

Wetland Delineations for Minnesota Wetland Conservation Act Compliance - Answers to Frequently Asked Questions

Wetlands Section, Minnesota Board of Water & Soil Resources (BWSR)

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Purpose

Identifying and delineating wetlands is often the first step in complying with the regulatory provisions of the Minnesota Wetland Conservation Act (WCA). Guidance for submitting delineation reports in Minnesota was issued in 2015 (*Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and Wetland Conservation Act Local Governmental Units in Minnesota, Version 2.0, March 4, 2015* - <https://bwsr.state.mn.us/delineation-guidance-resources>). The guidance does not comprehensively address all aspects of the delineation submittal and review process. This document provides answers to some frequently asked questions by wetland delineation practitioners related to wetland delineations in Minnesota and should be considered supplemental to the guidance.

Answers to Frequently Asked Questions

How long are approved wetland delineations (Type and Boundary) valid?

The Local Government Unit (LGU) decision is valid for **five** years unless the Technical Evaluation Panel (TEP) determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have sufficiently altered the wetland boundary or type. Note that this timeframe applies to all decisions, not just type and boundary. LGU's may specify a shorter or longer time frame at the time of the decision, however, five years is the default decision time-frame unless otherwise specified.

I have a Notice of Decision (NOD) that has or is about to expire, can I request the LGU to extend the NOD another 5-years?

If the site conditions affecting the wetland boundaries and types have not changed significantly, this may be a reasonable request. A request to extend an expired or about to expire wetland boundary/type decision should be accompanied by a letter/memo or report confirming the accuracy of the previously approved wetland boundaries and types. Confirmation of accuracy typically includes a site review by a professional delineator with documentation of site conditions and relevant wetland delineation parameters compared to that documented in the previously-approved report. Delineation sample points may need to be re-assessed in some instances and

included in the delineation renewal request. It is unlikely that older delineation approvals (i.e. conducted prior to the 87 Manual Supplements in 2010) can be extended without conducting significant field work using current delineation methodology.

Do I have to physically mark or flag delineated wetland boundaries for a Level 2 or 3 delineation? Do I need to have the wetland boundaries located by a land surveyor?

Physically marking the wetland boundary with pin flags or some type of flagging was a common practice in the past. However, there are circumstances where markings are subject to disturbance (i.e. they are moved or disappear) such as in pastures and urban areas. With the increased use of Global Positioning System (GPS) methods and equipment it is now possible to provide the precise location of wetland boundaries that can be followed and reviewed in the field without physical markers. Delineators should coordinate with the LGU and TEP members regarding local preferences and requirements for identifying the wetland boundaries to facilitate a field evaluation. Whether or not the boundaries need to be located by a professional land surveyor will vary according to the project type and/or LGU requirements. Projects requiring professionally prepared construction and grading plans are more likely to require that wetland boundaries be located by a professional land surveyor as compared to projects constructed from more informal sketch plans and such. Again, delineators should coordinate with the approving LGU to determine local requirements and preferences. When a land survey of wetland boundaries is required, it is often good practice to request a field review of either field-marked or GPS-located boundaries followed by a final survey of the approved boundaries.

I submitted my delineation outside the growing season, can it still be reviewed by the LGU/TEP?

It depends. Level 1 delineations can be reviewed at any time of the year as they are based on off-site assessment methods and a field review is not necessary. Field reviews for Level 2 and 3 delineations are required and are best performed during the growing season when vegetation is actively growing and easily identifiable. However, there are circumstances where Level 2 and 3 delineations can be adequately reviewed outside of the growing season. It depends on the specifics of the wetland being delineated including consideration of the important indicators for the specific boundary determination and how observable those indicators are at the time of review. For example, an outside of growing season field review of a wetland delineation could be conducted if the wetland boundaries are topographically abrupt, senesced vegetation is still reasonably identifiable, the ground is not frozen to prevent soil observations and adequate primary or secondary hydrology indicators are observable. Alternatively, an outside of growing season field review may not be appropriate if the wetland boundaries are subtle, the ground is frozen and vegetation is masked by snow or otherwise unidentifiable. It is the charge of the technical WCA LGU representative and the TEP to determine if an out of growing season decision can be made on any specific wetland boundary/type application. BWSR does not support an arbitrary cut-off date (such as October 1st or October 15th) for submittal of wetland delineations for review as there is no technical basis for a specific cutoff date. However, an LGU has the authority to impose such restrictions via their own local ordinance/rule based on other non-technical factors.

I completed several delineations near the end of the growing season, will the LGU/TEP review them with the submittal of just maps and data sheets and not a full report?

It is reasonable for an LGU and TEP to conduct a field review of a wetland delineation without a full report if basic information is provided including a map of delineated boundaries, soils map, NWI map, protected waters map, a recent aerial image and completed field data forms. The LGU and TEP should share their assessment of

the delineation with the applicant based on the field review. However, any final wetland boundary/type decision must be based on the submission, noticing (i.e. WCA Notice of Application) and review of a complete delineation report. An LGU has the authority to be more restrictive based on their own local ordinance/rule, but BWSR supports the flexible approach described above. Applicants should consider that the LGU has up to 60 days to act on the submittal of a complete application. Even though field reviews may be conducted prior to the submission of a complete delineation report as described, workload issues near the end of the growing season may prevent an LGU and TEP from completing the review prior to the onset of winter conditions. Therefore, it is important for delineators to coordinate delineation reviews with the appropriate LGU early and manage approval expectations with their clients.

What happens if I submit a delineation and the LGU is not able to review it within the 60-day decision timeline before the onset of winter conditions?

There are generally three options for the LGU if they determine that field review of the submitted delineation is not possible because of seasonal constraints related to the observance of critical indicators. One option is to call the application “incomplete” based on seasonal constraints, and then notice the application as complete in the spring when field conditions are conducive to review it. This option requires the applicant to be notified within 15 business days of submittal. A second option is to deny the application based on the inability to conduct the field review due to seasonal constraints, then reconsider the application in the spring when conditions are favorable. A third option is for the LGU to continue to extend the review of the delineation application until the appropriate field conditions for review exist. BWSR encourages use of the first option because the second option suggests technical inaccuracy which may not be the case and the third option requires diligent tracking of extension timelines involving applicant approval for extensions beyond 60 days.

Contact

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