

WCA ASSESSMENT PRELIMINARY RECOMMENDATIONS

OCTOBER 25, 2006

I. BACKGROUND/INTRODUCTION

A. 2001-2003 Minnesota Wetland Report

Every two or three years, the Board of Water and Soil Resources (BWSR) produces the Minnesota Wetland Report to provide data on the status of implementation of state laws and programs relating to wetlands. These reports include information on the quantity, quality, acreage, type, and public value of wetlands in the state.

The 2001 –2003 Minnesota Wetland Report was approved by the Board at its August 2005 meeting and it:

- ?? Includes data from multiple state and federal wetland programs, including those of: BWSR, DNR, PCA, MnDOT, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S.D.A. Natural Resources Conservation Service, and U.S.D.A. Farm Services Agency
- ?? Does not make policy recommendations
- ?? Can be used to identify trends in program accomplishments

Key data reported to BWSR from Wetland Conservation Act (WCA) local government units (LGU's) is shown in the table below.

REPORTED WETLANDS AVOIDED, MITIGATED, RESTORED, & IMPACTED FROM WCA REGULATION 2001-2003				
WCA Activity	2001	2002	2003	Totals
Number of Landowner Contacts to LGUs	17,086	18,507	17,561	53,145
Avoided/Minimized (in acres)	3,943	3,052	3,150	10,145
Impacted (in acres)	(273)	(330)	(383)	(986)
Replacement (in acres)	535	347	584*	1,466 ¹
Exempt (in acres)	(610)	(619)	(479)	(1,708)
Impact + Exempt	(883)	(949)	(862)	(2,694)
Impact + Exempt – Replacement = Net Loss	(348)	(602)	(417)	(1,367)

This table shows that WCA results in a net gain when evaluating regulated impacts and required replacement. However, including the effect of the exemptions turns the result from a net gain to a net loss under the program. It was this data that that led Governor Pawlenty to direct the Clean Water Cabinet undertake the WCA Assessment.

The recommendations shown in this WCA Assessment Preliminary Recommendations document represent recommendations of the BWSR Wetland Committee which are based on issues identified by the WCA Assessment Stakeholder Advisory Committee. This document does not represent the consensus of the WCA Assessment Stakeholders Advisory Committee.

B. September 7, 2005 Letter from Governor Pawlenty to the Clean Water Cabinet

In a letter to the Clean Water Cabinet (commissioners of the PCA, DNR, MDH, MDA, and the Executive Director of BWSR), Governor Pawlenty directed the Cabinet to assess the WCA to identify and discuss options to do more to limit the loss of wetlands through the regulatory process and to more closely align with the principle of no net loss.

C. Assessment Areas

1. Improve accounting and reporting

The Comprehensive Wetland Assessment, Monitoring and Mapping Strategy (CWAMMS) will provide an improved assessment of the status and trends of wetlands in Minnesota. This strategy will be partially implemented by June 2006. An interim accounting system is being developed to assess data collected by agencies to provide an improved picture of wetland gains and losses through current regulatory and nonregulatory programs. In addition, improvements will be developed to reporting and data acquisition efforts under state wetland programs.

2. Do more to limit the loss of wetlands

The current statutory and rule framework regarding the WCA exemptions and replacement ratios will be reviewed to identify opportunities to reduce wetland losses.

3. Streamline regulatory efforts

The BWSR will seek a memorandum of understanding with the U.S. Army Corps of Engineers to establish programmatic changes, both state and federal, that will increase efficiencies and improve the environmental benefits of wetland regulatory programs. Current WCA procedures will be examined to identify opportunities to reduce the administrative burden of the WCA without compromising wetland protections

D. Assessment Process and Timeline

1. Process.

BWSR through its Wetland Committee, in coordination with the CWC, is leading the assessment process. A stakeholder group has been meeting since February 2006 to provide input and work towards a consensus and/or identify options prior to the 2007 Legislative Session. The Wetland Committee reviews the issues and options to develop a recommendation. These recommendations will be discussed at the Wetland Roundtable scheduled for November 14-15 in St. Cloud.

The BWSR Wetland Committee consists of the following BWSR Board members:

LuAnn Tolliver, Watershed District (Chair)
Kay Cook, Watershed District
Gene Tiedemann, Watershed District
Brian Kletscher, County Commissioner
Brian Napstad, County Commissioner

Bob Burandt, Soil and Water Conservation District
Paul Brutlag, Citizen
Lisa Thorvig, Pollution Control Agency
Wayne Edgerton, Department of Natural Resources
Joe Martin, Department of Agriculture

The Stakeholder organizations that have been participating in the WCA Assessment are shown below.

Agriculture

1. Minnesota Agri-Growth Council
2. Minnesota Corn Growers Association
3. Minnesota Farm Bureau
4. Minnesota Farmers Union
5. Minnesota Soybean Growers Association
6. Minnesota Wheat Growers Association

Business

7. Builders Association of Minnesota
8. Builders Association of the Twin Cities
9. Minnesota Association of Realtors
10. Minnesota Chamber of Commerce
11. Minnesota Forest Industries
12. Utilities
13. Mining Industry Association of Minnesota
14. Aggregate Ready-Mix Association of Minnesota

Environment/Conservation

15. Audubon Minnesota
16. Izaak Walton League of America - Minnesota Division
17. Mn Center for Environmental Advocacy
18. Minnesota Conservation Federation
19. Minnesota Fish and Wildlife Legislative Alliance
20. Minnesota Outdoor Heritage Alliance
21. Minnesota Waters
22. Sierra Club - North Star Chapter

Local Government

23. Association of Minnesota Counties
24. League of Minnesota Cities
25. Metropolitan Inter-County Association
26. Minnesota Association of County Officers
27. Minnesota Association of Soil and Water Conservation Districts
28. Minnesota Association of Townships
29. Minnesota Association of Watershed Districts
30. Minnesota County Engineers Association
31. Minnesota Rural Counties Caucus
32. Minnesota Association of County Planning and Zoning Administrators

Others

33. Minnesota Viewers Association
34. Wetland Professionals Association
35. Wetland Bankers

Federal Government

36. Army Corps of Engineers
37. Fish and Wildlife Service
38. Natural Resources Conservation Service

State Government

39. Board of Water and Soil Resources
40. Department of Agriculture
41. Department of Natural Resources
42. Department of Transportation
43. Pollution Control Agency

2. Timeline

February – December 2006: Work with the BWSR Wetland Committee and stakeholder committee to assess WCA and identify issues

November 2006 Wetland Roundtable
December 2006 Report Presented to Governor

II. WETLAND REPORTING AND ACCOUNTING

A. Mn Comprehensive Wetland Assessment, Monitoring, and Mapping Strategy (CWAMMS).

Executive Summary from Strategy Report

Existing efforts to comprehensively assess wetland status and trends in Minnesota are inadequate. Data collected on proposed wetland loss and compensatory mitigation by state and federal wetland regulatory programs lacks coordination, may not reflect actual (versus permitted) activities and does not adequately account for exempt and illegal wetland loss. Data collected by government agencies and non-governmental conservation organizations on voluntary wetland restorations is inconsistent and incomplete. National wetland and land use monitoring efforts by the U.S. Fish and Wildlife Service (US FWS) and the Natural Resources Conservation Service do not sample intensively enough in Minnesota to draw accurate conclusions on the state's wetland status and trends.

Even less comprehensive data are available concerning the status and trends in wetland quality across the state. Essentially all that is known about Minnesota wetland quality comes from anecdotal observations of impaired wetlands, experience with a few local projects to improve or restore wetland habitat, data collected for local comprehensive wetland management plans, and limited data from initial efforts to develop field methods of wetland quality assessment.

To address these deficiencies, a group of state and federal agencies collaborated to develop a Minnesota Comprehensive Wetland Assessment Monitoring and Mapping strategy (CWAMMS). The primary agency participants were: the Minnesota Board of Water and Soil Resources (BWSR), the Minnesota Department of Natural Resources (DNR), the Minnesota Department of Agriculture (MDA), the Minnesota Pollution Control Agency (PCA) and the US FWS.

The overall goal of the CWAMMS is to develop a broadly understood, scientifically sound strategy for monitoring and assessing status and trends in wetland quantity and quality statewide. Under this goal there are five strategic objectives:

1. Establish accurate baseline data on wetland quantity and quality by wetland class (type) statewide and in each of four geographic regions: the Prairie Parkland, Eastern Broadleaf Forest, the Laurentian Mixed Forest, and the Paleozoic Plateau.
2. Accurately assess future changes (trends) in wetland quantity and quality by wetland class in the four geographic regions listed in objective 1 and statewide.

3. Associate changes in wetland quantity and quality with causal mechanisms such as urban and rural development, agricultural and silvicultural activities, transportation, mining, natural factors, conservation programs and other activities.
4. Provide statewide reports of status and trends in Minnesota wetland quantity every three years beginning in 2009 and provide similar status and trend reports on wetland quality every two to three years in select regions beginning in 2009. The different reporting times reflect the differences in collecting and analyzing data for wetland quantity versus wetland quality. These reports will be used to assess the effectiveness of wetland regulatory and non-regulatory programs and will provide a sound basis for future state wetland policy and management decisions.
5. Contribute to the long-term understanding of Minnesota's wetland health (functions), distribution, structure and processes.

To assess status and trends in wetland quantity, three separate but complementary approaches are recommended:

- ?? Develop and implement an integrated, geo-referenced online database for tracking wetland permitting and conservation program activities.
- ?? Update the National Wetland Inventory (NWI) in Minnesota on a regular basis.
- ?? Initiate a statewide, random sample survey using remote sensing data to track wetland gain and loss.

Wetland quality assessment will be conducted at three scales: landscape, qualitative field observational, and intensive sampling in individual wetland basins. Updated wetland polygons in the primary sample plots will be used as a sample frame to randomly select wetlands to be sampled to assess wetland quality.

Data from the various assessment approaches will be integrated and managed through several related geo-referenced databases maintained by participating agencies and partners. Collectively, these geo-databases will be accessible through a single wetlands data warehouse that can be queried by each partner agency and other users as appropriate.

The CWAMMS will be implemented through the collaborative efforts of local governments, state and federal agencies and non-governmental organizations.

Specific roles and responsibilities have been identified.

Partial funding for implementing the CWAMMS has been received from the US EPA (for three years) and through a state legislative appropriation to the DNR. The BWSR previously received a separate grant from the US EPA to plan the initial module of an integrated online permit and wetland accounting system. US EPA funds will also enable the PCA to conduct pilot tests of wetland quality assessments. Initial stages of implementing the CWAMMS will begin in early 2006.

B. Improve Wetland Reporting and Accounting - WCA Local Government Unit Reporting

In April 2006, the BWSR Wetland Committee reviewed and recommended approval of the following to address wetland reporting and accounting issues.

This change can be implemented by developing guidance and making reporting to BWSR a requirement of being an LGU.

1. Background - Current WCA Reporting System

The only reporting information that BWSR requires for the WCA are from the local government units (LGU) that BWSR provides grant funds (counties). Cities, townships, watershed districts, and watershed management organizations are not required to report WCA activities to BWSR.

However, the non-county WCA LGU's are encouraged to provide their data to their county to be included in the county report.

The report is accomplished via the WCA reporting module within the eLINK software online reporting system. The system currently collects the following data:

1. Number of landowner contacts during the year
2. Landowner contacts that resulted in wetlands being avoided
3. Wetland acres that were avoided completely
4. Landowner contacts that resulted in wetland impacts being minimized
5. Wetland acres for which impacts were minimized
6. Number of exemption determinations approved by LGU(s)
7. Wetland acres impacted via exemptions
8. Number of formal no-loss determinations approved by LGU(s)
9. Number of calls that required no further action
10. Number of Wetland Banking plan applications reviewed
11. Number of wetland banking-site monitoring assessments completed
12. Number of replacement plans reviewed
13. Number of acres drained/filled under WCA replacement plans
14. Number of acres replaced via WCA replacement plans
15. For all actual projects initiated during the reporting year, report the number of WCA projects in your county/LGU in each of the following categories:
<0.2 acres; 0.2-0.5 acres; 0.51-1.0 acres; 1.1-3.0 acres; and >3.0 acres
16. From the projects reported in item #15 please report the percentage of those projects for each of the wetland types listed below:
1; 1L; 2; 3; 4; 5; 6; 7; 8; and R.
17. Which wetland type generated your biggest workloads?
18. How many TEP determinations were required?
19. How many non-TEP field checks of wetland delineation were conducted?
20. How many cease Cease-and-Desist Orders were issued by DNR to enforce WCA?
21. How many Cease-and-Desist Orders were issued by LGU's to enforce local wetland ordinances?

22. How many Restoration Orders were issued?
23. How many staff days were spent attending WCA training/information sessions?

2. Background - WCA LGU Survey

As part of the WCA Assessment a survey of WCA LGU's was undertaken, this survey asked the LGU staff to provide their comments and suggestions on improving the wetland reporting and accounting system. Most of these comments have focused on WCA reporting. The suggestions and comments have been grouped into three categories:

- ?? Electronic/Online Reporting;
- ?? Exemptions; and
- ?? Data Issues

Significant comments and suggestions within these groupings are listed below.

Electronic/Online Reporting

- ☒ Develop an online system of applications and exemptions, project oriented
- ☒ Develop a standard spreadsheet that LGU's can use to track activity throughout the year that can be downloaded to BWSR for annual reporting purposes
- ☒ Include reporting of conservation easements in eLINK
- ☒ Modify the WCA module to allow printing of data by LGU's
- ☒ Include a GIS or mapping system to record wetland determinations, all mitigation and delineation data
- ☒ Have a web-based system where LGU's would enter permit information each time a notice of decision is sent out

Exemptions

- ☒ Record exemptions to the parcel the exemption was used on
- ☒ Require an application for exemptions
- ☒ Require reporting the numbers and acres of each exemption

Data Issues

- ☒ Develop a tracking mechanism for CRP that is converted to agriculture and that is left idle after the contract is not renewed, this would have to come from NRCS
- ☒ Improve the guidance to LGU's to improve the consistency and accuracy of reporting
- ☒ Have county's report acres restored/created under all programs (federal and state)
- ☒ Simplify WCA, contains so much information that few people really understand it
- ☒ Current report system is inadequate and it provides speculative data, the system needs to measure more than wetland loss or gain in acres, should advance to address wetland function, the data collected should be changed accordingly
- ☒ Reporting systems at the federal, state and local systems needs to be seamless
- ☒ The NWI should be updated
- ☒ Some impacts to wetlands are not currently reported – encroachment, fragmentation, long-term deterioration – we need to account for these “impacts”
- ☒ Impacts/restorations could be reported by subwatershed to better gauge their impact

- ☒ LGU’s should get “credit” for the work they do that does not only involve dirt moving.
- ☒ Applications for Withdrawal of Wetland Credits should be submitted before any impacts occur
- ☒ Wetland banks should annually report to their LGU’s on credits sold

3. Option for Improvements

In response to these comments as well as to address the needs for improved data a WCA/Public Water Program (PWP) Workgroup has been established to review the current system of WCA reporting by LGU’s and reporting that occurs under the Department of Natural Resources Public Waters Work Permit Program. Changes to the reporting system should address the following:

- ?? Improve the accuracy, consistency and completeness of data
- ?? Be necessary to measure the effectiveness of Program implementation
- ?? The value of the data be commensurate with the effort to collect and report it

The Workgroup will be charged with examining and making recommendations on the manner or system used to collect and manage data and the specific data elements to be collected and managed. The Workgroup will also discuss how it will engage the WCA Assessment Stakeholder Advisory Committee in its work. The Workgroup should consist of LGU, BWSR, DNR, U.S. Army Corps of Engineers, and NRCS staff. This review should be begun immediately and completed concurrently with the Assessment.

4. Wetland Reporting Work Group

The Wetland Reporting Work Group has met once and begun to develop improvements to the WCA reporting system. An initial proposed new list of data for LGU’s to report to BWSR is shown below. Future meetings of the Work Group will focus on refining this list of data, as well as addressing how this data will be submitted and used by BWSR.

DRAFT - Wetland Conservation Act Reporting Form - DRAFT
Implementation Activities Information

For Calendar Year _____

1. Number of replacement plans reviewed that included replacing impacts by the following methods:

Wetland Banking _____ Onsite Replacement _____
Combination of Wetland Banking and Onsite Replacement _____

2. Number of replacement plans approved? _____

3. Number of replacement plans approved by activity category.

Drainage _____ Agriculture _____ Commercial Development _____
Residential Development _____ Individual Property Improvement _____
Other (Specify _____) _____

4. Acres of wetland drained or filled. _____

5. Acres of wetland excavated with replacement being required _____

6. Acres of wetland excavated without replacement being required _____
7. Acres of replacement credit approved in the following categories
- A. Hydrologic and vegetative restoration of completely drained wetland _____
 - B. Hydrologic restoration of partially drained wetland _____
 - C. Vegetative restoration of farmed wetlands with hydrology still intact _____
 - D. Preservation of wetlands restored under conservation easements and legally eligible to be drained _____
 - E. Vegetative restoration of wetlands dominated by invasive/exotic species _____
 - F. Establish upland buffer areas _____
 - G. Preservation of wetlands having exceptional natural resource values _____
 - H. Creation of wetland on uplands _____
 - I. Water quality treatment areas/stormwater ponds _____

8. Number of exemption determinations approved by the LGU, acres of conversion to non wetland, acres of permanent adverse impact, and acres of increased wetland area for each of the exemption categories

	Number of Exemption Determinations	Acres of Conversion to Nonwetland	Acres of Permanent Adverse Impact	Acres of Increased Wetland Area
1. Agricultural Activities				
2. Drainage				
3. Federal Approvals				
4. Wetland Restoration				
5. Incidental Wetlands				
6. Utilities; Public Works				
7. Forestry				
8. Approved Development				
9. De Minimis				
10. Wildlife Habitat				

9. Number of no loss determinations approved by the LGU, acres of conversion to non wetland, and acres of permanent adverse impact for each of the no-loss categories.

	Number of No Loss Determinations	Acres of Conversion to Nonwetland	Acres of Permanent Adverse Impact
A. Work did not impact a wetland			
B. Excavation limited to debris			
C. Temporary or seasonal water management			
D. Surface impoundment for waste materials or water treatment			
E. Conducted as part of a replacement or banking plan			
F. Excavation in a stormwater pond or removal of contaminated substrate			
G. Impact rectification activity			

10. Number of cease and desist orders issued by law enforcement category.

DNR Conservation Officer _____
 County Sheriff _____
 Municipal Law Enforcement _____

11. Number of restoration orders issued. _____

12. Number of wetland boundary determinations made. _____

13. Number of replacement wetland monitoring reports received. _____

III. ALTERNATIVES TO THE EXEMPTIONS

On July 26, 2006, the BWSR Wetland Committee reviewed and recommended approval of changes to the WCA exemptions as shown by ~~strikeout~~ and underline. Key considerations of Wetland Committee in reviewing the Stakeholder exemption discussion points were:

- 1. Address the Governor’s request to “more closely align with the principle of no net loss”*
- 2. Maintain the “integrity” of the exemptions*
- 3. Update and simplify*

A. Wetland Restoration/Wildlife Habitat Exemptions

The BWSR Wetland Committee is recommending amending the Wildlife Habitat Exemption to condition its use on “the primary purpose of improving wildlife habitat”.

This recommended change can be implemented via rule.

Mn Rule 8420.0122, subpart 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.

Mn Rule 8420.0122, subpart 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 if within the permanently and semipermanently flooded areas of type 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

(3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district or 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 Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000" or similar criteria approved by the board; or

B. duck blinds.

This exemption is for projects that have the primary purpose of improving wildlife habitat.

B. Federal Approvals

The BWSR Wetland Committee is recommending deleting the existing Federal Approvals exemption and replacing it with a waiver, which is shown at the end of the Alternatives to the Exemptions section of this document. However, the recommendation is for the federal approvals section of the waiver to only correspond to B of the current exemption.

This recommended change can only be implemented by statute.

~~Mn Rule 8420.0122, subpart 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 United States 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 federal 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 the board of water and soil resources, the department of agriculture, the department of natural resources, and the pollution control agency.~~

C. Utilities/Public Works

The BWSR Wetland Committee is recommending adding a definition of public works to the Rule and repealing the existing exemption and replacing it with a consolidated and simplified exemption, as shown below.

This recommended change can only be implemented by statute.

Public works means works, such as water supply systems, wastewater treatment facilities, constructed for public use especially when financed and owned by the government.

Proposal to consolidate and simplify the utilities/public works exemption.

Mn Rule 8420.0122, subpart 6. Utilities; Public Works. A replacement plan for wetlands is not required for:

A) new placement or maintenance, repair, enhancement or replacement of existing utility or utility-type, service, including pipelines, if:

1. the direct and indirect impacts of the proposed project 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 operation, routine maintenance or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion, or additional draining or filling of a wetland either wholly or partially; or

1. repair and updating of existing individual sewage treatment systems necessary to comply with local, state and federal regulations.

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 approved best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local governmental unit after the emergency work has been completed.

~~Subp. 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.~~

D. De minimus

The BWSR Wetland Committee is recommending eliminating the de minimus exemption within the Shoreland Wetland Protection Zone and reducing the allowable amount of the exemption by 50%.

These recommended changes can only be implemented by statute.

Mn Rule 8420.0122, subpart 9. **De minimis.**

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 as part of a project:

(1) ~~10,000~~ 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 greater than 80 percent area;

(2) ~~5,000~~ 2,500 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; or

(3) ~~2,000~~ 1,000 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 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 within the wetland and within 300 feet of the impact.

E. Incidental Wetlands

The BWSR Wetland Committee is recommending no changes to the Incidental Wetlands Exemption.

Mn Rule 8420.0122, subpart 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 beaver. 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.

F. Approved Development

The Wetland Committee is recommending repeal of the Approved Development Exemption.

This recommended change can only be implemented by statute.

~~Mn Rule 8420.0122, subpart 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~~

G. Forestry

The BWSR Wetland Committee is recommending no specific change to the Forestry Exemption, but is recommending to eliminate the requirement that replacement is only required ten years after the drain, fill or excavation impact is undertaken in compliance with one of the exemptions. This change would require replacement if the primary purpose of a forest road changes to a non-forest management purpose.

Mn Rule 8420.0122, subpart 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.

H. Agricultural Activities

The BWSR Wetland Committee is recommending deleting most of the existing Agricultural Activities exemption and replacing it with a waiver, which is at the end of the Alternatives to the Exemptions section of this document. This waiver will be separate from the exemption section of the statute and rule. In addition, this proposal also simplifies the exemption, and eliminates current provisions that allow wetland impacts without Swampbuster coverage.

These recommended changes can only be implemented by statute.

Statute changes that would be made in conjunction with the recommended waiver:

103G.2241 Exemptions.

Subdivision 1. **Agricultural activities.** (a) A replacement plan for wetlands is not required for:

~~(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;~~

~~(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:~~

~~(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and~~

~~(ii) has not been restored with assistance from a public or private wetland restoration program;~~

~~(3) 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 Agricultural Stabilization and Conservation Service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;~~

~~(4) 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;~~

~~(5) 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;~~

~~(6) wild rice production activities, including necessary diking and other activities authorized under 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;~~

~~(7) 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~~

~~(8) agricultural activities in a wetland that is on agricultural land:~~

~~(i) annually enrolled in the federal Agriculture Improvement and Reform Act of 1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on January 1, 2000; or~~

~~(ii) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and 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.~~

~~(b) Land enrolled in a federal farm program under paragraph (a), clause (8), is eligible for easement participation for those acres not already compensated under a federal program.~~

~~(c) The exemption under paragraph (a), clause (4), 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.~~

I. Drainage

The BWSR Wetland Committee is recommending repealing subpart E as it is obsolete.

This recommended change can only be implemented by statute.

Mn Rule 8420.0122, subpart 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 ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section [103G.222](#).

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 Statutes, 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.

For items C and D, the landowner must provide documentation that the wetlands which 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. ~~E.~~ 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. F. 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 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.

J. Overall/General

1. Overall/General: Require LGU interaction for all exemptions

The BWSR Wetland Committee recommends no change, unless and until a study, as proposed in #2, is undertaken that documents the need for changing the application of the exemptions.

Options.

1. No change. Leave the exemption process unchanged, in that a landowner proposing an activity under an exemption can choose to contact the LGU for determination of whether or not the activity is exempt.
2. Conduct audit or study to estimate total wetland impacts resulting from exemptions. This estimate would be used to pursue public funding to restore wetlands to compensate for these impacts.
3. Landowner notifies LGU. Landowners would be required to notify the LGU prior to implementing an activity under an exemption. The notification would describe the activity, the exemption being claimed, the wetland type, and an estimate of the wetland area impacted.
4. LGU's required to issue exemption determinations. Landowners would be required to notify the LGU prior to implementing an activity under an exemption. The notification would describe the activity, the exemption being claimed, the wetland type, and an estimate of the wetland area impacted. Within X days the LGU would be required to issue an exemption determination, or deny application of an exemption and direct the landowner to pursue another regulatory process.
5. Require sequencing for all exemptions. Landowners would be required to notify the LGU prior to implementing an activity under an exemption. The notification would describe the activity, the exemption being claimed, the wetland type, how sequencing (avoidance and minimization) has been applied to the project, and an estimate of the wetland area impacted. Within X days the LGU would be required to (1) issue or an exemption determination, including approval of sequencing, or (2) reject the sequencing, or (3) deny application of the exemption and direct the landowner to pursue another regulatory process.

6. Repeal Exemptions. Require the development of a replacement plan for all wetland impacts.
7. Application. In addition to the above options, these could be applied to some or all of the exemptions.

2. Scope of Exemption Standards

The BWSR Wetland Committee is recommending the Scope of Exemption Standards (Mn Rule 8420.0115) be amended to: (1) add the requirement to comply with avoidance and minimization provisions of the Rule when conducting an activity under an exemption; and (2) to eliminate the requirement that replacement is only required ten years after the drain, fill or excavation impact is undertaken in compliance with one of the exemptions. This change would require replacement if the primary purpose of the area affected by the exemption changes to a non-exempt purpose.

The recommended changes can only be implemented as follows: (1) by rule and (2) by statute.

8420.0115 Scope of Exemption Standards

Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government units designee for advice on determining whether a proposed project is eligible for man exemption and to evaluate alternatives to avoid or minimize wetland impacts.

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.

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, excavation, or filling.

Wetlands may not be partially drained, excavated, or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact. Exemptions may not be combined on a wetland that is impacted by a project.

Present and future owners of wetlands drained or filled without replacement under an exemption in part 8420.0122, ~~subparts 1 and 2, item B,~~ can make no use of the wetland area after it is drained, excavated, or filled, ~~other than as agricultural land~~ except as provided in agricultural activities, drainage and forestry exemptions, for ten years after the draining, excavation, or filling, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222. Also, for ten years the wetland may not be restored for replacement credit. Except, for land in public ownership, at the time of draining, excavation, 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 ten-year period expires, the name of the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgement.

A person conducting an activity in a wetland under an exemption in part 8420.0122 shall ensure that:

- A. Appropriate erosion control measures are taken to prevent sedimentation of the water;
- B. The activity does not block fish activity in a watercourse; and
- C. The activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices as listed in part 8420.0112, and water resource protection requirements established under Minnesota Statutes, chapter 103H.
- D. The activity is conducted in compliance with the impact avoidance and minimization requirements of 8420.0520.

3. Treat all Wetlands the Same

The BWSR Wetland Committee reviewed this issue on October 25. The recommendation from the Committee is to set this issue aside for purposes of the Assessment.

Discussion: The current WCA rule provides different application of the regulations on different wetland types in several areas. These are:

- ?? *Excavation* is regulated in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if excavation includes filling or draining or results in conversion to nonwetland.
- ?? Specific application of portions of the *Agricultural Activities Exemption* is limited to wetland types, 1, 2, and 6.
- ?? Specific application of portions of the *Drainage Exemption* is limited to wetland types, 1, 2, and 6, and in one provision specifically excludes this exemption from applying to wetland types 3, 4, and 5.

- ?? Specific application of the *De minimus Exemption* generally allows higher exempt impact amounts to wetland types 1, 2, 6, and 7 (conversely exempt impacts are limited to 400 square feet to types 3, 4, and 5)
- ?? Specific application of the *Wildlife Habitat Exemption* is limited if the area of deposition, and excavation is within the permanently and semipermanently flooded areas of type 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
- ?? Water management plans are required to address *High Priority Regions* for those areas to qualify for wetland preservation, enhancement, restoration, and establishment. Plans should give strong consideration to identifying as high priority areas all type 1 or 2 wetlands, and other wetlands at risk of being lost by permanent conversion to other uses.
- ?? *Replacement Plan Procedures* restates the language, “No person shall drain, excavate in the permanent or semipermanently flooded areas of type 3, 4, or 5 wetlands, or fill a wetland, wholly or partially, or otherwise impact wetlands without first having a wetland replacement plan or other determination approved by the local government unit.”
- ?? Under *Replacement Plan Procedures, determination of impact avoidance*, for projects proposing impacts to type 3, 4, or 5 wetlands, the local government unit is required to determine that there are no environmentally preferable alternatives that would avoid the impact
- ?? *Wetland Replacement Standards* specify that the bottom contours of created types 3, 4, and 5 wetlands should be undulating, rather than flat, to provide a variety of water depths, comparable to natural wetlands in the vicinity of the replacement, and be consistent with part [8420.0547](#), subpart 2.

This issue of differential treatment most often comes up in the application of excavation and the De minimus exemption. When WCA was enacted it provided a higher level of protection to wetland types 3, 4, and 5 as most of these wetlands are regulated under the DNR Protected Waters Program, and wetland science had yet to identify the benefits of the seasonal and ephemeral wetlands.

On a programmatic level, providing different levels of protection to different wetland types makes the policy statement that some wetland types are more important than others, adds complexity and cost to program administration, and helps ensure that future wetland impacts will disproportionately occur in wetland types 1, 2, 6, and 7.

K. Proposed Waiver – Federal Approvals and Agricultural Activities

The BWSR Wetland Committee is recommending deleting the existing Federal Approvals exemption and most of the existing Agricultural Activities exemption and replacing them with a waiver. The recommendation is for the federal approvals section of the waiver to only correspond to B of the current exemption. This waiver will be separate from the exemption section of the statute and rule.

This recommended change can only be implemented by statute.

Waiver of replacement requirement.

The requirement to replace wetland impacts is waived for projects where all wetland impacts are regulated or permitted under a federal or state statute that requires, at a minimum, the replacement ratios as provided by Minnesota Rule 8420.0549.

Subpart 1. United States Department of Agriculture-approved wetland activities. Wetlands activities authorized under the Swampbuster provisions of the federal farm program where all impacts to wetlands are replaced and USDA written documentation eligibility, wetland boundary, wetland impact, and extent of any required mitigation are provided to the LGU upon request.

Subpart 2. Activities permitted under Section 404 of the Clean Water Act [USC Title 33. Section 1344] or Section 10 of the Rivers and Harbors Act Of 1899 [USC Title 33. Section 403]. Activities covered under this section include wild rice production and aquaculture.

IV. WETLAND REPLACEMENT

On September 13, 2006 and again on September 27, the BWSR Wetland Committee reviewed the Stakeholder identified wetland replacement issues. The Stakeholder identified issue, staff recommendation, and BWSR Wetland Committee recommendations are all included below. Key considerations of Wetland Committee in reviewing the wetland replacement issues identified by the Stakeholders were:

- 1. Address the Governor’s request to “more closely align with the principle of no net loss”*
- 2. Improve the quality of replacement wetlands and the ecological integrity of wetland replacement*
- 3. Increase the efficiency in WCA administration*

A. Refine and define the terms in-kind, in-place and in advance.

Discussion: WCA defines the key terms of in-kind, in-place and in advance differently than Section 404. Current WCA definitions are as follows:

Wetland replacement is considered *in-kind* if one of the following applies:

- ?? the replacement wetland is of the same type as the impacted wetland;
- ?? the replacement wetland is within the same county as the impacted wetland; or
- ?? the replacement wetland is in the same watershed as the impacted wetland.

In place means siting of wetland replacement in the following priority order:

1. on site or in the same minor watershed as the affected wetland;
2. in the same watershed as the affected wetland;
3. in the same county as the affected wetland;
4. in an adjacent watershed or county to the affected wetland; and

5. statewide, for : (a) wetlands affected in greater than 80 percent areas; and (b) public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven county metropolitan area must be replaced in the affected county or, if no restoration opportunities exist in the county, in another seven-county metropolitan area.

In advance means replacement of wetland functions and values must be completed before or concurrent with the actual draining, excavation, or filling of a wetland

To clarify these terms, the BWSR and the Corps have been discussing these terms and developing common definitions as part of the proposed Wetland Mitigation MOU. The working draft of the St. Paul Districts’ wetland regulatory policy includes the wetland plant community definitions shown below, that have also been incorporated into the Wetland Mitigation MOU discussions. These terms and their proposed definitions are as follows:

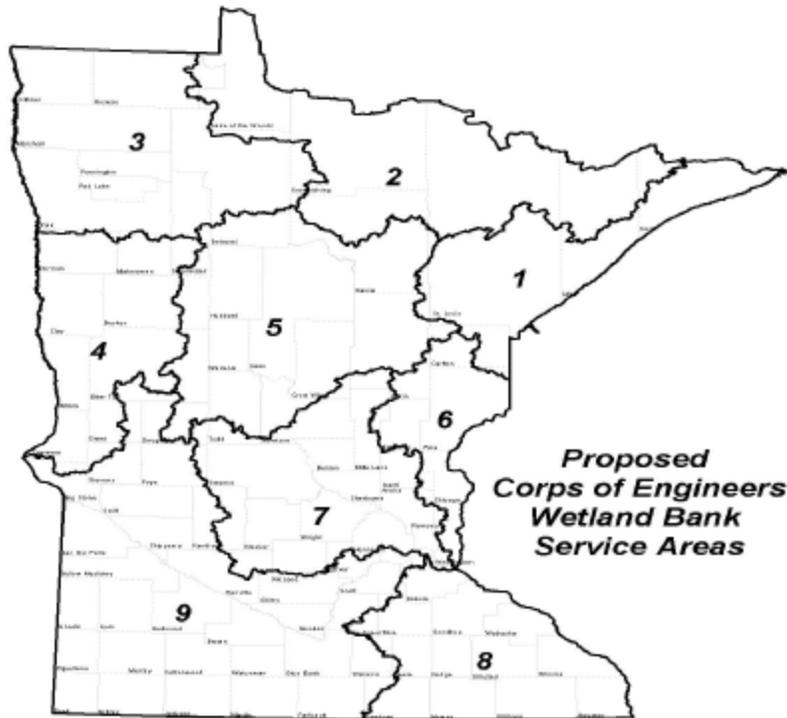
In-kind means: the 12 “Wetland Plant Community Types” as established by S. Eggers and D. Reed. (See table shown below)

Wetland Plant Community Types?	Classification of Wetlands and Deepwater Habitats of the United States (Cowardin <i>et al.</i> 1979)	Fish and Wildlife Service Circular 39 (Shaw and Fredine 1971)
Shallow, Open Water	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved	Type 5: Inland open fresh water
Deep Marsh	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved; and emergent; persistent and nonpersistent	Type 4: Inland deep fresh marsh
Shallow Marsh	Palustrine; emergent; persistent and nonpersistent	Type 3: Inland shallow fresh marsh
Sedge Meadow	Palustrine, emergent; narrow-leaved persistent	Type 2: Inland fresh meadow
Fresh (Wet) Meadow	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat; Type 2: Inland fresh meadow
Wet to Wet-Mesic Prairie	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat; Type 2: Inland fresh meadow

Calcareous Fen	Palustrine; emergent; narrow-leaved persistent; and scrub/shrub, broad-leaved deciduous	Type 2: Inland fresh meadow
Open Bog or Coniferous Bog	Palustrine; moss/lichen; and scrub/shrub; broad-leaved evergreen; and forested; needle-leaved evergreen and deciduous	Type 8: Bog
Shrub-Carr or Alder Thicket	Palustrine; scrub/shrub; broad-leaved deciduous	Type 6: Shrub swamp
Hardwood Swamp or Coniferous Swamp	Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and deciduous	Type 7: Wooded Swamp
Floodplain Forest	Palustrine; forested; broad-leaved deciduous	Type 1: Seasonally flooded basin or flat
Seasonally Flooded Basin	Palustrine; flat; emergent; persistent and nonpersistent	Type 1: Seasonally flooded basin or flat

⁷ Plant communities are based on: S. Eggers and D. Reed. 1997. *Wetland Plants and Plant Communities of Minnesota and Wisconsin. Second Edition.* St. Paul District, U.S. Army Corps of Engineers. 264 pp.

In place means: within a major (81) watershed or the Bank Service Area. (See map below)



In advance means: (1) approved bank credits; or (2) compensation sites that have established wetland hydrology and vegetation, but the vegetation may not be mature. The minimum requirement for (2) is that the compensation site has wetland hydrology and hydrophytic vegetation established a full growing season (April-October) prior to the authorized discharge of dredged/fill material. Further, the site must meet all performance standards applicable to that development stage of the compensation site.

BWSR Staff Recommendation: BWSR staff recommend amending WCA statute and rule, as appropriate, to incorporate these revised definitions of in-kind, in-place and in advance.

BWSR Wetland Committee: The Wetland Committee accepts the staff recommendation on the definitions of in-kind, in-place, and in advance, with the clarification to in place as follows:

In-place means: for project specific replacement within a major (81) watershed or for banking within one of the (9) Bank Service Areas.

These recommended changes can only be implemented by statute (definition of in place) and rule (definitions of in-kind and in advance).

B. Develop consistent wetland replacement ratios with the U.S. Army Corps of Engineers.

Discussion: WCA/Section 404 consistency in determining replacement ratios would provide significant programmatic benefits and increased regulatory efficiency. As shown in the table below, WCA and the U.S. Army Corps of Engineers (Corps) have significant differences in determining replacement ratios for permitted activities. BWSR and the Corps have been discussing this issue as part of the development of a proposed Wetland Mitigation Memorandum of Understanding (MOU). These discussions have resulted in a proposal that addresses several wetland management issues:

1. Increasing the ratio for replacement that is not completed in advance addresses temporal loss concerns. Even when replacement is completed in advance (on a project specific basis and for new banks) the replacement still results in a temporal loss of wetland functions.
2. Banking is generally preferred over project specific replacement, and this proposal would create an increased incentive to use banking for replacement.
3. Reducing project specific replacement would reduce LGU workload in overseeing replacement plans and mitigation sites. The need to approve, monitor and inspect project specific mitigation sites will be reduced if more mitigation occurs through wetland bank.
4. The proposed replacement ratios will reduce the overall net loss in wetlands that has been documented under the WCA.

WCA/Section 404 Mitigation Ratio Discrepancies and Proposal

Impact Location	Replacement Location (in place)	Type of Replacement Wetland (in type)	Replacement Process (in time)	Minimum Replacement Ratio		
				WCA Existing	WCA/404 Proposed* (see notes)	Section 404
> 80% area (see Fig. 2) (or agricultural land – WCA)	In-Place	Same type as impact wetland	In advance	1:1	1:1	1:1
			Not in advance	1:1	2:1	1.25:1
		Different type	In advance	1:1	1.25:1	1.25:1
			Not in advance	1:1	2:1	1.5:1
	Not In-Place	Same type as impact wetland	In advance	1:1	1.25:1	1.25:1
			Not in advance	1:1	2:1	1.5:1
		Different type	In advance	1.25:1	1.5:1	1.5:1
			Not in advance	1.5:1	2:1	1.5:1
< 80% area (See Fig. 2) (and non-agricultural land – WCA)	In-Place	Same type as impact wetland	In advance	2:1	2:1	2:1
			Not in advance	2:1	3:1	2.5:1
		Different type	In advance	2:1	2.25:1	2.5:1
			Not in advance	2:1	3:1	2.5:1
	Not In-Place	Same type as impact wetland	In advance	2:1	2.25:1	2.5:1
			Not in advance	2:1	3:1	2.5:1
		Different type	In advance	2.25:1	2.5:1	2.5:1
			Not in advance	2.5:1	3:1	2.5:1

* Notes:

1. Proposal: Replacement ratio increases by 1:1 for not in advance; ratio increases by 0.25 for not in place and not in type. Maximum ratios are 2:1 in greater than 80% areas and 3:1 in less than 80% areas
2. In the greater than 80% Area, the replacement ratio will not increase if bank credits are not available in the Bank Service Area in which the impact would occur.

BWSR Staff Recommendation: Staff recommend the replacement ratios for the WCA be modified as shown in the above table to be consistent with the Corps, address issues relating to temporal loss and continuing existing policy to provide incentives for in place and in type replacement.

BWSR Wetland Committee: The Committee recommends the proposed wetland replacement ratios in concept with no increase in replacement ratio if bank credits are not available in the Bank Service Area in which the impact would occur. This provision only applies in the greater than 80% area.

These recommended changes can be implemented by rule.

C. Develop consistent wetland replacement credit options and a single wetland credit denomination, again coordinated with the Corps of Engineers.

Discussion: Similar to the above discussion regarding replacement ratios, the WCA and Corps have significant differences in determining wetland replacement credits. The most significant differences are that WCA has two types of credit (New Wetland Credit and Public Value Credit), while Section 404 has only one. Within these two different credit schemes are many differences in how different actions are provided credit. These multiple differences results in increased costs and uncertainty among landowners, applicants, LGU's, and state and federal staff. Having a unified set of methods to determine replacement credit will provide significant programmatic benefits.

BWSR and the Corps have been discussing this issue as part of the development of a proposed Wetland Mitigation MOU. The table shown below identifies the current methods and crediting authorized under WCA and Section 404, as well as a proposal for a unified system.

BWSR Staff Recommendation: Staff recommend the wetland replacement credit options for the WCA be modified as shown in the attached table titled, "Proposed and Current Replacement Methods and Amount of Credit Under State and Federal Regulatory Programs" to be consistent with the Corps, to simplify the current WCA credit system and to create incentives to develop quality functions and values to replace those impacted by regulated activities.

BWSR Wetland Committee: The Committee recommends the proposed wetland replacement credit options in concept. The possible credit for, Enhancement-Wetlands dominated by invasive or exotic species should be increased to 75% and additional restrictions on possible use and crediting of preservation credits will be developed.

These recommended changes can be implemented by rule.

Proposed and Current Replacement Methods and Amount of Credit Under State and Federal Regulatory Programs

	Affected Wetland	Replacement Method	Proposed	Current Amount of Credit (x:1 = x acres of treatment to get 1 acre of credit)	
				WCA / PWPP(DNR)	Section 404
Restoration	Completely drained or filled	Hydrologic and vegetative	<u>100% of wetland area restored</u>	NWC: 100% of area restored (MR 8420.0541 Subp. 2)	100% of area restored
	Partially drained	Hydrologic	<u>50% to 100% of wetland area restored, depending on functional analysis</u>	in "<80% areas": NWC: 25% of total wetland area restored (includes areas that remained as wetland); requires establishment of permanent, native, non-invasive vegetation w/in restored wetland area and on upland buffer. or PVC: 50% of degraded wetland area restored in ">80% areas": NWC: 25% of total area (MR 8420.0541 Subp. 3 and Guidance)	Up to 100% of total wetland area restored, depending on functional analysis
	Farmed wetlands where hydrology is still intact (i.e., no ditches, tiles, etc.)	Vegetation	<u>50% to 100% of wetland area restored, depending on functional analysis and cropping history under normal circumstances (at least 6 out of 10 years)</u>	NWC: Up to 100% of area restored if farmed more than 10 years of previous 20; percent based on frequency of farming PVC: Up to 50% of wetland area restored if farmed at least six of previous 20 years (MR 8420.0541 Subp. 5)	Up to 100% of total wetland area restored, depending on functional analysis

	Affected Wetland	Replacement Method	Proposed	Current Amount of Credit (x:1 = x acres of treatment to get 1 acre of credit)	
				WCA / PWPP(DNR)	Section 404
	Wetlands previously restored under conservation easements and legally eligible to drain	Preservation	<u>Up to 100% depending on cropping history prior to enrollment in easement program</u>	NWC: 75% of wetland area preserved (MR 8420.0541 Subp. 7)	12.5% of wetland area preserved; wetland must be under demonstrable threat of loss
Enhancement	Wetlands dominated by invasive or exotic species	Establish native, non-invasive vegetation	<u>Up to 75% of wetland area vegetatively restored depending on functional increase</u>	PVC: 25% of total area vegetatively restored (MR 8420.0541 Subp. 8)	Up to 100% of total wetland area restored, depending on functional analysis
	Upland buffer areas	Establish native, non-invasive, permanent vegetation	<u>Required minimum upland buffer width of 50ft. in non-municipal areas and 25 ft. in municipal areas; credit given at 10% (non-native vegetation) to 25% (native vegetation) depending upon quality of buffer; typically, no more than 25% of total credits at a compensation site can be composed of upland buffer.</u>	PVC: 100% of the upland buffer area, up to the size of the replacement wetland it surrounds; must have 50 ft. avg. width in non-municipal areas, 25 ft. avg. width in municipal areas (MR 8420.0541 Subp. 6)	Required minimum upland buffer width of 50ft. in non-municipal areas and 25 ft. in municipal areas; credit given at 10:1 (non-native vegetation) to 4:1 (native vegetation) depending upon quality of buffer; typically, no more than 25% of total credits at a compensation site can be composed of upland buffer.
Preservation	Wetlands having “exceptional natural resource values”	Preservation	<u>12.5% credit for wetland area preserved, wetland must be under demonstrable threat and limited to wetlands that contain special or threatened species</u>	NWC: Up to 12.5% of wetland area preserved; must involve restoration of hydrology or vegetation over 25% of wetland area; must be under documented threat PVC: 25% of wetland area preserved (MR 8420.0541 Subp. 4)	12.5% of wetland area preserved; wetland must be under demonstrable threat of loss

	Affected Wetland	Replacement Method	Proposed	Current Amount of Credit (x:1 = x acres of treatment to get 1 acre of credit)	
				WCA / PWPP(DNR)	Section 404
Creation	Mineral extraction sites	Established via reclamation	<u>Up to 100% of wetland area created depending on functional analysis and after five-year monitoring period</u>	Up to 100% of wetland area (MR 8420.0541 Subp. 9)	
	Non-wetland areas	Wetland creation		100% of wetland area created; performance bond required (MR 8420.0541 Subp. 11)	
	Water quality treatment areas		<u>No credit for single or primary cells; 50% credit for secondary or tertiary cells depending on functional analysis and after five-year monitoring period</u>	NWC: 100% of normal pool area for downstream cell of two-cell system if certain criteria are met PVC: 100% of isolated one-cell system; upstream cell of two-cell system; or one year design pool of stormwater infiltration area that has native, non-invasive vegetative cover (MR 8420.0541 Subp. 10)	No credit for stormwater/water quality cells. Exceptions: second or third cell is designed for saturated soils to 6-inch water depths, has less than a 12-inch bounce lasting less than 7 days for the 10-year, 24-hour event; and is successfully planted to native, non-invasive vegetation. <u>Credit is limited to that acreage of the cell in excess of that needed to comply with local/state requirements.</u> A second compensation site is typically needed to replace additional wetland functions not adequately replaced by cells.

Notes:

1. The information found in the “Section 404” column of this table is based upon the draft Minnesota guidelines (St. Paul District Compensatory Mitigation Policy for Minnesota dated April 2005) and upon Corps comments submitted on July 6, 2006
2. The credit ratios adopted by the Corps are guidelines; they are not regulations
3. NWC – New Wetland Credit: Must be used for all mitigation requirements up to 1:1. may also be used for mitigation requirement exceeding 1:1
4. PVC – Public Value Credit: May only be used for the portion of mitigation requirements exceeding 1:1
5. < 80% areas and > 80% areas refers to areas of the state having less than or more than 80% of its presettlement wetland acreage remaining (see MR 8420.0545)

D. Incorporate performance standards within wetland replacement standards

Discussion: The current performance standards within the WCA rule does not apply to project specific replacement. These differing standards establish unequal replacement requirements with more rigorous standards for wetland banking than for project specific replacement. Banking performance standards, that do not currently apply to project specific replacement, includes limiting availability of credit to meet specifications included in the approved banking plan and requiring Technical Evaluation Panel approval before credits are available.

Additional performance standards, that would help ensure wetland replacement function policies are met, would include mandatory buffers, require the use of licensed native seed contractors, and establishing specific bounce and depth requirements based on wetland plant community goals.

BWSR Staff Recommendation: BWSR staff recommend that the WCA rule be amended to incorporate increased performance standards for all replacement wetlands. Increased performance standards will help ensure that wetland functions are replaced as required by statute and rule.

<p><i>BWSR Wetland Committee:</i> The Wetland Committee accepts the staff recommendation that the WCA rule be amended to incorporate increased performance standards for all replacement wetlands. Increased performance standards will help ensure that wetland functions are replaced as required by statute and rule.</p>

This recommended change can be implemented by rule.

E. Eliminate vegetative restoration option, or require permanent maintenance.

Discussion: Current WCA rule allows up to 100% New Wetland Credit under certain circumstances for vegetative restorations. This has drawn concerns as this activity does not result in new wetland area and can be viewed as negatively contributing to meeting the no net loss policy. However, wetland functions and values are increased under vegetative restorations. In addition, once a wetland has been vegetatively restored, what actions will be undertaken to ensure the wetland does not become degraded in the future?

The proposal to develop both consistent wetland replacement credit options and a single wetland denomination does not eliminate credit for vegetative restorations as the increase in wetland functions and values justifies allowing credit. However, a proposal to address the concern over the longevity of the restoration would include the development of a plan, require ongoing maintenance, and to establish a funding method to ensure the long-term financing of maintenance activities.

BWSR Staff Recommendation: Initially, BWSR staff recommended amending the WCA rule to require applicants proposing vegetative wetland restorations for replacement credit to develop a long-term management and funding plan for the site. However, subsequent discussions have identified this as an issue for all methods of developing replacement credit. Staff are now recommending withdrawing this issue for further work outside of the Assessment.

BWSR Wetland Committee: The Wetland Committee initially requested more information:

1. What kind of plan would be required for vegetatively restored sites?
2. How much financing would be required to manage these sites?
3. How long will maintenance be required, and required to be financed?
4. What happens when land becomes tax forfeit? Who is responsible for managing the site?
5. Define long-term
6. Discuss wetland succession and how that would be addressed under this proposal.

The BWSR Wetland Committee recommends this issue be withdrawn for further work.

F. Eliminate credit for stormwater ponds.

Discussion: Stormwater ponds and water quality treatment ponds have drawn increased attention as stormwater management requirements of the Clean Water Act have been ramped up. More and more of these are being constructed to comply with these requirements, but they can also be eligible for wetland replacement credit under WCA and Section 404 of the Clean Water Act. This opportunity has been negatively viewed as it is characterized as double-dipping (receiving credit under the WCA and stormwater regulations) and these aquatic areas only provide some of the functions of wetlands (most notable water storage and treatment).

The proposal for consistent wetland replacement credit options and a single wetland denomination addresses the issue of credit for stormwater ponds as discussed in #2 above. The proposal does not eliminate credit for stormwater ponds, but reduces the allowed credit and increases the rigor required to gain replacement credit.

The current proposal is to provide no credit for single or primary cells and 50% credit for secondary or tertiary cells depending on functional analysis and after five-year monitoring period.

BWSR Staff Recommendation: BWSR staff recommend limiting wetland replacement credit as proposed in #2 above.

BWSR Wetland Committee: The Wetland Committee accepts the staff recommendation to limit the credit for stormwater ponds as provided in the table, “Proposed and Current Replacement Methods and Amount of Credit Under State and Federal Regulatory Programs”.

This recommended change can be implemented by rule.

G. (a) Provide additional replacement credit for restoring rare plant communities.

(b) Clarify/develop additional guidance for Exceptional Natural Resource Value

Discussion: These issues overlap, as Exceptional Natural Resource Values (ENRV) is a means to provide replacement credit for actions that are not standard replacement methods. Restoring rare communities is an area where ENRV can be used. Changes to this guidance to provide additional incentive to restore rare plant communities, and/or plant communities that take longer to gain replacement credit would create an incentive for these restorations to occur. These projects are generally more costly and have higher risks, creating a disincentive for private bankers to undertake projects of this nature.

BWSR Staff Recommendation: BWSR staff recommend amending the ENRV guidance to provide additional credit for restoring native plant communities.

BWSR Wetland Committee: The Wetland Committee recommend amending the ENRV guidance, in concept, to provide additional credit for restoring rare native plant communities. Options that should be considered during this process are to place the ENRV guidance into rule and restricting preservation to project specific replacement.

This recommended change can be implemented by rule and/or guidance.

V. WETLAND ADMINISTRATION

On October 25 the BWSR Wetland Committee reviewed the Stakeholder identified wetland administration issues. The Committee's recommendations are shown below.

A. WCA and the 60-Day Rule

Stakeholder Issue: Develop proposed decision-making time limitations specific to WCA and separate from the current Minn. Stat. 15.99. Key issues to be developed as part of this proposal include (1) recognize seasonal issues with WCA process reviews; (2) establish a BWSR appeal process to avoid having the resource "lose" due to default approval; and (3) removing the local appeals process from complying with Minn. Stat. 15.99.

Discussion: Minnesota Statutes 15.99 (more commonly known as the 60-day rule) establishes specific procedures and time frames to make decisions related to "zoning, septic systems, or the expansion of the metropolitan urban service area" and WCA. Generally, Minn. Stat. 15.99 requires decisions to be made within 60 days or the application is approved. This default approval can result in a negative outcome for the environment.

Minn. Stat. 15.99 was written for zoning decisions which are conducted by local governments without state oversight. The only appeal process for zoning decisions is through the court system. WCA has state oversight by BWSR, including an appeals process, therefore other options to ensure a timely application process are available.

Due to the nature of wetland delineations they can only be accurately accomplished in the growing season and even then hydrology can be difficult to measure, requiring an extensive monitoring period. The rules should support these realities and not unduly suggest to the development community that regulatory decisions can be completed in 60 days in all weather conditions.

A concern that will be expressed by the development community is how to ensure that decisions are made in a timely manner. A proposal to address this concern would be to establish an appeal mechanism to BWSR and/or additional means to discipline an LGU should it not make a decision within the specified time period.

Another concern is that certain local decisions are required to be appealed to a local committee. This appeal must occur within the original time period. This additional appeal window can be difficult to meet, especially, if the initial 60-day time period has not been extended by the LGU.

BWSR Staff Recommendation: BWSR staff recommend that WCA decisions be exempt from Minn. Stat. 15.99, and that time requirements be established within WCA that will:

- ?? establish similar time frames for decision and application reviews;
- ?? incorporate existing WCA notice and approval requirements;
- ?? recognize seasonal issues with WCA process reviews;
- ?? establish a BWSR appeal process to avoid having the resource “lose” due to default approval; and
- ?? remove the local appeals process from complying with Minn. Stat. 15.99.

BWSR Wetland Committee: The BWSR Wetland Committee recommends the local appeals process, required under Minnesota Rules 8420.0200, Subp. 2B, be exempt from complying with Mn Stat.15.99.

This recommended change can only be implemented by statute.

B. Examine the Number and Size of WCA LGU’s

Stakeholder Issue: Develop a proposal to increase WCA LGU capacity requirements, establish a “default” LGU, and provide BWSR more options to address LGU performance issues that would either increase LGU ability to administer the program or reduce their numbers

Discussion: The Wetland Conservation Act (WCA) determines the responsible local government unit as follows:

- A. Outside of the seven-county metropolitan area, the local government unit is the city council, county board of commissioners or soil and water conservation district, or their delegate.
- B. In the seven-county metropolitan area, the local government unit is the city council, town board, or watershed management organization or soil and water conservation district, or their delegate.
- C. In those cases where an activity or replacement will occur on state land, the agency with administrative responsibility for that land.

This statute has resulted in 303 local government units (not including state agencies) administering WCA, distributed as follows:

Outside of the seven-county metropolitan area.

County.....	37
Soil and Water Conservation District.....	46
City.....	71
Township.....	<u>2</u>
Total.....	156

In the seven-county metropolitan area

County.....	1
Soil and Water Conservation District.....	2
City.....	103
Township.....	29
Watershed Districts/Watershed Management Organization.....	<u>12</u>
Total.....	147

This large number of LGU’s is a concern regarding its impact on the effectiveness and efficiency in administering the WCA. The impacts are felt at the state and local level. Many smaller jurisdictions have few if any WCA activities in any given year making it difficult for the LGU to maintain competency in administering this complex law. When a project comes forward the LGU turns to the county, SWCD and/or BWSR for assistance.

The Stakeholder Advisory Committee discussed using a minimum population as a means to reduce LGU numbers. Current city and township WCA LGU population distribution is as follows:

Population	Seven County Metro Area		Non-Seven County Metro Area	
	City	Township	City	Township
0 - 999	14	7	17	1
1,000 – 1,999	8	10	12	
2,000 – 2,999	6	5	9	
3,000 – 3,999	5	3	6	
4,000 – 4,999	6	3	4	
5,000 – 9,999	17	1	7	1
10,000 – 19,999	12		12	
20,000 +	35		5	

Source: Minnesota State Demographers Office, 2005 Population Estimates

However, the Stakeholders expressed concern over using a population threshold for a city or township to be a WCA LGU. The point made by several Stakeholders was that population may not be an indication of the commitment of city or township to carry out its duties to administer the WCA.

Also the current system does not establish a “default” LGU (i.e. an LGU that is responsible if others choose not to). This lack of a default, or mandated, LGU has made it difficult for some jurisdictions to end their administration of WCA. Another concern with a large number of LGU’s is the difficulty in ensuring complete and consistent reporting of WCA activities to BWSR.

Options.

1. No change.
2. Implement a system similar to that used in the Individual Sewage Treatment System (ISTS) program whereby the county is required to administer the rules in all areas of the county, except for those areas where a city or town has adopted an ordinance that is as strict as the county ordinance. A bifurcated system between the seven-county metropolitan area and the remainder of the state would still be necessary. This option could be as follows:

Outside of the seven-county metropolitan area, the local government unit is the *county* that has adopted a resolution acknowledging its responsibilities to administer the WCA, or its delegate. The county shall administer the rules or ordinance in all areas of the county other than in cities that have adopted a resolution acknowledging its responsibilities to administer the WCA.

In the seven-county metropolitan area, the local government unit is the *water management organization* that has adopted a resolution acknowledging its responsibilities to administer the WCA, or its delegate. The water management organization shall administer the rules or ordinance in all areas of the water management organization other than in cities or town that have adopted a resolution acknowledging its responsibilities to administer the WCA.

3. The WCA rule currently requires an LGU to provide knowledgeable and trained staff to manage the program. The rule also allows BWSR to place a moratorium or take other appropriate legal action to ensure proper implementation and compliance by LGU’s.

Under this option BWSR would establish specific standards under which LGU’s would have to maintain qualified staff to maintain their status as a WCA LGU. This requirement could be added to any of the above options, or be a stand-alone option. For this option to be effective, BWSR would need to have additional tools to address LGU performance issues. This option would also require BWSR to establish a curriculum of regularly scheduled training programs to allow LGU’s to maintain their proficiency.

BWSR Wetland Committee: The BWSR Wetland Committee recommends the following:

- * establishing the county as the default LGU outside of the seven county metro area;
- * establishing the watershed management organization as the default LGU in the seven county metro area;
- * the default LGU may delegate administrative responsibility to any legal unit of government (SWCD, county, city, township, watershed district, watershed management organization, joint powers board, etc.)
- * the default LGU will be responsible and accountable for the legal unit of government that it delegates responsibility to; and
- * this new framework for establishing LGU authority will become effective when the county or watershed management organization next updates their plan.

This recommended change can only be implemented by statute.

C. Appeals of Restoration Orders

Discussion: The Wetland Conservation Act (WCA) provides an administrative option to appeal LGU decisions on the full range of decisions: replacement plan, public road project notice; banking plan, exemption; no loss; and wetland boundary or type. The 2002 rule amendments (Minn. Rule 8420.0290, Subpart 3c) added restoration orders to the list of actions that can be appealed. (WCA Manual, Chapter 6 – WCA Appeal Procedures)

The five-year history on the number and category of appeals are shown below.

WCA Actions	2001	2002	2003	2004	2005	Total
Replacement Plan	5	11	6	7	8	37
Exemption	11	4	2	6	1	24
No Loss	1	2	1	2	0	6
Exemption/No Loss	0	0	4	0	0	4
Restoration Order	0	0	8	17	15	40
Cease and Desist	0	1	0	0	0	1
Boundary Delineation	0	1	1	1	0	3
Wetland Banking	1	0	0	0	1	2
Total	18	19	22	33	25	117

The data indicates an increase in appeal activity over this period (appeals for 2006 is currently 27). A significant reason for this increase is the 2002 rule amendments that allowed restoration orders to be appealed. Both BWSR and LGU staff have identified this as a concern as landowners typically use the restoration order appeal as a delay tactic. Also, none of the 40 appeals of restoration orders have been upheld, although several have resulted in a negotiated agreement.

BWSR Staff Recommendation: BWSR staff recommend amending the WCA rule to eliminate the ability to appeal restoration orders.

BWSR Wetland Committee: The BWSR Wetland Committee recommends amending the WCA rule to eliminate the ability to appeal restoration orders.

This recommended change can be implemented by rule.