

# April 25, 2025 Preliminary Draft Wetland Conservation Act Rule

## Companion Document

This document directly compares selected language from the 4/25/25 Preliminary Draft Rule to the 11/12/24 Preliminary Draft Rule where significant changes to the previously proposed language (i.e. “changes to previous changes”).

Language comparisons are included from the following rule subparts:

- **Page 2:** 8420.0111 DEFINITIONS, Subp. 11a. Bank Service Area or Wetland Bank Service Area.
- **Page 3:** 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES, Subpart 1. Determining local government unit.
- **Page 4:** 8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES, Subp. 3. Notice of application and Subp. 4. Decision.
- **Page 5:** 8420.0330 REPLACEMENT PLAN APPLICATIONS, Subp. 3. Application contents.
- **Page 6-7:** 8420.0420 EXEMPTION STANDARDS, Subp. 2. Agricultural activities.
- **Page 8-9:** 8420.0515 SPECIAL CONSIDERATIONS, Subp. 3. Rare natural communities.
- **Page 10:** 8420.0735 MONITORING AND CORRECTIVE ACTIONS, Subpart 1. Monitoring.
- **Page 11:** 8420.0810 REPLACEMENT WETLAND MONITORING, Subp. 4. Timing and duration of monitoring.
- **Page 12:** 8420.0900 ENFORCEMENT PROCEDURES, Subp. 2. Cease and desist orders.
- **Page 13:** 8420.0900 ENFORCEMENT PROCEDURES, Subp. 3. Restoration and replacement orders.
- **Page 14:** 8420.0900 ENFORCEMENT PROCEDURES, Subp. 8. Deed restriction.

## 8420.0111 DEFINITIONS.

### **11/12/24 Preliminary Draft:**

Subp. 11a. **Bank Service Area or Wetland Bank Service Area.** "Bank Service Area" or "Wetland Bank Service Area" means a geographic area wherein replacement wetlands, including banking credits, can provide preferred replacement for wetland impacts incurred in the same area according to part 8420.0522. Bank Service Areas are established by the board in consultation with the U.S. Army Corps of Engineers, published in the State Register, and publicly available on the board's website. The bank service areas take effect 30 days after publication and remain in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register. The board will consider watershed boundaries, ecological characteristics, land use, wetland quality, historic wetland abundance and loss, restoration opportunities, geographic size, and the economic viability of wetland banks when defining bank service areas.

### **4/25/25 Preliminary Draft:**

Subp. 11a. **Bank Service Area or Wetland Bank Service Area.** "Bank Service Area" or "Wetland Bank Service Area" means a geographic area wherein replacement wetlands, including banking credits, can provide preferred replacement for wetland impacts incurred in the same area according to part 8420.0522. Bank Service Areas are established by the board in consultation with the U.S. Army Corps of Engineers and publicly available on the board's website. The bank service areas must be published in the State Register, take effect when specified in the notice but no sooner than 120 days after publication, and remain in effect unless superseded by subsequent statute, state administrative rule, or notice in the State Register. The board will consider watershed boundaries, ecological characteristics, land use, wetland quality, historic wetland abundance and loss, restoration opportunities, geographic size, and the economic viability of wetland banks when defining bank service areas.

## 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

### Subpart 1. Determining local government unit.

**11/12/24 Preliminary Draft:** D. Notwithstanding items A to G, the Department of Natural Resources is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, for wetland banks established solely for replacing wetland impacts occurring under a permit to mine, and for projects affecting calcareous fens.

**4/25/25 Preliminary Draft:** ~~D. Notwithstanding items A to G, the Department of Natural Resources is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.~~ For wetland banking projects established solely for replacing wetland impacts occurring under a permit to mine under Minnesota Statutes Section 93.481, the local government unit is the Department of Natural Resources.

J. Notwithstanding items A to I, the commissioner is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

## 8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES.

### Subp. 3. Notice of application.

**11/12/24 Preliminary Draft:** A. Within 15 business days of receipt of a complete application, the local government unit must send a copy of the application and a notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization, if there is one; the commissioner; ~~and~~ individual members of the public who request a copy; and, for activities within the boundaries of a federally recognized Indian Tribe listed in Minn. Stat. Section 10.65, subdivision 2, the Tribal Chair. The notice must identify the type of application, the date the comment period ends, and where to submit comments. If requested, individual members of the public who request a copy must be sent a summary copy of the application that includes information to identify the applicant and the location and scope of the project. The comment period must ~~be at least~~ end no sooner than 15 business days from the date the notice of application is sent. Revisions of an approved and valid replacement plan must be noticed according to this subpart by sending a summary of the proposed revisions if:

**4/25/25 Preliminary Draft:** A. Within 15 business days of receipt of a complete application, the local government unit must send a copy of the application and a notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization, if there is one; the commissioner; ~~and~~ individual members of the public who request a copy; and, for activities within the exterior reservation boundary of a federally recognized Indian Tribe listed in Minn. Stat. Section 10.65, subdivision 2, the lead official of the Tribal governing body or their designee. The notice must identify the type of application, the date the comment period ends, and where to submit comments. If requested, individual members of the public who request a copy must be sent a summary copy of the application that includes information to identify the applicant and the location and scope of the project. The comment period must ~~be at least~~ end no sooner than 15 business days from the date the notice of application is sent. Revisions of an approved and valid replacement plan must be noticed according to this subpart by sending a summary of the proposed revisions if:

### Subp. 4. Decision.

**11/12/24 Preliminary Draft:** C. The local government unit's decision is valid for five years, or as otherwise specified in the local government unit's notice of decision when a longer period is justified in accordance with the standards in this chapter. For wetland boundary and type decisions, the local government unit's decision is valid for five years except when the technical evaluation panel has determined, subsequent to the issuance of the decision, that natural or artificial changes to the hydrology, vegetation, or soils of the area have altered the wetland boundary or type.

**4/25/25 Preliminary Draft:** C. For wetland boundary and type decisions that are not associated with another type of valid decision under this chapter, the local government unit's wetland boundary and type decision is valid for five years except when the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have altered the wetland boundary or type.

## 8420.0330 REPLACEMENT PLAN APPLICATIONS.

### Subp. 3. Application contents.

**11/12/24 Preliminary Draft:** ~~On an application form approved by the board in consultation with the commissioner, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information required in part 8420.0305: A replacement plan application must, on a form provided by the board, include all information required by the board.~~

**4/25/25 Preliminary Draft:** ~~On an application form approved by the board in consultation with the commissioner, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information required in part 8420.0305: The landowner applying for a replacement plan is responsible for submitting the information necessary, on a form provided by the board, to show that the proposed project satisfies the requirements and standards of parts 8420.0500 to 8420.0528 and, for project-specific replacement plans, part 8420.0810.~~

## 8420.0420 EXEMPTION STANDARDS.

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

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

**11/12/24 Preliminary Draft:** impacts to wetlands on agricultural land labeled prior-converted cropland and impacts to wetlands resulting from drainage maintenance activities authorized by the United States Department of Agriculture, Natural Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture, and wetland;

(1) the prior-converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service in accordance with Code of Federal Regulations, title 7, part 12;

(2) For areas labeled prior converted cropland to be eligible for the exemption under item A of this subpart, an agricultural commodity must have been produced on the area at least once before December 23, 1985, and, as of December 23, 1985, the area must have been capable of producing an agricultural commodity (i.e., did not support woody vegetation and was sufficiently drained to support production of an agricultural commodity).

(3) Impacts to wetlands resulting from the relocation of a drainage system are not exempt under the maintenance provision in item A unless those wetlands are labeled farmed wetland, farmed wetland pasture, or wetland on a valid, final certified wetland determination and the impacts to those wetlands constitutes NRCS authorized maintenance.

(4) when required by the local government unit or the board for purposes of verifying qualification for the exemption under this item, it is the responsibility of the owner or operator of the land to provide a copy of the final certified wetland determination and any other information necessary to demonstrate qualification to, and allow the Natural Resources Conservation Service to share related information with, the local government unit, the soil and water conservation district, and the board; and

(5) The board may provide guidance clarifying the validity of final certified wetland determinations for the purpose of this subpart.

**4/25/25 Preliminary Draft:** impacts to wetlands on agricultural land labeled prior-converted cropland and impacts to wetlands resulting from drainage maintenance activities authorized by the United States Department of Agriculture, Natural Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture, and wetland.

(1) For purposes of this item, “authorized” means:

(a) written confirmation from the Natural Resources Conservation Service verifying that the specific activity is authorized under Code of Federal Regulations, title 7, part 12 as amended, or, in the absence of such written confirmation,

(b) the maintenance activity does not exceed the scope and effect of drainage manipulations that occurred prior to December 23, 1985.

(2) This item is subject to the following conditions;

(a) the prior-converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service in accordance with Code of Federal Regulations, title 7, part 12;

(b) for areas labeled prior converted cropland to be eligible for the exemption under item A, the area must have been planted with an annually seeded crop at least once before December 23, 1985 and must not have supported woody vegetation as of December 23, 1985;

(c) impacts to wetlands resulting from drainage maintenance activities that involve relocating any portion of the drainage system are not exempt under item A unless those wetlands are labeled farmed wetland, farmed wetland pasture, or wetland on a valid, final certified wetland determination and the impacts to those wetlands are authorized by the Natural Resources Conservation Service;

(d) when required by the local government unit or the board for purposes of verifying qualification for the exemption under this item, it is the responsibility of the owner or operator of the land to provide a copy of the final certified wetland determination and any other information necessary to demonstrate qualification to, and allow the Natural Resources Conservation Service to share related information with, the local government unit, the soil and water conservation district, and the board; and

(e) impacts under this Item must not exceed those allowed using the label definitions and activities authorized under the version of Code of Federal Regulations, title 7, part 12 that was in effect on Aug 1, 2024. The board may issue orders to update the criteria and application of this item if changes to the Code of Federal Regulations, title 7, part 12, its successor laws, or United States Department of Agriculture implementation standards are enacted.

## 8420.0515 SPECIAL CONSIDERATIONS.

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

### 11/12/24 Preliminary Draft:

A. The commissioner must consider the following when making a rare natural community determination:

- (1) existing data on native plant communities in the area;
- (2) the conservation, condition, and biodiversity significance status ranks of the community; and
- (3) the context of the native plant community on the landscape, including:
  - a. the location of the community relative to surrounding native plant communities and land uses;
  - b. the presence and abundance of other occurrences of the same community type within or near the project site;
  - c. the rarity of the community at local, regional, and statewide scales; and.
  - d. whether data about the affected community are current and complete.

B. The local government unit must consider the following when determining if the proposed activities will permanently adversely affect a rare natural community:

- (1) the permanence of the adverse effect;
- (2) the size of the area affected by the impact relative to overall size of the community and the extent to which the impact will alter its character and quality;
- (3) any ongoing or anticipated future adverse effect to any portions of the community that will remain after the initial impact;
- (4) proposed onsite mitigation measures aimed at sustaining or enhancing the same community type; and
- (5) any proposed mitigation measures that restore comparable rare natural communities or permanently protect at-risk rare natural communities. To restore a rare natural community means to permanently protect its native community attributes, preferably in the same watershed or ecological section.

**4/25/25 Preliminary Draft:**

A. The commissioner must consider the following when making a rare natural community determination:

(1) existing natural heritage data, including native plant communities in the area;

(2) the Conservation Status Rank of the native plant community; and

(3) the landscape context of the native plant community, including:

a. the location of the community relative to surrounding native plant communities and land uses; and

b. the rarity of the community at local, regional, and statewide scales.

B. The commissioner may request and consider additional data for areas that have not been mapped or surveyed.

C. For projects potentially affecting a rare natural community, the local government unit must consult with the Department of Natural Resources. The local government unit must consider the following when determining if the proposed activities will permanently adversely affect a rare natural community:

(1) the permanence of the adverse effect;

(2) the size of the area affected by the impact relative to overall size of the community and the extent to which the impact will alter its character and quality;

(3) any ongoing or anticipated future adverse effect to any portions of the community that will remain after the initial impact;

(4) onsite mitigation measures aimed at sustaining or enhancing the same community type; and

(5) mitigation measures that permanently protect at-risk rare natural communities. Protection of a rare natural community must include permanent protection of its native community attributes, preferably in the same watershed or ecological section.

## 8420.0735 MONITORING AND CORRECTIVE ACTIONS.

### Subpart 1. Monitoring.

**11/12/24 Preliminary Draft:** B. After completion of the required monitoring period, the board ~~shall~~ may periodically inspect wetlands deposited into the bank ~~at a frequency sufficient~~ to ensure that easement conditions are being met.

**4/25/25 Preliminary Draft:** B. After completion of the required monitoring period, the board ~~shall periodically inspect wetlands deposited into the bank at a frequency sufficient to ensure that easement conditions are being met~~ is responsible for assessing a wetland bank site to ensure that it continues to provide important functions and values consistent with its approved bank plan.

## 8420.0810 REPLACEMENT WETLAND MONITORING.

Subp. 3 4. ~~Duration~~ Timing and duration of monitoring.

**11/12/24 Preliminary Draft:** A. ~~Monitoring~~ Replacement wetland monitoring may, ~~at the discretion of the local government unit,~~ begin upon construction certification, but must begin no later than the first full growing season following construction certification. ~~Monitoring~~ For replacement wetlands involving restoration or creation, monitoring must continue for at least five full growing seasons ~~or until the local government unit determines, with the concurrence of the technical evaluation panel, that the replacement is successful, but in no case may the determination be made before the end of the third full growing season.~~

**4/25/25 Preliminary Draft:** A. ~~Monitoring may, at the discretion of the local government unit, begin upon construction certification, but must begin no later than the first full growing season following construction certification. Monitoring must continue for five full growing seasons or until the local government unit determines, with the concurrence of the technical evaluation panel, that the replacement is successful, but in no case may the determination be made before the end of the third full growing season.~~ Replacement wetland monitoring must begin no later than the first full growing season after the local government unit has determined that the construction specifications of replacement wetlands have been met. The monitoring plan must include a monitoring period that is sufficient to determine whether the replacement wetland has met performance standards. For replacement wetlands involving actions in 8420.0526 subparts 3, 4, 5, 7, and 8, monitoring must continue for at least five full growing seasons. When the technical evaluation panel has determined that the replacement wetland has met all performance standards in less than five full growing seasons, the local government unit may waive the remaining monitoring requirements.

## 8420.0900 ENFORCEMENT PROCEDURES.

### Subp. 2. Cease and desist orders.

**11/12/24 Preliminary Draft:** A. ~~A~~ ~~C~~ease and desist orders may be issued when the enforcement authority has probable cause that an activity is being or will again be conducted that impacts a wetland;

~~(1) does not qualify for inconsistent with a valid exemption or no-loss no-loss or an exemption approved by the local government unit under parts 8420.0415 and 8420.0420, or with insufficient evidence to support qualification for an exemption or no-loss; and~~

~~(2) is being or will again be conducted without, or inconsistent with, prior approval of a valid replacement plan approved by a the local government unit under part 8420.0255 or involving a decision stayed by the board pursuant to part 8420.0905 or without having submitted a complete public road project notification meeting the requirements of part 8420.0544, item D.~~

**4/25/25 Preliminary Draft:** A. ~~A~~ ~~C~~ease and desist orders may ~~only~~ be issued when the enforcement authority has probable cause that an activity ~~is not in compliance with this chapter is being or will again be conducted that impacts a wetland, does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and is being or will again be conducted without prior approval of a replacement plan by a local government unit under part 8420.0255 or involving a decision stayed by the board pursuant to part 8420.0905.~~

## 8420.0900 ENFORCEMENT PROCEDURES.

### Subp. 3. Restoration and replacement orders.

**11/12/24 Preliminary Draft:** A. The enforcement authority ~~must~~ may issue a restoration order or replacement order when:

(1) the impact has already occurred ~~been completed when discovered~~ or, after the landowner or responsible party has been issued a cease and desist order ~~has been issued or otherwise notified that the impact is a potential violation of this chapter~~, the landowner does not apply for a replacement plan, exemption, or no-loss within ~~three weeks~~ 30 days;

(2) the impact is inconsistent with a valid exemption or no-loss approved by the local government unit under parts 8420.0415 and 8420.0420, or there is insufficient evidence to support qualification for an exemption or no-loss; and

(3) the impact has not been replaced in compliance with a valid replacement plan approved by the local government unit or a complete public road project notification meeting the requirements of part 8420.0544, item D has not been submitted;

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

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

**4/25/25 Preliminary Draft:** A. The enforcement authority ~~must~~ may issue a restoration order or replacement order when an activity has impacted a wetland in violation of this chapter and the enforcement authority has received an order in accordance with Item F. If a cease and desist order has been issued, the landowner has 30 days to apply for a replacement plan, exemption, or no loss before a restoration or replacement order may be issued.

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

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

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

## 8420.0900 ENFORCEMENT PROCEDURES.

### Subp. 8. Deed restriction.

#### **11/12/24 Preliminary Draft:**

A. If a landowner or responsible party fails to comply with a restoration or replacement order, the commissioner, conservation officers, or other peace officers may record the order with the county recorder or registrar of titles as a deed restriction on the property. The deed restriction will remain in place until the conditions of the order are satisfied or the order is rescinded.

B. A deed restriction filed or recorded under this subpart on homesteaded property must be removed if the owner requests that it be removed and a court has found that the owner of the property is not guilty or that there has not been a violation of the restoration or replacement order. Within 30 days of receiving a valid request for removal, the enforcement authority that recorded the order must contact, in writing, the office of the county recorder or registrar of titles to have the order removed and must inform the owner of such removal within 30 days of receiving confirmation from the county recorder or registrar of titles that the order has been removed.

#### **4/25/25 Preliminary Draft:**

A. Restoration or replacement orders may be recorded or filed as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. The deed restriction must be recorded or filed by the commissioner, a conservation officer, or a peace officer in the office of the county recorder or registrar of titles in the county where the real property is located.

B. A deed restriction filed or recorded under this subpart must be removed if:

(1) the conditions of the order are met;

(2) the order is rescinded; or

(3) on homesteaded property, the owner requests that it be removed and a court has found that the owner of the property is not guilty or that there has not been a violation of the restoration or replacement order. Within 30 days of receiving a valid request for removal, the enforcement authority that recorded the order must contact, in writing, the office of the county recorder or registrar of titles to have the order removed and must inform the owner of such removal within 30 days of receiving confirmation from the county recorder or registrar of titles that the order has been removed.