Day One

Replacement Plans

Wetland Banking Review

Local Road Wetland Replacement Program

Ag Exemptions

TEP Procedures

bwsr.state.mn.us/minnesota-wetland-professional-certification-program

Replacement Plan Applications

Preapplication Meeting

- Prior to preparation of an application;
- Meet with the LGU/TEP, provide basic information of the project;
- LGU/TEP inform the applicant of sequencing requirements and criteria to evaluate the replacement plan.

SEQUENCING

Avoid Impact

• Prior to preparation of an application;
• Meet with the LGU/TEP, provide basic information of the project
• LGU/TEP inform the applicant of sequencing requirements and criteria to evaluate the replacement plan

BWSR REPLACEMENT PLAN APPLICATIONS

Subpart 1. Requirement. A landowner proposing a wetland impact that requires replacement under this chapter must apply to the local government unit and receive approval of a replacement plan before impacting the wetland.

bwsr.state.mn.us/wetlands
Application Contents

- Information necessary to be considered a complete application (a lot of this info can be pulled from the delineation report)
- For the impacted wetland:
  1. The amount of wetland impact (in sq ft or acres) by type
  2. Minor/Major watershed, County, and Bank Service Area (BSA)
  3. Soil survey of site, identify hydric soils
  4. Hydrologic inlets and outlets, adjacent Public Waters (shoreland), floodplain

Application Contents Continued...

- Information pertaining to special considerations (T & E, rare communities, cultural resources, etc.)
- List of known local, state, and federal permits required for the activity
- Identify project purpose and need and alternatives considered

Application Contents Continued...

- C. for the replacement wetland when the replacement consists of wetland bank credits:
  1. The wetland bank account number;
  2. The minor watershed, major watershed, county, and bank service area;
  3. An amount of credits to be withdrawn in square feet; and
  4. A completed application for withdrawal of wetland credits from the wetland bank in a form provided by the board or a purchase agreement signed by the applicant and bank account holder; and
- D. A description of the required replacement as determined according to the proposed replacement actions and the replacement standards in part 8420.0522.

Special Considerations (8420.0515)

- These factors must be considered by the applicant before submitting a replacement and by the LGU during the review:
  1. Endangered and threatened species (DNR natural heritage/nongame)
  2. Rare natural communities (DNR natural heritage)
  3. Special fish and wildlife resources (fish spawning, water birds, waterfowl, deer wintering/wildlife corridor)
  4. Archaeological, historic, or cultural resource sites (National Register of Historic Places, State Historical Preservation Office)
  5. Groundwater sensitivity (Decorah edge, Geologic Sensitivity)

Special Considerations Continued...

- Sensitive surface waters (trout stream)
- Education or research use (Cedar Creek, Anoka Co)
- Waste disposal site (former dump, superfund, TCAAP/AHATS)
- Consistency with other plans (watershed management, land use, planning and zoning)

Sequencing: 8420.0520

- LGU MUST NOT approve a wetland replacement plan unless the LGU finds the project complies with sequencing.
Key Concepts

- Sequencing is a MUST for all replacement plans
- TWO avoidance alternatives
- Evaluate projects...can wetlands be avoided?
- Are impacts minimized?
- Long term effects

Sequencing

- Avoid
- Minimize
- Replace

Impact Avoidance

- If LGU finds that a Feasible and Prudent Alternative exists that avoids impacts, the application must be denied.

Alternatives Analysis

What is feasible and prudent?

WCA rule tells us (8420.0520 subp 3C(2)):

- Can be done from an engineering perspective
- Is in accordance with accepted engineering standards and practices
- Is consistent with public health, safety, and welfare requirements
- Is environmentally preferable based on social, economic, and environmental impacts
- Would not create any truly unusual problems
What if an avoidance alternative DOES exist?

• If the LGU determines that a feasible and prudent alternative exist that avoids wetland impacts, it MUST DENY the replacement plan.

Alternatives Analysis Continued...

• Direct and secondary impacts – A wetland may not be directly impacted (filled/drank/excavated) but can be impacted through loss of hydrology

What if an avoidance alternative does NOT exist?

• LGU evaluates:
  • Minimization
  • Rectification
  • Reduction/Elimination of impacts over time
  • Replacement
Impact Rectification

• Temporary impacts must be rectified by repairing, rehabilitating, or restoring the affected wetland to pre-project conditions.

Reduction or Elimination of Impacts Over Time

• Once complete, further impacts must be reduced or eliminated and preserve or maintain wetland functions.
• Best Management Practices (BMP)
  • Silt fence
  • Storm-ponds
  • Buffers
  • Rip-Rap

Sequencing Flexibility

• Allowed at the discretion of the LGU if:
  1. Impacted wetland degraded;
  2. Avoidance results in severe degradation;
  3. Upland site of the project or replacement has greater function and value;
  4. Human health and safety is a factor.

Sequencing – Replacement

Final Review Step
LGU must evaluate if unavoidable impacts will be adequately replaced AND if correctly sited.
Adequate Replacement
• Must replace the functions and values at an equal or greater level than that which was lost.
• Uses wetland area as the unit of measurement (acreage or sq. ft.)

Replacement Siting

• Must follow a priority order:
  • Minor watershed
  • Major watershed
  • Same BSA
  • Another BSA

Replacement Ratios

Must follow a priority order:
• Minor Watershed
• Major Watershed
• Same BSA
• Another BSA
A formal NOD document that summarizes the decision, is supported by technical findings and is valid for 5 years.

Application to withdraw wetland credits

- Be sure to complete all sections!
- New form auto calculates fees
- Signatures

Wetland Banking Options

- Agricultural Banking
- Standard Banking
- LGRWRP (Road replacement Banking)
- In-Lieu Fee Banking

Agenda

- What to look for in each of these options,
- Landowner options,
- How are each of these processed,
- SWCD/LGU responsibilities for each option.

Bank types

- Private
  - Standard - Landowners establish bank on private land to mitigate impacts on non-ag or transportation projects
  - Agriculture - Credits can only be used for Ag projects
- Local Government Road Wetland Replacement Program
  - Replaces impacts resulting from local transportation projects
- In-Lieu Fee (proposed)
  - Open to only government and NGOs, mitigation completed in advance, requires compensation planning framework

Agricultural Banking (Ag Banking)

- Focus on agricultural areas of the state.
- Use of the ag bank limited to farmed wetlands and other degraded agricultural wetlands that remain in ag use.
- Flexibility on banking vegetative standards.
- Guarantees compliance with both State and Federal (NRCS) requirements.
- Reduced redundancy for landowners.
Current Status

➢ 130 credits available*
➢ \( \text{avg} \) credits = average annual demand (2013-2021) 92
➢ 11 existing or new Ag Banks generating credits

Quick facts on Ag bank

Eligibility to USE the Ag Bank:
✓ The wetland must be proposed to be drained for agricultural use.
✓ The land must remain in agricultural use.
✓ The wetland must be a farmed wetland (FW) or otherwise degraded wetland on existing agricultural land.

Differences with Standard Bank:
• Credits can only be used for Ag projects
• Flexibility on Vegetation Standards
• Expired CRP sites could be eligible "as-is"

Functional Assessment Tool

Evaluate potential ag bank sites and proposed wetland impacts.
Ensures functions gained > functions lost.

Replacement Standards

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

Eligibility Criteria

• Restored Wetland
• Restoration of Natural Hydrology
• Native, Noninvasive Vegetation
• Expired Contract or Easement

Focus of Site Selection – Prior Converted Cropland
Focus of Site Selection – Expiring CRP

How are Ag Banks Processed?

Ag Banks are processed:
- Draft Prospectus submitted for review and comment by TEP;
- Prospectus submitted for review and comment by TEP and BWSR Engineering staff;
- Mitigation Plan submitted for review and approval by LGU.

Differences with Ag Bank:
- No COE review and approval;
- BWSR may act as consultant and engineer for eligible sites;
- More local review throughout the process.

LGU and SWCD Responsibilities for Ag Banks

SWCD/LGU responsibilities:
- Insuring Ag Bank meets the eligibility of the program;
- Review and comment to applicant;
- Approve mitigation plan.

Differences with Ag Bank:
- Review and understand the NRCS/BWSR MOU;
- Review and understand the Ag Bank Site Evaluation Tool;
- No involvement of the COE.

Examples of Ag Bank sites

Examples of Ag Bank sites

- Focus is statewide.
- Performance standards on vegetation are high.
- Guarantees compliance with both State and COE requirements.
Establishing a Wetland Bank

**State and Federal Review Process in Minnesota**
- Draft Prospectus
  - State: Optional
  - Federal: Optional
- Prospectus
  - State: Optional
  - Federal: Required
- Mitigation Plan/Draft MBI
  - State and Federal: Required
- Final Mitigation Plan and MBI
  - Federal only and required

**WCA**
- Draft Prospectus (optional)
- Prospectus (optional)
- Mitigation Plan (required)
- Easement Acquisition

**Corps**
- Draft Prospectus (optional)
- Prospectus (required)
- Mitigation Plan (required)

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**Actions Eligible for Credit**
- Buffer
- Restoration, Completely drained or filled
- Restoration, Partially drained or filled
- Vegetative Restoration of Farmed Wetlands
- Protection of Previously Restored Wetlands
- Wetland Creation
- ENRV
- Preservation

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**How are Standard Banks Processed?**

**Standard Banks are processed:**
- **Draft Prospectus** submitted for review and comment by TEP and BWSR Central office;
- **Prospectus** submitted for review and comment by TEP and BWSR Central office & Engineering staff;
- **Mitigation Plan** submitted for review and approval by LGU.

**Differences with Standard Bank:**
- COE review and approval;
- BWSR may act as consultant and engineer for eligible sites;
- More local review throughout the process.

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**Roles in Establishing a Wetland Bank**

**Draft Prospectus**

**Prospectus**

**Mitigation Plan**

**Local Government**

**BWSR**

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**LGU and SWCD Responsibilities for Standard and LGRWRP Banks**

**SWCD/LGU responsibilities:**
- Insuring the Standard Bank meets the eligibility of the program;
- Review and comment to applicant;
- Approve mitigation plan.

**Differences with Standard Bank:**
- Higher performance vegetation standards;
- Review completed by COE, along with BWSR Central Office;
- Similar review of projects for the LGRWRP, however, many banks are developed by BWSR.
Types of Wetland Banks

- Standard
- Private and Agriculture
- In Lieu of Fee (proposed)
- Local Road Program
- Actions Eligible for Credit
- Restoration of drained wetlands, vegetation restoration, protection, ENRV, Preservation, upland buffer

Establishing a Wetland Bank

- Draft Prospectus
- Prospectus
- Mitigation Plan

Quick facts on ILF (as proposed)

Minnesota In-Lieu Fee Program

A program in which wetland replacement requirements are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits according to section 103G.2242, subdivision 12 (Minn Stat.)

In-lieu fee versus banking, major differences

- Mitigation is completed in advance with banking, after sale of credits with ILF
- Banking is for profit, ILF is open only to government and NGOs
- Corps is involved in finances with ILF, no involvement in banking
- ILF requires development of a compensation planning framework for program approval, banking does not

Local Government Road Wetland Replacement Program (Road Program)

- WCA exempts certain local road projects from State wetland replacement requirements
- BWSR is required to replace the associated wetland impacts so the local governments don’t have to
- BWSR has generated approximately 4,500 credits to offset 3,000 acres of wetlands impacted by local road projects since 1996
- These wetland credits also satisfy Corps of Engineers’ Section 404 permit requirements
Project Eligibility and Application

Local Road Program - Eligibility

- Cannot involve new roads or roads expansion for additional traffic capacity lanes in anticipation of future demand
- The project must involve repair, rehabilitation, reconstruction or replacement of a currently serviceable road to meet state/federal design safety standards/requirements
- Project must minimize wetland impacts

Boundary Accuracy

- Wetland boundary accuracy is always important
- In this case it’s even more important since credit availability is limited
- Make sure to identify incidental wetlands separately

Application Requirements

Local Road Unit should provide the TEP the following:
- Project plans depicting wetland boundaries
- Description of wetland impacts by type
- Information demonstrating wetland impact minimization

Project Plans

Joint Application Form

For Local Road Projects:
- Parts 1-5; Attachments C and E
- May need Attachment D if there will be impacts that do not meet the Local Road Program eligibility requirements
Applications can also be sent via Email to:
Sarma Straumanis
Sarma.bwsr.Straumanis@state.mn.us

Timelines!

- Minor or emergency maintenance impacting less than 10,000 Square Feet = submit required information within 30 days of commencing work
- Otherwise = submit required information at least 30 days before construction

** Emergency work less than 10,000 SF can start prior to submission – just make sure you submit the appropriate information within 30 days or replacement cannot be completed through the Local Road Program**

Where do I send all this stuff??

- Emails should include the complete application, signed Attachment E, and plans
- Please include the County where the project is located as well as the SAP/CP/SP # and project name (CSAH XX, Bridge # XX)
- Send applications to:
  Sarma.bwsr.Straumanis@state.mn.us
Thank You!

Questions?

Credit Availability

As of XXXXX:

XXXX Federal credits available
XXXX WCA Only credits available
Total = XXXXX Credits

Road Bank Credit Use

<table>
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<tr>
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<th>2017</th>
<th>2018</th>
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<tr>
<td>Total Credits Withdrawn</td>
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<td>106.4534</td>
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<tr>
<td>Number of Withdrawal Transactions Processed</td>
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<td>100</td>
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Where are we at?

- 3 BSA’s have no credits
- 2 close to running out

Moving Forward

2019/2020 Appropriations
- Requested $5 million from the General Fund and $10.3 million through bonding
- Appropriated $5 million from the General Fund and $5 million from bonding

2018 Appropriations
- $6.7 million from bonding

Road Bank Status

- There are currently 9 banks in some stage of approval
- One bank just completed construction
- Two banks are at interim release of credits
- One bank has submitted for final credits

Jordan Bank – May 2019 (BSA 8)
Big Picture

- Intermediate and long-term: Re-establishing an ample supply of credits will require significant investments
- Establishment of the in-lieu fee program will expedite availability of credits for the LGRWRP

Exemption Basics

An impact that is allowed without the landowner being required to replace the lost wetland.

Exemption Standards

- A. An impact (draining, filling, excavating) is exempt from replacement if it qualifies for any one of the listed exemptions. (8420.0420 Exemption Standards.)

No exemptions apply to:
- Calcareous Fens
- Wetlands that have been deposited in a State bank
- Wetlands that have previously received replacement credit as a result of an approved replacement or banking plan
- Wetlands that were partially impacted, so that the remainder would be eligible for an exemption

What is Fill?

Any solid material added or redeposited in a wetland
- Alters cross-section or hydrological characteristics,
- Obstructs flow patterns,
- Changes Boundary, or
- Converts to non-wetland.

What is Drainage?

Any method for removing or diverting waters from a wetland
- Excavation of a ditch
- Tile Installation
- Filling
- Diking
- Pumping
- Diverted water
- Etc.
What is Excavation?

The displacement or removal of substrate, sediment, or other materials by any method.

Exemption Categories

- Agricultural Activities
- Drainage
- Federal Approvals
- Restored Wetlands
- Utilities; Public Works
- Forestry (roads)
- De Minimis
- Wildlife Habitat

Agricultural Exemptions (Subp. 2)

- Annually seeded crops or in rotation seeding with pasture grass/legume prior to 1991
- No size constraints, but must be Type 1 or 2 wetlands
- Does not require row crop to be successful/may be stressed
- Demonstrate that planting occurred
- USDA crop reporting or other records may be helpful

Can the Landowner Tile?

1990 1989 1988

1987 1986 1985
Agricultural Exemptions (2A)

Is it exempt??

What items may be needed to demonstrate this exemption is met?

- FSA Crop History/Records
- FSA Slides
- Fertilizer records, seeding records, etc.
- Other sources (photos, NWI, Soils map, etc.)

Agricultural Exemption (2B)

- Must be existing pasture
- Must remain pasture
- Type 1, Seasonally Flooded basin or flat

Where to Find Aerial Photos

- FSA Photos
- County Photos
- USGS Earth Explorer
- MHAPO
- Google Earth
Agricultural Exemption (2B cont.)

- Excludes Bottomland hardwood forest
- Type 2/6 (Fresh Wet Meadow/Shrub Swamp)
  if less than 2 acres in size
- Deed Restriction possible

Impacts Resulting from Soil & Water Conservation Projects

- Must be certified by SWCD Technical Staff
- After TEP Review
- If minimizes adverse effects
- i.e.- Flood control Projects, Erosion Control Projects

Agricultural Exemption (2C)

Agricultural Exemption (2D)

Fill for irrigation boom track

Agricultural Exemption (2E)

Impacts Resulting from Aquaculture Activities

- Includes Pond excavation, Access roads & dikes
- In Accordance with Army Corps of Engineers Permit

Agricultural Exemption (2F)

- Impacts from Wild Rice Production Activities (dikes)
- Requires Army Corps Approval

Agricultural Exemption (2G)

Impacts from Agricultural Activities for Farm Program Participants

- Must be:
  - Farmed Wetland (FW)
  - Farmed Wetland Pasture (FWP)
  - Wetland (W) that meets
    - WCA Exemptions 2A or 3C(1)
    - Wetland (W) <3 acres; Permanently bordered by Crop 8/10 last years; Degraded accorded to MNRAM Tool
    - Converted Wetland (CW) that prior to conversion qualifies as FW, FWP or W as determined by NRCS staff
Agricultural Exemption (2G)

Impacts from Agricultural Activities for Non-Farm Program Participants [See Ag Bank MOU]

- Farmed Wetland (FW) or Farmed Wetland Pasture (FWP) on a certified determination done prior to farm program enrollment
- Wetland on agricultural land that has been hydrologically modified and cropped prior to 1/1/1992
- Wetland less than 5 acres in size on a cultivated field when the wetland is degraded according to the BWSR Ag Wetland tool

Important Notes:
- Wetland size is determined by the entire basin, regardless of property ownership
- Wetlands not listed in A or B do not qualify to use the ag bank
- Wetland areas impacted for ag use must remain in that use for a minimum of 10 years or until participation in the federal farm program ends (whichever is longer)

Drainage Exemption (3B)

Public Drainage Subpart (1)
No replacement for maintenance/repair of existing public drainage if:
- Authorized by the public drainage authority under MN 103E
- When the work does not drain type 3, 4, or 5 wetlands that have existed for more than 25 years prior to work

Private Drainage Subpart (2)
No replacement for maintenance/repair of existing private drainage if:
- If work does not drain wetlands that have existed for more than 25 years

CONDITIONS:
- Spoil must be placed and stabilized to minimize impacts.
  - Remove
  - Incorporate
  - Side cast
- Ditch must be stable and not degrade water quality downstream.
Applying the rule is Not always Easy.

- When was it dug? Maintained?
- How much sediment is planned for removal?
- Do we have past records?
- Are there culverts?
- Can the impacts be quantified?

Drainage Exemption (3C)

(1)(a)
- Must be on ag land
- Must demonstrate cropping in 8 of 10 most recent years
- Annually seeded prior to July 5
- Can be new drainage or other impact

(1)(b)
In crop rotation of pasture grass, cover crop, legumes or fallow.
- Also 8 of 10 most recent years

(1)(c)
- Allows review of earlier years if enrolled in state/federal conservation program (ex. CRP)

Drainage Exemptions, Subp. 3C (2) a. & b.

- Applies to Type 1 or up to 5 acres of Types 2 or 6
- Must be within an area where drainage benefits for a public system has been assessed
- Must be in an unincorporated area
  
  AND.....

Wetlands cannot be impacted for conversion to

- Platted lots
- PUD, commercial or industrial
- Any development more than 1 residential per 40 acres unless Zoning allows
Resources for Drainage Project Evaluation

**Topic of Week**
- Summarizes drainage and things to consider when evaluating these types of projects.
- Provides an approach to assess these types of projects.
- Appendix provides a basic worksheet to assist in determining when/if the drainage exemption fits.

**Existing Conditions of the System**
- Drainage area/Watershed
- System features ditch, pump, tile, culvert
- Wetland type, proximity, and source of water
- Elevations and profiles
- Depth of sediment
- Control points

**Drainage Project Evaluation**

**Proposed Conditions & Past History**
- Elevations
- Depth of sediment to be removed
- Control point modifications?
- Spoil Locations proposed
- Prior maintenance details (when, where, and how much?)

**Example 1**
- Elevation profiles of ditches and tiles
- Elevation and slope
- Depth and location of sediment
- Culvert elevations
- Wetland type and location
Example – Proposed Conditions

- Proposing Culvert lowering of 1 ft
- No Spoil removal to ACSIC (“As Constructed Subsequently Improved”) Adjusted Profile

Example – Proposed Condition

- Culvert elevation still slightly above established wetland
- Proposed Culvert elevation: 1 ft
- No change in run-out elevation

Example – Existing and Proposed (Public Drainage)

- Proposing Culvert lowering of 3 ft
- Proposing Spoil removal to ACSIC Adjusted Profile (1.25 ft - 2 ft of spoil removal proposed)

Example – Proposed (Public Drainage)

- Proposed Cleanout level

Example – Public Drainage

- Lowering culvert includes current drainage; culvert no longer a control
Example 3

• Type 1 wetland – no size requirement;
• Type 2 or 6 wetland – 5 acre max size requirement;
• Unincorporated area (deed may be recommended if nearby a city);
• Expenditure was made from the drainage system between 1971 – 1991, anywhere on the system;
• Maintenance was authorized by drainage authority.

Other Scenarios

• Is it exempt if the Type 3 wetland is 18 years old and it is public drainage?
• Is it exempt if it is a Type 2 wetland, more than 25 years old and on public drainage? What if all the same applied but it is private drainage?
• Based on the example, what could the public ditch authority change to make it exempt?

Determining Impacts of Improved Drainage

• WCA rule is easy to interpret but can be difficult to apply on ditch maintenance projects.
• Every drainage project is incredibly unique and requires careful review of data - More information is frequently needed.
• When no consultant is involved, it may require more involvement of the LGU/TEP

Resources

• Wetland Delineation/Determination (Area?)
• Aerial Photo Review and Comparison (Has there been new drain tile inputs? Watershed changes? Has the wetland type changes over time?)
• Antecedent Precipitation (puts information into context)
• Downstream Controls (other culverts downstream?)
• Lateral Effect Calculations (often submitted with agent involved; setbacks tables can give some level of information but has limits)
• Watershed size (is it a large watershed and basin?)
• Site Visit & TEP Findings and Recommendation (complex and often in the "grey" – use the TEP process)
Examples

1. Is it a Wetland?
   - NWI
   - Aerial Photos
   - Web Soil Survey
   - LiDAR

2. Is it Exempt?
   - 8420.0420, Subp 2, A – Planted 6 of last 10 prior to Jan 1, 1991?
   - 8420.0420, Subp 3, C, 1, a) Planted 8 of last 10 years?
   - 8420.0420, Subp 3, C, 2, a) Type 1 Wetland? Type 2 or 6 <5acres?
   - 8420.0420, Subp 3, B (1 or 2)

3. What are they requesting?
4. Any additional info needed?
5. Review & Field Visit
What are they Requesting?

Fix Tile & Clean Ditch

8420.0420 Subp. 3 Drainage, B:

• (2) impacts resulting from maintenance or repair of existing drainage systems other than public drainage systems, when the maintenance or repair does not drain wetlands that have existed for more than 25 years before the proposed impact.

Any Additional Info Needed?

• When was it dug/maintained?
• How deep?
• How much sediment?
• Where will the spoil go?
• Past Records?
• Do you have any survey data?
  • X-sections
• Are there culverts/other hydro controls?

Review & Field Visit

• Is there an existing ditch?
• Has the wetland existed >25 years?
  • Current Size & Shape larger?
• Elevation Data
  • Ditch bottom, Wetland Bottom
  • Sediment elevation
  • Culvert bottoms?
Elevation Data/Findings

- Ditch Found
- Tile not found, but non perf will be used
- Wetland Has grown in size
- Sediment Depth: 6/10 ft.
- Ditch Bottom: 1475.93 ft
- Culvert Bottom: 1475.85 ft
- Approve?

Other Considerations

- Road Culvert Elevation Change?
- What if no Culverts? Sediment Found?
- Spoil Placement
- Sloping Wetland
- Difference in Elevation
- Dimensions of final ditch
- Future Plans for area?
• Used all Normal Precip Years
• Established Wetland Boundary
• Set Tile Intake Elevation 1ft below wetland boundary

Example

- Multiple “W”
- <5 acres
- “Degraded”
Example 3

• Use of Ag Bank

Can it skip sequencing?

- Subp. 8. Wetlands on cultivated fields. If the wetland is located on a cultivated field and will be replaced through restoration, then the priority order for sequencing in subpart 1 is not required.

- Subp. 73. Wetlands in a cultivated field. “Wetlands in a cultivated field” means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten years before January 1, 1991.

Technical Evaluation Panel

• Plays a key role in implementation.
• Representative from LGU, SWCD, BWSR and DNR (if project effects public waters and/or in shoreland zone).
• Primary role is to advise LGU on decisions. Some decisions depend on TEP recommendation/concurrence.
• TEPs often advise landowners/applicants during pre and post application reviews.
**Key Roles in WCA Implementation**

- **LGU** – make WCA decisions, leads Technical Evaluation Panel
- **SWCD** – serve on TEP, write restoration plans for violation orders
- **BWSR** – serve on TEP, hear appeals, administer wetland bank, oversee and train LGUs.
- **DNR** – serve enforcement orders and coordinate/collaborate with TEP, LGU and SWCD on enforcement process.

**TEP Roles**

- Determine technical issues
- Generate findings and document specific evidence
- Make recommendations to LGU
- Operate objectively, clearly, concisely, and timely

The TEP does not:

- Make decisions
- Perform LGU duties (notices, extensions, etc.)

**LGUs rely on the TEP to:**

- Help them through the regulatory process.
- Interpret the rules and associated policies in relation to their proposal(s).
- To be fair and objective.

**TEPs can and do operate informally**

- Not subject to open meeting law.
- Field reviews.
- Open discussions.
- Healthy debates.

**Who can Request a TEP?**

- LGU
- TEP member
- Landowner
When should you hold a TEP meeting?

- Complex or difficult projects
- Visible, high-profile, or public projects
- LGU is applicant
- Enforcement cases
- Bank plan and monitoring report reviews
- Local Government Road Wetland Replacement Program projects

When is TEP required to make findings?

- Requested by LGU, landowner, or a member of TEP
- LGU extends decision timeline beyond 5 years
- Enforcement when determining whether restoration is not possible or prudent

TEP Meetings

- Step 1: Define purpose of TEP discussion/review (set a formal agenda)
- Step 2: Have an open discussion (there will be disagreements)
- Step 3: Summarize and agree to conclusions (find common ground)
- Step 4: Write Findings Report (be clear and concise)

TEP findings & recommendations:

- Communicate the cumulative result of field visits, report reviews & informal discussions.
- Give the applicant/landowner direction on next steps (if any).
- Often provide the LGU with the basis for their decision.

Well-written TEP findings:

- Stand up in court/hearings involving appeals.
- Give clear direction to applicant/landowners.
- Protect the TEP from "he said, she said" issues.
- Are concise and focused on the decision that needs to be made.

Efficiency

There are ways to be more efficient such as:

- Having a TEP findings template ready to go (see BWSR template or customize for your area).
- For pre-application situations, creating simple forms for landowners to complete that make them clarify what they are looking for from the TEP.
Tips on Well-Written TEP Findings

We will cover the following topics:

- Purpose & audience
- Timing
- Active voice
- Subjective language & "legal-ease"
- Relevant
- Findings vs minutes
- Honesty

Purpose & Audience

Know purpose and your audience. Answer the following questions before writing findings (or before even convening a TEP):

- Who is the primary audience for the findings? (applicant, LGU, both?)
- What is the decision that needs to be made? (complete application, exemption determination, delineation approval, sequencing, bank plan, etc.)

Timing

Only write findings when they will be useful for the intended audience. Think about:

- Is there enough information to say anything meaningful?
- Can I convey the information informally without composing formal TEP findings?
- Is the project controversial or contentious? (consider the landowner you are dealing with?)

Avoid Subjective/Emotional Lingo

"The TEP feels....."
"The TEP believes ....."

The TEP is supposed to use judgment, no need to soften it with "feel" and "think" and other words that indicate a subjective opinion based on emotions.

Use alternative language like "determined" or "in our opinion based on Rule reference ...."

Avoid Legal-Ease

"herein" "hereby"
"thereto" "let the record show"

This is not a legal agreement and it is not being prepared as a court document.

Leave the legal-ease to the lawyers.

Findings should be Relevant to the Decision

For example, don’t talk about the loss of wildlife habitat due to a project if you are reviewing cropping history for an ag exemption.

Individual TEP members can provide their own comments, but they do not all have to be part of the findings.
Findings are not Meeting Minutes or Testimony

Minutes are for public meetings that generally involve elected officials - TEP members are not elected officials

TEP recommendations

- TEP may recommend approval, approval with conditions or denial
- LGU must consider TEP findings and recommendations
- TEP cannot make findings without having at least one member make a site visit
- Findings and recommendations must be endorsed by a majority of members

Be Honest about Hard Questions

If the TEP is unsure about something, then say so... but include a follow-up plan to answer the question.

What if the LGU doesn't agree with TEP?

- The LGU must provide detailed reasons for rejecting the TEP finding of fact or recommendation in its record of decision; otherwise, the LGU has not sufficiently considered the TEP report.

Detailed reasons for not following TEP recommendation?

"The Board felt that the TEP's recommendation to deny the application was unreasonable and therefore we approve the application."

Reasons for not following TEP recommendation

"The Board finds that the TEP's recommendation to reject the application based on the availability of a reasonable and prudent alternative alignment to the proposed road (impacting less wetland) did not give due consideration to the decreased public safety associated with alternative alignments. The alternative alignments mentioned in the TEP's recommendation result in unsafe sighting distances at road intersections according to national safety standards. Therefore, the Board finds that there are no feasible and prudent alternatives and approves the application."
Critique Exercises

Critique Exercise Instructions

Example 1 – Read and Answer the Questions as a group. Each group should select a Spokesperson to discuss their answers if requested to by the speaker.

Writing TEP Findings Exercises

- Take notes on verbal facts provided by instructor.
- Compile TEP findings as a group (each small group).
- Assume information given by instructor is correct/accurate.

What TEP findings should include:
• Landowner needs to find out DNR jurisdiction first.
• Include TEP’s assessment of delineation and need for adjustments to line and type before approval.
• Inform landowner of potential applicable de minimis amount.
• Inform landowner that he/she must be able to explain why the access road cannot be built on the adjacent parcel (seemingly in the same ownership) in order to minimize wetland impacts.

What TEP findings should not include:
• Historic cropping conditions from the 1980s.
• Landowner’s warehouse 1 mile west.
What TEP findings should include:

- Background as to why the TEP is investigating the site (tile installation, potential violation, investigation, etc.).
- Results of the onsite investigation.
- Results of TEP review of air photos and cropping history analysis.
- Exemption eligibility statement and end of violation investigation.

What TEP findings should not include:

- Delineation report.
- Past violations.
- Federal Farm program participation.
- TEP members' statements about potential downstream impacts and raising tile outlet.

Case 1 Questions

1. Does the change in wetland type constitute the "new normal"? Does this conflict with WCA's incidental definition?

2. Does the landowner have a valid incidental claim under WCA Rules 8420.0105 Subp. 2. D (pg. 5)?

3. What if the township wanted to add additional culverts at the same elevation as opposed to lowering the culvert?

Case 2 Question

1. To what extent can this ditch be maintained without replacement? Refer to WCA Rules 8420.0420 Subp. 3. B(2) (pg. 38).
Case 3 Questions

1. Does the TEP feel that the applicant’s alternatives analysis is adequate? Refer to WCA Rules 8420.0520 Subp. 3-C (page 44-45).

2. Is sequencing flexibility applicable in this case? Refer to WCA Rules 8420.0520 Subp. 7a. A. (1) (page 46).

Case 4 Questions

1. Is Landowner A’s claim of flooding damages important for this exemption? Refer to WCA Rules 8420.0420 Subp. 3. B(2) (pg. 38).

2. Assuming the 1997 8” plastic tile functioned for some period of time before it was intentionally raised, does this break 25 year existence requirement specified under WCA Rules 8420.0420 Subp. 3. B(2) (pg. 38)?
1. Since planning and zoning setbacks have placed the only buildable area on top of the wetland, should this be sufficient to satisfy avoidance requirements as outlined under 8420.0520 Subp. 3. (pg. 44)?

2. Is the applicant's minimization argument sufficient? Refer to WCA Rules 8420.0520 Subp. 4. (pg. 46).