considered necessary to facilitate the process.

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

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

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

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

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

23.25 C. The local government unit may, through resolution, rule, or ordinance, place
23.26 decision-making authority with staff according to procedures it establishes. For final

24.1 decisions made by staff, the local government unit must establish a local appeal process
24.2 that includes an evidentiary public hearing before appointed or elected officials.

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

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

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

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

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

24.24 I. The local government unit must annually report information to the board
24.25 regarding implementation of this chapter in a format and time period prescribed by the

25.1 board. Failure to comply with the board's reporting requirements may subject the local
25.2 government to a penalty under subpart 3.

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

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

25.14 B. If the board has information that a local government unit is not following
25.15 this chapter or the act in making decisions; if the local government unit does not have
25.16 knowledgeable and trained staff with experience in water resource management; or if the
25.17 local government unit fails to comply with the board's reporting requirements, the board
25.18 must notify the local government unit in writing of its concerns. The local government
25.19 unit must respond in writing within 60 days of being notified by the board. If not satisfied
25.20 with the local government unit's written response, or none is received, the board must ask
25.21 the local government unit to appear at a hearing before the board to discuss the matter. The
25.22 board may invite comments from other local governments or state and federal agencies.
25.23 If the board determines at the hearing that corrective action is necessary, the board must
25.24 write the local government unit directing specific corrective action to occur within 60 days
25.25 of receiving the board's decision. The notice must explain the reason for the action. If,
25.26 after the 60-day period, the local government unit has not corrected the problem to the

26.1 satisfaction of the board, the board must declare a moratorium as prescribed in item A or
26.2 take other appropriate legal action to ensure compliance.

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

26.11 **8420.0233 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND**
26.12 **ORDINANCES.**

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

26.15 **8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

26.16 A. For each local government unit, there is a technical evaluation panel. Panel
26.17 membership consists of: a technical professional employee of the board, a technical
26.18 professional employee of the soil and water conservation district of the county in which
26.19 the activity is occurring, and a technical professional with expertise in water resource
26.20 management appointed by the local government unit. For projects affecting public waters,
26.21 public waters wetlands, or wetlands within the shoreland protection zone, the panel also
26.22 includes a technical professional employee of the Department of Natural Resources. The
26.23 local government unit must coordinate the panel.

26.24 B. Two members of the technical evaluation panel must be knowledgeable and
26.25 trained in applying methodologies of the United States Army Corps of Engineers Wetland
26.26 Delineation Manual (January 1987), Wetland Plants and Plant Communities of Minnesota

27.1 & Wisconsin (S. Eggers and D. Reed 1997), Wetlands of the United States (United States
27.2 Fish and Wildlife Service Circular 39, 1971 edition), and Classification of Wetlands and
27.3 Deepwater Habitats of the United States (Cowardin, et al., 1979 edition), including
27.4 updates and supplements, and any modifications or guidance provided by the board. The
27.5 panel must also be knowledgeable and trained in evaluation of wetland functions and
27.6 the resulting public value. The panel may seek advice and assistance from others with
27.7 additional expertise to help the panel in its work.

27.8 C. The technical evaluation panel, if requested to do so by the local government
27.9 unit, the landowner, or a member of the panel, must make technical findings and
27.10 recommendations regarding applications, the scope of this chapter and the act, the
27.11 applicability of exemption and no-loss standards, wetland functions and the resulting
27.12 public value, direct and indirect impacts, possible violations of this chapter and the
27.13 act, enforcement matters under part 8420.0900, comprehensive wetland protection
27.14 and management plans and implementing rules and ordinances, and other technical
27.15 issues related to implementation of this chapter. The panel must review applications for
27.16 replacement of public road projects submitted according to part 8420.0544, banking
27.17 projects according to parts 8420.0700 to 8420.0755, and replacement wetland monitoring
27.18 as provided in parts 8420.0800 to 8420.0820. The panel must provide its findings to the
27.19 local government unit for consideration. For violations of this chapter that may result in the
27.20 issuance of an enforcement order, the panel must consult with the enforcement authority.

27.21 D. The panel's recommendation to the local government unit may recommend
27.22 approval, approval with changes or conditions, or denial of an application. When a
27.23 technical evaluation panel assembles findings or makes a recommendation, the local
27.24 government unit must consider the findings or recommendation of the panel in its approval
27.25 or denial of an application. The panel shall make no findings or recommendations
27.26 without at least one member having made an on-site inspection. Panel findings and
27.27 recommendations must be documented and endorsed by a majority of the members. If

28.1 the local government unit does not agree with the panel's findings and recommendation,
28.2 the detailed reasons for the disagreement must be part of the local government unit's
28.3 record of decision.

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

28.9 **8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION**
28.10 **PROCEDURES.**

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

28.13 Subp. 2. **Determination of complete application.** The local government unit must
28.14 determine that an application is complete based on parts 8420.0305 to 8420.0330. For
28.15 incomplete applications, the local government unit must notify the applicant within 15
28.16 business days of receipt of the application and list in writing what items or information is
28.17 missing.

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

28.19 A. Within 15 business days of receipt of a complete application, the local
28.20 government unit must send a copy of the application and a notice of application on a
28.21 form provided by the board to members of the technical evaluation panel; the watershed
28.22 district or water management organization, if there is one; the commissioner; and
28.23 individual members of the public who request a copy. The notice must identify the type of
28.24 application, the date the comment period ends, and where to submit comments. Individual
28.25 members of the public who request a copy must be sent a summary of the application
28.26 that includes information to identify the applicant and the location and scope of the

29.1 project. The comment period must be at least 15 business days from the date the notice of
29.2 application is sent. Revisions of an approved and valid replacement plan must be noticed
29.3 according to this subpart by sending a summary of the proposed revisions if:

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

29.5 (a) increased by more than ten percent;

29.6 (b) a different type;

29.7 (c) part of a different wetland; or

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

29.10 (2) the replacement is:

29.11 (a) a different type;

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

29.14 (c) a different action eligible for credit.

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

29.20 Subp. 4. **Decision.** The local government unit's decision must be based on the
29.21 standards and procedures required by this chapter and on the technical evaluation panel's
29.22 findings and recommendation, when provided. The local government unit must consider
29.23 and include in its record of decision the technical evaluation panel's recommendation,
29.24 when provided, to approve, modify, or deny the application. The local government

30.1 unit must also consider any comments received from those required to receive notice.
30.2 The local government unit's decision must be made in compliance with the time period
30.3 prescribed by Minnesota Statutes, section 15.99, which, on the effective date of this part,
30.4 generally requires a decision in 60 days. The local government unit may make on-site
30.5 exemption and no-loss decisions if the decisions are noticed according to subpart 5 and
30.6 project details are provided sufficient to document eligibility. The local government unit's
30.7 decision is valid for three years or as otherwise specified in the local government unit's
30.8 decision when the technical evaluation panel advises that a longer period is justified in
30.9 accordance with the standards in parts 8420.0100 to 8420.0935.

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

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

30.24 **8420.0265 PREVIOUSLY APPROVED APPLICATIONS.**

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

31.4 **APPLICATION PROCEDURES**

31.5 **8420.0305 GENERAL APPLICATION REQUIREMENTS.**

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

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

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

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

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

31.16 (4) the type of decision requested, as identified in parts 8420.0310 to
31.17 8420.0330;

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

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

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

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

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

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

32.10 **8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.**

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

32.20 **8420.0315 NO-LOSS APPLICATIONS.**

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

33.1 B. The landowner applying for a no-loss is responsible for submitting the proof
33.2 necessary to show qualification for the claim. This part also applies to applications
33.3 requesting a decision on whether an activity or wetland falls within the scope of this
33.4 chapter.

33.5 **8420.0320 EXEMPTION APPLICATIONS.**

33.6 A. A landowner intending to impact a wetland without replacement, claiming
33.7 exemption under part 8420.0420, may apply to the local government unit for an exemption
33.8 decision or request an on-site exemption decision before beginning the activity to verify
33.9 whether the proposed impact is exempt. A landowner who does not request a decision
33.10 from the local government unit and proceeds with the activity may be subject to the
33.11 enforcement provisions under part 8420.0915 and Minnesota Statutes, section 103G.2372.
33.12 An exemption may apply whether or not the local government unit has made an exemption
33.13 decision. If the landowner requests an exemption decision, then the local government
33.14 unit must make one.

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

33.17 **8420.0325 SEQUENCING APPLICATIONS.**

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

33.25 **8420.0330 REPLACEMENT PLAN APPLICATIONS.**

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

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

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

34.13 A. for the impacted wetland:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37.1 (12) evidence that a person proposing to create or restore a wetland within
37.2 the easement of a pipeline, as defined in Minnesota Statutes, section 299J.02, subdivision
37.3 11, has first notified the easement holder and the director of the Office of Pipeline Safety
37.4 in writing. The person may not create or restore the wetland if, within 90 days after
37.5 receiving the required notice, the easement holder or the director of the Office of Pipeline
37.6 Safety provides to the person a written notice of objection that includes the reasons for
37.7 the objection;

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

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

37.12 (15) a vegetation establishment and management plan according to part
37.13 8420.0528, subpart 2, item D; and

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

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

37.18 (1) the wetland bank account number;

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

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

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

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

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

38.4 A. for project-specific replacement that is not in advance according to part
38.5 8420.0522, subpart 8, item B, a financial assurance according to part 8420.0522, subpart
38.6 9, unless waived by the local government unit;

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

38.10 (1) the location of the replacement area;

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

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

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

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

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

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

38.25 **8420.0335 CONTRACTOR'S NOTIFICATION RESPONSIBILITY.**

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

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

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

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

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

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

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

39.15 **8420.0405 BOUNDARY OR TYPE.**

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

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

40.1	Wetland Plants and Plant Communities		
40.2	of Minnesota and Wisconsin (Eggers and		
40.3	Reed 1997), as modified by the Board	Classification of	
40.4	of Water and Soil Resources-United	Wetlands and Deepwater	Fish and Wildlife
40.5	States Army Corps of Engineers	Habitats of the United	Service Circular 39
40.6	Wetland Mitigation Memorandum of	States (Cowardin et al.	(Shaw and Fredine
40.7	Understanding (May 2007)	1979)	1971)
40.8	Shallow, open water	Palustrine or lacustrine,	Type 5: Inland open
40.9		littoral; aquatic bed;	fresh water
40.10		submergent, floating, and	
40.11		floating-leaved	
40.12	Deep marsh	Palustrine or lacustrine,	Type 4: Inland deep
40.13		littoral; aquatic bed;	fresh marsh
40.14		submergent, floating,	
40.15		and floating-leaved;	
40.16		emergent; persistent and	
40.17		nonpersistent	
40.18	Shallow marsh	Palustrine; emergent;	Type 3: Inland
40.19		persistent and	shallow fresh marsh
40.20		nonpersistent	
40.21	Sedge meadow	Palustrine; emergent;	Type 2: Inland fresh
40.22		narrow-leaved persistent	meadow
40.23	Fresh (wet) meadow	Palustrine; emergent;	Type 1: Seasonally
40.24		broad- and narrow-leaved	flooded basin or flat
40.25		persistent	Type 2: Inland fresh
40.26			meadow
40.27	Wet to wet-mesic prairie	Palustrine; emergent;	Type 1: Seasonally
40.28		broad- and narrow-leaved	flooded basin or flat
40.29		persistent	Type 2: Inland fresh
40.30			meadow
40.31	Calcareous fen	Palustrine; emergent;	Type 2: Inland fresh
40.32		narrow-leaved	meadow
40.33		persistent; scrub/shrub;	Type 6: Shrub
40.34		broad-leaved deciduous	swamp

41.1	Open bog or coniferous bog	Palustrine; moss/lichen;	Type 8: Bog	
41.2		scrub/shrub;		
41.3		broad-leaved evergreen;		
41.4		forested; needle-leaved		
41.5		evergreen and deciduous		
41.6	Shrub-carr or alder thicket	Palustrine; scrub/shrub;	Type 6: Shrub	
41.7		broad-leaved deciduous		swamp
41.8	Hardwood swamp or coniferous swamp	Palustrine; forested;	Type 7: Wooded	
41.9		broad-leaved deciduous;		swamp
41.10		needle-leaved evergreen		
41.11		and deciduous		
41.12		Floodplain forest		Palustrine; forested;
41.13		broad-leaved deciduous	flooded basin or flat	
41.14	Seasonally flooded basin	Palustrine; flat;	Type 1: Seasonally	
41.15		emergent; persistent		flooded basin or flat
41.16		and nonpersistent		

41.17 **8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.**

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

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

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

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

41.29 **8420.0415 NO-LOSS CRITERIA.**

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

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

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

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

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

42.22 E. excavation limited to removal of deposited sediment in wetlands that are
42.23 presently utilized as storm water management basins, or excavation and removal of
42.24 contaminated substrate, when the excavated area is limited to the minimum dimensions
42.25 necessary for achieving the desired purpose and stabilized to prevent water quality
42.26 degradation;

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

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

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

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

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

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

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

44.5 **8420.0420 EXEMPTION STANDARDS.**

44.6 Subpart 1. **Scope.**

44.7 A. An impact is exempt from replacement if it qualifies for any one of the listed
44.8 exemptions. An impact is not disqualified when it is indicated as not exempt under a
44.9 different exemption. Persons proposing to conduct an exempt activity may contact the
44.10 local government unit to verify eligibility for an exemption and to evaluate alternatives
44.11 to avoid or minimize wetland impacts. When the total amount of impact exceeds the
44.12 amount allowed under the applicable exemption, the impact is not exempt and the entire
44.13 amount of impact must be replaced.

44.14 B. No exemptions apply to:

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

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

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

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

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

44.24 D. Present and future owners of wetlands impacted without replacement under
44.25 an exemption for agricultural activities in subpart 2 or drainage in subpart 3 must

45.1 make no use of the wetland area after it is impacted, other than as agricultural land or
45.2 other use specified in subpart 2, for at least ten years after the impact unless it is first
45.3 replaced according to Minnesota Statutes, section 103G.222. Except for land in public
45.4 ownership, at the time of impact, the local government unit may require the landowner
45.5 to record a notice of these restrictions in the office of the county recorder for the county
45.6 in which the project is located if the local government unit determines the wetland
45.7 area impacted is at risk of conversion to a nonagricultural use or use other than that
45.8 specified in subpart 2 within ten years, based on the zoning classification, proximity to a
45.9 municipality or full-service road, or other criteria as determined by the local government
45.10 unit. In making a decision under this item, the local government unit must review the
45.11 applicable comprehensive plan, if one exists, when evaluating the risk of conversion to a
45.12 nonagricultural use and monitor and enforce the prohibition on using the area impacted for
45.13 a nonagricultural purpose for at least ten years. At a minimum, the recorded document
45.14 must contain the name or names of the landowners, a legal description of the property
45.15 to which the restrictions apply, a statement of the restrictions, the date on which the
45.16 restrictions expire, the name of the local government that approved the exemption, if an
45.17 exemption occurred, the signatures of all owners, and an acknowledgment.

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

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

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

46.1 type 1 wetlands, and impacts resulting from agricultural activities in a type 2 or 6 wetland
46.2 that is less than two acres in size and located on agricultural pasture land that remains in
46.3 the same use;

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

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

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

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

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

47.1 the conditions and standards shall be noticed by the board to local government units
47.2 and published in the State Register. The conditions and standards take effect 30 days
47.3 after publication and remain in effect unless superseded by subsequent statute, rule, or
47.4 notice in the State Register. Upon taking effect, this exemption only applies to impacts on
47.5 agricultural land annually enrolled in the federal Farm Program that are not beyond what is:

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

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

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

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

47.14 **Subp. 3. Drainage.**

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

47.18 B. A replacement plan is not required for:

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

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

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

48.6 C. A replacement plan is not required for:

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

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

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

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

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

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

48.20 i. there was an expenditure made from the drainage system
48.21 account for the public drainage system;

48.22 ii. the public drainage system was repaired or maintained as
48.23 approved by the drainage authority; or

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

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

49.5 i. platted lots;

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

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

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

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

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

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

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

50.1 than 25 years on public drainage systems and other wetlands that have the greatest risk of
50.2 drainage from a public drainage repair project.

50.3 Subp. 4. **Federal approvals.** A replacement plan is not required for impacts
50.4 authorized under section 404 of the federal Clean Water Act, United States Code, title
50.5 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States
50.6 Code, title 33, section 403, and regulations that meet minimum state standards under this
50.7 chapter and that have been approved by the board, the Department of Agriculture, the
50.8 Department of Natural Resources, and the Pollution Control Agency. This exemption is
50.9 not valid until such approval is obtained. If approved, the conditions and standards shall
50.10 be noticed by the board to local government units and published in the State Register. The
50.11 exemption takes effect 30 days after publication and remains in effect unless superseded
50.12 by subsequent statute, rule, or notice in the State Register.

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

50.14 A. draining a wetland that was restored or created for conservation purposes
50.15 under a contract or easement providing the landowner with the right to drain the restored
50.16 or created wetland to preproject hydrologic conditions. The landowner must provide a
50.17 contract or easement conveyance demonstrating that the landowner or a predecessor
50.18 restored or created the wetland for conservation purposes but retained the right to
50.19 subsequently drain the restored or created wetland to the conditions that existed before
50.20 restoration or creation; or

50.21 B. impacts to a wetland that was restored or created by a landowner without any
50.22 assistance or financing from public agencies or private entities other than the landowner,
50.23 if the wetland has not been used for wetland replacement or deposited in the state
50.24 wetland bank. For purposes of this item, assistance by public agencies does not include
50.25 consultation on project design or advice on the project's relationship to state or federal
50.26 programs. The landowner must provide a contract, billing statements, or other evidence

51.1 sufficient to demonstrate that the landowner or a predecessor restored or created the
51.2 wetland without any assistance or financing from public agencies or private entities other
51.3 than the landowner or predecessor. The landowner must also provide sufficient information
51.4 to determine that the area was not wetland before restoration or creation activity.

51.5 **Subp. 6. Utilities.**

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

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

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

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

51.13 (2) repair or updating of existing subsurface sewage treatment systems
51.14 necessary to comply with local, state, and federal regulations. This exemption does
51.15 not apply if the wetland impacts are the result of the treatment system being expanded
51.16 to accommodate increased use.

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

51.23 **Subp. 7. Forestry.** The exemption under this subpart is for roads and crossings
51.24 solely constructed, and primarily used, for the purpose of providing access for the conduct
51.25 of silvicultural activities. A replacement plan is not required for impacts resulting from

52.1 construction of forest roads and crossings so long as the activity limits the impact on the
52.2 hydrologic and biologic characteristics of the wetland; the construction activities do not
52.3 include, or result in, the access becoming a dike, drainage ditch, or tile line; impacts are
52.4 avoided wherever possible; and there is no drainage of the wetland or public waters.

52.5 **Subp. 8. De minimis.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54.7 (3) 400 square feet.

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

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

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

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

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

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

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

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

55.7 B. duck blinds.

55.8 WETLAND REPLACEMENT

55.9 **8420.0500 PURPOSE AND REQUIREMENT.**

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

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

55.22 Subp. 3. **Alternative evaluation methodologies.** The local government unit may
55.23 evaluate the replacement plan using a scientifically accepted methodology that evaluates
55.24 all wetland functions specified in Minnesota Statutes, section 103B.3355, for both the
55.25 impacted and replacement wetlands. The alternative methodologies must be approved

56.1 and listed by the board, in consultation with the commissioners of natural resources and
56.2 agriculture and local government units. When using alternative evaluation methodologies
56.3 to evaluate replacement plans, the ratio of replacement credit to impacted wetland must
56.4 not be less than the minimum requirements listed in part 8420.0522, subpart 4, except as
56.5 provided for in part 8420.0830.

56.6 **8420.0515 SPECIAL CONSIDERATIONS.**

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

56.10 Subp. 2. **Endangered and threatened species.** A replacement plan for activities
56.11 that involve taking species listed as endangered or threatened in parts 6134.0200 to
56.12 6134.0400 must be denied unless the commissioner issues a permit under part 6212.1800
56.13 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may identify if there
56.14 are known locations of listed species at a particular site by contacting the Department of
56.15 Natural Resources' natural heritage and nongame research program.

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

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

56.25 A. fish passage and spawning areas;

- 57.1 B. colonial water bird nesting colonies;
- 57.2 C. migratory waterfowl concentration areas;
- 57.3 D. deer wintering areas; and
- 57.4 E. wildlife travel corridors.

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

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

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

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

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

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

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

58.9 **8420.0520 SEQUENCING.**

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

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

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

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

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

58.22 E. replaces unavoidable impacts by restoring or, if wetland restoration
58.23 opportunities are not reasonably available, creating replacement wetland areas having
58.24 equal or greater public value as provided for in parts 8420.0500 and 8420.0522 to
58.25 8420.0528.

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

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

59.4 Subp. 3. **Impact avoidance.**

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

59.6 B. Wetland dependence determination:

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

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

59.14 C. Alternatives analysis:

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

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

- 60.1 (a) it is capable of being done from an engineering point of view;
- 60.2 (b) it is in accordance with accepted engineering standards and
60.3 practices;
- 60.4 (c) it is consistent with reasonable requirements of the public health,
60.5 safety, and welfare;
- 60.6 (d) it is an environmentally preferable alternative based on a review of
60.7 social, economic, and environmental impacts; and
- 60.8 (e) it would create no truly unusual problems.
- 60.9 (3) The local government unit must consider the following in evaluating
60.10 avoidance alternatives as applicable:
- 60.11 (a) whether the basic project purpose can be reasonably accomplished
60.12 using one or more other sites in the same general area that would avoid wetland impacts.
60.13 An alternate site must not be excluded from consideration only because it includes or
60.14 requires an area not owned by the applicant that could reasonably be obtained, used,
60.15 expanded, or managed to fulfill the basic purpose of the proposed project;
- 60.16 (b) the general suitability of the project site and alternate sites
60.17 considered by the applicant to achieve the purpose of the project;
- 60.18 (c) whether reasonable modification of the size, scope, configuration,
60.19 or density of the project would avoid impacts to wetlands;
- 60.20 (d) efforts by the applicant to accommodate or remove constraints
60.21 on alternatives imposed by zoning standards or infrastructure, including requests for
60.22 conditional use permits, variances, or planned unit developments;
- 60.23 (e) the physical, economic, and demographic requirements of the
60.24 project. Economic considerations alone do not make an alternative not feasible and
60.25 prudent; and

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

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

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

61.13 A. the spatial requirements of the project;

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

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

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

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

61.21 F. individual and cumulative impacts; and

61.22 G. an applicant's efforts to:

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

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

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

62.4 (4) otherwise minimize impacts.

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

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

62.13 Subp. 7. **Unavoidable impacts.** Unavoidable impacts that remain after efforts
62.14 to minimize, rectify, or reduce or eliminate them must be replaced according to parts
62.15 8420.0522 to 8420.0528.

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

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

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

62.22 (2) avoidance of a wetland would result in severe degradation of the
62.23 wetland's ability to function and provide public value, for example, because of surrounding
62.24 land uses, and the wetland's ability to function and provide public value cannot reasonably

63.1 be maintained through implementation of best management practices, land use controls, or
63.2 other mechanisms;

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

63.6 (a) demonstrates impact minimization to the wetland;

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

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

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

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

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

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

64.1 **8420.0522 REPLACEMENT STANDARDS.**

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

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

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

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

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

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

64.17 F. low-flow augmentation; and

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

64.22 Subp. 2. **Determining impacts of partial drainage.** In cases where wetlands will
64.23 be partially drained, the amount of wetland to be replaced must be determined according
64.24 to this subpart. The area impacted by partially draining a wetland is determined in two
64.25 parts. The wetland area where the hydrology will be totally removed must be considered

65.1 an impact in its entirety. The amount of impact for the area that is partially drained must
 65.2 be at least 50 percent of the acreage of the remaining wetland area determined by an
 65.3 assessment acceptable to the technical evaluation panel.

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

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

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

65.10 Subp. 4. **Replacement ratios.**

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

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

65.17 (2) project-specific replacement within the same major watershed or county
 65.18 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, 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
66.4 66.5 66.6 66.7 >80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
	Within major watershed and in-kind	1.1
66.8 66.9 66.10 66.11 <50% area, 50-80% area, and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Within major watershed and in-kind	2:1

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

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

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

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

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

67.11 F. The board may approve special replacement ratios based on data derived
67.12 from comprehensive inventories of replacement opportunities. The board must give
67.13 notice of the replacement ratios to local government units and must publish the ratios in
67.14 the State Register. The board must provide opportunities for public input and comment
67.15 before publishing the special replacement ratios. The conditions and standards take effect
67.16 30 days after publication and remain in effect unless superseded by subsequent statute,
67.17 rule, or notice in the State Register.

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

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

67.24 B. Restoration and replacement of wetlands must be accomplished according to
67.25 the ecology of the landscape area. The replacement site must be ecologically suitable for
67.26 providing the desired functions and compatible with adjacent land uses. A replacement or

68.1 banking plan that would result in wetland types or characteristics that do not naturally
68.2 occur in the landscape area in which the replacement will occur must be denied.
68.3 Replacement must not adversely affect other habitat types or ecological communities that
68.4 are important in maintaining the overall biological diversity of the area.

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

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

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

68.15 A. Establishment or preservation of unmanicured vegetated upland buffer areas
68.16 is required adjacent and contiguous to replacement wetlands receiving credit under part
68.17 8420.0526, subparts 3 to 7.

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

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

69.1 Subp. 7. **Siting of replacement.**

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

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

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

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

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

69.10 (5) for project-specific replacement, in an adjacent major watershed to
69.11 the affected wetland or, for replacement by wetland banking, in an adjacent wetland
69.12 bank service area, except that impacts in a 50 to 80 percent area must be replaced in a
69.13 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a
69.14 less than 50 percent area.

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

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

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

69.22 (3) statewide.

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

- 70.1 (1) in the affected county;
- 70.2 (2) in another of the seven metropolitan counties; or
- 70.3 (3) in one of the major watersheds that are wholly or partially within the
- 70.4 seven-county metropolitan area, but at least one-to-one must be replaced within the
- 70.5 seven-county metropolitan area.

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

70.7 with part 8420.0544.

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

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

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

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

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

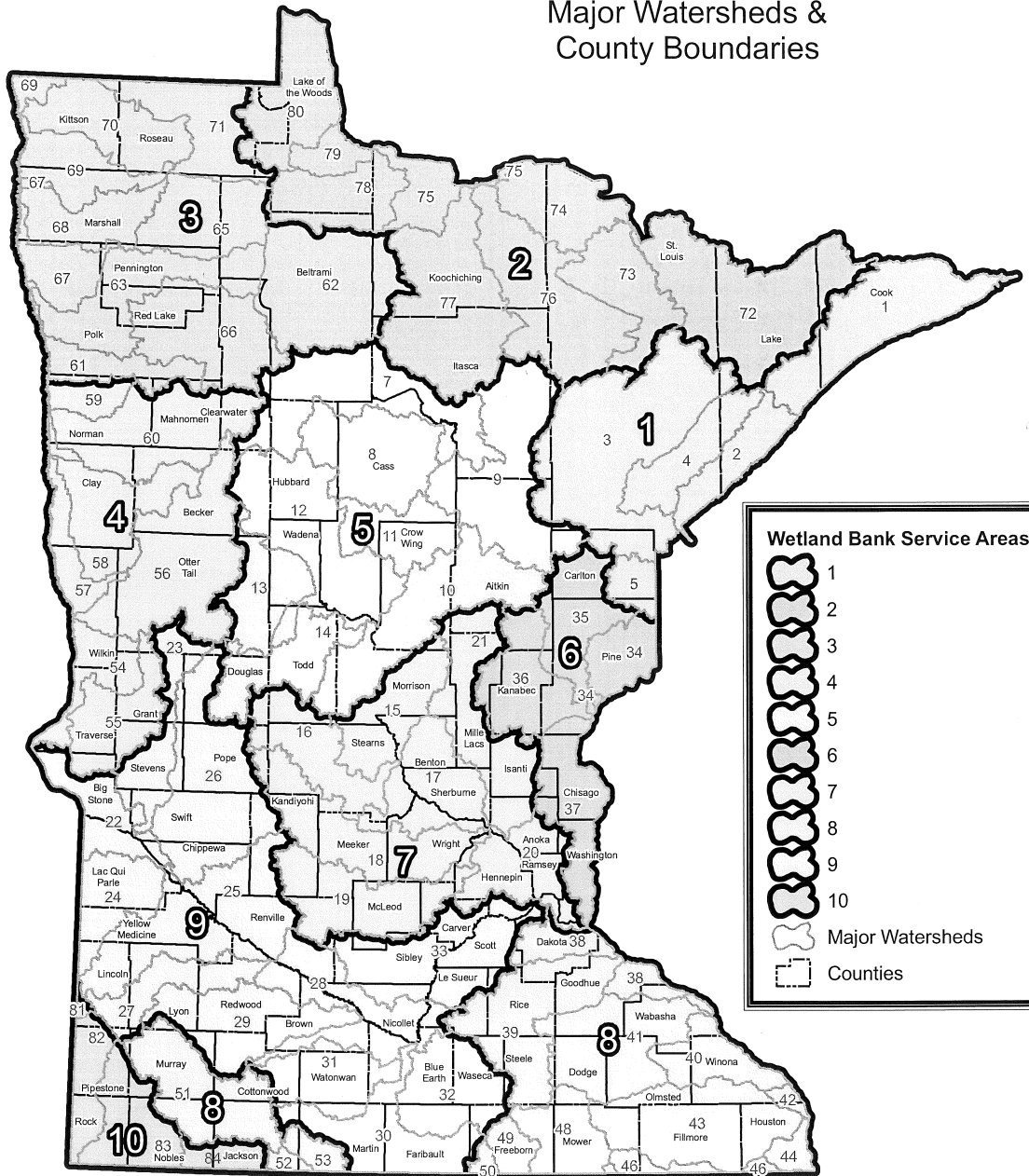
70.17 F. Regulatory agencies, local government units, and other entities involved in

70.18 wetland restoration must collaborate to identify potential replacement opportunities in

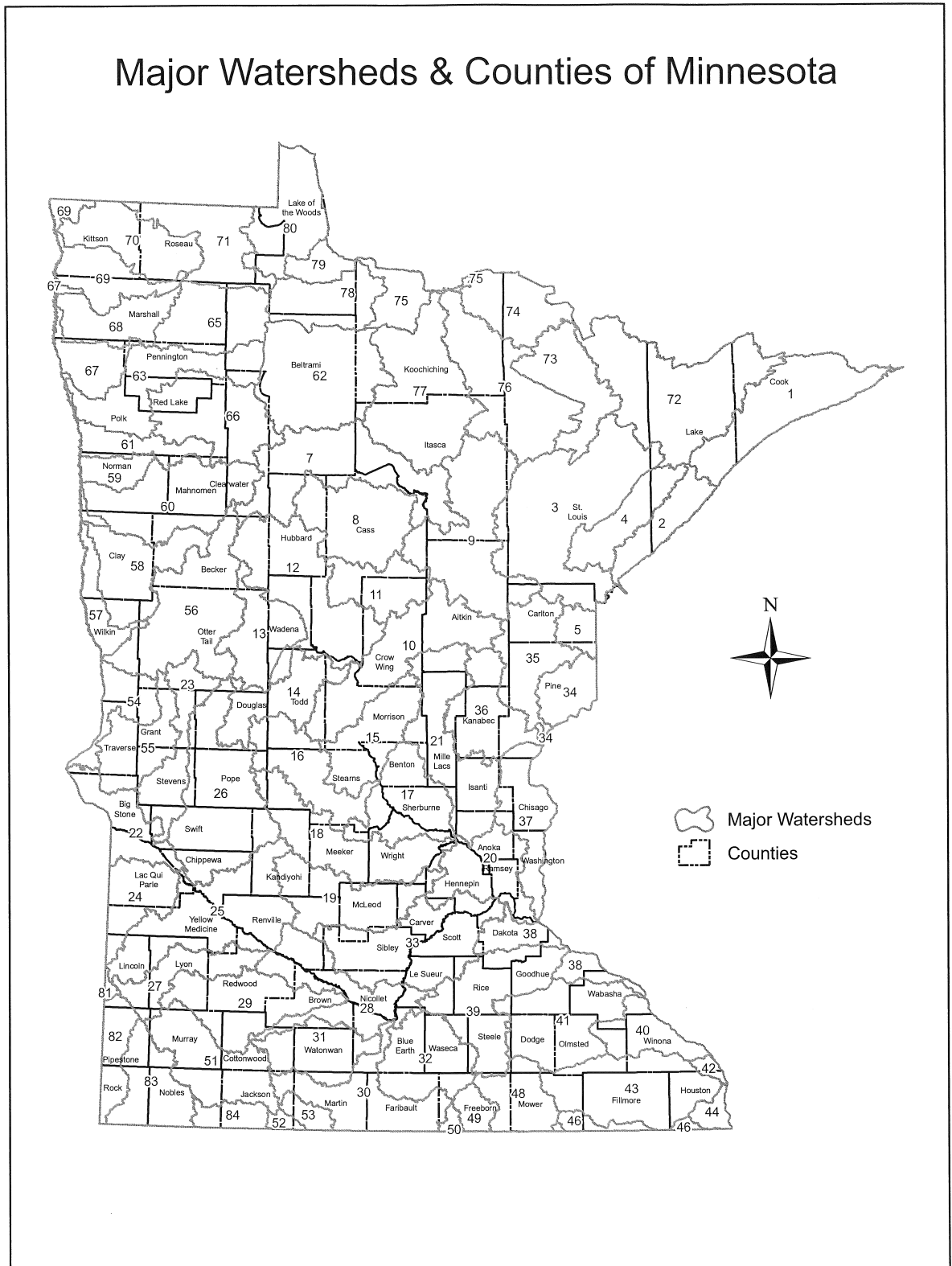
70.19 watersheds within their jurisdictional areas.

Wetland Bank Service Areas

With
Major Watersheds &
County Boundaries



Major Watersheds & Counties of Minnesota



LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

73.1	1	Lake Superior (north)
73.2	2	Lake Superior (south)
73.3	3	St. Louis River
73.4	4	Cloquet River
73.5	5	Nemadji River
73.6	7	Mississippi River (Headwaters, Lake Winnibigoshish)
73.7	8	Leech Lake River
73.8	9	Mississippi River (Grand Rapids)
73.9	10	Mississippi River (Brainerd)
73.10	11	Pine River
73.11	12	Crow Wing River
73.12	13	Redeye River (Leaf River)
73.13	14	Long Prairie River
73.14	15	Mississippi River (Sartell)
73.15	16	Sauk River
73.16	17	Mississippi River (St. Cloud)
73.17	18	North Fork Crow River
73.18	19	South Fork Crow River
73.19	20	Mississippi River (Metro)
73.20	21	Rum River
73.21	22	Minnesota River (Headwaters)
73.22	23	Pomme de Terre River
73.23	24	Lac qui Parle River
73.24	25	Minnesota River (Granite Falls)
73.25	26	Chippewa River
73.26	27	Redwood River
73.27	28	Minnesota River (Mankato)
73.28	29	Cottonwood River
73.29	30	Blue Earth River
73.30	31	Watonwan River
74.1	32	Le Sueur River

74.2	33	Minnesota River (Shakopee)
74.3	34	St. Croix River (Upper)
74.4	35	Kettle River
74.5	36	Snake River
74.6	37	St. Croix River (Stillwater)
74.7	38	Mississippi River (Red Wing) and Lake Pepin
74.8	39	Cannon River
74.9	40	Mississippi River (Winona)
74.10	41	Zumbro River
74.11	42	Mississippi River (La Crescent)
74.12	43	Root River
74.13	44	Mississippi River (Reno)
74.14	46	Upper Iowa River
74.15	47	Wapsipinican River (Headwaters)
74.16	48	Cedar River
74.17	49	Shell Rock River
74.18	50	Winnebago River (Lime Creek)
74.19	51	West Fork des Moines River (Headwaters)
74.20	52	West Fork des Moines River (Lower)
74.21	53	East Fork des Moines River
74.22	54	Bois de Sioux River
74.23	55	Mustinka River
74.24	56	Otter Tail River
74.25	57	Red River of the North (Headwaters)
74.26	58	Buffalo River
74.27	59	Marsh River
74.28	60	Wild Rice River
74.29	61	Sandhill River
74.30	62	Upper and Lower Red Lake
75.1	63	Red Lake River

- 75.2 65 Thief River
75.3 66 Clearwater River
75.4 67 Grand Marais Creek (Red River of the North)
75.5 68 Snake River
75.6 69 Tamarack River (Red River of the North)
75.7 70 Two River
75.8 71 Roseau River
75.9 72 Rainy River (Headwaters)
75.10 73 Vermillion River
75.11 74 Rainy River (Rainy Lake)
75.12 75 Rainy River (Manitou)
75.13 76 Little Fork River
75.14 77 Big Fork River
75.15 78 Rapid River
75.16 79 Rainy River (Baudette)
75.17 80 Lake of the Woods
75.18 81 Big Sioux River (Medary Creek)
75.19 82 Big Sioux River (Pipestone)
75.20 83 Rock River
75.21 84 Little Sioux River

75.22 **Subp. 8. Timing of replacement.**

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

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

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

76.1 (2) project-specific replacement for which construction has been certified
76.2 and the first monitoring report of the first full growing season following construction

76.3 certification has been submitted according to part 8420.0810, and the replacement
76.4 meets all goals and performance standards applicable to that development stage of the
76.5 replacement site.

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

76.9 Subp. 9. **Financial assurance.**

76.10 A. For wetland replacement that is not in advance, a financial assurance
76.11 acceptable to the local government unit must be submitted to, and approved by, the local
76.12 government unit to ensure successful replacement. The local government unit may
76.13 waive this requirement if it determines the financial assurance is not necessary to ensure
76.14 successful replacement. The local government unit may incorporate this requirement
76.15 into any financial assurance required by the local government unit for other aspects of
76.16 the project.

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

76.23 C. Before drawing on the financial assurance, the local government unit
76.24 must provide written notice to the landowner stating the actions necessary to bring the
76.25 replacement project into compliance and that the landowner has 30 days to complete the
76.26 actions, after which the local government unit will use the financial assurance to gain
77.1 compliance. Use of the financial assurance by the local government unit may be appealed

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

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

77.11 **8420.0526 ACTIONS ELIGIBLE FOR CREDIT.**

77.12 Subpart 1. **Scope.**

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

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

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

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

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

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

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

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

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

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

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

78.22 (3) provide important habitat connections; or

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

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

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

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

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

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

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

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

80.3 B. up to 90 percent of the area restored for wetland areas in bank service areas 2,
80.4 3, and 4 in a percentage equivalent to the percent of time the wetland areas were planted
80.5 with annually seeded crops, were in a crop rotation seeded to pasture grasses or legumes,
80.6 or were required to be set aside to receive price supports or equivalent payments during
80.7 the 20-year period prior to the date of application for a replacement or bank plan.

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

80.9 Permanently protecting wetlands previously restored or created for conservation
80.10 purposes under a contract or easement, when the contract or easement has expired and
80.11 gives the landowner the right to drain or fill the wetland upon termination, is eligible
80.12 for replacement credit where the area receiving credit meets the replacement wetland
80.13 construction standards of part 8420.0528. The maximum replacement credit is 75 percent
80.14 of the area created or restored under the conservation contract or easement. Alternatively,
80.15 credit may be allocated according to the other subparts in this part as applied prior to
80.16 initiation of the contract or easement, when the applicant can document eligible credit
80.17 yield to the satisfaction of the local government unit.

80.18 Subp. 7. **Wetland creations.**

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

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

80.24 C. A wetland created as part of a water quality treatment system is eligible
80.25 for replacement credit under this subpart only if the wetland area receiving credit is
80.26 a functioning wetland designed for a maximum 24-inch rise in water level for the

81.1 ten-year critical storm event and treatment of runoff is provided before discharge into the
81.2 replacement wetland area according to part 8420.0528, subpart 2, item G. Any portions of
81.3 water quality treatment systems allowed for replacement are not eligible for the exemptions
81.4 in part 8420.0420 and are subject to the replacement requirements under parts 8420.0500
81.5 to 8420.0544 and the monitoring requirements under parts 8420.0800 to 8420.0820.

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

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

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

81.14 (2) rare native plant communities;

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

81.18 (4) sensitive surface waters; or

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

81.22 B. Project eligibility and the allocation of credit under this subpart is determined
81.23 by the local government unit with concurrence of the technical evaluation panel based on
81.24 the qualification of the resource as exceptional, the actions proposed, and the resulting
81.25 contribution to the value and sustainability of the exceptional resource. Areas receiving

82.1 credit must be protected by a permanent conservation easement, in a format prescribed
82.2 by the board, that is granted to and accepted by the state.

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

- 82.13 A. contains or benefits an exceptional resource identified in subpart 8;
- 82.14 B. is of a type or function that is rare, difficult to replace, or of high value to
82.15 the watershed;
- 82.16 C. contains a rare or declining plant community; or
- 82.17 D. is of a type that is not likely to regenerate, such as northern white cedar.

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

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

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

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

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

83.6 **8420.0528 REPLACEMENT WETLAND CONSTRUCTION STANDARDS.**

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

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

83.16 Subp. 2. **Design requirements.**

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

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

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

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

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

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

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

84.25 G. Treatment of runoff before discharge to replacement areas is required
84.26 to improve sustainability and minimize degradation of the wetland over time. The

85.1 replacement area must be physically separated from any water quality treatment system.

85.2 "Treatment of runoff" under this part means:

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

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

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

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

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

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

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

85.23 D. for all restored wetlands where the original organic substrate has been
85.24 stripped away and for all created wetlands, the organic substrate must be sufficient to
85.25 establish a functioning wetland and to accomplish the goals of the replacement or banking

86.1 plan. When feasible, organic soil used for backfill should be salvaged from the impacted
86.2 wetland for utilization in the replacement wetland. Organic soil for backfill from wetlands
86.3 dominated by nonnative or invasive species should be avoided.

86.4 **8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.**

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

86.7 B. Wetlands impacted by public transportation projects:

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

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

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

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

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

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

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

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

87.8 (a) at least 30 days before construction;

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

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

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

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

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

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

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

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

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

88.18 **WETLAND BANKING**

88.19 **8420.0700 PURPOSE OF WETLAND BANKING.**

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

89.1 bank transactions, maintaining bank records, and ensuring that the operation of the bank
89.2 complies with parts 8420.0700 to 8420.0755.

89.3 **8420.0705 ESTABLISHING WETLAND BANK SITE.**

89.4 Subpart 1. **Eligibility for wetland banking.** Replacement wetland credits that result
89.5 from any of the eligible actions in part 8420.0526, and that meet the standards of parts
89.6 8420.0522 and 8420.0528, may be deposited in the state wetland bank for later use in
89.7 replacing unavoidable impacts. To be eligible for deposit in the bank, the credits must be
89.8 specifically designated for wetland banking purposes prior to undertaking the replacement
89.9 actions and certified by the local government unit prior to deposit. Designation of
89.10 credits for wetland banking is accomplished by approval of a wetland banking plan by a
89.11 local government unit. Replacement actions completed or initiated without prior local
89.12 government unit approval are not eligible for deposit in the wetland bank.

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

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

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

89.23 Subp. 3. **Application procedures.** When replacement actions are proposed for
89.24 banking purposes, the applicant must submit to the local government unit a banking
89.25 plan application, in a form prescribed by the board, containing the information identified
89.26 in parts 8420.0305, item B, and 8420.0330, subpart 3, item B, and other information

90.1 required by the board. The banking plan must also contain specific performance standards
90.2 and a proposed credit release schedule based upon achievement of those standards.
90.3 The local government unit is responsible for ensuring that a copy of the banking plan
90.4 application is sent to the administrator of the state wetland bank, to the St. Paul District
90.5 Office of the United States Army Corps of Engineers, and to those required to receive
90.6 a copy of an application in part 8420.0255, subpart 3. The technical evaluation panel
90.7 must review the banking plan application and may recommend changes or additions to
90.8 the performance standards and credit allocation schedule. The wetland banking plan
90.9 applicant must be advised of any panel recommendations. Based on the panel's findings
90.10 and recommendations and other comments received, the local government unit must
90.11 determine the likelihood that the replacement actions will be successful and approve,
90.12 approve with modifications, or deny the banking plan application.

90.13 Subp. 4. **Combined banking and project-specific replacement.** When a banking
90.14 plan applicant wishes to use a portion of the credits generated from a banking project for
90.15 project-specific replacement, the banking plan must identify the project-specific impact
90.16 and the amount of credits to be used according to a corresponding replacement plan. The
90.17 credits must meet the requirements of parts 8420.0500 to 8420.0528 and the approved
90.18 replacement plan, and be deducted before deposit of any credits into the state wetland bank.

90.19 Subp. 5. **Conservation easement.** No credits may be deposited in the state wetland
90.20 bank until a perpetual conservation easement, in a format prescribed by the board, is
90.21 granted to and accepted by the state. The easement must encompass the entire replacement
90.22 area, unless the local government unit and the board approve an alternate boundary at the
90.23 time of bank application approval. The easement must provide for preservation of the
90.24 banked wetland's functions by the fee owner and wetland banking plan applicant. The
90.25 wetland banking plan applicant must also provide a title insurance policy that is acceptable
90.26 to the state naming the state of Minnesota as the insured. If the conservation easement
90.27 does not abut a public road, the fee owner and wetland banking plan applicant must also

91.1 grant and record an access easement in favor of the board; the local government unit; and
91.2 any other state, local, or federal regulatory authority that has authorized use of credits
91.3 from the site for wetland replacement. The access easement does not confer a right of
91.4 access to the general public. The boundary of bank areas must be clearly marked as
91.5 prescribed in the conservation easement. This subpart does not apply to state land.

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

91.11 **8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.**

91.12 A. To be deposited into the state wetland bank, replacement credits must be
91.13 certified for deposit by the local government unit in which they are located. Certification
91.14 of credits by the local government unit is requested by the banking plan applicant and may
91.15 occur at any time during the monitoring period. The certification must be based on the
91.16 findings and recommendation of the technical evaluation panel and must identify the
91.17 area by type, area of buffer, and credits eligible for deposit. The technical evaluation
91.18 panel must ensure that sufficient time has passed for the wetland to become established,
91.19 especially vegetation and hydrology, before recommending certification. The area certified
91.20 must be based on a land survey or comparable method of field measurement. The person
91.21 making the measurement must verify in writing as to the method and accuracy of the
91.22 measurement. Failure to follow the approved construction specifications or vegetation
91.23 management plan is sufficient grounds for the local government unit to deny certification
91.24 of credits for deposit.

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

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

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

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

92.7 (4) a copy of the recorded conservation easement according to part
92.8 8420.0705, subpart 5;

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

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

92.13 (7) other information required by the board.

92.14 C. Up to 15 percent of the credits proposed for banking are eligible for deposit in
92.15 the bank immediately after the certification of construction according to part 8420.0820,
92.16 subpart 2, and recording of a conservation easement according to part 8420.0705, subpart
92.17 5.

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

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

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

93.15 **8420.0735 MONITORING AND CORRECTIVE ACTIONS.**

93.16 Subpart 1. **Monitoring.**

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

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

93.24 Subp. 2. **Maintenance responsibilities.** The fee owner and the banking applicant,
93.25 if different from the fee owner, are jointly and severally responsible for the success of
93.26 the banking project according to the approved banking plan and for maintaining the

94.1 banking project according to the conditions of the conservation easement. The banking
94.2 plan applicant, if different from the fee owner, is not responsible for maintenance after the
94.3 monitoring requirements have been completed if the banking plan applicant no longer
94.4 owns an easement interest in the real estate or credits associated with the banked wetland.

94.5 **Subp. 3. Corrective actions.**

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

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

94.17 C. If satisfactory remediation does not result under item A or B, the local
94.18 government unit or the board may undertake reconstruction work to bring the site into
94.19 compliance. Alternatively, when credits have not been withdrawn or transferred, the board
94.20 may vacate the conservation and access easement and close the account. The board and
94.21 local government unit may require reimbursement of reasonable costs of bringing the site
94.22 into compliance or vacating the conservation and access easement.

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

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

95.3 **8420.0745 WITHDRAWALS AND TRANSFERS.**

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

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

96.1 under replacement plans must not occur until the board has notified the replacement plan
96.2 applicant that the credits have been withdrawn.

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

96.8 Subp. 4. **Reporting credit transactions.** Upon the sale, use, or transfer of credits,
96.9 the owner of the account must immediately report the transaction to the board's banking
96.10 administrator on withdrawal or transfer forms provided by the board and include a copy of
96.11 the bill of sale when applicable. The board shall complete the accounting transactions and
96.12 send a notice of credit withdrawal to the local government unit, the account holder, and
96.13 the applicant. Failure to report the sale, use, or transfer of credit may result in restrictions
96.14 on withdrawals until the account is reconciled.

96.15 **8420.0755 BANK ACCOUNT ADMINISTRATION.**

96.16 Subpart 1. **Account information.**

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

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

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

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

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

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

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

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

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

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

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

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

97.19 B. account deposit or transfer: 6.5 percent of the value of credits not to exceed
97.20 \$1,000 per deposit or transfer; and

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

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

98.1 **INSPECTION AND MONITORING OF REPLACEMENT WETLANDS**98.2 **8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION.**

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

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

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

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

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

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

98.18 E. construction photos showing relevant restoration work;

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

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

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

99.16 **8420.0810 REPLACEMENT WETLAND MONITORING.**

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

99.20 Subp. 2. **Responsibilities.**

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

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

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

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

100.12 B. If the goals of the approved plan have not been achieved after the fifth
100.13 season of monitoring but, in the written opinion of the technical evaluation panel, may be
100.14 achieved with more time, the local government unit may, through written notification of
100.15 the applicant, extend the monitoring period for not more than an additional five growing
100.16 seasons. The local government unit's notification of extension must specify the reasons
100.17 for the extension and any corrective actions necessary to bring the replacement wetland
100.18 into compliance with the approved plan.

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

100.24 Subp. 4. **Monitoring reports.**

100.25 A. Following the first full growing season after construction certification,
100.26 the applicant must submit annual monitoring reports documenting the progress of the

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

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

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

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

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

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

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

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

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

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

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

102.11 **8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.**

102.12 Subpart 1. **Monitoring oversight.**

102.13 A. The local government unit must evaluate all monitoring reports for
102.14 compliance with report requirements and must determine if the goals of the approved
102.15 plan can be met within the specified monitoring period based on the current condition
102.16 of the replacement wetland and the applicant's proposed management activities for the
102.17 following growing season.

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

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

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

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

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

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

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

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

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

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

103.21 **WETLAND PLANNING**

103.22 **8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND**
103.23 **MANAGEMENT PLANS.**

103.24 Subpart 1. **Purpose and eligibility.**

104.1 A. As an alternative to the rules adopted under Minnesota Statutes, section
104.2 103G.2242, subdivision 1, and the public value criteria established or approved under
104.3 Minnesota Statutes, section 103B.3355, a comprehensive wetland protection and
104.4 management plan may be developed by a local government unit, or one or more
104.5 local government units operating under a joint powers agreement, provided that the
104.6 requirements of this part are met. This part provides minimum standards. Local
104.7 government units may require equivalent or more stringent standards and procedures for
104.8 wetland conservation, but not less stringent standards and procedures.

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

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

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

104.25 Subp. 3. **Plan area.** To the extent practical and feasible, the comprehensive wetland
104.26 protection and management plan should be based on watershed boundaries. The size of

105.1 watershed addressed should not be larger than is appropriate to ensure that the wetland
105.2 resources provided through replacement will effectively compensate for approved
105.3 impacts. For local governments with multiple watersheds, a separate analysis should be
105.4 completed for each watershed substantially within the local government's jurisdiction.
105.5 Local governments should consider joint planning efforts for those watersheds that cross
105.6 political boundaries.

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

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

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

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

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

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

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

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

106.10 F. allow exemptions based on ordinance or rule standards, eligibility criteria,
106.11 and processes that are not less restrictive than the requirements in parts 8420.0320 and
106.12 8420.0420 based on wetland classifications as defined in the plan.

106.13 Subp. 5. **Plan content.**

106.14 A. The comprehensive wetland protection and management plan must include
106.15 the establishment of watershed goals based on an analysis of the existing ecological
106.16 conditions of the plan area and the development of corresponding goals for maintaining
106.17 and improving those conditions. The ecological condition of the plan area should be
106.18 based on inventories of historic and existing wetland resources, including identification of
106.19 degraded wetlands, existing high-quality wetlands, and immediate and long-term resource
106.20 needs within the plan area. The analysis may be completed as part of the comprehensive
106.21 wetland protection and management plan or adopted from a relevant local or regional
106.22 water plan, if one exists.

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

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

107.1 (2) an assessment of the wetland functions listed in part 8420.0522, subpart
107.2 1, using a methodology chosen by the technical evaluation panel and based on one of the
107.3 methodologies established or approved by the board;

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

107.6 (4) the resulting public value.

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

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

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

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

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

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

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

108.16 C. The local government unit must implement a process for notifying and
108.17 involving local citizens in the development of the plan and determination of local value.
108.18 Local citizen involvement may include the formation of a citizen's advisory committee or
108.19 utilization of other existing citizen groups.

108.20 D. Upon completion, the local government unit must submit the draft
108.21 comprehensive wetland protection and management plan and ordinance or rule for a
108.22 60-day review and comment period to those required to receive notice under item A. The
108.23 local government unit must respond in writing, within 30 days of the end of the review
108.24 period, to any comments received during the review period.

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

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

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

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

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

109.22 A. The board shall make a decision to approve or disapprove a comprehensive
109.23 wetland protection and management plan within 60 days of receipt of a complete and final
109.24 draft of the plan and ordinance or rule as required in subpart 6, item F. The board may
109.25 disapprove all or parts of the plan if the board determines the plan does not meet the
109.26 requirements of this part. If the board has not made a decision within 60 days of receipt of

110.1 the final plan, the plan is deemed approved. The 60-day period may be extended upon
110.2 mutual agreement of the board and the local government unit.

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

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

110.15 D. If, after the hearing, the board and local government unit disagree on the
110.16 plan, the board must, within 60 days, initiate mediation through a neutral party. If the
110.17 board and local government unit agree in writing not to use mediation or the mediation
110.18 does not result in a resolution of the differences between the parties, then the board may
110.19 commence a declaratory judgment action in the district court of the county where the local
110.20 government unit is located. If the board does not commence a declaratory judgment action
110.21 within the applicable 60-day period, the plan is deemed approved.

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

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

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

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

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

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

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

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

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

111.23 **Subp. 9. Implementation.**

111.24 A. The comprehensive wetland protection and management plan must be
111.25 implemented by ordinance as part of the local government unit's official controls under

112.1 Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city;
112.2 and Minnesota Statutes, chapter 366, for a town and by rules adopted under Minnesota
112.3 Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B,
112.4 for a watershed management organization.

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

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

112.10 Subp. 10. **Reporting.** In addition to and as part of the reporting requirements of part
112.11 8420.0200, subpart 2, item I, a local government unit with an approved and adopted
112.12 comprehensive wetland management plan must annually provide information to the board
112.13 regarding activities that vary from this chapter, this part notwithstanding, and documenting
112.14 compliance with the minimum plan standards developed according to subpart 4. Failure
112.15 to provide this information on an annual basis may subject the local government unit to
112.16 penalties under part 8420.0200, subpart 3.

112.17 **8420.0835 HIGH-PRIORITY REGIONS AND AREAS.**

112.18 Subpart 1. **High-priority regions.** Parts of the state that are high-priority regions
112.19 for preservation, enhancement, restoration, and establishment of wetlands include all
112.20 major watersheds with a majority of their land area contained within counties that have
112.21 lost 50 percent or more of their presettlement wetland base, which are those listed in part
112.22 8420.0117, subpart 1, item C. In all other major watersheds of the state, high-priority
112.23 regions are high-priority areas approved as such by the board according to subpart 2.

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

113.1 A. Water management plans prepared by water management organizations in
113.2 the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside
113.3 the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed
113.4 districts outside the metropolitan area under Minnesota Statutes, sections 103D.401
113.5 and 103D.405, may identify those areas that qualify as high-priority areas for wetland
113.6 preservation, enhancement, restoration, and establishment. To designate a high-priority
113.7 area, the preservation, enhancement, restoration, and establishment of wetlands must have
113.8 or achieve high public value based on the functions of wetlands listed in part 8420.0522,
113.9 subpart 1, and the goals of the water management plan.

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

113.18 C. Local water plans may identify individual wetlands, or criteria to establish
113.19 individual wetlands, as high-priority areas. Individual wetlands identified as high-priority
113.20 areas should be of high local value, at risk of degradation or loss, and consistent with
113.21 any existing wetland classification criteria established under part 8420.0830, subpart
113.22 5, items A and B. Plans may also identify individual sites as high-priority areas for
113.23 wetland restoration and establishment. High-priority restoration sites should be identified
113.24 according to the criteria in part 8420.0830, subpart 5, items A and C.

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

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

114.8 **8420.0840 WETLAND PRESERVATION AREAS.**

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

114.19 Subp. 2. **Landowner application for wetland preservation area.** A landowner
114.20 may apply to the county or watershed district, if the county or watershed district chooses to
114.21 accept wetland preservation areas, for designation of a wetland as a wetland preservation
114.22 area on forms provided by the board. The applicant must include a buffer strip that meets
114.23 the minimum width requirements of part 8420.0522, subpart 6, around the perimeter of the
114.24 wetland. The applicant may include up to four acres of upland for each acre of wetland.
114.25 The application must be accompanied by a restrictive covenant on a form provided by
114.26 the board. The covenant must contain the same limitations on use that are provided in

115.1 Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled
115.2 upland area must be vegetated by the landowner to permanent vegetation other than
115.3 noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

115.4 Subp. 3. **County or watershed district review of application.** Upon receipt of a
115.5 complete application, the county or watershed district must send a copy of the application
115.6 to the county assessor, the board, and the soil and water conservation district where the
115.7 land is located. The soil and water conservation district must prepare an advisory statement
115.8 of existing and potential preservation problems or conflicts and send the statement to the
115.9 owner of record and to the county or watershed district. The county or watershed district
115.10 may accept the application if the wetland is in a high-priority region and high-priority
115.11 area, the application provides for the minimum required buffer strip, and the application
115.12 is accompanied by the proper covenant. The county or watershed district may limit or
115.13 reject additional upland proposed to be included according to criteria identified in the
115.14 approved plan and standards the county may establish. The county or watershed district
115.15 may reject the application if the application does not qualify or may require modification
115.16 and resubmittal of the application. If the application qualifies, the county or watershed
115.17 district may approve it and mark the date of approval on the application. The county or
115.18 watershed district must notify the landowner of the acceptance or denial of the application
115.19 within 60 days from the date of the application. Within five business days of approval of
115.20 the application, the county or watershed district must forward it to the county recorder for
115.21 recording of the restrictive covenant or memorialization of the application on the certificate
115.22 of title. The county or watershed district must also send a copy of the approved application
115.23 to the county assessor for entry in the assessor's records as a wetland preservation area.
115.24 The county or watershed district must also send copies of the approved application to the
115.25 soil and water conservation district, the local government unit, and the board.

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

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

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

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

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

116.15 **ENFORCEMENT, APPEALS, AND COMPENSATION**

116.16 **8420.0900 ENFORCEMENT PROCEDURES.**

116.17 Subpart 1. **Enforcement authorities.** The commissioner, conservation officers, and
116.18 other peace officers may issue cease and desist orders and restoration and replacement
116.19 orders.

116.20 Subp. 2. **Cease and desist orders.**

116.21 A. Cease and desist orders may be issued when the enforcement authority has
116.22 probable cause that an activity is being or will again be conducted that impacts a wetland,
116.23 does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and
116.24 is being or will again be conducted without prior approval of a replacement plan by a

117.1 local government unit under part 8420.0255 or involving a decision stayed by the board
117.2 pursuant to part 8420.0905.

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

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

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

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

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

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

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

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

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

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

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

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

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

118.14 B. Promptly upon being informed by the enforcement authority or the local
118.15 government unit of the need, a soil and water conservation district staff person must
118.16 inspect the site and prepare a plan in consultation with the local government unit and the
118.17 enforcement authority for restoring the site to its prealtered condition. The soil and water
118.18 conservation district may request assistance from the local government unit or technical
118.19 evaluation panel in inspecting the site and preparing the plan. Restoration must be ordered
118.20 unless the technical evaluation panel concludes that restoration is not possible or prudent.
118.21 The soil and water conservation district must incorporate its plan into a restoration or
118.22 replacement order and send it to the enforcement authority for service in person or by
118.23 certified mail to the landowner or responsible party.

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

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

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

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

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

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

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

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

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

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

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

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

120.15 C. If, as part of a misdemeanor proceeding, the court orders restoration or
120.16 replacement, the technical evaluation panel must determine which is appropriate, and if it
120.17 is restoration, the method of restoration. If the court orders replacement, the landowner
120.18 or responsible party must follow the replacement plan process under subpart 6 and part
120.19 8420.0330, and the wetland replacement, construction, and monitoring requirements
120.20 of this chapter.

120.21 Subp. 6. **After-the-fact replacement.** If a landowner or responsible party seeks
120.22 approval of a replacement plan after the proposed project has already impacted the
120.23 wetland or if an approved replacement plan has not been implemented in advance of or
120.24 concurrent with the impact, the local government unit must require the landowner or
120.25 responsible party to replace the impacted wetland at a ratio twice the replacement ratio

121.1 otherwise required, unless the local government unit and enforcement authority concur
121.2 that a lesser ratio is acceptable.

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

121.6 **8420.0905 APPEALS.**

121.7 Subpart 1. **Appeal of replacement and restoration orders to the board.** A
121.8 landowner or responsible party may appeal the terms and conditions of a restoration or
121.9 replacement order issued according to part 8420.0900 to the board's executive director
121.10 within 30 days of receipt of the order by filing a written request for review and paying a
121.11 nonrefundable filing fee to the board. The time frame for appeal may be extended beyond
121.12 30 days upon mutual agreement, in writing, between the landowner or responsible party,
121.13 the local government unit, and the enforcement authority. The filing fee is an amount
121.14 determined by the board not to exceed \$1,000. If the written request is not submitted
121.15 within 30 days, the restoration or replacement order is final. The executive director must
121.16 review the request and supporting evidence and render a decision within 30 days of the
121.17 request for review. The executive director may stay the restoration or replacement order
121.18 until the appeal is resolved.

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

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

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

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

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

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

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

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

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

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

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

123.13 C. The board, its dispute resolution committee, or its executive director may
123.14 remand the appealed decision back to the local government unit if the petitioner has not
123.15 exhausted all local administrative remedies, such as a local government unit evidentiary
123.16 public hearing, if expanded technical review is needed, or if the local government unit's
123.17 record is not adequate. If an appeal is remanded, a new application is not required
123.18 and additional information may be submitted before a decision is made by the local
123.19 government unit. The local government unit must make a decision on an appeal that has
123.20 been remanded within 60 days unless the remand order, or a subsequent order, specifies a
123.21 longer period.

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

124.1 the local government unit, and those required to receive notice of the local government
124.2 unit decision.

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

124.6 F. Within 30 days of the grant of the appeal, unless an extension of time is
124.7 approved by the board, the local government unit must forward to the board the written
124.8 record on which it based its decision. The board must forward one copy of the record to
124.9 each of the parties to the appeal. The board shall make its decision on the appeal after
124.10 hearing. The board must give the parties 30 days' notice of the hearing. The board must
124.11 base its review on the record and the argument presented to the board by the parties.
124.12 However, if the local government unit did not consider fundamental information, such
124.13 as aerial photographs, soil maps, or wetland maps, or did not make formal findings
124.14 contemporaneously with its decision; if there is not accurate verbatim transcript of the
124.15 proceedings; if the proceedings were not fairly conducted; or if the record is otherwise
124.16 incomplete or deficient, the board may remand the matter or receive additional evidence.
124.17 If, before the date set for the hearing, application is made to the board for leave to present
124.18 additional evidence on the issues in the case and it is shown to the satisfaction of the board
124.19 that additional evidence is material and that there were good reasons for failure to present it
124.20 in the proceeding before the local government unit, the board may order that the additional
124.21 evidence be taken before the local government unit upon such conditions that the board
124.22 deems proper. The local government unit may modify its findings and decision by reason
124.23 of the additional evidence and must file with the board, to become a part of the record, the
124.24 additional evidence, together with any modifications or new findings or decision.

124.25 G. The board shall affirm the local government unit's decision if the local
124.26 government unit's findings of fact are not clearly erroneous; if the local government unit

125.1 correctly applied the law to the facts, including this chapter; and if the local government
125.2 unit made no procedural errors prejudicial to a party. Otherwise, the board shall reverse
125.3 the decision, amend it, or remand it with instructions for further proceedings. The board
125.4 must provide notice of its decision to the parties to the appeal.

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

125.8 **8420.0910 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT**
125.9 **UNITS.**

125.10 Subpart 1. **Intervention.** At the request of a local government unit against which
125.11 a compensation action is brought based at least in part on the local government unit's
125.12 application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G.237,
125.13 or 103G.2372, or rules adopted by the board to implement these sections, the state, through
125.14 the attorney general, must intervene in the action on behalf of the local government unit
125.15 and is thereafter considered a defendant in the action. A local government unit making a
125.16 request under this subpart must provide the attorney general with a copy of the complaint
125.17 as soon as possible after being served. If requested by the attorney general, the court must
125.18 grant additional time to file an answer equal to the time between service of the complaint
125.19 on the local government unit and receipt of the complaint by the attorney general.

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

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

126.4 **8420.0915 COMPENSATION TO LANDOWNERS.**

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

126.9 Subp. 2. **Application requirements.**

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

126.12 B. An application must include an agreement that, in exchange for compensation,
126.13 the applicant shall convey to the state a perpetual conservation easement in the form
126.14 required by Minnesota Statutes, section 103F.516. The applicant must provide an
126.15 abstract of title demonstrating the ability to convey the easement free of any prior title,
126.16 lien, or encumbrance. Failure to provide marketable title negates the state's obligation
126.17 to compensate.

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

126.23 D. The landowner must demonstrate that the proposed impact is a feasible and
126.24 prudent project and that the replacement plan as proposed is a reasonable good faith

127.1 effort to fulfill the wetland replacement, construction, and monitoring requirements of
127.2 this chapter and the act.

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

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

127.16 Subp. 3. **Board action.** If the board finds that the applicant has submitted a
127.17 complete application and proved the requirements in this part, the board must compensate
127.18 the applicant as required by law within 90 days after the board received a completed
127.19 application, provided that within the same time period the applicant conveys to the
127.20 board a conservation easement in the form required by Minnesota Statutes, section
127.21 103F.516. If the board does not provide the required compensation in exchange for the
127.22 conservation easement, the applicant may impact the wetland in the manner proposed,
127.23 without replacement.

127.24 **ACTIVITIES UNDER DEPARTMENT OF NATURAL RESOURCES**
127.25 **AUTHORITY**

127.26 **8420.0930 MINING.**

128.1 Subpart 1. **Impacts from mining.** Wetlands must not be impacted as part of a project
128.2 for which a permit to mine is required by Minnesota Statutes, section 93.481, except as
128.3 approved by the commissioner. Impacts to wetlands that the landowner can demonstrate,
128.4 to the satisfaction of the local government unit, were created by pits, stockpiles, or tailing
128.5 basins, and by actions the purpose of which was not to create the wetland according to part
128.6 8420.0105, subpart 2, item D, are not regulated under this chapter.

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

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

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

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

128.20 A. wetlands for which impacts were approved but not initiated before July
128.21 1, 1993, must not be impacted until the operating plan or annual report as required in
128.22 the permit to mine includes an approved wetland replacement plan for the undisturbed
128.23 wetlands. The wetland replacement plan must meet the same principles and standards for
128.24 replacing wetlands under parts 8420.0500 to 8420.0528 and provide for construction
128.25 certification and monitoring according to parts 8420.0800 and 8420.0810;

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

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

129.16 Subp. 4. **Applicability.**

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

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

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

129.24 **8420.0935 STANDARDS AND CRITERIA FOR IDENTIFICATION,**
129.25 **PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS.**

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

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

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

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

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

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

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

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

131.1 **Subp. 6. Appeals.**

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

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

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

131.14 **Subp. 7. Enforcement procedures.** Enforcement procedures for calcareous fens
131.15 must be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372,
131.16 except that necessary restoration or replacement activities, if required, must be determined
131.17 by the commissioner, in consultation with the local soil and water conservation district.

131.18 **REPEALER.** Minnesota Rules, parts 8420.0102; 8420.0103; 8420.0110, subparts 1, 1a,
131.19 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,
131.20 22, 23, 24, 25, 28, 29, 29a, 30, 30a, 31, 31a, 31b, 31c, 31d, 32, 32a, 32b, 32c, 33, 34, 34a,
131.21 34b, 35, 36, 37, 37a, 38, 39, 39a, 40, 40a, 41, 42, 43, 44a, 44b, 45, 46, 47a, 47b, 48, 49,
131.22 50, 51, 51a, 52, 53, 54, and 54a; 8420.0115; 8420.0122, subparts 1, 2, 3, 4, 5, 6, 7, 9, and
131.23 10; 8420.0210; 8420.0220; 8420.0225; 8420.0230; 8420.0245; 8420.0250, subparts 1, 3,
131.24 and 4; 8420.0260; 8420.0268; 8420.0270; 8420.0280; 8420.0290; 8420.0300; 8420.0350;
131.25 8420.0400; 8420.0505; 8420.0510; 8420.0520, subparts 2 and 9; 8420.0530; 8420.0540,
131.26 subparts 1 and 2; 8420.0541; 8420.0542; 8420.0543; 8420.0545; 8420.0546; 8420.0547;

- 132.1 8420.0548; 8420.0549; 8420.0550, subparts 1 and 2; 8420.0600; 8420.0610; 8420.0620;
132.2 8420.0630; 8420.0650, subparts 1, 2, 2a, 3, 4, 7, and 8; 8420.0720, subparts 1, 2, 3, 4, 5,
132.3 6, 7, 8, 8a, 10, 11, 12, 13, and 14; 8420.0730, subparts 1 and 2; 8420.0740; 8420.0750;
132.4 8420.0760; 8420.1010; 8420.1020; 8420.1030; 8420.1040; 8420.1050; 8420.1060; and
132.5 8420.1070, are repealed.