

HOUSE BILL No. 5151

October 9, 2003, Introduced by Reps. Moolenaar, Caul, LaJoy, Ward, Pastor, Milosch, Bisbee, Walker, Stahl, Casperson, Palmer, Hummel, Emmons and Farhat and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30301 (MCL 324.30301), as amended by 2003 PA
14, and by adding sections 30312a, 30312b, 30312c, 30312d,
30312e, 30312f, 30312g, and 30312h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Bank sponsor" means a person who independently or in
3 cooperation with another person is responsible for the
4 establishment, operation, and long-term management of a
5 mitigation bank.

6 (b) ~~—(a)—~~ "Beach" means the area landward of the shoreline of
7 the Great Lakes as the term shoreline is defined in section
8 32301.

9 (c) ~~—(b)—~~ "Beach maintenance activities" means any of the

1 following in the area of Great Lakes bottomlands lying below the
2 ordinary high-water mark and above the water's edge:

3 (i) Manual or mechanized leveling of sand.

4 (ii) Mowing of vegetation.

5 (iii) Manual de minimis removal of vegetation.

6 (iv) Grooming of soil.

7 (v) Construction and maintenance of a path.

8 **(d)** ~~—(c)—~~ "Debris" means animal or fish carcasses, zebra
9 mussel shells, dead vegetation, trash, and discarded materials of
10 human-made origin.

11 **(e)** ~~—(d)—~~ "Department" means the department of environmental
12 quality.

13 **(f)** ~~—(e)—~~ "Director" means the director of the department.

14 **(g)** "Ecoregion" means a geographic region of relatively
15 homogenous ecological systems. The mapped sub-subsections found
16 in the publication entitled "Regional Landscape Ecosystems of
17 Michigan, Minnesota, and Wisconsin," Dennis A. Albert, 1994,
18 north central forest experiment station, United States department
19 of agriculture, shall be used to identify ecoregion boundaries.

20 **(h)** ~~—(f)—~~ "Fill material" means soil, rocks, sand, waste of
21 any kind, or any other material that displaces soil or water or
22 reduces water retention potential.

23 **(i)** ~~—(g)—~~ "Environmental area" means an environmental area as
24 defined in section 32301.

25 **(j)** ~~—(h)—~~ "Grooming of soil" means raking or dragging,
26 pushing, or pulling metal teeth through the top 4 inches of soil
27 without disturbance of or destruction to plant roots, for the

1 purpose of removing debris.

2 (k) "In-kind mitigation" means replacement of unavoidably
3 lost wetland with created, restored, or, in exceptional
4 circumstances, preserved wetlands of a similar physical and
5 biological type, with the goal of replacing as fully as possible
6 the functions of the lost wetland.

7 (l) ~~-(i)-~~ "Leveling of sand" means the relocation of sand
8 within areas being leveled that are predominantly free of
9 vegetation, including the redistribution, grading, and spreading
10 of sand that has been deposited through wind or wave action onto
11 upland riparian property.

12 (m) ~~-(j)-~~ "Minor drainage" includes ditching and tiling for
13 the removal of excess soil moisture incidental to the planting,
14 cultivating, protecting, or harvesting of crops or improving the
15 productivity of land in established use for agriculture,
16 horticulture, silviculture, or lumbering.

17 (n) "Mitigation bank" means a site where mitigation banking
18 takes place.

19 (o) "Mitigation banking" means the process of restoring or
20 creating self-sustaining functioning wetlands, or, in exceptional
21 circumstances, preserving high-quality and threatened wetlands,
22 as prior replacement of chemical, physical, and biological
23 wetland functions for wetlands that are expected to be
24 unavoidably impacted by development within a watershed or
25 ecoregion.

26 (p) "Mitigation banking agreement" means a formal written
27 agreement between a mitigation bank sponsor and the department

1 that identifies all relevant establishment, operation, and
2 management considerations of a wetland mitigation bank.

3 (q) "Mitigation credit" means a unit of value generally
4 equivalent to 1 acre of created or restored functioning wetland
5 that may be bought and sold on the open market.

6 (r) ~~-(k)-~~ "Mowing of vegetation" means the cutting of
7 vegetation to a height of not less than 2 inches, without
8 disturbance of soil or plant roots.

9 (s) ~~-(l)-~~ "Ordinary high-water mark" means that term as it is
10 defined in section 32502.

11 (t) "Out-of-kind mitigation" means the replacement of
12 unavoidably lost wetland with created, restored, or, in
13 exceptional circumstances, preserved wetland that is physically
14 or biologically different than the wetland that was lost.
15 Out-of-kind mitigation may result in the replacement of different
16 wetland functions than the functions that were lost.

17 (u) ~~-(m)-~~ "Path" means a temporary access walkway from ~~the~~
18 upland riparian property directly to the shoreline across swales
19 with standing water, not exceeding 6 feet in bottom width and
20 consisting of sand and pebbles obtained from the exposed,
21 nonvegetated bottomlands or from the upland riparian property.

22 (v) ~~-(n)-~~ "Person" means an individual, sole proprietorship,
23 partnership, corporation, association, municipality, this state,
24 an instrumentality or agency of this state, the federal
25 government, an instrumentality or agency of the federal
26 government, or other legal entity.

27 (w) ~~-(o)-~~ "Removal of vegetation" means the manual or

1 mechanized removal of vegetation, other than the manual de
2 minimis removal of vegetation.

3 (x) "Service area" means an area in which a mitigation bank
4 can reasonably be expected to provide appropriate compensatory
5 mitigation for impacts to wetlands, defined on a watershed or
6 ecoregion basis.

7 (y) "Unavoidably lost" means a wetland impact which has been
8 approved by the department in accordance with permit review
9 criteria under this part.

10 (z) "Watershed" means a drainage area within which the
11 replacement of certain wetland functions, including hydrologic,
12 water quality, and aquatic habitat functions, may be authorized
13 by the use of a mitigation bank. Mitigation bank watersheds are
14 illustrated in figure 1 in R 281.961 of the Michigan
15 administrative code.

16 (aa) ~~(p)~~ "Wetland" means land characterized by the presence
17 of water at a frequency and duration sufficient to support, and
18 that under normal circumstances does support, wetland vegetation
19 or aquatic life, and is commonly referred to as a bog, swamp, or
20 marsh and which is any of the following:

21 (i) Contiguous to the Great Lakes or Lake St. Clair, an
22 inland lake or pond, or a river or stream.

23 (ii) Not contiguous to the Great Lakes, an inland lake or
24 pond, or a river or stream; and more than 5 acres in size; except
25 this subparagraph shall not be of effect, except for the purpose
26 of inventorying, in counties of less than 100,000 population
27 until the department certifies to the commission it has

1 substantially completed its inventory of wetlands in that
2 county.

3 (iii) Not contiguous to the Great Lakes, an inland lake or
4 pond, or a river or stream; and 5 acres or less in size if the
5 department determines that protection of the area is essential to
6 the preservation of the natural resources of the state from
7 pollution, impairment, or destruction and the department has so
8 notified the owner; except this subparagraph may be utilized
9 regardless of wetland size in a county in which subparagraph (ii)
10 is of no effect, ~~—~~ except for the purpose of inventorying, at
11 the time.

12 (bb) "Wetland creation" means the physical and biological
13 establishment of a wetland where a wetland did not formerly
14 exist.

15 (cc) "Wetland function" means the physical, chemical, or
16 biological processes which provide benefits to the public and
17 which are recognized in section 30302(1)(b).

18 (dd) "Wetland preservation" means the protection of an
19 ecologically critical wetland in perpetuity through the
20 implementation of appropriate legal and physical mechanisms.

21 (ee) "Wetland restoration" means the reestablishment of
22 wetland characteristics and functions at a site where they have
23 ceased to exist through the replacement of wetland hydrology,
24 vegetation, or soils.

25 Sec. 30312a. (1) Any person may establish a mitigation bank
26 and may buy, sell, or use mitigation credits as approved by the
27 department to meet the requirements of this part.

1 (2) The department may authorize the use of credits from an
2 approved mitigation bank to satisfy all or a part of the wetland
3 mitigation requirements associated with any permit application in
4 accordance with applicable statutory criteria.

5 (3) The department may authorize the use of credits from an
6 established mitigation bank only to offset the unavoidable loss
7 of wetlands as approved in accordance with this part. Before
8 approving the use of a mitigation bank, the department shall
9 determine that the applicant has taken all feasible and prudent
10 steps to avoid the loss of wetland resources and has used all
11 practical means to minimize impacts to wetlands. The
12 establishment of, or purchase of, credits from a mitigation bank
13 does not eliminate the need to comply with the permit review
14 criteria established in this part.

15 (4) Site-specific functions shall be replaced on site where
16 practical and where the department has determined that on-site
17 replacement is environmentally preferable. In these
18 circumstances, mitigation banking shall not be used.

19 Sec. 30312b. (1) A mitigation bank shall be maintained in
20 perpetuity.

21 (2) To the extent possible, a mitigation bank shall provide
22 multiple chemical, physical, and biological functions. Single
23 function, low-quality wetlands, such as wastewater ponds, shall
24 not qualify as mitigation banks. The department shall quantify
25 the wetlands in a mitigation bank as mitigation credits that are
26 available for use by the bank sponsor or other persons to
27 compensate for adverse impacts.

1 (3) The department shall normally base the number of
2 mitigation credits in a mitigation bank on the acres of created
3 and restored wetland in the mitigation bank after monitoring by
4 the bank sponsor demonstrates that wetland functions have been
5 established.

6 (4) In exceptional circumstances, the preservation of certain
7 existing wetlands may also contribute to the number of mitigation
8 credits. Not more than 15% of the total wetland acreage in any
9 mitigation bank shall be for the preservation of existing
10 wetlands. The department shall grant mitigation credit for
11 preserved wetlands only if all of the following apply:

12 (a) The preserved wetlands perform exceptional physical or
13 biological functions that are essential to the preservation of
14 the natural resources of the state or the preserved wetlands are
15 an ecological type that is rare or endangered.

16 (b) The preserved wetlands are under a demonstrable threat of
17 loss or substantial degradation due to human activities that are
18 not under the control of the mitigation bank sponsor and that are
19 not otherwise restricted by state law.

20 (c) Inclusion of the preserved wetlands in a mitigation bank
21 and implementation of other actions identified in the mitigation
22 bank plan will serve to protect functions associated with the
23 wetlands that would otherwise be lost.

24 (5) Mitigation credit granted for preserved wetlands shall be
25 at a rate of 0.1 credit for each acre of preserved wetland.

26 (6) A mitigation bank shall be planned and managed in a
27 watershed or ecoregion context, or both, and shall include

1 restored, created, or, in exceptional circumstances, preserved
2 wetlands that will provide functions which meet the needs of the
3 watershed or ecoregion, or both.

4 (7) A mitigation bank may be established on either public or
5 private land. However, a mitigation bank shall be established on
6 public lands only if it furthers established management
7 objectives that have been defined by the agency responsible for
8 managing the public land, and with the approval of the agency
9 responsible for management of that land.

10 (8) A mitigation bank shall provide at least 10 acres of new
11 wetland. The new wetland may consist of multiple sites if the
12 sites are a minimum size of 1 acre each and are administered
13 under a single mitigation banking agreement.

14 Sec. 30312c. (1) The establishment and use of a mitigation
15 bank are voluntary. A permit applicant has the option of
16 providing compensatory mitigation for a single permitted action
17 at the time of permit issuance.

18 (2) A person who chooses to establish and operate a
19 mitigation bank shall enter into a written mitigation banking
20 agreement with the department before construction of the
21 mitigation bank or any sale or use of credits from the bank. The
22 agreement shall define the size of the bank, the ecological type
23 of wetlands to be included, wetland functions to be provided, the
24 area to be served by the mitigation bank, and the requirements
25 for establishment, operation, and long-term maintenance by the
26 mitigation bank sponsor. The mitigation bank sponsor shall
27 provide the department with all of the information needed to

1 prepare the mitigation banking agreement. A mitigation banking
2 agreement shall include all of the following elements and
3 provisions:

4 (a) A legal identification of and authorized signature for
5 the mitigation bank sponsor.

6 (b) The mitigation bank's location and size, including a
7 legal description of the property.

8 (c) Ownership of the site and documentation that the
9 mitigation bank sponsor is authorized to use the property. If
10 the owner is not the mitigation bank sponsor, then the owner
11 shall also sign the mitigation banking agreement.

12 (d) Mitigation bank goals and objectives and the geographic
13 area to be served. The goal statement shall indicate the types
14 of wetlands to be developed and the types of wetland losses for
15 which the bank is to be used.

16 (e) An analysis of the ability of the site to support a
17 diverse wetland system.

18 (f) Consistency with existing watershed or ecoregion
19 management plans.

20 (g) Long-term development trends in the area and their
21 potential impact on the long-term viability of the mitigation
22 bank.

23 (h) A description of baseline conditions at the proposed
24 mitigation bank, including delineation of all existing surface
25 waters or wetlands.

26 (i) The mitigation bank development plan.

27 (j) A long-term mitigation bank management plan. If the

1 person responsible for ongoing management of the mitigation bank
2 is not the mitigation bank sponsor, that person shall also sign
3 the mitigation banking agreement.

4 (k) The accounting procedures to be used to track the
5 availability, sale, and use of mitigation credits and the
6 procedures for notifying the department of the sale or use of
7 mitigation credits.

8 (l) Performance standards for determining mitigation bank
9 success and certification of mitigation credits.

10 (m) A monitoring plan to evaluate the achievement of
11 performance standards and reporting protocol.

12 (n) Provisions for financial assurances to be used to
13 complete remedial action in the event of mitigation bank default
14 or failure, and provisions for the release of financial
15 assurances once an approved mitigation bank is determined by the
16 department to be self-sustaining.

17 (o) Provisions for the protection of the site in perpetuity,
18 such as through a conservation easement or deed restriction.

19 (p) Assumption of liability for construction and operation by
20 the mitigation bank sponsor.

21 (q) If the mitigation bank will also be used to meet
22 mitigation requirements of another agency, whether federal,
23 state, or local, the signature of an authorized official of the
24 agency.

25 (3) Before submitting a mitigation banking proposal to the
26 department, the mitigation bank sponsor shall notify all affected
27 local units of government and adjacent property owners of the

1 proposed mitigation bank and shall take reasonable steps to
2 address any objections to the project. The bank sponsor shall
3 provide copies of any comments received and documentation of
4 efforts to resolve local issues to the department with the
5 mitigation banking proposal.

6 (4) The mitigation bank sponsor shall obtain the necessary
7 construction permits for the alteration of existing wetlands or
8 surface waters and all other required federal, state, or local
9 approvals before initiating mitigation banking. The permit
10 review criteria in the act will be applied in reviewing an
11 application to construct a mitigation bank.

12 (5) This part does not preempt any requirements to obtain
13 local approval for construction of a wetland mitigation bank
14 under a local zoning ordinance or other local regulation.

15 Sec. 30312d. (1) In determining whether mitigation credits
16 from a particular mitigation bank may be used to meet the
17 requirements of this part, the department shall consider all of
18 the following factors:

19 (a) The location of the mitigation bank relative to the
20 permitted wetland impact.

21 (b) The wetland types represented in the mitigation bank.

22 (c) The sustainable wetland functions provided by the
23 mitigation bank.

24 (d) The area of wetland provided as mitigation relative to
25 the impact.

26 (2) In-kind mitigation is required unless the department
27 determines that it is not practical or that in-kind mitigation is

1 not essential and that out-of-kind wetland mitigation provides a
2 greater benefit to the wetland resources of the state. The
3 department may consider the use of out-of-kind mitigation, based
4 on 1 or more of the following criteria:

5 (a) The types of wetlands restored or created in the
6 mitigation bank help to restore the historic balance of wetland
7 types within the watershed or ecoregion.

8 (b) The mitigation bank provides particular wetland functions
9 that meet defined resource management needs and goals articulated
10 in an established watershed or ecosystem plan and will contribute
11 to the overall health of the ecosystem.

12 (c) The mitigation bank supports a diverse wetland complex
13 that offsets cumulative primary and secondary impacts within the
14 watershed.

15 (d) The mitigation credits will be used to offset the loss of
16 wetland types that cannot readily be recreated in a manner that
17 is consistent with the permit review criteria of this part.

18 (3) The service area of a mitigation bank shall be
19 appropriate to the functions provided. The department shall use
20 all of the following criteria in defining the service area of a
21 mitigation bank:

22 (a) Functions that are dependent upon the location of the
23 wetland in the subwatershed shall be replaced by mitigation
24 credits from a bank or other site within the same subwatershed.

25 (b) Wetland functions which are watershed dependent, but
26 which are not specific to a subwatershed, will be replaced in the
27 same watershed as the impact.

1 (c) Wetland functions, such as migratory bird habitat, that
2 are not dependent upon location in the watershed shall be
3 replaced either within the same watershed or within the same
4 ecoregion.

5 (d) The mitigation required by an individual permit may be
6 split so that location-specific wetland functions are replaced on
7 site or within the same subwatershed area, while other functions
8 are replaced through a mitigation bank that has a larger defined
9 service area.

10 (4) When credits from a mitigation bank are used, the
11 mitigation ratio shall be determined based on the nature of the
12 permitted wetland loss in accordance with R 281.925 the Michigan
13 administrative code.

14 Sec. 30312e. (1) Before use of mitigation credits, the
15 mitigation bank sponsor shall assess the establishment of
16 wetlands in accordance with a monitoring program defined in the
17 mitigation banking agreement and shall certify the extent to
18 which performance standards defined in the mitigation banking
19 agreement have been met. The design of the monitoring program
20 shall measure the achievement of performance standards associated
21 with the targeted wetland functions. Monitoring shall begin at
22 least 1 year before use of credits. Once mitigation credits in
23 the bank are used, monitoring shall continue on an annual basis
24 until performance standards for the full establishment of the
25 bank are met. Monitoring parameters shall include all of the
26 following:

27 (a) Hydrology.

1 (b) Plant community structure.

2 (c) Animal community structure.

3 (d) Design acreage.

4 (e) Other measures as defined in the mitigation banking
5 agreement.

6 (2) The mitigation bank sponsor shall certify that
7 appropriate wetland functions have been established in the
8 mitigation bank pursuant to the banking agreement by submitting a
9 report to the department that includes all of the following
10 information:

11 (a) All data collected during the monitoring program.

12 (b) An evaluation of the status of wetlands in the mitigation
13 bank as compared to design criteria.

14 (c) A list of the number and type of mitigation credits for
15 which approval is requested.

16 (3) The department shall approve or disapprove the
17 certification of the mitigation bank sponsor within 60 days of
18 receipt of the sponsor's report. The department may determine
19 that mitigation credits cannot be approved because the wetlands
20 have not achieved design wetland functions or because of a lack
21 of adequate information to document wetland functions. The
22 department's evaluation may include an on-site inspection of the
23 mitigation bank. If the department determines that wetland
24 conditions have been established in accordance with the
25 mitigation banking agreement, the department shall issue a letter
26 to the mitigation bank sponsor approving the number and type of
27 wetland credits that are available for use and shall list the

1 approved credits in a mitigation bank registry as required in
2 section 30312f.

3 (4) The department shall not authorize the use of credits
4 from a mitigation bank in advance of initial restoration or
5 creation of wetlands in the bank except as provided in section
6 30312h. The department shall authorize the use of approved
7 mitigation credits from the mitigation bank in accordance with
8 the following schedule:

9 (a) The use of 50% of approved mitigation credits shall be
10 allowed after the department determines that construction has
11 been completed in accordance with plans and specifications
12 included in the mitigation banking agreement and design hydrology
13 has been achieved and maintained for at least 1 calendar year.

14 (b) The use of an additional 25% of total mitigation credits
15 shall be allowed when the mitigation bank wetland plant community
16 achieves 50% of design cover based on performance standards
17 defined in the mitigation banking agreement.

18 (c) The use of the final 25% of credits shall be allowed when
19 the created and restored wetlands in the bank are fully
20 functional and meet performance standards defined in the
21 mitigation banking agreement.

22 (5) If the department agrees to inclusion of preserved
23 wetlands in a mitigation bank under section 30312b, the
24 mitigation bank sponsor shall provide documentation of permanent
25 protection of the wetlands through appropriate legal instruments
26 and shall complete and document all other steps defined in the
27 mitigation banking agreement needed to permanently protect the

1 preserved wetland area before department approval of the use of
2 the credits.

3 (6) The department may audit a mitigation bank at any time to
4 evaluate the status of the wetlands in the mitigation bank and to
5 confirm the number of mitigation credits available. The
6 department may inspect a mitigation bank at any reasonable time.

7 Sec. 30312f. (1) The department shall maintain a mitigation
8 bank registry of established mitigation banks and approved
9 mitigation credits to track the generation and use of credits and
10 to provide information to the public regarding the availability
11 of credits. The registry shall include all of the following
12 information for each mitigation bank:

13 (a) A general description of the mitigation bank.

14 (b) The total number of credits (acres) in the mitigation
15 bank, the number previously used to meet mitigation requirements,
16 the number offered for sale by the mitigation bank sponsor, and
17 the number sold.

18 (c) The number of acres of each major ecological type of
19 wetland.

20 (d) The defined service area of the mitigation bank.

21 (e) The name and address of the mitigation bank sponsor.

22 (f) The date of mitigation bank establishment by the
23 mitigation banking agreement, and the date of approval of
24 mitigation credits.

25 (g) An identification code.

26 (2) Within 60 days of the sale of approved mitigation bank
27 credits, the bank sponsor shall report the sale and the per

1 credit sale price to the department. The sale price shall not be
2 included in the mitigation bank registry.

3 (3) The department shall list approved mitigation credits in
4 the mitigation bank registry. Inclusion of uplands in mitigation
5 bank plans is encouraged and may be essential to fully meet
6 functional goals. However, uplands will not be included in the
7 mitigation credits available in the bank, except as provided in
8 section 30312h.

9 (4) All information contained in the mitigation bank registry
10 shall be readily available to the public.

11 Sec. 30312g. (1) A mitigation bank sponsor shall assure,
12 through legally binding instruments, including leases, contracts,
13 deed restrictions, or conservation easements, that the mitigation
14 bank shall be maintained in perpetuity. Restrictive covenants
15 that provide for long-term management shall be included in any
16 lease, sale, or other conversion and shall run with the
17 property.

18 (2) Long-term management is the responsibility of the
19 mitigation bank sponsor and shall include site maintenance,
20 monitoring of wetland conditions, remedial action needed to fully
21 establish and maintain wetland characteristics in accordance with
22 permit requirements, and notification of subsequent owners of
23 limitations on the property. The bank sponsor shall submit a
24 long-term management plan as part of the mitigation banking
25 agreement. Responsibility for the long-term management of a
26 mitigation bank may be transferred through the sale or lease of
27 the property or through an agreement with another person if the

1 department approves of the transfer and if the mitigation banking
2 agreement is amended accordingly.

3 (3) A mitigation bank sponsor may enter into a legal
4 agreement with a state or local agency or a nonprofit resource
5 management organization to manage the mitigation bank for a
6 particular purpose as defined in the mitigation banking
7 agreement. An authorized official of the agency or organization
8 shall sign the mitigation banking agreement.

9 (4) Before the use of any credits from an approved mitigation
10 bank, the mitigation bank sponsor shall provide financial
11 assurances in the form of a performance bond, irrevocable letter
12 of credit, or equivalent legal instrument that is sufficient to
13 guarantee that mitigation bank establishment, monitoring, and, if
14 necessary, remedial action will be carried out in accordance with
15 the mitigation banking agreement. The mitigation banking
16 agreement shall define the form and amount of the financial
17 assurance to be provided and shall also define the temporal
18 limits on the financial assurances tied to the achievement of
19 performance standards that define the establishment of a fully
20 functional, self-sustaining wetland. If the wetland by design is
21 not self-sustaining, because maintenance is required for dikes,
22 dams, water control structures, or other components essential to
23 the preservation of functional wetlands on the site, the bank
24 sponsor shall make financial provisions for perpetual management
25 and maintenance. A state agency that sponsors a mitigation bank
26 may enter into a formal interagency agreement with the department
27 to guarantee long-term protection and management of the

1 mitigation bank instead of providing financial assurances.

2 Sec. 30312h. (1) The department may, in cooperation with
3 the department of natural resources, designate priority wetland
4 restoration areas in large former wetland complexes which have
5 been impacted by significant historic loss or degradation of
6 wetlands and which have a high potential for successful wetland
7 restoration. Areas so designated may include either public or
8 private lands, but must have the potential to provide the public
9 with vital wetland functions after ecologically sensitive
10 restoration of wetland areas.

11 (2) The department shall develop a management plan for each
12 priority wetland restoration area and shall consider the concerns
13 of the department of natural resources and the potential of the
14 area to provide critical wetland for any of the following:

- 15 (a) Habitat.
- 16 (b) Wildlife and fish production.
- 17 (c) Flood control.
- 18 (d) Water quality protection.
- 19 (e) Groundwater recharge.
- 20 (f) Recreation.

21 (3) Priority wetland restoration area management plans that
22 impact lands administered by the department of natural resources
23 are subject to the approval of the department of natural
24 resources.

25 (4) The department may enter into partnerships with other
26 state agencies, local units of government, or private parties to
27 promote the restoration and protection of wetlands within a

1 priority wetland restoration area in accordance with the
2 management plan. The department may provide funding or in-kind
3 services to the partnership to support the management plan.

4 (5) Any person may establish a mitigation bank within a
5 priority wetland restoration area. All of the general
6 requirements that apply to mitigation banks apply to mitigation
7 banks established in priority areas, subject to subsections (6)
8 and (7). The department may assist in the establishment of a
9 mitigation bank by identifying state lands suitable for use in
10 the mitigation bank or by providing technical assistance.

11 (6) The department may establish a mitigation bank within a
12 priority wetland restoration area if a mitigation bank is not
13 established by other parties within 1 year after designation of
14 the priority wetland restoration area or if existing banks do not
15 provide adequate capacity or wetland functions.

16 (7) A mitigation bank established within a priority wetland
17 restoration area may utilize 1 or more of the following
18 incentives if approved by the department in the mitigation
19 banking agreement:

20 (a) Up to 15% of planned wetland credits may be used before
21 the establishment of wetland conditions if the department has
22 approved the site plan and signed the mitigation banking
23 agreement, the bank sponsor has obtained all state and local
24 permits and approvals required for construction of the mitigation
25 bank, and the bank sponsor has provided adequate financial
26 assurances to ensure the timely establishment of wetland
27 functions.

1 (b) The department may approve partial mitigation credit for
2 uplands within the priority wetland restoration area mitigation
3 bank that are vital to the successful functioning of wetlands in
4 the mitigation bank. The condition of these uplands shall be
5 protected under a conservation easement or equivalent
6 instrument. The mitigation banking agreement shall specify the
7 credit received for uplands based on the extent to which the
8 uplands directly enhance or maintain the integrity of the aquatic
9 ecosystem, but not more than 0.5 credits shall be authorized for
10 each acre of upland. Not more than 10% of the total acreage for
11 which mitigation credit is given in a mitigation bank shall be
12 upland.

13 (c) The department may approve mitigation credit for the
14 preservation of certain existing wetlands which provide
15 exceptional functions or which represent rare wetland types, such
16 as lakeplain wet prairie. Not more than 25% of the wetland
17 acreage approved in a priority wetland restoration area
18 mitigation bank shall be for the preservation of existing
19 wetlands.