

2017 WCA Statute Changes

Sec. 108.

Minnesota Statutes 2016, section 103G.005, subdivision 10b, is amended to read:
Subd. 10b.

Greater than 80 percent area.

"Greater than 80 percent area" means a county ~~or~~ watershed, [or, for purposes of wetland replacement, bank service area](#) where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

EFFECTIVE DATE.

[This section is effective the day following final enactment.](#)

Sec. 109.

Minnesota Statutes 2016, section 103G.005, subdivision 10h, is amended to read:
Subd. 10h.

Less than 50 percent area.

"Less than 50 percent area" means a county ~~or~~ watershed, [or, for purposes of wetland replacement, bank service area](#) with less than 50 percent of the presettlement wetland acreage intact or any county ~~or~~ watershed, [or bank service area](#) not defined as a "greater than 80 percent area" or "50 to 80 percent area."

EFFECTIVE DATE.

[This section is effective the day following final enactment.](#)

Sec. 110.

Minnesota Statutes 2016, section 103G.222, subdivision 1, is amended to read:
Subdivision 1.

Requirements.

(a) Wetlands must not be drained or filled, wholly or partially, unless replaced by actions that provide at least equal public value under a replacement plan approved as provided in section [103G.2242](#), a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section [103G.2243](#), or, if a permit to mine is required under section [93.481](#), under a mining reclamation plan approved by the commissioner under the permit to mine. [Project-specific wetland replacement plans submitted as part of a project for which a permit to mine is required and approved by the commissioner on or after July 1, 1991, may include surplus wetland credits to be allocated by the commissioner to offset future mining-related wetland impacts under any permits to mine held by the permittee, the operator, the permittee's or operator's parent, an affiliated subsidiary, or an assignee pursuant to an assignment under section 93.481, subdivision 5.](#) For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands that are applicable to mitigation plans approved as provided in section [103G.2242](#). [The commissioner must provide notice of an application for wetland replacement under a permit to mine to the county in which the impact is proposed and the county in which a mitigation site is proposed.](#) Public value must be determined in accordance with section [103B.3355](#) or a comprehensive wetland protection and

management plan established under section [103G.2243](#). Sections [103G.221](#) to [103G.2372](#) also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

EFFECTIVE DATE.

[This section is effective retroactively from July 1, 1991.](#)

Sec. 111.

Minnesota Statutes 2016, section 103G.222, subdivision 3, is amended to read:

Subd. 3.

Wetland replacement siting.

(a) ~~Impacted wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area.~~ Impacted wetlands outside of a greater than 80 percent area must **not** be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area. All wetland replacement must follow this priority order:

- (1) ~~on site or~~ in the same minor watershed as the impacted wetland;
- (2) in the same watershed as the impacted wetland;
- (3) in the same ~~county or~~ wetland bank service area as the impacted wetland; and
- (4) in another wetland bank service area.

(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

(c) Notwithstanding paragraph (a), clauses (1) and (2), the priority order for replacement by wetland banking begins at paragraph (a), clause (3), according to rules adopted under section [103G.2242, subdivision 1](#).

(d) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.

(e) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

- (1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;
- (2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;
- (3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and
- (4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

(f) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

(g) The board must establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement.

[\(h\) Wetland replacement sites identified in accordance with the priority order for replacement siting in paragraph \(a\) as part of the completion of an adequate environmental impact statement may be approved for a replacement plan under section 93.481, 103G.2242, or 103G.2243 without further modification related to the priority order, notwithstanding availability of new mitigation sites or availability of credits after completion of an adequate environmental impact statement. Wetland replacement plan](#)

[applications must be submitted within one year of the adequacy determination of the environmental impact statement to be eligible for approval under this paragraph.](#)

EFFECTIVE DATE.

[This section is effective the day following final enactment.](#)

Sec. 112.

Minnesota Statutes 2016, section 103G.223, is amended to read:

103G.223 CALCAREOUS FENS.

[\(a\) Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary or as provided in paragraph \(b\). Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section \[14.386\]\(#\) does not apply.](#)

[\(b\) The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan.](#)

Sec. 113.

**Minnesota Statutes 2016, section 103G.2242, subdivision 1, is amended to read:
Subdivision 1.**

Rules.

(a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public-waters-work permits affecting public waters wetlands under section [103G.245](#). These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values and may address the state establishment and administration of a wetland banking program for public and private projects, including provisions for an in-lieu fee program; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon. Any in-lieu fee program established by the board must conform with Code of Federal Regulations, title 33, section 332.8, as amended.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section [103G.2243](#).

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section [103G.2243](#), the government unit is subject to penalty as determined by the board.

[\(d\) When making a determination under rules adopted pursuant to this subdivision on whether a rare natural community will be permanently adversely affected, consideration of measures to mitigate any adverse effect on the community must be considered.](#)

Sec. 114.

**Minnesota Statutes 2016, section 103G.2242, subdivision 2, is amended to read:
Subd. 2.**

Evaluation.

(a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a Technical Evaluation Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional

employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan, sequencing, exemption determination, no-loss determination, or wetland boundary or type determination and may recommend approval or denial of the plan. The authority must consider and include the decision of the Technical Evaluation Panel in their approval or denial of a plan or determination.

(b) A member of the Technical Evaluation Panel that has a financial interest in a wetland bank or management responsibility to sell or make recommendations in their official capacity to sell credits from a publicly owned wetland bank must disclose that interest, in writing, to the Technical Evaluation Panel and the local government unit.

~~(b)~~ (c) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. The board may develop a professional wetland delineator certification program.

~~(c)~~ (d) The board must establish an interagency team to assist in identifying and evaluating potential wetland replacement sites. The team must consist of members of the Technical Evaluation Panel and representatives from the Department of Natural Resources; the Pollution Control Agency; the United States Army Corps of Engineers, St. Paul district; and other organizations as determined by the board.

Sec. 115.

**Minnesota Statutes 2016, section 103G.2372, subdivision 1, is amended to read:
Subdivision 1.**

Authority; orders.

(a) The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting groundwater quantity, wetlands, and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting groundwater quantity, a wetland, or public waters.

(b) In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

(c) If a court has ruled that there has not been a violation of the restoration or replacement order, an order may not be recorded or filed under this section.

(d) The commissioner must remove a deed restriction filed or recorded under this section on homesteaded property if the owner requests that it be removed and a court has found that the owner of the property is not guilty or that there has not been a violation of the restoration or replacement order. Within 30 days of receiving the request for removal from the owner, the commissioner must contact, in writing, the office of the county recorder or registrar of titles where the order is recorded or filed, along with all applicable fees, and have the order removed. Within 30 days of receiving notification from the office of the county recorder or registrar of titles that the order has been removed, the commissioner must inform the owner that the order has been removed and provide the owner with a copy of any documentation provided by the office of the county recorder or registrar of titles.