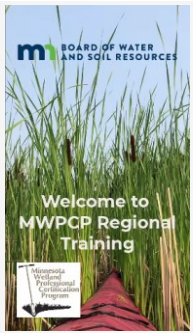

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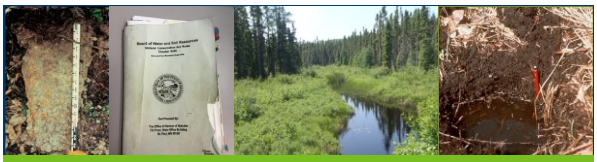

MWPCP Regional Training

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Minnesota Wetland Professional Certification Program

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MWPCP Regional Training- May 17-18

Minnesota Wetland Professional Certification Program

Day One

WCA Crash Course

- Wetland Regulatory Programs 101
- LGU Duties & TEP Procedures
- Application Procedures
- Enforcement Procedures
- Basic Decisions
- Replacement Plans
- Wetland Banking
- Q/A & Quiz

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

3

Wetland Regulatory/Compliance Programs in Minnesota

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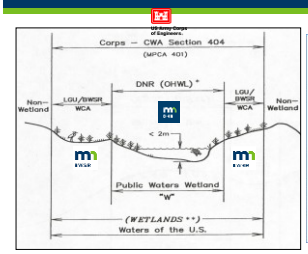
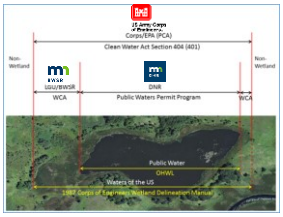
Programs

- Public Waters Work Permit Program (PWWPP)
- Section 404 of the Clean Water Act (404)
- Swampbuster provisions of the Food Security Act (FSA)
- Minnesota Wetland Conservation Act (WCA)

5

Jurisdiction





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Public Waters Work Permit Program (PWWPP)

Overview

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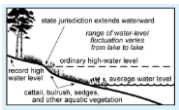
Public Waters Permit Program

- **Regulates:** changes to "course, current or cross-section"
- **Administered by:** DNR – Area Hydrologists
- **Authorities:** M.S. 103G; M.R. Chapter 6115
- **Jurisdictional boundary:** "Ordinary High Water Level"
- **Review standards:** Public interest; reasonable/practical, Riparian rights, Availability of feasible & prudent alternatives, Compensatory mitigation
- **Appeals:** Contested case hearing
- **Enforcement:** DNR Conservation Officers; cease & desist, restoration orders
- **Application:** on-line via "MPARS"



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Program Element	WCA	PWWPP
Basis of Authority	Mn Rules Chapter 8420 and associated statutes	Mn Rules Chapter 6115 and associated statutes
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Public Waters and Public Waters Wetlands (which includes deepwater habitats, streams and wetlands)
Jurisdictional Boundaries	Wetland Delineation per 87 Manual	OHWL
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	Changes in course, current or cross-section
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	DNR implementation
Type of Approvals	WCA decisions	Permit authorizations
Applying for Approval	WCA application or request for decision	MNPARS online application

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Section 404 Clean Water Act (in MN)

Overview

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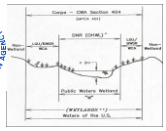
Clean Water Act Section 404

- **Regulates:** Discharges of dredged or fill material, including redeposit
- **Administered by**.U.S. Army Corps of Engineers – St. Paul District
- **Authorities:** 33 U.S.C. §1251; 33 CFR Parts 320-332; 40 CFR Part 230
- **Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- **Review Standards:** Sequencing, public interest, adequate compensatory mitigation
- **Appeals:** COE administrative appeal
- **Enforcement:** COE and USEPA; administrative orders
- **Application**: Joint Application Form for Activities Affecting Water Resources in Minnesota

US Army Corps of Engineers



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Program Element	WCA	404
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Clean Water Act
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Waters of the U.S. (WOTUS)
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	Discharges of dredged or fill material
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight
Type of Approvals	WCA decisions	Permit authorizations via IPs, GPs, NWPs
Applying for Approval	WCA application or request for decision	Pre-Construction Notification (PCN) for GPs/NWPs, Application for IP
Mitigation for Impacts	Replacement	Compensatory Mitigation

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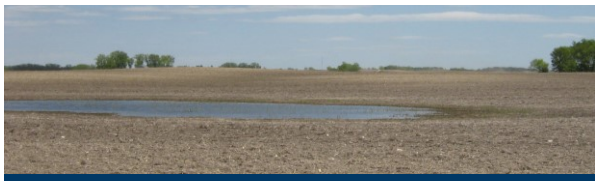

Food Security Act (Wetland Conservation Provisions)

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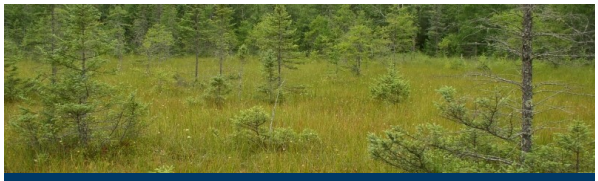
How Does NRCS Evaluate Compliance?

Primarily through Certified Wetland Determination (CWD).

Involves identifying wetlands and then assigning a label that has implications for compliance. For example, if producer drains a wetland for crop production, that would result in a label change that could result in producer being ineligible.

CWD does not relate to WCA jurisdiction!

14



Wetland Conservation Act (WCA)

Overview

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Wetland Conservation Act

- **Regulates:** draining, filling, some excavation
- **Administered by:** Local Government Units, SWCDs, Watershed Districts
- **Oversight by:** MN Board of Water and Soil Resources
- **Authorities:** M.S. 103A, 103B, 103G; M.R. Chapter 8420
- **Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- **Review standards:** Avoid, minimize, replace (sequencing)
- **Enforcement:** DNR Conservation Officers; cease & desist, restoration orders
- **Application**: Joint Application Form for Activities Affecting Water Resources in Minnesota

Communities and Local Government

MASWCD

Minnesota Association of Soil and Water Conservation Districts

MINNESOTA ASSOCIATION OF WATERSHED DISTRICTS, INC

Land and Water Shall be Preserved

BWSR

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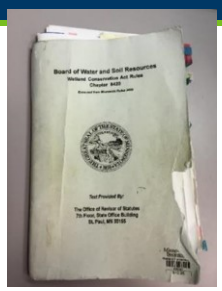
What is it?

- Series of laws passed in 1991
- Major component – wetland regulatory provisions, Minnesota Rules Chapter 8420.
- Regulatory provisions implemented under temporary rules in 1991 and permanent rules in 1993.



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Purpose?

- Maintain and *increase* the quantity, quality and biological diversity of Minnesota's wetlands. (QQB)
- *Avoid* wetland impacts from activities that negatively effect quantity, quality and biological diversity.
- *Replace* wetland values where avoidance is not feasible and prudent.
- The sequence of avoid, minimize and then replace for wetland impacts is referred to as **Sequencing** in WCA rules.

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What does WCA regulate?

- **Wetland Impacts** are defined in WCA rule.
- **Wetlands** are identified and their boundaries determined by 87 Manual.
- Two exceptions:
  - Incidental wetlands
  - Wetland areas of DNR public waters and public waters wetlands unless regulatory jurisdiction waived by DNR to WCA.

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Incidental Wetlands

- Wetlands created in naturally non-wetland areas not on purpose.


Temporary puddles


Stormwater ponds


Sewage treatment wetlands


Roadside ditch in upland

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WCA Wetlands vs Public Waters

- DNR public waters regulated by the DNR Public Waters Work Permit Program (PWWPP) are generally pre-determined (they are on a map).
- WCA wetlands are identified and determined via the 87 Manual on a case-by-case basis.

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Implementation Structure

- Local Government Units (LGUs) are primarily responsible for implementing WCA.
- BWSR provides oversight and assistance to LGUs. BWSR implements certain limited provisions of WCA.
- DNR has an enforcement role in WCA.

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Implementation by LGUs

- LGU can be:
  - County, City/Town
  - Township (in certain 7-county metro areas only)
  - Watershed district, management organization or commission
  - State agency on state owned or administered lands
  - For projects that require a Permit to Mine under state law, DNR's Division of Lands and Minerals administers the provisions of the WCA under their Permit

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Applications and Decisions

- In general, applicants demonstrate through their application submittal that they are compliant with WCA.
- An LGU's decision to approve, deny or approve with conditions is saying if the project complies with WCA or not.
- An LGU can take the WCA decision process and fold it into a permit that they issue for a project. This is optional, but common among watershed districts and counties that issue permits for various other things.
- In general, LGUs can have more restrictive local requirements, but not less restrictive requirements.

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WCA Decision Types and Application Requirements

Decision Type	Application Requirement
Wetland Boundary/Type	Application required
Exemption or No-Loss Provision	Application not required (unless LGU has more restrictive local requirement)
Replacement Plan	Application required
Banking Plan	Application required

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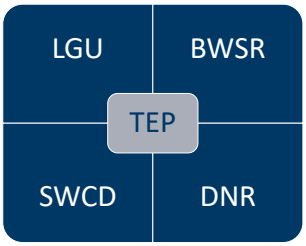
Technical Evaluation Panel

- 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.



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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.

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How many jurisdictions?

BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

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WCA 101

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Wetland Conservation Act 101

Purpose

Method

Scope

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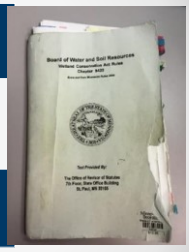
WETLAND CONSERVATION ACT (WCA)

State Law passed in 1991

MN Statute **103G** and parts of 103A,B,E,F

MN Rule Chapter 8420



https://bwsr.state.mn.us/wetlands-regulation-minnesota

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WETLAND CONSERVATION ACT (WCA) OF 1991

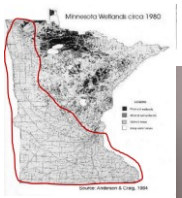
Bipartisan Bill

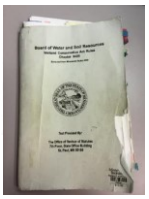
- Passed in 1991
- Effective 1992

MN Statutes **103G** and parts of 103A,B,E,F

MN Rule **8420**

- Statute changes
- Guidance Documents





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WCA Authority on Tribal Lands?

- Tribes have legal status as sovereign nations
- Many tribes have enacted their own environmental regulations
- Federal regulatory environmental laws apply on Tribal Lands
- Tribal lands are composed of Trust lands, allotted trust lands, fee lands

- WCA does not have jurisdiction on Trust lands
- Fee lands are held by an owner (tribal member or not)
- Authority of state environmental laws on tribal land is limited to fee lands held by a non-tribal owner

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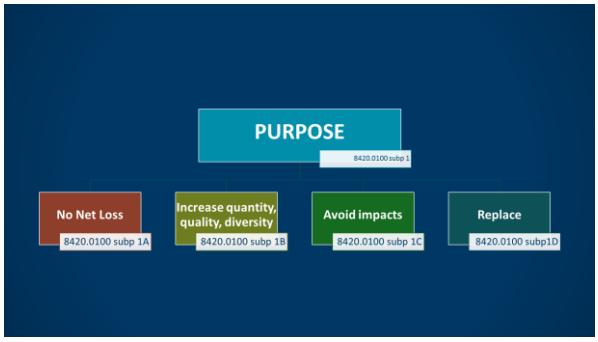

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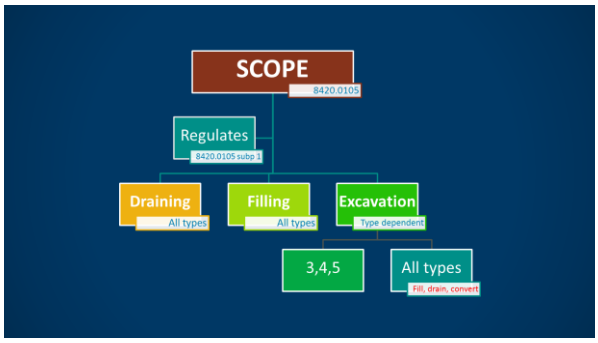

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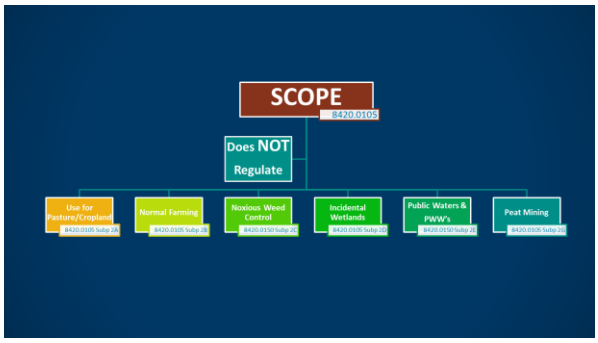

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What Does WCA Regulate?

Draining or filling of wetlands (wholly or partially)

Excavation of wetlands (under certain conditions)

37

Excavation

WCA regulates excavation in *permanently* and *semi-permanently* flooded areas of *Type 3, 4, or 5* wetlands and in all wetland types if the excavation results in conversion to nonwetland (i.e. deepwater habitat which is defined as average water depth of 8.2 feet or greater).

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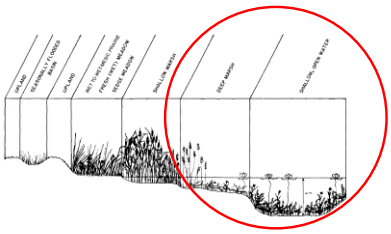
Excavation

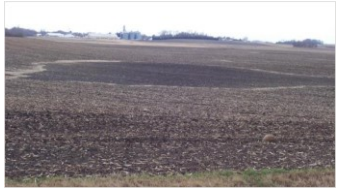
What is permanently and semi-permanently flooded?



39

What WCA Does NOT Regulate

- The use of wetlands for pasture or cropland
- Normal farming practices (plowing, seeding, timber harvesting, etc.)
- Control of noxious weeds
- Impacts to created (non-natural) wetlands (ditches, ponds, etc. created in upland areas)



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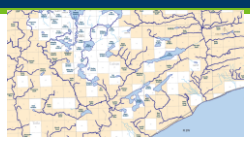
WCA Does NOT regulate

DNR Public Waters & PWW

- DNR can waive to WCA for public water wetlands

Peat Mining

- Subject to DNR permit to mine under MN Statue 93.44-93.51
- WCA applies if project does not require DNR permit to mine



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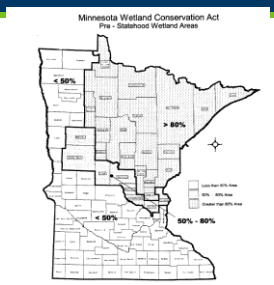
Where you are in the State matters



Different regulations apply depending on whether you are in a <50% area, 50 – 80% area, or >80% area.

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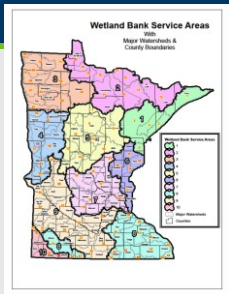
Bank Service Areas



- Used in wetland mitigation siting

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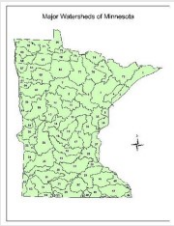
Watersheds



- Factored into project-specific replacement siting

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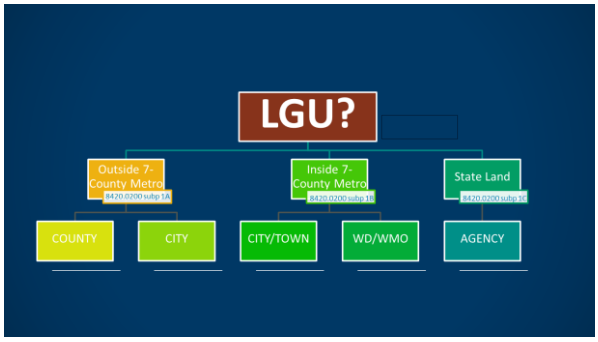

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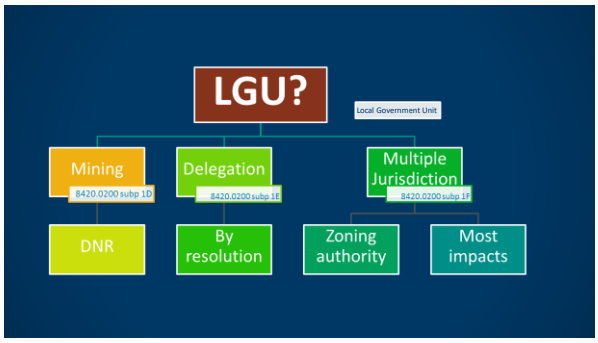

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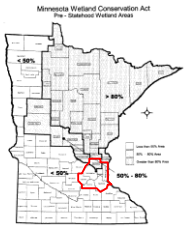
Who is the LGU?

- Outside the 7-County Metro area – County or City
- Inside 7-County Metro – City, town, or WMO



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Who is the LGU (cont.)

- In 7-County Metro, watershed plan will indicate LGU, but lacking an indication, LGU must be City or town.
- For activities on State land, the LGU is the State agency with administrative responsibility for the land (e.g. DNR, MnDOT). However, State agencies must coordinate with LGU that would otherwise have jurisdiction.

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Who is the LGU (cont.)

- LGU's can delegate some or all of their authority to another entity provided that both parties pass resolutions (see BWSR website for example resolutions).
- If project overlaps LGU jurisdiction, then the LGU is:
  - One with zoning authority over the project
  - If both have zoning authority, then the one in which the most impact occur.
  - Both LGUs can maintain separate jurisdiction if agreed upon.

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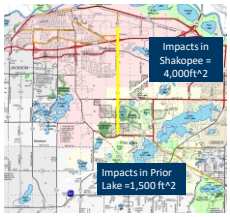
Example



Scenario 1 – Cities agree that both review and approve application within their respective jurisdictions, and both administer LGU duties.

Scenario 2 – Cities agree to have Shakopee review entire application and be responsible for LGU duties (most impact).

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BWSR Website

- WCA Contacts

BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

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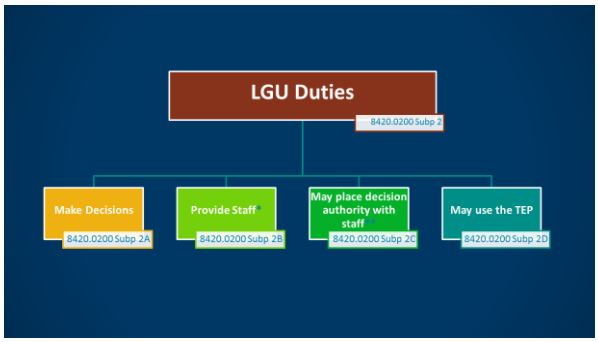

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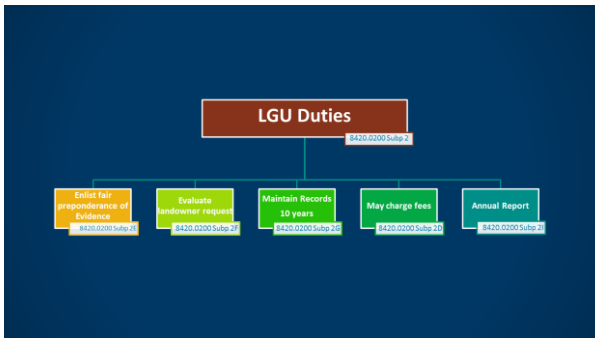

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Delegation of Decision-Making Authority to Staff

- Decision authority by default rests with the elected/appointed governing board (City Council, County Board, WMO Board, etc.)
- However, the LGU *may*, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes.

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Failure to Apply Law

If the LGU is not following WCA:

1) BWSR notify LGU in writing of its concerns
2) File Review spot check
3) Can then impose moratorium on making decisions

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Local Wetland Ordinances

- WCA provides minimum standards
- Local governments may require more procedures and more wetland protection, but not less

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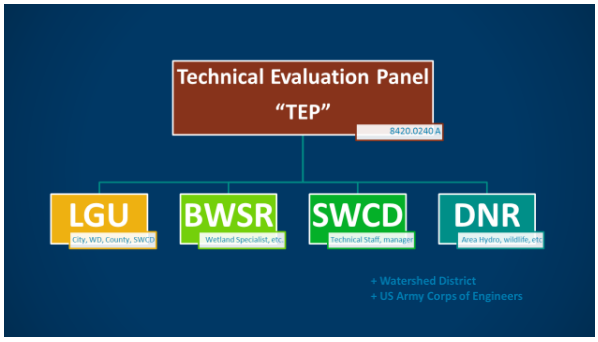

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TEP

A TEP

Too many people for a TEP

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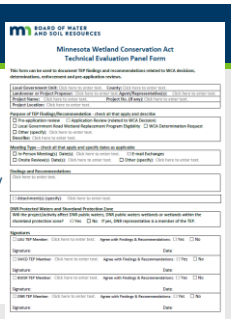
TEP Roles

- Determine technical issues
- Generates findings Document specific evidence
- Makes recommendations to LGU
- Operate objectively, clearly, concisely, and timely

The TEP does not:

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


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Technical Evaluation Panel Form

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TEP

Who can Request a TEP?

- LGU
- TEP member
- Landowner

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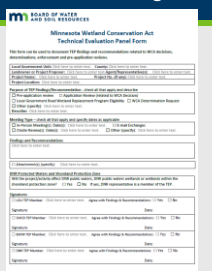
TEP Meetings

- 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)


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Technical Evaluation Panel Form

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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

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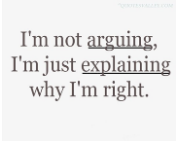
What if the LGU doesn't agree with TEP?

- 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.



64

Detailed reasons for not following TEP recommendation?

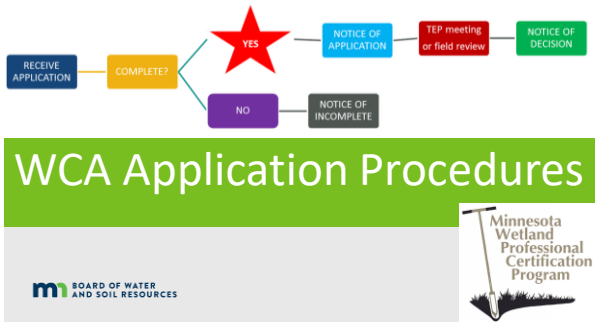
"The Board felt that the TEP's recommendation to deny the application was unreasonable and therefore we approve the application."

65

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."

66



67

BWSR website

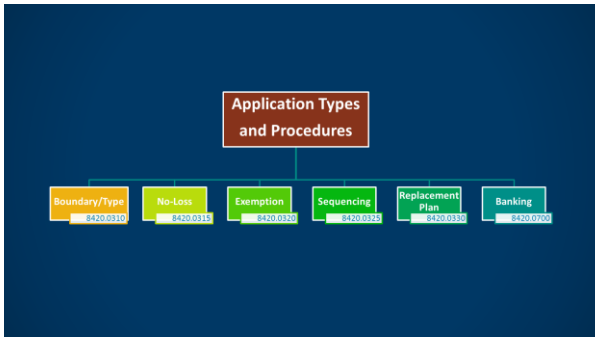
- WCA Forms and Templates

68

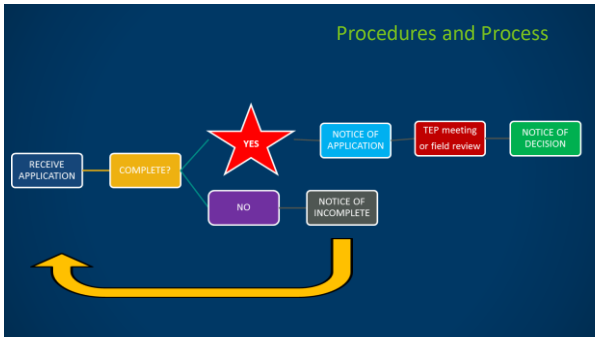
WCA Application Procedures

- LGU Roles
- Application Procedures
- Agency Action Deadlines
- Noticing Requirements
- Technical Evaluation Panel

69



70



71

Timelines and deadlines

Determine Complete Application
- **15** Business days from the date of receipt (date stamp!)

Send the Notice of Application
- **15** Business days from date of receipt of a complete application

Set the Comment Period
- MINIMUM **15** Business days from the date of sending the Notice of Application
  - Can be longer

Make a Decision
- **60** Calendar days from the receipt of a complete application
- Can extend 60 days, additional extension requires applicant approval

Send the Notice of Decision
- **10** Business days from date of decision

72

Appeal a Decision

- 30 Calendar days from the date of decision

How long is the Decision Valid?

- 5 Years
- Unless longer is specified by LGU when TEP advises longer period

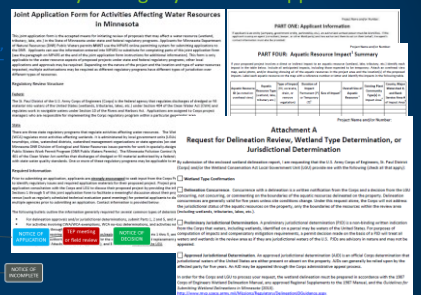
How long do I (LGU) keep all this paperwork?

- 10 Years

73

Now you've got yourself an application

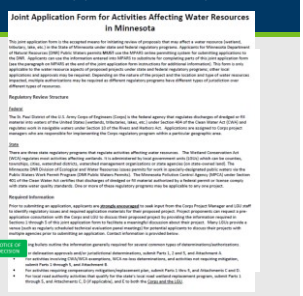
- You should receive:
  1. A "Joint Application"
  2. Applicable attachment(s)
  3. Supporting documentation



74

Is the application complete?

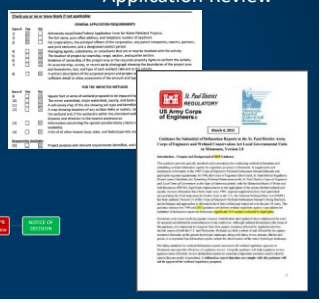
- Application must contain sufficient/required information found on 1st page of application
- Consider what is being asked, where it fits in Rule, what information the Rule requires
- Local application requirements such as fees?



75

Application Review

- Use checklists/guidance
- Missing Information = Incomplete Application
- Notify applicant
  - Within 15 business days of receipt
  - Provide list of what is missing



76

It's Complete! Notice of Application

- Complete BWSR form
- Mark all decision types
- Specify comment Period (min 15 days)
- Decision time information
- Send to applicant, agent, TEP and others who requested notice

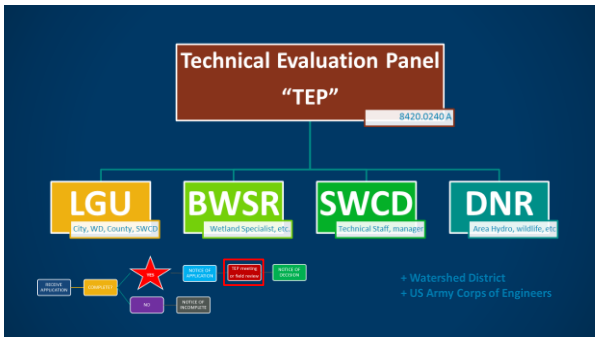
77

NOA Use

Summary of LGU Application Types

Decision Type	NOA Required	NOD Required
Boundary or Type	Yes	Yes
No-Loss	No	Yes
Exemption	No	Yes
Sequencing	Yes	Yes
Replacement Plan	Yes	Yes
Bank Plan	Yes	Yes

78



79

Notice of Decision

Notice of Decision (NOD) should include:

- Summarize the project- Decision type requested, proposed impact including wetland type and amount
- Clearly state the decision
- Applicable rule citation(s)
- TEP findings
- Conditions of approval
- Location map


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Notice of Decision

80

LGU Decision

- Based on standards and procedures in WCA, TEP Findings, and Recommendation.
- Must occur within 60 day of complete application (or as extended)
- Requires a Notice of Decision within 10 days

81

General Appeal Process

- 30 day appeal window following NOD
  - Any work completed during this period may be at risk.
- 30 days starts from postmarked date of mailing or date of electronic transmission
- Extension possible by mutual agreement

82

Appeals

- Appeals may be made by
  - landowner,
  - those required to be noticed (TEP/other), or
  - 100 residents in county where wetland is located.
- Appeal goes to BWSR.
- Heard by Dispute Resolution Committee with final decision by full BWSR Board.

83

Summary of LGU Review Process

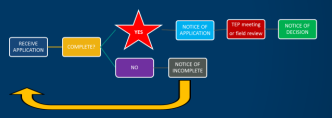
- Discussion (pre app meeting?),
- Review of application,
- On-site review,
- TEP meeting(s)/Rec.,
- Amendment(s)?
- more discussion……

*** Don't forget to include our Army Corps of Engineers partners!!*

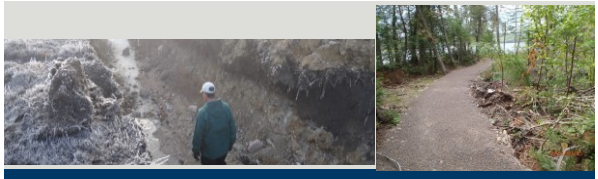
84

WCA Application Procedures Review

- LGU Roles
- Application Procedures
- Agency Action Deadlines
- Noticing Requirements
- Technical Evaluation Panel



85



WCA Enforcement

ROARD OF WATER AND SOIL RESOURCES

86

Enforcement Procedure Overview

87

8420.0900 Subp. 3. Restoration and Replacement orders.

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

88

SWCD Role in a violation

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

89

LGU Role in a violation

- Help Determine if site has permit for work or prior work done.
- Assist SWCD on Restoration/Replacement Orders
- Assist with gathering evidence
- Receive application from landowner for exemption, no-loss determinations, and replacement plans
- Track the cases

90

BWSR's Role in a violation

- Rule interpretation
- Bounce ideas back and forth (appropriate seed mixes)
- May contact more specialist BWSR staff to assist in difficult projects
- Assist SWCD/LGU in developing RO's
- Assist in technical findings

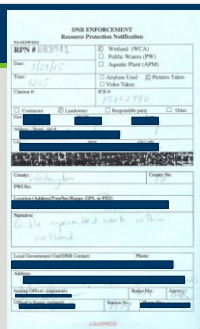
91

DNR Enforcement Role

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

92

Resource Protection Notices


DNR ENFORCEMENT
Resource Protection Notification

RPN # 683981

☐ Wetland (WCA)
☐ Public Waters (PW)
☐ Aquatic Plant (APM)
☐ Airplane Used ☑ Pictures Taken
☐ Video Taken

Date: 11/29/15
Time: 1:00
Citation #:
ICR #: 15262790

☐ Contractor ☑ Landowner ☐ Responsible party ☐ Other

Name: [redacted]
Address: [redacted]
City: [redacted]
Tel: [redacted]

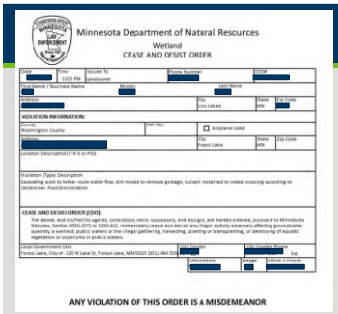
County: Washington
County No:
PID No:
Location Address/Twp/Sec/Range, (DD, or MD):
[redacted]
Signature:
Visible impacted wetlands within wetland

Local Government Unit/DNR Contact: Phone: [redacted]
Address: [redacted]
Issuing Officer (signature): [redacted]
Badge No:
Agency:
City: [redacted]
Station No.: [redacted]

LGU/DNR/CO

93

Cease & Desist Orders


Minnesota Department of Natural Resources
Wetland
CEASE AND DESIST ORDER

Date: [redacted]
Time: 1:23 PM
Issued To: landowner
Phone Number: [redacted]
DOB: [redacted]
First Name / Business Name: [redacted]
Middle: [redacted]
Last Name: [redacted]
Address: [redacted]
City: Lino Lakes
State: MN
Zip Code: [redacted]

VIOLATION INFORMATION:
County: Washington County
Part No.:
☐ Airplane Used
Address: [redacted]
City: Forest Lake
State: MN
Zip Code:
Location Description (T-R-S or PID):
Violation (Type) Description:
Excavating work to better route water flow; dirt mound to remove garbage, culvert installed to create crossing according to landowner. Possible violation.

CEASE AND DESIST ORDER (CDO):
The above, and his/her/its agents, contractors, successors, and assigns, are hereby ordered, pursuant to Minnesota Statutes, Section 103G.237, Subd. 2, to immediately cease and desist any illegal activity adversely affecting groundwater quantity, a wetland, public waters or the illegal gathering, harvesting, planting or transplanting, or destroying of aquatic vegetation or organisms on public waters.

Place Hearing Held: CO
Forest Lake, City of - 220 N Lake St, Forest Lake, MN55025 (651) 464-3500
Date: [redacted]
Time: [redacted]
Hearing Officer Name: [redacted]
Agency: [redacted]
Station #: [redacted]

ANY VIOLATION OF THIS ORDER IS A MISDEMEANOR

94

Data Collection

Who – landowner and/or responsible party, contractor

- RO will go to all

What – type of disturbance or activity that occurred

- Useful for determining impact

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

95

Data Collection

When – estimated time of activity occurrence

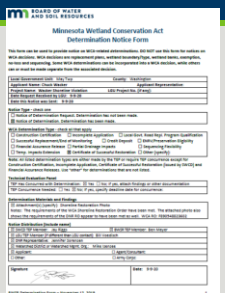
- Helpful in determining responsible party if ownership change has occurred
- Aerial photos/PID information
- Did the activity work?

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

96

Data Collection

- Maps
- Illustrations
- TEP Findings and Recommendation
- Discussions with landowner/responsible party
- Survey information
- You may only have one opportunity to be on site


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Determination Notice Form

97

The RO

Restoration Order Gives the Landowner Options

- Restore
- Apply for replacement, exemption, no-loss
- Appeal- w/in 30 days + $500 fee
- Court/Deed Restriction if no action is taken by landowner


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Restoration Order

After-the-fact replacement ratio must be twice the ratio otherwise required

98

The RO

- Send RO to the Officer OR WREO ASAP Enforcement will serve the order (must be served in person or certified mail)
  - We recommend to officers to use only certified mail
  - Easy for everyone to track time line
- MAKE SURE YOU SIGN YOUR COPY BEFORE SENDING IT TO CO OR WREO.
- Extensions are issued **only** by enforcement and if:
  - The landowner has a good reason for not getting it done
  - Has made some progress
  - Maybe weather related (heavy rains, early freeze)
  - Submitted application
  - Filed an Appeal

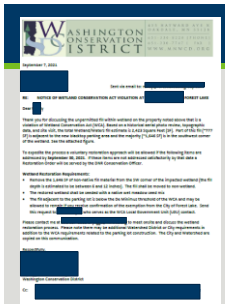
99

Is a formal Restoration Order Always Required?

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

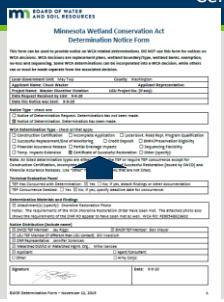
100

Voluntary Restoration


WASHINGTON CONSERVATION DISTRICT

101

Certificate of Satisfactory Restoration


BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Conservation Act
Determination Notice Form

Prepared and issued by the SWCD

102

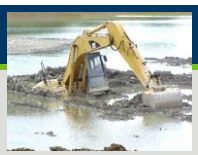
RO Non-Compliance

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

- Enforcement will work with you!
  - CO Sends a Letter
  - CO Makes a Phone call
  - Deed restriction in some cases
  - Landowner Served a Criminal Citation
  - Court

103

Contractors Responsibility



- Prior to working they:
- Must have obtained signed statement from landowner
- Mailed a copy to the LGU
- They do not need to verify if the landowner has a permit or not. Just have the signed form and mailed it.

104

Appeals

- Landowner has 30 days to appeal Order
- RO must allow >30 days to comply with Order

105

Basic Decisions w/Ag Exemptions

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

106

Basic WCA Decision Types

- Definition Refresher
- Exemptions Basics
- Ag Related Exemptions

107

What is regulated by WCA?

What is considered Impact?

A loss in quantity, quality, or biological diversity of a wetland *caused* by draining or filling or by excavation in types 3, 4, or 5.

108

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.

109

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.

110

Wetland Fill

- Does not include posts for walkways, bridges, powerline poles, etc.

- Does not include slash or woody vegetation as long as it originated from vegetation growing in the wetland and does not impair flow or circulation of water.

111

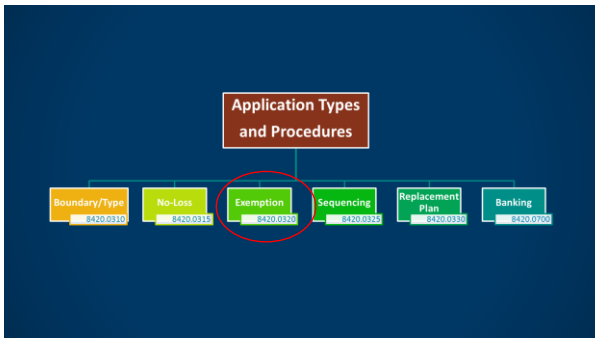
- Wetland fill *does not* include posts and pilings unless it turns wetland into a nonaquatic use or significantly alters its functions and value.

112

What is Excavation?

Removal of soil by any method if it results in an impact*.

113



114

Exemption Basics

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

115

Exemption Basics

In other words…

The activity is regulated but is allowed to be filled, drained, and/or excavated permanently without replacing the loss of functions/values IF it fits within one of the categories.

116

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Typical Exemption Categories

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

117

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General Exemption Requirements for ALL

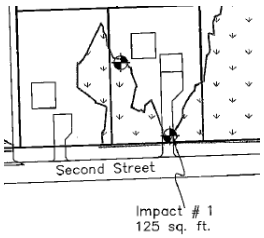
- Only has to fit one; not disqualified if not exempt by another
- If impacts exceed max allowed = nothing is exempt
- Max may not apply to all situations or wetlands-very specific
- May not be combined on a project
- Must be stabilized to prevent sedimentation/erosion & can't block fish activity.
- Can't be combined on the same project.

118

118

General Information

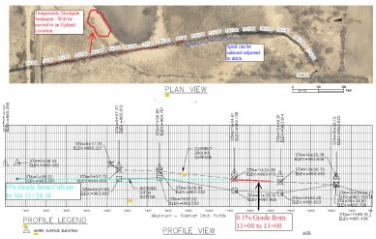
- The activity is still regulated.
- Exemptions do not apply to: calcareous fens, wetland bank sites, project-specific replacement sites (8420.0420 Subp 1B)
- WCA does not REQUIRE an application; some LGU's may.
- NOA or NOD is not a requirement but…..



119

Application and Noticing

- WCA does not REQUIRE an application; Some LGU's may
- NOA or NOD is not a requirement but…
  - LGU can seek TEP evaluation w/o NOA
  - LGU should push for application and notification when the project is
    - Complex
    - Controversial
    - Likely to be denied



120

BOARD OF WATER AND SOIL RESOURCES

Agricultural Exemptions (Subp. 2)

121

Sub-Categories of Ag Exemptions

Impacts from Agricultural Activities

- 8420.0420 Subp 2

(A) Type 1,2 Planted 6 of 10 prior to 1991

(B) Agricultural pasture land, except bottomland hardwood type 1

(C) SWCD conservation practices

(D) Wheeled booms on irrigation

(E) Aquaculture

(F) Wild rice

(G) Farm program MOU

122

Agricultural Exemptions (2A)

- Annually seeded crops or in rotation seeding with pasture grass/legume prior to Jan 1, 1991
- No size constraints, but <u>must</u> 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

123

123

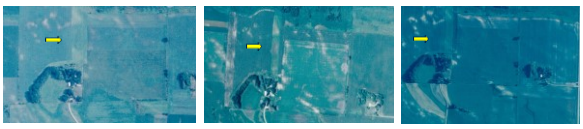
Ag 2A - Can the Landowner Tile?

1990 1989 1988

124

124

Ag 2A



1987 1986 1985

125

125

Ag 2A

1984 1983 1982

126

126

Ag 2A

1981 1980 1979

Is it exempt??

127

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What IF?

1981 1980 1979

- Aerial Photos clearly indicated 5 of 10 were cultivated/planted, 2 of 10 were not but there are 3 photos missing from the record?
- Or simply 2 photos were unclear/open for debate?

128

128

Agricultural Exemptions (2A)

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

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

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129

Where to Find Aerial Photos

- FSA Photos
- County Photos
- USGS Earth Explorer
- MHAPO
- Google Earth

130

130

Agricultural Exemption (2B) - Pastureland

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

131

131

Agricultural Exemption (2B cont.)

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

132

132

Agricultural Exemptions (2A)

What items may be needed?

- Demonstrated current pasture use
- FSA Slides (fencing, watering ponds, other infrastructure)
- Estimate of Wetland size if type 2/6 (NWI, Soils map, etc.)

133

133

Agricultural Exemptions (2C)

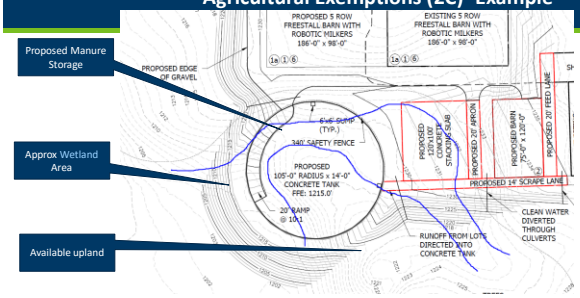
Impacts Resulting from Soil & Water Conservation Projects

- Must be certified by SWCD Technical Staff
- After TEP Review
- No specific guidance in rule, but must minimize adverse bio/hydro effects
  - TEP can/should consider alternative layouts where applicable
- Projects are highly variable (i.e.- Flood control Projects, Erosion Control Projects, manure storage areas, cattle crossing)

134

134

Agricultural Exemptions (2C) -Example



135

Agricultural Exemption (2D)

Fill for irrigation boom track

136

136

Agricultural Exemption (2E)

Impacts Resulting from **Aquaculture Activities**

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

137

137

Agricultural Exemption (2F)

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

138

138

Agricultural Exemption (2G)

- Impacts from Agricultural Activities for **Farm and No-Farm Program Participants** meeting certain criteria
- Process functions more like an exemption, but results function like replacement

139

139

BOARD OF WATER AND SOIL RESOURCES

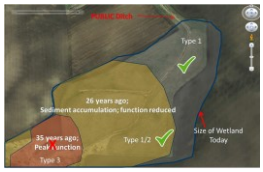
Drainage Exemptions (Subp. 3)

140

Drainage Exemption (3B)

Public Drainage part (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



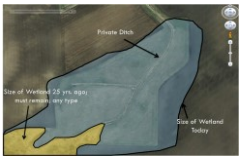
141

141

Drainage Exemption (3B)

Private Drainage part (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



142

142

Drainage Exemption (3B)

CONDITIONS:

- Spoil must be placed and stabilized to minimize impacts.
  - ~ Remove
  - ~ place on existing spoil
  - ~ incorporate
  - ~ side cast
- Ditch must be stable and not degrade water quality downstream.

143

143

Subp. 3B - Rule vs Application

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/other hydro controls?
- Downstream conditions?
- Can the impacts be quantified?

144

144

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

145

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Drainage Exemption (3C)

Example

- New tile (red) discovered at time of LGU onsite
- Determined to be installed in 2011
- Demonstrated annual planting in blue polygon in past 9 of 10 prior to July 5th.

Exempt?
Further Review?

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Drainage Exemption (3C)

(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)

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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.....

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

- Expenditure from the public drainage account occurred 1972-1992

OR

- the system was repaired/maintained as approved by DA

OR

- the DA determined no repair/maintenance is required

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

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

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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.


BOARD OF WATER AND SOIL RESOURCES

Wetland Conservation Act (WCA) Topic of the Week

Ditches, Drainage Projects, and WCA

November 12, 2020

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Resources for Drainage Project Evaluation

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


BOARD OF WATER AND SOIL RESOURCES

Drainage Project Fact Sheet for Wetland Conservation Act Compliance

Wetlands Section, Minnesota Board of Water & Soil Resources

Version: 1.1
Date: 4/26/2019

Purpose

Projects that involve the installation, improvement, repair and/or maintenance of public or private drainage systems (collectively referred to as "drainage projects") must comply with the provisions of the Minnesota Wetland Conservation Act (WCA). These projects typically involve construction-type activities in or near wetlands regulated under WCA rules and have the potential to impact these wetlands. Wetland impacts regulated by the WCA include drainage, fill and excavation (under certain circumstances). This fact sheet is intended to identify the type of information that is often needed to evaluate drainage projects for WCA compliance. Drainage authorities, private landowners and consultants can use this document to inform their applications for WCA compliance, and local government unit (LGU) and technical evaluation panel (TEP) representatives can use it to inform their review of applications.

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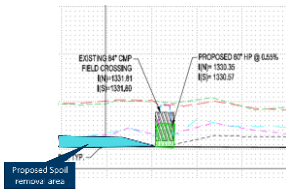
Drainage Project Evaluation

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?)



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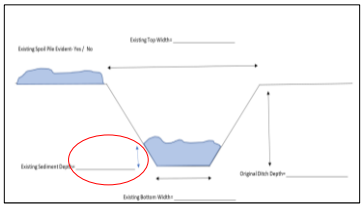

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Public Drainage Example

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Example – Existing Condition

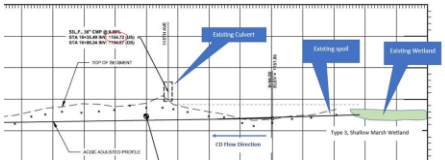
*Elevation profiles of ditches and tiles

*Depth and location of sediment

*Wetland type and location

*Elevation and slope

* Culvert elevations



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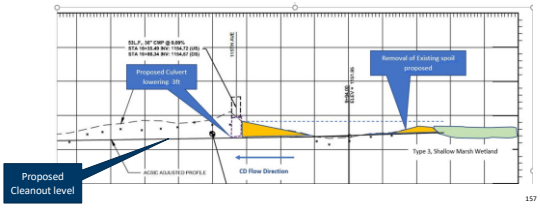
Example – Proposed Condition

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



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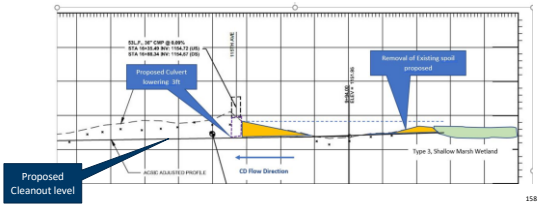
Is it exempt??

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



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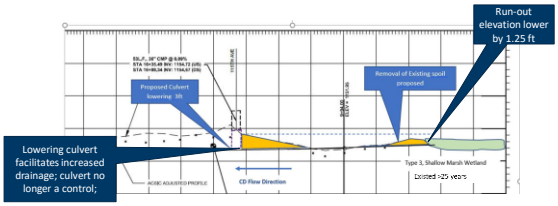
Not exempt



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Modified Scenarios

- What if the wetland were a Type 2 and more than 25 years old in the public drainage system?
- 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?

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Determining Impacts of Improved Drainage

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)

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Private Drainage Example

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Private Drainage

Knowns:

- Ditch exists today in some capacity
- Wetland is a Type 2/6 Sedge/Shrub area transitions to Type ½ Reed canary
- There are 2 culverts along the stretch to be maintained
- Outlets to public water course just east of road culvert.
- Not a public ditch or assessed drainage benefits

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Private Drainage

- Limited cleanout based on conditions of onsite visit
- Wetland is approx. based on NWI/Soils
- Proposed 1.5 ft of sediment removal

Is it exempt??

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Private Drainage

- Limited cleanout based on conditions of onsite visit
- Wetland is approx. based on NWI/Soils
- Proposed 1.5 ft of sediment removal

Is it Exempt to allow the 1.5 ft sediment cleanout?

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Private Drainage

Additional Information is necessary to make the determination…

- Culvert Elevations/Fall; Is outlet restricted?
- Prior cleanout?
- Conditions of wetland 25 yrs ago or near last clean out time – comparison?
- Soil type and Estimated LE of additional 1.5 ft clean out?

Exempt?

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Private Drainage

Additional Information is necessary to make the determination…

- Culvert Elevations/Fall; Is outlet restricted?
- Prior cleanout?
- Conditions of wetland 25 yrs ago or near last clean out time – comparison?
- Soil type and Estimated LE of additional 1.5 ft clean out?

Failed to demonstrate an exemption is met – however, consider if modifications can allow some maintenance to be exempt….

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Take Aways…

- 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

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Replacement Plan Applications

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Minnesota Wetland Professional Certification Program

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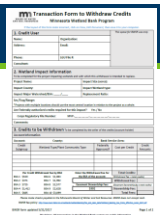
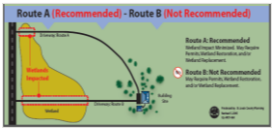
Replacement Plans



8420.0330 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.



Sequencing 8420.0520

- Avoid Impact 8420.0520 subp 3
- Minimize Impact 8420.0520 subp 4
- Replace 8420.0522

BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

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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

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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

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Application Contents Continued…

5. Information pertaining to special considerations (8420.0515) (T & E, rare communities, cultural resources, etc.)
6. List of known local, state, and federal permits required for the activity
7. Identify project purpose and need and alternatives considered

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Replacement

- 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) the 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.

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Sequencing: 8420.0520

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

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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
- 8420.0520 Subp C – Page 45 of 2009 Rule book

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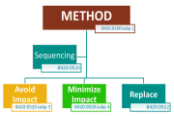
Sequencing

- **Avoid**
- **Minimize**
- **Replace**



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How does applicant *demonstrate* sequencing?

- Clearly define the **purpose** of the project.
- Identify the physical, economic, and/or demographic **requirements** of the project.
- **Justify** why <u>this</u> project should or must go on <u>this</u> site.
- Show (concept plans, discarded grading plans, etc.) and describe other *reasonable* **alternatives** that were considered or could be considered.

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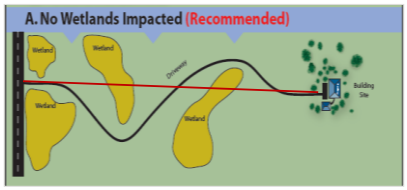
Impact Avoidance

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



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Alternatives Analysis

- LGU must determine if feasible and prudent alternatives are available that avoid wetland impact

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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

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Evaluating Alternatives (continued)

- LGU must consider (8420.0520 subp 3C(3)):
  - Could the size, configuration, or density of the project be modified to avoid wetlands?
  - Has the applicant made efforts to remove constraints (zoning restrictions, ordinance requirements, etc.) that are causing wetland impacts (i.e. request for variances, PUD, conditional use permit, etc.)?

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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.

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Sequencing - Offsite

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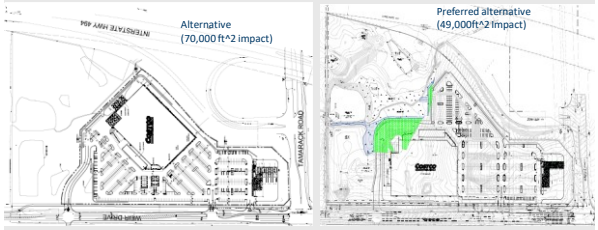
Sequencing - Minimization



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Alternatives Analysis Continued…

Future considerations when reviewing a site and potential off-site impacts

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Alternatives Analysis Continued…

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

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What if an avoidance alternative does NOT exist?

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

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Impact Rectification

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

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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

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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.

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Special Considerations

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)

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Special Considerations Continued…

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

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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.)

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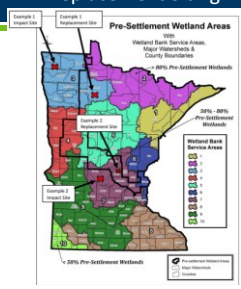
Replacement Siting

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



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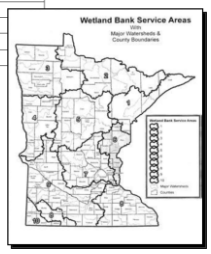
Replacement Ratios

Minimum Replacement Ratios: Banking		
Location of impact	Replacement	Minimum replacement ratio
>80% area or agricultural land	Outside bank service area	1.5:1
	Within bank service area	1.1
<50% area, 50-80% area, and nonagricultural land	Outside bank service area	2.5:1
	Within bank service area	2:1

Must follow a priority order:
Minor Watershed
Major Watershed
Same BSA
Another BSA



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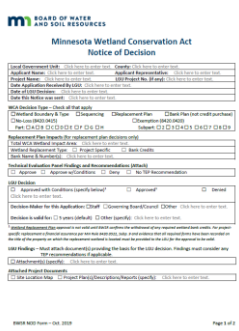
Result?



A formal NOD document that summarizes the decision, is supported by technical findings and is valid for 5 years.

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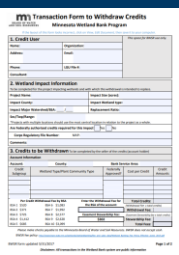
Application to withdraw wetland credits



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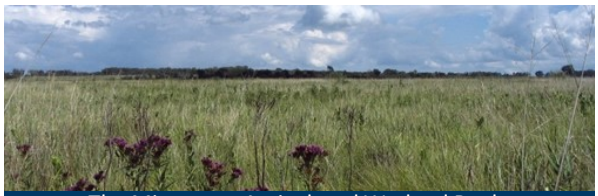

The Minnesota Agricultural Wetland Bank:
History, procedures and application review tips

BOARD OF WATER AND SOIL RESOURCES

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Topics Covered

- ❑ Background – WCA and Banking
- ❑ The origins of the Ag Bank
- ❑ Agency roles in the Partnership
- ❑ How the Ag Bank works
- ❑ Things to watch out for

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Opportunity for a Partnership

- MN Board of Water and Soil Resources (BWSR)
  - "WCA"
- USDA Natural Resources Conservation Service (NRCS)
  - "Swampbuster"

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The BWSR-NRCS Partnership
-Utilize Agency Strengths

NRCS:

✓Working directly with agricultural producers.

✓Identifying wetland impacts on ag land.

BWSR:

✓Established wetland banking program and procedures.

✓Wetland mitigation expertise.

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The BWSR-NRCS Partnership
-The Beginning of the Ag Bank

- **2009 MOU**: Addressed wetland mitigation (and other issues).
- **2011 Contribution Agreement**: Included establishment of the Ag Bank.
- **2013 MOU**: Established joint Ag Bank criteria.
- **2014 Farm Bill**: National Ag Banking Pilot.
- **2017 Grant Agreement**: Continued Wetland Mitigation Bank Development.

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The Minnesota Ag Bank
-Some Key Roles in the Partnership

NRCS: Process farm program participant requests for voluntary mitigation on ag land using the ag bank.

BWSR: Process applications for ag bank establishment and administer the statewide bank, including all credit transactions.

LGU: Review and process applications requesting use of the Ag Bank per the MOU (or notify applicant if not eligible!)

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Wetlands Eligible for AB credit replacement

II. Use of the Agricultural Wetland Bank.

A. For farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:

1) Farmed Wetland (FW);
2) Farmed Wetland Pasture (FWP);
3) a Wetland (W) impacted by an activity for which the landowner can provide evidence (i.e. Local Government Unit determination) of qualification for a WCA exemption under MN Rule 8420.0420, Subp. 2, Item A or Subp. 3, Item C(1);
4) a Wetland (W) less than five acres in size that is predominantly bordered by land that has been cropped 8 of the last 10 years when the wetland is degraded according to the BWSR Agricultural Wetland Evaluation Tool, as amended (the tool assesses vegetative diversity, downstream water quality protection, floodwater attenuation, and wildlife habitat - a wetland qualifies as degraded when the tool results in a ranking of low for vegetation and one or more other functions, and no higher than medium for any function); or
5) Converted Wetland (CW) that, prior to conversion, qualifies under items one through four above as determined by NRCS staff.

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	Agricultural Wetland Bank (AWB)	Standard Wetland Bank (SWB)
Credit generation:	wetland restorations only (hydrology & vegetation restored). **No creations**	Any eligible action in WCA Rule
Standards:	Agricultural Bank Site (Wetland) Evaluation Tool	WCA Rule replacements standards
Fees:	Less than SWB fees	More than AWB fees
Credit Use:	Degraded wetlands on Ag land only (must remain in ag use for 10 years after replacement)	No restrictions – any wetland impact

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How is the Ag Bank Different?

- 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.
- Ensures compliance with both State and Federal (NRCS) requirements.
- Reduced redundancy for landowners.

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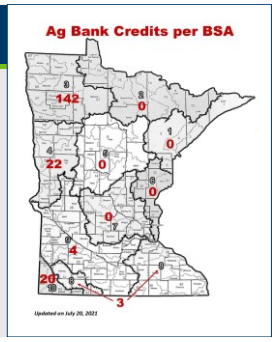
Current Status

- ➢191 credits available.*
- ➢63 credits anticipated for release within the next 6-8 months
- ➢6 Ag Bank projects in the application process

*Available credit numbers can fluctuate daily (as of July 20, 2021).



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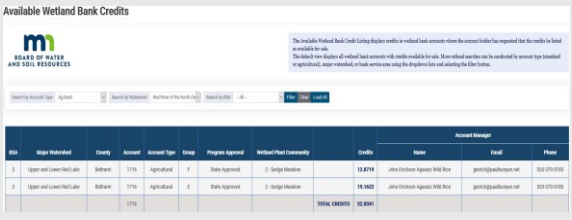
Public Interface – Bank Information

The website provides information relating to: Location, availability of credits, type of credits and contact info



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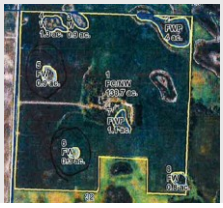
"Typical" Ag Bank Wetland Replacement Process

1. The farmer (producer) initiates process with NRCS (or FSA via an AD 1026)
2. NRCS refers to the Certified Wetland Determination (CWD)



FW Farmed Wetland. An area that is farmed wetland was manipulated and planted before December 23, 1985, but still meets wetland criteria. These may be farmed and maintained in the same manner as long as they are not abandoned.

FWP Farmed Wetlands Pasture. An area that is pasture or hayland, manipulated before December 23, 1985 but still meets wetland criteria. These may be farmed and maintained in the same manner as long as they are not abandoned.

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"Typical" Ag Bank Wetland Replacement Process

1. The farmer (producer) initiates process with NRCS (or FSA via an AD 1026)
2. NRCS refers to the Certified Wetland Determination (CWD)
3. If the CWD shows a "W", NRCS/consultant/LGU completes Ag Wetland Evaluation Tool assessment (AWET);
   - MNRAM based assessment – vegetative diversity, downstream water quality protection, flood water attenuation and wildlife habitat.
   - "Degraded" = a scoring of "Low" for vegetative diversity + "Low" for one other function, and no other score may be higher than "Medium"

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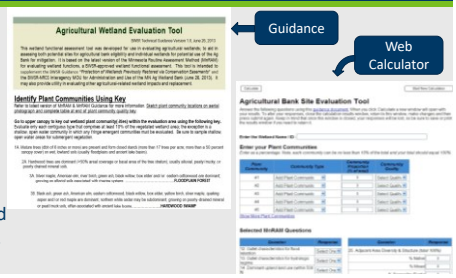
Functional Assessment Tool

Evaluate potential ag bank sites and proposed wetland impacts.

Ensures functions gained > functions lost.



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2. NRCS refers to the Certified Wetland Determination (CWD)
3. If the CWD shows a "W", NRCS/consultant/LGU completes Ag Wetland Evaluation Tool assessment (AWET)
4. NRCS/consultant/LGU assists the producer filling out form, and producer submits it to the LGU

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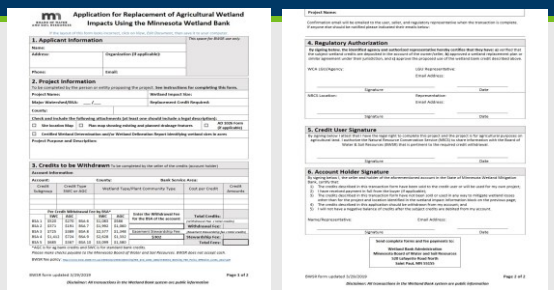
Application Process (Use of the Ag Bank)



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Are all wetlands identified?

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- NRCS evaluates the "best drained condition" of the wetland prior to Dec. 23, 1985
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- For WCA, it hasn't been planted for almost 35 years therefore not exempt.
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Things to Watch For …

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- NRCS evaluates by tract – pay attention to tract boundaries!
- What if the property line is also a county boundary???
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- Remember Ws have a three-part eligibility criteria;
  - Confirm the acreage
  - Confirm the history of the land bordering the wetland
  - Confirm it is degraded per the Ag Wetland Evaluation Tool
- If not eligible for AB MOU replacement – **NOTIFY THE APPLICANT!!!!!**
- MN Statute 15.99 timelines apply

224

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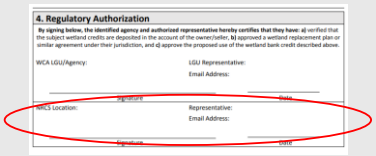
Things to Watch For …

Is the form signed by NRCS staff?



4. Regulatory Authorization

By signing below, the identified agency and authorized representative hereby certifies that they have: a) verified that the subject wetland credits are deposited in the account of the owner/seller, **b)** approved a wetland replacement plan or similar agreement under their jurisdiction, and **c)** approve the proposed use of the wetland bank credit described above.

WCA LGU/Agency: LGU Representative:
Email Address:
Signature Date

NRCS Location: Representative:
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- This must be signed by NRCS *prior to* your review and approval.
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Wetland Banking

BOARD OF WATER AND SOIL RESOURCES

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Overview

- Purpose of Wetland Banking
- Types of Wetland Banks
- Actions Eligible for Credit
- Establishing a Wetland Bank
- Certification and deposit of credits
- Withdrawals and transfers
- Replacement for Public Road Projects

Banking-related topics covered in other sections:

- Restoration Construction Standards
- Monitoring and Corrective Actions

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- Wetland Bank Guidance and Information

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Purpose

What is Wetland Banking?

- WCA rule: "The purpose of the state **wetland banking** system is to provide a market-based structure that allows for replacement of unavoidable impacts with pre-established replacement wetlands."
- Federal Mitigation Rule definition (33 CFR 332.2): "A **mitigation bank** sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor."

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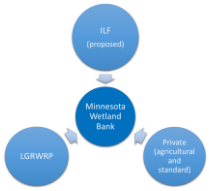
Bank types

- 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
- In-lieu Fee (proposed)
  - Open to only government and NGOs, mitigation completed in advance, requires compensation planning framework
- Local Government Road Wetland Replacement Program
  - Replaces impacts resulting from local transportation projects



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Local Government Road Wetland Replacement 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
- These wetland credits also satisfy Corps of Engineers' Section 404 permit requirements

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What projects Qualify?

- **Repair, rehabilitation, reconstruction** or **replacement** of **currently serviceable** existing State, City, County or Town public road.
  - Provided that:
    - Project **minimizes impacts**
    - **Plans are provided** to the LGU
- What doesn't qualify?
  - New roads
  - Roads expanded solely for additional capacity lanes

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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"

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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	Corps
Draft Prospectus (optional)	Draft Prospectus (optional)
Prospectus (optional)	Prospectus (required)
Mitigation Plan (required)	Mitigation Plan (required)
Easement Acquisition	Final Mitigation Plan (required)

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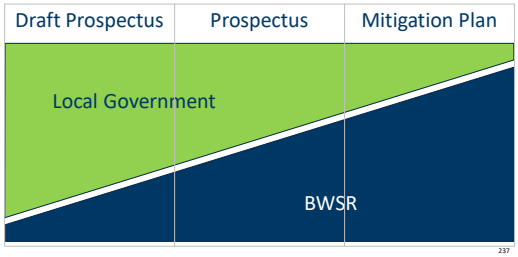
Roles in Establishing a Wetland Bank



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Review

- Types of Wetland Banks
  - Standard
    - Private and Agriculture
  - In Lieu of Fee (proposed)
  - Local Road Program
- Replacement for Public Road Projects
  - Repair, rehabilitate, reconstruction of currently serviceable roads
- Actions Eligible for Credit
  - Restoration of drained wetlands, vegetation restoration, protection, ENRV, Preservation, upland buffer
- Establishing a Wetland Bank
  - Draft Prospectus
  - Prospectus
  - Mitigation Plan
- LGU and TEP procedures for banking
  - Construction Certification, deposit of credits, withdrawal of credits

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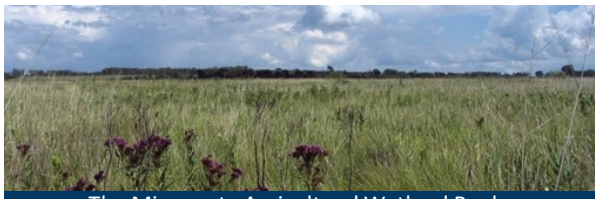

The Minnesota Agricultural Wetland Bank: History, procedures and application review tips

Spicer Training – May 17, 2022

Lynda Ponting - Wetland Specialist

BOARD OF WATER AND SOIL RESOURCES

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Topics Covered

- ❑ Background – WCA and Banking
- ❑ The origins of the Ag Bank
- ❑ Agency roles in the Partnership
- ❑ How the Ag Bank works
- ❑ Things to watch out for

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Minnesota Wetland Conservation Act (WCA)

- State law passed in 1991.
- Applies to all wetlands, including those on agricultural land.
- "Stand-alone" state law not dependent on federal programs.
- Provides authority for the State Wetland Bank (1993).
- Administered by BWSR and local governments.

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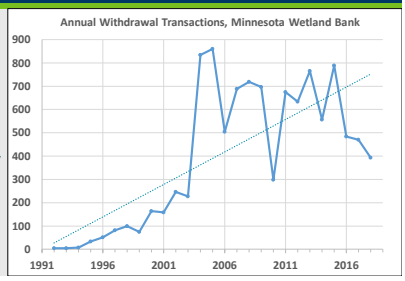
Wetland Banking in Minnesota

- ~450 bank sites since inception
- ~400-800 annual withdrawals

Goals:
- Adequate credit supply
- High-quality wetlands*
- Efficient
- Cost-effective



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Opportunity for a Partnership

- MN Board of Water and Soil Resources (BWSR)
  - "WCA"
- USDA Natural Resources Conservation Service (NRCS)
  - "Swampbuster"

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The BWSR-NRCS Partnership
-Utilize Agency Strengths

NRCS:

✓Working directly with agricultural producers.

✓Identifying wetland impacts on ag land.

BWSR:

✓Established wetland banking program and procedures.

✓Wetland mitigation expertise.

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The BWSR-NRCS Partnership
-The Beginning of the Ag Bank

- **2009 MOU**: Addressed wetland mitigation (and other issues).
- **2011 Contribution Agreement**: Included establishment of the Ag Bank.
- **2013 MOU**: Established joint Ag Bank criteria.
- **2014 Farm Bill**: National Ag Banking Pilot.
- **2017 Grant Agreement**: Continued Wetland Mitigation Bank Development.

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The Minnesota Ag Bank
-Some Key Roles in the Partnership

NRCS: Process farm program participant requests for voluntary mitigation on ag land using the ag bank.

BWSR: Process applications for ag bank establishment and administer the statewide bank, including all credit transactions.

LGU: Review and process applications requesting use of the Ag Bank per the MOU (or notify applicant if not eligible!)

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Wetlands Eligible for AB credit replacement

II. Use of the Agricultural Wetland Bank.

A. For farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:

1) Farmed Wetland (FW);
2) Farmed Wetland Pasture (FWP);
3) a Wetland (W) impacted by an activity for which the landowner can provide evidence (i.e. Local Government Unit determination) of qualification for a WCA exemption under MN Rule 8420.0420, Subp. 2, Item A or Subp. 3, Item C(1);
4) a Wetland (W) less than five acres in size that is predominantly bordered by land that has been cropped 8 of the last 10 years when the wetland is degraded according to the BWSR Agricultural Wetland Evaluation Tool, as amended (the tool assesses vegetative diversity, downstream water quality protection, floodwater attenuation, and wildlife habitat - a wetland qualifies as degraded when the tool results in a ranking of low for vegetation and one or more other functions, and no higher than medium for any function); or
5) Converted Wetland (CW) that, prior to conversion, qualifies under items one through four above as determined by NRCS staff.

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	Agricultural Wetland Bank (AWB)	Standard Wetland Bank (SWB)
Credit generation:	wetland restorations only (hydrology & vegetation restored). **No creations**	Any eligible action in WCA Rule
Standards:	Agricultural Bank Site (Wetland) Evaluation Tool	WCA Rule replacements standards
Fees:	Less than SWB fees	More than AWB fees
Credit Use:	Degraded wetlands on Ag land only (must remain in ag use for 10 years after replacement)	No restrictions – any wetland impact

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How is the Ag Bank Different?

- 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.
- Ensures compliance with both State and Federal (NRCS) requirements.
- Reduced redundancy for landowners.

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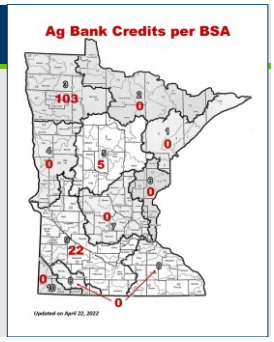
Current Status

- 130 credits available*
- 92 credits = average annual demand (2013-2021)
- 11 existing or new Ag Banks in development - most expecting credit releases this year
- 2 new projects in application development with more potential projects under review

*Available credit numbers can fluctuate daily (as of April 22, 2022).



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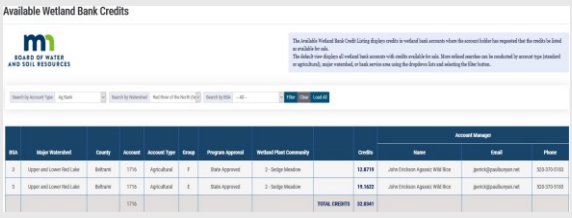
Public Interface – Bank Information

The website provides information relating to: Location, availability of credits, type of credits and contact info



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FW Farmed Wetland. An area that is farmed wetland was manipulated and planted before December 23, 1985, but still meets wetland criteria. These may be farmed and maintained in the same manner as long as they are not abandoned.

FWP Farmed Wetlands Pasture. An area that is pasture or hayland, manipulated before December 23, 1985 but still meets wetland criteria. These may be farmed and maintained in the same manner as long as they are not abandoned.

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3. If the CWD shows a "W", NRCS/consultant/LGU completes Ag Wetland Evaluation Tool assessment (AWET);
   - MNRAM based assessment – vegetative diversity, downstream water quality protection, flood water attenuation and wildlife habitat.
   - "Degraded" = a scoring of "Low" for vegetative diversity + "Low" for one other function, and no other score may be higher than "Medium"

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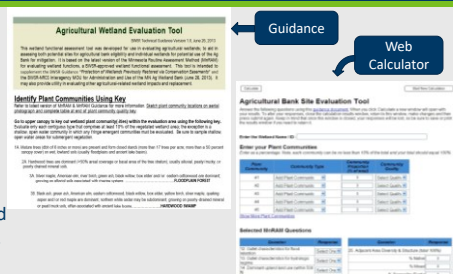
Functional Assessment Tool

Evaluate potential ag bank sites and proposed wetland impacts.

Ensures functions gained > functions lost.



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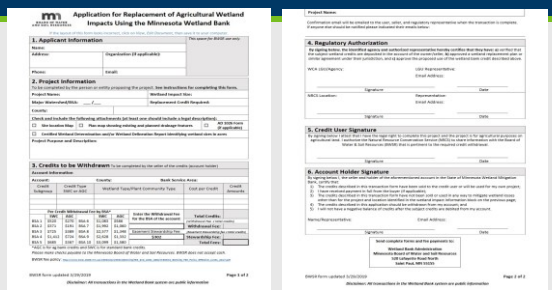

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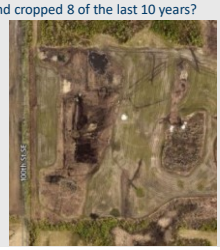

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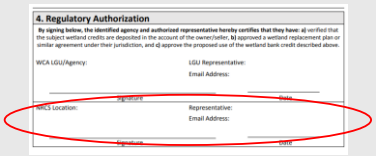

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Which of the following is not a LGU's role in administering the WCA:

a) Make decisions on applications made under the WCA
b) Completely fil out a joint application for the landowner
c) Coordinate TEP meetings when needed
d) Provide knowledgeable and trained staff

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Sometimes referred to as the "60 day Rule", this Minnesota State Statute determines the agency action deadline for all WCA LGUs to make a decision on a wetland application:

a)MN Statute 8420
b)MN Statute 15.99
c)MN Statute 404
d)MN Statute 103G

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For a project in a shoreland area, the Technical Evaluation Panel consists of:

a)The LGU, Army Corps and DNR.
b)The LGU, SWCD, BWSR and Army Corps.
c)The LGU, SWCD, BWSR and DNR.
d)The Army Corps and DNR.

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An exemption is:

a)An activity that no matter how large of an impact requires replacement.
b)A regulated activity that does not require replacement.
c)An activity that requires an application everywhere in the State.
d)An activity occurring in a calcareous fen.

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During the review of a replacement plan application, LGUs must use this process to determine whether a project avoids, minimizes then replaces wetland impacts:

a)No-loss criteria
b)Sequencing
c)Exemption standards
d)Replacement order

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Which member of TEP is responsible for writing a WCA restoration Order?

a)LGU
b)BWSR
c)SWCD
d)Army Corps

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