



MN Wetland Professional Certification Program Regional Training

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

1

2023 MWPCP Schedule

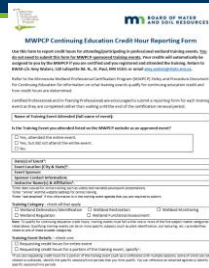
- WCA Regulatory Training- St Cloud MNDOT Training Facility- April 20
- Regional Training: Rochester - May 16-17
- Wetland Delineation and Regulation Basic Class: Arden Hills- June 12-16
- Floristic Quality Assessment (FQA)- MNDOT Shoreview Training Center – June 20
- Basic Wetland Plant ID- Farmington (July 18) or Brainerd (July 20)
- Wetland Delineation Refresher- Prairie Woods ELC- Spicer- August 8
- Regional Training: Fergus Falls – August 15-16
- Wetland Delineation and Regulation Basic Class: Brainerd - September 11-15



2

End of the current renewal period

- Current certification renewal period ends on December 31, 2023 for all who transferred to the MWPCP from the U of MN Wetland Delineation Certification Program.
- Credit reporting deadline for this renewal period is January 1, 2024.
- Submit the [Credit Hour Reporting Form](#) with proof of attendance no later than January 1, 2024.
- Not required to submit a credit hour reporting form for MWPCP courses.
- COVID-related [temporary continuing education policies](#) will lapse at the end of 2023.



MWPCP Continuing Education Credit Hour Reporting Form

Use this form to report credit hours for attending/participating in a continuing education activity. This form is required for all MWPCP Certified Professionals. It must be submitted to the Board of Water and Soil Resources by the MWPCP deadline and will be used to determine if you are eligible to renew your certification. For more information, visit [www.dnr.state.mn.us/bwsr/mwpcp](#).

Name of the Minnesota Wetland Professional Certification Program (MWPCP) Course: _____

Course Number: _____

Course Title: _____

Course Dates: _____

Course Location: _____

Course Type: _____

Course Description: _____

Number of Credit Hours: _____

Reporting Period: _____

Reporting Date: _____

Reporting Professional Name: _____

Reporting Professional ID Number: _____

Reporting Professional Title: _____

Reporting Professional Address: _____

Reporting Professional Phone: _____

Reporting Professional Email: _____

Reporting Professional Signature: _____

Reporting Professional Title: _____

Reporting Professional Address: _____

Reporting Professional Phone: _____

Reporting Professional Email: _____

3

Next renewal period

- The next credit renewal period begins January 1, 2024 and ends on December 31, 2026.
- [MWPCP Continuing Education policy](#) requires 18 credit hours of MWPCP-approved training.
- Six of those may be online training.



Continuing Education for MWPCP – Policies and Procedures

April 23, 2022

This document explains specific Minnesota Wetland Professional Certification Program (MWPCP) policies and procedures related to Continuing Education.

Terminology:

Certified Professionals – Individuals that are recognized by the MWPCP as having a certain level of knowledge, expertise, and experience in MWPCP subject matter and related to conducting and/or reviewing professional work associated with wetland regulatory compliance in Minnesota.

Certified as Training Professionals – Individuals that are recognized by the MWPCP as having a certain level of knowledge and training in MWPCP subject matter and related to conducting and/or reviewing professional work associated with wetland regulatory compliance in Minnesota.

Certification Renewal – The process of renewing certification of MWPCP Certified Professionals and/or Training Professionals every three years through attendance of professional wetland training events.

Credit Hours – Number of hours for the relevant half hour event used with an MWPCP-approved continuing education training event (workshop/short course).

Approved Training Event – Professional wetland training event where the MWPCP has determined the number of credits from participants will apply for certification renewal if they attend/participate.

4

MWPCP Regional Training- Fergus Falls

Day One:

- NRCS Wetland Determinations
- Special Considerations
- Restorations Orders
- Lunch
- Ag Bank Case Studies
- De minimis
- Group Delineation Review

Day Two:

- Ecologic provinces of Otter Tail County
- Common Soil & Hydrology Indicators
- Soil Profile description exercise
- Lunch
- Chapter 5 or drainage exercises
- Antecedent Precipitation Tool
- Field exercise- small group delineation exercise

Class Portal: <https://bwsr.state.mn.us/node/4681>

5



USDA United States Department of Agriculture

Natural Resources Conservation Service Wetland Determinations

MN Wetland Professional Certification Program Fergus Falls Regional Training- August 15, 2023

Natural Resources Conservation Service

6



MN NRCS Wetland Determinations

Authority/Administration
 Self Certification (AD-1026)
 Initiating a Determination
 Certified Wetland Determination
 Wetland Determination Process
 Policy/Procedures
 Best Drained Condition
 Labels
 Mitigation
 Minimal Effect
 Lateral Effect



Natural Resources Conservation Service
www.nrcs.usda.gov



7



Authority - The Food Security Act of 1985

The Food Security Act of 1985, as amended.
 Food, Agriculture, Conservation, and Trade Act of 1990
 The Federal Agriculture Improvement and Reform Act of 1996
 The Farm Security and Rural Investment Act of 2002
 Food, Conservation, and Energy Act of 2008
 Agricultural Act of 2014
 Agricultural Act of 2018



Natural Resources Conservation Service
www.nrcs.usda.gov



8

Highly Erodible Land Conservation and Wetland Conservation
 The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby— (1) Reduce soil loss due to wind and water erosion; (2) Protect the Nation's long-term capability to produce food and fiber; (3) Reduce sedimentation and improve water quality; and (4) Assist in preserving the values, acreage, and functions of the Nation's wetlands.
 ...a person who ...plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA.



Compliance with Wetland Conservation

a person shall be ineligible for USDA program benefits listed if:
 (2) The person produces an agricultural commodity on a wetland that was converted after December 23, 1985; or
 (3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.



Natural Resources Conservation Service
www.nrcs.usda.gov



9

Agricultural commodity: any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.



Administration of Wetland Conservation

- Farm Service Agency (FSA)**
- provides the administration and determination of ineligibility, assists persons with self certifying compliance
- Natural Resources Conservation Service (NRCS)**
- Makes wetland determinations, including the determination of if the wetland was converted
 - Determines whether maintenance of drainage of is within the scope and effect of the original drainage
 - Approves mitigation plans

16 USC Ch. 58 Sections 3801, 3821-3824
 7 CFR Part 12

Natural Resources Conservation Service
www.nrcs.usda.gov



10



Self Certification

The person applying for or receiving the benefits must certify in writing on Form AD-1026 that such person will not plant an agricultural commodity on a converted wetland; or convert a wetland to make possible the production of an agricultural commodity

The person applying for the benefits must authorize and provide representatives of USDA access to all land in which such person has an interest for the purpose of verifying any such certification.

U.S. DEPARTMENT OF AGRICULTURE
 FarmServiceAgency
**HIGHLY ERODIBLE LAND CONSERVATION (HELIC) AND
 WETLAND CONSERVATION (WC) CERTIFICATION**

Natural Resources Conservation Service
www.nrcs.usda.gov



11



The image shows a detailed form titled 'Form AD-1026 Self Certification'. It includes sections for 'Certification', 'Signature', and 'Remarks'. The form is used for certifying compliance with wetland conservation requirements.

Natural Resources Conservation Service
www.nrcs.usda.gov



12

AD-1026

- Form person uses to self certify
- Continuous certification, person only needs to update as necessary
- Completed at FSA, needs to be on file for person to receive USDA benefits
- Person should be the one to fill out, can receive guidance from FSA and NRCS on what choices to make on the form.
- For referring technical determination needs to NRCS



Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



13

Certified Wetland Determination

- Certification of a wetland determination means that the wetland determination is of **sufficient quality to make a determination of ineligibility** for program benefits. In order for a map to be of sufficient quality to determine ineligibility for program benefits, the **map document must be legible** to the extent that areas that are determined wetland can be discerned in relation to other ground features.
- Any determinations issued before November 28, 1990 **are not** certified wetland determinations
- After November 28, 1990 must be on correct form to be consider certified wetland determination.
- If issued after July 3, 1996, usually will be a certified wetland determination (map still must be legible)
- Issuing document (NRCS-CPA-026-WC, NRCS-CPA-026E, SCS-CPA-026) must be signed
- NRCS can only provide technical guidance based off a certified wetland determination

Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



14

Issuing/Utilizing Determinations

- All wetland determinations are initially issued to the person who filed the AD-1026
- Issued as a map delineating and labeling the areas of restrictions/exemptions
- Issued as a preliminary determination with informal appeal rights (reconsideration, mediation), 30 calendar days from receipt
- If appealed issued as a final determination with further appeal rights, if not appealed determination becomes final
- Person's responsibility to use determination to maintain compliance
- NRCS utilizes for providing further guidance if desired by person or when conducting compliance investigations
- GIS information of determination can be shared with the person, contractors, consultants
- Person can request FSA mark/tag boundary in the field
- Determinations are private information, NRCS can only share at person's request/release



Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



15

Review of Existing Certified Wetland Determinations

- All certified wetland determinations, conditions, and exemptions remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification.**
- A person may request review of a certification only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination.



Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



16

Determination Process

- National Food Security Act Manual (Title 180 Conservation and Planning, Part 510-520)**
Internal document used by NRCS to fulfill its duties regarding WC
Includes detailed definitions
Processes for determining compliance with WC
Provides process for completing wetland determinations
e.g., 514.8A Food Security Act Wetland Identification Procedures
- Provides that the methods of the Corp of Engineers Wetland Delineation Manual and its Regional Supplements are the foundation for completing wetland determinations, provides for variances to the Corp methodology
 - Provides for the use of State Offsite Methods (SOSM)
- State Guidance For Wetland Determinations Including State Offsite Methods**
Minnesota Natural Resources Conservation Service For the 1985 Food Security Act, as amended. Revised January 2018
- supplements/provides a process to streamline the Corp offsite methodology specific to the needs of USDA



Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



17

Determination Process

- Centralized management of completion and administration within MN NRCS
- All wetland determination are completed by dedicated compliance staff



Natural Resources Conservation Service [nrcs.usda.gov](https://www.nrcs.usda.gov)



18



Determination Process

Rely heavily on onsite procedures

Some onsite data collection

Offsite resources utilized

- Imagery
- LIDAR data
- Soils mapping/data
- Existing agency record
- National Wetlands Inventory

Sampling Unit Number	Step 1		
	Vegetation	Hydrology	Soil
1	2275	44	100%
2	100	75%	100%
3	100	75%	100%
4	100	75%	100%
5	100	75%	100%
6	100	75%	100%
7	100	75%	100%
8	100	75%	100%
9	100	75%	100%
10	100	75%	100%



Presence of three wetland criteria: vegetation, hydrology, soils

Natural Resources Conservation Service <https://www.nrcs.usda.gov>

19



Determination Process

3 Step Process

- Wetland Identification – Does it meet the wetland criteria?
- Wetland Type and Labeling – Does it meet an exemption, what restrictions apply?
- Wetland Size and Delineation – What is the extent?



NRCS staff completing the process must have the appropriate job approval authority.

Wetland Unit Number	Step 1			Step 2			Step 3		
	Vegetation	Hydrology	Soil	Wetland Type	Labeling	Size	Delineation	Exemption	Restrictions
1	2275	44	100%	W1	W1	100%	100%	None	None
2	100	75%	100%	W1	W1	100%	100%	None	None
3	100	75%	100%	W1	W1	100%	100%	None	None
4	100	75%	100%	W1	W1	100%	100%	None	None
5	100	75%	100%	W1	W1	100%	100%	None	None
6	100	75%	100%	W1	W1	100%	100%	None	None
7	100	75%	100%	W1	W1	100%	100%	None	None
8	100	75%	100%	W1	W1	100%	100%	None	None
9	100	75%	100%	W1	W1	100%	100%	None	None
10	100	75%	100%	W1	W1	100%	100%	None	None

Natural Resources Conservation Service <https://www.nrcs.usda.gov>

20



Best Drained Condition

Normal Circumstances –

The soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed. For FSA wetland identification purposes, this concept is the consideration of normal and abnormal climate-based site changes and natural and artificial disturbance-based site changes that can create wetland identification challenges. "Normally present" is further explained as the vegetative, soil, and hydrologic conditions that occur under both of these conditions:

- (a) Without regard to whether the site has been subject to drainage actions after December 23, 1985, and without regard to whether the vegetation has been removed or significantly altered.
- (b) During the wet portion of the growing season under normal climatic conditions.

Best drained condition –

the hydrologic conditions with respect to depth, duration, frequency, and timing of soil saturation or inundation resulting from drainage manipulations that occurred prior to December 23, 1985, and that exist during the wet portion of the growing season during normal climatic conditions.

Natural Resources Conservation Service <https://www.nrcs.usda.gov>

21



Best Drained Condition - SOMS

To determine the best drained conditions, the agency expert must review all available imagery years regardless of "slide indicator status" following the pre-1985 drainage manipulation year through 1985 or further, if necessary.

Consideration of years after 1985 may be needed when the manipulation was installed in the years immediately preceding 1985. The agency expert must consider lack of maintenance and recent maintenance when reviewing imagery.

- If the sampling unit(s) exhibits a wetness signature, on the normal year image that best represents best drained conditions, it is indicative to support the presence of wetland hydrology. Wetland hydrology is positive.
- If the sampling unit(s) lack a wetland signature, on the normal year image that best represents best drained conditions, it is indicative of an absence of wetland hydrology. Wetland hydrology is negative.



Natural Resources Conservation Service <https://www.nrcs.usda.gov>

22



Labels

Non-exempt

- Wetland (W)
- Farmed Wetland (FW)
- Farmed Wetland Pasture/Hayland (FWP)
- Converted Wetland (CW)

Exempt

- Prior Converted Cropland (PC)
- Nonwetland (NW)
- PC/NW
- Artificial Wetland (AW)
- Mitigation Exemption (MIW)
- Minimal Effect Exemption (MEW)



Natural Resources Conservation Service <https://www.nrcs.usda.gov>

23



Wetland (W)

An area that meets the criteria for hydric soils, hydrophytic vegetation, and wetland hydrology.

Site typically has not been manipulated by altering hydrology and/or removing woody vegetation.

May be farmed under natural conditions without drainage improvement or removal of woody vegetation.



Natural Resources Conservation Service <https://www.nrcs.usda.gov>

24



Farmed Wetland

A wetland that was **manipulated and planted** to an ag commodity before December 23, 1985, but meets inundation or saturation criteria and exhibits wetland characteristics in its best drained condition.

Area may be farmed and maintained as existed before December 23, 1985. May be maintained to the extent that existed before December 23, 1985.

Pothole vs. Non-pothole hydrology criteria



Natural Resources Conservation Service nrcs.usda.gov



25



Farmed Wetland Pasture or Hayland (FWP)

A wetland that was **manipulated** and used for pasture or hay before December 23, 1985, but meets saturation criteria and exhibits wetland characteristics in its best drained condition.

Area may be utilized for forage or farmed and maintained as existed before December 23, 1985. May be maintained to the extent that existed before December 23, 1985.



Natural Resources Conservation Service nrcs.usda.gov



26



Converted Wetland (CW)

A wetland converted between December 23, 1985, and November 28, 1990.

Planting of agricultural commodities or additional manipulation may cause ineligibility.

Maintenance allowed to scope and effect of original manipulation.



Natural Resources Conservation Service nrcs.usda.gov



27



Converted Wetland Year (CWYear)

A wetland converted after November 28, 1990. "Year" indicates the year the wetland was converted, and ineligibility begins.

USDA program participant and their affiliated persons are ineligible for benefits (regardless of whether ag commodity planting occurred) until the wetland is restored or mitigated. Planting of agricultural commodities is also prohibited.



Natural Resources Conservation Service nrcs.usda.gov



28



Prior Converted Cropland (PC)

A wetland converted to cropland before December 23, 1985, and did not meet farmed wetland inundation or saturation criteria.

No restrictions.

PC may include areas that meet wetland criteria, but do not meet farmed wetland hydrology criteria.



Natural Resources Conservation Service nrcs.usda.gov



29



Nonwetland (NW)

An area that does not contain a wetland.

NW may include areas that were converted and no longer met wetland criteria prior to December 23, 1985, but that were not in cropland use.

Artificial Wetland (AW)

An area that was formerly a non-wetland area under natural conditions but now exhibits wetland characteristics because of the influence of human activities.

No restrictions.



30

Natural Resources Conservation Service nrcs.usda.gov



Converted Wetland Technical Error (CWTE)

An area converted after December 23, 1985, where the conversion was a consequence of an incorrect NRCS determination or USDA technical guidance.



May be used for production of agricultural commodities or forage. May be maintained to the extent that existed on date of the CWTE determination.

Natural Resources Conservation Service www.nrcs.usda.gov



31



Mitigation Exemption (MIW)

No person shall be determined to be ineligible for any action associated with the conversion of a wetland if the wetland values, acreage, and functions are adequately mitigated.

NRCS Approves mitigation plans, can assist in development of plans
Two options

- on land for which the owner grants an easement to USDA (restoration, enhancement, or creation of wetland)
- through mitigation banks approved by USDA



Natural Resources Conservation Service www.nrcs.usda.gov



32



Minimal Effect Exemption (MW)

NRCS has determined that the actions of the person with respect to the conversion of the wetland or the combined effect of the production of an agricultural commodity on a wetland converted by the person or by someone else, individually and in connection with all other similar actions authorized by NRCS in the area, would have only a minimal effect on the wetland functions and values of wetlands in the area.



Exemption that has existed since the enactment of WC, either not implemented, or not implemented consistently

- new process to be used soon in determining minimal effect
- functional assessment that combines the process of determining wetland values in the area while also assessing combined effect of granting additional minimal effect exemptions in the area

Natural Resources Conservation Service www.nrcs.usda.gov

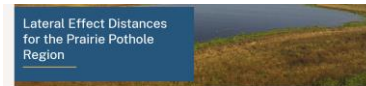


33



Lateral Effect

- NRCS developed lateral effect distances
- Recent update was to provide consistency across Prairie Pothole Region
 - Based on soils data
 - For USDA customers it provides certainty with compliance if guidance is followed
 - Produce a coarse assessment of the likely impacts of drainage to a wetland based on soils and drainage characteristics
 - Designed so drainage has a minimal impact on wetland hydrology
 - Same lateral effect regardless of extent of tile planned around wetland



This tool provides guidance on lateral effect distances for prospective drainage projects within the Prairie Pothole Region (PPR) states of Iowa, Minnesota, North Dakota and South Dakota.

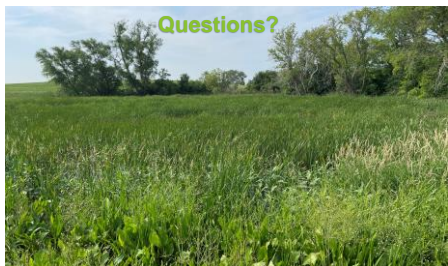
Prairie Pothole Region Lateral Effect Database

The tool provides guidance on lateral effect distances for prospective drainage projects within the Prairie Pothole Region (PPR) states of Iowa, Minnesota, North Dakota and South Dakota. It is based on soil texture and soil moisture characteristics and is intended to inform the assessment of lateral effect distances for tile drainage projects in the PPR. It is not intended to be used for projects outside of the PPR. It is not intended to be used for projects in the PPR that are not tile drainage projects.

Natural Resources Conservation Service www.nrcs.usda.gov



34



Natural Resources Conservation Service www.nrcs.usda.gov



35

Food Security Act Manual (FSAM)

Table of Contents

PART VII. PREPARING TO MAKE WETLAND DETERMINATIONS

7001 Overview

Subject A. General

7001 Overview

7002 Wetland Protection, Criteria, Definitions, and Exclusions

7003 Wetland Mapping and Wetland Determinations

Subject B. Coordination with Other Agencies

7004 Overview

7005 Coordination with FWS

7006 Agency Approval of Easements (ACE) and Environmental Reviews

7007 State, Local, State, and Federal Wetland Protection Rules

Subject C. Making Conservation and Wetland Determinations

7008 Wetland Mapping Convention

7009 Use of Aerial Imagery

PART VIII. MAKING WETLAND DETERMINATIONS

8001 Overview

Subject E. General Process for Making Wetland Determinations

8002 Overview

8003 Identifying and Mapping of Wetland Determinations

8004 Off-Site and On-Site Determinations

1800-1809AM, Title 180, Manual (2011)

NRCS Wetland Determinations

When are they applicable in WCA?

36

Certified Wetland Determinations When are they applicable in WCA?

Use of Certified Wetland Determination (CWD) for WCA implementation varies from

- Can be considered
- Must be used
- Can't be used

We'll go over 6 parts of WCA and discuss whether CWD can or can't be used.

37

Wetland Delineations

Can the CWD be used?

NO

The differences are too great -

- Focus is around the 1985 timeframe
- 30-year precipitation (1980-2010)
- Policies like "best drained condition"

38

Ag Exemptions

Can the CWD be used?

NO

Ag exemptions are based on -

- Planting history, drainage maintenance, within a public drainage system, size of impact, etc.

But there is one exception.....

39

Ag Bank MOU

Can the CWD be used?

YES*

CWD labels are used to determine if Ag credits (AGC) can be used for replacement.

**May be some instances when an area is identified as PC but is a wetland that requires replacement for WCA.*

40

Replacement Plans

Can the CWD be used?

NO / MAYBE*

No, for most replacement plans.

* Could be considered for some agricultural related projects if the LGU/TEP agrees with the CWD boundary/size.

41

Wetland Banking Projects

Can the CWD be used?

NO

Due to all the differences that were discussed, delineations done according to the 87 Corps Manual are needed.

42

Violations/Enforcement

Can the CWD be used?

NO / MAYBE

It can be used for violations on ag land if it is consistent with the WCA determination.

Should not be used for all other violations.

43

Take Home Messages

- Use the CWD when appropriate.
- Producers in the Farm Program may believe it is the one and only wetland map – IT IS NOT!!!
- We all wish for one wetland regulation in MN but that isn't the reality – different programs and legal authority limit us.

44



Special Considerations




45

What are WCA Special Considerations?

Scope: Factors that must be considered when preparing/reviewing a replacement plan.

- WCA 8420.0515 (Subp. 2-10)
- Applies to impact/replacement
- Does not apply to exemptions/no loss
- Responsibility lies with Applicant and LGU

"must be considered" & "in the review of"



46

Special Considerations (8420.0515)

- Subp. 2 Endangered and threatened species
- Subp. 3 Rare natural communities
- Subp. 4 Special fish and wildlife resources
- Subp.5 Archaeological, historic, or cultural
- Subp. 6 Groundwater sensitivity
- Subp. 7 Sensitive surface waters
- Subp. 8 Education or research use
- Subp. 9 Waste disposal site
- Subp. 10 Consistency with other plans



47

Special Considerations (8420.0515)-Basics

- Can result in denial
- Each Subp. has unique requirements
 - 'Permanent or significant adverse effects'
 - 'Taking of ETS'
 - 'Not maintained or adequately replaced'



48

Subp. 2 - Endangered/Threatened Species (ETS)

- Takings = No WCA approval
- DNR determines if takings has/will occur
- Can allow with DNR takings permit
 - Discretionary
 - Must be unavoidable
 - Compensatory mitigation often required

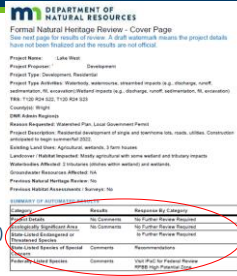


49

Subp. 2 - Endangered/Threatened Species (ETS)

STEP 1 – Evaluate Existence

- DNR natural heritage review
 - NHIS or Explore Report
 - License agreement
- Listed species under MR 6134.0200-.0400 or website
- Prior EAW?
- DNR staff (Hydro, Eco Services, TEP member)



50

Subp. 2 - Endangered/Threatened Species (ETS)

STEP 1 – Evaluate Existence

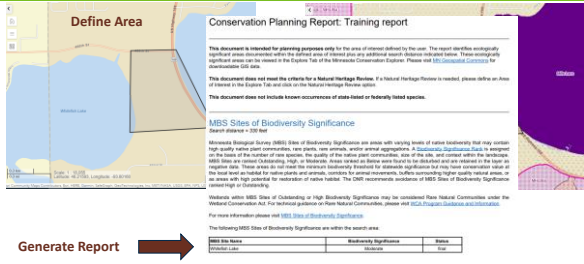
DNR NHR - Conservation Planning Report

- <https://mce.dnr.state.mn.us/>
- User defined area
- Free review and report
 - "Flags" items for more review
 - Fast
 - More maybe needed



51

ETS – Conservation Planning Report



52

ETS – Natural Heritage Report

- Set up account and Submits for full review
- Include non-public data
- Fee and full report
 - Flags ETS 1 mile
 - "Hit" moves to DNR Staff Review
 - No comment OR "Needs Further Review"
 - Botanical/species survey?

SUMMARY OF AUTOMATED RESULTS

Category	Results	Response By Category
Project Details	No Comments	No Further Review Required
Ecologically Significant Area	No Comments	No Further Review Required
State-Listed Endangered or Threatened Species	Needs Further Review	State-protected Species in Vicinity
State-Listed Species of Special Concern	Comments	Recommendations
Federally Listed Species	Needs Further Review	NLEB - Recommendations Visit PHC for Federal Review NLEB - Needs Further Review

53

ETS – Natural Heritage Report



54

Subp. 2 - Endangered/Threatened Species (ETS)

LGU Administration

- Request Additional information
 - Incomplete?
- Review & approve
- Wait for additional information
 - 15.99?
- **Conditional Approval after ID



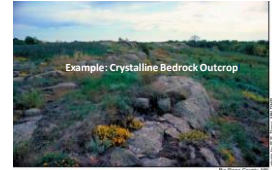
55

Subp. 3 - Rare Natural Communities (RNC)

Modification resulting in Permanent Adverse affects = No WCA approval

DNR Determines if RNC exists

LGU determines adverse affects



56

Subp. 3 - Rare Natural Communities (RNC)

STEP 1: Evaluate Existence

- Assisted by applicant/consultant/LGU
- Requires discussion with DNR staff
- May require site visit, additional data, project information.

*Guidance found here
https://bwsr.state.mn.us/sites/default/files/2019-01/Wetland_WCA_Rare_Nat_Comm_Tech_Guidance.pdf



57

Subp. 3 - Rare Natural Communities (RNC)

DNR Considerations

- Native Plant Communities/Natural Heritage Database
- Conservation Status
 - Greater Consideration for Vulnerable, Imperiled, Critically Imperiled

The following DNR Native Plant Communities are within the search area:

WCA Site Name	NPC Code	Native Plant Community Classification	Conservation Status Rank	Number of Communities
DNR Wetlands	WSP_20	Open Water / Open Water / Open Water	S1, S2, S3	2
DNR Wetlands	MNPL	Open Water / Open Water	S1	4
DNR Wetlands	MNPL	Open Water / Open Water	S4	1
DNR Wetlands	WSP_20	Open Water / Open Water	S1, S2, S3, S4, S5	1
DNR Wetlands	FDW4	Open Water / Open Water	S1	1
DNR Wetlands	FDW4	Open Water / Open Water	S4	4
DNR Wetlands	FDW4	Open Water / Open Water	S4	1
DNR Wetlands	WSP_20	Open Water / Open Water	S1, S2, S3, S4, S5	1

Conservation Status Ranks for Native Plant Community Types and Subtypes
 The native plant community (NPC) type and subtypes recognized in Minnesota have been assigned conservation status ranks (S-ranks) that reflect the risk of elimination of the community from Minnesota. There are the ranks:

- S1 = critically imperiled
- S2 = imperiled
- S3 = susceptible to extirpation
- S4 = apparently secure, uncommon but not rare
- S5 = secure, common, widespread, and abundant

58

Subp. 3 - Rare Natural Communities (RNC)

DNR Considerations

- Condition Rank of Native Plant Communities
- Landscape Context
 - presence or abundance locally, regionally, statewide?
- Biodiversity Significance rank
 - Outstanding, High, Moderate, Below

EWR DIVISION DIRECTOR ROUTING SLIP - DECISION REQUEST

Subject: Rare Natural Community (RNC) Designation Decision

Region: Region 1 - NW Region 2 - NE Region 3 - Central Region 4 - South

Project/Title Name: Rock Outcrops (Mine Site)

Regional Staff Recommendation: []

Name: [] Title: [] Phone #: 507.253.1256 Email: []

Position: Regional Ecologist

Date: 2/26/2020

Summary of Project and Recommendation:

The [] site is located within the rock outcrop communities on the [] site. The status of plant communities - they have previously been determined by the DNR to be intact, viable, and of relatively high quality. It is one of the few remaining places that the state endangered, *Eschscholus virginicus* remains.

- Conservation status rank: imperiled (S2)
- Condition of the site: range from (in between excellent and good) (S4) to good (S)
- Landscape context: site contains some of the largest bedrock outcrops in the Outcrops area and these outcrops support the suite of typical outcrop plant species
- Site of Biodiversity Significance: High to Moderate

Recommendation: Designate the equivalent of good wetlands as "rare natural community" for the purposes of the wetland conservation act.

59

Subp. 3 - Rare Natural Community (RNC)

STEP 2: Will it be permanently adversely impacted?

LGU determination

- Consider indirect/direct impacts
- Permanence (on-going? Future?)
- Scope of impact
- Options for project modification
- Mitigation measures (setbacks/buffers) & Sufficient Replacement
- DNR input/options



60

Subp. 4 Special fish and wildlife resources

- Significant adverse effect on special/locally significant F & W
- Potential Resources
 - fish passage/spawning areas,
 - water birds,
 - waterfowl,
 - deer wintering/wildlife corridor
- Could include others



61

Subp. 4 Special fish and wildlife resources

- Must determine if a resources exists nearby/within impact site
 - Local resource managers
 - Public data sets
 - May not meet Criteria as RNC but could be noted & locally significant?
- Must determine resource affects
- Consider F(x) replacement options



62

Subp 5 - Archaeological, historic, or cultural resources

- Modification of known AHC
 - Includes sites on or eligible for National Registration
 - LGU must determine if significant adverse effect on the AHC value
 - "in consultation with State Historical Preservation Office" (SHPO)



63

Subp. 5 - Archaeological, historic, or cultural resources

- Submit to SHPO
 - <https://mn.gov/admin/shpo/environmental-review/review/>
 - Applicant or LGU
 - 30 days?
 - 106 review with Corps, or
 - Online Portal (arch/cultural) [Home Page - OASites \(mn.gov\)](#)
- Qualified individual=full access



64

Subp. 5 - Archaeological, historic, or cultural resources

Results

- No property or suspected resource letter
- Request more information/site survey
 - Phase I/Other data submittal

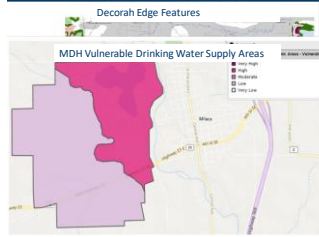
LGU

- Review & move to NOD
- Wait for additional information
 - 15.99?
- Conditional Approval NOT a good option



65

Subp. 6 - Groundwater sensitivity



- Examples may include Decorah edge or Vulnerable well areas
- [Source Well Protection Mapping](#)
 - Groundwater layers
- <https://mnatlas.org/gis-tool/Where-to-find-information>
 - Numerous layers....

66

Subp. 6 - Groundwater sensitivity



- Significant adverse effects on groundwater quality = no WCA approval
- LGU determination
 - Expand TEP to include others staff resources
 - [Groundwater Resources, data and studies \(DNR\)](#)
 - [Criteria and Guidelines for Assessing Geo Sensitivity...](#)

67

Subp. 7 - Sensitive surface waters

- Resources Include
- Designated Trout streams
 - Outstanding Resource Value Waters
 - Lakes, Rivers and Fens
 - MN Rule 7050.0100 .0335

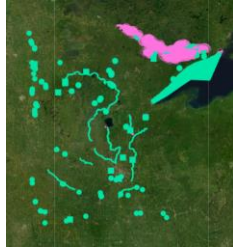


68

Subp. 7 - Sensitive surface waters

Resource Location

- List at Revisor website – [here](#)
- Mapping at <https://mpca.maps.arcgis.com/apps/webappviewer/index.html?id=8358fe79d8e14403a28fe3451aa7f48b>
- OR [MnGeo Search](#)



69

Subp. 7 - Sensitive surface waters

- Activity cannot have a significant adverse effect on the water quality
- Coordination with PCA
- Coordination with DNR



70

Subp 8. - Education or research use

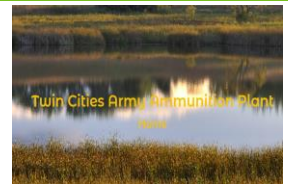
- Are the wetlands impacted known for educational or research purpose?
- If so, will these uses be maintained?
- Can the uses be adequately replaced?
- If not, must be denied



71

Subp. 9 Waste disposal site

- LGU must evaluate type/amount of waste material at site.
 - (former dump, superfund site, TCAAP/AHATS)
- If the activity involves hazardous waste or contaminants, must comply with federal/state standards
 - Does activity include excavation/grading in areas?
- Work much be conducted according to State and Federal standards
 - Seek assistance with Solid waste authority and/or MPCA



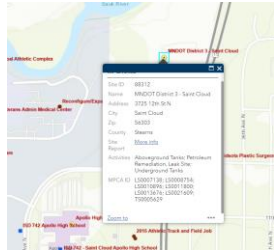
72

Subp. 9 Waste disposal site

MPCA Resources

<https://www.pca.state.mn.us/air-water-land-climate/cleanup-and-redevelopment>

- Previously contaminated and those being investigated for contamination
- Contaminated/Hazardous waste sites
- Groundwater contamination sites
- Petroleum leak sites



73

Subp. 10 Consistency with other plans

Other Plans: Comp. Plan, Watershed plan, land use plans, planning and zoning, etc.

- Is the activity consistent?
 - Type of use "fit" the area proposed?
 - Zoning allow the use?
- Coordination with the other staff
 - zoning authority
 - watershed planner
 - City planner
 - WD staff

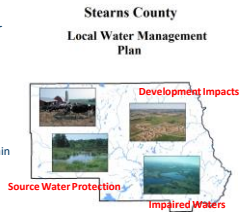
6.8 Subpart 10, Consistency with Other Plans Zoning
 The property is zoned general agricultural (A-1) by Wright County. Single family residential uses are a permitted use in this district (Zoning Ordinance Section 155.047). The proposed building area is within the School Section Lake 1000-foot lake overlay which is zoned as a natural environment shoreline. Construction on the project site will comply with the building standards and setbacks outlined in Zoning Ordinance Section 155.057).

Land Use Plan
 Wright County structures their Land Use Plans into three separate regions of the county and the project area falls into the US Highway 12 Corridor Land Use Plan that was adopted in 2011. The Land Use Plan presents future land use for the entirety of the US Highway 12 corridor located in Wright County. The future land use outlined in this plan indicates that the project area will remain in an Agricultural Land Use classification, (US Highway 12 Corridor Land Use Plan, US 12 Corridor Future Land Use Map).

74

Subp. 10 Consistency with other plans – Examples

- Multiuse trail proposed near BWCA
 - No motorized vehicles within certain buffer area of BWCAW
 - Replacement plan modifications to meet
- Driveway sharing and/or spacing – ordinance prohibits or requires.
 - Access sharing may or may not be required by certain ordinances
 - Access spacing for safety



75

Considerations Subp. 2 thru 10

What about Highly degraded Sites?

- Annual cultivation
 - Fence line may still have sp
- Prior fill or heavy repeated use
 - Re-development,
 - Gravel pit?
- Other high degradation



6. RARE & ENDANGERED SPECIES CONSIDERATIONS
6.1.3.1 Rare Species Consideration
 Minnesota Rules Part 6420.0115 specifies that endangered and threatened species must be considered when submitting a wetland replacement plan.
 reviewed a formal copy of the Named Herring Inventory System (NHIS) to assess if any rare species are known to occur within a 1-mile radius of the project area. No records of threatened or endangered species are contained within a 1 mile radius of the project area. There are no rare natural communities on this site.

76

Examples

6.1.3.1.1.1 Wetland Replacement Considerations
 WCA rules (6420.0115) identify nine factors that must be considered when submitting a wetland replacement plan:

1. Endangered and Threatened Species – See Section 6.1.
2. Rare Natural Communities – See Sections 6.1
3. Special Fish and Wildlife Resources – The project footprint does not include known fish passage or spawning areas, water bird nesting colonies, migratory waterfowl concentration areas, or deer watering areas.
4. Archaeological, Historic, or Cultural Resource Sites – A phase 1 archaeological survey was recommended for this site by SHPO. A phase 1 survey was completed. No cultural resources were observed.
5. Groundwater Sensitivity – Development of the site is not expected to have adverse effects on groundwater quality.
6. Sensitive Surface Waters – Development of the site is not expected to have adverse effects on the water quality of outstanding resource value waters listed in part 7050.0180 or on trout waters designated by the Minnesota DNR.
7. Education or Research Use – Wetlands at the site are not known to be used for educational or research purposes.
8. Waste Disposal Sites – The project site is not known to include hazardous wastes or contaminants.
9. Consistency with Other Plans – The proposed development plan is consistent with applicable land use and policy plans envisioned by the City of Buffalo.

****Included Map & letters from SHPO/DNR**

77

Examples

Special Considerations (6420.0516)
 Chapter 6420.0516, Subpart 1 – Scope of WCA states that the following special considerations must be assessed for the applicant prior to the submission of a replacement plan. Below is a discussion of special considerations categories as they pertain to the project area.

- 6.1 Subpart 2, Endangered and Threatened Species**
 A Minnesota Department of Natural Resources (DNR) quality of the National Heritage Information System (NHIS) revealed no rare natural communities within the project area.
- 6.2 Subpart 3, Rare Natural Communities**
 Review of the DNR NHIS indicates there are no rare natural communities within the project area as defined in rules. One site on the Minnesota Biological Survey is listed within the property. This site, M350000000, is listed as a rare natural community and is located on the property. This site is located on the property. This site is located on the property. This site is located on the property.
- 6.3 Subpart 4, Special Fish and Wildlife Resources**
 The project area does not contain any special fish and wildlife resources. The site does not contain any trout streams, habitat for species of greatest conservation need, or lakes or streams of biological significance.
- 6.4 Subpart 5, Archaeological, Historic, or Cultural Resource Sites**
 Requests to archaeological, historic, or cultural resource sites are not restricted. It is anticipated that further analysis of cultural resources may be conducted by the USACE as part of the wetland replacement plan. It is anticipated to be necessary.
- 6.5 Subpart 6, Groundwater Sensitivity**
 The project is not anticipated to have a significant effect on groundwater.
- 6.6 Subpart 7, Sensitive Surface Waters**
 There are no outstanding resource value waters as listed in part 7050.0050 in the project area. Review of DNR geographic data indicates there are no outcrops in the project area or nearby.

****Data review and summary each; SHPO to come.**

78

Special Considerations



Questions?

79

MINNESOTA WETLAND CONSERVATION ACT Restoration Order

Pursuant to Minn. Stat. § 103G.2372 and MN Rule part 8420.0900, this order is being issued by the Minnesota Department of Natural Resources to restore wetland that was impacted in violation of the Minnesota Wetland Conservation Act. **Violation of this order is a misdemeanor.**

Reference Number: _____

This order is issued to:

Name: _____

Address: _____

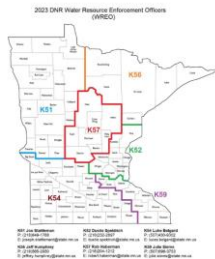
BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

80

Enforcement Guidance & Contacts

- [Violations and Restoration/Replacement Orders Topic of the Week](#)
- [Enforcement Procedures online module](#)
- Water Resource Enforcement Officers contact found on [BWSR WCA Contacts page](#)



81

Enforcement Procedure Overview



82

DNR Enforcement Role

- Landowner contact if Cease and Desist Orders issued
- Write Summary of information on violation
- Gather Evidence of the violation including contractor's info
- Issue Restoration and Replacement Order
- Grant Extensions
- Initiate enforcement action
- Follow and track all violation cases
- Issue RPN for after the fact cases. (not in progress)



83

Enforcement Procedures (8420.0900)

Subpart 1. **Enforcement authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

Subp. 2. **Cease and desist orders.**

A. Cease 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, does not qualify for no-loss or an exemption, and is being or will again be conducted without prior approval of a replacement plan by a local government unit



84

Resource Protection Notice

Enforcement Documents

Cease & Desist Order

85

Cease & Desist Orders (8420.0900 Subp. 2.)

B. A cease and desist order must not be issued if the landowner:

- (1) has, and is complying with, a valid approval from the local government unit or
- (2) has sufficient evidence to support qualification for an exemption or no-loss.

C. The enforcement authority must advise the landowner that the landowner's written application should be made immediately to the local government unit

The enforcement authority issuing a cease and desist order must promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.

86

Cease & Desist Orders (8420.0900 Subp. 2.)

D. If an application is triggered by a cease and desist order, the local government unit must make the decision according to WCA standards.

E. If the decision is that the activity is exempt or qualifies as a no-loss, the local government unit must request that the enforcement authority rescind the cease and desist order,

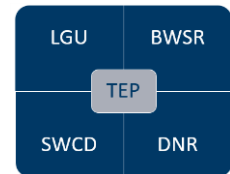
F. If the application is denied, the local government unit must immediately notify the soil and water conservation district, the enforcement authority, and the landowner.



87

SWCD Role in a violation

- Landowner contact for CDO or RPN
- Site visit- gather information/evidence
- Prepare Restoration/Replacement Order
- Monitor restoration/ replacement site.
- Certificate of Satisfactory Completion
- Track the cases.



88

Restoration and Replacement Orders

Subp. 3. Restoration and replacement orders.

- A. The enforcement authority must issue a restoration order or replacement order when:
- (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.

89

8420.0900 Subp. 3. Restoration and Replacement orders.

B. Promptly upon being informed by the enforcement authority or the local government unit of the need, a soil and water conservation district staff person **must** inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its pre-altered condition.

[Violations and Restoration/Replacement Orders Topic of the Week](#)

90

Data Collection

Where – Property location (critical), jurisdiction, but also landscape position, slope, etc.

When – estimated time of activity occurrence
 Helpful in determining responsible party if ownership change has occurred
 Aerial photos/PID information
 Did the activity work?



91

Data Collection

Who – landowner and/or responsible party, contractor

- RO will go to all

What – type of disturbance or activity that occurred

- Fill, drainage, excavation resulting in fill
- Need to know when determining impact

Why – purpose of action? Were goals achieved? (i.e. some drainage is not effective...)



92

Use offsite resources



93

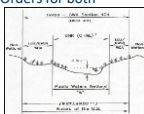
Soil borings for determining fill



94

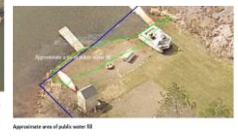
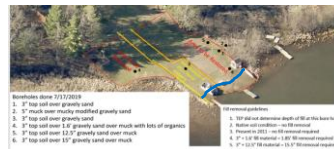
Public Waters & WCA Violations

- DNR present during initial site visit to make jurisdiction determination
- Define WCA and Public Waters Impacts
- Work with Area Hydrologist to issue Restoration Orders for both programs



95

Public Waters & WCA Violations



96

After-the-fact Replacement

Subp. 6. **After-the-fact replacement.** If a landowner or responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland or if an approved replacement plan has not been implemented in advance of or concurrent with the impact, the local government unit must require the landowner or responsible party to replace the impacted wetland at a ratio twice the replacement ratio otherwise required, unless the local government unit and enforcement authority concur that a lesser ratio is acceptable.

Location of Impact	Replacement	Minimum replacement ratio
W80% area or agricultural land	Outside bank service area	1.5:1
	Within bank service area	1:1
<50% area, 50-80% area, and nonagricultural land	Outside bank service area	2.5:1
	Within bank service area	2:1

**X 2
ATF**

103

Example 1

- Impact area and wetland type
- Does not qualify for exemption
- Property ownership and right of way
- Responsible party and why
- Timeline of road abandonment
- Project purpose

104

- Stormwater BMPs
- Reference impact map
- Pre-altered conditions
- Specify seed mix and seed tag requirement
- Plenty of time (Oct 1-Dec 31)



105

- Gave more than 30 days to appeal (October 1-Nov 16)
- Distribution list includes Water Resources Enforcement Officer, BWSR, LGU

106

Example 2

- Reference previous findings
- Clearly state TEP recommendation
- Summarize aerial photo review
- Document boreholes
- Recognizes DNR as TEP member in shoreline

107

- Gives landowner until June of following year to complete work
- Uses specific year as pre-altered condition
- Remove fill down to organic layer
- Seed mix and seed tags
- Replant shrubs species

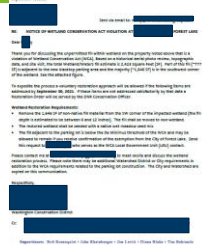
108

Is a formal Restoration Order Always Required?

- **No**, voluntary restoration is allowed but should consider
 - Willingness to cooperate
 - Past history
 - Shortened timeframe for completion to allow for formal RO process
 - Some kind of written plan or agreement with deadlines
 - Communication and agreement with DNR Enforcement
 - No formal way to make other responsible parties liable

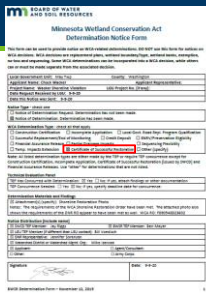
109

Voluntary Restoration



110

Certificate of Successful Restoration



Prepared and issued by the SWCD

A certificate of satisfactory restoration or replacement may be issued with conditions that must be met in the future, such as for issues with wetland vegetation, weed control, inspections, monitoring, or hydrology.

Failure to fully comply with any conditions that have been specified may result in the issuance of a new restoration or replacement order.

111

RO Non-Compliance

The landowner does not comply with the RO. Now what?

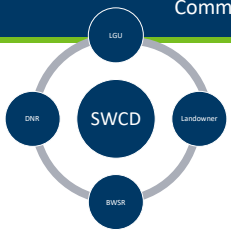
- Enforcement authority will take lead in the following steps:
 - CO Sends a Letter
 - CO Makes a Phone call
 - Deed restriction (in some cases)
 - Landowner Served a Criminal Citation
 - Court

If case goes to court:

- You may be asked to testify
- Work with County Attorney
- Stick to the findings
- Have good timeline of events
- Compile all documents (including communications)

112

Communication is key



113



Questions?

114

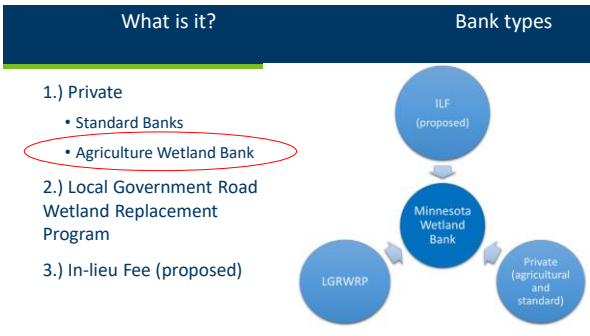


115

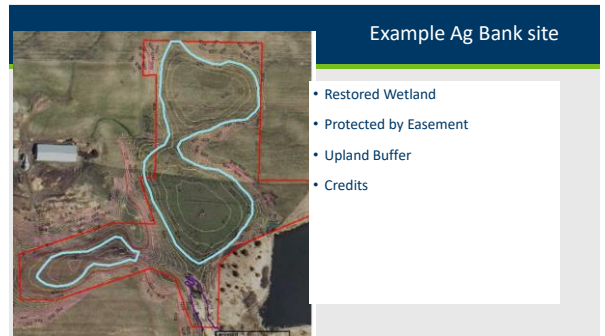
Agricultural Banking

- What is it?
- Use of the Ag Bank
- Creating an Ag Bank
- Reviewing Proposed Ag Bank Projects

116



117



118



119

Use:
What kind of wetlands does the Ag Bank replace?

- Use of the ag bank limited to farmed wetlands (FW's) OR
- Degraded agricultural wetlands (W's)
- Guarantees compliance with both State and Federal (NRCS) requirements.
- Must remain in Agricultural Use
- BWSR-NRCS Memorandum of Understanding

120



121

Using the Ag Bank: LGU Responsibilities

- LGU must:
- Review and understand the NRCS/BWSR MOU
 - Review and understand the Ag Bank Site Evaluation Tool

8/14/2023

NRCS representatives receive the participant's Agricultural Wetland Banking Site ID, certification and sharing of information to the extent allowable under federal law. NRCS agrees to provide certification to NRCS of NRCS authorizations for wetland credits from the Minnesota Wetland Bank using the "Application for Replacement of Agricultural Wetland Projects Using the Minnesota Wetland Bank" as amended.

Use of the Agricultural Wetland Bank:

- For farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:
 - Farmed Wetland (FW)
 - Farmed Wetland Pasture (FPW)
 - A Wetland (W) created by an activity for which the landowner can provide evidence (i.e. Local Government Unit determination) of qualification for a NRCS exemption under the State NRCS/USDA, 16 CFR 17.103(a), from CWS
 - A Wetland (W) less than five acres in size that is predominantly bordered by land that has been cropped 9 of the last 30 years when the wetland is regulated according to the NRCS Agricultural Wetland Evaluation Tool, as amended (the tool assesses vegetation diversity, downstream water quality protection, floodwater attenuation, and wildlife habitat - a wetland qualifies as degraded when the tool results in a ranking of low for vegetation and one or more other functions, and no higher than medium for any function); or
 - Conserved Wetland (CW) that, prior to conversion, qualifies under Bank one through four above as determined by NRCS staff.
- For non-farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a wetland determination completed or assessed by the NRCS Local Government Unit:

122

Using the Ag Bank: Functional Assessment Tool

Evaluate potential ag bank sites and proposed wetland impacts.

Ensures functions gained > functions lost.

Agricultural Bank Site Evaluation Tool

Web Calculator

Enter the Wetland Name (ID):

Enter your Plant Communities

Plant Community	Community Type	Community Proportion (%) of total	Community Quality
#1	Asst Plant Community	5	Select Quality
#2	Asst Plant Community	1	Select Quality
#3	Asst Plant Community	6	Select Quality
#4	Asst Plant Community	5	Select Quality
#5	Asst Plant Community	6	Select Quality

Selected MnRAM Questions

Question	Response	Question	Response
1A. Restore trees (if empty answer)			
2A. Restore woodlands (if empty answer)			

123

Replacement Standards

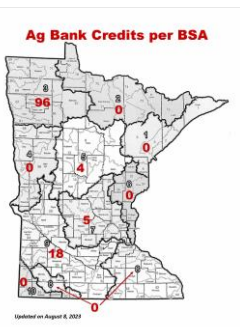
- Replace the public value of wetlands lost as a result of an impact.

	Use of the Ag Bank credits (i.e. Impacted wetlands)	Eligible to establish an Ag Bank (i.e. Replacement wetlands)
Water Quality, Flood Storage, Wildlife Habitat	1 low and 0 high/exceptional	2 mediums or 1 high/exceptional
Vegetative Ranking	low	medium/high

124

Current Status

- 123 credits available
- 91 credits = average annual demand (2013-2022)
- 11 new/existing Ag Banks generating credits
- More projects in the works, but more needed



125

Eligibility Criteria for Creating an Ag Bank

- Project must:
- Restore a Wetland
 - Natural Size & Hydrology
 - Native, Noninvasive Vegetation
 - Upland Buffer
 - Previously Restored Wetlands

126

Drained and/or Farmed Wetlands



127

127

Expiring CRP



128

Examples of Ag Bank sites



129

Reviewing a Proposed Ag Bank Site: LGU and TEP Responsibilities

Reviewing an Ag Bank:

- ✓ Insuring Ag Bank meets the eligibility of the program;
- ✓ Review and comment to applicant;
- ✓ Approve mitigation plan.

130

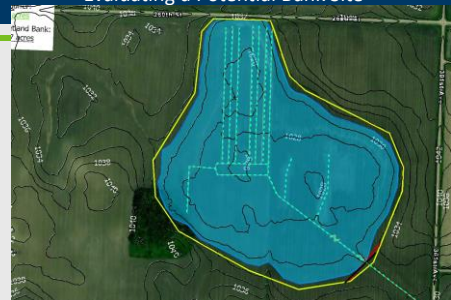
How are Ag Banks Processed ?

Ag Banks are processed:

- ✓ **Draft Prospectus** submitted for review and comment by TEP;
- ✓ **Prospectus** submitted for review and comment by TEP and BWSR Engineering staff;
- ✓ **Mitigation Plan** submitted for review and approval by LGU.

131

Evaluating a Potential Bank Site



132



133

DOVRAY SERIES

The Dovray series consists of deep poorly and very poor soils, and mean annual air temperature is about 44 deg F.

TAXONOMIC CLASS: Fine, unstratified, frigid Calcic

TYPICAL PEDON: Dovray clay with a nearly level soil

Ap-0 to 10 inches, black (N 2.0) clay; moderate fine sub

A-10 to 33 inches, black (N 2.0) clay; fine fine gessum

Bg-33 to 43 inches, very dark gray (5Y 3/1) clay; med

Bq-43 to 56 inches, olive gray (5Y 5/2) clay; many med

Cg-56 to 60 inches, light olive gray (5Y 6/2) clay; many

TYPE LOCATION: Lac qui Parle County, Minnesota, 1

RANGE IN CHARACTERISTICS: The soils are 28 to 60 or both. Some pedons have an O horizon as thick as 4 and mottled in an average between 35 and 60 percent, if has in

The A horizon has hue of 10YR, 2.5Y or 5Y, value of 2 to 6, and chroma of 1 to 3.

The Bg horizon has hue of 2.5Y or 5Y, value of 3 to 6, and chroma of 1 to 3.

The C horizon has hue of 2.5Y or 5Y, value of 4 to 6, and chroma of 1 to 3.

COMPETING SERIES: There are no competing series.

USDA Natural Resources Conservation Service

**Ecological site R102AY001SD
Shallow Marsh**

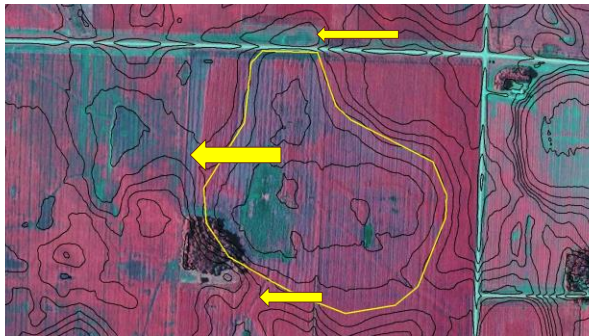
Accessed 09/12/2023

General information

Provisional: A provisional ecological site description has undergone quality control and quality assurance and contains a working state and transition model and enough information to identify the ecological site.



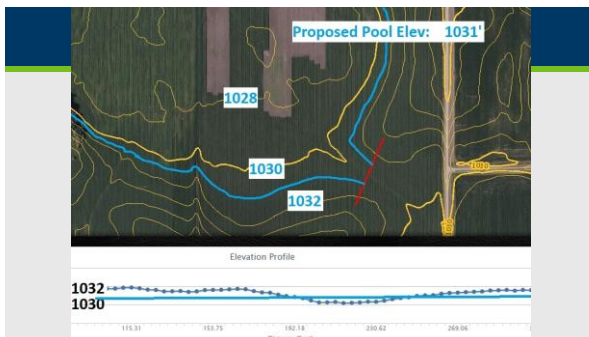
134



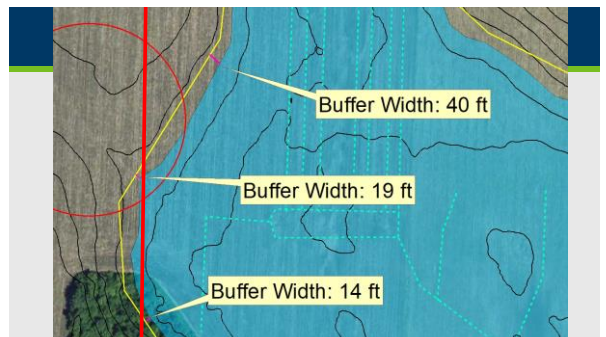
135



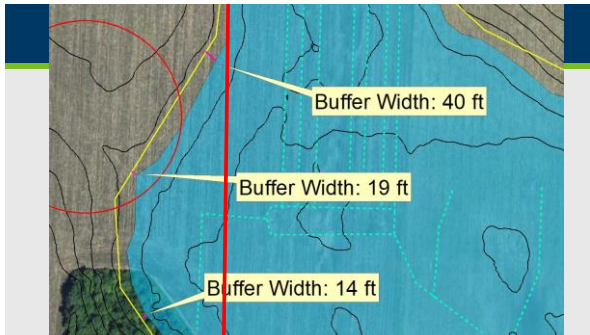
136



137



138



139

Findings and Recommendations

<p>FINDINGS:</p> <ul style="list-style-type: none"> • 3 Potential Offsite Impacts • Natural Hydrology • Buffer Requirements not met currently • Reduced Credit Areas <ul style="list-style-type: none"> • Road • Trees 	<p>RECOMMENDATION:</p> <p>TEP recommends applicant move forward with project if these scenarios can be adequately addressed.</p>
--	---

140

Characteristics/Advantages: Ag Bank over Standard Bank

- Only Restorations
- Flexible Vegetation Standards
- Shorter Planning and Establishment Timeframe
- Lower Upfront Costs
- Expiring CRP
- Small Sites
- Landowners Comfort Level – Credits (farmers selling to farmers)

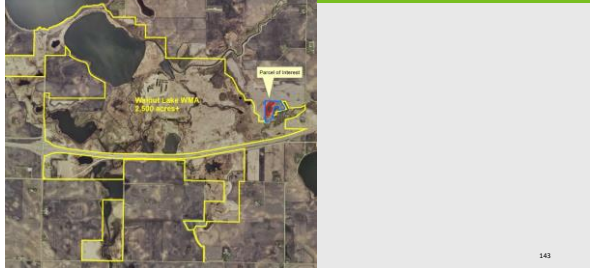
141

Full Restoration - Cropland



142

Cropland Restoration Continued...



143

Expiring CRP Site Example



144



Ag Wetland Evaluation Tool

Determine Functional Rating for the Following Functions:

Enter the data into the web tool on the BWSR website to calculate the ranking. For the web-calculator, go to: <http://www.bwsr.state.mn.us/wetlands/index.html>

Function	Rating (exceptional, high, med, or low)
Vegetative Diversity/Integrity	Medium
Floodwater Attenuation	Medium
Downstream Water Quality Protection	High
Maintenance of Characteristic Wildlife Habitat	Medium

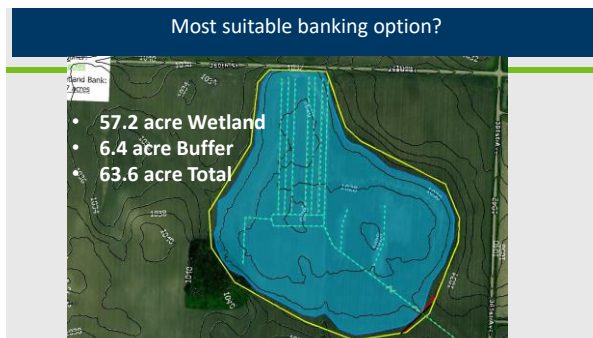
145

Key Points – Expiring CRP Site

- Permanent protection over whole site.
 - 23 acres approved for Ag Bank w/conditions.
 - Remainder of site was put into CREP
- Likely would not have been approved by the Corps
- Accelerated credit release
- Great replacement for degraded wetlands on ag land!

146

146



Most suitable banking option?

- 57.2 acre Wetland
- 6.4 acre Buffer
- 63.6 acre Total

147



Any Questions?

148

De Minimis

149

De Minimis

Area	Wetland Types	Exemption Amount
Non Shoreland Areas	Types 1, 2, 6, 7 (excluding white cedar and tamarack wetland and any Type 7 wetland in a < 50% metro county)	15,000 ft ² in all > 80% counties 5,000 ft ² in non-metro 50-80% counties 2,500 ft ² in metro 50-80% counties 2,000 ft ² in non-metro < 50% counties 1,000 ft ² in metro < 50% counties
	Types 3, 4, 5, 8, and white cedar and tamarack wetland (excluding any Type 7 wetland in a < 80% metro county)	100 ft ²
	Types 1, 2, 6, 7	400 ft ² *(1,000 ft ²)
	Types 3, 4, 5, 8, and white cedar and tamarack wetland	100 ft ²
Within Shoreland, but beyond structure setback	All wetland types	20 ft ² *(100 ft ²)

*Increased amounts shown in parenthesis may be allowed if wetland is isolated from the public water, or if permanent water runoff retention or infiltration measures are established in proximity to the impact and approved by the shoreland management authority.

- De minimis 8420.0420 Subp 8
 - The de minimis exemption covers small impacts to wetlands typically used for driveways, roads, small projects by landowners, etc.
 - Very specific requirements depending on location in state, local area, shoreland, etc.
 - Review all nuances of each part for every project

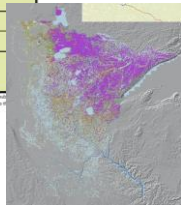
150

De minimis

- Always site specific
- Where you are matters
- Wetland type dependent
- Shoreland proximity
- Defining the project
- Requiring applications?
- How to track? Do you track?

Table 1: Base de minimis exemption amounts for all of Minnesota

Category	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Non-Standard Area	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Wetland	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Wetland and Shoreland	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	Table 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100



151

Exemptions 8420.0420

Impacts to wetlands that DO NOT require replacement

- The activity is still regulated.
- WCA does not REQUIRE an application; some LGU's may.
- Follow standard conditions: stormwater, fisheries, comply with other laws



Exemptions do not apply to: calcareous fens, wetland bank sites, project-specific replacement sites (8420.0420 Subp 1B)

152

General Exemption Requirements

- Only has to fit one; not disqualified if not exempt by another
- If impacts exceed max allowed = nothing is exempt
- Max may not apply to all situations or wetlands-very specific
- May not be combined on a project
- Must be stabilized to prevent sedimentation/erosion.
- May not divide property simply to get more

153

153

Noticing Requirements

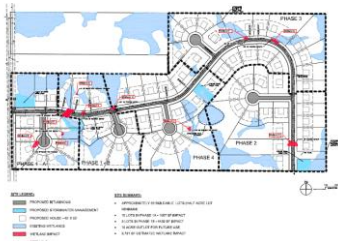
Summary of LGU Application Types		
Decision Type	NOA Required	NOD Required
Boundary or Ty	Yes	Yes
No-Loss	No	Yes
Exemption	No	Yes
Sequencing	Yes	Yes
Replacement PI	Yes	Yes
Bank Plan	Yes	Yes

154

Defining the project

"Project" means a specific plan, contiguous activity, proposal, or des necessary to accomplish a goal as defined by a local government unit.

- Properties cannot be divided to increase the de minimis
- Think about wetlands during planning and zoning decisions.



155

Defining a project for de minimis

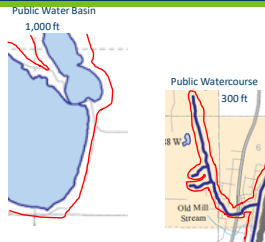
- Considerations:
 - Related activity
 - Timing
 - Ownership
 - After-the-fact?



156

Shoreland definition

- DNR definition:
 - 1,000 ft from the OHWL of a public water basin or the shoreland area defined in local ordinance, which can be more restrictive
 - 300 ft from the OHWL of a public watercourse or the shoreland area defined in local ordinance, which can be more restrictive



157

Wetland Type for de minimis

Circular 39 Classification system
- Based on hydrology and vegetation

Two groups of wetland types for de minimis:

- Types 1,2,6&7
- Types 3,4,5&8

Table 1. Base de minimis exception amounts for all of Wisconsin

Wetland Type	Base de minimis exception amount (acres)
Type 1	10
Type 2	10
Type 3	10
Type 4	10
Type 5	10
Type 6	10
Type 7	10
Type 8	10



158

Types 1 & 2

Type 1- Seasonally flooded basins

Landscape position: depressional basins, floodplains

Hydrology: Seasonally **Flooded**, dry for much of growing season



Type 2- Inland fresh meadow

Landscape position: depressions, lake fringes

Hydrology: saturated, without standing water for most of the growing season



159

Types 6 & 7

Type 6- Shrub swamps

Landscape position: sloped, along river and lake fringes

Hydrology: Saturation with seasonal shallow inundation



Type 7- Wooded swamps

Landscape position: mineral flats, sloped

Hydrology: saturated with seasonal inundation for short periods

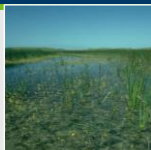


160

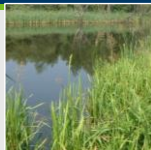
Types 3,4,5



Type 3- Inland shallow marshes
flooded up to 6" in depth
Grasses, bulrushes, cattails, arrowhead



Type 4- Deep marsh
6" to 3' of near permanent surface water with open water components
Cattails, reeds, spike rush, bulrushes, pondweeds, duckweeds, water lilies, wild rice



Type 5- Inland open water
<8.2' (2.5m) deep
Pondweeds, water milfoils, fringed by emergent vegetation

161

Type 8

Bogs

Landscape Position: organic flats, lake fringe

Hydrology: permanently saturated

Vegetation: Herbaceous strata dominated by sphagnum moss, leatherleaf, Labrador tea, sedges, black spruce and tamarack trees



162

What is a tamarack or white cedar wetland?

- Either of species is a dominant species using the dominance test (50/20 Rule)
- If no delineation has been conducted, TEP should make findings demonstrating dominance using the 50/20 rule prior to making a de minimis determination

Wetland Delineation Report form showing various fields for project information, wetland types, and findings. A photograph shows a wetland area with trees and water.

163

- For wetlands larger than 40 acres, wetland type may be defined as the deepest water regime within the wetland and within 300 feet of impact



164

Where you are in the State

Table 1: Base de minimis exemption amounts for all of Minnesota

Wetland Type	Non-Shoreland Areas
Types 1, 4, 6, 7 (including white cedar and tamarack wetland and any Type 7 wetland in a 30% non-wetland area)	10,000 sq ft in all 80% counties 2,500 sq ft in non-metro 50-80% counties 2,000 sq ft in non-metro > 50% counties
Types 3, 4, 5, 6, and white cedar and tamarack wetland (including any Type 7 wetland in a 30% non-wetland area)	1,000 sq ft in non-metro > 50% counties
Wetland Shoreland, but beyond structure setback	Types 3, 4, 5, 6, 7 400 sq ft *1,000 sq ft
Wetland Shoreland, but within structure setback	Types 3, 4, 5, 6, and white cedar and tamarack wetland 500 sq ft
Wetland Shoreland and structure setback	All wetland types 20 sq ft *100 sq ft

Map of Minnesota showing wetland distribution and percentages (>80%, 50%-80%, <50%).

165

>80% areas

- (1) in a greater than 80 percent area:
 - (a) 10,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone;
 - (b) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. *This amount may be increased to 1,000 square feet by the local government unit if the wetland is isolated and determined to have no direct surficial connection to the public water;*
 - (c) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance; or
 - (d) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance;

Table 1: Base de minimis exemption amounts for all of Minnesota

Wetland Type	Non-Shoreland Areas
Types 1, 4, 6, 7 (including white cedar and tamarack wetland and any Type 7 wetland in a 30% non-wetland area)	10,000 sq ft in all 80% counties 2,500 sq ft in non-metro 50-80% counties 2,000 sq ft in non-metro > 50% counties
Types 3, 4, 5, 6, and white cedar and tamarack wetland (including any Type 7 wetland in a 30% non-wetland area)	1,000 sq ft in non-metro > 50% counties
Wetland Shoreland, but beyond structure setback	Types 3, 4, 5, 6, 7 400 sq ft *1,000 sq ft
Wetland Shoreland, but within structure setback	Types 3, 4, 5, 6, and white cedar and tamarack wetland 500 sq ft
Wetland Shoreland and structure setback	All wetland types 20 sq ft *100 sq ft

Map of Minnesota showing wetland distribution and percentages (>80%, 50%-80%, <50%).

166

Shoreland but isolated from public waters in >80%

- "This amount may be increased to 1,000 square feet by the local government unit if the wetland is isolated and determined to have no direct surficial connection to the public water"
- Walk reach between wetland and public water
- Document surficial connection if present
- Produce TEP findings
- Consult shoreland management authority (often City, County, Township zoning)

Table 1: Base de minimis exemption amounts for all of Minnesota

Wetland Type	Non-Shoreland Areas
Types 1, 4, 6, 7 (including white cedar and tamarack wetland and any Type 7 wetland in a 30% non-wetland area)	10,000 sq ft in all 80% counties 2,500 sq ft in non-metro 50-80% counties 2,000 sq ft in non-metro > 50% counties
Types 3, 4, 5, 6, and white cedar and tamarack wetland (including any Type 7 wetland in a 30% non-wetland area)	1,000 sq ft in non-metro > 50% counties
Wetland Shoreland, but beyond structure setback	Types 3, 4, 5, 6, 7 400 sq ft *1,000 sq ft
Wetland Shoreland, but within structure setback	Types 3, 4, 5, 6, and white cedar and tamarack wetland 500 sq ft
Wetland Shoreland and structure setback	All wetland types 20 sq ft *100 sq ft

Footnote: Exemption amounts shown in parentheses may be allowed if wetland is isolated from the public water, or if appropriate surficial connection or other measures are established in proximity to the impact and approved by the shoreland management authority.

167

Scenario

A project is located within the building setback zone in a >80% area of the State and proposes to fill and impact 320 ft² of a type 2 wetland.

Does not Qualify



168

50-80% areas

(2) in a 50 to 80 percent area:

(a) 5,000 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and outside of the 11-county metropolitan area;

(b) 2,500 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;

(c) 400 square feet, except for type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;

(d) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or

(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance; or

Wetland Type	Exemption Amount	Notes
Non-Shoreland Areas	5,000 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Shoreland, but Outside Shoreland Wetland Protection Zone	2,500 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Shoreland, but Inside Shoreland Wetland Protection Zone	400 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Building Setback Zone	20 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

169

Scenario

A project is located outside of metro and outside of shoreland in a 50-80% area of the State and proposes to fill and impact 4,975 ft² of a type 2 wetland. The applicant owns the entire wetland basin.



Qualifies

170

>50% areas

(3) in a less than 50 percent area:

(a) 2,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland protection zone and outside the 11-county metropolitan area;

(b) 1,000 square feet of type 1, 2, or 6 wetland outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;

(c) 400 square feet of type 1, 2, or 6 wetland outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;

(d) 100 square feet of type 3, 4, 5, or 8 wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or

(e) 20 square feet of any wetland inside the building setback zone, as defined in the local shoreland management ordinance.

Wetland Type	Exemption Amount	Notes
Non-Shoreland Areas	2,000 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Shoreland, but Outside Shoreland Wetland Protection Zone	1,000 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Shoreland, but Inside Shoreland Wetland Protection Zone	400 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Within Building Setback Zone	20 sq ft	Types 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

171

Scenario

A project is located outside of shoreland in the less than 50% area of the State and proposes to fill and impact 175 ft² of a type 5 wetland. The applicant owns the entire wetland basin.



Does not Qualify

172

Impacts to multiple wetlands

- If multiple wetlands are impacted, the smallest applicable de minimis amount is applied to the project.
- That could be for shoreland or wetland type

173

What if just part of the project is in shoreland?

- If multiple are impacted and more than one de minimis amount is applicable, the exemption amount is the lower amount.

174

When wetland extends off property

- When a landowner does not own the entire wetland, the de minimis is the lesser of:
 - The base amount of de minimis
 - 5% of landowner's portion, down to a minimum of 400 square feet



175

Scenario

A project is located outside of shoreland in a greater 80% area of the State and proposes to fill and impact 5,800 ft² of a type 2 wetland. The applicant owns 120,000 ft² of the wetland basin.



Qualifies

5% of 120,000 equals 6000

176

“Informal” de minimis “determinations”

- Applicant “may apply”
- LGU would like to document impact(s)
- Likely would be considered formal decision if challenged
 - Retain record as a decision
 - Include map showing impact location(s)
- NOD has same effect

On Wetland Determination Templates

Dear XX XXXX,

Thank you for the opportunity to review your XXXXX Permit. The project proposes to build a XXXXX your property at XXX County Road 00, PFD XXXXXXXXX.

On June XX, 2017, I conducted a site visit to your property at XXXXX. The purpose of the visit was to determine the overall extent of the impacts to wetland resources caused by the proposed project.

During this visit, I observed soils, hydrologic and vegetative indicators that characterized type 1 wetlands along the small sub-impervious areas that cross the wetland boundaries of your property. The installation of the XXXXX will cause the drainage in the north of the existing driveway. The plan shows the contour that will be made will impact a 100' wide north of the driveway. Assuming an 10' wide road base of the turn around loop which you proposed, the project as proposed will result in XXXX ft² of wetland impacts.

The Minnesota Wetland Conservation Act (MN Stat. 84C01-84C02 Subg. 8) provides an exemption for certain amounts of impacts to certain types of wetlands. I have determined that your lot area proposal has a total of 10,000 ft² of allowable wetland impacts, called the de minimis.

MN Stat. 84C01-84C02 states that the determination “may apply” for an expedited determination. The benefit of applying for such a decision is that you will have an official finding of compliance regarding the de minimis determination. There is a formal decision to apply for a formal decision. If you file later, you will have an informal determination that your project qualifies for a wetland exemption determination.

This determination is made on the following conditions:

- 1) Wetland use decisions have not been proposed and signed on the ground.
- 2) All necessary County, State and Federal permits (i.e. 100XX) are received prior to the work commencing.
- 3) All conditions described on the XXXXX Permit will be followed.

I will file this in the property folder located in the XXXXXXXXX Office and deduct XXXX ft² from the property's 10,000 ft² of available de minimis. The remaining de minimis for the property XXXXXXXXX is XXXX ft². Please save this letter for your records. This decision is valid for 3 years from today's date.

177

Tracking de minimis

Project	Location	PFD	Permit/Title	Design	Submitted	Complete	NDA	100XX	Decision	NOD	Wetland/Imp	Wetland/Prop	Wetland/De Min	Permit/De Min	De Min/Total	Comments	
Johnson	North St	16-04	1603-2013	Recreation	10/1/13	10/1/2013	10/1/2013	10/1/2013	10/1/2013	10/1/2013	0	100	100	0	100	Wetland/De Min	Completed
Smith	Highway	12-04	1603-2013	Recreation	10/1/13	10/1/2013	10/1/2013	10/1/2013	10/1/2013	10/1/2013	0	100	100	0	100	Wetland/De Min	Completed
Johnson	Highway	12-04	1603-2013	Recreation	10/1/13	10/1/2013	10/1/2013	10/1/2013	10/1/2013	10/1/2013	0	100	100	0	100	Wetland/De Min	Completed
Johnson	Highway	12-04	1603-2013	Recreation	10/1/13	10/1/2013	10/1/2013	10/1/2013	10/1/2013	10/1/2013	0	100	100	0	100	Wetland/De Min	Completed

Use data for WCA reporting

178



Questions?

179