

The Minnesota Wetland Conservation Act Manual

*A comprehensive implementation
guide to Minnesota's wetland law*



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Helping Minnesota's Local Governments Manage and Conserve Our Irreplaceable Water and Soil Resources



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Index

Chapter One: Introduction Page 5

Wetlands: A Brief Historical Background Page 5
Minnesota Wetland Conservation Act Basics Page 5
Determining Local Governmental Unit Page 7

APPENDIX

Chapter 15_99 Guidance
Sample Resolution for Adopting the Permanent Rules
of the Wetland Conservation Act
Summary of WCA Court of Appeals Cases
TEP Meeting Guidance

Chapter Two: WCA Exemptions Page 9

WCA Exemptions at a Glance Page 10
Exemption 1: Agricultural activities Page 11
Exemption 2: Drainage Page 13
Exemption 3: Federal approvals Page 14
Exemption 4: Wetland Restoration Page 15
Exemption 5: Incidental wetlands Page 15
Exemption 6: Utilities; public works Page 16
Exemption 7: Forestry Page 16
Exemption 8: Approved development Page 17
Exemption 9: De minimis Page 18
Exemption 10: Wildlife habitat Page 19

APPENDIX

WCA Jurisdiction for Wetlands on Agricultural Land
Incidental Exemption for Wetlands Restored Under
Conservation Programs on Road Rights of Way
Forestry Exemption Guidance
Drainage Project Exemptions
Drainage Exemption Graphic
De Minimis Exemption Graphic
Forms:
De Minimis Calculation Worksheet
Declaration of Restrictions for Impacted Wetlands
Under Agricultural Exemption
Affidavit/Exemption Evidence for LGUs

Chapter Three: Avoiding, Minimizing, and Replacing Wetland Impacts Page 21

Sequencing—The First Step Page 21
Wetland Replacement Plans—Adequacy Page 21
Monitoring—A Critical Phase Page 22
Steps in the Wetland Replacement Plan Application
Process Page 24
Index to Sequencing and Replacement Plan
Information Page 25

APPENDIX

Guidance: “Approved and Active” Stormwater Mgmt. Plans
Guidance on Exceptional Natural Resource Value Projects
Application of the WCA to Temporary Storage of
Floodwaters in Areas Having Existing Wetlands

Guidance on the Application of the WCA to Impacts on
Rare Natural Communities

Guidance on Wetland Replacement Credit for
Restoring Completely and Partially Drained
Wetlands

Forms:

Minnesota Local/State/Federal Application Forms for
Water/Wetland Projects (A B Word) (A B PDF)

Notice of Wetland Conservation Act Application for
Impacts < 10,000 Square Feet

Notice of Wetland Conservation Act Application for
Impacts ≥ 10,000 Square Feet

Certificate of Mailing of Notice of Wetland
Conservation Act Application

Certificate of Mailing of Notice of Wetland
Conservation Act Decision

Notice of Wetland Conservation Act Decision

Replacement Plan—Findings and Decision

Replacement Plan—Determination of Complete
Application

Technical Evaluation Panel Findings of Fact

Sequencing Findings of Fact

BWSR Deed Form Instructions

Declarations of Restrictions and Covenants for Site
Specific Wetland Replacement

Affidavit of Landowners

Consent to Replacement Wetland

Certificate of Compliance Wetland Replacement and/
or Banking Plan

Chapter Four: Local Government Roads Wetland Replacement Program Page 26

The Reporting Process Page 26
Common Questions and Answers Page 27

APPENDIX

Policy on Sale of Wetland Credits to Public
Transportation Authorities

Form:

Minnesota Local/State/Federal Application Forms for
Water/Wetland Projects: Public Transportation and
Linear Utility Projects (C D Word) (C D PDF)

Chapter Five: Wetland Bank Procedures Page 30

How to establish a wetland bank account Page 30
Steps within the application, construction, certification,
and deposit phases Page 31

Monitoring requirements Page 34

How to withdraw credits Page 34

How to transfer credits to another account Page 35

Enforcement and corrective measures Page 36

Index, continued

APPENDIX

Policy on Wetland Banking Fees
Forms:

Wetland Bank Application Form A (W PDF) ■
Form B (W PDF) ■ Supplement to B ■
Guidance and Instructions

Application to Deposit Wetland Bank Credits
Application for Withdrawal of Wetland Credits
Application for Transfer
Purchase Agreement for Wetland Banking Credits

LGU Checklist for Wetland Banking Projects
TEP Findings of Fact: First Official Review Form
TEP Findings of Fact: Second Official Review Form
TEP Findings of Fact: Third Official Review Form
TEP Findings of Fact: Fourth Official Review Form
Certificate of Compliance Wetland Replacement and/
or Banking Plan

Chapter Six: WCA Appeal Procedures Page 37

Preparations and procedures for LGU hearings on WCA
decisions Page 37
Local appeals procedures Page 38
How to appeal to BWSR Page 39
Compensation claims against LGUs Page 40
WCA compensation Page 40

Chapter Seven: Enforcement Procedures Page 42

WCA enforcement process Page 42
WCA and Public Water enforcement process Page 42
The cease and desist order Page 42
Restoration and replacement orders Page 43
Deed recording Page 44
After-the-fact replacement Page 44
Appeals Page 44
Important references in statute and rule Page 44

APPENDIX

Forms:

Interagency Wetlands/Waters Prosecution Checklist
Enforcement Procedures Checklist
Restoration/Replacement Order
Certificate of Satisfactory Restoration/Replacement
Contractor Responsibility and Landowner Statement
Form

Finding of Fact for Violations on Agricultural Land

Chapter Eight: Local Comprehensive Wetland Protection and Management Plans Page 46

Elements of a Comprehensive Wetland Protection and
Management Plan Page 46
Additional (optional) local requirements for wetland
management Page 47
BWSR review and approval Page 47
Local capacity requirements Page 47
Reporting and oversight Page 47

APPENDIX

Forms:

Comprehensive Wetland Protection and Management
Plan Summary Worksheet
Comprehensive Wetland Protection and Management
Plan Additional Local Requirements Worksheet

Chapter Nine Miscellaneous WCA Items Page 48

High priority regions and areas for Local Water
Planning Page 48
Wetland Preservation Areas Page 48
How to establish a WPA Page 49
County review and notice Page 50
Duration of WPAs and actions affecting WPAs Page 50
Information for county relating to WPA tax-exempt
status Page 51
County or watershed reclassification Page 52
Calcareous fens Page 52

APPENDIX

Fact Sheet: Wetland Preservation Areas
Frequently Asked Questions About Wetland
Preservation Areas

Forms:

Wetland Preservation Area Application Form
Wetland Preservation Area SWCD Advisory Statement
Wetland Preservation Area Enrollment Checklist
Restrictive Covenant for Wetland Preservation Area
Notice of Expiration of Restrictive Covenant for
Wetland Preservation Area

Chapter Ten: Agency Web Sites Page 53

Chapter Eleven: Technical References (Web Sites) . Page 54

Note: external links to forms are highlighted in red within the manual text. The forms and appendices listed in the index are also linked to Word files (and PDF files where noted). Word forms are interactive files, which means you can save the files to your desktop and complete them. References to web sites, statutes, and rules also have external links, but aren't in red.

CHAPTER ONE

Introduction

Welcome to the administrative manual for the Wetland Conservation Act (WCA). We hope that you will find the format and information within this manual helpful. The manual is now being provided to local governments on-line. Printed manuals will no longer be available.

All applicable laws and rules are the controlling documents for WCA administration. This manual is not intended to provide legal advice, and users of this manual should consult their own legal counsel to the extent necessary.

This manual follows the natural progression of activities typically encountered under WCA. Links have been provided for each part to help you find specific items. Corrections should be forwarded to WCA program staff at BWSR's St. Paul office.

As always, if you have any questions or need assistance, contact the BWSR board conservationist (BC) for your area. The BC list can be found on the BWSR web site: www.bwsr.state.mn.us. Look for the "Staff Contact Information" link on the home page.

Wetlands: A Brief Historical Background

The debate over the value of wetlands, and their resulting drainage, has been the paramount water issue since Minnesota gained statehood in 1858. Early water management in Minnesota consisted mainly of manipulating surface waters—mostly wetlands and small lake areas—attempting to make more land suitable for farming.

Surface water was viewed as a "common enemy" and wide scale drainage was the order of the day early in the 20th century. Wetlands were considered "undesirable wastelands."

Governor Alexander Ramsey, in an 1861 speech to the legislature, said: "From their nature and situation they [wetlands] are capable of easy reclamation. In a climate so dry as ours, we may naturally expect that lands of this class will eventually be the most valuable in the state."

As settlement increased, especially along the state's rivers, floods and property damage often occurred and wetlands in floodplain areas came to be valued as storage basins.

The drought cycle has greatly influenced lawmakers on drainage and wetlands issues over the years. A series of wet summers would affect the need for more drainage. In recent years, summer drought patterns have increased public concern for wetland preservation.

Minnesota Wetland Conservation Act Basics

Statutes and Rules

The Wetland Conservation Act was first passed in 1991 as Minnesota Laws Chapter 354, as amended (codified, as amended, at Minnesota Statutes, section 103G.222-.2373 and in other scattered sections). Rules were promulgated by the Minnesota Board of Water and Soil Resources in Minnesota Rules, chapter 8420, as amended (Rules).

Scope of the Act

Draining, filling and in some cases, excavating in wetlands is prohibited unless (a) the drain, fill, or excavation activity is exempt or (b) wetlands are replaced by restoring or creating wetland areas of at least equal public value. The overall goal is no net loss of wetlands (Minnesota Rules, part 8420.0105). Specifically, WCA regulates the following activities:

- Draining and filling, wholly or partially, is regulated in all wetland types;
- Excavation is regulated in the permanently and semi-permanently flooded areas of types 3, 4, and 5 wetlands;
- Excavation is regulated in all wetland types if the excavation includes filling or draining, or results in conversion to nonwetland (including deep water habitat).

WCA does not prevent the use of the bed of wetlands for pasture or cropland during periods of drought if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands. It does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. It does not prevent control of noxious weeds if the control does not drain or fill the wetland.

WCA does not apply to public waters wetlands, which are regulated by the Minnesota Department of Natural Resources. WCA does not supersede other regulations such as those of the U.S. Army Corps of Engineers, U.S. Department of Agriculture, Minnesota Pollution Control Agency, watershed districts, and local governments. Persons proposing to do wetland projects may need approvals from these agencies. The **combined application forms** should be used to notify these agencies prior to commencing a project in or near wetlands. To resolve issues of jurisdiction, use of the combined project application process is strongly encouraged.

State agencies are not required to obtain local government approvals under the WCA. However, state agencies must coordinate with the local government unit when conducting activities in wetlands within the jurisdiction of the local government unit (Minnesota Rules, part 8420.0105, item B). They are obligated by statute to follow WCA requirements (103G.222, Subd. 1(j)).

Definition of a Wetland

A wetland is defined by presence of (a) hydric soils, (b) surface or subsurface hydrology, and (c) hydrophytic vegetation (Minnesota Rules, part 8420.0110, subpart 52). Wetlands are delineated using procedures in the 1987 U.S. Army Corps of engineers Wetland Delineation Manual. The Wetland Conservation Act applies to all wetlands, except those identified on the DNR inventory of public waters and wetlands.

Local Governmental Unit

The local government unit (LGU) has the primary responsibility for administering WCA and for making key determinations. Generally, the LGU is the city or county, but may be another entity such as a watershed district or soil and water conservation district. (Minnesota Rules, part 8420.0110, subpart 30.) The state agency is the LGU for a project by that state agency or activity on state land.

Exemptions

WCA specifies 10 categories of exempt drain and fill activities. (Minnesota Rules, part 8420.0122.) No approval is necessary for exempt activities. Notable exemptions include those for certain agricultural activities, maintenance of existing public or private drainage systems, public utilities, road maintenance, and previously approved developments. There is an absolute de minimis exemption for activities draining or filling less than 400 square feet. Other de minimis exemptions range from 2,000 to 10,000 square feet, depending upon wetland type, location, and ownership. (Minnesota Rules, part

8420.0122, subpart 9.) See chapter two for more information.

Replacement Plans

If an activity is not exempt, impacted wetlands must be replaced under a replacement plan approved by the LGU. The replacement plan must demonstrate compliance with “sequencing,” i.e., (a) that wetland impacts are avoided as much as possible, (b) that to the extent that the impacts cannot be avoided, the wetland impacts are minimized, and (c) that unavoidably impacted wetlands are replaced as required by WCA rules. (Minnesota Rules, part 8420.0520.) The rules include numerous specific requirements as to location, size, type, etc., of replacement wetlands. (Minnesota Rules, part 8420.0540-.0550.) Minimum replacement is generally two acres of replaced wetland for each acre drained or filled. For wetlands on agricultural land or in counties where 80 percent or more of the pre-settlement wetlands exist, minimum replacement is one acre of replaced wetland for each acre drained or filled. (Minnesota Rules, part 8420.0540, subpart 6.) See chapter three for more information.

Appeals

LGU decisions may be appealed to BWSR. Review by BWSR on an appeal is based upon the LGU record. (Minnesota Rules, part 8420.0250.) Judicial review of any BWSR decisions regarding an appeal of a decision of a LGU would be in the State Court of Appeals. See chapter four for more information.

Enforcement

DNR conservation officers and other peace officers may issue cease and desist, restoration, and replacement orders for violations of WCA. (Minnesota Rules, part 8420.0290.) Violation of an order is a misdemeanor. County attorneys pursue criminal prosecution of violations under WCA. Civil enforcement is also an option for obtaining compliance with the WCA. See chapter seven for more information.

Banking

WCA allows wetland losses from drain or fill activities to be replaced by wetlands previously restored or created and deposited into the state wetland bank.

The banked wetlands can only be used if the result is a no net loss in the quantity, quality, and biological diversity of Minnesota’s existing wetlands. Wetland bank “accounts” must always maintain a positive balance. (Minnesota Rules, part 8420.0700-.0760) See chapter five for more information.

Timing of LGU Decisions

Local Government Unit decisions on applications for wetland exemptions, no-loss, replacement plans, banking plans and boundary determinations must comply with Minnesota Statutes 15.99, which generally requires that a decision be made within 60 days of receipt of a complete application. Additional information on this requirement is provided in the appendix to this chapter.

Determining Local Governmental Unit

Determining the Local Governmental Unit (LGU) for administering WCA is clearly spelled out in the rules (Minnesota Rules, part 8420.0200). Specifically:

- Outside the seven-county metropolitan area, the LGU is the county or city in which the drain or fill activity is located, or its delegate.

- In the seven-county metropolitan area, the LGU is the city, town, or water management organization regulating surface-water-related matters in the area in which the drain or fill activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules, will normally indicate the appropriate LGU. Lacking an indication, the LGU must be the city, town, or its delegate.

If the activity in a wetland is located in two jurisdictions, the LGU for decisions under the WCA shall be the one exercising zoning authority over the project or, if both have zoning authority, the one in which most of the wetland loss will occur. If no zoning permits are required, the LGU shall be the one in which most of the wetland loss will occur. If an activity will affect wetlands in more than one LGU, the BWSR will coordinate the project review to ensure consistency and consensus among the LGUs involved.

In cases where an activity or replacement will occur on state land, the local governmental unit is the agency with administrative responsibility for that land.

BWSR will resolve all questions as to which government entity is the responsible authority by applying the guidelines spelled out in the Minnesota Rules, part 8420.0200, items A to C, as described above. 

THE 60-DAY DECISION REQUIREMENT OF SECTION 15.99 AND THE WETLAND CONSERVATION ACT

Local government unit ("LGU") decisions under the Wetland Conservation Act ("WCA") must be made in compliance with Minn. Stat. § 15.99. Generally, this means that an application for a WCA decision must be approved or denied within 60 days or it will be deemed to be granted. The following provides general information on the application of Section 15.99 to WCA.

BASICS.

- Section 15.99 applies to WCA replacement plan, banking plan, exemption, no-loss, and wetland boundary or type decisions. *See* Minn. Stat. § 103G.2242, subs. 2a & 4.
- The LGU must approve or deny a written request for a WCA decision within 60 days of receipt of the request. *See* Minn. Stat. § 15.99, subs. 1 & 2; Minn. Stat. § 103G.2242, subs. 2a & 4.
- Failure to deny a written request within 60 days is approval of the request. *See* Minn. Stat. § 15.99, subd. 2.
- If a resolution or motion to approve a written request fails, the request is considered denied, provided that those voting against the motion state for the record their reasons for opposing the motion. *See* Minn. Stat. § 15.99, subd. 2(b).
- If the LGU denies a request, it must state in writing the reasons for the denial at the time it denies the request. *See* Minn. Stat. § 15.99, subd. 2.
- If a written request does not contain all required information, the LGU must send written notice within 15 business days of receipt of the request telling the requester what information is missing.
- If the LGU gives written notice that a request is incomplete within 15 business days of receipt, then the 60-day period starts over when all required information is received. If such notice is not given, the LGU must approve or deny the incomplete request within 60 days of the original receipt date. *See* Minn. Stat. § 15.99, subd. 3(a).
- The information required for an application must be defined in a previously adopted, rule, ordinance, or written policy of the local government unit. *See* Minn. Stat. § 15.99, subd. 3(a).
- A response meets the 60-day time limit if the LGU can document that the response was sent within 60 days of receipt of the written request. *See* Minn. Stat. § 15.99, subd. 3(c).
- The LGU may extend the time limit by written notice prior to the end of the initial 60-day period. The written notice must state the reasons for the extension and its anticipated length. The extension may not exceed 60 days unless approved by the applicant. *See* Minn. Stat. § 15.99, subd. 3 (f).

SUGGESTED "DOS" AND "DON'TS" FOR LGU STAFF MEMBERS.

Dos.

Do check the actual language of Section 15.99 frequently rather than relying on your memory *or this summary*.

Do consult with the attorney for your LGU on the application of Section 15.99 if you have any question in a particular circumstance. .

Do keep a log showing dates on which requests are received and responses are sent.

Do respond to all requests in writing rather than relying on oral communications.

Do deny requests that you intend not to approve. Not acting on a request will be treated as an approval after the passage of 60 days.

Do state the reasons for the denial of a request in writing at the time of the denial of the request.

Do adopt a written policy on the information required for each type of WCA application.

Don'ts

Don't assume that Section 15.99 will be interpreted leniently. The courts stringently apply subdivision 2 of Section 15.99 to require a decision within 60 days, unless there is an exception stated in Section 15.99.

Don't assume it's OK to enact a blanket extension to give you an automatic 60-day extension on all requests. You have the right to extend the response date by an additional 60 days, but this must be done in writing on a case-by-case basis after the request is received. *See American Tower, L.P. v. City of Grant*; 636 N.W.2d 309 (Minn. Ct. App. 2001).

Don't assume that you have an extension just because you have a verbal understanding with the applicant. Subdivision 3(f) of Section 15.99 requires a written notice of extension prior to the end of the initial period, If the extension will be more than 60 days, you must have the applicant's agreement in writing.

ADDITIONAL COMMENTS

WCA statutes and rules state that notice of various WCA decisions must be mailed to the landowner within ten days of the decision. *See* Minn. Stat. § 103G.2242, subd. 7; Minn. R. 8420.0210-.0230, 8420.0740. On the other hand, subdivision 3(c) of Section 15.99 says that the 60-day time limit is satisfied if the LGU can document that the response was sent within 60 days of the written request. To be on the safe side, don't wait a full ten days to send the response if this would take you past the 60 days allowed by Section 15.99.

Sometimes an application is received outside of the growing season but field investigation during the growing season is necessary to verify the information in the application. If it is not possible to extend the response date for an adequate period of time under subdivision 3(f) of Section 15.99, then the application must be denied before the end of the initial 60-day period or it will be deemed to be granted. If denied, the reasons for denial must be stated. If applicable, these reasons would include the LGU's analysis of why a field investigation is necessary.

Start counting the 60 days on the day after the receipt of the written request. You should count calendar days. If the 60th day is a Saturday, Sunday, or legal holiday, then the last day to act on the request is the next day that is not a Saturday, Sunday, or legal holiday. *See* Minn. Stat § 645.15; *Gun Lake Ass'n v. County of Aitkin*, 612 N.W.2d 177, 181(Minn. Ct. App. 2000).

Under Minn. Stat. § 15.99 an LGU must generally make a decision within 60 days, unless the time period is properly extended. A Minnesota Court of Appeals case (*See Moreno v. City of Minneapolis*, 676 N.W. 2d 1, March 9, 2004) holds that an LGU must make its FINAL decision within the same time period. For some matters the initial LGU decision may indeed be the final decision. However, as is often the case with WCA, if an LGU staff individual makes a decision and that decision is heard by, or appealed to, a local board (e.g. city council, county board, SWCD board), that board's FINAL decision must also be made within the same time period of 60 days unless properly extended. Therefore, especially in cases of denying applications, LGU's may want to extend the initial 60 day time period in writing by up to 60 days depending on the time needed to process a local appeal.

Further, if a decision on an application is not made timely under Minn. Stat. § 15.99, then the application is approved by default. However, the LGU must still issue a permit. If the LGU fails to issue a permit, the applicant's remedy is to file suit in district court for a writ of mandamus to compel the permit to be issued based on no timely decision (*See* Minn. Stat. § 586.01). The issuance of a permit would control the scope of the work and the length of time to complete the work.

This summary is provided for general information purposes only. LGU staff members and others should consult with their legal counsel for specific advice on application of Section 15.99 to any particular circumstance. This summary is not a rule of the Board of Water and Soil Resources ("BWSR") and is not binding on BWSR or any other party.

THE USE OF E-MAIL FOR NOTIFICATIONS AND THE WETLAND CONSERVATION ACT

The use of e-mail for official notifications under WCA could be problematic because the use of e-mail is not expressly stated in WCA statutes. BWSR attempted to allow for the use of e-mail with a rule change, however, that may not be sufficient. BWSR may seek statutory revisions, or further rule changes, to allow for the use of e-mail.

The WCA statutes state "mailed" for all notifications and the rules state "sent" for some items and "mailed" for others. The instances where "sent" is used could be argued, although probably unsuccessfully in consideration of case law, that e-mail would be satisfactory. Having evidence of the person receiving the e-mail could possibly strengthen the argument for satisfactory compliance with the intent of the law. However, the language in the WCA rules for the filing of appeals is based on a mailed notice of decision, so if decisions were e-mailed it could be an issue under an appeal or in litigation.

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Technical Evaluation Panel (TEP) Meetings – Procedures and Timing

The technical evaluation panel provisions within the Minnesota Wetland Conservation Act are generally regarded to be one of the strengths of the Act. TEPs provide forums to discuss site-specific interpretations of laws, rules, and technical data. They also provide an opportunity for gaining consensus on a number of primarily technical issues in order to make a recommendation to the decision-maker.

In spite of the utility, they do come at a cost. Strained budgets have staff serving larger areas. Applicants incur additional consulting and time costs. It is in the interest of all involved to optimize both the number of TEP meetings and the amount of time each TEP meeting takes to reach a conclusion. Here are some recommendations:

WHY call a TEP

- Complex projects where further explanation is necessary and where issues cannot be resolved with a phone call or other correspondence.
- Controversial projects where the TEP recommendation could aid the LGU or the applicant in interpreting WCA and/or reduce the likelihood of appeal.
- Difficult delineations in very altered settings or problem areas, or when contradicting delineations exist.
- The LGU doesn't know the answer and BWSR staff alone cannot provide a definitive answer.
- Impacts or replacement in uncommon settings such as fens, bogs, rare species, etc.
- Proposed credits from restoration of Exceptional Natural Resource Value (ENRV) wetlands.
- Incidental wetland issues or exemption decisions with a high chance of appeal.
- When sequencing flexibility is requested.
- Large complex violations, or situations where legal action is likely.
- When an LGU or staff is new to the administration of WCA.
- Where multiple perspectives are needed, or when differing opinions exist within the TEP.
- As a pre-planning session prior to beginning development of a Comprehensive Wetland Management Plan.
- Banking applications or requests for early withdrawal of mitigation sites from monitoring requirements.

WHEN to hold a TEP

- After receipt of a complete application, accurate delineation, and supporting information. If a pre-application TEP is called, address all issues at that time so a second TEP is not necessary.
- When the issue(s) requiring TEP review and the meeting objectives are narrowly defined.
- When TEP members have received all applicable information with sufficient lead-time to review.
- With enough lead-time for the TEP members to fit the meeting into their schedules. Ask TEP members what days work for them before scheduling; avoid picking a day and expecting TEP members to make it.
- With enough lead-time for the applicant to revise or seek an extension before the LGU decision is made.
- Regularly scheduled (standing) TEP meetings are recommended to ease scheduling and improve efficiency in areas with high WCA workload. Standing TEPs should be coordinated with other LGUs in the area. (For example, a standing TEP meeting is held the third Wednesday of each month for all LGUs in Scott County, coordinated by the SWCD.)
- LGUs can call the SWCD or BWSR staff to ask if a situation warrants a TEP.

HOW to hold a TEP

- Brief and to the point. The LGU (or designee) should run the meeting, keeping things moving and on track.
- Follow a timeline and specific agenda that lays out the issues to address and desired outcome. LGU staff should develop the agenda based on review of application and any questions raised by the TEP or others.
- On-site for those projects likely requiring a site visit. Try to avoid calling one TEP to review the application and a second for a site inspection.
- For wetland delineation reviews, require a representative transect(s) with sample points to be staked on site.
- LGU staff should take good notes, draft the minutes and/or findings (a TEP Findings of Fact Form is available on BWSR's website), and distribute to the other TEP members for comment. If minutes will not be kept, the LGU should inform the other TEP members.

WCA Exemptions

This section provides local government officials with a complete listing of exemptions, including guidance (see notes) based on the Wetland Conservation Act statute and rule. LGUs must make their own interpretations, findings, and decisions based on the facts of the wetland project being proposed. The technical evaluation panel may be convened to render a technical decision as to whether or not an exemption applies. If no exemptions apply, the sequencing process begins.

Local government units and the applicant must consider the following when determining eligibility for exemptions;

- An activity is exempt if it qualifies for any *one* of the exemptions, even though it may be indicated as not exempt under another exemption.
- These exemptions do not apply to calcareous fens as identified by the Commissioner of Natural Resources.
- No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage or filling.
- Non-exempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, exemptions or no-loss determinations cannot be applied to the remaining wetland that would not have been applicable before the impact.
- A person conducting an activity in a wetland under an exemption shall ensure that:
 1. appropriate erosion control measures are taken to prevent sedimentation of the water;
 2. the activity does not block fish activity in a watercourse; and
 3. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

A landowner intending to drain or fill a wetland without replacement, claiming an exemption, may contact the LGU before beginning draining or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement actions. The LGU must keep on file all documentation and findings of fact concerning exemption determinations *for a period of 10 years*.

Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies whether or not the local government unit chooses to issue certificates of exemption. If the wetland qualifies for an exemption, and the landowner requests a certificate of exemption, then the LGU must issue one. **The LGU decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application.** The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed.

WCA EXEMPTIONS AT A GLANCE

Note: To ensure that an exemption applies to a project, a certificate of exemption should be secured from an LGU before commencing any work.

Agricultural

- Wetlands that have been cropped 6 out of the 10 years prior to Jan. 1, 1991.
- Land that is enrolled in CRP and was cropped 6 of 10 years, prior to being enrolled.
- Wetlands receiving “commenced drainage” determinations from the USDA Farm Service Agency.
- Type 1 wetlands on agricultural land (see definition of agricultural land) and type 2 and type 6 wetland areas less than 2 acres on agricultural land.
- Aquaculture activities as permitted by the U.S. Army Corps of Engineers.
- Wild rice production as permitted by the U.S. Army Corps of Engineers.
- Weed and pest control that does not drain or fill wetlands.
- Activities allowed under the federal farm program restrictions that meet the minimum state standards under this chapter.

Drainage

- Certain public drainage system improvements and maintenance and repair that doesn't affect type 3,4, and 5 wetlands that have existed for more than 25 years. Private drainage maintenance and repair that doesn't affect wetlands (any type) that have existed for more than 25 years is exempt.

Federal approvals

Some activities determined to be exempt from the U.S. Army Corps of Engineers Section 404 regulations.

Wetland restoration

Wetlands restored under a contract that allows subsequent drainage.

Incidental wetlands

Wetlands formed by beavers, culvert blockage, and other activities/projects not intended to create/restore wetlands.

Utilities/public works

- Utility line placement that impacts less than 0.5 acre.
- Utility line maintenance.
- Interstate pipelines.

- Public works projects that do not drain or fill wet lands.
- Private structural projects that do not drain or fill wetlands.
- Individual sewage treatment systems if allowed by other regulations.

Forestry

- Temporary roads constructed for forestry activities.
- Permanent roads constructed for forestry activities.

Approved development

Development projects approved between July 1, 1986, and July 1, 1991.

De minimis

Projects impacting the following amounts of wetland unless a 5 percent cap is exceeded:

- 10,000 square feet of type 1, type 2, type 6, or type 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a greater than 80 percent area;
- 5,000 square feet of type 1, type 2, type 6, or type 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area;
- 2,000 square feet of type 1, type 2, or type 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;
- 400 square feet of wetland types 3,4,5 everywhere;
- 400 square feet of all wetland types in the in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland protection zone in areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water.

Wildlife habitat

- Deposition of up to 0.5 acre (not to exceed 5 percent of the wetland) of spoil associated with excavation within a wetland for wildlife habitat improvement. If within the permanently or semi-permanently flooded portion of a type 3, 4 or 5 wetland, the combined area of the excavation and the deposition must be less than the 0.5 acre or 5 percent limit.
- Duck blind construction.

Note: Local ordinances may be more restrictive than the WCA and thus some of the exemptions may not be applied as listed above.

WCA Exemptions

Exemption 1: Agricultural activities

A replacement plan for wetlands is not required for:

- A.** Activities in a wetland that was planted with annually seeded crops or that was in a crop rotation seeding of pasture grass or legumes in six of the last 10 years prior to Jan. 1, 1991. Documentation, such as aerial photographs, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption. Land eligible for this exemption must be wetland types 1 and 2.

Guidance: The landowner is responsible for providing verification of crop history. For landowners with a history of participating in USDA farm programs, the Farm Service Agency generally has information concerning cropping history for the preceding years. For other cases, an affidavit from an expert witness (or from the landowner if there is some evidence of cropping history) is acceptable.

- B.** Activities in a wetland that is or has been enrolled in the federal Conservation Reserve Program that was (1) planted with annually seeded crops or was in a crop rotation seeding in six of the last 10 years prior to being enrolled in the program and (2) has not been restored with assistance from a public or private wetland restoration program. Federal documentation that the wetland is or has been enrolled in the federal Conservation Reserve Program may be used as evidence for this exemption. The landowner must also meet the same requirements of item A, except that the years required are at least six of the 10 years preceding the year of enrollment in the federal Conservation Reserve Program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland.

Guidance: As in exemption (1), the landowner must verify the exemption in the form of a CRP contract and for cropping history.

The landowner must state in writing that the wetland was not restored with “outside” funds, or show that if “outside” funds were used the contract or easement allowed drainage of the restored wetland.

- C.** Activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county USDA office prior to Sept. 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to Dec. 23, 1985. The landowner must provide United States Department of Agriculture documents confirming that the county USDA office determined before Sept. 19, 1988, that drainage had begun before Dec. 23, 1985, and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review.

Guidance: The landowner must document that a commenced determination was made by USDA prior to Sept. 19, 1988.

D. 1. Activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land.

Guidance: This exemption applies if the wetland is a type 1 or 2 or 6 on agricultural land, and the type 2 or 6 wetland is less than two acres.

2. This exemption may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetlands other than types 1, 2, and 6 are not drained or filled;

3. The exemption in subitem 2 is subject to the size limits included in subitem (1);

Guidance: The maximum amount of type 2 or 6 wetland that can be drained or filled is 2 acres.

E. Aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings.

Guidance: This exemption covers excavation and road/dike construction as permitted by the U.S. Army Corps of Engineers. To qualify for this exemption, a copy of a valid U.S. Army Corps of Engineers permit must be presented to the LGU.

F. Wild rice production activities, including necessary diking and other activities authorized under a permit issued by the U.S. Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344.

Guidance: An applicant must demonstrate that this exemption applies by showing possession of a U.S. Army Corps of Engineers permit for the project.

G. Normal agricultural practices to control noxious or secondary weeds as defined by rule of the commissioner of agriculture, in accordance with applicable requirements under state and federal law, including established best management practices; and

H. Agricultural activities that are:

1. in a wetland that is on agricultural land annually enrolled in or determined to be eligible for benefits under the federal Agriculture Improvement and Reform Act of 1996, Public Law Number 104-127; or

2. subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency. The approved conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards shall take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register.

This exemption may be applied to agricultural land annually enrolled in the federal

Farm Program as long as wetlands are not drained, excavated, or filled beyond what is:

- (a) allowed under the other exemptions in this part;
- (b) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed; or
- (c) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions as supported by documentation from the United States Department of Agriculture which must be included as evidence to support this exemption.

If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption.

Refer to the flowchart “WCA Jurisdiction for Wetlands on Agricultural Land” in the appendix to this chapter.

Guidance: An activity that has been determined by the USDA to be compliant with the Federal Farm Program is not automatically exempt under WCA. **LGUs and land owners must apply the criteria listed under Subpart H.2.(a) – (c) to determine if the project is exempt under WCA.** See also the guidance following Exemption 2. B.

Exemption 2: Drainage

- A.** For the purposes of this subpart, “public drainage system” means a drainage system as defined in Minnesota Statutes, section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.
- B.** A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or type 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:
 - 1.** during the 20-year period that ended January 1, 1992:
 - (a) there was an expenditure made from the drainage system account for the public drainage system;
 - (b) the public drainage system was repaired or maintained as approved by the drainage authority; or
 - (c) no repair or maintenance of the public drainage system was required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the public drainage authority; and
 - 2.** the wetlands are not drained for conversion to:
 - (a) platted lots;
 - (b) planned unit, commercial, or industrial developments; or
 - (c) any development with more than one residential unit per 40 acres.

If wetlands drained under this item are converted to uses prohibited under subitem (2) during the 10-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section 103G.222.

Guidance: Present and future owners of wetlands drained or filled without replacement under exemptions 1 and 2 B. can make no use of the wetland area after it is drained or filled, other than as agricultural land, for 10 years after the draining or filling, unless it is first replaced under the requirements of Minnesota Rules, part 8420.0500 to 8420.0630. Also, for 10 years the wetland may not be restored for replacement credit. At the time of draining or filling, the landowner shall record a notice of these restrictions in the office of the county recorder for the county in which the project is located. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the

restrictions apply, a statement of the restrictions, the date on which the 10-year period expires, the name of the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

- C.** A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems conducted or authorized by a public drainage authority pursuant to Minnesota Statute, chapter 103E.
- D.** A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

Guidance: For items C and D, the landowner must provide documentation that the wetlands that will be partially or completely drained by the maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or sworn affidavits.

- E.** A replacement plan is not required for draining, excavating, or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:
 - 1.** the approval remains valid;
 - 2.** the project remains active; and
 - 3.** no additional drainage will occur beyond that originally approved.
- F.** The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.
- G.** Wetlands and public waters of all types that could be drained as a part of a public drainage repair project are eligible for the Permanent Wetlands Preserve program established under Minnesota Statutes, section 103F.516. The BWSR board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Guidance: Aerial photographs should be used as a guide. Photos taken during wetter than normal conditions during the past five years, which show no wetlands (or a smaller wetland) to exist, are good evidence for parts C and D or this exemption. State drainage law (103E) may apply to certain activities involving public drainage systems. Questions concerning drainage law should be referred to DNR Division of Waters personnel. Landowners should be aware that repair and maintenance of public or private drainage systems may be regulated by the USDA under "Swampbuster." Natural Resources Conservation Service personnel should be consulted.

Exemption 3: Federal approvals

A replacement plan for wetlands is not required for activities described in items A and B.

- A.** Activities exempted from federal regulation under United States Code, title 33, section

1344(f), as in effect on January 1, 1991. The local government unit may certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the U.S. Army Corps of Engineers. This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area;

B. Activities authorized under section 404 of the Clean Water Act, United States Code, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by BWSR, the Minnesota Department of Agriculture, the Minnesota Department of Natural Resources, and the Minnesota Pollution Control Agency.

Exemption 4: Wetland restoration

A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland. The landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland.

Guidance: The landowner must document the existence of drainage rights.

Exemption 5: Incidental wetlands

A replacement plan for wetlands is not required for activities in wetland areas created solely as a result of:

- A.** beaver dam construction;
- B.** blockage of culverts through roadways maintained by a public or private entity;
- C.** actions by public or private entities that were taken for a purpose other than creating the wetland; or
- D.** any combination of items A to C.

Wetland areas created by beaver activities may be drained by removing those materials placed by beavers. Drainage is permitted by removing or moving materials blocking installed roadway culverts and related drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged. Wetland areas may be drained, excavated, or filled if the landowner can show that the wetland was created solely by actions, the purpose of which was not to create the wetland.

Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a wetland replacement process that may, over time, take on wetland characteristics, are also exempt.

See **guidance** on applicability of the incidental wetland exemption to lands within public transportation rights of way in the appendix to this chapter.

Exemption 6: Utilities; public works

A replacement plan for wetlands is not required for:

- A.** placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if:
 - 1.** the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
 - 2.** the proposed project significantly modifies or alters less than one-half acre of wetlands;
- B.** activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;
- C.** alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way;
- D.** emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland;
- E.** normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland; or
- F.** repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations. For new placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized. For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Guidance: Utility projects that involve many LGUs may require coordinated discussions prior to the onset of activities. A copy of the project plans should be kept on file as supporting documentation for the exemption.

Exemption 7: Forestry

A replacement plan for wetlands is not required for:

- A.** temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or
- B.** permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line;

filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

This exemption is for roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Guidance: See link to [“Guidance on Forestry Exemption.”](#)

Exemption 8: Approved development

A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. As used in this subpart, “infrastructure” means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan. Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

Guidance: Wetlands may be drained or filled by construction projects without replacement if:

1. The landowner received governmental approvals required by federal, state, county, city, or town official controls before July 1, 1991, but after July 1, 1986, that identified or clearly implied that wetlands were to be drained or filled. The approvals must not have expired; and no wetland drainage or filling can occur beyond that documented by the approval. For plats, approval means preliminary or final approval, except that in the metro area and in cities of the first and second class, it means preliminary approval. For other projects, approval means site plan approval, conditional use permits, or similar approvals required by the local controls, or state and federal regulations (First class city means those having more than 100,000 inhabitants. Second class city means those having more than 20,000 and not more than 100,000 inhabitants.); or,
2. (a) The landowner had started or completed legally installed infrastructure that clearly implied wetland impacts on a specific parcel. Infrastructure includes storm water piping, outfalls, inlets, riprap, street sub-base, electric and water utilities, culverts, bridges, and any work defined by the LGU as constituting a capital improvement to the specific parcel under consideration. This includes: (b) partially completed projects approved *and initiated* before July 1, 1986, provided that ongoing activity — as defined by the LGU — is documented for the period between July 1, 1986, and July 1, 1991.

Exemption 9: De minimis

WETLAND TYPE (Circular 39)	SHORELAND CLASS	PRE-STATEHOOD WETLAND AREA	DE MINIMIS AMOUNT ¹
1, 2, 6, or 7* *excluding white cedar and tamarack wetlands	Non-Shoreland	> 80% 50–80% < 50%	10,000 ft² 5,000 ft² 2,000 ft²
7* *white cedar and tamarack wetlands only	Non-Shoreland	Any	400 ft²
3, 4, 5, or 8	Non-Shoreland	Any	400 ft²
Any Wetland Type	Shoreland	Any	400 ft²

¹If more than one de minimis amount is applicable to the project, the exemption amount is the lesser of these.

NOTE: Given the complexity of this exemption, it is strongly suggested to seek the advice of the local government unit prior to beginning a project. LGUs should develop a record-keeping system that tracks projects by *basin or location* in order to provide a means to document the cumulative aspects of this exemption.

- A.** Except as provided in items B and C, a replacement plan for wetlands is not required for draining, excavating, or filling the following amounts of wetlands:
- 1.** 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a greater than 80 percent area;
 - 2.** 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a 50 to 80 percent area;
 - 3.** 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands in a less than 50 percent area;
 - 4.** 400 square feet of wetland types not listed in subitems (1) to (3) outside of shoreland wetland protection zones in all counties; or
 - 5.** 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland wetland protection zone in areas beyond the building setback if the wetland is not a type 3, 4, or 5 wetland, is isolated, and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this subitem, the local shoreland ordinance applies.
- B.** The amounts listed in item A may not be combined on a project.
- C.** This exemption no longer applies to a landowner's portion of a wetland when the proposed project impact area and the cumulative area of the landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:
- 1.** the applicable area listed in item A, if the landowner owns the entire wetland;
 - 2.** five percent of the landowner's portion of the wetland; or
 - 3.** 400 square feet.
- D.** This exemption may not be combined with another exemption on a project.
- E.** For the purposes of this subpart, for wetlands greater than 40 acres, the wetland

type may be determined to be the wetland type with the deepest water regime with the wetland and within 300 feet of the impact.

A note about the de minimis exemption — and its interpretation

Refer to the calculation sheet that illustrates application of this exemption, found at this [link](#).

There are two things key to understanding the application of this exemption: 1) The definition of “project”; and 2) the exemption is limited — or “capped”— by the amount of the wetland owned by the person proposing to drain or fill the wetland. A “project” means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in the Wetland Conservation Act, a project may not be split into components or phases for the sole purpose of gaining additional exemptions. Landowners exercise the de minimis exemption by doing projects as determined by the local government unit. The de minimis applies to the *total* project impact whether to one, or more than one, wetland basin. Although the exemption generally allows a person to use the full de minimis amount, use of the exemption depends on the amount of the wetland owned by the person proposing the impact, the size of the wetland, and the extent of previous drain and fill projects. The exemption reads: “This exemption no longer applies to a *landowner’s portion* of a wetland when the cumulative area drained or filled of the landowner’s portion since Jan. 1, 1992, is the *greatest* of:

1. the applicable area (10,000; 5,000; 2,000 or 400 square feet), *if the landowner owns the entire wetland*;
2. five percent of the *landowner’s portion of the wetland*; or
3. 400 square feet.”

The full de minimis amount may not be available if: previous projects—regardless of the number of owners of the wetland—have partially drained or filled the wetland; the wetland is owned by more than one person; or the wetland size is limiting.

Guidance: The de minimis amount cannot be subtracted from the amount needed to be replaced through a wetland replacement plan. Minnesota Laws 2000, Chapter 382, Sec. 8 removed the provision that previously allowed the de minimis amount to be subtracted from the area that needed to be replaced through a wetland replacement plan. This change was made primarily to enhance the alignment of the WCA and Federal 404 programs and thus make possible the regulatory streamlining General Permits and Letters of Permission allow.

Exemption 10: Wildlife habitat

A replacement plan for wetlands is not required for:

- A. Excavation or the associated deposition of spoil within a wetland for a wildlife habitat improvement project, if:
 1. the area of deposition and excavation within the permanently and semi permanently flooded areas of types 3, 4, or 5 wetlands does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded with native, noninvasive species to prevent erosion;
 2. the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

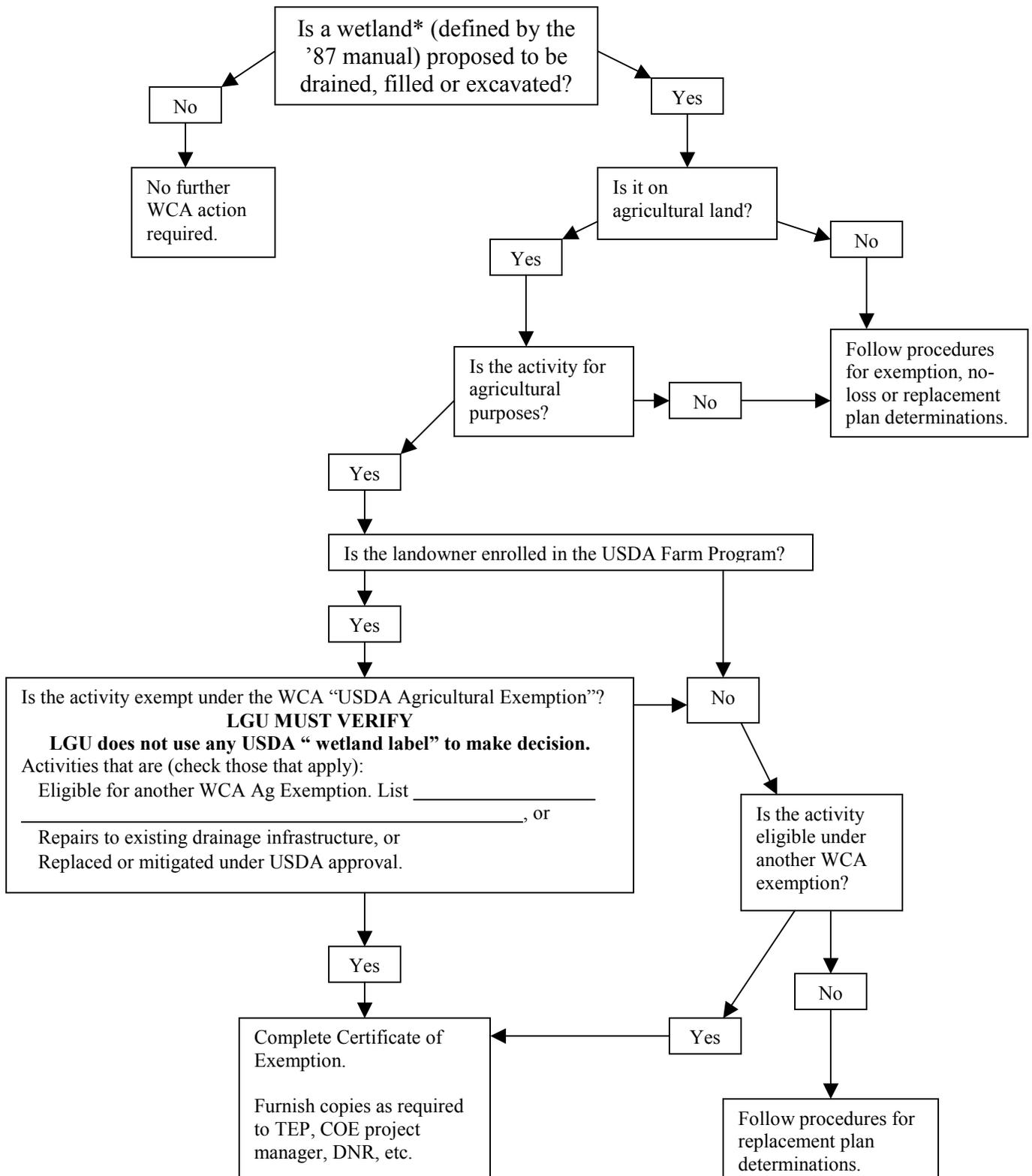
Local ordinances may be more restrictive than WCA and thus some of the exemptions may not be applied as listed here.

3. the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or the technical evaluation panel using the “Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Proposals” (Minnesota Interagency Wetlands Group; December 2000) or similar criteria approved by the BWSR board; or

B. duck blinds.

Guidance: Soil and Water Conservation Districts are encouraged to consult local wildlife management experts such as the DNR area wildlife manager or U.S. Fish and Wildlife Service staff to seek input on activities that will benefit wildlife habitat, in addition to using the publication listed in (3) above. Landowners considering wildlife habitat improvement projects should consult the DNR publication: “Excavated Ponds for Wildlife.” 

WCA Jurisdiction for Wetlands on Agricultural Land*



* Regardless of whether or not wetland is shown on USDA maps. WCA jurisdiction is first established using '87 Manual and other information available.



Memorandum

Date: April 26, 2004

From: Tom Mings, Senior Wetland Specialist *TM*

To: Tom Wenzel

Cc: Doug Norris	Tim Fredbo	Steve Woods
Dale Krystosek	John Overland	Ron Shelito Al Kean
Lynda Peterson	Greg Larson	Jeff Nielsen Ron Harnack

Re: Determining applicability of the incidental wetland exemption (8420.0122.Subp.5) to lands within public transportation rights of way.

Areas of public transportation rights of way that develop wetland characteristics solely as a result of adjacent wetland restoration activities funded under a conservation program (e.g., CREP, RIM, CRP, WRP, USFWS Partners for Wildlife) are exempted from wetland replacement by 8420.0122.Subp.5 (current rule of March 29, 2004), provided that all of the following apply:

- 1) The wetland area(s) were restored as a soil and water conservation practice under a conservation program and were not part of a wetland replacement or compensatory mitigation project;
- 2) The wetland areas proposed for exemption from replacement were within existing public road right of way at the time the adjacent conservation project was established;
- 3) These wetland areas proposed for exemption as incidental were not wetland prior to the implementation of the conservation program project.

Rationale: The initially purchased conservation program and associated flowage easement boundaries are the intended extent of wetland restoration on these soil and water conservation projects.

If public road right of way is expanded in the future to include restored, created or existing wetlands within the initial conservation program boundaries, replacement of these wetlands is required if they would be impacted.

Bemidji 3217 Bemidji Avenue N. Bemidji, MN 56601 phone (218) 755-4255 fax (218) 755-4201	Brainerd 217 S. 7th Street Suite 202 Brainerd, MN 56401 phone (218) 828-2383 fax (218) 828-6036	Duluth 394 S. Lake Avenue Room 403 Duluth, MN 55802 phone (218) 723-4752 fax (218) 723-4794	Fergus Falls 413 W. Stanton Avenue Fergus Falls, MN 56537 phone (218) 736-5445 fax (218) 736-7215	Marshall 1400 E. Lyon Street Box 267 Marshall, MN 56258 phone (507) 537-6060 fax (507) 537-6368	New Ulm 261 Highway 15 S. New Ulm, MN 56073 phone (507) 359-6074 fax (507) 359-6018	Rochester 40 16th Street S.E. Suite A Rochester, MN 55904 phone (507) 285-7458 fax (507) 280-2875	Saint Paul One West Water Street Suite 250 Saint Paul, MN 55107 phone (651) 282-9969 fax (651) 284-0000
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Minnesota Wetland Conservation Act Guidance Paper 2004 – 01

Approved by BWSR: June 23, 2004

SUBJECT: Forestry Exemption Guidance for Local Government Units

Prepared by: Minnesota Board of Water and Soil Resources with assistance from the Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, Fond du Lac Reservation and several Local Units of Government

1. Purpose and applicability.

- a. **Purpose.** The purpose of this guidance paper is to provide Local Government Units (LGUs) with guidance for determining landowner qualification for the forestry exemption (8420.0122 Subpart 7) under the Wetland Conservation Act.
- b. **Applicability.** LGUs are encouraged to use this guidance to help determine whether the forestry exemption is being properly implemented by a landowner for a temporary or permanent forest road.

2. General Considerations. This guidance recognizes that persons utilizing the forestry exemption are not required to obtain an exemption certificate from the LGU. In 1991, when the Wetland Conservation Act was enacted, the legislature recognized the importance of the forest products industry in Minnesota. The statute and rule provide for an exemption from the requirement to obtain an approved replacement plan for wetland impacts for certain silvicultural activities (see Minnesota Rule 8420.0122, Subpart 7.) This guidance is intended to protect the legitimate use of the forestry exemption, while providing guidance to LGUs for determining when the exemption is not properly being implemented. Some abuses of the forestry exemption have occurred in Minnesota. **The following examples are clear misuse of the forestry exemption when a road is constructed resulting in:**

- Conversion of forested land to residential development
- Conversion of forested land to agricultural use
- Conversion of forested land to commercial development
- Conversion of forested land to industrial development
- Clearing and grubbing of forested land
- Construction of forest roads that have NOT limited impacts to the hydrologic and biologic characteristics of the wetland

For less obvious determinations, LGUs may use the attached Forestry Exemption Guidance Worksheet to help determine whether an activity is eligible for the forestry exemption.

Legitimate silvicultural activities that meet the provisions of the Wetland Conservation Act forestry exemption as stated in Minnesota Rules 8420.0122 Subpart 7. are eligible for the forestry exemption.

When a road is legitimately constructed using the forestry exemption, but later the primary purpose of the road is converted to another use (for example providing access for residential development), this guidance recommends that wetland impacts be dealt with in the following manner:

- **If the forest road has been in place for less than 10 years when the primary purpose of the road changes from silviculture to another use, the entire wetland impacts, including the footprint of the forest road should be replaced in compliance with Minnesota Rules 8420.**

- **If the forest road has been in place for more than 10 years when the primary purpose of the road changes from silviculture to another use, the wetland impacts in excess of the original footprint of the forestry road should be replaced in compliance with Minnesota Rules 8420.**

LGUs are encouraged to document use of the exemption (as is practical) to help determine future wetland mitigation needs if the primary purpose of the road changes.

The Minnesota Board of Water and Soil Resources (BWSR) has developed this guidance in cooperation with Minnesota Department of Natural Resources Division of Forestry and Ecological Services and the U.S. Army Corps of Engineers, St. Paul District, in addition to several LGUs. The BWSR has developed this guidance to help determine the applicability of the forestry exemption when a landowner applies for the exemption, or when a wetland impact is inspected after the fact and the landowner claims the forestry exemption. This guidance is intended to help LGUs determine when the forestry exemption has been properly applied or has been misused which may initiate an enforcement action. LGUs should inform landowners that they should contact the U.S. Army Corps of Engineers for a determination of compliance with the federal Clean Water Act.

Minnesota Rules 8420.0290 Subpart 3.C. states, in part, *“The soil and water conservation district shall incorporate its plan into a restoration order or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner or responsible party.”* The rule definitions, 8420.0110, Subpart 40a states *“Responsible party means an individual, business, or other organization causing the draining, excavation, or filling of wetlands on the property of another, with or without landowner’s permission or approval.”* This rule language provides that the logger or contractor, in addition to the landowner, may be held liable for restoration or replacement of the wetland impacts if the LGU determines that a road is not eligible for the forestry

exemption. Loggers and contractors are encouraged to use the Minnesota Wetland Conservation Act **Contractor Responsibility and Landowner Statement Form** which can be found at the Minnesota Board of Water and Soil Resources web site www.bwsr.state.mn.us/wetlands/wcamanual/BWSR_Form_Enforcement.

The forest road exemption also covers skid trails (trails used for logging equipment to drag logs to the landing) provided the skid trails limit the impact on the hydrologic and biologic characteristics of the wetland and meet all other conditions of Minnesota Rules 8420.0122 Subpart 7. Landings (areas used to stockpile logs before loading onto trucks) are not considered to be eligible for the forest road exemption. Landings should be sited on uplands, or if the entire forest harvest area is in wetlands, harvesting in winter on frozen ground is recommended. Landings on frozen ground in wetlands are acceptable provided slash and woody debris from trees growing in uplands is not deposited in wetlands.

3. **Guidance** – LGUs are encouraged to review the reference “**Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines**” for information regarding best management practices for forest roads. This document can be found at the web site www.frc.state.mn.us/Fmgdline/Guidebook.html. LGUs may use the **Forestry Exemption Guidance Worksheet** below and the questions as evidence to determine applicability of Minnesota Rules 8420.0122 Subpart 7, the forestry exemption. **Questions A, B and C below should all be answered yes in order for landowner to be eligible for the forestry exemption.** If this evaluation has occurred after the road construction activity has occurred and the LGU determines that the road is not an exempt activity, then the enforcement procedures under Minnesota Rule 8420.0290 should be followed and restoration or replacement may be required.

Forestry Exemption Guidance Worksheet

<u>A. Is silvicultural activity occurring on the landowner’s property?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether silvicultural activity is occurring.

<u>Question</u>	<u>Staff Comments</u>
1. Does the landowner have a written forest management plan? (For example, a Forest Stewardship Plan)	
2. Does the landowner have receipts for reforestation planting stock or other evidence that reforestation is occurring?	
3. Does the landowner have evidence of a logging	

contract?	
4. Does landowner plan to do site preparation on the property?	
5. Does the logger have a “Contractor Responsibility and Landowner Statement Form”?	
6. Other evidence of silvicultural activity? (explain)	

<u>B. Is Silviculture the primary purpose for the road?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether silviculture is the primary purpose for the road.

<u>Question</u>	<u>Staff Comments</u>
1. Is the road providing access for buildings or other structures? <i>(Most silvicultural operations do not require buildings or other structures. If the road is providing access to homes, cabins or other structures, it raises questions whether silviculture is the primary purpose of the road.)</i>	
2. What is the intended use for the road after the logging or reforestation or timber stand improvement activity occurs?	
3. Will the road be built to the appropriate standard for the number of acres the road will service? <i>(A road built to a standard out of proportion to the resource being managed should be questioned. A major, all season road may be appropriate for silvicultural purposes if it provides access to several hundred acres. A road built to the same standard would be excessive for a 40-acre parcel under the silvicultural exemption).</i>	
4. Other than for silvicultural purposes, does the landowner have another proposed use for the road?	
5. How is land currently being accessed? (Why is new route needed?)	
6. What is the zoning status of the property and adjoining property?	
7. Is, or will access to the road be controlled?	
8. Other evidence? (please explain)	

<u>C. Will (or has) the road construction activity limit(ed) impacts to hydrologic and biological characteristics of the wetland?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether the road has limited impacts to the hydrology and biology of the wetland.

<u>Question</u>	<u>Staff Comments</u>
1. Do plans for the proposed road incorporate the appropriate best management practices (BMPs), as outlined in the roads section of the guidebook Sustaining Minnesota Forest Resources: Voluntary Site level Forest Management Guidelines for Landowners, Loggers, and Resource Managers, so that impacts to the hydrologic and biologic functions of wetlands are avoided where practical and minimized when not?	
2. Can the proposed road location be modified to avoid or minimize wetland impacts? Are there practical alternate routes that could provide access to the forested land? Do these alternatives impact fewer wetlands?	
3. Where roads have already been constructed, have the above referenced BMPs been properly utilized to minimize hydrologic and biologic impacts to wetlands?	
4. Can the timber harvesting be done without road building, such as on frozen ground during winter while still meeting management objectives?	
5. Do the silvicultural objectives require activity during non-frozen conditions?	
6. Can the road be cost effectively located to avoid crossing a wetland?	
7. Is a temporary crossing that avoids the placement of fill in a wetland a practical option for the planned silvicultural activities?	
8. Will the type of crossing to be constructed provide adequate cross drainage to avoid blocking normal surface and subsurface water movement? Will properly sized culverts be installed?	
9. Where wetland impacts are unavoidable, will impact be minimized?	
10. If ditches are part of the road construction, will they drain wetlands?	
11. Will the upland approaches to a crossing, and any associated roadside ditches, avoid directing surface flow from adjoining upland into wetlands?	
12. Other evidence? <i>(Please explain)</i>	

CHAPTER THREE

Avoiding, Minimizing & Replacing Wetland Impacts

Minnesota Rules, parts 8420.0500–8420.0630, specify the procedures and criteria for avoiding and minimizing wetland impacts and for ensuring adequate replacement of lost public values for unavoidable wetland impacts. Sequencing, meaning different development designs, methods, and/or locations to avoid and minimize wetland impacts, is the first step in this process. If the LGU determines, upon completion of the sequencing analysis, that some wetland impacts cannot be avoided, then these impacts must be mitigated through the preparation and implementation of a wetland replacement plan.

The LGU must determine the adequacy of the wetland replacement plan in accordance with the WCA requirements, and then must approve, approve with conditions, or deny the plan. If a replacement plan is denied by the LGU, the applicant may revise and resubmit the plan for further consideration. Once the replacement plan is implemented, monitoring of the site is necessary to ensure the success of the plan in replacing the lost values of the impacted wetland.

Monitoring is the last—yet often overlooked—step in the wetland replacement process; this step is critical to ensure adequate wetland replacement. WCA requires monitoring of wetland replacement areas for a minimum of 5 years upon the completion of the wetland replacement, unless a longer or shorter monitoring period is specified by the TEP.

Sequencing – The First Step

Sequencing to avoid wetland impacts should be addressed early in the planning/review process. Once a wetland is identified, the LGU should ask the applicant how the wetland can be avoided. A pre-application meeting is highly recommended at this point in the process so that the LGU can inform the applicant of the requirements to avoid and minimize wetland impacts early in the design phase of the project. The landowner should also be informed of the wetland replacement requirements, should they be unable to avoid wetland impacts.

The applicant must address sequencing in preferential order. Avoiding wetland impacts is the first priority. Avoidance can be achieved through the location and/or design of a development. Following are questions to ask: Is there another property on which the development can occur so that wetlands can be avoided? Can the project be designed differently to avoid wetland impacts? Can the project footprint be reduced to avoid wetland impacts?

If avoidance cannot be achieved, wetland impacts should be minimized or rectified. Minimization can be achieved through the location and/or design of a development and also through different construction methods. For example, to minimize wetland impacts, a road crossing can be located across the narrowest part of a wetland, and the road crossing can be designed to use a retaining wall instead of fill for the road slopes. If wetland impacts cannot be avoided, then the impacted wetland must be replaced.

In order to properly apply sequencing, applicants must identify a specific project, i.e., a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal. LGUs cannot approve applications to drain, fill, or excavate a wetland for an unspecified purpose. This principle was upheld in an important court case (*Kells v. City of Rochester*) where the Minnesota Court of Appeals affirmed that, “A wetland replacement plan applicant must describe the proposed project in detail and must demonstrate compliance with the sequencing requirements.”

A sequencing report or analysis can be submitted for review prior to preparation of a replacement plan. This is especially important and encouraged for large and/or complicated projects. The review of a sequencing analysis prior to preparation of a replacement plan can save time and money in the long run. Minnesota Rules, part 8420.0520 provides substantial guidance on sequencing.

Wetland Replacement Plans—Adequacy

Wetland restoration is the preferred method of wetland replacement because it usually has a greater chance of success and is often less costly and less time consuming than wetland creation.

There are several different ways of replacing impacted wetlands under WCA. Minnesota Rules, part 8420.0541, lists 11 actions that are eligible for wetland replacement credit. These include different methods of wetland restoration and creation. The type of replacement action will determine the percentage of new wetland credits and public value credits allowable for wetland replacement. Guidance pertaining to some of the replacement methods can be found in the appendix to this chapter.

The type of replacement action must be suitable for the site characteristics. For example, if wetland creation is being considered, there must be an adequate source of hydrology and soils on the site. If there is a drained wetland on the site then restoration of the drained wetland is preferred over wetland creation.

The protection of special resources, such as endangered or threatened species and sensitive groundwater or surface water areas, must be considered for the impacted and replacement wetlands during the review of the replacement plan (see Minnesota Rules, part 8420.0548).

All wetland replacement plans must include the components listed in Minnesota Rules, part 8420.0530.

Refer to Chapter 11 for a variety of references useful in preparing and evaluating wetland replacement plan applications.

Wetland replacement plans must include a measurable goal along with measurable performance standards so that it can be determined when the goal of the replacement plan has been met. For example, .5 acres of a type 3 wetland will be impacted by a proposed project. The goal of the wetland replacement plan then should be to restore 1 acre (.5 acres at a 2:1 ratio) of type 3 wetland. Performance standards for the restored wetland would include such things as: 1 acre of wetland will be dominated by a diverse mix of native, noninvasive emergent species, the wetland boundary will be sinuous, and the bottom of the wetland will be undulating. The goal and performance standards of a wetland replacement plan should include the size of the replacement wetland, the ecological consistency, the functions, and values and other characteristics of the replacement wetland (see Minnesota Rules, parts 8420.0546, 8420.0547, 8420.0549, and 8420.0550). LGUs may require applicants to post a performance bond or similar instrument to assure that the replacement wetland is successfully established.

On-site wetland replacement is preferred because it has the greatest chance of replacing the lost values and functions of the impacted wetland. Criteria for the location of replacement wetlands can be found at Minnesota Rules, part 8420.0543. To ensure that wetland functions and values are not lost over time, wetland replacement must occur prior to or concurrent with the actual draining, filling, or excavation of a wetland.

Monitoring – A Critical Phase

Monitoring is an integral part of wetland replacement and wetland banking. It identifies the success or failure of wetland restorations and creations.

As-built drawings are the first component of monitoring, and they are very important.

They indicate whether the wetland restoration or construction activities have occurred in

accordance with the approved replacement plan. As-builts also establish the base line (the initial characteristics of the site) for comparison purposes during the monitoring period.

The monitoring plan must outline the methods by which data are to be collected for demonstrating that the goal and performance standards of the replacement plan have been met. The monitoring plan should include the variables to be measured, i.e. hydrology, vegetation, etc., along with the sampling methods for each variable, the sampling schedule for each variable, and the sampling locations for each variable.

It is important to consider whether the proposed monitoring methods will provide sufficient data to indicate whether the goal and performance standards of the replacement plan have been met. For example, a staff gauge is commonly used to monitor ponding within replacement wetlands. However, a staff gauge only works if the proposed wetland type is a type that experiences regular ponding during the growing season (not just soil saturation). If a type 2 wetland is proposed, then a series of monitoring wells should be utilized along the anticipated wetland boundary to show whether adequate soil saturation is occurring. A staff gauge is not a suitable method of gathering hydrology data for a type 2 wetland because type 2 wetlands rarely experience regular ponding. Also, staff gauge readings should only be utilized in conjunction with an accurate topographic survey that is provided as part of the as-built. The staff gauge readings represent the hydrology only at the point at which the staff gauge is located. A topographic survey is needed to extrapolate the staff gauge readings across the replacement wetland to determine if adequate wetland hydrology is occurring.

Monitoring of the replacement wetland must occur for a minimum of five years unless a longer or shorter monitoring period is specified by the TEP in accordance with Minnesota Rules, part 8420.0610. Annual monitoring reports must be submitted to the LGU and the reports must include, at a minimum, the information listed in Minnesota Rules, part 8420.0620.

The LGU, with assistance from the TEP if requested, should review the annual monitoring reports and should periodically visit the site to verify the conditions of the replacement wetland. The LGU may order corrective measures or take other actions to ensure successful wetland replacement, as listed in Minnesota Rules, part 8420.0630. 

STEPS IN THE WETLAND REPLACEMENT PLAN APPLICATION PROCESS

1 Project is being considered or proposed

2 Meeting and site visit

Applicant and LGU (may include other technical partners)

- Obtain information regarding the project.
- Inform the landowner of sequencing requirements and criteria used to evaluate wetland replacement plans.
- Ask the landowner how the wetland will be avoided.

3 Evaluation

- Review wetland delineation report and verify delineated wetland boundary on the site (if a wetland delineation has been completed).
- Determine function and value, location, size and type of wetland (s).
- May include TEP.
- Document findings.

4 Sequencing

Can the proposed project avoid wetland impacts?

- A minimum of two alternatives that avoid wetland impacts must be provided in the sequencing analysis.
- Sequencing must be completed in preferential order: avoid, minimize, rectify, replace.
- A sequencing analysis can be submitted for review prior to preparation of a replacement plan.
- If a wetland(s) can be avoided by a proposed project, then a replacement plan is unnecessary.

5 Receive replacement plan and combined project application form

- Many required items. LGU should use "Replacement Plan—Determination of Complete Application" to determine if complete.

*Within 10 days of receiving a complete application, the Notice of Wetland Conservation Act Application must be mailed to those required to receive notice, or a letter must be sent to the applicant stating that the application is incomplete (include a list of missing items).

6 When application is complete, LGU mails "Notice of Wetland Conservation Act Application"

- Impacts < 10,000 square feet (include summary of application)
- Impacts > or = to 10,000 square feet (include full application)

*Specify a comment period. The Notice of Wetland Conservation Act Application must state when the comment period ends.

7 LGU Completes Certificate of Mailing of Wetland Conservation Act Application

8 Replacement Plan Evaluation

*TEP meeting recommended: complete Technical Evaluation Panel Findings of Fact form; complete Sequencing Findings of Fact form.

- Does the replacement plan include a measurable goal, objectives, and performance standards?
- Does the replacement plan include a planting plan, vegetation maintenance plan, contingency plan, and monitoring plan?

*M.S. 15.99 requires a Record of Decision within 60 days of receiving a complete application.

9 LGU Decision Regarding Replacement Plan

- LGU decision must be made based on findings of fact.
 - Within 10 days of the decision, the LGU mails Notice of Wetland Conservation Act Decision.
- *Findings of fact must be included with notice of decision.

10 LGU completes Certificate of Mailing Notice of Wetland Conservation Act Decision

11 Project can commence

- Wetland replacement must occur prior to/or simultaneous with the wetland impacts.

*NOTE: APPEAL WINDOW

A project can commence immediately upon mailing of the Notice of Wetland Conservation Act Decision; however, there is a 30-day window during which time any of the parties listed on the notice may appeal the decision to BWSR. If there is a possibility that the decision will be appealed, work should be delayed until 30 days following the mailing of the Notice of Decision.

12 Replacement wetland constructed

- Applicant notifies LGU that the replacement wetland has been constructed – by letter and as-built plan.
- LGU (may include TEP) inspects project to determine if the project is in compliance with the replacement plan specifications.
- LGU notifies applicant of compliance and the beginning of the monitoring period.

13 Monitoring

Monitoring must be completed for five years, or for a longer or shorter duration as determined by the TEP, until the replacement wetland is fully functioning.

- The applicant or the LGU must submit annual monitoring reports for every year of monitoring.
- LGU may order corrective action or implementation of a contingency plan if the replacement wetland appears to be failing.
- The TEP may be included in reviewing the monitoring reports and proposed corrective actions.
- The LGU conducts a site visit at the end of the monitoring period to determine if the goal of the replacement plan has been met.

*If the goal has been met, the LGU completes Certificate of Compliance Wetland Replacement and/or Banking Plan. If the goal has not been met, the LGU shall order corrective action and extend the monitoring period.

INDEX TO SEQUENCING AND REPLACEMENT PLAN INFORMATION

See combined rules booklet published by the Minnesota Bookstore, January 2003 (rule references are linked here)

8420.0230 (p. 91)	Replacement Plan Determination	8420.0542 (p. 118)	Timing of Wetland Replacement
Subp.	1. Application. (p. 91)	8420.0540 (p. 119)	Wetland Replacement Siting
	2. Decision. (p. 92)	8420.0544 (p. 120)	Replacement for Public Transportation Projects
8420.0500 (p. 106)	Purpose of Sequencing and Replacement	8420.0545 (p. 122)	Presettlement Wetland Acres and Areas
8420.0505 (p. 106)	Previously Approved Determinations	8420.0546 (p. 124)	Size of Replacement Wetlands
8420.0510 (p. 107)	Replacement Plan Procedures	8420.0547 (p. 124)	Other Requirements
Subp.	1. Generally no drain, fill, excavation without replacement. (p. 107)	8420.0548 (p. 124)	Special Considerations
	2. Pre-application conference and site visit. (p. 107)	Subp.	1. Scope. (p. 124)
	3. Evaluation of wetland type, size, location, and value. (p. 107)	GUIDANCE LINK 	2. Endangered and threatened species. (p. 124)
8420.0520 (p. 107)	Sequencing		3. Rare natural communities. (p. 125)
Subp.	1. Requirements. (p. 107)		4. Special fish and wildlife resources. (p. 125)
	2. Application options. (p. 108)		5. Archaeological, historic, or cultural resource sites. (p. 125)
	3. Avoidance. (p. 108)		6. Groundwater sensitivity. (p. 125)
	4. Minimization. (p. 109)		7. Sensitive surface waters. (p. 125)
	5. Impact rectification. (p. 110)		8. Education or research use. (p. 125)
	6. Reduction or elimination of impacts over time. (p. 111)		9. Waste disposal sites. (p. 125)
	7. Unavoidable impacts. (p. 111)		10. Consistency with other plans. (p. 126)
	7a. Sequencing flexibility. (p. 111)	8420.0549 (p. 126)	Evaluation of Wetland Functions and Values
	8. Wetlands on cultivated fields. (p. 112)	Subp.	1. Evaluation options. (p. 126)
	9. Calcareous fens. (p. 112)		2. Wetland types. (p. 126)
8420.0530 (p. 112)	Replacement Plan Components		3. In-kind wetland replacement. (p. 131)
8420.0540 (p. 115)	Replacement Plan Evaluation Criteria		4. Out-of-kind wetland replacement. (p. 131)
Subp.	1. Sequencing. (p. 115)		5. Determining impacts of partial drainage. (p. 132)
	2. Type of replacement. (p. 115)		6. Alternative evaluation methodologies. (p. 132)
8420.0541 (p. 115)	Actions Eligible for Credit		7. Special cases or appeals. (p. 133)
Subp.	1. Scope. (p. 115)		8. Adequacy decision. (p. 133)
	2. Restoration of completely drained wetlands. (p. 116)	8420.0550 (p. 133)	Wetland Replacement Standards
GUIDANCE LINK 	3. Restoration of partially drained wetlands. (p. 116)	Subp.	1. General requirements. (p. 133)
GUIDANCE LINK 	4. Exceptional natural resource value projects. (p. 116)		2. Specific requirements. (p. 134)
	5. Restoration of Farmed Wetlands. (p. 116)	8420.0600 (p. 135)	Monitoring
	6. Upland buffer areas. (p. 116)	8420.0610 (p. 135)	Duration of Monitoring
	7. Wetlands previously restored via conservation easements. (p. 117)	8420.0620 (p. 135)	Monitoring Annual Report
	8. Restoration of wetland vegetation. (p. 117)	Subp.	1. Purpose. (p. 135)
	9. Wetlands established via mineral extraction site reclamation. (p. 117)		2. Report content. (p. 135)
GUIDANCE LINK 	10. Water quality treatment areas. (p. 117)	8420.0630 (p. 136)	Monitoring Determinations by the LGU
	11. Wetland creations. (p. 118)		

Minnesota Board of Water and Soil Resources

WCA Guidance: "approved and active" stormwater management plans
September 2003

The standards for what constitutes an "approved and active" stormwater management plan for WCA replacement credit (see MN Rule 8420.0541, Subp. 10) are as follows:

1. Has been officially adopted by the entity having land use controls (city/county/township/WD/WMO) and is enforceable;
 and
2. Has specific standards for volume and rate controls aimed at maintaining at pre-development conditions;
 and
3. Contains provisions for on-going maintenance of stormwater ponds and other facilities (who's responsible, how often, etc.);
 and
4. The approving body (city/county/township/WD/WMO) ensures that the plan is actively implemented. This implies the presence of sufficient staff/resources for enforcement and implementation.

Minnesota Wetland Conservation Act
Guidance Paper 2003-01
October, 2003

Approved by: Minnesota Board of Water and Soil Resources (10/22/03)

Approved by: Minnesota Interagency Wetland Group

SUBJECT: Exceptional Natural Resource Value Projects (8420.0541 Subp. 4)

1. Purpose and applicability.

- a. **Purpose.** The purpose of this guidance paper is to provide Local Government Units (LGUs) with guidelines for use of Minnesota Rule 8420.0541 Subpart 4 **Exceptional natural resource value projects.**
- b. **Applicability.** This guidance applies to LGU's evaluation of wetland replacement plans where an applicant proposes the use of the **exceptional natural resource value projects** method of allocation of wetland credits.

2. General Considerations.

Exceptional natural resource value projects was added to 8420.0541 ACTIONS ELIGIBLE FOR CREDIT in the Wetland Conservation Act (WCA) rule that became permanent on August 5, 2002. Minnesota Rule 8420.0541 Subpart 4 states ***“Projects that restore exceptional natural resource values of wetlands may receive either public value or new wetland replacement credit solely or in combination as determined by the local government unit with the concurrence of the technical evaluation panel. The amount and type of credit allowed shall be based on a functional assessment that documents the restoration of these values.”***

Local government units and technical evaluation panels are strongly encouraged to use this guidance paper when evaluating all wetland replacement plans that propose use of the exceptional natural resource value projects method of allocating wetland replacement credits. Because the rule does not define ***exceptional natural resource value of wetlands***, LGUs and Technical Evaluation Panels (TEPs) are encouraged to use this guidance to limit the use of this part of the rule.

The WCA rules require that wetland replacement should occur as close to the impacted wetland as possible (WCA Rule 8420.0543 Wetland Replacement Siting). The exceptional natural resource value projects option for wetland replacement provides another opportunity to achieve this goal and should be strongly considered by project applicants.

3. “Exceptional” definition. The word ***exceptional*** in this subpart means that replacement plans that use this method of allocating credits ***should be restricted to projects that:***

- a. **Restore values listed under 8420.0548 Special Considerations** including:

**Where can
ENRV be used?**

- i. endangered and threatened species
- ii. rare natural communities,
- iii. special fish and wildlife resources (*especially fish passage and spawning areas, colonial water bird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, and wildlife travel corridors*),
- iv. groundwater sensitivity,
- v. sensitive surface waters, and
- vi. educational or research use.

b. Restore wetland function and values of wetlands adjacent to or protecting trout waters designated by the commissioner. For the purposes of this part, the TEP should make recommendations to the LGU regarding adjacency and whether the proposed wetland restoration activities would protect the trout stream or lake. The LGU and TEP should seek technical recommendations from DNR fisheries staff.

c. Restore sites that were formerly calcareous fens. There are several degraded wetland sites in Minnesota that have been degraded by cultivation or other human activity that are believed to have functioned as a calcareous fen before disturbance. These sites may be eligible for use of the exceptional natural resource value projects if they have potential to be restored to a calcareous fen. The TEP should seek advice from calcareous fen experts from the Department of Natural Resources and U.S. Army Corps of Engineers and should base eligibility and restoration potential on an interagency evaluation of the site.

d. Restore white cedar swamps. Sites that are a degraded white cedar swamp or have been converted from a white cedar swamp to a nonwetland or another wetland type are eligible for this part. Restoration of the site may include restoration of natural hydrology and/or restoration of vegetation. The vegetation management plan must include a plan to control damage by white tailed deer and other wildlife.

e. Restore wetlands adjacent to or protecting Outstanding Resource Value Waters (Minnesota Rules 7050) Wetlands that are adjacent to or serve to protect Outstanding Resource Value Waters are eligible for this part. These waters include, in part, *Lake Superior, Federal or state wild river segments, Voyageurs National Park, DNR designated scientific and natural areas, calcareous fens, and lake trout lakes*. Restoration and associated preservation of these wetlands can serve to provide additional protection to sites that have been designated by the public to have significant natural resource values.

f. Restore floodplains and riparian wetlands of streams designated for restoration or protection through state, regional or local plans.

**Where can
ENRV be used?**

- g. **Restore rare local or regional wetlands as identified in local wetland or water management plans.** Wetlands that are recognized to be rare within areas or regions of the state may be restored and protected with the exceptional natural resource value method of allocating wetland credits if they are identified in a local or regional plan as a high priority for restoration and protection and approved by the TEP.

4. **“Restore” definition.** The word *restore* in this subpart means projects that:

- a. **Restore vegetation of an exceptional wetland that had been previously degraded or converted to a different type by human activity.** Restoration of vegetation shall be limited to reestablishment and maintenance of permanent native, noninvasive vegetation.
- b. **Restore natural hydrology of an exceptional wetland.** Restoration of hydrology can include either putting water back on a site where it had been removed or removing water from a site where some wetland functions had been degraded by impounding of excess water. For example, restoration of the natural hydrology of a white cedar swamp that had been degraded by improper installation of a culvert would be considered restoration of the natural hydrology of an exceptional wetland.

How can ENRV be used?

5. **Determination and allocation of New Wetland Credit (NWC) and Public Value Credit (PVC) under**

“Exceptional Natural Resource Value Projects”. For the purposes of this subpart, NWC and PVC may be determined by the following guidelines and examples:

- a. **NWC should only be allowed for actions that restore some wetland functions by restoration of native vegetation or restoration of natural hydrology.** The following are examples of allocation of credit under this part of the rule that are consistent with the goal of no-net loss of wetland functions and values:
 - 1. **Up to 100% NWC based on an evaluation of the replacement site with current version of MNRAM or by use of another BWSR approved wetland evaluation method.** For example, recommend that the percentage of NWC correspond to the percent of functional ratings in MNRAM that are increased by at least one level as a result of the restoration of vegetation or hydrology. For example, if restoration of hydrology or vegetation of the replacement wetland increases 50% of the functional ratings by at least one level (low to medium, medium to high, etc.), recommendation is to allocate 50% NWC for the wetland area restored with approval of the TEP.

What do you get? (NWC or PVC)

2. **Up to 50% NWC for restoration of permanent native noninvasive vegetation** in a wetland area where wetland vegetation had been degraded by human activity *at least ten years prior to the date of the wetland replacement plan or banking plan application*. Examples of activities that may have degraded wetland function include, but is not limited to cropping, grazing, haying, clearing of vegetation.
3. **Up to 10% NWC for removing excess hydrology** from a wetland area where wetland functions had been degraded by flooding due to improper placements of culverts, roads, or other human structures provided that permanent native noninvasive vegetation is established in the restored area.
4. **Up to 100% NWC for restoring a deep-water habitat to a wetland condition.** Areas where wetlands have been converted to deep-water habitat more than 10 years prior to the date of the replacement plan application, may receive up to 100% NWC for restoring the natural wetland hydrology provided that permanent native noninvasive vegetation is established in the restored area and all necessary permits are obtained.
5. **Exceptional wetland preservation - *New wetland credit may be granted for preservation of exceptional wetlands,*** as defined here, *provided that restoration of native noninvasive vegetation or hydrology occurs on at least 25% of the project area. The amount of NWC allocated is recommended to not exceed 12.5% of the wetland area preserved* through a permanent easement. The restored and preserved wetland areas should have an adequate protective buffer as determined by the TEP. NWC granted under this part **must have concurrence** of the TEP, the LGU and the designated DNR TEP member for public waters projects. LGUs are encouraged to consult the U.S. Army Corps of Engineers for recommendations. Wetlands preserved for NWC credit must be facing some documented threat of development.

b. PVC may be allowed for:

1. **Up to 25% PVC for preservation of wetland areas of exceptional natural resource values protected under a permanent easement.** Wetland areas that are preserved for public value credit must be facing some documented threat of development.
2. **Activities where PVC is allowed under 8420.0541 Actions Eligible for Credit.**

6. **Functional Assessments.** It is recommended that the *current version* of the Minnesota Routine Assessment Methodology for Evaluating Wetland Functions (MNRAM) be used for functional assessments for this subpart. Functional assessments may also be completed with other BWSR approved wetland evaluation methods.

7. **Summary.** This guidance is recommended for use by local government units and technical evaluation panels in evaluating all wetland replacement plans where use of **Minnesota Rule 8420.0541 Subpart 4. Exceptional Natural Resource Value Projects** is proposed for determination and allocation of wetland replacement credits. The rule language limits use of this method of allocation of credits to *“Projects that restore exceptional natural resource values of wetlands...”*, but does not define *“restore”* or *“exceptional”*. This guidance was developed to help clarify and limit the use of the part of the rule to ensure compliance with the overall purpose of the Wetland Conservation Act, which is to *“achieve no net loss in the quantity, quality, and biological diversity of Minnesota’s existing wetlands...”*

Application of the Wetland Conservation Act to temporary storage of floodwaters in areas having existing wetlands.

Minnesota Board of Water and Soil Resources
November 2003

Projects constructed to enhance the storage of runoff in areas that contain previously existing, natural wetlands may fall under the jurisdiction of the WCA and trigger the need for wetland replacement. These types of projects include constructed off-channel and on-channel storage areas designed to capture and detain runoff in order to moderate flood peaks. Depending on the frequency and duration of flooding and the type and quality of the wetland, such projects can have adverse impacts¹. The WCA calls for no net loss in the quantity, quality and biological diversity of wetlands (M.S. 103A.201, Subd.2). To the extent that temporary flood storage projects can adversely affect all of these parameters, such projects may fall under WCA regulation.

The following types of impacts associated with flood storage projects are potentially sufficient to assert WCA jurisdiction:

Significant sedimentation – The runoff that enters these temporary storage impoundments is likely to be laden with sediment that will be deposited within the wetland. Technically, this sedimentation can be classified as “fill” and is regulated under the WCA. A recently published study showed that as little as 0.5 cm of sediment burial caused a 91.7% reduction in wetland seedling emergence and a 99.7% reduction in invertebrate emergence². At the extreme, sediment deposition can completely bury the wetland, converting it to non-wetland.

Long-term inundation greater than 2 meters – Aquatic areas having water depths exceeding 2 meters are classified as deepwater habitats³ and are considered “nonwetland” under WCA rules (Ch. 8420.0110, Subp. 32b). Converting a wetland to deepwater habitat by excavation requires wetland replacement under the WCA (Ch. 8420.0105). In principle, it seems reasonable to require replacement for similar conversions accomplished by inundation if the inundation persists long enough to eliminate or significantly diminish wetland functions and values.

Elimination or degradation of wetland plant community – Different wetland plant communities vary in their tolerance to changes in the hydrologic regime^{1,4}. Some communities, such as sedge meadows and wet prairies are quite intolerant to hydrologic perturbations. Other wetland communities, such as floodplain forests or emergent wetlands dominated by hybrid cattail or reed canary grass may tolerate frequent and relatively long duration flooding. However, prolonged and frequent inundation can eliminate wetland plant communities entirely. Degrading or eliminating existing wetland plant communities violates the requirement of the WCA to achieve no net loss in wetland quality and biological diversity.

Because of the variability in the type and operation of temporary flood storage projects and in the types of wetlands potentially affected, it's not practical to identify precise thresholds that trigger WCA jurisdiction or to pre-determine the type and amount of wetland replacement required. Such determinations must be made on a case-by-case basis. Any of the impacts described above may be sufficient to assert WCA jurisdiction, including the sequencing requirements to avoid and minimize impacts.

The type and amount of wetland replacement required for unavoidable impacts should reflect the severity of the impact. A wetland functional assessment method such as Minnesota Routine Assessment Method (MnRAM) (Ver. 3) can be used to evaluate the existing wetland and compare it to the projected, with-project conditions. Reduced functional ratings for functions such as Vegetative Diversity/Integrity, Maintenance of Hydrologic Regime, Maintenance of Wetland Water Quality, Maintenance of Characteristic Wildlife, Fishery or Amphibian Habitat, or Aesthetics/Recreational/Education/Cultural Values are indications of a project-specific degradation of wetland quality and/or biological diversity and would require compensatory mitigation. The replacement ratios could be based on the functional assessment, and, if done under the context of a local comprehensive wetland management plan, the ratios could vary from the standard ratios specified in the WCA rules.

Summary: Although temporary flood storage projects are not typical of the majority of “drain and fill” projects regulated under the WCA, they can entail impacts that may trigger WCA jurisdiction. Determining jurisdictional status and the type and amount of wetland replacement required must be done on a case-by-case basis and may be best evaluated using a wetland functional assessment method.

¹ Apfelbaum, S. and L. Lewis. Working Paper No. 1: An Overview of the Impacts of Water Level Dynamics (“Bounce”) on Wetlands.

² Gleason, R., N. Euliss, D. Hubbard, W. Duffy. 2003. Effects of sediment load on emergence of aquatic invertebrates and plants from wetland soil egg and seed banks. *Wetlands* 23: 26-34.

³ Cowardin, L., V. Carter, F.C. Golet and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife FWS/OBS-79/31.

⁴ Minnesota Storm-Water Advisory Group. 1997. Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow Melt Runoff on Wetlands. Minnesota Pollution Control Agency, St. Paul.

Minnesota Wetland Conservation Act

Guidance on the Application of the Wetland Conservation Act to Impacts on Rare Natural Communities

Minnesota Board of Water and Soil Resources
November 2003, rev. Aug. 2004

I. Background

The rules for the Wetland Conservation Act (WCA) contain the following provision under “Special Considerations”:

Minn. Rules 8420.0548 Subp. 3. **Rare natural communities.** A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

The DNR's Natural Heritage Program (NHP), in collaboration with the Minnesota County Biological Survey (MCBS) identifies, describes and maps rare and high quality native plant communities (referenced in the above rule as “natural communities”) in the Natural Heritage Information System (NHIS). Since the WCA rule provision above was originally promulgated, the NHP and MCBS have, and continue to refine the NHIS. Changes in the NHIS classification and ranking system have created questions about how the above rule provision is to be applied. This guidance is provided to clarify the types of native plant communities applicable to Subp. 3 above. Note that the “Special Considerations” provisions apply to both impact and proposed replacement sites (8420.0548, Subp. 1).

II. “Rare Natural Communities”

The DNR's Natural Heritage Program has determined that the following qualify as “rare natural communities” for the purposes of M.R. 8420.0548 Subp. 3.

Native plant communities having a state element rank of S1, S2, or S3 that are mapped or determined by the NHP or MCBS to be eligible for mapping in the Natural Heritage Information System;

or

Any native plant community that is contained within an area mapped or determined by the MCBS to be eligible for mapping in the Natural Heritage Information System as a Site of Outstanding or High Biological Diversity.

The native plant community classification system and associated state element ranks for all native plant communities in Minnesota are currently under revision.

Until this revision is completed and published, contact Doug Norris, DNR Wetlands Program Coordinator (651-296-0779, doug.norris@dnr.state.mn.us) for information on a particular community that appears in the NHIS that may be affected by a wetland replacement plan or wetland banking plan application.

Wetland replacement plan applicants are encouraged to consult the NHIS to determine if any listed elements (rare native plant communities, threatened & endangered species) are present at proposed impact or replacement sites. Copies of the NHIS are available at all county soil and water conservation district offices, or refer to the NHIS web page at:

http://www.dnr.state.mn.us/ecological_services/nhnrp/nhis.html
for information on how to submit a search request.

Guidance on wetland replacement credit for restoring completely and partially drained wetlands (M.R. 8420.0541, Subp. 2 & 3).

Minnesota Board of Water and Soil Resources
November 2003

There has been confusion regarding the amount and type of wetland replacement credit that may be assigned under Subp. 2, "Restoration of completely drained wetland areas," and Subp. 3, "Restoration of partially drained wetland areas." The following guidance reflects the intent of the rules, based on information contained in the Statement of Need and Reasonableness (SONAR) (1/19/02), the addendum to the SONAR (3/25/02) and personal communication with members of the rule drafting team.

8420.0541, Subpart 2, "Restoration of completely drained wetland areas." This replacement provision is relatively straightforward: former wetland areas that are completely drained or filled, such that they are no longer jurisdictional wetlands, may receive new wetland credit (NWC) for up to 100% of the area hydrologically restored. It applies in all areas of the state and is the generally preferred method for obtaining wetland replacement.

8420.0541, Subpart 3, "Restoration of partially drained wetland areas." This provision applies to wetlands or wetland areas that have been degraded, but not completely eliminated by draining, watershed diversion, or filling. These areas remain jurisdictional wetlands, at least in part, but provide minimal wetland functions and values (see M.R. 8420.0110, subp. 13a). In less than 80% areas, applicants may elect to receive either NWC or Public Value Credit (PVC) for restoring partially drained wetlands M.R. 8420.0541, Subp. 3.A):

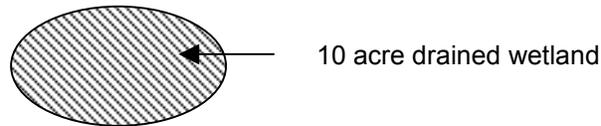
- 1) PVC may be awarded for up to 50% of the degraded wetland area hydrologically restored. This option applies *only to the degraded, but still jurisdictional areas of a partially drained wetland*. This option may be combined with NWC received under 8420.0541, Subp. 2 for any portions of the wetland that have been completely drained.
- 2) Alternatively, NWC may be awarded for up to 25% of the entire area that is hydrologically restored, provided that native, noninvasive plants are established within the wetland and an upland buffer is established according to the requirements in 8420.0541, subp 6. The required upland buffer may receive PVC credit. Note that this option applies to *the entire area hydrologically restored, including any areas that may have been completely drained*. If this option is selected, no PVC credit is awarded (other than for the required upland buffer), *nor can it be combined with NWC credit received under 8420.0541 Subp. 2*. This option was recently made available in less than 80% areas to provide additional incentive to restore partially drained basins in those areas. However, because such basins already contain varying degrees of existing wetlands, NWC is awarded at a reduced rate and an upland buffer is required to improve wetland quality. This option is generally most useful when a wetland has been affected by drainage, but nearly all of the area remains wetland. If significant areas of a basin have been completely drained, applicants in less than 80% areas are generally better off receiving a combination of NWC under Subpart 2 and PVC received under Subpart 3, option 1.

In greater than 80% areas, restoration of partially drained wetlands or wetland areas may receive NWC up to 25% of the total area hydrologically restored (M.R. 8420.0541, Subp. 3.B). However, there is no requirement for establishing an upland buffer under this provision in greater than 80% areas. Under the current rules, there is no option to receive PVC for restoring partially drained wetlands in greater than 80% areas. Although this type of PVC is used very little in greater than 80% areas, the lack of a PVC option was an error

during the drafting of the revised rules and BWSR intends to seek a technical correction. Any completely drained areas that are restored in > 80% areas are eligible to receive 100% NWC under M.R. 8420.0541, Subp. 2.

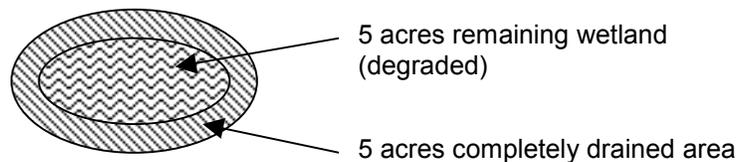
Examples:

1. Hydrologic restoration of completely drained, former 10-acre wetland:



Credit: 10 acres NWC, statewide (100% of completely drained area; 8420.0541, Subp. 2)

2. Hydrologic restoration of partially drained, former 10-acre wetland; 5 acres wetland remaining:



Credit:

< 80% areas:

Option 1 (Combination of 8420.0541, Subp. 2 and 8420.0541, Subp. 3.A – PVC Option)

5 acres NWC (100% of completely drained area; 8420.0541, Subp. 2)

+ 2.5 acres PVC (50% of degraded wetland area; 8420.0541, Subp. 3.A)

[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

Option 2 (8420.0541, Subp. 3.A – NWC Option)

2.5 acres NWC (25% of total area hydrologically restored)

+ up to 10 acres PVC for *mandatory* upland buffer established according to 8420.0541, Subp. 6; actual amount of PVC credit depends on amount of upland buffer established or preserved.

> 80% areas:

Option 1 (8420.0541, Subp. 2):

5.0 acres NWC (100% of completely drained area)

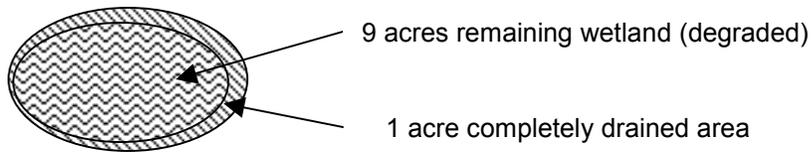
[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

Option 2 (8420.0541, Subp. 3.B):

2.5 acres NWC (25% of total area hydrologically restored)

[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

3. Hydrologic restoration of partially drained, former 10-acre wetland; 9 acres wetland remaining:



Credit:

< 80% areas:

Option 1 (Combination of 8420.0541, Subp. 2 and 8420.0541, Subp. 3.A – PVC Option)

1.0 acre NWC (100% of completely drained area; 8420.0541, Subp. 2)

+ 4.5 acres PVC (50% of degraded wetland area; 8420.0541, Subp. 3.A)

[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

Option 2 (8420.0541, Subp. 3.A – NWC Option):

2.5 acres NWC (25% of total area hydrologically restored)

+ up to 10 acres PVC for *mandatory* upland buffer established according to 8420.0541, Subp. 6; actual amount of PVC credit depends on amount of upland buffer established or preserved.

> 80% areas:

Option 1 (8420.0541, Subp. 2):

1.0 acre NWC (100% of completely drained area)

[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

Option 2 (8420.0541, Subp. 3.B):

2.5 acres NWC (25% of total area hydrologically restored)

[*optional* additional credit: up to 10 acres PVC for upland buffer established or preserved according to 8420.0541, Subp. 6]

CHAPTER FOUR

Local Government Roads Wetland Replacement Program

The Local Government Roads Wetland Replacement Program was a key outcome of amendments to WCA in 1996 and 2000 as it transferred responsibility for replacing wetlands lost due to local government road improvements from the local road authority to BWSR. This eliminates the need for local government transportation officials to undertake and finance environmental reclamation projects and consolidates the necessary technical, financial, and other implementation work. That results in higher quality, more cost-effective wetland replacement.

Only city, county, and township road improvement projects that are done to meet state or federal design or safety standards qualify for the program. *New road projects or roads expanded solely for additional traffic capacity lanes do not qualify.* The purpose behind this restriction is to pass on new development costs to local governments since these types of projects relate to long range planning and local governments have the ability to avoid wetland impacts by proper land use planning. Minnesota Rules, part 8420.0544, item D., defines the process that local governments must follow in order to qualify for the program. For projects that do not qualify for this program, public transportation authorities are eligible to *purchase* wetland banking credits from BWSR at cost. See “Policy on Sale of Wetland Credits to Public Transportation Authorities” in the appendix to this chapter.

The Local Government Roads Wetland Replacement Program provides the following benefits:

- Regulatory simplification and efficient and improved wetland mitigation are achieved by eliminating the need for each local road authority to maintain its own staff expertise and budget to mitigate impacts to wetlands from road projects.
- Fragmented impacts from road projects are consolidated in targeted areas to provide habitat, water quality, and other wetland functions away from traffic and highway runoff areas at a lower public cost.
- Water management goals such as improving water quality, flood control, greenway preservation, and wildlife corridor enhancement can be better addressed collectively.
- Site selection, ranking of project proposals, and setting program strategies consistent with overall state and federal wetland goals are achieved through an interagency process.

The reporting process

The following is a chronological summary of the steps a local road authority must take in order to have a qualifying road improvement impact replaced by BWSR under this program:

1. The road authority develops project construction plans that avoid and minimize wetland impacts. If important site-specific wetland functions can't be replaced off site, the plans must replace those functions on site. Plans must include delineations of the wetland boundaries that the project will encroach upon.
2. At least 30 days prior to construction of a qualifying road repair, rehabilitation, reconstruction, or replacement, the public road authority must complete and submit a **“Public Transportation and Linear Utility Projects” notice/application form**. Copies of the application and supporting data are sent to the Technical Evaluation Panel (TEP), BWSR, Minnesota Department of Natural Resources, the LGU, the Corps of Engineers, and members of the public who requested a copy. See form for mailing instructions.

3. The TEP must review the proposed impact and provide recommendations regarding on-site replacement if so asked by the LGU, a contiguous landowner, or a member of the TEP. If the TEP finds that the project does not qualify for replacement under the BWSR road replacement program, it must report that finding to the LGU, the road authority, and the BWSR wetland bank administrator.
4. The BWSR wetland bank administrator reviews the application and, if no problems with eligibility are apparent, the impacts are duly recorded and provision is made to replace the proper amount and type of wetland.
5. If plans are changed, the road authority must notify BWSR of the changes so that correct impacts are recorded in the BWSR database.
6. Projects scheduled for BWSR replacement are posted on the BWSR web site. If a project is not posted, either BWSR has rejected the project as non-qualifying or no application was ever received. Generally, if a project has been determined not to qualify for the program, the road authority will be notified in writing of such determination and advised to seek other replacement options.

Note: An LGU cannot require a separate wetland replacement plan for a project that qualifies under this program. If a project is determined to not qualify for this program, the LGU must process the application through the regular WCA replacement plan process. The Corps of Engineers can require an individual permit for certain projects and require special mitigation requirements. Ordinarily, both the Corps of Engineers and the Minnesota Department of Natural Resources will accept replacement under this program for qualifying projects.

Common questions and answers

The law does not allow BWSR to replace impacts from “new roads or roads expanded solely for additional traffic capacity lanes.” How does BWSR interpret this portion of the law?

All wetland impacts caused by new roads will have to be replaced by the road authority through an approved replacement plan. Likewise, when a road improvement is solely for increased capacity, the road authority will also be responsible to replace any wetland impacts. BWSR will not replace wetland impacts if the road improvement involves additional lanes, such as the conversion of a two-lane road to a four-lane road, unless the additional lanes are necessary to safely accommodate existing traffic counts in accordance with accepted road design standards (e.g., AASHTO standards, MnDOT Road Design Manual). However, adding a third lane for turning on a two-lane road and a fifth lane for turning on a four-lane road for safety will generally always qualify for the BWSR replacement program. For projects that do not qualify for this program, public transportation authorities are eligible to *purchase* wetland banking credits from BWSR at cost. See “Policy on Sale of Wetland Credits to Public Transportation Authorities” in the appendix to this chapter.

What happens if the road authority doesn’t provide notice as provided by the law and proceeds to build? Will BWSR replace the impact after-the-fact?

BWSR will not replace the wetland impact. The road authority will have to replace the wetland. If that occurs, then the intended streamlined process has been compromised and there is little opportunity for the TEP and other regulatory agencies to provide input on issues relating to sequencing. To allow late reporting defeats the purpose of the law and would promote late reporting or reporting only when noticed by a regulatory authority. It is possible that the matter would be viewed as a violation of the Wetland Conservation Act. *The only exception would be in the case where the impact involved minor or emergency work impacting less than 10,000 square feet of wetland in which case after-the-fact reporting within 30 days is allowed.*

Will the BWSR program mitigate for improvements to trails and sidewalks?

BWSR will only mitigate for trail and sidewalk project impacts if there is an existing trail or sidewalk that needs to be relocated as a result of a qualifying project done to meet state or federal safety standards. Impacts from new trails and sidewalks or trails and sidewalks that are relocated as a result of construction for traffic capacity increases will have to be replaced by the road authority.

What are some typical projects that would qualify for the BWSR road replacement program?

Following are some typical projects that qualify:

- Expanded lane width, improved shoulders, curb installation, and addition of turning lanes are covered. Generally, the road authority should limit the safety slopes to 3 feet horizontal to 1 foot vertical to minimize wetland impacts and use guardrails where practical.
- If a qualifying project requires installation of a storm water pond to meet current state or federal design requirements and the pond has to impact a wetland, BWSR will replace the impacts caused by the installation of the storm water pond.
- Wetland impacts that result from realignments done primarily to increase radius of existing curves for safety reasons.

What are some typical projects that the BWSR road replacement program would not cover?

Following are projects that local authorities have requested BWSR to provide replacement for but have been rejected. As the program matures, there will no doubt be other unique circumstances:

- new roads and improvements to existing roads primarily for increased capacity;
- wetlands mined to secure road-building material;
- projects relating to the expansion of airport facilities and runways; and
- projects related to the improvement of local road authority facilities such as garages and salt storage sites.

If a local road authority is uncertain about whether the program will replace wetland impacts, the matter should be brought to the attention of a TEP member even before the Public Road Combined Project Application Form is submitted.

What authority does the TEP or others who receive notice have?

Members of the TEP and persons and agencies who are required to receive notice of a project may appeal minimization, delineation, and on-site mitigation decisions of the road authority (see Minnesota Rules, part 8420.0540, subpart 5, item F.). Therefore, it is important that local road authorities attempt to minimize impacts and consider on-site mitigation before applying to BWSR for replacement.

Will BWSR be required to replace wetland impacts caused by qualifying projects if the Legislature doesn't fund the program?

No, implementation of this program is subject to the Legislature providing the funding. If no more funding is provided, BWSR will assign all wetland credits established or under development to projects that have been reported on a first-come, first-serve basis. BWSR is working with county, city, and township associations to secure stable funding for the program.

Will BWSR pay for on-site mitigation if required by the LGU or another regulatory agency such as the Minnesota Department of Natural Resources or Corps of Engineers?

No.

Do created wetlands and wetlands in road ditches count as WCA-regulated wetlands?

Yes. BWSR does not apply the de minimis or any other exemption to road project impacts. Road authorities must report total permanent impacts without deducting any amount for any reason.

If you have any questions, contact your board conservationist . 



Sale of Wetland Credits to Public Transportation Authorities

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[Water Management](#)
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July 1, 2005

I. Background. Minnesota Statutes 103G.222, Subd. 1(k), as amended in 2003, provides for the sale of wetland credits to public transportation authorities:

(k) For projects involving draining or filling of wetlands associated with a new public transportation project and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits.

This policy establishes the cost of establishing the credits, and accordingly, the sales price to be charged to public transportation agencies. These sales prices will be updated annually via Board Policy to reflect actual costs.

II. Cost of Credits/Sales Price

The cost to establish wetland credits and thus the sale price for public transportation authorities that purchase the credits are as follows:

Location	Sales Price (BWSR's cost to establish)
7-County Metropolitan Area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington Counties)	\$35,420/acre
Outside of the 7-county metro area but within a major watershed that is wholly or partially in the Metro Area (see Figure 1.)	\$7,980/acre
Areas of the state other than those listed above	\$4,050/acre

The cost/sales figures above represent the average cost incurred by BWSR to establish or purchase credits at a number of wetland bank sites in each of the identified regions.

III. Purchasing Credits.

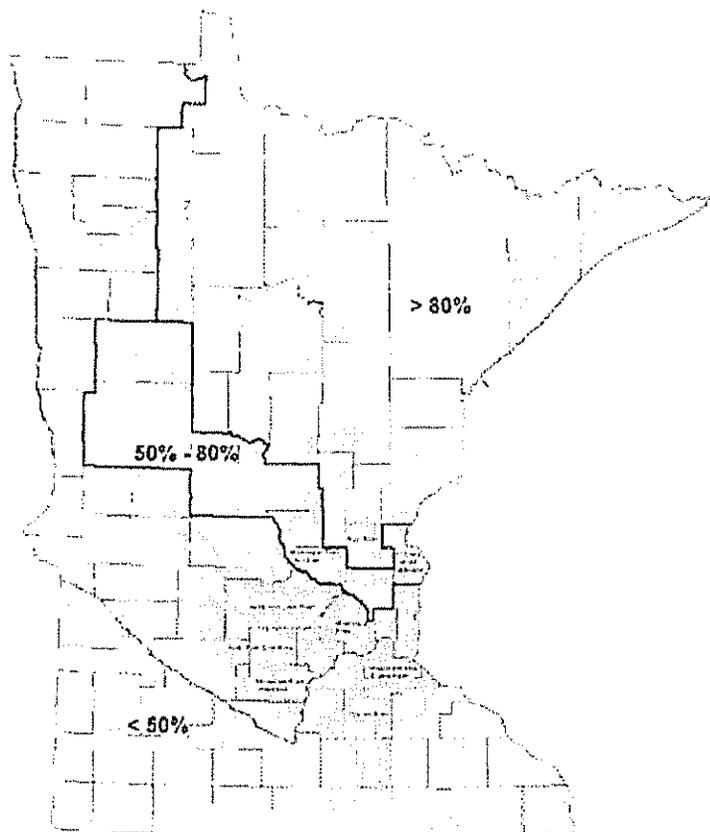
When purchasing credits for qualifying wetland impacts, the sales price charged to public transportation authorities will be based on the location of the wetland impact. For projects that have impacts in more than one of the three regions shown in Part II, the sales price will be based on the amount of wetland impact occurring in each region.

To purchase credits, public transportation authorities should contact the BWSR Wetland Bank Administrator (651-297-3432) for information on available credits. The location and number of credits (acres or square feet) to be purchased must be identified on a "Minnesota Wetland Conservation Act Application for Withdrawal of Wetland Credits from the Minnesota Wetland Bank," (available at <http://www.bwsr.state.mn.us/wetlands/wcmanual/index.html>), which must be included with the wetland replacement plan application prepared by the public transportation authority. Once the "Application for Withdrawal of Credits" has been signed by the appropriate regulatory authorities (box 7), the form should be submitted by the public transportation authority to the BWSR Wetland Bank Administrator along with a check (payable to BWSR) for the amount due. BWSR will then deduct the appropriate credits

from the bank and provide confirmation to the public transportation authority and the appropriate regulatory authorities.

Figure 1: Shaded areas are major watersheds wholly or partially in the Metro Area (North Fork Crow River, South Fork Crow River, Rum River, St. Croix River - Stillwater, Mississippi River, Mississippi River - St. Cloud, Mississippi River - Lake Pepin, Minnesota River - Shakopee, Cannon River).

Minnesota Wetland Conservation Act
Pre-Statehood Wetland Areas



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CHAPTER FIVE

Wetland Bank Procedures

Subject to approval by regulatory authorities, wetland banking credits may be used to provide replacement wetlands to mitigate wetland impacts. No warranty or representation is made in this manual as to the value of wetland banking credits.

Legislation that established WCA allowed for the creation of a market-based wetland banking system in Minnesota that uses wetland credits. The wetland banking system was developed to comply with the no-net loss goal of WCA and provide landowners with a wetland replacement option where no viable on-site opportunity exists. In brief, this system allows landowners who restore or create new wetlands to receive credits that can be sold on the open market to persons who receive approval to impact wetlands in other locations.

In 1994, state and federal regulatory authorities that administer programs for the protection of wetlands within Minnesota entered into an Interagency Memorandum of Understanding (MOU) for wetland regulatory simplification. Under the MOU, the regulatory authorities concurred that it is in the public interest to allow use of the state wetland bank, where appropriate, as a compensatory option and that the respective regulatory authorities will consider the use of state wetland bank credits in applicable and appropriate situations. The use of wetland banking credits as a form of wetland replacement is subject to the approval, in each case, of the responsible regulatory authority.

Under authority granted by the Legislature, BWSR oversees the wetland banking system. The establishment and administration of the state wetland banking system by BWSR is authorized in Minnesota Statutes, section 103G.2242. The administrative rules adopted by BWSR for the implementation of the state wetland bank are found in Minnesota Rules, part 8420.0700 to 8420.0760. BWSR is required by statute (M.S. 103G.2242, Subd. 14) to collect fees for the administration of the wetland banking program. Details on these fees are provided in the appendix to this chapter (see "Policy on Wetland Banking Fees").

The BWSR wetland banking administrator is responsible for the management of the state wetland bank, including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with WCA rules. The LGU administering WCA is responsible for coordinating the processing of applications for establishing bank sites and for ensuring that the monitoring requirements are fulfilled. The applicant/landowner is responsible for ensuring that the wetland bank is constructed in accordance with the approved plan, maintaining the wetland in perpetuity in accordance with the conservation easement, and reporting the sale of credits to BWSR.

How to establish a wetland bank account

There are four phases that a proposed wetland bank has to follow in order to be considered for deposit of credits in an account in the Minnesota wetland bank:

Phase 1: Application. The project sponsor initiates the process by filing a completed wetland banking plan application and supporting documents with the LGU. The TEP inspects the site for the first time.

Phase 2: Construction. Once the applicant's bank plan is approved, the applicant restores or creates the wetland area in accordance with the approved banking plan. Upon completion of the construction and initial phase of the vegetation establishment management plan, the TEP inspects the site a second time.

Phase 3: Credit certification. After a requisite 6 or 12 month waiting period to allow wetland conditions to develop, the applicant files an application for deposit of credits. The TEP inspects the site a third time and recommends an appropriate credit allocation. The LGU considers the recommendation of the TEP and approves all or a portion of the application for deposit.

Phase 4: Deposit of credits. The LGU submits a completed application for deposit and all supporting data to BWSR for consideration for deposit. After the landowner or applicant accepts a perpetual conservation easement for the site and the applicant provides BWSR with an acceptable title insurance policy naming the state of Minnesota as the insured, BWSR establishes an account for the applicant.

Only those wetland and buffer areas eligible for replacement credit in WCA are eligible for deposit in the state wetland bank. Credits are assigned to a bank as either new wetland credits (NWC) or public value credits (PVC) based on Minnesota Rules, part 8420.0541.

Wetland areas established by any of the following activities are not eligible for deposit into the state wetland banking system:

- wetlands that were drained, excavated, or filled under an exemption of the WCA and subsequently restored;
- the modification or conversion of non-degraded naturally occurring wetland from one type to another;
- wetland sites restored or created for another regulatory mitigation/replacement purpose;
- wetland sites restored with financial assistance from a public conservation program (Reinvest in Minnesota, Conservation Reserve Program, Wetland Reserve Program, etc.)
- any wetlands restored or created after July 1, 1993, that did not first receive a Wetland Bank Plan Application approval from the LGU.

Steps within the application, construction, certification, and deposit phases

APPLICATION PHASE

- **Pre-application meeting.** The prospective bank applicant notifies the LGU of their intent to create a wetland bank and a pre-application TEP review (not mandatory) is conducted to assess the suitability of the site for wetland banking purposes.
- **Submittal of bank application.** The applicant submits a completed **Wetland Bank Plan Application** and all necessary supporting documentation to the LGU. This documentation includes but is not limited to the following items:
 - design plans and specifications for water control structures;
 - existing wetland boundaries;
 - proposed wetland credit areas;
 - low-level air photo;
 - soils map;
 - draft vegetation establishment and management plan;
 - evidence of property rights;
 - timetable; and
 - various affidavits relating to ownership, use of public funds, CRP, etc.
- **Notice of application.** The LGU prepares a **Notice of Application form** and sends a copy of the form and complete banking application to members of the TEP, the BWSR bank administrator, the Department of Natural Resources, the St. Paul district

of the U.S. Army Corps of Engineers, the watershed district or watershed management organization (if applicable), and any members of the public who have requested a copy.

- **First TEP.** Upon receipt of the notice and application, the TEP and Corps of Engineers project manager inspect the site and review the banking application. The TEP provides the LGU with its findings and recommendations in a written report using the **format provided by BWSR**. The Corps of Engineers project manager should sign off on the TEP report or provide the LGU with comments before the LGU makes its decision on whether or not to approve.
- **LGU decision.** Within 60 days of receipt of a completed application containing all required supporting data, the LGU must evaluate the TEP report and any other comments received and make a decision on whether to approve, request modification of, or deny the wetland banking plan.
- **Notice of decision.** Within 10 working days of making its decision the LGU sends a **Notice of Decision** to the applicant and those required to receive notice of the application.
- **Final plans.** The applicant must make any revisions to the plan required by the LGU before proceeding with implementation and provide a copy to the LGU, the TEP, and the Army Corps of Engineers.

CONSTRUCTION PHASE

- **Restoration within two years.** If the banking application is approved, the proposed wetland must be restored or created within two years of this approval. Failure to do so necessitates the need for the applicant to resubmit the bank plan to the LGU and start the review process over.
- **Second TEP.** After construction and the initial phase of the vegetation plan is complete, the applicant must notify the LGU. The LGU will request the TEP and the Corps of Engineers project manager to inspect the site to ensure that the construction and the vegetation management plan specified in the approved application have been followed. If the scope of the project required that a professional engineer (PE) design the project, then a PE must certify that the construction was completed in compliance with the plans and specifications. If engineering certification is required, the TEP can only certify that this has occurred.
- **TEP report.** The TEP prepares a report containing its findings using the **format provided by BWSR**. Failure to comply with the approved plans is sufficient grounds for the LGU to deny consideration of the wetland bank.

Note: Once construction is complete and the TEP verifies it has been completed as prescribed in the approved bank plan, up to 15 percent of the credits are eligible for deposit into the state wetland bank, provided that all of the following criteria are met:

- Any dams, dikes, or other impoundment features were designed, overseen, and certified by a registered professional engineer.
- The TEP certifies that the initial planting was completed in accordance with the vegetation management plan.
- The applicant grants a perpetual conservation easement and an easement granting access by BWSR (if not adjacent to a public road) and provides the state with an acceptable title insurance policy. See Minnesota Rules, part 8420.0720, subpart 8.

CREDIT CERTIFICATION PHASE

- **Application for deposit.** After a requisite 6 (restoration projects) or 12 (creation projects) month waiting period to allow wetland conditions to develop, the applicant submits an **Application to Deposit Wetland Bank Credits** to the LGU. The LGU then requests the TEP to inspect the project for the third time.
- **Third TEP inspection.** The TEP and the Corps of Engineers project manager inspect the site a third time. If the TEP believes that the restored or created wetland has had sufficient time to develop, the TEP must verify the size and type of new wetland credits and public value credits available for deposit. If the TEP determines that more time is needed for the wetland to develop or specific performance standards are needed, it shall report these findings to the LGU. The TEP prepares a report containing its findings using the **format provided by BWSR**.
- **LGU decision.** The LGU considers the recommendation of the TEP and approves all or a portion of the application for deposit.

DEPOSIT OF CREDITS PHASE

- **Submission of Application for Deposit.** After certification, the LGU submits the Application to Deposit Wetland Bank Credits and a completed **Minnesota Wetland Bank Checklist** to the BWSR bank administrator. If BWSR does not already have a complete copy of the Wetland Bank Plan Application and all supporting documents, the LGU must also submit any missing documents so that BWSR has a complete copy of the file. If the bank does not abut a public road, the applicant must provide a legal description for an access easement for authorized personnel to use to gain access to the site.
- **Easement prepared.** Once all necessary information is received, the BWSR bank administrator will prepare a Perpetual Conservation Easement (including an access easement if necessary). BWSR mails the draft easement to the landowner along with a notice of the account establishment and deposit fee.
- **Title insurance and signing of easement.** The applicant reviews the easement and secures a commitment for a title insurance policy naming the state of Minnesota as the insured. Upon securing the title insurance commitment, the applicant signs the easement and returns it to BWSR along with the title insurance commitment.
- **Easement returned to BWSR.** BWSR reviews the title insurance commitment and if determined to be adequate to protect the state's interest, formally "accepts" the easement and returns it to the applicant for recording.
- Applicant provides BWSR and the title insurance company **evidence of recording** of the easement and orders preparation of the title insurance policy.
- Upon receipt of the title insurance policy and payment of the account establishment and deposit fee, **BWSR establishes a wetland bank account** on behalf of the applicant and begins to post notice on BWSR's web site noting that the credits are available for purchase if the bank owner desires to sell the credits.

Monitoring requirements

After the wetland bank is deposited into the state bank system, the LGU where the bank is located is responsible to assure that the account holder monitors the site in accordance with Minnesota Rules, part 8420.0600 to 8420.0630, for a five-year period and files an annual monitoring report. The monitoring period may be adjusted based on an evaluation and recommendation from the TEP. A copy of each monitoring report must be submitted to the LGU, and preferably, also submitted to BWSR. The LGU must maintain a copy of the annual monitoring report in its files.

Once the owner's required monitoring period is finished, BWSR is required to inspect each wetland deposited into the state bank system at least once each five-year period to verify compliance with the approved plan and prescribe corrective measures if needed.

How to withdraw credits

Wetland bank credits are withdrawn from an account to provide replacement for specific impacts associated with an approved WCA replacement plan or other regulatory programs implemented by the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources, or the USDA. The process is accomplished by via the full execution and processing of an **Application for Withdrawal of Wetland Credits** from the Minnesota wetland bank. Most often the withdrawal involves the purchase of credits from the account holder by another party who needs to mitigate wetland impacts from a development project. According to Minnesota Rules, part 8420.0720, subpart 7, no sale, withdrawal, or transfer of credits is final until BWSR approves and debits the account of origin. If the proposed use of banked wetland credits is being considered by an LGU administering WCA, the LGU must first:

- determine that the applicant has complied with all of the sequencing requirements of the WCA; and
- determine that the wetland replacement siting criteria of WCA are followed.

The transaction between buyer and seller is a private sale and both buyer and seller are encouraged to seek legal counsel when appropriate. Potential buyers should be aware that the BWSR account balance only reflects sales that have been properly reported to BWSR. BWSR does not guarantee title to the credits or the land on which banked wetlands are located, nor does it make any representations as to their value.

Following is a chronological summary of the steps that typically take place in the withdrawal of wetland credits from the state wetland bank.

1. The potential buyer of credits receives at least a preliminary indication from a regulatory authority that they will consider the use of wetland bank credits to mitigate his or her proposed project impacts.
2. The potential buyer checks the BWSR web site to get a list of bank accounts that might be acceptable for meeting his or her mitigation needs based on the location of his or her impact. He or she contacts the account owners and negotiates a sale.
3. The buyer and the seller negotiate a price and draft a **purchase agreement** (use of an attorney is recommended).
4. Buyer and seller execute their respective portions of the **Application for Withdrawal of Wetland Credits** from the Minnesota wetland bank.

5. Buyer acquires the authorized signature of a qualified regulatory authority on the credit withdrawal form and returns that to the seller.
6. The seller of the credits sends the withdrawal form containing all the original signatures and a copy of the purchase agreement and payment of the applicable withdrawal fee to the BWSR wetland bank administrator.
7. The wetland bank administrator verifies that enough credits are in the seller's account to cover the withdrawal, debits the account, and sends notification of the withdrawal of credits to the buyer, the seller, the soil and water conservation district of the impact site, the LGU for the impact site, the U.S. Army Corps of Engineers project manager, and the BWSR board conservationist. The seller also receives a copy of the fully executed withdrawal form and a current account transactions summary. The buyer also receives a copy of the fully executed withdrawal form.

The bank account holder is responsible to report the sale of any credits to BWSR. Failure to report credit sales or withdrawals may require the BWSR to freeze an account from further transactions and delist the bank account from BWSR's web site.

Note: No wetland impacts may commence until the user of the credits (buyer) is in receipt of a copy of the fully signed and executed Application for Withdrawal of Wetland Credits signed by the BWSR bank administrator.

How to transfer credits to another account

A block of bank credits may also be transferred to a new account holder for their use at a later time, provided a conservation easement consistent with Minnesota Rules, part 8420.0720, subpart 8, has been recorded for the bank site and a credit transfer form is completed and submitted to BWSR.

Following is a chronological summary of the steps that must be taken in the transfer of a block of credits to another account in the wetland bank.

1. To be eligible for transfer to another party for future use or re-sale, the bank site must be protected by a recorded perpetual conservation easement that was **a)** granted to the state of Minnesota, **b)** formally accepted by BWSR, and **c)** in a format that is consistent with Minnesota Rules, part 8420.0720, subpart 8.
2. The potential buyer of credits and the owner of the account negotiate a purchase agreement for the sale and transfer of the specific type and quantity of credits desired and fill out their respective portions of a **Minnesota Wetland Bank Application for Transfer**.
3. The buyer or seller submits the transfer form to the LGU of jurisdiction where the bank site exists and seeks the LGU's approval.
4. The seller of credits submits the fully executed transfer form and a copy of the purchase agreement and payment of the applicable transfer fee to the BWSR wetland bank administrator.
5. BWSR's wetland bank administrator verifies that enough credits are in the seller's account to cover the transfer, makes certain that a qualified perpetual easement exists, and transfers the appropriate amount of credits to an account in the buyer's name.
6. The bank administrator then initiates the transfer to a separate account and sends notification of the transfer of credits to the buyer, the seller, the soil and water conservation district for the bank site, the LGU for the bank site, the U.S. Army Corps of Engineers project manager, and the BWSR board conservationist. The buyer and seller also receive a copy of the fully executed transfer form and a current account

transactions summary for the old and new accounts.

Enforcement and corrective measures

The responsibility for the success and maintenance of the wetland bank lies with the fee owner, easement holder, and any other party having financial or real estate interest in the banked wetland area. At any time, during or after monitoring, it is determined that a bank site does not substantially meet the specifications in the approved bank plan, BWSR can take the following actions:

- prescribe corrective measures to the LGU and fee owner to bring the wetland into compliance;
- refuse future bank certifications by the LGU;
- refuse future deposits from the fee owner or applicant; and
- restrict the sale or transfer of credits by the fee owner and subsequent account holder until the bank is brought into compliance.

The LGU or BWSR may undertake reconstruction work and require reimbursement of reasonable costs from the fee title owner or easement holder of the land on which the banked wetland exists. 

Policy on Wetland Banking Fees

Minnesota Board of Water and Soil Resources

December 2003

(Board Action 03-93)

I. Background

Minnesota Statutes 103G.2242, Subds. 14 and 15 require the Board of Water and Soil Resources to collect fees for administering the state wetland banking program:

*Subd. 14. **Fees Established.** Fees must be assessed for managing wetland bank accounts and transactions as follows:*

(1) account maintenance annual fee: one percent of the value of credits not to exceed \$500;

(2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and

(3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

*Subd. 15. **Fees Paid To Board.** All fees established in subdivision 14 must be paid to the board of water and soil resources and credited to the general fund to be used for the purpose of administration of the wetland bank.*

The fee structure and procedures described in Part II will be implemented beginning January 1, 2004 and are subject to annual evaluation and possible change.

II. Definitions (from M.R. Chap. 8420.0110)

A. Account or wetland bank account. "Account" or "wetland bank account" means a record of wetland banking debits and credits established by an account holder within the state wetland banking system.

B. Account holder. "Account holder," in the state wetland banking system, is a person, corporation, government agency, or organization that is the owner of credits.

C. Wetland banking credits. "Wetland banking credits" means acres or parts of acres of restored or created wetland or adjacent upland buffer described by type and topographic setting, or areas as described in parts 8420.0540 and 8420.0541, that have been approved for deposit in the wetland bank.

III. Fee Structure and Procedures

A. Account Establishment and Deposit Fees. Account establishment and deposit fees will be assessed at 6.5% of the value of the credits

deposited, not to exceed \$1,000. The value of the credits will be determined according to Part III.E.1. The account establishment fee will be collected at the time of initial deposit of wetland credits into the bank for the subject account¹. The establishment and deposit fees are limited to \$1,000 for each account, i.e., credits deposited into an account after the initial establishment (for instance, if the Technical Evaluation Panel did not certify all of the credits at one time) will be assessed a 6.5% deposit fee until the \$1,000 limit is reached. Subsequent deposits into the same account will not be assessed deposit fees unless the restrictive easement for the bank site has to be revised to reflect the additional credits. In that case, deposit fees will be assessed at 6.5% of the value of the credits deposited, not to exceed \$1,000. (To avoid these additional fees, banking applicants are encouraged to draft the original restrictive easement to cover all anticipated deposits.)

When the "Application to Deposit Wetland Bank Credits" form has been approved by the appropriate Local Government Unit (LGU), the applicant should submit the form, along with a check (payable to BWSR) for the amount due to the BWSR Wetland Bank Administrator. Applicants may contact the BWSR Wetland Bank Administrator to verify the amount due. Wetland credits deposited into a wetland bank account cannot be used for replacement purposes until the establishment/deposit fees have been paid.

Accounts for which the Wetland Banking Plan Application has received approval by the Local Government Unit after August 1, 2000 and prior to January 1, 2004 are exempt from account establishment fees. However, subsequent deposits after January 1, 2004 will be assessed deposit fees as described above.

- B. Account Maintenance Fee.** Account maintenance fees will be assessed annually at 1% of the value of the credits in each account, not to exceed \$500. The value of the credits will be determined according to Part III.E.1. Account maintenance fees will be assessed at the time of the first transaction (withdrawal, transfer or deposit) of each year and will be based on the credits in the account at that time. If there are no transactions in an account for the year, then no maintenance fees will be assessed for that year. No transactions will be processed until the current year's maintenance fees have been paid.

- C. Account Transfer Fee.** Account transfer fees will be assessed at 6.5% of the value of the credits transferred, not to exceed \$1,000. The value of the credits will be determined according to Part III.E.1 or Part III.E.2.

¹ The exception to this is if the credits are deposited in a new account by transfer from an existing account. In that case, account transfer fees (see Part III.C) will be assessed.

Transfer fees are assessed when credits are transferred by any means (e.g., sale, gift, donation, exchange) from one account holder to a new owner, but not used for replacement purposes². To transfer credits, an “Application to Transfer” form, along with a check (payable to BWSR) for the applicable transfer fee should be submitted to the BWSR Wetland Bank Administrator. The Wetland Bank Administrator may be contacted to verify the amount of the transfer fee. BWSR will not transfer the credits until the fee is paid.

- D. Withdrawal Fee.** Withdrawal fees are incurred when credits are withdrawn for the purposes of wetland replacement and will be assessed at 6.5% of the value of the credits withdrawn. The value of the credits will be determined according to Part III.E.1 or Part III.E.2. The applicable withdrawal fee should be submitted to the BWSR Wetland Bank Administrator along with the “Application for Withdrawal of Wetland Credits” form that has been approved by the appropriate regulatory authority(ies). Withdrawal fees will not be charged in cases where the “Application for Withdrawal of Wetland Credits” is received after January 1, 2004 and for which a purchase agreement was signed during calendar year 2003. Credits will not be withdrawn from the bank until the applicable withdrawal fees have been paid. After receiving payment, BWSR will deduct the appropriate credits from the subject account and notify the account holder, the user of the credits and the approving regulatory authority(ies).
- E. Value of Credits.** The value of wetland credits for the purpose of assessing fees will be determined as follows:

1. Credit Value (\$/acre) = Avg. agricultural land value (\$/acre) in the county where the bank is located (from Dept. Revenue – see Table 1 for 2003 values) x Wetland Credit Value Coefficient (currently 7.0).

The Wetland Credit Value Coefficient reflects the value added to the land by the wetland credits. It is determined by BWSR based on the average ratio of credit sale price to county land value for credits that BWSR has purchased from existing bank accounts statewide. The current coefficient of 7.0 is based on 32 separate credit sales from 1999 – 2000. This coefficient will be updated annually by BWSR Board Policy to reflect recent wetland credit market values. For the purposes of the formula above, the most recent agricultural land values available from the Minnesota Department of Revenue will be used.

2. For determining withdrawal or transfer fees, account holders

² In cases of account transfers, the new account holder will not be charged account establishment or deposit fees.

may present other evidence to BWSR demonstrating the value of credits, such as actual sales values. When using actual sales data to determine credit values, account holders will be required to submit to BWSR actual bills of sale as documentation.

Table 1. Average agricultural land values for Minnesota counties for 2003 (from Minn. Dept. Revenue)

COUNTY	AVG \$/ACRE TILLABLE
AITKIN	\$542.53
ANOKA	\$2,917.14
BECKER	\$694.61
BELTRAMI	\$342.03
BENTON	\$1,449.43
BIG STONE	\$904.39
BLUE EARTH	\$2,248.75
BROWN	\$2,062.30
CARLTON	\$553.98
CARVER	\$2,272.57
CASS	\$762.94
CHIPPEWA	\$1,421.41
CHISAGO	\$1,586.46
CLAY	\$853.20
CLEARWATER	\$403.02
COOK	\$1,154.67
COTTONWOOD	\$1,672.88
CROW WING	\$1,052.26
DAKOTA	\$2,070.77
DODGE	\$2,059.35
DOUGLAS	\$1,016.84
FARIBAULT	\$1,952.24
FILLMORE	\$1,659.84
FREEBORN	\$1,835.25
GOODHUE	\$1,983.58
GRANT	\$1,033.89
HENNEPIN	\$4,002.21
HOUSTON	\$1,484.00
HUBBARD	\$1,027.51
ISANTI	\$1,319.30
ITASCA	\$366.12
JACKSON	\$1,806.27
KANABEC	\$957.55
KANDIYOHI	\$1,422.36
KITSON	\$446.82

KOOCHICHING	\$475.86
LAC QUI PARLE	\$1,057.49
LAKE	\$735.06
LAKE/WOODS	\$260.54
LE SUEUR	\$2,292.13
LINCOLN	\$893.34
LYON	\$1,453.95
McLEOD	\$1,860.42
MAHNOMEN	\$528.47
MARSHALL	\$450.60
MARTIN	\$2,175.25
MEEKER	\$1,437.35
MILLE LACS	\$952.87
MORRISON	\$1,078.12
MOWER	\$1,995.15
MURRAY	\$1,512.93
NICOLLET	\$2,510.33
NOBLES	\$1,728.17
NORMAN	\$663.40
OLMSTED	\$1,821.06
OTTER TAIL	\$745.86
PENNINGTON	\$306.64
PINE	\$1,075.50
PIPESTONE	\$1,395.05
POLK	\$697.20
POPE	\$986.24
RAMSEY	\$4,002.21
RED LAKE	\$345.25
REDWOOD	\$1,718.60
RENVILLE	\$1,828.18
RICE	\$2,601.63
ROCK	\$1,876.42
ROSEAU	\$294.40
ST. LOUIS	\$390.50
SCOTT	\$3,566.71
SHERBURNE	\$1,185.11
SIBLEY	\$1,977.26
STEARNS	\$1,257.80
STEELE	\$1,992.70
STEVENS	\$1,117.95
SWIFT	\$1,158.76
TODD	\$735.14

TRAVERSE	\$1,151.25	WATONWAN	\$1,797.90
WABASHA	\$1,639.46	WILKIN	\$1,036.09
WADENA	\$701.55	WINONA	\$1,751.68
WASECA	\$2,202.83	WRIGHT	\$1,768.53
WASHINGTON	\$4,002.21	YELLOW MEDICINE	\$1,276.79

WCA Appeal Procedures

A local government unit decision on a replacement plan, public road project notice, banking plan, exemption, or no-loss or wetland boundary or type may be brought before BWSR through an appeal. However, before BWSR will hear an appeal, all local administrative appeal options must first be exhausted. Generally, a decision must have been made only after a technical evaluation panel (TEP) recommendation was made to the LGU and a hearing was subsequently held by the LGU. It is important to note that this does not mean all exemption and no-loss decisions would require a hearing, it just provides the appellant an opportunity for a hearing at the local level.

Guidance provided in this section regarding preparation for LGU hearings, establishment of the record and preparation of findings, should be followed regardless of the chances for a particular decision to be appealed. LGU decisions under the WCA are a matter of public record. In the event that an LGU decision is appealed, these procedures provide the LGU with adequate documentation of its decision.

Note the guidance on the 60-day rule, Minn. Stat. § 15.99, and the use of e-mail for notifications at the end of Chapter 1. Both of these items could be very significant in decisions that are appealed.

Preparations and procedures for LGU hearings on WCA decisions

Preparations prior to LGU hearings

LGU staff should make sure that all notices required by WCA, the State Open Meeting Law, and under any local laws and rules are properly given. The rules specify the notice requirements for replacement plan determinations. Failure to comply with notice requirements can be grounds for reversal on appeal.

LGU staff should prepare a staff report that describes the facts, evaluates the application of the WCA to the facts, and makes a recommendation. The staff report should include proposed written findings for adoption by the LGU. The staff report should, ideally, be circulated to the LGU decision-makers in the agenda packet prior to a hearing.

LGU staff should arrange to obtain a TEP report if required by the WCA Rules or if otherwise desirable. The TEP report should be submitted in writing to the LGU. The TEP report should be accompanied by all documents that support the TEP report and findings, such as wetland delineation sheets.

Procedures for LGU hearings

A tape recording should be made of all LGU hearings. This will allow the LGU to provide the verbatim transcript, required by Minnesota Rules, part 8420.0250, subpart 3), if needed for the purposes of an appeal. All persons should identify themselves each time they speak so that it will be apparent who is speaking. All persons should be given a full and fair opportunity to speak and submit documents and other exhibits to the LGU. All speakers should be allowed to ask questions of other staff and speakers. It may be most appropriate for questions to be directed through the chair, rather than directly by one speaker to another.

LGU staff should deliver an oral staff report at the hearing. The staff report should provide the facts, evaluate the application of the WCA rules to the facts, and make a recommendation to the LGU.

All documents that are submitted to or relied upon by the LGU should be identified on the record at the hearing. This will allow the LGU to identify and forward to BWSR the documents in the record, as required by Minnesota Rules, part 8420.0250, subpart 3, if needed for an appeal. The TEP report and any supporting documents relied upon by the TEP should be included in the record. It may also be desirable to have an oral report from the TEP at the hearing in addition to the written report.

The LGU must adopt formal written findings at the same time that it makes its final determination. The findings should state the relevant facts as found by the LGU and state the LGU's conclusions on the application of WCA statutes and rules to the facts, and the LGU's determination should be consistent with the findings of fact and conclusions. The LGU should consider consulting with the LGU legal counsel for assistance in the preparation of the findings of fact. In order to expedite matters, LGU staff might include proposed findings along with the staff report.

If the LGU makes formal written findings of fact and the findings of fact are supported by the testimony and documents in the record, then the LGU's findings of fact will be entitled to substantial deference on appeal.

As required in Minnesota Rules, part 8420.0230, after the LGU has made its final determination, a copy of the LGU's decision must be mailed to those required to receive notice of the decision. The time for filing of an appeal to BWSR starts on the date of the mailing of the decision, and must be sent to BWSR within **30 calendar days of this date**.

In making WCA determinations, LGUs should be aware of potential conflicts of interest. For example, when the applicant for a replacement plan or other determination is the LGU itself, the LGU should make special efforts to be sure that the requirements of WCA are complied with and that the record provides support for the LGU's determination.

Local appeals procedures

All local administrative appeal options must be exhausted before BWSR will hear an appeal. For example, if an exemption or no-loss determination was made by an individual LGU staff person, the LGU (i.e., county board, city council, board of managers) should hold a hearing and make a record and findings before appeal to BWSR. Specific local appeals processes might include the following examples:

- The county board or city council has delegated WCA exemption and no-loss determinations to the zoning administrator. Before an appeal can be brought to BWSR, the county board or city council would need to hear the matter, unless another route had been previously established such as a hearing before the planning commission, board of adjustment or SWCD board.
- The county board has delegated WCA administration to the SWCD, and the SWCD board delegated exemption and no-loss determinations to the district manager. Before an appeal can be brought to BWSR, the SWCD board would need to hear the matter, unless another route had been previously established such as a hearing before the county board.

If the county board, SWCD, watershed district, or city council administers WCA and the county board, SWCD board, watershed district board, or city council made a decision on a replacement plan after a hearing was held that included consideration of a TEP recommendation, that decision could be brought to BWSR on appeal.

The LGU has the option of creating other local appeal procedures. For example, this could include an ad hoc committee composed of an SWCD board member, a board of adjustment member, a planning commission member, and a county commissioner or city council member. It is recommended that the local appeal procedures be adopted, or at least written, as an official policy. However, in most cases, if the decision resulted from a hearing with a TEP recommendation, there is no other local appeal option established.

The basic requirements of a hearing are proper notice, a full and fair opportunity for everyone to speak, verbatim recording of all proceedings, and contemporaneous adoption of formal findings by the original decision maker (LGU).

How to appeal to BWSR

Petition to appeal

To appeal a decision made by an LGU, a petition to appeal must be mailed to BWSR within **30 calendar days** after the date on which the decision was mailed to those required to receive notice of the decision (see Minnesota Rules, part 8420.0250, subpart 1). The petition must be accompanied by a non-refundable fee of \$200.

The petition may be made by the landowner, by any of those required to receive notice of the decision, or by at least 100 residents of the county in which a majority of the wetland is located. A copy of the petition to appeal must also be mailed to the LGU and evidence submitted to BWSR that such has been done. The LGU must mail a copy of the petition to all those to whom it was required to mail a copy of the notice of decision.

After a petition to appeal has been filed, the LGU has the option of requiring the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. The amount posted must be returned to the petitioner unless BWSR finds that the appeal was meritless, trivial, or brought solely for the purposes of delay. If the LGU decides to exercise this option, it is recommended that a procedure be adopted, or at least written, as an official policy that describes how the decision will be made to require the additional posting and how the amount will be determined.

BWSR decision to grant appeal

BWSR is required to decide whether to hear the appeal within 30 days of receipt of the petition. If the appeal is timely, BWSR will decide to hear the appeal unless it is deemed meritless, trivial, or brought solely for purposes of delay and all local administrative remedies have been exhausted, the \$200 filing fee has been paid, and the LGU amount of up to \$500 has been posted, if required.

Pre-hearing conference

When a decision has been made to grant the petition to appeal, a pre-hearing conference will be held with the parties. Parties to the appeal are the appellant, the landowner, the LGU, and all those required to receive notice of the LGU decision. Usually, copies of the record are forwarded before the pre-hearing conference, otherwise the LGU should bring a copy of the record on which it based its decision to the pre-hearing conference. The purpose of the pre-hearing conference is to seek informal settlement, if possible. If settlement is not possible, the attendees to the pre-hearing conference will define who the active parties are, define what the issues are, define what constitutes the record, establish a schedule for filing written briefs, and set a time and date for the hearing. Thirty days notice of the hearing will be given to the active parties. The schedule for the written briefs includes the appellant's brief, the respondent's brief, and the appellant's reply brief. After all the briefs have been filed, a hearing will be held before the BWSR dispute resolution committee (a five-member subcommittee of the full board), where the parties may present oral arguments. The recommendation of the dispute resolution committee is considered in the BWSR board decision on the appeal.

BWSR decision on the appeal

If the LGU made formal findings contemporaneously with its decision, there is an accurate verbatim transcript of the proceedings, and the proceedings were fairly conducted, BWSR will base its review on the record. If this is not the case, then the matter will most likely be remanded to the LGU. However, it is possible, although not probable, that the dispute resolution committee could take additional evidence.

The LGU's decision will be affirmed if their findings of fact were not clearly erroneous, they correctly applied the law to the facts, and they made no procedural errors prejudicial to a party. Otherwise, the decision will be reversed, amended, or remanded with instructions for further proceedings.

Compensation claims against LGUs

Under this part of WCA rules, "compensation action" refers to an action in which the plaintiff seeks compensation for taking private property under the state or federal constitution.

At the request of an LGU against which a compensation action has been brought, based at least in part on the LGU's application of the WCA statutes or rules, the state, through the attorney general, shall intervene in the action on behalf of the LGU and shall thereafter be considered a defendant in the action. An LGU making a request under this part of the rules must provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the LGU and receipt of the complaint by the attorney general.

The state is liable for costs, damages, fees, and compensation awarded in the action based on the LGU's adoption or implementation of standards that are required by WCA, as determined by the court. The LGU is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than WCA, including further local controls added in a comprehensive wetland protection and management plan.

WCA compensation

In order for a replacement plan applicant to seek compensation, a replacement plan must be denied by the local government unit, and the BWSR appeal process must be completed whereby the local government unit decision is not reversed, remanded, or amended. Only then may compensation be sought under Minnesota Statutes, section 103G.237.

The application package for compensation must be submitted to BWSR by certified mail. The BWSR appeal file number must be included in the application. If the applicant wants to make oral arguments to BWSR, it must be indicated as part of the application. A completed Conservation Easement Application and Permanent Wetlands Preserve Easement Area Assessment must be submitted. These forms include an agreement that, in exchange for compensation, a perpetual conservation easement will be conveyed to the state. The applicant must be able to convey the easement free of any prior title, lien, or encumbrance. The submission of an abstract of title is also necessary.

Official documentation must be submitted that the proposed drain or fill activity and the proposed subsequent use of the wetland are lawful under their respective legal requirements. Documentation is required from the U.S. Army Corps of Engineers, Minnesota

Pollution Control Agency, and if applicable, the county, the town or city, and the watershed district or watershed management organization.

The application must explain that the proposed drain or fill is a feasible and prudent project. Similarly, the application must show that the proposed replacement plan is a good faith effort to fulfill the replacement requirements under WCA rules.

If the replacement plan was approved with conditions or modifications, the application must include how the conditions or modifications make the plan unworkable or not feasible. A plan is considered unworkable or not feasible if the replacement is proposed on land that the applicant does not own, the applicant has made unsuccessful good faith efforts to acquire a replacement site, and the bank does not contain a qualifying replacement. Also, if a plan cannot be carried out for engineering reasons, it is considered unworkable or not feasible. The application must show that disallowing the proposed project will enhance the public values of the wetland and will cause the applicant damages.

BWSR will act within 90 days of receipt of a complete application. Compensation will be given if the application is complete, all requirements are satisfied, and a conservation easement in the form required by Minnesota Statutes, section 103F.516, is conveyed to the state. BWSR must provide compensation in an amount equal to the greater of:

- 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:
 1. the average equalized estimated market value of agricultural property in the township as established by the Commissioner of Revenue at the time application is made; or
 2. the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement; or
- \$200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation (see Minnesota Statutes, chapter 103G.237, subd. 4).

If BWSR does not compensate the landowner as required by law within 90 days after receiving a completed application and conveyed conservation easement, the landowner may drain or fill the wetland in the manner proposed, without replacement. 

CHAPTER SEVEN

Enforcement Procedures

An agent or employee of another may not drain, excavate, or fill a wetland, wholly or partially, unless the agent or employee has:

1. obtained a signed statement from the landowner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and
2. mailed a copy of the statement to the local government unit with jurisdiction over the wetland.

Work in violation of this part is a misdemeanor. Contractors or others who impact wetland for someone else can be issued a citation if they do not comply with this requirement.

WCA enforcement process

In accordance with Minnesota Statutes, section 103G, and Minnesota Rules, chapter 8420 (Wetland Conservation Act rules), DNR conservation officers (CO), wetland enforcement officers (WEO), and other peace officers may issue cease and desist orders, restoration orders, and replacement orders in the event of a violation of WCA. This section provides guidance on the enforcement procedures under WCA rules, as well as other means to achieve compliance. Refer to the above statute and rule for specific language on enforcement procedures.

WCA and Public Water enforcement process

Enforcement officers issue cease and desist, restoration, and replacement orders for impacts to public water basins and public watercourses. These cases may likely involve both public waters and WCA wetlands. Both a WCA and public water cease and desist order (CDO) may be issued for a dual impact, or one CDO may be issued to cover both the wetland and public water portions of the impact. The officer involved will pick the appropriate form based on the officer's perception of which is the largest portion of the impact. For dual impacts, LGUs, SWCDs, and DNR area hydrologists need to coordinate their involvement and efforts so that both portions of the impact get properly resolved.

The cease and desist order

Cease and desist orders (CDOs) should be used when dealing with wetland impacts not approved by the local government unit, impacts that are not exempt, or impacts that exceed what is allowed by WCA. CDOs are not mandatory, but their use is strongly encouraged. The order may be issued to the landowner, a contractor, or any other person involved with the project. Cease and desist orders can only be issued by a conservation officer or peace officer. They can be issued for impacts that are in progress or for those that are already completed. The orders are civil, not criminal, documents that notify the recipient to stop all wetland filling, draining, or excavation. It may become a misdemeanor criminal violation if the recipient of the order fails to comply by continuing to fill, drain, or excavate the wetland covered by the order. Cease and desist orders only restrict additional wetland impact within the specified wetland area. They do not restrict work on adjacent upland areas, provided the work does not adversely affect the wetland.

A copy of the cease and desist order is sent by the enforcement authority to the LGU and to the SWCD. The recipient of a CDO may decide to call the LGU contact person as directed by the order, or they may submit an exemption or no-loss, or replacement plan application to the LGU. If a CDO recipient believes that the activity qualifies for an

exemption or no-loss determination, the recipient should submit an **Application for Certificate of No-Loss or Exemption** to the LGU, along with any supporting evidence and a copy of the CDO. The LGU or TEP must review all evidence of exemption or no-loss produced by the applicant, and an inspection of the site should be performed to determine that a wetland was impacted beyond that which is allowed and to determine if the activity qualifies for an exemption or no-loss. The LGU's decision to approve or deny applications submitted to them should be made within 60 days. Notice of incomplete applications should be made to the applicant within 10 days of receipt of the application, and notice of a decision must be mailed within 10 days of the decision.

A CDO will be rescinded if an LGU decides to grant an exemption or no-loss application or to approve a replacement plan application, provided the LGU decision is not appealed. Cease and desist orders are rescinded by the issuing officer after a request from an LGU, and when the project has been determined to be exempt or no-loss through official notice or a replacement plan has been approved.

If exemption or no-loss or replacement-plan applications are not submitted to the LGU by the CDO recipient within the three-week period, or if the applications are denied, the LGU must then immediately notify the enforcement authority and the SWCD regarding the need for a restoration order. Local government units are encouraged to be proactive and contact the CDO recipient immediately instead of waiting to be contacted by the recipient of a CDO.

Restoration and replacement orders

Restoration orders, prepared by an SWCD, are used to restore the impacted wetland to its pre-altered condition. Conservation officers or peace officers issue restoration orders. These orders may be issued to a landowner or party responsible for a wetland impact, and may be issued without being preceded by a CDO. Restoration orders may direct the recipient to restore the wetland or may direct the recipient to submit a replacement plan. Restoration orders may require a combination of restoration and replacement.

When notified of the need for a restoration order the SWCD should promptly inspect the site along with the LGU, and confirm that wetland is impacted beyond what is allowed, that there is a loss of wetland, and that no exemption applies. The SWCD will then prepare a plan for restoration of the wetland and prepare a restoration order based on that plan. The order must specify a date when restoration shall be completed and a date by which it shall be submitted. The SWCD, with concurrence of the TEP and the enforcement officer, may conclude that the wetland should not be restored and that replacement is the better option. The SWCD is not required to prepare a replacement plan, just the conclusion that replacement is the most viable option. The SWCD prepares a replacement order directing the landowner or responsible party to submit a replacement plan application to the LGU.

Restoration orders always give a recipient an opportunity to submit exemption or no-loss applications and to submit a replacement plan application to the LGU.

The enforcement officer or the SWCD must inspect the restoration/replacement site immediately after the completion date. If the restoration is not completed by the specified date and no replacement application is received, or if the replacement plan application has not been submitted by the specified date, or if replacement has not been

completed by the specified date, the enforcement officer should issue a written warning to the landowner or responsible party for failure to comply with the restoration order (a violation of Minnesota Statutes, section 103G.2372, and Minnesota Rules, section 8420.0290). A short but reasonable written completion date extension should be issued by enforcement along with the warning, with copies to the recipient, LGU, and SWCD. If the required restoration, replacement, or application submittal is not completed after the extended date, the enforcement officer should issue a citation. The enforcement officer should always ask for court-ordered restoration or replacement along with an appropriate fine and jail time.

Deed recording

Minnesota Statutes, section 103G .2372, allows for the recording of delinquent restoration or replacement orders:

Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located, by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

After-the-fact replacement

Landowners and responsible parties seeking to replace wetlands after they have already been impacted must now replace those wetlands at twice the normal replacement ratio unless the LGU and the enforcement authority concur that it is not required.

Appeals

The terms and conditions of restoration and replacement orders may be appealed to the BWSR executive director if the recipient submits a written appeal request to the executive director within 30 days of receipt of the order. Implementation of the order may be delayed by BWSR until the appeal is resolved. The appeal decision must be made by BWSR within 60 days.

Important references in statute and rule

Minnesota Statutes, section 103G.2372: Enforcement

Subd. 1. Commissioner of natural resources

The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the

and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

Subd. 2. Misdemeanor. A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland or public waters are located or the illegal activity occurred.

Subd. 3. Restitution. The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

Minnesota Rules, part 8420.0290: Enforcement Procedures

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

Subp. 3c. Appeals of replacement and restoration orders. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director shall review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

Subp. 4. 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, the local government unit shall 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 an increased ratio is not required.

CHAPTER EIGHT

Local Comprehensive Wetland Protection and Management Plans

In accordance with Minnesota Rules, part 8420.0650, as an alternative to the WCA rules a local governmental unit may develop a comprehensive wetland protection and management plan. The purpose of this plan is to provide for alternative standards for management of wetland resources, based on the needs and priorities of the LGU.

The planning process must include the following:

- provide for resource agency and public participation;
- wetland functional assessment information for the plan area;
- high priority area identification;
- meet no-net loss of wetlands within the plan area;
- follow Wetland Conservation Act requirements; and
- a local ordinance that implements the plan.

Prior to developing a plan, an LGU must first provide notice at the beginning of the planning process to BWSR (through a board conservationist), the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, the Minnesota Department of Agriculture, all affected local governments, and local citizens inviting participation in the development of the plan. An agency that is invited to participate in the development of the plan but declines to do so and fails to participate or to provide written comments during the local review process, waives the right to submit comments during the BWSR review, except for comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency's comment, BWSR will consider the involvement of the agency in the development of the plan.

After BWSR approval and adoption by the local government unit, replacement plan, exemption, and no-loss determinations are made according to the plan and ordinance. The WCA rule provides minimum standards for a plan. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.

Elements of a Comprehensive Wetland Protection and Management Plan

The contents of each plan will vary, depending upon the area of the state in which the LGU is located. Therefore, each plan should include an introduction that describes the reasons for developing and implementing the plan.

Classification of wetlands

All plans must include a classification of wetlands in the plan area based on the following:

- an inventory of wetlands in the plan area;
- an assessment of the wetland functions, based upon a methodology chosen by the technical evaluation panel (TEP) from one of those established or approved by the BWSR in the WCA rules; and
- the resulting public values of the functions provided.

Sequencing standards

The plan may vary certain standards used in making decisions regarding replacement plans for wetlands impacted by drain, excavation, or fill activities. Plans may vary the application of the WCA sequencing standards for projects, based upon the classification and alternative standards set forth in the plan.

Replacement standards

Comprehensive wetland protection and management plans may vary the replacement standards as spelled out in the rules. Any variance to replacement standards must ultimately ensure that there is no net loss of the public values within the area subject to the plan.

In 50 to 80 percent areas:

One to one replacement must be met in the plan area.

In less than 50 percent areas:

Two to one replacement must be met in the plan area, with at least one to one being new wetland credit.

In greater than 80 percent areas:

The replacement ratio must be based on the alternative standards set forth in the plan, and replacement credit may be awarded for any project that increases the public value of wetlands, including activities on adjacent upland areas.

Additional (optional) local requirements for wetland management

While WCA allows for local plans to adopt alternative standards for greater flexibility in administering WCA, there is also the opportunity for the LGU to provide additional requirements that are more restrictive than WCA. Enforcement and appeals of any local standards that are more restrictive than state law or rules must be provided for through local means as WCA processes (including any alternative standards in the comprehensive wetland protection and management plans) will not apply, even if they are part of a BWSR-approved plan.

BWSR review and approval

Once the LGU submits the final plan to Board of Water and Soil Resources, the BWSR has a 60-day period in which to review the contents of the plan. The plan is deemed approved if BWSR does not disagree with the plan within that 60-day review period. In its review of the plan, BWSR will note the elements of the plan that are more restrictive than state law and rules. Plans are approved by a resolution of the full BWSR board with a notice of decision letter sent by the BWSR chair or executive director.

The process that BWSR uses in the event of a disagreement with the plan contents is spelled out in Minnesota Rules, part 8420.0650, subpart 3, items D, E, and F. In the event that such a disagreement occurs, the LGU should immediately contact their board conservationist to begin the process for resolving any differences.

A comprehensive wetland protection and management plan may be developed as part of or in conjunction with a local water plan. See Minnesota Rules, part 8420.0650, subpart 3G., for additional information.

Local capacity requirements

Local government units that pursue incorporating the contents of a comprehensive wetland protection and management plan into a local ordinance must provide documentation to BWSR that demonstrates local capacity to implement the plan.

Reporting and oversight

The local government unit must submit an annual activity report to BWSR that documents compliance with plan standards. The annual report must include all items required in Minnesota Rules, part 8420.0650, subpart 8. 

Miscellaneous WCA Items

High priority regions and areas for Local Water Planning

High priority regions

Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in the Minnesota Rules, part 8420.0545, item B. In all other counties of the state, high priority regions are high priority areas approved as such by the board.

High priority areas

Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, must identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. These priority areas shall be included in the next scheduled water management plan update.

In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed.

High priority areas may also be designated in a Local Comprehensive Wetland Protection and Management Plan, prepared according to Minnesota Rules, part 8420.0650.

The board will review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed above become high priority regions with board approval.

Wetland Preservation Areas

Except for DNR Protected Waters Wetlands, wetlands that are located in both high priority regions and high priority areas as discussed above are eligible for enrollment as Wetland Preservation Areas. Wetlands that are already enrolled in other conservation programs may still be eligible to be enrolled as a WPA. The required minimum size of an enrolled area is the wetland area owned and a 16.5-foot strip of upland buffer. The maximum size eligible for enrollment is the wetland area owned with a total adjacent upland area of up to four acres for each acre of wetland. A wetland area so enrolled is exempt from property tax in accordance with Minnesota Statutes, section 272.02, subpart 11, clause (iii). This section of the manual describes the steps by which a county accepts, limits, or denies applications for enrollment of parcels of land into WPAs by landowners.

Participation in the WPA program by counties is optional. If the county chooses to accept applications, the county will be reimbursed by the Department of Revenue for the actual lost tax revenue, not a payment in lieu of tax. The county includes the total amount of revenue lost as a result of WPA enrollment as part of the abstract of tax lists filed each year with the Department of Revenue. There is a standing appropriation from the general fund to the Department of Revenue in an amount necessary to make payments to cover the WPAs enrolled by the counties.

The Department of Revenue will reimburse the county the actual amount of lost revenue with a minimum reimbursement rate of the net tax capacity multiplied by 50 cents an acre, even if the land is already enrolled in a conservation program.

Once a parcel of land is enrolled as a WPA, a restrictive covenant placed on the land is considered permanent. However, there is an opportunity for the landowner to request termination. If the owner elects to terminate the WPA, the expiration date must be at least eight years from the date of the notice of request for termination. A WPA may be terminated earlier than this only in the event of a public emergency upon petition from the owner or county to the governor.

Finally, a parcel of land enrolled as a WPA has significant protection from eminent domain actions. In addition, land in a WPA may not be assessed for public projects built in its vicinity, unless the landowner chooses to benefit from the public project.

How to establish a WPA

Application processing

The county may request that the soil and water conservation district accept and process the applications on behalf of the county.

Landowner application

A wetland owner may apply to the county where the wetland is located for designation of a WPA, if the wetland is in a high priority region *and* a high priority area. The **Wetland Preservation Area Application form** is found on the BWSR web site.

The entire wetland should be enrolled in the WPA, along with a required adjacent upland buffer that is at a minimum 16.5 feet but no more than four times the area of the wetland acreage.

In order to determine the extent of the wetland, and therefore its associated adjacent buffer, a wetland delineation will be needed. The landowner may request the assistance of the SWCD where the land is located for completion of a routine on-site or off-site delineation (*Note: the SWCD may charge a fee for this service*), or the landowner may hire a private consultant qualified in the science of wetland delineation.

The application should be made to the county and must include at least the information listed as follows (*Note: If the wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located*):

- the application fee, if required to defray administrative costs of the program;
- the legal description of the area to be enrolled, including an upland strip at least 16.5 feet in width around the perimeter of wetlands within the area but no more than four acres for each acre of wetland (information on wetland delineation should be provided);
- parcel identification numbers where designated by the county auditor;
- name and address of the owner;
- a notarized signature of the owner on the **WPA Restrictive Covenant Form**, which indicates that the land will be preserved as a wetland and will only be used in accordance with the conditions of the restrictive covenant;
- a statement that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land;
- the completed **WPA SWCD Advisory Statement**, in accordance with Minnesota Statutes, section 103F.612, subd. 3; and

- for registered land only, the owner's duplicate certificate of title.

County review and notice

Upon receipt of an application, the county shall determine if all material required for submittal has been included, and, if so, shall deem the application complete. The term "date of application" as used with this program means the date the application is determined complete by the county. Once the application is considered complete, the county should assign a WPA number to the application, which will be used to identify the WPA upon enrollment, and start the **WPA Enrollment Checklist**. The county assigns a WPA identification number using the following format: WPA - (two digit county #) - (sign-up number). For example, WPA-34-01, which is the first WPA enrollment in this county.

The county may limit or reject additional upland proposed to be included according to standards the county establishes. The county may reject an application or send it back for modification. If the application qualifies, the county may approve it and mark the date of approval on the application. The county shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Within five days of approval of the application, the county shall forward copies of the approved application to the following:

- the county assessor;
- the soil and water conservation district;
- the local governmental unit, if different from the county;
- the Board of Water and Soil Resources central office in St. Paul; and
- the county recorder. The county recorder is also sent the original WPA Restrictive Covenant Form for recording. The county recorder shall record the covenant (or memorialize the application upon the certificate of title and on the owner's duplicate certificate of title in the case of registered property) and return it to the landowner. The county recorder shall notify the county that the restrictive covenant has been recorded or memorialized.

The Wetland Preservation Area commences 30 days from the date the county notifies the landowner that the application has been accepted. The county should note the date of this notice on the WPA Enrollment Checklist to record the date the WPA becomes effective. Once the county accepts WPA enrollments, the county is required to maintain maps illustrating the lands covenanted as WPAs.

Once a property is enrolled in a WPA, the landowner is required to manage the area and surrounding upland areas with sound soil conservation practices that prevent excessive soil loss. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practicable extent.

Duration of WPAs and actions affecting WPAs

Termination

Once a WPA is enrolled, it is assumed permanent unless and until the landowner initiates a request for termination of the restrictive covenant. The date of expiration of the WPA can be no earlier than eight years from the date of the notice from the landowner to the county requesting termination. The benefits and limitations of the WPA and the restrictive covenant filed with the application cease on the date of expiration.

The landowner notifies the county on the **Notice of Expiration of Restrictive Covenant**. This notice describes the property involved and states the date of expiration. The land-

owner may rescind the termination notice at any time during the first two years following the notice. When the county receives the notice of termination from the landowner, the county recorder will record the effective date of expiration. The county also notifies the following of the date of expiration of the WPA:

- the SWCD;
- the local governmental unit, if different from the county; and
- the Board of Water and Soil Resources central office in St. Paul.

For registered property, the county recorder shall cancel the restrictive covenant upon the certificate of title and the owner's duplicate certificate of title on the effective date of expiration.

A WPA may be terminated earlier than described above only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order according to statute. The executive order must identify the WPA, the reasons requiring the actions, and the date of expiration.

Eminent domain actions affecting WPAs

Property enrolled as a WPA has protection from eminent domain actions through extensive review and public hearing proceedings that must be completed under the Environmental Quality Board (EQB), in accordance with Minnesota Statutes, section 103F.614. The EQB, in consultation with affected local governments, reviews a proposed action to determine its effect on the preservation and enhancement of wetlands and the relationship to local and regional comprehensive plans. The EQB may suspend the action for up to one year if the EQB determines that a proposed action might have unreasonable effects on the WPA and that there are feasible and prudent alternatives that may have a less negative impact on the WPA.

Public project limitations and assessment limitations

Notwithstanding any other law, construction projects for public sanitary sewer systems, public water systems, and new public drainage systems are prohibited in wetland preservation areas. New connections between land or buildings in a WPA and public projects are also prohibited. Finally, land in a WPA may not be assessed for public projects built in the vicinity of the WPA, unless the landowner of the WPA elects to use and benefit from the public project.

Information for county relating to WPA tax exempt status

The county will be reimbursed by the Department of Revenue (DOR) for the total amount of revenue lost as a result of the WPA tax exemption. The county auditor is required to certify to the DOR the total amount of revenue lost as part of the abstract of tax list filed with the DOR each year prior to March 31. Procedures for computing the total amount of lost revenue are provided in the section of statute referenced earlier, and information and assistance will be available from the DOR to counties on this program. The DOR has a standing appropriation from the general fund in the amount necessary to make the payments required by this exemption.

According to Minnesota Statutes, section 275.295, "the commissioner [of revenue] shall pay to each taxing district, other than school districts, its total payment for the year at the time distributions are made." The DOR determines the amount of tax reimbursement for each taxing district in the geographic area based upon the abstract of tax list provided by

the county auditor. DOR pays out to each of those taxing districts directly, except for the school districts. The DOR certifies to the Minnesota Department of Children, Families and Learning (DCFL) the amount that goes to each school district, and DCFL reimburses that portion directly to the school districts. This is standard procedure that the DOR and DCFL follow.

Regarding valuation of land in a WPA, DOR assessors in each county help review records and valuation issues. The DOR assessors review land value changes and can require the county auditor to adjust the value of a parcel up or down, depending if it is valued too low or too high.

County or watershed reclassification

An LGU may request that BWSR reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining, and, after receipt of sufficient documentation from the LGU, BWSR shall change the classification. If requested by the LGU, BWSR will assist in developing the documentation for the change of classification. Within 30 days of BWSR approval of the change in classification, BWSR will publish a notice of the change in the EQB Monitor.

One hundred citizens of an LGU may request the LGU to reclassify a county or watershed as described above. Through a petition to the LGU, the citizens must provide sufficient documentation to the LGU for the reclassification. The LGU will consider the petition and forward the request to BWSR or provide a reason why the petition is denied to BWSR and the citizens.

Calcareous fens

A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the DNR. The DNR will provide technical assistance to landowners or project sponsors in the development of management plans.

The DNR will investigate wetlands to determine if the wetland is properly identified as a calcareous fen. Furthermore, the DNR maintains a list of known calcareous fens in the state and their location (available at http://files.dnr.state.mn.us/publications/waters/Calcareous_Fen_List.pdf), and provides updated lists to BWSR for further distribution. Updates to the list will also be published in the *State Register*. 

CHAPTER TEN

Agency Web Sites

For information on a variety of wetland regulations, publications, and reports, visit the following web sites **(which are linked)**:

U.S. Army Corps of Engineers www.mvp.usace.army.mil/regulatory/

- Permit information (GP/LOP)
- Fact sheet (www.mvp.usace.army.mil/regulatory/mnagfact.pdf)
- Wetland Delineation Guide (www.wes.army.mil/el/wetlands/pdfs/wlman87.pdf)

National regulatory web sites

- Headquarters regulatory (www.usace.army.mil/inet/functions/cw/cecwo/reg/); Sacramento District (www.spk.usace.army.mil/cespk-co/regulatory/); St. Paul District (www.mvp.usace.army.mil/regulatory/)

Technical publications

- Ecosystem Management and Restoration Information System: (www.wes.army.mil/el/emrrp/emris/); Technical and biological information (www.usace.army.mil/inet/functions/cw/cecwo/reg/techbio.htm); Environmental Laboratory Wetlands Publications (www.wes.army.mil/el/wetlands/wetlands.html#wrtc)

Environmental Protection Agency (wetland laws) www.epa.gov/owow/laws.html

- Section 404 of the Clean Water Act: An Overview (www.epa.gov/owow/wetlands/facts/fact10.html); Section 404 Regulations (www.epa.gov/owow/wetlands/regs/index.html); Executive Orders (www.epa.gov/owow/wetlands/regs/eo.html); Policy and Technical Guidance Documents (www.epa.gov/owow/wetlands/guidance/index.html)
- Scientific Documents (National Wetlands Inventory Report; National Resources Inventory Report; Hydrogeomorphic Approach for Assessing Wetland Functions; The Wetlands Conservation and Sustainability Project) (www.epa.gov/owow/wetlands/science/)

Minnesota Board of Water and Soil Resources www.bwsr.state.mn.us/wetlands/wca/index.html

- Minnesota Rules, chapter 8420 (www.bwsr.state.mn.us/wetlands/wca/chapter8420.pdf)
- Wetland publications: Wetlands in Minnesota brochure, Minnesota Wetland Report, Native Vegetation in Restored and Created Wetlands, Wildlife Habitat Improvements in Wetlands (www.bwsr.state.mn.us/wetlands/publications/index.html)
- Historical Background on Wetland/Public Water Issues (www.bwsr.state.mn.us/wetlands/wca/history.html)

Minnesota Department of Natural Resources www.dnr.state.mn.us/index.html

- Division of Ecological Services (www.dnr.state.mn.us/ecological_services/index.html)
Wetland publications: Minnesota Wetlands Conservation Plan, Minnesota Wetland Banking Study, Excavated Ponds for Wildlife brochure (www.dnr.state.mn.us/ecological_services/pubswetlands.html)
- Division of Waters (www.dnr.state.mn.us/waters/index.html); Water permit information (www.dnr.state.mn.us/permits/water/index.html); Public Water Inventory Maps (www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html); Public Waters Work Permits Program (www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/applications.html)

Minnesota Pollution Control Agency www.pca.state.mn.us/rulesregs/index.html



Technical References (Web Sites)

Sources incorporated by reference into WCA rule

These documents are available through the state law library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. Internet links, if known, are included to electronic version of the document, summaries of the document, or ordering information. Please send additional links to electronic documents to the BWSR webmaster (webmaster@bwsr.state.mn.us).

Wetlands of the United States (United States Fish and Wildlife Service Circular No. 39, 1956 and 1971 editions). A pdf file is at: www.bwsr.state.mn.us/wetlands/publications/index.html

United States Army Corps of Engineers Wetland Delineation Manual (January 1987). See either www.wes.army.mil/el/wetlands/wlpubs.html [look under “1987” publication year] or www.spk.usace.army.mil/cespk-co/regulatory/ [See “1987 Wetland Delineation Manual (pdf)” under “Quick Links”].

Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition). See the document at: www.npwrc.usgs.gov/resource/1998/classwet/classwet.htm. Additional info at: www.fgdc.gov/standards/status/sub3_4.html

Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota (Minnesota Department of Natural Resources, 1991).

United States Geological Survey Hydrologic Unit Map for Minnesota (1974). Digital info at lucy.lmic.state.mn.us/ or lucy.lmic.state.mn.us/metadata/huc2_93.html or www.nationalatlas.gov/atlasmap.html

National Wetland Inventory maps (United States Fish and Wildlife Service). See www.nwi.fws.gov/mapper_tool.htm

Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective (Anderson and Craig, 1984).

Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1992). Copy also located here: efw.lib.umn.edu/qref/about.phtml (University of Minnesota Entomology, Fisheries, and Wildlife Library, 375 Hodson Hall, 1980 Folwell Ave., St. Paul, MN 55108).

Vegetation in Restored and Created Wetlands (Minnesota Board of Water and Soil Resources, September 2000). See: www.bwsr.state.mn.us/wetlands/publications/index.html

Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals (Minnesota Interagency Wetlands Group, December 2000). See www.bwsr.state.mn.us/wetlands/wca/habitatexemption.pdf

Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers (Minnesota Forest Resources Council, St. Paul, 1999). See: www.frc.state.mn.us/FMgdline/Guidebook.html

Minnesota Construction Site Erosion and Sediment Control Planning Handbook (Minnesota Board of Water and Soil Resources and the Association of Metropolitan Soil and Water Conservation Districts, St. Paul, 1988).

Agriculture and Water Quality: Best Management Practices for Minnesota (Minnesota Pollution Control Agency, St. Paul, 1991).

Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands (Minnesota Storm-Water Advisory Group, 1997).

Minnesota Plant Database (Minnesota Department of Natural Resources, St. Paul, 2002). See: files.dnr.state.mn.us/ecological_services/plant_list9-25-02.pdf

Wetland assessment methods approved by BWSR

The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP-DE-3, August 1993). Regional models, guide books, and other references at: www.wes.army.mil/el/wetlands/wlpubs.html

Minnesota Routine Assessment Methodology for Evaluating Wetland Functions (Minnesota Board of Water and Soil Resources, Version 2.0, September 1998) [version 3 in review at time of publication of this document]. See: www.bwsr.state.mn.us/wetlands/mnram/index.html

Minnesota Wetland Evaluation Methodology for the North Central United States (United States Army Corps of Engineers, September 1988).

Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993). Order form: statelands.dsl.state.or.us/ofwam_order.htm

Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991). Summary at: www.wes.army.mil/el/emrrp/emris/emrishelp6/new_hampshire_method_tools.htm. To order, follow directions at: www.des.state.nh.us/deslette.htm

Wetland assessment methods—general

Habitat evaluation method links and discussion at: www.wes.army.mil/el/emrrp/emris/emrishelp6/habitat_evaluation_methods_dst.htm

Brief descriptions of many **wetland assessment procedures and comparisons** are at:

- www.wes.army.mil/el/emrrp/emris/emrishelp6/wetlandand_procedure_descriptions.htm

Seventeen methods compared (1994) at: www.wes.army.mil/el/wrtc/wrp/tnotes/wgev2-2.pdf

A Comprehensive Review of Wetland Assessment Procedures: A Guide for Wetland Practitioners (Candy C. Bartoldus, Environmental Concern, Inc., 1996) Order form at: www.wetland.org/ecpubs.htm

Selection of **wetland assessment methods**. See www.wes.army.mil/el/emrrp/emris/emrishelp6/selection_of_wetland_assessment_methods_tools.htm

The Process of Selecting a Wetland Assessment Procedure: Steps and Considerations. See: www.wes.army.mil/el/emrrp/emris/emrishelp6/the_process_of_selecting_a_wetland_assessment_procedure_steps_and_considerations.htm

Comparison of several “functional evaluation” methods by Massachusetts at: www.state.ma.us/czm/waFE.HTM

New England district methodology. Select Public Services, then Regulatory/Permitting, then Highway Methodology Workbook at: www.nae.usace.army.mil/

Wetland restoration references

Restoration References: Regional or National Restoration Guidance. See the NOAA site at: restoration.nos.noaa.gov/htmls/resources/guide_pubs.html

Potentially restorable wetlands (Metro) report. See www.bwsr.state.mn.us/wetlands/publications/PotentiallyRestorableWetlands.pdf

BWSR recommended seed mixes. See: www.bwsr.state.mn.us/wetlands/publications/nativeseedmixes.pdf. On DNR's web site, see: www.dnr.state.mn.us/excavatedponds/resources.html

Restoration and Reclamation Review [Student On-Line Journal (Hort 5015/5071)] at: www.hort.agri.umn.edu/h5015/rrrmain.htm

Engineering: wetland restoration spreadsheets (both Excel files) at www.bwsr.state.mn.us/outreach/engineering/index.html

Vegetation in Restored and Created Wetlands (Minnesota Board of Water and Soil Resources, September 2000). See: www.bwsr.state.mn.us/wetlands/publications/index.html

Minnesota Plant Database (Minnesota Department of Natural Resources, St. Paul, 2002). See: files.dnr.state.mn.us/ecological_services/plant_list9-25-02.pdf

Wetland delineation

Guidance to delineators from St. Paul District Corp at www.mvp.usace.army.mil/regulatory/wetdelguide.pdf

Wetland Science Institute of USDA/NRCS Wetland delineation page. See: www.pwrc.usgs.gov/wli/wetdel.htm

USDA **hydrology tools** at: <http://www.pwrc.usgs.gov/wli/wetdel.htm>

Soils information

National soils info, lists of soil surveys, hydric soils at: www.pwrc.usgs.gov/wli/wetdel.htm or soils.usda.gov/soil_use/hydric/main.htm. By state, etc., see soils.usda.gov/index.htm

Plant identification

National list of plant species that occur in wetlands. See www.nwi.fws.gov/bha/

The **Wetland Plants and Communities of Minnesota and Wisconsin** (see www.npwrc.usgs.gov/resource/1998/mnplant/mnplant.htm). To order, visit www.mvp.usace.army.mil/docs/bookorderform.txt

Wisconsin **vascular plants.** Wisconsin State Herbarium: University of Wisconsin, Madison. See: www.botany.wisc.edu/herbarium

Flora of Minnesota. Go to www.cbs.umn.edu/herbarium/mnpage.htm

USDA Regional **Wetland Plant Book Links** at: www.pwrc.usgs.gov/wli/wetdel.htm

Sedge drawings in the TAMU-BWG Vascular Plant Image [Good drawings of almost all sedge species]: www.csd1.tamu.edu/FLORA/carex/carexout.htm

USDA's **plants database**: plants.usda.gov/index.html

Aquatic and Wetland Vascular Plants of the Northern Great Plains (Gary E. Larson, 1993): www.npwrc.usgs.gov/resource/1999/vascplnt/intro.htm

Michigan Flora. Ordering info at: www.umich.edu/~newsinfo/Releases/1997/Mar97/r031397a.html

The Illustrated Flora of Illinois—Sedges: Carex (Robert H. Mohlenbrock; Illustrated by Paul Nelson). www.siu.edu/~siupress/titles/f98_titles/mohlenbrock_flora.htm

Selected North Dakota and Minnesota **range plants**: references. See www.greatplains.org/resource/1999/ndmnrngp/refer.htm

Wetland mapping and classification

National Wetlands Inventory Maps—U.S. Fish and Wildlife Service (www.nwi.fws.gov/mapper_tool.htm)

Minnesota Public Waters Inventory Maps—MnDNR, Division of Waters (www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html)

Wetlands of the United States—U.S. Fish and Wildlife Service Circular 39 (www.bwsr.state.mn.us/wetlands/publications/index.html)

Classification of Wetlands and Deepwater Habitats of the United States—Cowardin, et al., 1979 edition. (www.npwrc.usgs.gov/resource/1998/classwet/classwet.htm)

Miscellaneous web sites

Minnesota Department of Natural Resources, Division of Waters. See www.dnr.state.mn.us/waters)

Minnesota Pollution Control Agency at www.pca.state.mn.us/

U.S. Geological Service **Digital Orthophoto Quad**. See mcmcweb.er.usgs.gov/status/doq_stat.html

USDA Natural Resources Conservation Service Wetland Science Institute. Visit www.pwrc.usgs.gov/wli

U.S. Army Corps of Engineers Wetlands Research Program: Wetlands Publications. See www.wes.army.mil/el/wetlands/wlpubs.html

USDA Natural Resources Conservation Service Soils web page at www.mn.nrcs.usda.gov/soils

Minnesota Climatology Working Group. Visit climate.umn.edu

Minnesota Wetlands (University of Minnesota). See www.mnwetlands.umn.edu

