

## SECTION 64. S, SHORELAND MANAGEMENT OVERLAY DISTRICT

### Subdivision

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**64.01: PURPOSE:** The intent of this Section is to reduce the effects of overcrowding, to prevent pollution of waters of the Community, to provide ample space on lots for sanitary facilities, to minimize flood damages, to maintain property values, and to maintain natural characteristics of shorelands and adjacent water areas by controlling lot sizes, placement of structures on lots, and alteration of shoreland areas.

**64.02: STATUTORY AUTHORIZATION:** This Section is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103A, B, E, F, G, and I, Minnesota Regulations, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

**64.03: SHORELAND DISTRICTS:** The shorelands within the City of St. Augusta are hereby designated as shoreland districts and the requirements set forth in this Section shall govern development and other activities within these districts. The classification of the shoreland areas shall govern the use, alteration and development of these areas according to said classification as per M.S. 103F.201, .205, .211, .215, and .221, and Minnesota Regulations NR 82-84.

**64.04: DISTRICT APPLICATION:** The Shoreland District shall be applied to and superimposed as an overlay upon all zoning districts as contained herein as existing or amended by this

Ordinance and official Zoning Map. The regulations and requirements imposed by the Shoreland District shall be in addition to those established for districts which jointly apply. Under the joint application of districts, the more restrictive requirements shall apply.

**64.05: BOUNDARIES:** The boundaries of the Shoreland Overlay District are established within the following distances from the ordinary high water mark of the surface water depending on the size of the surface water as indicated on the official Zoning Map.

SURFACE WATER	DISTANCE (FEET)*
Greater than ten (10) acres (Table 1)	1,000
Rivers and Streams (draining an area greater than two (2) square miles)***	300**

\* The practical distance may be less whenever the waters involved are bounded by topographical divides which extend landward from the waters for lesser distances and prevent flowage toward the surface water.

\*\* The distance requirement shall be increased to the limit of the floodplain when the floodplain is greater than three hundred (300) feet.

\*\*\* Does not include Wild, Scenic, and Recreational River

**64.06: SHORELAND CLASSIFICATION SYSTEM:** The surface waters affected by this Ordinance and which require controlled development of their shoreland (Shoreland District) shall be shown on the official Zoning Map established by Subd. 44.03 of this Ordinance. Surface waters generally greater than ten (10) acres and given an identification number by the State of Minnesota are defined and listed below.

A. Lakes Classification System:

1. Natural Environmental Lakes: Natural environmental lakes are generally small, often shallow lakes with limited capacities for assimilating the impacts of development and recreational use. They often have adjacent lands with substantial constraints for development such as high water tables, exposed bedrocks, and unsuitable soils.

These lakes, particularly in rural areas, usually do not have much existing development or recreational use.

Natural  
Environment Lakes

Protected Waters  
Inventory ID #

2. **Recreational Development Lakes:** Recreational development lakes are generally medium sized lakes of varying depths and shapes with a variety of land form, soil, and ground water situations on the lands around them. They often are characterized by moderate levels of recreational use and existing development. Development consists mainly of seasonal and year-round residences and recreationally-oriented commercial uses. Many of these have capacities for accommodating additional development and use.

Recreational  
Development Lakes

Protected Waters  
Inventory ID #

**B. Rivers and Streams Classification System:**

1. **Agricultural Rivers:** Agricultural river segments are located in well-roaded, intensively cultivated areas of the western and southern regions of the state. Cultivated crops are the predominant land use, with some pasture and occasional feedlots, small municipalities, and small forested areas. Residential development is not common, but some year-round residential use is occurring within commuting distances of major cities. Some intensive recreational use occurs on these river segments in particular areas, but overall recreational use of these waters and adjacent lands is low. Although potential exists for additional development and recreation, water quality constraints and competing land uses, particularly agriculture, will inhibit expansions.

Agricultural River

Legal Description

2. **Tributary Rivers:** Tributary river segments consists of water courses mapped in the Protected Waters Inventory that have not been assigned one of the river classes. These segments have a wide variety of existing land and recreational use characteristics. The segments have considerable potential for additional development and recreational use, particularly those located near roads and within cities.

Tributary Rivers

Legal Descriptions

**64.07: LAND USE DISTRICT DESCRIPTIONS:**

- A. **Criteria for Designation:** The land use districts in Subd. 64.07.B and the delineation of a land use district's boundaries on the official Zoning Map, shall be consistent with the goals, policies, and objectives of the City's Comprehensive Plan and the following criteria,

considerations, and objectives:

1. General Considerations and Criteria for all Land Uses:

- a. Preservation of natural areas.
- b. Present ownership and development of shoreland areas.
- c. Shoreland soil types and their engineering capabilities.
- d. Topographic characteristics.
- e. Vegetative cover.
- f. In-water physical characteristics, values, and constraints.
- g. Recreational use of the surface water.
- h. Road and service center accessibility.
- i. Socio-economic development needs and plans as they involve water and related land resources.
- j. The land requirements of industry which, by its nature, requires location in shoreland areas.
- k. The necessity to preserve and restore certain areas having significant historical or ecological value.

2. Factors and Criteria for Planned Unit Developments:

- a. Existing recreational use of the surface waters and likely increases in use associated with planned unit developments.
- b. Physical and aesthetic impacts of increased density.
- c. Suitability of lands for the planned unit development approach.
- d. Level of current development in the area.
- e. Amounts and types of ownership of undeveloped lands.

B. Allowable Land Uses: The land uses allowable for the Shoreland Overlay District shall follow the permitted, interim, accessory, and conditional use designations as defined and outlined in the base zoning districts established by Subd. 44.01 of this Ordinance and shall be properly delineated on the official Zoning Map for the shorelands of St. Augusta. The land uses shall be further subject to the provisions of Subd. 64.08 of this Section. These land use districts are in conformance with the criteria specified in Minnesota Regulations, Part 6120.3200, Subp. 3.

**64.08: AGRICULTURE/RESIDENTIAL STANDARDS - LAKES:**

A. Lot and Setback Standards –Lakes: Subject to the other more restrictive limitations which may be imposed by this Ordinance, the following minimum requirements for lakes shall be observed in the agricultural and residential zoning districts established by Subd. 44.01 of this Ordinance, which are overlaid by the Shoreland District.

		Natural Environment		Recreational Development	
		<u>Area</u>	<u>Width</u>	<u>Area</u>	<u>Width</u>
1.	Lot Area and Width				
a.	Unsewered				
	Riparian Lots				
	Single	80,000	200	40,000	150
	Duplex	120,000	300	80,000	225
	Triplex	160,000	400	120,000	300
	Quad	200,000	500	160,000	375
	Non-Riparian Lots				
	Single	80,000	200	40,000	150
	Duplex	160,000	400	80,000	265
	Triplex	240,000	600	120,000	375
	Quad	320,000	800	160,000	490
b.	Sewered				
	Riparian Lots				
	Single	40,000	125	20,000	75
	Duplex	70,000	225	35,000	135
	Triplex	100,000	325	50,000	190
	Quad	130,000	425	65,000	255
	Non-Riparian Lots				
	Single	20,000	125	15,000	75
	Duplex	35,000	220	26,000	135
	Triplex	52,000	315	38,000	190
	Quad	65,000	410	49,000	245
2.	Setbacks from Ordinary High Water Mark*				
a.	Structures				
	Unsewered		150		100
	Sewered		150		75
b.	Sewage Treatment System		150		75
3.	Side Yard Setbacks for Property Abutting a Lake		20		20
4.	Building Height (Ft)**		35		35
5.	Maximum Impervious Surface to Area Ratio		25%		25%

\* Setback requirements from the ordinary high water mark shall not apply to piers and docks. Where development exists on both sides of a proposed building site, building setbacks may be altered to more closely conform to adjacent building setbacks provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.

\*\* Agricultural use related buildings, silos, and towers shall be exempt from the building height requirements. Building heights of over 35 feet that are not an exempt agricultural use may be allowed through approval of a conditional use permit as regulated under Section 4 of this Ordinance and Subd. 64.15 of this Section.

**64.09: COMMERCIAL/INDUSTRIAL STANDARDS - LAKES:**

A. Lot and Setback Standards - Lakes. Subject to other more restrictive limitations which may be imposed by this Ordinance, the following minimum requirements for lakes shall be observed in the business and industrial zoning districts established by Subd. 44.01 of this Ordinance, which are overlaid by the Shoreland District

	<u>Natural Environment</u>	<u>Recreational Development</u>
1. Lot Width		
a. Unsewered		
Riparian Lots	200	150
Non-Riparian Lots	200	150
b. Sewered		
Riparian Lots	125	100
Non-Riparian Lots	125	100
2. Setback from Ordinary High Water Mark*		
a. Commercial/Industrial	150	100
b. Impervious Surface Parking	75	50
3. Side Yard Setback for Property Abutting Lake	20	20
4. Building Height - Feet**	35	35
5. Maximum Impervious Surface to Lot Area Ratio	25%	25%

- \* Setback requirements from the ordinary high water mark shall not apply to piers and docks. Where development exists on both sides of a proposed building site, building setbacks may be altered to more closely conform to adjacent building setbacks provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.
- \*\* Agricultural use related buildings, silos, and towers shall be exempt from the building height requirements. Building heights of over 35 feet that are not an exempt agricultural use may be allowed through approval of a conditional use permit as regulated under Section 4 of this Ordinance and Subd. 64.15 of this Section.

**64.10: AGRICULTURE, RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL STANDARDS- RIVERS/STREAMS:**

A. Lot and Setback Standards - Rivers: Subject to other more restrictive limitations which may be imposed by this Ordinance, the following minor requirements for rivers shall be observed in all Zoning Districts established by Subd. 44.01 of this Ordinance which are overlaid by the Shoreland District.

	<u>Agriculture</u>	<u>Tributary</u>
Lot Width		
1. Unsewered		
Single	150	100
Duplex	225	150
Triplex	300	200
Quad	375	250
2. Sewered		
Single	150	75
Duplex	225	115
Triplex	300	150
Quad	375	190
Setback from Ordinary High Water Mark*		
1. Structures		
Unsewered	100	100
Sewered	50	50
2. Sewage Treatment System	75	75
Side Yard Setbacks for Property Abutting a River or Stream	20	20
Building Height-Feet**	35	35
Maximum Impervious Surface Area Ratio	25%	25%

- \* Setback requirements from the ordinary high water mark shall not apply to piers and docks. Where development exists on both sides of a proposed building site, building setbacks may be altered to more closely conform to adjacent building setbacks provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.
- \*\* Agricultural use related buildings, silos, and towers shall be exempt from the building height requirements. Building heights of over 35 feet that are not an exempt agricultural use may be allowed through approval of a conditional use permit as regulated under Section 4 of this Ordinance and Subd. 64.15 of this Ordinance.

**64.11: ADDITIONAL SPECIAL PROVISIONS:**

- A. Residential subdivisions with dwelling unit densities exceeding those in the tables in Sections 64.08, 64.09 and 64.10 can only be allowed if designed and approved as residential planned unit developments under Subd. 64.17 of this Ordinance. Only land above the ordinary high water level of public waters shall be used to meet lot area standards, and lot width standards shall be met at both the ordinary high water level and at the building line. The sewer lot area dimensions shall only be used if publicly owned or controlled sewer system service is available to the property.
- B. Subdivisions of duplex, triplexes, and quadraminiums on Natural Environment Lakes shall also meet the following standards:
  - 1. Each building shall be set back at least two hundred (200) feet from the ordinary high water level;
  - 2. Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;
  - 3. Watercraft docking facilities for each lot shall be centralized in one location and serve all dwelling units in the building; and
  - 4. No more than twenty-five (25) percent of a lake's shoreland shall be in duplex, triplex, or quad developments.
- C. Lots intended as controlled private access to public waters or as recreational areas for use by other than those residents residing on the lot in question is expressly prohibited.
- D. Placement, Design, and Height of Structures:
  - 1. Placement of Structures on Lots: When more than one setback applied to a site, structures and facilities shall be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located

in a shore impact zone or in a bluff impact zone. Subject to other more restrictive limitations as may be imposed by this Ordinance, structures shall be located a follows:

- a. Additional Structure Setbacks: The following additional structure setbacks apply, regardless of the classification of the water body.

<u>Setback From:</u>	<u>Setback (in feet)</u>
(1) Top of bluff	30
(2) Unplatted cemetery	50
(3) Right-of-way line of federal, state, or county highway.	30
(4) Right –of-way line of street , or other roads or streets not classified.	(Subject to individual of town road, public district requirements)

- b. Bluff Impact Zones: Structures and accessory facilities, except stairways and landings, shall not be placed within bluff impact zones.
- c. Uses Without Water-Oriented Needs: Uses without water-oriented needs shall be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, shall either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

2. Design Criteria for Structures:

- a. High Water Elevations: Structures shall be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed shall be determined as follows:
  - (1) For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher.
  - (2) For rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data is not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to

determine effects of proposed construction upon flood stages and flood lows and to establish a flood protection elevation. Under all three approaches, technical evaluations shall be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined shall be used for placing structures and other facilities;

- (3) Water-oriented accessory structures may have the lowest floor placed lower than the elevation determined if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

b. Water-Oriented Accessory Structures: Subject to other more restrictive limitations which may be imposed by this Ordinance, each lot may have one water-oriented accessory structure not meeting the normal structure setback in Subd. 64.08, 64.09 and 64.10 of this Ordinance if the water-oriented accessory structure complies with the following provisions:

- (1) The structure or facility shall not exceed ten (10) feet in height, exclusive of safety rails, and cannot occupy an area greater than two hundred fifty (250) square feet. Detached decks shall not exceed eight feet above grade at any point;
- (2) The setback of the structure or facility from the ordinary high water level shall be at least ten (10) feet;
- (3) The structure or facility shall be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;
- (4) The roof may be used as a deck with safety rails, but shall not be enclosed or used as a storage area;
- (5) The structure or facility shall not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and
- (6) As an alternative for general development and recreational development water bodies, water-oriented accessory structures used solely for watercraft storage, and including storage of related boating and water-oriented supporting equipment, may occupy an area up to four hundred (400) square feet, provided the maximum width of the

structure is twenty (20) feet as measured parallel to the configuration of the shoreline.

- c. **Stairways, Lifts and Landings:** Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Subject to other more restrictive limitations which may be imposed by this Ordinance, stairways and lifts shall meet the following design requirements:
- (1) Stairways and lifts shall not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, and public open space recreational properties;
  - (2) Landings for stairways and lifts on residential lots shall not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet may be used for commercial properties, and public open space recreational properties;
  - (3) Canopies or roofs shall not be allowed on stairways, lifts, or landings;
  - (4) Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
  - (5) Stairways, lifts, and landings shall be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and
  - (6) Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (a) to (e) shall be complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.
- d. **Significant Historic/Archeological Sites:** No structure may be placed on a significant historic and/or archeological site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.
- e. **Steep Slopes:** The Zoning Administrator shall evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions shall be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other

facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

E. Shoreland Alterations: Alterations of vegetation and topography shall be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic value, prevent bank slumping, and protect fish and wildlife habitat.

1. Vegetation Alterations:

a. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Subd. 64.11.F of this Ordinance shall be exempt from the vegetation alteration standards that follow.

b. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Subd. 64.11.H of this Ordinance may be allowed subject to the following standards:

(1) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes shall not be allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan may be developed and approved by the Soil and Water Conservation District in which the property is located.

(2) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees may be allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:

(a) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, shall not be substantially reduced;

(b) Along rivers, existing shading of water surfaces shall be preserved; and

(c) The above provisions shall not be applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

2. Topographical Alterations/Grading and Filling:

a. Subject to other more restrictive limitations which may be imposed by this

Ordinance, grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validity issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this section shall be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.

- b. Public roads and parking areas as regulated by Subd. 64.11.F of this Ordinance.
- c. Notwithstanding items a and b above, a grading and filling permit shall be required for:
  - (1) The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
  - (2) The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.
- d. The following considerations and conditions shall be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
  - (1) Grading or filling in any Type 2, 3, 4, 5, 6, 7, or 8 wetland shall be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland:
    - (a) Sediment and pollution trapping and retention;
    - (b) Storage of surface runoff to prevent or reduce flood damage;
    - (c) Fish and wildlife habitat;
    - (d) Recreational use;
    - (e) Shoreline or bank stabilization; and
    - (f) Noteworthiness, including special qualities such a historic significance, critical habitat for endangered plants and animals, or others.

\*This evaluation shall also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant shall be so advised.

- (2) Alterations shall be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
  - (3) Mulches or similar materials shall be used, where necessary, for temporary bare soil coverage, and permanent vegetation cover shall be established as soon as possible.
  - (4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature shall be used;
  - (5) Altered areas shall be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
  - (6) Fill or excavated material shall not be placed in a manner that creates an unstable slope;
  - (7) Plans to place fill or excavated material on steep slopes shall be reviewed by the City Engineer for continued slope stability and shall not create finished slopes of 30 percent or greater. This provision shall not apply to any retaining wall;
  - (8) Fill or excavated material shall not be placed in bluff impact zones;
  - (9) Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner of the Department of Natural Resources under Minnesota Statutes, Section 103G.245.
  - (10) Alterations of topography shall only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
  - (11) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, may be permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
- e. Connections to Public Waters: Excavations where the intended purpose is connection to a public water, such boat slips, canals, lagoons, and harbors, shall be controlled by local shoreland controls. Permission for excavations may be given only after the Commissioner of the Department of Natural Resources has approved the proposed connection to public waters.

F. Placement and Design of Streets, Driveways, and Parking Areas: Subject to other more restrictive limitations which may be imposed by this Ordinance, the following standards shall apply in regard to roadway, driveway, and parking area placement and design within the Shoreland Overlay District of St. Augusta.

1. Public streets and private roads and parking areas shall be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation shall be provided by a qualified individual that all streets and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.
2. Streets, driveways, and parking areas shall meet structure setbacks and shall not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and shall be designed to minimize adverse impacts.
3. Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this sub-part are met. For private facilities, the grading and filling provisions of Subd. 64.11.E of this Ordinance shall be met.

G. Storm Water Management: Subject to other more restrictive limitations which may be imposed by this Ordinance or the City Code, the following general and specific standards shall apply in regard to storm water management within the Shoreland Overlay District of St. Augusta:

1. General Standards:
  - a. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces shall be used to convey, store, filter, and retain storm water runoff before discharge to public waters.
  - b. Development shall be planned and conducted in a manner that shall minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas shall be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
  - c. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle storm water runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference shall be given to designs using surface

drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

2. Specific Standards:

- a. Impervious surface coverage of lots shall not exceed twenty-five (25) percent of the lot area.
- b. When constructed facilities are used for storm water management, documentation shall be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
- c. New constructed storm water outfalls to public waters shall provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

H. Special Provisions for Commercial, Industrial, Public/ Semipublic, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat:

1. Standards for Commercial, Industrial, Public and Semipublic Uses:

- a. Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Subject to other more restrictive limitations which may be imposed by this Ordinance, those uses with water-oriented needs shall meet the following standards:
  - (1) In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this Ordinance, the uses shall be designed to incorporate topographic and vegetative screening of parking areas and structures;
  - (2) Uses that require short-term watercraft mooring for patrons shall centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and
  - (3) Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
    - (a) No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the Zoning

Administrator;

- (b) Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They shall only convey the location and name of the establishment and the general types of goods or services available. The signs shall not contain other detailed information such as product brands and prices, shall not be located higher than ten feet above the ground, and shall not exceed thirty-two (32) square feet in size. If illuminated by artificial lights, the lights shall be shielded or directed to prevent illumination out across public waters; and
  - (c) Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.
- b. Uses without water-oriented needs shall be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, shall either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

## 2. Agriculture Use Standards:

- a. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting may be permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States soil Conservation Service, as provided by a qualified individual or agency.
- b. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.
- c. Animal feed lots shall meet the requirements of this Ordinance, as well as the following standards:
  - (1) New feedlots shall not be located in the shoreland of watercourses or in bluff impact zones and shall meet a minimum setback of 300 feet from the ordinary high water level of all public waters basins; and

- (2) Modifications or expansions to existing feedlots that are located within 300 feet of the ordinary high water level or within a bluff impact zone may be allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.
  3. Forest Management Standards: The harvesting of timber and associated reforestation shall be conducted consistent with the provisions of the Minnesota Non-point Source Pollution Assessment-Forestry and the provisions of Water Quality in Forest Management “Best Management Practices in Minnesota”.
  4. Extractive Use Standards:
    - a. Site Development and Restoration Plan: An extractive use site development and restoration plan shall be developed, approved, and followed over the course of operation of the site. The plan shall address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and shall clearly explain how the site will be rehabilitated after extractive activities end.
    - b. Setbacks for Processing Machinery: Processing machinery shall be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.
  5. Mining of Metallic Minerals and Peat: Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51, shall be a permitted use provided the provisions of Minnesota Statutes, Sections 93.44 to 93.51 are satisfied.
- I. Water Supply and Sewage Treatment:
    1. Water Supply: Any public or private supply of water for domestic purposes shall meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

Private wells shall be located, constructed, maintained, and sealed in accordance with, or in a more thorough manner, than the water well construction code of the Minnesota Department of Health.
    2. Sewage Treatment: Any premises used for human occupancy shall be provided with an adequate method of sewage treatment, as follows:
      - a. Publicly-owned sewer systems shall be used where available.
      - b. All private sewage treatment systems shall meet or exceed the Minnesota

Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted by reference and declared to be a part of this Ordinance.

- c. On-site sewage treatment systems shall be set back from the ordinary high water level in accordance with the setbacks contained in this Section.
- d. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in subitems (1) - (4). If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

Evaluation criteria.

- (1) Depth to the highest known or calculated ground water table or bedrock;
  - (2) Soil conditions, properties, and permeability;
  - (3) Slope;
  - (4) The existence of lowlands, local surface depressions, and rock outcrops.
- e. Non-conforming sewage treatment systems shall be regulated and upgraded in accordance with Subd. 64.12.C of this Ordinance.

**64.12: NON-CONFORMITIES:** All legally established non-conformities as of the date of this Ordinance may continue, but they shall be managed according to applicable state statutes and Section 14 of this Ordinance for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards shall also apply to shoreland areas;

A. Construction and Non-conforming Lots of Records:

- 1. Lots of record in the Office of the Stearns County Recorder on the date of enactment of local shoreland controls that do not meet the requirements of this Section may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this Ordinance are met.

2. A variance from setback requirements shall be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
3. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of this Section, the lot shall not be considered as a separate parcel of land for the purposes of sale or development. The lot shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of this Ordinance to the extent possible.

**B. Additions/Expansions to Non-conforming Structures:**

1. All additions or expansions to the outside dimensions of an existing non-conforming structure shall meet the setback, height, and other requirements of this Section. Any deviation from these requirements may be authorized only by a variance pursuant to Section 7 of this Ordinance.
2. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:
  - a. The structure existed on the date the structure setbacks were established;
  - b. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
  - c. The deck encroachment toward the ordinary high water level does not exceed fifteen (15) percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than thirty (30) feet, whichever is more restrictive; and
  - d. The deck is constructed primarily of wood, and is not roofed or screened.

**C. Non-conforming Sewage Treatment Systems:** A sewage treatment system not meeting the requirements of this Section shall be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision a sewage treatment system shall not be considered non-conforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.

**64.13: ADMINISTRATION:**

A. Permits Required:

1. A shoreland permit shall be required for the construction of buildings or building additions (and including such related activities as construction decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Subd. 64.11.E.2 of this Ordinance. Application for a permit shall be made to the City Zoning Administrator on the forms provided. The application shall include the necessary information so that the site's suitability for the intended use can be determined and that a compliant sewage treatment system will be provided.
2. A shoreland permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Subd. 64.12.C. shall be reconstructed or replaced in accordance with the provisions of this Ordinance.

- B. Certificate of Zoning Compliance: The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in this Section. This certificate shall specify that the use of land conforms to the requirements of this Ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this Ordinance and shall be punishable as provided in Section 12 of this Ordinance.

**64.14: VARIANCES:**

- A. Provisions: Variances shall only be granted in accordance with Minnesota Statutes, Chapter 462, as applicable and with Section 7 of this Ordinance. A variance may not circumvent the general purposes and intent of this Ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the Board of Adjustment shall also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
- B. Board of Adjustment: The Board of Adjustment shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Subd. 64.18 below shall also include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
- C. Sewage Treatment Systems: For existing developments, the application for variance shall

clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, shall require reconstruction of a nonconforming sewage treatment system.

**64.15: CONDITIONAL USES:** Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses as found in Section 4 of this Ordinance. The following additional evaluation criteria and conditions shall apply within shoreland areas:

- A. Evaluation Criteria: A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site shall be made to ensure:
  - 1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
  - 2. The visibility of structures and other facilities as viewed from public waters is limited;
  - 3. The site is adequate for water supply and on-site sewage treatment; and
  - 4. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
  
- B. Conditions Attached to Conditional Use Permits: The City of St. Augusta, upon consideration of the criteria listed above and the purposes of this Ordinance, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:
  - 1. Increased setbacks from the ordinary high water level;
  - 2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
  - 3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

**64.16: SUBDIVISION/PLATTING PROVISIONS:**

- A. Land Suitability: Each lot created through subdivision, including planned unit developments authorized under Subd. 64.17 of this Ordinance, shall be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider items specified in the Subdivision Ordinance.
  
- B. Consistency with Other Controls: Subdivisions must conform to the Subdivision Ordinance. A

subdivision shall not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision shall not be approved unless domestic water supply is available and a sewage treatment system consistent with Subd. 64.11.I can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of this Ordinance, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks shall not be approved.

- C. Information Requirements: Sufficient information shall be submitted by the applicant for the community to make a determination of land suitability. The information shall include those items specified in Subd. 10.06 of this Ordinance and at minimum the following:
1. The surface water features required in Minnesota Statutes, Section 505.02, Subdivision 1, to be shown on plats, obtained from United State Geological Survey quadrangle topographic maps or more accurate sources;
  2. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling storm water runoff and erosion, both during and after construction activities;
  3. Location of 100-year floodplain areas and floodway districts from existing adopted maps or data; and
  4. A line or contour representing the ordinary high water level, the “toe” and the “top” of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.
- D. Dedications: When a land or easement dedication is a condition of subdivision approval, the approval shall provide easements over natural drainage or ponding areas for management of storm water and significant wetlands.
- E. Platting: All subdivisions that create five or more lots or parcels that are 2 ½ acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505 and the Subdivision Ordinance. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls are enacted unless the lot is approved as part of a formal subdivision.
- F. Controlled Access or Recreational Lots: Lots intended as controlled accesses to public waters or for recreational use areas for use by non-riparian lots within a subdivision shall meet or exceed the sizing criteria in Subd. 64.08, 64.09 and 64.10 of this Ordinance.

#### **64.17: PLANNED UNIT DEVELOPMENT (PUDs):**

- A. Types of PUDs Permissible: Planned unit developments (PUDs) may be allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. Planned unit developments may be allowed as a district as specified in Section 63 of this Ordinance. The land use districts in which they are an allowable use are identified in the land use district descriptions in Subd. 64-7 of this Ordinance and the official zoning map.
- B. Processing of PUDs: Planned unit developments shall be processed as a conditional use and in conformance with Section 63 of this Ordinance, except that an expansion to an existing commercial PUD involving six or less new dwelling units or sites since the date of this Ordinance was adopted are permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Subd. 64.17.E. Approval shall not occur until the environmental review process (EAW/EIS) is complete.
- C. Application for a PUD: The applicant for a PUD shall submit the documents specified in Subd. 63.03 of this Ordinance prior to final action being taken on the application request.
- D. Site "Suitable Area" Evaluations: Proposed new or expansions to existing planned unit developments shall be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in Subd. 64.17.E.
  - 1. The project parcel shall be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions

	Unsewered (Feet)	Sewered (Feet)
Recreational Development Lakes	267	267
Natural Environment Lakes	400	320
All River Classes	300	300

- 2. The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project shall then be subject to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.
- E. Residential and Commercial PUD Density Evaluation: The procedures for determining the "base" density of a PUD and a density increase multipliers are as follows. Allowable densities may be transferred from any tier to any other tier further from the water body, but shall not be transferred to any other tier closer.

1. Residential PUD “Base” Density Evaluation:
  - a. The suitable area within each tier is divided by the single residential lot size standard for lakes or, for rivers, the single residential lot width standard times the tier depth, unless the local unit of government has specified an alternative minimum lot size for rivers which shall then be used to yield a base density of dwelling units or sites for each tier. Proposed locations and numbers of dwelling units or sites for the residential planned unit developments shall then be compared with the tier, density, and suitability analysis herein and the design criteria in Subd. 64.17.D.
  
2. Commercial PUD “Base” Density Evaluation: The density evaluation as follows pertains to those commercial planned unit developments that provide transient service oriented operations such as hotel/motel accommodations, resorts, recreational vehicles, and camping parks and other like service activities.
  - a. Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes shall not include decks, patios, steps, steps, garages or porches and basements, unless they are habitable space.
  - b. Select the appropriate floor area ratio from the following table:

Commercial Planned Unit Development  
Floor area Ratios\*  
Public Waters Classes

*Average unit floor area (sq.ft.)	Sewered general development lakes; first tier on unsewered general development lakes; urban, agricultural, tributary river segments	Second and additional tiers on unsewered general development lakes; recreational lake; transition and forested river segments	Natural environment lakes and remote river segments
200	.040	.020	.010
300	.048	.024	.012
400	.056	.028	.014
500	.065	.032	.016
600	.072	.038	.019
700	.082	.042	.021
800	.091	.046	.023
900	.099	.050	.025
1,000	.108	.054	.027

1,100	.116	.058	.029
1,200	.125	.064	.032
1,300	.133	.068	.034
1,400	.142	.072	.036
1,500	.150	.075	.038

\*For average unit floor areas less than shown, use the floor area ratios listed for 200 square feet. For areas greater than shown, use the ratios listed for 1,500 square feet. For recreational camping areas, use the ratios listed at 400 square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home, or if unknown, the ratio listed for 1,000 square feet.

- c. Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.
- d. Divide the total floor area by tier computed in Item C above by the average inside living area size determined in Item A above. This yields a base number of dwelling units and sites for each tier.
- e. Proposed locations and numbers of dwelling units or sites for the commercial planned unit development are then compared with the tier, density, design criteria and suitability analysis.

3. Density Increase Multipliers:

- a. Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in Subd. 64.17.E are met or exceeded and the design criteria in Subd. 64.17.F are satisfied. The allowable density increases in Item b below may only be allowed if structure setbacks from the ordinary high water level are increased to at least 50 percent greater than the minimum setback, or the impact on the water body is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the local unit of government and the setback is at least 25 percent greater than the minimum setback.
- b. Allowable dwelling unit or dwelling site density increases for residential or commercial planned unit developments:

Density Evaluation Tiers	Maximum density increase within each tier (percent)
First	50
Second	100
Third	200
Fourth	200
Fifth	200

F. Maintenance and Design Criteria:

1. Maintenance and Administration Requirements:

- a. Before final approval of a planned unit development, adequate provisions shall be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
- b. Open space preservation. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means shall be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protection:
  - (1) Commercial uses prohibited (for residential PUDs);
  - (2) Vegetation and topographic alterations other than routine maintenance prohibited;
  - (3) Construction of additional buildings or storage of vehicles and other materials prohibited; and
  - (4) Uncontrolled beaching of watercraft prohibited.
- c. Development organization and functioning: Unless an equally effective alternative community framework is established, when applicable, all residential planned unit development shall use an owners association with the following features:
  - (1) Membership shall be mandatory for each dwelling unit or site purchaser and any successive purchasers;
  - (2) Each member shall pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites;
  - (3) Assessments shall be adjustable to accommodate changing conditions; and
  - (4) The association shall be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

2. Open Space Requirements: Planned unit developments shall contain open space meeting all of the following criteria:

- a. At least 50 percent of the total project area shall be preserved as open

space;

- b. Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;
  - c. Open space shall include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;
  - d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;
  - e. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;
  - f. Open space shall not include commercial facilities or uses, but may contain water-oriented accessory structures or facilities;
  - g. The appearance of open space areas, including topography, vegetation, and allowable uses, shall be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means; and
  - h. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUDs, at least fifty (50) percent of the shore impact zone area of existing developments or at least seventy (70) percent of the shore impact zone area of new developments shall be preserved in its natural existing state. For commercial PUDs, at least fifty (50) percent of the shore impact zone shall be preserved in its natural state.
3. Erosion Control and Storm Water Management: Erosion control and storm water management plans shall be developed and the PUD shall:
- a. Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. this shall be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques shall be used to minimize erosion impacts on surface water features. Erosion control plans approved by a Soil and Water Conservation District may be required if project size and site physical characteristic warrant; and
  - b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of storm water runoff. Impervious surface coverage

within any tier shall not exceed twenty-five (25) percent of the tier area, except that for commercial PUDs thirty-five (35) percent impervious surface coverage may be allowed in the first tier of general development lakes with an approved storm water management plan and consistency with this Ordinance.

4. Centralization and Design of Facilities: Centralization and design of facilities and structures shall be done according to the following standards:
  - a. Planned unit developments shall be connected to publicly owned water supply and sewer systems, if available. On-site water supply and sewage treatment systems shall be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and this Ordinance. On-site sewage treatment systems shall be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors shall be provided for a replacement soil treatment system for each sewage system;
  - b. Dwelling units or sites shall be clustered into one or more groups and located on suitable areas of the development. They shall be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks from the ordinary high water level shall be increased in accordance with this Ordinance for developments with density increases;
  - c. Shore recreation facilities, including but not limited to swimming areas, docks, and watercraft mooring areas and launching ramps, shall be centralized and located in areas suitable for them. Evaluation of suitability shall include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft shall not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor). Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers;
  - d. Structures, parking areas, and other facilities shall be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening shall be preserved, if existing, or may be required to be provided;
  - e. Accessory structures and facilities, except water oriented accessory structures, shall meet the required principal structure setback and shall be

centralized; and

- f. Water oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Subd. 64.11.D of this Ordinance are centralized.

G. Conversions: The City may allow existing resorts or other land uses and facilities to be converted to residential planned unit developments if all of the following standards are met:

1. Proposed conversions shall be initially evaluated using the same procedures for residential planned unit developments involving all new construction. Inconsistencies between existing features of the development and these standards shall be identified.
2. Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities shall be corrected as part of the conversion or as specified in the conditional use permits.
3. Shore and bluff impact zone deficiencies shall be evaluated and reasonable improvements made as part of the conversion. These improvements shall include, where applicable, the following:
  - a. Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
  - b. Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and
  - c. If existing dwelling units are located in shore or bluff impact zones, conditions are attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.
4. Existing dwelling unit or dwelling site densities that exceed standards in this Ordinance may be allowed to continue but shall not be allowed to be increased, either at the time of conversion or in the future. Efforts shall be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.

**64.18: NOTIFICATIONS TO THE DEPARTMENT OF NATURAL RESOURCES:**

- A. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls shall be sent to the

Commissioner of the Department of Natural Resources or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plans shall include copies of the subdivision/plat.

- B. A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls shall be sent to the Commissioner of the Department of Natural Resources or the Commissioner's designated representative and postmarked within ten days of final action.

## SECTION 65. W, WETLANDS OVERLAY DISTRICT

### Subdivision

- 65.01: Purpose
- 65.02: Scope
- 65.03: District Application
- 65.04: Permitted Uses
- 65.05: Conditional Uses
- 65.06: Exemption Determinations
- 65.07: No-Loss Determinations
- 65.08: Replacement Plan Determinations
- 65.09: Technical Evaluation Panel and Procedures
- 65.10: Appeal of City of St. Augusta Decisions
- 65.11: Compensation
- 65.12: Enforcement Procedures
- 65.13: Mining
- 65.14: Standards and Procedures for Evaluating Wetland Replacement Plans
- 65.15: Standards and Criteria for State Wetland Banking
- 65.16: Calcareous Fens

**65.01: PURPOSE:** The purpose and intent of this Section is to insure that the wetland resources within the City of St. Augusta are protected and conserved. Wetland resources serve to provide food, shelter and habitat for fish and wildlife, store surface runoff and reduce flooding damages, replenish subsurface water supplies, provide outdoor recreation areas and enhance the natural beauty and biodiversity of landscapes within the City. This section incorporates by reference the Wetland Conservation Act of 1991, Laws of Minnesota 1991, chapter 354, as amended by Laws 1993, chapter 175 and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minnesota Rules Chapter 8420, as amended) whose purpose is to:

- A. Achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. Increase the quantity, quality and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. Avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of wetlands; and
- D. Replace wetland values where avoidance of activity is not feasible and prudent. These purposes being consistent with the City's desire to preserve areas containing low lands, marshes, wetlands, drainage areas, water bodies and waterways which are essential to the health, safety and general welfare of the City's residents.

**65.02: SCOPE:** Wetlands must not be drained or filled wholly or partially unless replaced by

restoring or creating wetland areas of at least equal public value. This Section, along with the above mentioned references, shall be utilized by the City to insure the protection of the City's wetland resources.

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

**65.03: DISTRICT APPLICATION:**

- A. All wetlands within the City of St. Augusta are hereby designated as part of the W, Wetlands Overlay District, and the requirements set forth in this Section shall govern development and other activities within these districts.
- B. The W, Wetlands Overlay District shall be applied to and superimposed as an overlay upon all zoning districts as contained herein as existing or amended by the text of this Section. The regulations and requirements imposed by the W, Wetlands Overlay District shall be in addition to those established for districts which jointly apply. Under the joint application of districts, the more restrictive requirements shall apply.
- C. The boundaries of wetlands within the City may be changed by the City Council, Department of Natural Resources, or Army Corps of Engineers, whatever applicable, when it can be demonstrated by registered site survey and topographic work, and hydrologic analysis performed by registered engineer or land surveyor that the established boundaries are incorrect.

**65.04: PERMITTED USES:** Permitted uses within a wetland, and as described in this Section, are subject to guidelines established by the Minnesota Department of Natural Resources and the United States Army Corps of Engineers. Uses within a wetland which are not prohibited by this Section are:

- A. The use of the bed of the wetlands for pasture or cropland during dry period if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands.
- B. The filling of a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.
- C. The control of noxious weeds if the control does not drain or fill the wetland.
- D. Excavation in wetlands if done in a manner such that the wetlands are not drained or filled.

**65.05: CONDITIONAL USES:** Permitting for conditional uses in the W District shall be based upon procedures set forth in and regulated by Chapter 4 of this Ordinance. Conditional use permits shall be subject to the elevation criteria as set forth in Subd. 4.02 of this Ordinance. Subject to other more restrictive limitations which may be imposed by this Section, the uses listed in part B may be allowed in wetlands by conditional use permit subject to the following:

- A. A wetland may not be drained or filled, wholly or partially, unless either the activity meets the exemption criteria stated in part B or unless it is replaced under an approved replacement plan meeting the criteria of Subd. 65.14.C. A wetland activity will be considered exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

These exemptions do not apply to calcareous fens as identified by the commissioner of the Department of Natural Resources.

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

Nonexempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact.

Present and future owners of wetlands drained or filled without replacement under an exemption in part B, subparts 1, 2, 4, 7, 8 and 23, can make no use of the wetland area after it is drained or filled, other than as agricultural land, for ten years after the draining or filling, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). Also, for ten years the wetland may not be restored for replacement credit. At the time of draining or filling, the landowner shall record a notice of these restrictions in the office of the Stearns County Recorder. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the ten-year period expires, the City of St. Augusta as the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

A person conducting an activity in a wetland under an exemption in part B shall ensure that:

1. Appropriate erosion control measures are taken to prevent sedimentation of the water;
2. The activity does not block fish activity in a watercourse; and
3. The activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource

protection requirements established under Minnesota Statutes, chapter 103H.

B. A request for an exemption shall be required of a prospective applicant on a form provided by the City of St. Augusta. Exemptions which qualify for City of St. Augusta review are as follows:

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

Documentation, such as Agricultural Stabilization and Conservation Service aerial photographs, Agricultural Stabilization and Conservation Service form 578 or equivalent, United States Department of Agriculture records, or affidavit of landowner is required to accompany the application for exemption and be furnished by the applicant.

Set aside land used for this exemption must be wetland Types 1 and 2.

2. Activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States code, title 16, section 3831, that:
  - a. Was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and
  - b. Has not been restored with assistance from a public or private wetland restoration program.

Federal documentation that the wetland is or has been enrolled in the federal conservation reserve program is required to accompany the application for exemption and be furnished by the applicant. The landowner must also meet the same requirements of subpart 2 for the exemption stated in Minnesota Statutes, section 103G.2241, subdivision 1, clause (1), except that the years required are at least six of the ten years preceding the year of enrollment in the conservation reserve program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland.

3. Activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained. This exemption allows maintenance which fills wetlands that have been in existence for more than 20 years when the wetlands are located within the right-of-way acreage of the ditch or within a one rod width on either side of the top of the

ditch, whichever is greater, and the filling is limited to the side casting of spoil materials resulting from the maintenance and the spoil deposition area is permanently seeded into grass after maintenance activities are completed.

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

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

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

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

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

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

The City of St. Augusta shall certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

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

This exemption is for nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 25 issued under Code of Federal Regulations, title 33, section 330.5. The City of St. Augusta shall certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new street does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

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

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

The wetland landowner must provide the same proofs required by the first paragraph of exemption 1, for lands abutting at least 50 percent of the wetland's boundary. The City of St. Augusta may seek the advice of the technical panel as to whether the wetland is a type 1 wetland not of the bottomland hardwood type.

The type of the wetland will be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, the type of the wetland can be determined from the Cowardin (et al. 1979) classification system: PEM1A, PEMA, PEMJ, and PEM1J may be considered to be a type 1 wetland.

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

8. Activities in a type 2 wetland that is two acres in size or less located on agricultural land.

The wetland landowner must provide the same material as required from the landowner by exemption 7. The City of St. Augusta may seek the advice of the technical panel as to whether the wetland is a type 2 wetland, two acres or less in size.

The wetland size is the area within its boundary. The boundary must be determined according to the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The type of the wetland must be determined according to United State Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, type can be determined from the Cowardin (et al. 1979) classification system: PEM1B and PEMB may be considered to be a type 2 wetland.

This exemption applies if the wetland is a type 2 wetland, or is a combination of

types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

9. Activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

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

10. Activities in a wetland created solely as a result of:

- a. Beaver dam construction;
- b. Blockage of culverts through roadways maintained by a public or private entity;
- c. Actions by public entities that were taken for a purpose other than creating the wetland; or
- d. Any combination of a. to c.

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

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

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

11. Placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, or natural or manufactured gas, electricity, telephone, or radio service or communications if:

- a. The impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
- b. The proposed project significantly modifies or alters less than one-half acre

of wetlands.

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

For maintenance, repair, and replacement, the City of St. Augusta may issue a seasonal or annual exemption certification or the utility may proceed without City of St. Augusta certification if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the City of St. Augusta after the emergency work has been completed.

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

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

The City of St. Augusta may issue a seasonal or annual exemption certification or the utility may proceed if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the City of St. Augusta after the emergency work has been completed.

13. Alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way. This exemption includes construction activities.

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

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

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

This exemption is the same as exemption 14 except that it is for permanent forest roads which are roads constructed for the primary purpose of providing access for

the conduct of silvicultural activities.

16. Activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland outside of the existing right-of-way.

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

17. Emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland.

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

18. Normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland.

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

19. Duck blinds: This exemption allows floating duck blinds and blinds on poles or pilings. This exemption does not allow fill other than poles or pilings.

20. Aquiculture activities including pond excavation and associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including buildings.

21. Wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. Documentation demonstrating that the exemption applies may include showing possession of a United States Army Corps of Engineers permit for the project.

22. Normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices.

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

23. Activities in a wetland that is on agricultural land annually enrolled in the federal

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

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

24. Development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before \_\_\_\_\_. Plat approval must be preliminary as approved by the City of St. Augusta.

Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided. For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

25. Activities that result in the draining or filling of less than 400 square feet of wetlands. This exemption applies if the total wetland loss by draining and filling will be less than 400 square feet per year per landowner, and the cumulative impact by all persons on a wetland over time without replacement after January 1, 1992, does not exceed five percent of the wetland's area.

**65.06: EXEMPTION DETERMINATIONS:** A landowner intending to drain or fill a wetland without replacement, claiming exemption, must apply for a conditional use permit from the City of St. Augusta before beginning drainage or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions contained herein and Minnesota Statutes, section 103G.2372. The City of St. Augusta will keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

The City of St. Augusta will offer exemption certificates as part of the wetland program within their jurisdiction.

The landowner applying for exemption is responsible for submitting the proof necessary to show

qualification for the particular exemption claimed.

The City of St. Augusta will place the decision authority for exemption applications with the City's Engineer.

The City Engineer's decision shall be based on the exemptions standards in Subd. 65.05. If the decision requires a finding of wetland size or type, the City's Engineer may seek the advice of the technical panel.

A landowner draining or filling a wetland under an exemption shall ensure that appropriate erosion control measures are taken to prevent sedimentation of the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

**65.07: NO- LOSS DETERMINATIONS:** A landowner unsure if proposed work will result in a loss of wetland may apply by conditional use permit application to the City of St. Augusta for a determination. A landowner who does not request a determination may be subject to the enforcement provisions contained herein and Minnesota Statutes, section 103G.2372. The City of St. Augusta will keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

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

The City of St. Augusta will place the decision authority for no-loss applications with the City's engineer.

The City's Engineer shall issue a no-loss certificate if the landowner requests and if either:

- A. The work will not drain or fill a wetland;
- B. Water level management activities will not result in the conversion of a wetland to another land use;
- C. The activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program;  
or
- D. The activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

**65.08: REPLACEMENT PLAN DETERMINATIONS:** A landowner intending to drain or fill a

wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the City of St. Augusta before beginning draining or filling the wetland. A person who does not do so is subject to the enforcement provisions in Subd. 65.12 and Minnesota Statutes, section 103G.2372. An application for approval of a replacement plan may be obtained from the City of St. Augusta.

The City of St. Augusta will, within ten days of receipt of the application, mail a copy of the application and an invitation to submit comments to:

- A. The Board of Water and Resources, who will subsequently publish the application in the Environmental Quality Board Monitor.
- B. Members of the public who have requested a copy.
- C. The Soil and Water Conservation District.
- D. The watershed district or water management organization, if there is one.
- E. The Stearns County board of water and soil resources.
- F. Mayors of the cities within the watershed.
- G. The commissioners of agriculture and natural resources.

At the same time, the City of St. Augusta will publish notice of the application with an invitation to comment in a general circulation newspaper in the area affected.

The City of St. Augusta will not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice, publication in the Environmental Quality Board Monitor, when required, or publication in the newspaper, whichever is later. The City of St. Augusta decision will not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, when required, and mailed to the same list specified above for notice of the application and to the applicant. The mailing to the applicant will be by registered mail and will advise that the decision is not effective for 30 days, and is stayed if it is appealed.

Publication in the Environmental Quality Board Monitor of replacement plan applications and decisions will be performed, except for the fill activities described in the next paragraph, when the City of St. Augusta will publish a general notice in the Environmental Quality Board Monitor that it will not be publishing notice of such individual activities, but will instead provide mailed notice of each project to anyone asking to be put on the City of St. Augusta's mailing list for such projects. This notice will be published not less often than once every year. The notice will advise how persons may submit their names and addresses to be put on the mailing list.

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

The City of St. Augusta's decision shall be based on the replacement standards contained in this Section and on the technical determination of the technical evaluation panel concerning the public values, location, size, and type of the wetland being altered. The City of St. Augusta will consider the recommendation of the technical evaluation panel to approve, modify, or reject the proposed replacement plan.

For wetland replacement plans involving both the City of St. Augusta and one or more other local government units, approval of all local government units involved must be obtained before the project may proceed.

**65.09: TECHNICAL EVALUATION PANEL AND PROCEDURES:** The City of St. Augusta will form, by resolution, a technical evaluation panel consisting of three persons:

- A. A technical professional employee of the Board of Water and Soil Resources.
- B. A technical professional employee of the Stearns County Soil and Water Conservation District.
- C. A technical professional with expertise in water resources management appointed by the City of St. Augusta.

The member appointed by the City of St. Augusta will act as the contact person and coordinator for the panel. Two members of the technical review panel will be knowledgeable and trained in applying methodologies of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989), and evaluation of public values. The technical evaluation panel reserves the right to invite additional wetland experts to help the panel in its work.

The panel will make technical determinations on questions of public values, location, size, and type for replacement plans if requested to do so by the City of St. Augusta, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans and recommend to the City of St. Augusta either approval, approval with changes or conditions, or rejection. The panel will make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

The panel, or one of its members when so authorized by all of the members, may assist the City of St. Augusta in making wetland size and type determinations when asked to do so by the City of St. Augusta as part of making an exemption or no-loss determination.

If requested by the City of St. Augusta, the landowner, or a member of the technical evaluation panel, the panel will answer technical questions or participate in the monitoring of replacement wetlands and will similarly participate in the monitoring of banked wetlands.

**65.10: APPEAL OF CITY OF ST. AUGUSTA DECISIONS.**

- A. Appeal of replacement plan decisions: The decision of the City of St. Augusta to approve, approve with conditions, or reject a replacement plan, becomes final if not appealed to the Board of Water and Soils Resources within 30 days after the date on which the decision is mailed to those required to receive notice of the decision.

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

Appeal is effective upon mailing of the notice of appeal to the Board of Water and Soils Resources with an affidavit that a copy of the notice of appeal has been mailed to the City of St. Augusta. The City of St. Augusta shall then mail a copy of the notice of the appeal to all those to whom it was required by this Section to mail a copy of the notice of decision.

B. Appeal of exemption and no-loss determinations:

1. An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all City of St. Augusta administrative appeal options.
2. Those required to receive notice of replacement plan decisions as provided for in Subd. 65.08 may petition the board to hear an appeal from an exemption or no-loss determination. The board will grant the petition unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board will also give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the City of St. Augusta or landowner or petitioner, and the consequences of the delay.
3. The determination of the City of St. Augusta on the exemption or no-loss application is final unless an appeal or petition is mailed to the board within 30 days after the decision is mailed to the landowner. The appeal or petition must be accompanied by an affidavit that a copy has been sent to the City of St. Augusta and to the landowner if it is a petition.

C. Board of Soil and Water Resources Procedures: The appeal will be decided by the board within 60 days after receiving the notice of appeal and affidavit or granting the petition. Parties to the appeal will be the appellant, the City of St. Augusta and in the case of replacement plan appeals, all those required to receive notice of the City of St. Augusta's decision.

Upon appeal, the City of St. Augusta will forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing will be given by the board to the parties. The parties may present written and oral argument. When the City of St. Augusta has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record. Otherwise, it may take additional evidence, or remand the matter.

The board will affirm the City of St. Augusta's decision if the City of St. Augusta's findings of fact are not clearly erroneous; if the City of St. Augusta correctly applied the law to the facts, including this Section; and if the City of St. Augusta made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

**65.11: COMPENSATION:** Replacement plan applicants who have completed the City of St. Augusta process and the Board of Water and Soil Resources appeal process and the plan has not been approved as submitted, may apply to the Board of Water and Soil Resources for compensation under Minnesota Statutes, section 103G.237.

**65.12: ENFORCEMENT PROCEDURES:**

- A. Enforcing Authorities: The commissioner of the Department of Natural Resources, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.
  
- B. Cease and Desist Orders: Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination and is being or has been conducted without prior approval of a replacement plan by the City of St. Augusta.

A cease and desist order will not be issued if the landowner has a valid certificate of exemption or no-loss from the City of St. Augusta or has evidence to support an exemption. Otherwise:

1. The enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;
  
2. The order may be withheld to give the landowner time to produce the evidence required by the City of St. Augusta to the enforcement authority of qualification for an exemption or no-loss determination; or
  
3. A cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority may exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.

The enforcement authority will advise the landowner that the landowner's application, if any, for an exemption or no-loss determination, should be made immediately to the City of St. Augusta and that whatever drain and fill work the landowner has done may require restoration according to a restoration plan designed by the soil and water conservation district, if the application for exemption or no-loss determination is denied.

The enforcement authority issuing a cease and desist order will submit copies to the soil and water conservation district, City of St. Augusta, and department.

If an application for an exemption or no-loss determination is triggered by a cease and desist order, the City of St. Augusta or the technical evaluation panel will make a decision

within three weeks from the date of application. The City of St. Augusta or the technical evaluation panel will review evidence of exemption or no-loss produced by the landowner, inspect the site if necessary, and determine:

1. If the area in question is a wetland; and
2. If the activity qualifies for an exemption or no-loss determination.

In cases where the cease and desist order has been issued to the City of St. Augusta, the determination of exemption or no-loss will be made by the Board of Soil and Water Resources.

If the decision is that the activity is exempt or results in a no-loss determination, the decision maker will issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the department, and the landowner.

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

- C. Restoration and replacement orders: The enforcement authority will issue a restoration order or replacement order when the drain or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the City of St. Augusta denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the City of St. Augusta for restoring the site to its prealtered condition, unless the soil and water conservation district person concludes that restoration is impossible. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner.

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

1. Restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or
2. Submit a replacement plan to the City of St. Augusta.

The order will state that it will be canceled when the landowner obtains a certificate of exemption or no-loss from the City of St. Augusta or a certificate that restoration has been completed according to an approved restoration plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order.

If the soil and water conservation district determines that restoration will not restore all the

loss caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, as determined by the soil and water conservation district. The order will direct the landowner to obtain replacement plan approval from the City of St. Augusta. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order will tell the landowner that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district will determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan process in this Section unless the court orders otherwise.

**65.13: MINING:** Wetlands may not be drained or filled as part of a project for which a permit to mine is required by Minnesota Statutes, section 93.481 or by the City of St. Augusta City Code. Draining or filling of wetlands created by pits, stockpiles or tailing basins by actions whose purpose was not to create the wetland may be exempt. The landowner must contact the City of St. Augusta to verify this exemption.

#### **65.14: STANDARDS AND PROCEDURES FOR EVALUATING WETLAND REPLACEMENT PLANS:**

A. Procedures:

1. General: No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the City Council of the City of St. Augusta consistent with this Section and provided that the activity is not prohibited under the special considerations provisions in Subd. 65.14.D.9.
2. Preapplication conference and site visit: Before preparation of a wetland value replacement plan, the landowner must meet with the City of St. Augusta for a preapplication conference and site visit. A landowner may submit the sequencing information required in Subd. 65.14.B and request a determination of compliance with the sequencing requirements from the City of St. Augusta before preparing a replacement plan.
3. Evaluation: Technical questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel. Wetland boundaries must be determined using the methodologies in the federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989).

Wetland type must be identified according to Cowardin, et al. 1979, Classification of Wetlands and Deepwater Habitats of the United States and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical evaluation panel will provide its determinations to the City of St. Augusta for consideration.

B. Sequencing:

1. Requirement: Except for wetlands located in cultivated fields that are subject to Subd. 65.14.B.8, and calcareous fens that are subject to Subd. 65.14.B.9, the City of St. Augusta will not consider or approve a wetland replacement plan unless the City of St. Augusta finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order or priority:
  - a. avoids direct or indirect impacts to the wetland that may destroy or diminish the wetland under the criteria in Subd. 65.14.B.3;
  - b. minimizes the impact to the wetland by limiting the degree or magnitude of the wetland activity and its implementation under the criteria in Subd. 65.14.B.4;
  - c. rectifies the impact by repairing, rehabilitating, or restoring the affected wetland under the criteria in Subd. 65.14.B.6;
  - d. reduces or eliminates the impact to the wetland over time by preservation and maintenance operations under the criteria in Subd. 65.14.B.6; and
  - e. replaces unavoidable impacts to the wetland by restoring or creating substitute wetland areas having equal or greater public value as provided for in this Section.
2. Application options: An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the City of St. Augusta before preparing a replacement plan. The City of St. Augusta may request additional information needed to make a determination. For projects impacting wetland areas less than 0.1 acres, the City of St. Augusta may provide an on-site sequencing determination without written documentation from the applicant.
3. Determination of impact avoidance:
  - a. Avoidance will be required when indicated by special considerations as stated in this Section.
  - b. Wetland dependence determination:

- (i) Based on information provided by the applicant, the City of St. Augusta will determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features, functions, or values are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.
- (ii) A project that has been determined by the City of St. Augusta to be wetland dependent is exempt from the analysis of avoidance alternatives in Subd. 65.14.B.3.c.

c. Alternative analysis:

- (i) The applicant shall provide the City of St. Augusta with documentation describing at least two alternatives in addition to the proposed project, one of which may be the no-build alternative, that would avoid impacts to wetlands. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the City of St. Augusta as good faith efforts, or the City of St. Augusta will require the applicant to redraft them for reconsideration.
- (ii) The City of St. Augusta will determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative will be considered feasible and prudent if it is capable of being done from an engineering point of view, is in accordance with accepted engineering standards and practices, is consistent with reasonable requirements of the public health, safety, and welfare, is an environmentally preferable alternative based on a review of social, economic, and environmental impacts, and would create no truly unusual problems. The City of St. Augusta will consider the following in evaluating alternatives as applicable:
  - (a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site will not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;
  - (b) the general suitability of alternate sites considered by the applicant;
  - (c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

- (d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including request for conditional use permits, variances, or planned unit developments; and
  - (e) the physical, economic and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.
- (iii) If the City of St. Augusta determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it will deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the City of St. Augusta will evaluate the replacement plan for compliance with Subd. 65.14.B.4 to Subd. 65.14.B.6.

4. Determination of impact minimization:

- a. The applicant shall demonstrate to the City of St. Augusta satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the City of St. Augusta will consider:
- (i) the spatial requirements of the project;
  - (ii) the location of existing structural or natural features that may dictate the placement or configuration of the project;
  - (iii) the purpose of the project and how the purpose relates to placement, configuration, or density;
  - (iv) the sensitivity of the site design to the natural features of the site, including topography, hydrology and existing vegetation;
  - (v) the value, function, and spatial distribution of the wetlands on the site;
  - (vi) individual and cumulative impacts; and
  - (vii) an applicant's efforts to:
    - (a) modify the size, scope, configuration, or density of the project;
    - (b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and
    - (c) otherwise minimize impacts.

- b. If the City of St. Augusta finds that an applicant has not complied with the requirements to minimize wetland impacts, the City of St. Augusta will list, in writing, its objections to the project. If, within 30 days, the applicant does not withdraw the project proposal or indicate intent to submit an amended project proposal satisfying the City of St. Augusta's objections, the statement of objections shall constitute a denial.
- 5. Determination of impact rectification: Temporary impacts to a wetland must be rectified by repairing, rehabilitating, or restoring the affected wetland:
  - a. Activities may qualify for a no-loss determination in Subd. 65.07 by meeting all of the following conditions:
    - (i) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, and hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject functions and values are restored;
    - (ii) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity; and
    - (iii) the party responsible for the activity provides a performance bond to the City of St. Augusta for an amount sufficient to cover the estimated cost to restore the wetland to preproject conditions. The City of St. Augusta will return the performance bond to the responsible party upon a determination by the City of St. Augusta that the conditions in this item and item b. have been met.
  - b. An applicant shall be granted a no-loss determination under the criteria in item a. once in a ten-year period for a particular site within a wetland, except that repairs to the original project shall be allowed under the no-loss determination, if the City of St. Augusta determines the request to be necessary and reasonable.
  - c. Wetland impacts that do not qualify for a no-loss determination according to the criteria in item a. are subject to replacement under the criteria in 65.14.C to I.
- 6. Determination of reduction or elimination of impacts over time. After an activity is completed, further wetland impacts from the draining or filling must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions and values. The City of St. Augusta will require applicants to implement best management practices to protect wetland functions and values.
- 7. Unavoidable impacts: Unavoidable wetland impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be replaced according to

65.14.B to I.

8. Wetlands on cultivated fields: If the wetland is located on a cultivated field, replacement must be accomplished through restoration without regard to the priority order in 65.14.B.1. A wetland drained or filled under this provision must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for Wright County.
9. Calcareous fens: Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any action, unless the commissioner, under an approved management plan, decides some alteration is necessary, as provided in this Section.

C. Replacement Plan Components:

On an application form provided by the City of St. Augusta and with needed attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in Subd. 65.15, items 2 and 4 do not apply; instead the applicant shall submit the credit transfer form prescribed in Subd. 65.15.E.2.e:

1. Organizational information, including the following:
  - a. the post office address of the applicant;
  - b. for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;
  - c. managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;
2. Either an affidavit confirming that the wetland values will be replaced before or concurrent with the actual draining or filling of a wetland or an irrevocable bank letter of credit to guarantee the successful completion of the wetland value replacement;
3. For the impacted wetland:
  - a. a recent aerial photograph or accurate map of the impacted wetland area;
  - b. the location of the wetland, including the county, watershed name or number, and public land survey coordinate of approximate wetland center;
  - c. the size of the wetland, in acres or square feet;
  - d. the type of wetland using United States Fish and Wildlife Service Circular No.

39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979);

- e. a list of the dominant vegetation in the impacted wetland area, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattails, and 30 percent sedge;
- f. a soils map of the site showing soil type and substrate, where available;
- g. the size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;
- h. the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;
- i. a map, photograph, or written description of the land use of the immediate watershed within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;
- j. the nature of the proposed project, its areal extent, and the impact on the wetland must be shown in sufficient detail to allow the City of St. Augusta to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in Subd. 65.14.B if applicable;
- k. evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgement of the covenant provisions in Subd. 65.14.C.4.f by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan;
- l. a list of all other local, state, and federal permits and approvals required for the activity; and
- m. other information considered necessary by the City of St. Augusta for evaluation of the activity;

4. For the replacement wetland Subd. 65.14.C.3, subitems a. to i. and k. to m., and:
  - a. an explanation of the size and type of wetland that will result from successful completion of the replacement plan;
  - b. scale drawings showing plan and profile views of the replacement wetland and fixed photo-reference points for monitoring purposes. Photo-reference points should include views of any control structures and enough additional points to adequately depict the entire project;
  - c. how the replacement wetland shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;
  - d. for created wetlands only, additional soils information sufficient to determine the capability of the site to produce and maintain wetland characteristics;
  - e. a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;
  - f. a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:
    - (i) the location of the replacement wetland;
    - (ii) that the wetland is subject to the act;
    - (iii) that the fee title owner is responsible for the costs of repairs or reconstruction, if necessary, or for replacement costs;
    - (iv) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;
    - (v) that costs of title review and document recording is the responsibility of the fee title owner; and
    - (vi) that the City of St. Augusta or board can require necessary repairs or reconstruction work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;
  - g. a statement that the replacement wetland was not previously restored or created under a prior approved replacement plan;
  - h. a statement that the replacement wetland was not drained or filled under an

exemption during the previous ten years;

- i. a statement that the replacement wetland was not restored with financial assistance from public conservation programs;
- j. a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the City of St. Augusta in writing that the restored wetland may be considered for replacement;
- k. a plan for monitoring the success of the replacement plan in meeting the project goal Subd. 65.16.D.1, and as specified in this Section; and
- l. other information considered necessary for evaluation of the project by the City of St. Augusta.

- 5. The applicant must provide information known to the applicant or readily available concerning the special considerations criteria in Subd. 65.14.O.9.

D. Replacement Plan Evaluation Criteria:

- 1. Sequencing: Prior to the City of St. Augusta considering or approving a replacement plan, the applicant must have exhausted all possibilities to avoid and minimize adverse wetland impacts according to sequencing in Subd. 65.14.B.

The applicant must demonstrate to the City of St. Augusta that the replacement plan complies with this part and Subd. 65.14.E.

- 2. Type of replacement: The order of preference for the method of replacement, from most preferred to least preferred, is project-specific restoration, project-specific creation, then wetland banking. Modification or conversion of nondegraded wetlands from one wetland type to another, for example by impoundment of additional water, does not constitute adequate replacement.

Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

- 3. Timing of replacement: Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit is submitted to the City of St. Augusta to guarantee successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the City of St. Augusta of the information required in Subd. 65.14.C and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or

creation.

4. Location of replacement wetlands: Replacement wetlands must be located within the same watershed or county as the impacted wetlands.
5. Statewide replacement for public transportation projects: Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system or under this Section.
6. Size of replacement wetlands: Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. For a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values. A review by the City of St. Augusta will determine the actual required replacement ratios. Future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the Stearns County recorder.
7. Carbon balance: When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally invading vegetation established within three growing seasons.
8. Ecological consistency: Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.
9. Special considerations: The factors in items a. to i., when identified as being applicable to an impact site or a replacement site, will be considered by the City of St. Augusta in the review of replacement plans.
  - a. Federal or state-listed endangered species: A replacement plan for activities that involve sites where federal or state-listed endangered species are known to be present will not be approved if it is determined that the proposed activities will constitute a taking of those listed species under Minnesota Statutes, section 84.0895. Limited information on the presence of listed species at a particular site is available from the department's natural heritage program. Activities that involve taking listed species are subject to Minnesota Statutes, section 84.0895.

- b. Rare natural communities: A replacement plan for activities that involve the modification of a rare natural community as determined by the department's natural heritage program will not be approved if the City of St. Augusta determines that the proposed activities will permanently adversely affect the natural community.
- c. Special fish and wildlife resources: A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource will not be approved. These activities include, but are not limited to:
  - (i) fish passage and spawning areas;
  - (ii) colonial waterbird nesting colonies;
  - (iii) migratory waterfowl concentration areas;
  - (iv) deer wintering areas; and/or
  - (v) wildlife travel corridors.

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

- d. Archaeological or historic sites: A replacement plan for activities that involve the modification of known archaeological or historical sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, will not be approved if the City of St. Augusta determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.
- e. Groundwater sensitivity: A replacement plan for activities will not be approved if the City of St. Augusta determines the activities would have a significant adverse impact on groundwater quality. The publication "Criteria and Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.
- f. Sensitive surface waters: A replacement plan will not be approved if the City of St. Augusta determines the activities will have a significant adverse impact on the water quality of outstanding resource value waters or on trout waters designated by the commissioner.
- g. Education or research use: Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.
- h. Waste disposal sites: The City of St. Augusta will evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

- i. Consistency with other plans: The City of St. Augusta will consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

10. Evaluation of wetland functions and values:

- a. Evaluation options: Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. A replacement wetland should replace the same combination of functions and values provided by the impacted wetland. The evaluation of wetlands shall be performed in accordance with part 8420.540 of the Board of Water and Soil Resources Wetland Conservation Act Rules (August, 1993).

E. Wetland Replacement Standards:

1. General requirements: The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.
2. Specific requirements: The standards in items a. to h. shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.
  - a. Water control structures must be constructed using specifications provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the department dam safety regulations.
  - b. Best management practices must be established and maintained adjacent to the entire perimeter of all replacement wetlands.
  - c. For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the soil and water conservation district, in coordination with the department. If the replacement wetland is seeded or planted, the seed or planting stock should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.
  - d. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

- e. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland.
  - f. The bottom contours of created types 3, 4, and 5 wetlands shall be undulating, rather than flat, to provide a variety of water depths.
  - g. Sideslopes of created wetlands and buffer strip must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred.
  - h. Created wetlands shall have an irregular edge to create points and bays.
- F. **Monitoring:** The purpose of wetland value replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.
- G. **Duration of Monitoring:** Monitoring shall be by means of an annual report as specified in Subd. 65.14.H and shall continue for five years following completion of the wetland replacement project. Through written notification to the applicant, the City of St. Augusta may extend the required monitoring period for not more than an additional five-year period if, at the end of the initial five-year period, the goal of the replacement plan has not been achieved, but may be achieved with more time.
- H. **Monitoring Annual Report:**
1. **Purpose:** The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in 2. The applicant shall submit the annual report to the City of St. Augusta on a date determined by the City of St. Augusta until the applicant has fulfilled all of the requirements of the City of St. Augusta.
  2. **Report content:** The annual report shall include the following information and other site-specific information identified by the City of St. Augusta:
    - (a) A description of the project location, size, current wetland type (Cowardin classification), and desired wetland type (goal);
    - (b) A comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes;
    - (c) Hydrology measurements: seasonal water level elevations during the period April through October (msl or referenced to a known bench mark);
    - (d) A list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage,

for example, 50 percent willow, 20 percent cattail, and 30 percent sedge; and

- (e) Color photographs of the project area taken anytime during the period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly.

I. Monitoring Determinations by the City of St. Augusta:

1. Will inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the City of St. Augusta certifies that the construction specifications have been met, the City of St. Augusta will so advise the applicant and return any bond or other security that the applicant had provided;
2. May order corrective action at any time during the required monitoring period if it determines that the goal of the approved replacement plan will not be met, and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the City of St. Augusta which describes in detail the corrective measures to be taken to achieve the goal of replacing lost wetland functions and values;
3. Shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the City of St. Augusta will order corrective action and extend the monitoring period; and
4. Will require one or more of the following actions if during the monitoring period the City of St. Augusta finds that the goal of the replacement plan will not be met:
  - (a) Order the applicant to prepare and implement a new replacement plan;
  - (b) Issue a cease and desist order on the draining and filling activity if it has not been completed;
  - (c) Order restoration of the impacted wetland;
  - (d) Obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland values;
  - (e) Ask the district court to order the applicant to fulfill the replacement plan; or
  - (f) Other actions that the City of St. Augusta determines necessary to achieve the goal of the replacement plan.

**65.15: STANDARDS AND CRITERIA FOR STATE WETLAND BANKING**

- A. Purpose: The purpose of this section is to provide City of St. Augusta standards for procedures related to a state wetland banking system as provided for in parts 8420.0700 to 8420.0760. The City of St. Augusta is responsible for approving bank plans, certifying deposits, and monitoring of banked wetlands and enforcement under the rules.

**65.16: CALCAREOUS FENS:**

- A. General: Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner. No exemptions shall be granted for any drain or fill activities which affect calcareous fens.