

Line-by-Line Accounting of Changes to the Revisor's RD4365 Draft WCA Rule 2/2/26

This document is a companion to the 2/2/26 Preliminary Draft Wetland Conservation Act Rule, which is a strikeout-underline version of MN Office of the Revisor of Statutes RD4356 draft. Each edit to the RD4356 draft rule is accounted for in this document, identified by the numbered line(s) that correspond to each change. This document also contains the rationale for select changes that are more substantive in nature or that consist of significant language adjustments.

- 1.9: Amend the line as follows:

...laws. ~~This chapter shall~~ must be interpreted to implement the ~~The~~ purpose of the act, which is to:

Rationale: An alternative to changing “shall” to “must,” as this line is not a rule requirement.

- 2.10: Delete “the.”
- 2.11: Add “wetland” after “flooded,” delete “of,” and delete “wetlands,” (note: delete both “wetlands” and the comma immediately after it).
- 4.18: Delete the proposed “replacement” and replace with “banking.”
- 5.8 – 5.9: Delete the last sentence of Subp. 8.

Rationale: It is not appropriate to include a rule requirement in the definition of a term, and the provision and use of forms is covered in other parts of the rule.

- 5.17: Delete “8420.0702” and replace with “8420.0510.”

Rationale: To account for the relocation of the new ESTABLISHING BANK SERVICE AREAS part.

- 5.19: Delete “certified and.” Also add “state” before “wetland.”
- 6.12: Delete “at” and replace with “from.”
- 6.13: Delete “site” and replace with “wetland.”
- 7.10 – 7.14: Delete the entire definition of “eligible” (Subp. 24).

Rationale: The term “eligible” is used in the current draft rule in accordance with its conventional definition (having the right to do /obtain something or satisfying the appropriate conditions). It is not used in the draft rule in the context of this definition. Also, the definition states a general rule provision regarding a local government’s decision making on an application rather than defining the term. Where this general provision is applicable (e.g. 8420.0526 - actions eligible for credit), the corresponding part of the rule clarifies the ability of a local government unit to exercise its ability to set an applicable parameter such as the amount of credit allocated for a proposed action eligible for credit.

- 8.15 – 8.17: Delete the entire definition of “hydric soils” (Subp. 30).

Rationale: Aside from 8420.0111 (definitions), this term is only used once in in the draft rule. It is deleted from 8420.0330 Subpart 3 because, in part, the term as it is used in that subpart is no longer applicable. Soil survey map units are now assigned hydric soil ratings

rather than simply classified as hydric or not. The term appears in the definition of a “wetland;” however, it is only relevant to the process of delineating wetlands in accordance with the United States Army Corps of Engineers Wetlands Delineation Manual, which is incorporated by reference under 8420.0112. The applicable definition of hydric soils and how that is used in the context of wetland identification and delineation is within this document incorporated by reference and is not needed for rule implementation outside that context.

- 8.18 - 8.21: Delete the draft definition of Hydrogeomorphic class (Subp. 30a).

Rationale: The definition of wetland type is based on hydrogeomorphic class, and hydrogeomorphic class is not used anywhere else in the rule except under the definition of wetland type. In addition, the basis for hydrogeomorphic classes is incorporated by reference in 8420.0112 A. Therefore, defining hydrogeomorphic class is not needed or substantive to implementation of the rule.

- 9.4: Delete “the” and add “wetland areas” after “flooded.”
- 9.5: Delete the proposed “area of a wetland” language and change “and” to “or.”

Rationale: Due to the deletion of “or by” in item A, Item B must now end with an “or.”

- 12.5 – 12.6: Add the following definition between lines 12.5 and 12.6:

*Subp. 50a. **Performance standards.** “Performance standards” means observable or measurable physical, chemical, and/or biological attributes that are used to determine if a replacement wetland meets the replacement standards in part 8420.0522 and the objectives of the wetland replacement or banking plan.*

Rationale: The definition is necessary as the term is used multiple times in the rule and is significant to the practical determination of replacement credit allocation for project-specific replacement and banking. The definition is consistent with the Federal Mitigation Rule and its common usage in wetland banking and replacement.

- 12.6-12.7: Add “wetland” after “flooded” and delete “of a.” Also delete “wetland” at the beginning of line 12.7. Then, in the text on line 12.7 that follows the title, add “wetland” after “flooded” and delete “of a” and “wetland.” The clean language for lines 12.6 – 12.7 should be:

*Subp. 51. **Permanently and semipermanently flooded wetland area.** “Permanently and semipermanently flooded wetland area”*

Rationale: Changing “area of wetland” to “wetland area” for consistency with 8420.0115 Subp. 72 which defines and refers to “wetland area”. This also makes the term consistent with how it is referred to in various other places in the rule.

- 12.21 – 12.23: Delete the following sentence: “As used in this chapter, a project may not be split into components or phases for the purpose of gaining additional exemptions.”

Rationale: This sentence is relocated to 8420.0420, Subp. 1C (Scope of Exemption Standards) as it is a restriction associated with the application of exemptions rather than a sentence that helps define “project.” In accordance with rulemaking practices, it is inappropriate to include substantive rule requirements such as this in a definition.

- 13.11 – 13.12: Add the following definition between lines 13.11 and 13.12:

*Subp. 59a. **Rare natural community.** "Rare natural community" means a native plant community in good or exceptional condition that is imperiled or vulnerable to extirpation in the state due to a restricted range, few occurrences, steep declines in occurrences, or severe threats.*

Rationale: Rare natural community is referenced in several areas of the rule, but is undefined. This definition is based on the Minnesota Department of Natural Resources Conservation Status Ranks for native plant communities in Minnesota which follows the methodology used by the conservation organization NatureServe and its member natural heritage programs in North America.

- 16.7: Add “regulation under” after “of.” This addition is necessary for consistency with Minn. Stat. 103G.005, Subd. 19(b), which was amended in 2010 to differentiate between the authority to regulate a public waters wetland (which lies with the DNR) and the ability for WCA to allow replacement credit for the restoration of a drained public waters wetland.
- 16.15 – 16.21: Delete the entire item E (both existing and proposed language).

Rationale: This subpart defines what a wetland is. The basis and method for determining the boundaries of the wetland, and hence its’ size, is provided in 8420.0405. Therefore, this reference within the definition is not needed and is repetitive of .0405.

- 17.3 - 17.8: Amend the definition of “Wetland type or type” as follows:

*Subp. 75. **Wetland type or type.** "Wetland type" or "type" means a ~~wetland type classified according to~~ Wetlands of the United States (1956 and 1971 editions), as summarized in this subpart category of wetland based on A Hydrogeomorphic Classification for Wetlands (August 1993), in accordance with guidance provided by the Board. Classification of Wetlands and Deepwater Habitats of the United States (2013), is a separate, parallel wetland typing system that may be used to characterize components of a wetland, including permanently and semi-permanently flooded wetland areas. Both documents are incorporated by reference under part 8420.0112, ~~items A and B.~~*

Rationale: These changes clarify that a wetland type is a category of wetland. It eliminates the use of “type” to define “type” as in the previous version. In addition, “according to” is replaced with “based on” as this more accurately conveys that the document “A Hydrogeomorphic Classification for Wetlands” identifies a systematic approach to classifying wetlands rather than a set classification system for which type is synonymous with. In accordance with this document, BWSR will provide a classification system (i.e. type) specific to Minnesota based on hydrogeomorphology.

- 19.17: Add “database” after “Inventory” for clarity.
- 21.11 - 21.12: Delete the entire item.

Rationale: Item L is no longer needed due to the edits to 8420.0420, Subp. B.

- 22.5: Add “PRESETTLEMENT” before “WETLAND” to differentiate it from the definition of “wetland area.”
- 23.3: Add “based” after “jurisdiction” and delete “the basis of.”
- 23.4: Change “wetlands” to “wetland acres.”
- 23.12: Add “based” after “subpart 1,” delete “the basis of,” and change “wetlands” to “wetland acres.”
- 23.16: In the title of the proposed Subp. 3, delete “designation” and replace with “classification.” In the first sentence of the subpart, delete “the” after “replacement,” and add “each bank service area must be classified based on its percentage of presettlement wetland acres remaining.”

Rationale: To improve clarity and consistency with the language used in Subparts 1 and 2, and to establish the classification requirement.

- 23.17: Add “The” before “board.” Delete “designate” and replace with “classify.”
- 23.18: Change “designations” to “classifications.”
- 23.19: Change “designations” to “classifications.”
- 23.21: Change “designations” to “classifications.”
- 23.25: Delete the proposed item “K” and replace with the original item “J.” The clean sentence should look as follows:

...for making decisions is determined according to items A to J.

- 25.9: Delete “site” and replace with “wetland.”
- 25.10: Delete “area.”
- 25.15: Delete “for” and replace with “over.”
- 25.16: Delete “for” and replace with “over.”
- 25.17: Delete “site” and replace with “wetland” in both occurrences.
- 25.19: Delete “for” and replace with “over.” Also delete “site” and replace with “wetland.”
- 25.21: Delete “for” and replace with “over.” Also delete “site” and replace with “wetland.”
- 25.22: Delete “for” and replace with “over.”
- 26.1-26.3: Delete item J entirely.

Rationale: The commissioner is not a “local government unit” for mining and calc fens, which are addressed separately in 8420.0930 and 8420.0935.

- 26.4: Delete the proposed Item “K” and replace with the original Item “J.” The clean language should look as follows:

J. The board shall resolve all questions as to which government entity is the...

- 26.5: Delete the proposed item “J” and replace with the original item “I.” The clean language should look as follows:

...responsible authority, applying items A to I.

- 26.15: Add “minimum” after “establish.”
- 29.5: Delete the colon.
- 29.12 – 29.22: Amend the item as follows (new changes shown in red):

B. Two members of the technical evaluation panel must be knowledgeable and trained in ~~applying methodologies of the United States Army Corps of Engineers Wetland Delineation Manual (January 1987), Wetland Plants and Plant Communities of Minnesota & Wisconsin (S. Eggers and D. Reed 1997), Wetlands of the United States (United States Fish and Wildlife Service Circular 39, 1971 edition), A Hydrogeomorphic Classification for Wetlands, and Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition), including updates and, supplements, or replacements according to part 8420.0112 and any modifications or guidance provided by the board. The panel must also be knowledgeable and trained in the identification of wetland boundaries and type, and in the evaluation of wetland functions and the resulting public value. The panel may seek advice and assistance from others with additional expertise to help the panel in its work.~~

Rationale: The new changes eliminate the specific references to the definition and basis for determining wetland boundary and type. The requirements for identifying wetland boundary and type are specified in 8420.0405 and 8420.0111, and it is repetitive to name them again here.

- 32.10: Delete the previously proposed “area” and replace with “wetland.”
- 32.15: Change “bank” to “banking” in the first part of the sentence.
- 36.6 – 36.7: Reject proposed changes to the title of 8420.0310 and retain the existing title. The clean title should look as follows:

8420.0310 WETLAND BOUNDARY OR TYPE APPLICATIONS.

Rationale: Wetland type is defined in 8420.0115, Subp. 75 to include permanently and semi-permanently flooded wetland areas using “Wetlands and Deepwater Habitats of the United States.” Therefore, it is not necessary to include the “flooded areas” language in the title of this part as they are encompassed within the definition of wetland type. Keeping “Applications” at the end of the title is consistent with the part titles for replacement plan, no-loss, sequencing, and exemption applications.

- 36.8 -36.13: Add “for a wetland boundary or type decision” after “unit” on line 36.9. Delete the newly proposed language on lines 36.10 – 36.13. The clean language of Item A should look as follows:

A. A landowner may apply to the local government unit for a wetland boundary or type decision.

- 37.17 – 37.18: Restore the “8420.0325 SEQUENCING APPLICATIONS” language to which no changes were proposed.
- 42.10: Delete “area” and replace with “wetland.”
- 42.11: Delete “area” and replace with “wetland.”
- 42.14: Delete “area shall be” and replace with “wetland is.”
- 42.22: Change “bank” to “banking.”
- 42.24 - 43.1: Restore the “8420.0335 CONTRACTOR’S NOTIFICATION RESPONSIBILITY” language to which no changes were proposed.
- 43.4 – 43.5: Delete “including subsequent updates and supplements, and guidance provided by the board” and replace with “which is incorporated by reference under part 8420.0112.”

Rationale: To reduce redundancy and potential inconsistency. The “Incorporation by Reference” part already covers “updates, addenda, supplements, replacements, or derivations” to the listed documents.

- 43.6 - 43.10: Amend 8420.0405, Subp. 2 to refer to the definition as follows:

*Subp. 2. **Wetland type.** Wetland type must be identified according to ~~United States Fish and Wildlife Service Circular No. 39 (1971 edition) Wetlands of the United States~~ A Hydrogeomorphic Classification for Wetlands, and components of the wetland must be described using Classification of Wetlands and Deepwater Habitats of the United States, including modifications or guidance provided by the board part 8420.0111, subpart 75. Wetland type in relation to...*

- The clean language for the entire subpart should look as follows:

*Subp. 2. **Wetland type.** Wetland type must be identified according to part 8420.0111, subpart 75.*

Rationale: To reduce redundancy and potential inconsistency. The definition contains the documents according to which wetland type is classified. The “Incorporation by Reference” part includes those documents and covers “updates, addenda, supplements, replacements, or derivations” to them.

- 45.13: Delete “blockage of culverts,”

Rationale: This term is not an example of “sediment or debris” like the other items listed in the sentence. In addition, sediment and debris removal is allowed under the no-loss criteria regardless of whether it is blocking a culvert or not.

- 45.16 – 45.17: Delete “*permitted*” and replace with “*allowed.*” Also delete “*installed roadway.*”

Rationale: The term “*permitted,*” which is otherwise only used in the draft rule to refer to a mining permit, is potentially confusing in this context and is inconsistent with how actions that are “*allowed*” are otherwise referred to throughout the rule. Specifying a culvert as “*installed*” is not necessary because the culvert would have to be installed to be relevant to the action of unblocking it. Specifying a culvert as a “*roadway culvert*” is unnecessarily restrictive as blocked culverts can exist in other types of situations such as under railroads and under berms that are not necessarily used as roadways. The amended language is inclusive of those situations as well as roadways.

- 45.18 – 45.19: Delete “*is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill*” and replace with “*must not impact.*” Delete “*was there*” and replace with “*existed.*”

Rationale: The current language needlessly limits the type of evidence that can be used to show compliance with this part of the no-loss provision (aerial photographs only). This restriction is not supported by statute or other rule procedures and is an arbitrary limitation. See the rationale for lines 45.17 – 45.17 regarding the use of the term “*permitted.*” Also, the phrase “*drain or fill*” is replaced with the more comprehensive term “*impact*” that is defined in the rule and is the basis for regulating wetlands in the rule. The revised sentence provides a clearer rule standard.

- 46.4: Delete “*in accordance*” and replace with “*consistent.*” Also delete “*guidance*” and replace with “*guide.*”
- 47.7: Add “*and*” after the semicolon.
- 47.12: Add a period after “*landowner*” and delete “*; and.*”
- 47.13 – 47.16: Delete the entire sub-item 4.

Rationale: This condition for a no-loss for a temporary impact is conflicting, not supported by statute, and not implementable as written. It is unclear exactly what the condition is. The no-loss provision applies to a temporary wetland impact, not an entire project, while the condition refers to “*the original project*” which is inconsistent and unclear. Ten years is an arbitrary timeframe, and “*for a particular site within a wetland*” is also unclear and undefined. The condition also states that the local government unit may allow “*repairs to the original project,*” which conflicts with sub-items (1) and (2) that require the wetland to be restored to pre-project conditions. Further, the repairs are only allowed when the local government unit has determined they are “*necessary and reasonable*” with no basis for making that determination, which allows for arbitrary decisions. Removing sub-item (4) does not change the applicability or implementation of the no-loss provision.

- 47.23 – 47.25: Delete the last sentence of item A.

Rationale: This sentence is no longer necessary in Scope due to the 2024 statutory changes to exemptions which eliminated exemption provisions based on wetland impact amounts except for Subp. 8 (de minimis), and this requirement is already stated in Subp. 8F where it is still relevant.

- 48.10: Delete the existing sentence and replace with “*A project may not be split into components or phases for the purpose of gaining additional exemptions.*”

Rationale: The existing language of Item C is not supported in statute and is unnecessary due to the 2024 statutory changes to exemptions. Statute restricts the combining of the de minimis exemption (subpart 8) with other exemptions on a project. However, it does not restrict the combining of exemptions on a project other than de minimis. Further, the 2024 statute changes eliminated area-based exemptions (other than de minimis) and the remaining exemptions are purely activity-based, so only one exemption will apply to a given activity. The new language for Item C is relocated from 8420.0111 Subpart 54 (definition of project) as it is a substantive restriction associated with the application of exemptions rather than part of the definition of “project.”

- 50.20 – 50.23: Delete the entire second sentence of item e, beginning with “*The board may issue...*”

Rationale: Deleted due to questionable statutory authority.

- 51.3: Delete “*certified*” and replace with “*approved*.”

Rationale: “*Approved*” is consistent with Minn. Stat. 103G.2241, Subd. 1(3). Also, “*certified*” refers to a process of officially recognizing something as possessing certain qualifications or meeting certain standards. There are no specific qualifications or standards for a project to be considered a soil and water conservation project as they are highly variable and specific to the locale in which they are implemented. As the soil and water conservation district is specifically charged with implementing soil and water conservation, it is not necessary to specify any standards or criteria for such projects. “*Certified*” is changed to “*approved*” to ensure that such projects have been approved in some form by the applicable district charged with soil and water conservation, consistent with statute.

- 51.6 – 51.10: On lines 51.6 - 51.7, delete “*For purposes of this item, examples of soil and water conservation projects include those identified in the.*” On lines 51.9 – 51.10, delete “*Natural Resources Conservation Service Field Office Technical Guide.*”

Rationale: The rule reference to examples of soil and water conservation projects is unnecessary and imposes no substantive requirement or standard to be met. As the soil and water conservation district is specifically charged with implementing soil and water conservation, it is not necessary to specify any standards or criteria for such projects.

- 57.18: Delete “*the*” from the proposed language at the end of the line.
- 57.19: Add “*wetland*” after “*flooded*” and delete “*of wetlands*” from the proposed language after “*areas.*”
- 59.22 – 59.23: On line 59.22, delete “*the*” and add “*wetland*” before “*areas.*” On line 59.23, delete “*of wetlands.*” The clean language for Item D should look as follows:

D. Except as provided in items B, C, and E to I, a replacement plan is not required for up to 400 square feet of impacts to permanently and semipermanently flooded wetland areas as part of a project.

- 61.3: Delete “*area.*”

- 61.7 – 61.8: On line 61.7, delete “provide” and replace with “improve,” delete “improvement,” and delete “certified” and replace with “determined.” On line 61.8, delete “or technical evaluation panel.” The clean language of sub-item (3) should look as follows:

(3) the project will improve wildlife habitat as determined by the soil and water conservation district; or

Rationale: “Certified” refers to a process of officially recognizing something as possessing certain qualifications or meeting certain standards. There are no specific qualifications or standards for a project to be considered as improving wildlife habitat now that the outdated guidance reference is deleted from the rule. Therefore, “certified” is changed to “determine.” “Provide wildlife habitat improvement” is changed to “improve wildlife habitat” to improve clarity and conciseness with the use of active voice. The technical evaluation panel is deleted as another option for determining if a project improves wildlife because it establishes a potential conflict with statute, which provides that authority solely to the soil and water conservation district. Overall, the amended language for the entire subpart is now more consistent with statute.

- 62.11 – 62.12: Relocation of the proposed part 8420.0702 (lines 99.1 – 99.10), amending the part number to “8420.0510.”
- 62.14: Delete “site” and replace with “wetland.”
- 62.23 – 64.5: Delete lines 62.23 through 64.5 entirely and replace it with the following:
 - A. *A replacement plan for wetland impacts that result in a permanent adverse effect on a rare natural community must include provisions to replace the associated loss of public value.*
 - B. *A rare natural community is permanently adversely affected when a wetland impact results in a significant adverse change in the size or condition of the community. When determining whether a permanent adverse effect on the community exists, the local government unit must consider:*
 - (1) the size of the area affected by the impact relative to overall size of the community;*
 - (2) the extent to which the impact will alter the community's character and quality; and*
 - (3) any adverse effects to the community that are likely to occur after the initial impact.*
 - C. *Replacement for wetland impacts that permanently adversely affect a rare natural community must include credits obtained through:*
 - (1) the actions in part 8420.0526 when associated with the restoration or protection of a rare natural community or the restoration of a native plant community to an exceptional ecological condition; or*
 - (2) the restoration and protection of an exceptional natural resource under part 8420.0526, subpart 8.*

A replacement plan that does not provide for adequate replacement of the public value lost as a result of a wetland impact that permanently adversely affects a rare natural community must be denied.
 - D. *When making a decision on a replacement plan under this subpart, the local government unit must consult with the commissioner. Any comments received from the commissioner must be considered in accordance with part 8420.0255, Subp. 4A(4).*

Rationale: This provision is revised to better align with the board’s statutory authority under Minn. Stat. 103G.2242, Subd. 1 to develop rules for the replacement of wetland value. The revisions specify standards and requirements for the consideration of impacts to wetlands that contain rare natural communities as they relate to that statutory authority. The standards provide a basis for a local government decision, clarify replacement options, and, coupled with the new definition of rare natural communities in 8420.0111, Subp. 59a, provide greater clarity for both applicants and local government units.

- 65.8: Amend the line as follows:

*...quality of outstanding resource value waters listed designated in part ~~7050.0180~~
7050.0335 or on trout...*

Rationale: In the first Revisor’s draft, “7050.0335” is not shown as new, and “7050.0180” is not shown as stricken. The amendment above shows the change.

- 66.10: Add an “s” to “wetland” and delete “areas.”
- 72.18 – 72.24: Delete all of the existing language in the subpart and replace it with: “At least 50 percent of a wetland area where the hydrology is partially removed by drainage must be considered an impact. The percentage must be greater than 50 percent when the local government unit determines, in consultation with the technical evaluation panel, that a higher percentage is necessary to replace the resulting loss of public value.”

Rationale: The subpart is reworded to improve clarity. The beginning description of how drainage impacts are determined when wetland hydrology is completely removed is unnecessary as it is inferred from the definition of an impact and is the default. This subpart is specific to an alternative impact determination for partial drainage, and the proposed edits limit it as such. The proposed language also eliminates the inferred requirement that the technical evaluation panel approve the local government’s determination by deleting “acceptable,” which is both arbitrary and a potential conflict with statute. The language is replaced with a requirement for the local government unit to consult with the technical evaluation panel consistent with similar changes proposed in other parts of the rule. The new language also provides a basis for the local government unit to determine when a higher percent is warranted. The deleted language provided no such basis, which could lead to arbitrary decisions.

- 73.3: Delete “hydrogeomorphic class” and replace with “type.”
- 73.12: Delete “site.”
- 73.16: Add “wetland” before “bank” and delete “site” from the proposed language.
- 74.25: Add “or” after the first comma, delete the first occurrence of “board approved,” delete the second comma, delete the second occurrence of “board-approved,” and add “developed or approved by the board” after “criteria.” The clean language of the line should read as follows:

..., or a plan or criteria developed or approved by the board.”

Rationale: The change condenses and simplifies the sentence for increased clarity while encompassing the intended range of plans and criteria (e.g. Board approved comprehensive wetland protection and management plans or local water management plans,

compensation planning frameworks developed by the board, high priority areas under Minn. Stat. 103B.3355,(e), etc.) consistent with the watershed approach to wetland replacement.

- 75.25: Delete “area.”
- 76.4: Delete “site” and replace with “wetland.”
- 76.8: Change “habitat” to “habitats” and delete “types.”
- 76.15: Add “wetlands” after “replacement.”
- 77.13: Add “wetlands” after “replacement.”
- 77.15: Delete “wetland” after “of” and add “wetlands” after “replacement.”
- 79.16: Delete “wetland” after “when” and add “wetland” after “replacement.”
- 79.18: Add “wetland” after “replacement.”
- 79.20: Delete “mitigation” from the proposed language and replace with “replacement wetland.”

Rationale: The term “mitigation” is not defined and no longer used in the WCA rule. “Replacement” is the proper rule term in this context.

- 83.8: Add “wetlands” after “replacement.”
- 83.9: Add a comma after “verified,” and delete “and.”
- 83.10: Add “wetland” after “replacement.”
- 83.11 – 83.12: Amend as follows:

...meets all goals and performance standards applicable to ~~that~~ its stage of development stage of the replacement site.

- 84.18: Delete “area” from the proposed subpart title and replace with “wetland.”
- 84.19: Delete “area” and replace with “wetland.”
- 85.2: Delete “area” and replace with “wetland.”
- 85.4: Add “any part of” after “if” in the proposed language. Also delete “area” and replace with “wetland.”
- 85.23 - 85.25: Amend the first sentence of 8420.0526, Subp. 1D as follows:

D. Modification ~~or conversion~~ of nondegraded wetlands ~~from one wetland type to another~~ by damming, diking, impounding, or excavating does not constitute replacement credit.

Rationale: This change reduces potential confusion, as converting a wetland from one type to another is no longer applicable due to the change in the definition of wetland type. The basis for wetland type is now its hydrogeomorphic setting which would not change due to the actions listed in this item. In addition, the important substantive restriction of this provision is the modification of nondegraded wetlands, not the results of the modification.

- 87.8: Add “*or preserved*” after “*established.*”

Rationale: “*Preserved*” is added to encourage the preservation of these difficult to restore, rare resources where they exist. The addition is also consistent with changes to 8420.0515, Subp. 3.

- 88.16: Delete “*or*” and add “*as identified on U.S. Department of Agriculture records, years of*” after “*planting.*”

Rationale: To clarify the use of the term “*prevented planting*” and to improve the sentence’s grammar. Prevented planting is a United States Department of Agriculture (USDA) Risk Management Agency crop insurance provision defined and tracked by the USDA and is now specified as such where it is mentioned in the rule.

- 93.11: Add “*wetland*” after “*replacement.*”
- 93.19: Delete “*site*” and replace with “*wetland.*”
- 93.21: Delete “*hydrogeomorphic class*” and replace with “*type.*”
- 94.4: Delete “*the*” after “*of*” and add “*wetland*” after “*flooded*” in the proposed language.
- 94.15: Delete “*areas*” and replace with “*wetlands.*”
- 94.16: Delete “*area*” and replace with “*wetland.*”
- 95.14: Delete “*hydrologic bounce*” and change to “*water level fluctuations.*”

Rationale: To make the language of 8420.0528, Subp. 3C more user friendly. “*Water level fluctuation*” is more widely understood than the term “*hydrologic bounce.*”

- 99.1 – 99.10: The entire part is relocated to 8420.0510 (between lines 62.11 and 62.12) or thereabouts.
- 99.11: Add “*A*” after “*ESTABLISHING*” and delete the proposed “*SITES.*” The clean title should read as follows:

8420.0705 ESTABLISHING A WETLAND BANK.

- 99.17: Delete “*and certified by the local government unit prior to deposit.*”

Rationale: The deleted language is redundant with 8420.0725 which establishes the requirement for credits to be certified by the local government unit prior to deposit. In addition, the deletion removes confusing language as “*eligibility*” and “*certification*” are two very different things that happen at different times. Eligibility is established via approval of the wetland bank plan, while certification is the process of determining whether the actions have been successful in meeting performance standards. Deleting the “*and certified*” language establishes the eligibility requirement more clearly.

- 99.19 - 99.20: Delete the entire last sentence of 8420.0705, Subp 1.

Rationale: The deleted sentence is redundant as the requirement for prior local government unit approval of replacement actions is addressed in the two immediately preceding sentences.

- 100.8: Delete “*Application*” and replace with “*Prospectus requirements.*” Also delete “*decision*” from the proposed language. The clean title should look as follows:

Subp. 3. Prospectus requirements and procedures.

- 100.23 – 100.24: To be consistent with the chronological order of the banking process, the “*Prospectus requirements and procedures*” subpart is deleted from lines 103.5 – 103.21 and inserted between lines 100.23 and 100.24 as 8420.0705, Subp. 3, with the following edits:

- Add a new Item A as follows: Relocate 8420.0705, Subp. 3B (lines 101.1 – 101.3) to the new/relocated Subp. 3A (immediately after line 100.23) and edit as follows:

A. Before submitting a banking plan application to a local government unit under subpart 3a, the applicant must submit a prospectus to the local government unit for review ~~according to subpart 3a~~.

- Item letters: Re-letter the relocated items to account for the new Item A added above.
- Item E: Amend the proposed language as follows:

~~D.E.~~ The technical evaluation panel must review the prospectus to determine the feasibility of the project and ~~the its potential of the proposed wetland bank to generate replacement credits in accordance with this chapter. The local government unit must send findings and recommendations to the applicant within 90 days after the local government unit receives the complete prospectus.~~

- Subp. 3a: Insert the new title for Subp. 3a after item E (immediately before line 100.24) as follows:

Subp. 3a. Banking plan application and decision procedures.

- Clean language to be inserted between 100.23 and 100.24 is:

A. Before submitting a banking plan application to a local government unit under subpart 3a, the applicant must submit a prospectus to the local government unit for review.

B. The prospectus must describe the location of the proposed bank, how the bank will be established, associated land rights and ownership arrangements, and the actions proposed to generate credits according to part 8420.0526 and must include other information required by the board.

C. The local government unit must determine whether the prospectus is complete. If the prospectus is incomplete, the local government unit must notify the applicant within 15 business days of receiving the incomplete prospectus and specify, in writing, what information is missing.

D. Within 15 business days of receiving a complete prospectus, the local government unit must send a copy of the prospectus to members of the technical evaluation panel and the board's designated banking administrator.

E. The technical evaluation panel must review the prospectus to determine the feasibility of the project and its potential to generate replacement credits in accordance with this chapter. The local government unit must send findings and recommendations to the applicant within 90 days after the local government unit receives the complete prospectus.

*Subp. 3a. **Banking plan application and decision procedures.***

- 101.1 – 101.3: Delete Item B and relocate (with edits) to the “*Prospectus requirements and procedures*” subpart (Subp. 3, item A). See bullet 100.23 – 100.24 above.
- 101.4: Re-letter item “C” to item “B.”
- 101.5: Change “*subpart 3a*” to “*subpart 3.*”
- 101.8: Add “*boundary*” after “*easement.*”
- 101.11: Add “*to determine whether the application meets the requirements of this chapter*” after “*board.*”
- 101.12: Re-letter item “D” to item “C.”
- 101.16: Re-letter item “E” to item “D.”
- 101.24: Delete “*issued*” and replace with “*sent.*”
- 102.1: Re-letter item “F” to item “E.”
- 102.3: Add “*or if extended under item F,*” after “*Except as provided in item H.*”
- 102.6: Re-letter item “G” to item “F.” Change “*item F*” to “*item E.*”
- 102.11: Re-letter item “H” to item “G.”
- 102.13: Change “*item F*” to “*item E.*”
- 102.14: Change “*item I*” to “*item H.*”
- 102.15: Re-letter item “I” to item “H.”
- 102.22: Re-letter item “J” to item “I.”
- 102.24: Change “*item E*” to “*item D.*”

- 103.1: Re-letter item “K” to item “J.”
- 103.5 – 103.21: The entire “Prospectus requirements and procedures” subpart is deleted, relocated to 8420.0705, Subp. 3, and edited there.

Rationale: To be consistent with the chronological order of the banking process. See bullet 100.23 – 100.24 above.

- 104.3: Delete “; waiver” from the proposed language. The clean title should look as follows:

Subp. 5. Conservation easement.

- 104.4: Delete “No” and add “Except as provided in item B, no” at the beginning of the sentence.
- 104.18 – 104.20: Delete the proposed language and replace with:

B. A conservation easement is not required on state or Federal land, or land held in trust by the federal government for Tribal Nations, when the board determines that:

- 1) a conservation easement is not feasible, and*
- 2) adequate access to, and long-term protection of, the bank site exists.*

Rationale: To better clarify the limits of the intended discretion.

- 105.2: Delete “A.”
- 105.11 – 105.14: Amend 8420.0725, Item A as follows:

~~...sufficient time has passed for the wetland to become established, especially vegetation and hydrology, the applicable performance standards contained in the approved banking plan have been met before recommending certification. The area certified must be based on a A land survey or comparable method of field measurement must be used to define the extent of the area on which the credit certification is requested. The person making the measurement must verify in writing as to credit release request must identify the method and accuracy of the measurement. Failure to follow...~~

Rationale: The changes on lines 105.11 and the first part of 105.12 remove ambiguity relating to “sufficient time” and improve clarity by referencing performance standards. A “credit release schedule with associated performance standards” is required under 8420.0705, Subp. 3aB and is the mechanism by which it is determined when the wetland has become established. The amendments to the latter half of line 105.12 through 105.14 improve clarity and specificity.

- 105.17 – 105.18: Delete all proposed text (which will result in the deletion of the entire 8420.0725, Item B) as follows:

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

Rationale: The deleted sentence is unnecessary as it is addressed in the second sentence of the part above (lines 105.4 – 105.5).

- 106.6: Re-letter item “C” to item “B” and edit as follows:

€ B. Up to 15 percent of the potential banking credits ~~proposed for specified in the approved banking plan~~ are eligible for deposit in...

- 106.11: Re-letter item “D” to item “C.”
- 106.14-106.17: Delete the entire last sentence of the item:

...certification by the local government unit. ~~If the approved banking plan does not contain a credit release schedule and associated performance standards, remaining credits will be eligible for deposit based on the findings and recommendation of the technical evaluation panel regarding the success of the proposed replacement action.~~

Rationale: The language is unnecessary due to the new language in 8420.0705, Subp. 3aB which require the submittal and approval of a credit release schedule and performance standards, so all banking plans must contain them in order to gain approval.

- 106.18: Re-letter item “E” to item “D.”
- 107.1: Re-letter item “F” to item “E.”
- 107.6: Delete “areas” and replace with “wetlands.”
- 107.19: Delete “provide important functions and values” from the proposed language and replace with “function.”

Rationale: Remove potential ambiguity associated with “important” while more directly tying long-term wetland function to that intended in the approved bank plan.

- 109.10: Change “Bank” to “Banking.”
- 109.20: Change “Bank” to “Banking.”
- 113.12: Delete “long-term viability” and replace with “condition.”
- 114.10: Delete the first occurrence of “site” and replace with “wetland.”
- 114.11: Delete “site” and replace with “wetland.”
- 114.13 – 114.18: Edit the previously proposed language such that the clean language reads as follows:

Subp. 2a. Monitoring plan. Each replacement plan and banking plan involving restoration or creation must include a monitoring plan that achieves the purpose in subpart 1. The monitoring plan must include a description of proposed monitoring methods, the frequency and timing of monitoring during the growing season, and the content and submittal dates of monitoring reports.

Rationale: The deleted language is unnecessary as other parts of the rule address monitoring report requirements, including 8420.0810, Subp. 4 which requires that the monitoring reports must document “...*the progress toward and achievement of performance standards...*” It is more accurate to specify that the monitoring plan must include a “*description of*” the listed items rather than the vaguer, deleted requirement to include “*information on*” them. Given that the monitoring plan is proposed by the applicant, the addition of “*proposed*” prior to monitoring methods is more accurate. The deleted clause at the end of the subpart could also potentially be viewed as arbitrary.

- 115.25: Delete item “A” (the item letter).
- 116.14: Delete item “B” (the item letter).
- 116.17 - 116.19: Delete the entire sentence (delete the entire 8420.0810. Subp. 4B).

Rationale: The sentence could potentially be viewed as arbitrary and is unnecessary due to other rule provisions, including the requirement earlier in the subpart for the monitoring report to be consistent with the approved monitoring plan. 8420.0810, Subp. 2a addresses the monitoring plan, which must include the content and submittal dates of monitoring reports. 8420.0810, Subp. 4 also requires that the monitoring reports must document “...*the progress toward and achievement of performance standards...*”

- 119.17: Add “*wetland*” after “*replacement.*”
- 121.9: Delete “*mitigation.*”

Rationale: “*Mitigation*” is not defined or otherwise used in the rule, is much broader than “*replacement,*” and is unnecessary in the context of this sentence.

- 122.10: Add “*wetland*” after “*replacement.*”
- 122.11: Add “*wetland*” after “*replacement.*”
- 122.18: Delete “*sites*” and replace with “*wetlands.*”
- 123.15: Add “*wetland*” after “*replacement.*”
- 126.19: Add “*wetland*” after “*replacement.*”
- 130.17: Delete “*business.*”

Rationale: For consistency with the timeline for sending a notice of decision.

- 133.15: Delete “*and the enforcement authority*” from the proposed language and change “*agree*” to “*agrees.*”

Rationale: Change made in consultation with DNR enforcement to better clarify roles and responsibilities.

- 133.19: Delete “*determines*” and replace with “*certifies.*”

- 133.24 – 133.25: Delete “*Failure to comply with the conditions may result in the issuance of a subsequent restoration or replacement order*” and replace with “*If the soil and water conservation district determines that the applicant has failed to comply with the conditions, a subsequent restoration or replacement order must be issued to obtain compliance.*”

Rationale: To eliminate potential ambiguity related to the use of “*may*” in this instance.

- 137.8: Delete “*A*” and replace with “*To obtain compliance, the enforcement authority may record a.*” Then delete “*may be recorded or filed.*” The clean language of the line should read:

A. To obtain compliance, the enforcement authority may record a restoration or replacement order as a deed restriction...

Rationale: To address potential ambiguity while remaining consistent with statute.

- 137.11: Delete “*by the commissioner, a conservation officer, or a peace officer.*”

Rationale: To correspond with the edits to line 137.8 that reference the enforcement authority.

- 137.15: Delete “*conditions of the order are met*” in the proposed language and replace it with “*soil and water conservation district has issued a certificate of satisfactory restoration or replacement.*”

Rationale: Improve clarity as the certificate is the method by which it is determined whether the conditions of the order have been met.

- 137.18 – 137.19: Delete “*finds*” and replace with “*has found.*” Also delete “*or that there has not been*” and replace with “*of.*”

Rationale: To clarify confusing language while remaining consistent with statute.

- 139.4 - 139.5: Delete the proposed sentence and replace it as follows:

D. A local government unit’s decision on an appeal under this subpart must be noticed in accordance with part 8420.0255, subpart 5.

- 139.22 – 139.23: On line 139.22 delete “*should*” and replace with “*must,*” and delete the proposed “*sufficient.*” On line 139.23 add “*significant*” before “*merit.*” A clean version of the language is as follows:

...government unit. The petition must include information to establish significant merit for the appeal based on the requirements of this chapter. The filing fee is not...

Rationale: For consistency with Minn. Stat. 103G.2242, Subd. 9(b)(1).

- 142.24: Delete “*site*” and replace with “*wetland.*”