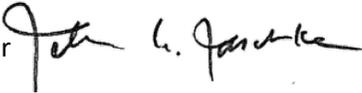




DATE: September 20, 2022

TO: Board of Water and Soil Resources' Members, Advisors, and Staff

FROM: John Jaschke, Executive Director 

SUBJECT: BWSR Board Meeting Notice – September 28, 2022

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, September 28, 2022, beginning at 9:00 a.m. The meeting will be held in the lower-level Board Room, at 520 Lafayette Road North, St. Paul and by WebEx. Connect through WebEx by either 1) logging into WebEx by going to the following website: <https://minnesota.webex.com/minnesota/onstage/g.php?MTID=efd8b0f49f0d9c951f58c657fadee85ca>, and entering the password: webex, or 2) join by audio only conference call by calling telephone number: 415-655-0003 and entering the access code: 2493 923 7614.

The following information pertains to agenda items:

COMMITTEE RECOMMENDATIONS

Dispute Resolution Committee

1. **WCA Appeal File 21-1 of a Notice of Decision for a No-Loss -Kittson County** – The appeal was brought before BWSR on August 16, 2021, from Steve Anderson with Anderson Law Group PLLC on behalf of Glenn Brazier to appeal a WCA Notice of Decision involving property located in Kittson County. A WCA Restoration Order was issued previously for the property that identified three areas of impact to wetland associated with the excavation of a ditch, construction of a road, and placement of other fill material for amusement rides. The October 15, 2019 Restoration Order was not appealed. The application for a no-loss and notice of decision is only associated with the activity/impact of excavation of material in a wetland. It does not address the other impacts identified in the Restoration Order. Impacts associated with the project also occurred on an adjacent Public Water Wetland that will need to be addressed separately through the Department of Natural Resources.

The Dispute Resolution Committee heard oral arguments from the parties to the appeal on August 31, 2022. After review of the record, written briefs, and oral arguments, unanimously voted to recommend that the appeal be denied and the LGU decision affirmed. A second motion was made on the request for additional evidence to be included in the record. That motion carried to accept the additional information as part of the record with the caveat that it's not relative to the decision. **DECISION ITEM**

Grants Program and Policy Committee

1. **Clean Water Legacy Partners Grant: Policy and Request for Proposals Ranking Criteria** – The Legislature appropriated \$400,000 in fiscal year 2022 and \$600,000 in fiscal year 2023 from the Clean Water Fund “for developing and implementing a water legacy grant program to expand partnerships for clean water.” The two fiscal year appropriations are combined for this RFP. The Grants Program and Policy Committee was briefed on the program on August 23 and recommended the policy and RFP criteria at their meeting on September 26. **DECISION ITEM**

2. **Environment and Natural Resources Trust Fund (ENRTF) Watershed and Forest Restoration: What a Match! Project Partner Grants and Agreements** – BWSR applied for and received \$3,318,000 in funding from the Environmental Natural Resources Trust Fund (ENRTF) to accelerate tree planting on privately owned lands for water-quality protection and carbon sequestration. This project will be completed in partnership with soil and water conservation districts, the Mille Lacs Band of Ojibwe, and the Department of Natural Resources. **DECISION ITEM**

NEW BUSINESS

1. **BWSR Climate Change Trends and Action Plan** – The first version of this plan was published in 2013 and updated in 2016 and 2019. This 2022 report summarizes the climate-related benefits of BWSR programs, both for mitigation and adaptation to climate change trends, and estimates the greenhouse gas emission reduction benefits of conservation practices that BWSR programs support (grant, cost-share and easement programs). **INFORMATION ITEM**

If you have any questions regarding the agenda, please feel free to call me at 651-539-2587. We look forward to seeing you on September 28th.

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
WEDNESDAY, SEPTEMBER 28, 2022**

PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF AUGUST 25, 2022 BOARD MEETING

PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)

INTRODUCTION OF NEW STAFF

- Jed Chestnut, Wetland Specialist
- Brittany Polzin, Easement Acquisition Specialist Sr.
- Ashley Rezachek, Communication Specialist

CONFLICT OF INTEREST DECLARATION

A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today's business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by staff before any vote.

REPORTS

- Chair & Administrative Advisory Committee – Gerald Van Amburg
- Executive Director – John Jaschke
- Audit & Oversight Committee – Joe Collins
- Dispute Resolution and Compliance Report – Travis Germundson/Rich Sve
- Grants Program & Policy Committee – Todd Holman
- RIM Reserve Committee – Jayne Hager Dee
- Water Management & Strategic Planning Committee – Joe Collins
- Wetland Conservation Committee – Jill Crafton
- Buffers, Soils & Drainage Committee – Mark Zabel
- Drainage Work Group – Neil Peterson/Tom Gile

AGENCY REPORTS

- Minnesota Department of Agriculture – Thom Petersen
- Minnesota Department of Health – Steve Robertson
- Minnesota Department of Natural Resources – Sarah Strommen
- Minnesota Pollution Control Agency – Katrina Kessler

ADVISORY COMMENTS

- Association of Minnesota Counties – Brian Martinson
- Minnesota Association of Conservation District Employees – Nicole Bernd
- Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Eunice Biel
- Minnesota Association of Watershed Districts – Jan Voit
- Natural Resources Conservation Service – Troy Daniell

COMMITTEE RECOMMENDATIONS

Dispute Resolution Committee

1. WCA Appeal File 21-1 of a Notice of Decision for a No-Loss -Kittson County – Rich Sve, Oliver Larson, Travis Germundson – ***DECISION ITEM***

Grants Program and Policy Committee

1. Clean Water Legacy Partners Grant: Policy and Request for Proposals Ranking Criteria – Annie Felix-Gerth – ***DECISION ITEM***
2. Environment and Natural Resources Trust Fund (ENRTF) Watershed and Forest Restoration: What a Match! Project Partner Grants and Agreements – Lindberg Ekola and Ryan Hughes – ***DECISION ITEM***

NEW BUSINESS

1. BWSR Climate Change Trends and Action Plan – Suzanne Rhees and Dan Shaw – ***INFORMATION ITEM***

UPCOMING MEETINGS

- Northern Region Committee meeting is scheduled for 10:00 AM on October 5, 2022 in Detroit Lakes.
- Central Region Committee meeting is scheduled for 2:00 PM on October 6, 2022 in St. Paul and by Microsoft Teams.
- Grants Program and Policy Committee meeting is scheduled for 8:30 AM on October 24, 2022 in St. Paul and by Microsoft Teams.
- Next BWSR meeting is scheduled for 9:00 AM, October 26, 2022 in St. Paul and by WebEx.

ADJOURN

**BOARD OF WATER AND SOIL RESOURCES
514 GATEWAY DRIVE NORTHEAST
EAST GRAND FORKS, MN
THURSDAY, AUGUST 25, 2022**

BOARD MEMBERS PRESENT:

Joe Collins, Jill Crafton, Jayne Hager Dee, Kurt Beckstrom, Carly Johnson, Neil Peterson, Rich Sve, Gerald Van Amburg, Ted Winter, LeRoy Ose, Kelly Kirkpatrick, Todd Holman, Ronald Staples, Mark Zabel, Glenn Skuta, MPCA; Jeff Berg, MDA; Mark Wettlaufer, MDH; Theresa Ebbenga, DNR

BOARD MEMBERS ABSENT:

Eunice Biel, Rich Sve, Joel Larson, University of Minnesota Extension

STAFF PRESENT:

John Jaschke, Rachel Mueller, Tom Gile, Mike Nelson, Julie Westerlund, Pete Waller, James Adkinson, Matt Fischer

OTHERS PRESENT:

Brian Martinson, AMC; Nicole Bernd, MACD; Mori Maher, MSTRWD; John Waller, RCWD

Chair Gerald VanAmburg called the meeting to order at 8:39 AM

PLEDGE OF ALLEGIANCE

22-32 **ADOPTION OF AGENDA** – Moved by Neil Peterson, seconded by Jill Crafton, to adopt the agenda as amended to introduce a new staff member. ***Motion passed on a voice vote.***

22-33 **MINUTES OF JUNE 22, 2022 BOARD MEETING** – Moved by Todd Holman, seconded by Jill Crafton, to approve the minutes of June 22, 2022, as circulated. ***Motion passed on a voice vote.***

PUBLIC ACCESS FORUM

No members of the public provided comments to the board.

CONFLICT OF INTEREST DECLARATION

Chair Van Amburg read the statement:

“A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today’s business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by staff before any vote.”

INTRODUCTION OF NEW STAFF

John Jaschke introduced Craig Engwall, Senior Legal and Program Advisor.

REPORTS

Chair & Administrative Advisory Committee – Chair Gerald Van Amburg thanked those that worked on the programs and tour. Stated MNDOT Comm. Nancy Daubenberger has been named chair of the Environmental Quality Board.

Executive Director’s Report - John Jaschke reported Craig Engwall and Melissa King will be working on increasing tribal connections. Stated they are working on the Diversity Equity and Inclusion Plan, which Jenny Gieseke will bring to the board at a future date. John stated he worked with Chair Van Amburg on the Risk Management Assessment Report that will be submitted to MMB. Stated the Outdoor Heritage Council is meeting and toured the west central area of Minnesota. The tour included BWSR staff showing sites accomplished through the Grassland Program. The Outdoor Heritage Council is working on recommendations for Legislation. LCCMR is meeting on the proposals they received. The Clean Water Council has been meeting and have released their preliminary recommendations on funding.

John reviewed the Day of Packet that include the Drainage Work Group Report, One Watershed One Plan Program Update, and Snapshots.

Audit and Oversight Committee – No report was provided.

Dispute Resolution and Compliance Report – Chair Van Amburg reported there will be a committee meeting on August 31st. John Jaschke reviewed the Dispute Resolution and Compliance Report included in the board packet.

Grants Program & Policy Committee – Todd Holman thanked the team for the work on the tour and meetings. Stated there are action items on the agenda for today. The committee adopted a standing meeting that will be on the fourth Monday of every month. It will be in person at the St. Paul office with a Teams link available. Stated the Committee has been discussing the watershed-based implementation funding formula.

RIM Reserve Committee – Jayne Hager Dee reported they have not met.

Water Management & Strategic Planning Committee – No report provided.

Wetland Conservation Committee – Jill Crafton reported they have not met.

Buffers, Soils & Drainage Committee – Mark Zabel reported they have not met.

Drainage Work Group (DWG) – Neil Peterson and Tom Gile reported they have met twice and discussed outlet adequacy and the drainage registry bill from the 2022 Legislature.

AGENCY REPORTS

Minnesota Department of Agriculture – Jeff Berg reported Commissioner Petersen is at the State Fair. Stated they are working on endorsements for the Minnesota Ag Water Quality Certification. Drought relief checks went out this week. Stated complaints are down this year for the herbicide dicamba that is used to control weeds. The Groundwater Protection Rule restricts nitrogen fertilizer application in the fall and will start on September 1, 2022.

Minnesota Department of Health – Mark Wettlaufer reported they are working on updating their wellhead protection rule. Stated the Source Water Protection Grants Program has grants available to implement wellhead plans.

Minnesota Department of Natural Resources – Theresa Ebbenga reported the Northwest Region has been involved with One Watershed One Plan and appreciates the opportunity to be involved. Stated they are working on their legislative budget for next year. They are also involved with flood damage reduction projects in the area.

Minnesota Extension – No report provided. Chair Van Amburg stated the Minnesota Water Resources Conference is October 18 and 19, 2022.

Minnesota Pollution Control Agency – Glenn Skuta thanked those involved in organizing the tour. Stated the WRAPS for Cottonwood River will be going on notice in September. The Redwood River will be going on public notice by the end of the year. Stated they hired new staff manager Heather Johnson in Southern Minnesota.

ADVISORY COMMENTS

Association of Minnesota Counties – Brian Martinson thanked those that organized the tour. Stated the Local Water Government Roundtable presented to the Clean Water Council. Comments were focused on the need for implementation funding for One Watershed One Plan and Comprehensive Watershed Plans. AMC is beginning its policy development work with the AMC Fall Policy Conference September 14-16 at Arrowwood in Alexandria.

Minnesota Association of Conservation District Employees – Nicole Bernd reported they have an education grant program that districts throughout the state can apply and can receive up to \$1,000 on a project that is tied into education on soil and water. They are planning on having another joint meeting with Watershed District Administrators and stated the first one was successful. Will be having a board meeting on September 22 and will have a gathering at the BWSR Academy in October.

Minnesota Association of Soil & Water Conservation Districts – No report provided. Kurt Beckstrom stated the MASWCD Board had a retreat in St. Cloud last week.

Minnesota Association of Townships – No report was provided.

Minnesota Association of Watershed Districts – No report was provided. John Jaschke stated the Administrators meeting was on Tuesday. Stated Emily Javens resigned and the MAWD staff role is temporarily being filled by Jan Voit. The new MAWD president is Linda Vavra, BdSWD.

Natural Resources Conservation Service – No report was provided.

Chair Van Amburg recessed the meeting at 9:49 a.m. and called the meeting back to order at 10:03 a.m.

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

One Watershed, One Plan Planning Grants Authorization – Julie Westerlund presented One Watershed, One Plan Planning Grants Authorization.

The calendar year 2022 (FY23 grants) One Watershed, One Plan Planning Grants request for proposal (RFP) period opened on March 26, 2022 and closed on June 11, 2022. BWSR received five proposals. Staff reviewed the five proposals (locations shown on attached map) against the RFP selection criteria and received feedback from the Interagency Water Management and Implementation Team on June 29, 2022. BWSR's Senior Management Team reviewed staff recommendations on July 12, 2022, and recommended funding all five proposals. Grants Program and Policy Committee reviewed this recommendation on July 25, 2022.

Funds are from the 2020-2021 biennium, Laws of Minnesota 2019, 1st Special Session, Chapter 2, Article 2, Section 7(i) and the 2022-2023 biennium, Laws of Minnesota, 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (i) for assistance, oversight, and grants to local governments to transition local water management plans to a watershed approach as well as previously returned clean water fund grants.

**
22-34 Moved by Neil Peterson, seconded by Jill Crafton, to approve the One Watershed, One Plan Planning Grants Authorization. ***Motion passed on a voice vote.***

Soil Health Cost Share Grant – Tom Gile presented Soil Health Cost Share Grant.

The Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 1, Section 4(K) appropriated \$675,000 for both fiscal years 2022 and 2023 for soil health practice adoption purposes consistent with the cost-sharing provisions of Minnesota Statutes, section 103C.501, and for soil health program responsibilities in consultation with the University of Minnesota Office for Soil Health.

The Soil Health Cost Share Grant program combines FY22 and FY23 General Fund dollars for the implementation of soil health practices and the necessary staff time needed for technical assistance and

grant program administration. Available funding will be split equally between Minnesota's soil and water conservation districts. The Policy has been developed primarily using the existing Erosion Control and Water Management Policy but includes a list of core soil health practices.

Kurt stated this program will complement climate smart agriculture coming down the road.

Mark Wettlaufer asked if the Board Conservationists will review work plans. Tom stated the Board Conservationists will work through it with SWCDs.

**
22-35 Moved by Kurt Beckstrom, seconded by Ron Staples, to approve the Soil Health Cost Share Grant.
Motion passed on a voice vote.

FY22 and FY23 Clean Water Fund Soil Health Grants – Tom Gile presented FY22 and FY23 Clean Water Fund Soil Health Grants.

In 2021, the Minnesota Legislature, in the first Special Session, passed Chapter 1, article 2, Sec. 6(p) (Clean Water Fund Appropriations). The original round of Clean Water Fund Soil Health Grants RFP was released this spring. We received 8 applications for a total request of approximately 2.1 million dollars. An interagency scoring team has reviewed the applications submitted and is recommending funding 7 of the 8 applications for approximately 2 million dollars.

This Grant program combines FY22 and FY23 appropriation dollars. Priority for this program is being given to new adoption and understanding of soil health practices through the following efforts: Building local knowledge; Facilitating partnerships; Demonstrating clean water benefits; Identifying methods to increase long term adoption of soil health practices; and Scope and scale of implementation efforts in locally prioritized areas that show a direct benefit to public water supplies.

The first Clean Water Fund Soil Health Grant RFP was released this spring and the recommendations for funding are included in this action item. The submitted applications have been reviewed and scored by an interagency scoring team consisting of membership from MDH, MDA, MPCA, DNR, and BWSR. That team has forwarded the attached funding recommendations for Board consideration. A second round RFP for this program was also available during the BWSR Competitive Clean Water Fund application cycle which closed earlier in August.

Ron Staples asked what GBERBA stands for. Tom stated it stands for the Greater Blue Earth River Basin Alliance.

**
22-36 Moved by Mark Zabel, seconded by Neil Peterson, to approve the FY22 and FY23 Clean Water Fund Soil Health Grants. ***Motion passed on a voice vote.***

FY2023 Buffer Implementation Grants – Tom Gile presented FY2023 Buffer Implementation Grants.

This is the annual Grant support funding for SWCD's role to provide planning, technical and implementation assistance to landowners under 103F.48 (Buffer Law) as well as their annual monitoring and reporting on compliance status.

Ted Winter asked if they would need to inform the Clean Water Council of the ongoing effort of monitoring buffers. Tom stated to bring these dollars forward they will come through the Clean Water Fund or another appropriation to provide the resources to the district. John Jaschke stated counties and

watershed districts are responsible for the compliance and both get a direct appropriation from the Department of Revenue.

Jill Crafton asked if they are looking at diversity in these buffers and if they are increasing diversity. Tom stated there are landowners who did what was necessary to come into compliance where others did alternative practices on what they thought was a better fit. Stated there are no specific requirements for diversity as perennial vegetation is the standard.

Kelly Kirkpatrick asked if there is data showing an economic benefit where a larger buffer is not a negative feature on the space being farming. Tom stated putting a dollar amount on it would be challenging as some are used for hay and others are reducing ditch maintenance costs.

**
22-37 Moved by Jayne Hager Dee, seconded by Kurt Beckstrom, to approve the FY2023 Buffer Implementation Grants. ***Motion passed on a voice vote.***

Northern Region Committee

Middle-Snake-Tamarac Rivers Comprehensive Watershed Management Plan – Matt Fischer and Nicole Bernd presented Middle-Snake-Tamarac Rivers Comprehensive Watershed Management Plan.

The Middle-Snake-Tamarac Rivers Watershed Planning Partnership established a Memorandum of Agreement between the planning partners for the purposes of writing a Comprehensive Watershed Management Plan in May of 2020 and was approved for a One Watershed, One Plan planning grant in August of 2020. The partners include Marshall County, Marshall Soil and Water Conservation District (SWCD), Polk County, West Polk SWCD, and Middle-Snake-Tamarac Rivers Watershed District.

The partnership held a 60-day review process that ended on June 27, 2022, and the required public hearing on July 13, 2022. The final draft of the updated Plan, a record of the public hearing, and copies of all written comments were submitted to the state review agencies on July 19, 2022. The partnership has incorporated most of the agency and public comments received throughout the Plan development process. Final state review agency comments were submitted by July 29, 2022, and all agencies that submitted comments recommended approval.

The Northern Regional Committee met on August 3, 2022, to review the content of the Plan, State agency comments on the Plan, and to make a recommendation. The Committee recommends approval of the submitted Plan by the full Board.

Neil Peterson stated it was great that they pushed this through.

Theresa Ebbenga stated the quality of these reports and increased coordination has been tremendous. Stated their staff had positive things to say.

Glenn Skuta stated he also heard positive things from his staff.

Mark Zabel is happy to see One Watershed One Plan do what it should be doing.

**
22-38 Moved by LeRoy Ose, seconded by Neil Peterson, to approve the Middle-Snake-Tamarac Rivers Comprehensive Watershed Management Plan. ***Motion passed on a voice vote.***

UPCOMING MEETINGS

- Next BWSR Meeting is scheduled for 9:00 AM, September 28, 2022 in St. Paul and by WebEx.
- Dispute Resolution and Compliance Committee meeting scheduled for 1:00 PM, August 31, 2022 in St. Paul.

Chair VanAmburg adjourned the meeting at 11:10 AM

Respectfully submitted,

Gerald Van Amburg
Chair

Dispute Resolution and Compliance Report

September 9, 2022

By: Travis Germundson

There are presently **five** appeals pending. All the appeals involve the Wetland Conservation Act (WCA). There has been **one** new appeal filed since last report.

Format note: New appeals that have been filed since last report to the Board.
~~Appeals that have been decided since last report to the Board.~~

~~File 22-5 (8-18-22). This appeal involves property located in Isanti County. The petition does not indicate what action under WCA is being appealed. A Restoration Order was issued for the property back on July 15 2021. The conditions of that order have not been met. The appeal has been dismissed. The appeal period for the restoration order has expired, and there is no evidence of a new restoration order or local government decision having been issued.~~

~~File 22-4 (6-21-22) This is an appeal of a WCA Restoration Order in Ottertail County. The appeal regards the alleged placement of approximately 2,870 square feet of fill in a wetland within the shoreland protection zone of Pelican Lake. The Restoration was affirmed in part and modified in part. The area required to be restored was reduced in size.~~

File 21-9 (12-17-2021) This is an appeal of a WCA notice of decision involving a no-loss determination in Pope County. The appeal regards the approval of a 36' inlet structure/tile to reduce inundation and saturated soil on agricultural fields. At issue is the elevation that was approved (to high). The petition request that the appeal be placed in abeyance until technical data can be gathered. Note, this involves the same notice of decision being appealed under File 21-07. *The appeal has been combined with file 21-7 and placed in abeyance to allow the Technical Evaluation Panel to develop written finding of fact following the submission of additional technical analyses. The appeal has been remanded back to the local unit of government for expanded technical review and a new decision because of the submission of additional technical analyses. The 60-day deadline for remand proceedings has been extended.*

File 21-8 (12-17-21) This is an appeal of a WCA Restoration Order in Rock County. The appeal regards the alleged placement of tile lines through wetlands. The petition request that the appeal be placed in abeyance for the submittal of an after-the-fact wetland application. *The appeal was placed in abeyance and the Restoration Order stayed for further investigation and submittal of an after-the-fact wetland application.*

File 21-7 (12-14-2021) This is an appeal of a WCA notice of decision involving a no-loss determination in Pope County. The appeal regards approval of a 36" inlet structure/tile that allegedly rout water around U.S. Fish and Wildlife Service property and impact wetlands. At issue is the elevation that was approved (to low). *The appeal has been combined with file 21-9 and placed in abeyance to allow the Technical Evaluation Panel to develop written finding of fact following the submission of additional technical analyses. The appeal has been remanded back to the local unit of government for expanded technical review and a new decision because of the submission of additional technical analyses. The 60-day deadline for remand proceedings has been extended.*

File 21-4 (10-26-2021) This is an appeal of a WCA restoration order in Morrison County. The appeal regards alterations to a private ditch and excavation of wildlife ponds. The project allegedly exceeded the project scope and authorization granted by the local unit of government for ditch maintenance under a no-loss determination. *The appeal was placed in abeyance and the restoration order stayed to determine viability of proposed actions for restoration.*

File 21-1 (8-16-2021) This is an appeal of a WCA Notice of Decision involving a no-loss determination in Kittson County. The appeal regards the denial of a no-loss determination for wetland impacts associated with the construction of road, ditch, and additional fill material. *The appeal was placed in abeyance and the restoration order stayed for submittal of an after-the-fact wetland restoration and replacement plan application. The appellant’s legal counsel notified BWSR that there they are no longer interested in pursuing a new application. As a result, a decision was made on November 3, 2021 to grant and hear the appeal. The appeal has been heard by the Dispute Resolution Committee (8-31-22). The committee’s recommendation will be presented to the full BWSR Board for a decision.*

Summary Table for Appeals

Type of Decision	Total for Calendar Year 2021	Total for Calendar Year 2022
Order in favor of appellant		
Order not in favor of appellant	2	3
Order Modified		1
Order Remanded	2	1
Order Place Appeal in Abeyance	5	2
Negotiated Settlement		
Withdrawn/Dismissed	2	1

Buffer Compliance Status Update: BWSR has received Notifications of Noncompliance (NONs) on 93 parcels from the 12 counties BWSR is responsible for enforcement. Currently there are no active Corrective Action Notices (CANs) and 3 Administrative Penalty Orders (APOs) issued by BWSR that are still active. Of the actions being tracked over 90 of those have been resolved.

*Statewide 32 counties are fully compliant, and 52 counties have enforcement cases in progress. Of those counties (with enforcement cases in progress) there are currently 529 CANs and 52 APOs actively in place. Of the actions being tracked over 2,327 of those have been resolved.

**Disclaimer: These numbers are generated monthly from BWSR’s Access database. The information is obtained through notifications from LGUs on actions taken to bring about compliance and may not reflect the current status of compliance numbers.*

COMMITTEE RECOMMENDATIONS

Dispute Resolution Committee

1. WCA Appeal File 21-1 of a Notice of Decision for a No-Loss -Kittson County – Rich Sve, Oliver Larson and Travis Germundson – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: WCA Appeal File 21-1 of a Notice of Decision for a No-Loss -Kittson County

Meeting Date: September 28, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: WCA Appeal File 21-1 Kittson County Board Order

Section/Region: Resource Conservation Section/Central

Contact: Travis Germundson

Prepared by: _____

Reviewed by: Dispute Resolution Committee Committee(s)
Rich Sve DRC Chair/Oliver Larson Attorney
General's Office/Travis Germundson

Presented by: _____

Time requested: 20 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval of Order that affirms the Kittson County Soil and Water Conservation District’s July 14, 2021 decision denying an application for non-loss filed by Glenn Brazier (appellant) on behalf of Wagon Wheel Ridge. The Order also includes a provision to accept additional evidence into the record provided by the appellant in an addendum submitted on February 23, 2022.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

The appeal was brought before BWSR on August 16, 2021, from Steve Anderson with Anderson Law Group PLLC on behalf of Glenn Brazier to appeal a WCA Notice of Decision involving property located in Kittson County. A WCA Restoration Order was issued previously for the property that identified three areas of impact to wetland associated with the excavation of a ditch, construction of a road, and placement of other fill material for amusement rides. The October 15, 2019 Restoration Order was not appealed. The application for a no-loss and notice of decision is only associated with the activity/impact of excavation of material in a wetland. It does not address the other impacts identified in the Restoration Order. Impacts associated with the project also occurred

on an adjacent Public Water Wetland that will need to be addressed separately through the Department of Natural Resources.

The Dispute Resolution Committee heard oral arguments from the parties to the appeal on August 31, 2022. After review of the record, written briefs, and oral arguments, unanimously voted to recommend that the appeal be denied and the LGU decision affirmed. A second motion was made on the request for additional evidence to be included in the record. That motion carried to accept the additional information as part of the record with the caveat that it's not relative to the decision.

Additional details and basis for the recommendation is included in the Order/ Memorandum.

Minnesota Board of Water and Soil Resources
Dispute Resolution Committee
520 Lafayette Road North
St. Paul, Minnesota 55155

In WCA Appeal of a Notice of Decision for a No-Loss Determination, Kittson County

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

BWSR File No. 21-1

This matter came to the Board of Soil and Water Resources for a final order from an appeal concerning the denial of a no-loss determination. The petitioners are Glen Brazier and Wagon Wheel Ridge, Inc (collectively “Wagon Wheel”). The respondent is the Kittson County Soil and Water Conservation District (the “Kittson District”).

On May 3, 2021, Wagon Wheel applied for a no-impact determination from the Kittson District, seeking a determination that Wagon Wheel’s excavation of a ditch and pond to create a firebreak (the “Project”) had or would have no impact on a surrounding wetland regulated under the Wetlands Conservation Act (“WCA”). Wagon Wheel completed the ditch prior to seeking the no-impact determination, leading to the issuance of a restoration order covering this and other issues. In its no-loss application, Wagon Wheel also proposed to extend the ditch and add a connected pond.

On July 16, 2021, the Kittson District issued a decision denying Wagon Wheel’s request for a no-impact determination, finding that the completed and proposed actions impacted the Type 2/Type 3 wetland through with the project was constructed (or proposed to be constructed).

Wagon Wheel timely appealed the Kittson District’s no-impact determination to BWSR pursuant to Minn. R. 8420.0905. The parties submitted briefs, and the matter was referred to BWSR’s Dispute Resolution Committee for hearing, which was held on August 31.

STATEMENT OF ISSUES AND RESOLUTION

1. Wagon Wheel has constructed a ditch through a Type II / Type III wetland, and proposes to extend the ditch and add a connected pond.

Should the Kittson District's decision to deny a no-loss determination for this Project be affirmed?

- a. The Kittson District determined that the constructed ditch and additional proposed excavations had impacted or would impact a WCA wetland because of the direct impacts of the excavations and because of the ability of the resulting ditch to drain the wetlands. The Kittson District found that these were impacts within the meaning of Minn. R. 8420.0111, subps. 22, 32.
 - b. The Dispute Resolution Committee voted 4-0 to recommend that BWSR affirm the Kittson District's no-loss determination, finding that it was not clearly erroneous.
 - c. [Insert BWSR decision]
2. After this appeal was filed, Wagon Wheel proposed that the record be expanded to include materials concerning certain negotiations between the parties, and materials concerning how certain boring tests were conducted by the Kittson District. Wagon Wheel alleges the discussion documents are relevant to show the Kittson District failed to consult certain other government entities while negotiating with Wagon Wheel. Wagon Wheel alleges that the borings were conducted without Wagon Wheel's required permission, and that evidence from the borings should therefore be excluded.

Should the materials Wagon Wheel submitted concerning the negotiations and borings be admitted into the record?

- a. The Kittson District did not consider the additional materials, which were not submitted prior to its decision, and opposes inclusion of the materials into the record.
- b. The Dispute Resolution Committee voted 3-1 to recommend admission of the additional materials into the record on the basis that there was no prejudice to the Kittson District. The Dispute Resolution Committee determined that while the materials were not relevant to the no-loss determination before it, admitting the records was preferable to potentially remanding the case back to the Kittson District for further proceedings in light of these materials.
- c. [Insert BWSR decision]

FINDINGS OF FACT

1. Glen Brazier is the principal and owner of Wagon Wheel, Inc. (R57.) Wagon Wheel owns connected parcels of land near Karlstad adjacent to Minnesota Highway 11, which is

the site of the Project. (R57.) Among other things, Wagon Wheel holds an annual concert/event called “Kick’n Up Kountry Music Festival” at the Project site. (R58.)

2. In 2012, a large wild-fire impacted Kittson County near to Karlstad and the Project site. (R61-62.)

3. In 2018¹, Wagon Wheel constructed a ditch running roughly north/south as a firebreak², and a road making a loop through a portion of the Project suite to facilitate firefighting access. (R62-63.) The ditch and road are depicted in the aerial photograph below (R10):³

¹ The exact dates of construction of various elements of the project are not revealed from the record, but in its brief, Wagon Wheel states that the ditch was constructed in December of 2018. The record generally suggests the constructions activities occurred in 2018. For purposes of this appeal, the exact dates are not relevant.

² Wagon Wheel contends the ditch and road were constructed for firebreak purposes. For purposes of this appeal, it is not necessary for BWSR to determine the purpose the ditch and road. The purpose of the ditch and road could conceivably be relevant to wetland replacement plan application, where the necessity of the impact is a factor. *See* Minn. R. 8420.0520. But for a no-loss determination, the only question is whether the activities impacted a wetland, not whether that impact can be justified. For purposes of the appeal, BWSR assumes without deciding that the ditch and proposed pond were built (or would be built) for firebreak purposes.

³ The photograph contains a notation added by the Kittson District: “Current location of Wagon Wheel Ridge in 2019. This photo shows the scope of the violation.” BWSR reproduces the photograph here only for the purposes of the photograph itself, not the notation.



4. In addition to the ditch and road, Wagon Wheel also placed certain structures on the Project site, including a “UFO Display” and aircraft fuselage as site attractions. (R49, 51.)

5. The Project site contains a mix of wetlands regulated by different authorities. (R103-114). The road and the northern portion of the ditch were constructed in Type 2/Type 3 wetlands regulated under the Wetlands Conservation Act. (R103-104.) The Kittson District is the local unit of government with jurisdiction over these wetlands. (*Id.*) The southern portion of the

ditch was constructed through a State public waters wetlands. (R105-114.) The Department of Natural Resources has jurisdiction over these wetlands. (*Id.*)

6. On July 15, 2019 representatives of the DNR and the Kittson District met with Mr. Brazier and conducted a site inspection of the Project site. (R103.)

7. On August 23, 2019, the Kittson District issued a restoration order to Mr. Brazier. (R103-104.) The Kittson District determined that the road and ditch were constructed through a Type 2/Type 3 wetlands in violation of the Wetlands Conservation Act. (*Id.*) The Kittson District restoration order required Mr. Brazier to restore the wetlands by filling the ditch and removing the road in conformance with certain instructions. (*Id.*) Alternatively, the restoration order allowed Mr. Brazier to submit a complete wetland replacement plan, exemption, or no-loss application within 30 days of the order. (*Id.*)

8. On October 11, 2019, the DNR issued a restoration order to Mr. Brazier for the public waters portion of the Project. (R105-114.) The DNR determined that these portions of the ditch were constructed through a public water wetland. (R105.) The DNR restoration order required that the ditch be filled, and certain structures removed in accordance with certain instructions. (R110.)

9. Mr. Brazier did not appeal either restoration order. He did submit an application to the Kittson District for an exemption that appears to be timely.⁴ The application was, however, incomplete. (R78.) Among other things, it failed to identify the basis in statute or rule for an exemption. (*Id.*) The Kittson District concluded that elements of the application could be

⁴ The application does not appear to be dated, but a letter dated November 22, 2019 from the Kittson District to Mr. Brazier informing him the application was incomplete supports a finding that application was submitted within 30 days of Wagon Wheel's receipt of the October 19 Kittson District restoration order. (R78.) For purposes of this appeal, the timeliness of the initial application is not relevant.

potentially be construed as a request for a no-loss determination, but that the application was deficient for those purposes as well. (*Id.*)

10. From April 2020 to August 2021, there was a long period of correspondence between Mr. Brazier and his attorney on the one hand, and the Kittson District on the other. (R115-185.) The purpose of this correspondence, among other things, was to see if Wagon Wheel and the Kittson District could reach an agreement on the resolution of the Kittson District restoration order. (*Id.*) This included a discussion of whether Wagon Wheel could resolve the restoration order through wetlands replacement, as well as the possibility of a no-loss application. (*Id.*)

11. Wagon Wheel submitted the application that underlies this appeal on May 3, 2021. In the application, Wagon Wheel sought a no-loss determination on three elements of the project only:

- a. A no-loss determination as to the already constructed portions of the ditch that ran through the WCA wetlands (R26).
- b. A no-loss determination as to a proposed pond to be constructed and connected to the ditch. (R26, 45.)
- c. A no-loss determination as to a proposed extension of the ditch. (R26, 47.)

12. In its application, Wagon Wheel did not contest that the existing ditch had been constructed through a Type 2/Type 3 wetland, or that the proposed pond and ditch extension would be constructed through a Type 2/Type 3 wetland. The record also fully supports the Kittson district's determination that these elements of the Project were constructed or proposed to be constructed in a wetland covered by the WCA and subject to the Kittson District's jurisdiction. (R196-197.)

13. Wagon Wheel contested whether the ditch and proposed pond and extension would have an impact on the wetlands. (R29.) Wagon Wheel argued that the excavations could improve the wetlands by removing invasive cattails and improving waterfowl habitat. (*Id.*) These

arguments appear to be unsupported by any evidence. The Kittson District concluded that the ditch and proposed additional excavations were impacts within the meaning of the WCA because they directly impacted the wetlands through their construction, and also altered the hydrology of the wetland by conveying and draining water from it. (R4.)

14. BWSR concludes that the record fully supports the Kittson District's determination that the completed ditch and proposed additional excavations would directly impact the associated wetlands, and would further impact them by changing the hydrology of the wetlands by carrying water away from the wetlands.

15. In general, the no-loss application makes an argument for an equitable exemption from the WCA based on the nature of the property, risk of fire, and Wagon Wheel's use of the site. BWSR makes no findings on these issues, which might be relevant to an after-the-fact replacement plan. These issues are not relevant to a determination of whether the actual and proposed ditch and pond excavations have had or will have an impact on the wetlands in question. BWSR concludes that the actual and proposed ditch and pond excavations unquestionably would impact on the wetlands in question.

16. After this appeal was filed, Wagon Wheel proposed adding seven additional exhibits into the record in this case:

- a. An order issued by BWSR holding this appeal in abeyance while settlement discussions took place between the parties (Exhibit 1);
- b. A aerial photograph exchanged between the parties concerning settlement proposals (Exhibit 2);
- c. A transcript of a recording of a meeting between Mr. Brazier and representatives of the Kittson District, BWSR, and DNR related to the July 15, 2019 site inspection (in three parts – Exhibits 3, 4, 5);
- d. Notes prepared BWSR employee Matt Johnson concerning the July 15, 2019 site visit (Exhibit 6);

- e. An e-mail dated July 17, 2019 from DNR employee Stephanie Klamm to other DNR employees concerning the July 15 site inspection and other issues concerning the site (Exhibit 7).

17. The Matt Johnson notes (Wagon Wheel additional Exhibit 6) were included in the record. (R197-198.)

18. The Kittson District objected to the inclusion of the other exhibits on the basis that they were not considered by the Kittson District as part of its review of the case. The record confirms that the exhibits were not submitted to the Kittson District or considered by it as part of its denial of Wagon Wheel's no-loss determination. Exhibits 1-2 also post-date the decision.

19. Wagon Wheel argues that its proposed Exhibits 1-2 show that the Kittson District made proposals in settlement allegedly without consulting with other government entities. Wagon Wheel argues that its Exhibits 3-7 support its argument that Kittson District employee Justin Muller conducted borings on the Project site during the July 15, 2019 site visit without permission to do so.

20. The Kittson District limited its objection to Exhibits 1-2 to timeliness and relevance, without conceding in any way the argument by Wagon Wheel as to what the records did or did not show. With respect to Exhibits 3-5 and 7, the Kittson District similarly objected on the basis of timeliness and relevance. The Kittson District also disputed that the borings were conducted without permission and whether such permission was necessary.

21. For purposes of this appeal, BWSR concludes that Wagon Wheel's additional proposed exhibits are irrelevant to the no-loss determination.

22. Wagon Wheel failed to develop its argument concerning Exhibits 1 and 2. At points in its briefing, Wagon Wheel seems to contend that it has been treated differently than other nearby landowners, or that it took various actions in response to requests from other regulators. But Wagon Wheel failed to articulate how this is relevant to the discrete issue in this appeal – did

Wagon's Wheels actual or proposed ditch excavations impact the wetlands in question. BWSR sees no relevance of the proposed Exhibits 1 and 2 to these issues.

23. With respect to Exhibits 3-5 and 7, Wagon Wheel concedes, and the evidence fully supports, that the borings were conducted in connection with the road, not the ditch or the proposed additional ditch and pond excavations. The purpose of the boring was to determine the character of the soil under the road, as part of a determination as to whether the road was constructed in a wetland. Because Wagon Wheel did not apply for a no-loss determination as to the road, the borings are not relevant to this appeal.

CONCLUSIONS OF LAW

1. BWSR's has jurisdiction to hear this appeal pursuant to Minn. Stat. § 103G.2242, subd. 9 and Minn. R. 8420.0905, subp. 4.

2. The Wetlands Conservation Act and associated rules allow a party to seek a no-loss determination from the regulating local unit of government that activities in or adjacent to a wetland will not have an impact on them. Minn. Stat. § 103G.2242, subd. 2; Minn. R. 8420.0410.

3. The criteria for a no-loss determination are set forth in rule. Minn. R. 8420.0415. In general, the rule sets forth certain types of excavations that will have only a temporary or allowable impact, and permits a no-loss determination as to these activities. Minn. R. 8420.0115(B-H). In the absence of a specific exemption, the burden is on the applicant to show that excavations within a covered wetland will not impact the wetland. Minn. R. 8420.0115(A).

4. Minn. R. 8420.0111, subp. 32 defines "impact" as follows:

"Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or by excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, as defined in subpart 75, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland.

5. Minn. R. 8420.011, subp. 22 defines “drain” as follows:

“Drain” or “drainage” means any method for removing or diverting waters from wetlands. Methods include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

6. Minn. R. 8420.011, subp. 25 defines “excavation” as:

“Excavation” means the displacement or removal of substrate, sediment, or other materials by any method.

7. The Kittson District’s conclusion that Wagon Wheel’s existing excavated ditch impacted a Type 2/Type 3 wetland is not clearly erroneous. The record as a whole shows that the excavation itself, and the ability of the resulting ditch to convey water and thereby drain the wetland, impacted a WCA regulated wetland.

8. The Kittson District’s conclusion that Wagon Wheel’s proposed additional extension of the ditch and construction of a connected pond would impact a Type 2/Type 3 wetland is not clearly erroneous. The record as a whole shows that these additional excavations would further impact the wetlands through the excavations themselves, and ability to drain the wetlands.

9. BWSR concludes that it has the power to admit the additional exhibits proposed by Wagon Wheel, and orders they be included in the record. BWSR recognizes that the Kittson District has the better of the argument as to whether the under normal circumstances the additional materials should be admitted into the record. The applicable rules provide the BWSR generally conducts an on-the-record review of the local unit of government’s decision, using the same record materials. Minn. R. 8420.0905, subp. 4(F). However, the rules also allow BWSR to remand a matter back to the local unit of government if “the local unit of government’s record is not adequate.” Minn. R. 8420, subp. 4(C). BWSR concludes that the record is adequate to evaluate whether Wagon Wheel is entitled to a no-loss determination, but also notes that there is no prejudice to the Kittson District in admitting the additional materials. The Kittson District has

successfully argued that the materials are not relevant to the no-loss determination issues before BWSR, because they either relate to the road, or to issues not germane to the no-loss determination for other reasons. On this basis, BWSR elects to admit the materials into the record rather than take up the issue of whether a remand of this matter to the Kittson District for consideration of these materials is warranted.

10. Any Finding of Fact more appropriately deemed a Conclusion of Law, or the reverse, should be deemed as such.

ORDER

The Board hereby affirms the Kittson District decision issued on July 16, 2021 denying Wagon Wheel's no-loss application.

Dated: _____

By: _____
Gerald Van Amburg, Chair
Board of Water and Soil Resources

INDEX TO RECORD
In Re: Wetland Conservation Act Appeal of a Notice of Decision
Kittson County, File No. 21-1

1. Notice of Decision with board findings signed by Justin Muller Dated July 16, 2021 46-48, 2 pages
2. Technical Evaluation Panel (TEP) Form with TEP findings signed by TEP members Matt Johnson BWSR, and Stephanie Klamm MN DNR Area Hydrologist and Justin Muller Kittson LGU Dated July 13, 2021, 7 pages
3. Email sent July 1, 2021 to Steve Anderson from Justin Muller explaining the decision timeline will be Extended, 1 page
4. Notice of Application signed by Justin Muller WCA LGU Dated May 19, 2021, 1 page
5. After the Fact Permit submitted by Steve Anderson on behalf of Glen Brazier Dated May 3, 2021, 35 pages
6. Pre-Application Letter sent to Steve Anderson from Justin Muller, 8 pages
7. Pre-Application Wetlands After the Fact Plan submitted by Steve Anderson on behalf of Glen Brazier February 2021, 21 pages
8. Application incomplete letter sent to Glen Brazier from Justin Muller dated November 22, 2019, 1 page
9. Application submitted by Glen Brazier in November 2019, 16 pages
10. Aerial photos from a DNR flight taken August 1, 2019 of the Wagon Wheel Ridge Property, 3 Pages
11. Restoration Order with Conservation Officer Anthony Elwell Signature, 2 pages
12. DNR Public Waters Restoration and Replacement Order, January 24, 2017, 10 pages
13. Email correspondence with attachments from April 15, 2020 through August 16, 2021, 71 pages
14. Notes written by Stephanie Klamm DNR area hydrologist, July 2019, 10 pages
15. Notes written by Matt Johnson BWSR wetland Specialist, July 2019, 2 pages
16. July 2021 meeting minutes, 3 pages



Minnesota Wetland Conservation Act Notice of Decision

Local Government Unit: Kittson SWCD	County: Kittson
Applicant Name: Glenn Brazier	Applicant Representative: Steven Anderson
Project Name: Wagon Wheel Ridge	LGU Project No. (if any):
Date Complete Application Received by LGU: 05/03/2021	
Date of LGU Decision: 07/14/2021	
Date this Notice was Sent:	

WCA Decision Type - check all that apply

<input type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Wetland Impact Area:
Wetland Replacement Type: <input type="checkbox"/> Project Specific Credits: <input type="checkbox"/> Bank Credits:
Bank Account Number(s):

Technical Evaluation Panel Findings and Recommendations (attach if any)

<input type="checkbox"/> Approve <input type="checkbox"/> Approve w/Conditions <input checked="" type="checkbox"/> Deny <input type="checkbox"/> No TEP Recommendation
--

LGU Decision

<input type="checkbox"/> Approved with Conditions (specify below) ¹ List Conditions:	<input type="checkbox"/> Approved ¹	<input checked="" type="checkbox"/> Denied
Decision-Maker for this Application: <input type="checkbox"/> Staff <input checked="" type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other:		
Decision is valid for: <input type="checkbox"/> 5 years (default) <input type="checkbox"/> Other (specify):		

¹ *Wetland Replacement Plan approval is not valid until BWSR confirms the withdrawal of any required wetland bank credits. For project-specific replacement a financial assurance per MN Rule 8420.0522, Subp. 9 and evidence that all required forms have been recorded on the title of the property on which the replacement wetland is located must be provided to the LGU for the approval to be valid.*

LGU Findings – Attach document(s) and/or insert narrative providing the basis for the LGU decision¹.

<input type="checkbox"/> Attachment(s) (specify):
<input checked="" type="checkbox"/> Summary: The Kittson SWCD with the recommendation of the TEP, has Denied the No-Loss application received May 03, 2021 submitted by Steve Anderson on behalf of Glenn Brazier. The board agreed that because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

¹ *Findings must consider any TEP recommendations.*

Attached Project Documents

Site Location Map Project Plan(s)/Descriptions/Reports (specify):

Appeals of LGU Decisions

If you wish to appeal this decision, you must provide a written request within 30 calendar days of the date you received the notice. All appeals must be submitted to the Board of Water and Soil Resources Executive Director along with a check payable to BWSR for \$500 *unless* the LGU has adopted a local appeal process as identified below. The check must be sent by mail and the written request to appeal can be submitted by mail or e-mail. The appeal should include a copy of this notice, name and contact information of appellant(s) and their representatives (if applicable), a statement clarifying the intent to appeal and supporting information as to why the decision is in error. Send to:

Appeals & Regulatory Compliance Coordinator
Minnesota Board of Water & Soils Resources
520 Lafayette Road North
St. Paul, MN 55155
travis.germundson@state.mn.us

Does the LGU have a local appeal process applicable to this decision?

Yes¹ No

¹If yes, all appeals must first be considered via the local appeals process.

Local Appeals Submittal Requirements (LGU must describe how to appeal, submittal requirements, fees, etc. as applicable)

[Empty box for Local Appeals Submittal Requirements]

Notice Distribution (include name)

Required on all notices:

<input type="checkbox"/> SWCD TEP Member:	<input checked="" type="checkbox"/> BWSR TEP Member: Matt Johnson
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Stephanine Klamm	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input type="checkbox"/> Applicant:	<input type="checkbox"/> Agent/Consultant:

Optional or As Applicable:

<input type="checkbox"/> Corps of Engineers:	
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):	
<input type="checkbox"/> Members of the Public (notice only):	<input type="checkbox"/> Other:

Signature: 	Date: 07/16/2021
--	----------------------------

This notice and accompanying application materials may be sent electronically or by mail. The LGU may opt to send a summary of the application to members of the public upon request per 8420.0255, Subp. 3.



Minnesota Wetland Conservation Act Technical Evaluation Panel Form

This form can be used to document TEP findings and recommendations related to WCA decisions, determinations, enforcement and pre-application reviews.

Local Government Unit:	Kittson SWCD	County:	Kittson
Landowner/Applicant:	Glenn Brazier	Agent/Representative(s):	Steve Anderson
Project Name:	Wagon Wheel Ridge		Project No. (if any):
Project Location:	Deerwood Township Sec. 26		

Purpose of TEP Findings/Recommendation - check all that apply and describe

<input type="checkbox"/> Pre-application review <input checked="" type="checkbox"/> Application Review (related to WCA Decision)
<input type="checkbox"/> Local Government Road Wetland Replacement Program Eligibility <input type="checkbox"/> WCA Determination Request
<input type="checkbox"/> Other (specify):
Describe:

Meeting Type – check all that apply and specify dates as applicable

<input checked="" type="checkbox"/> In-Person Meeting(s), Date(s): Multiple	<input checked="" type="checkbox"/> Electronic Exchanges (email, skype, etc.)
<input checked="" type="checkbox"/> Onsite Review(s), Date(s): Multiple	<input type="checkbox"/> Other (specify):

Findings and Recommendations

Background: Steve Anderson has submitted an After the Fact Joint Application on behalf of Glen Brazier on May 3, 2021. The After the Fact permit is in response to a Restoration Order that was written in August of 2019. The Restoration order had three impacts identified: a road that was constructed, a ditch with adject spoil and, fill for an amusement ride these impacts total 74,500 Sq. Ft. This application only covers the ditch and the corresponding spoil of the Restoration Order. The submitted application also proposes to extend the ditch to higher ground and to excavate a new wildlife pond.

TEP Findings:
 The After the Fact Application was received from Steve Anderson via Email on May 3rd, 2021, the application was reviewed for completeness by Justin Muller (Kittson SWCD) and Matt Johnson (BWSR). It was deemed complete on May 19th, 2021. Comments were requested from Stephanie Klamm (DNR) and Matt Johnson (BWSR).
 On July 1, 2021 Steve Anderson was notified via email the decision timeline was extend another 60 Days to September 3, 2021.
 A TEP meeting was held on July 2, 2021 via Webex that included Matt Johnson, Stephanie Klamm, And Justin Muller. The TEP members would like it noted that Glenn Brazier and Steve Anderson have submitted multiple pre applications for review and the TEP members have provided Steve and Glenn clear and concise comments on these pre applications. The TEP finds despite providing substantial feedback on previous applications, meetings, and discussions, the current application fails to address all wetland impacts. It should also be noted that the restoration and after-the-fact application deadline has passed. The LGU in a good faith effort to work with the applicant is considering this application for decision. Also, no recognizable restoration work has been done to satisfy the order nor has a complete comprehensive application/plan to address all impacts been received.
 TEP found inconsistencies through pages 4-6 on what type of application the applicant was applying for i.e. Filling out the Aquatic Resource Table and listing permanent impacts on pg. 4., Checking the Delineation

Concurrence box on pg. 5 without submitting delineation information to review, and reference to No Loss and Exemptions.

The TEP reviewed the application as a No-Loss Application as that was referenced on Page 6 and the narrative in the application fits best to a No-Loss request. The TEP concurs that no exemptions fit this application. Appendix 2. a Purpose and Need are stated. The purpose and need are clear and well stated. Under the section of Appendix 2 Titled Role of Water Management the TEP would like to make it clear that the WCA LGU and DNR Area Hydrologists are the appropriate contacts for the type of work performed and requested by Mr. Brazier and that neither entity was contacted prior to any work being done.

Under the section of Appendix 2 Titled Project Description: The TEP finds that a ditch is not necessary to keep the pond full. Hydrology for the wetland is likely a combination of ground water and overland runoff.

The ditch in its current state of being an open channel and its ability to convey water is an impact. According to the definition of ditch in MS 103E.005, Subdivision 8 ditch means an open channel to conduct the flow of water. Further WCA recognizes the same definition of ditch, which in this case is capable and will divert or remove hydrology from a wetland per the definition of drain or drainage in 8420.0111 Subp. 22. Per the definition of impact under 8420.0111 Subp. 32 because water can freely leave the wetland through the excavated channel (ditch), the ditch will result in draining the wetland. Even further, the excavation of the ditch currently passes through type 3 wetlands, which by definition if impact, excavation in type 3 wetlands is a wetland impact.

Furthermore, the TEP finds that the ditch from HWY 11 south labeled the "north half of the ditch," in the project description does not qualify for is not a No-Loss scenario because of the above definitions of ditch, drainage, and impact. The TEP has reviewed aerial imagery from 1979 to present (attached) and Exhibit 7 submitted by the applicant and determined that there is no evidence of a ditch in this location prior to the work performed in 2019.

The TEP find that Pond Excavation and the extension of the dich described in Appendix 2 would happen outside of WCA jurisdiction and in a DNR protected water. The DNR believes that these to actions would be a further impact and no additional work will be allowed. The WCA LGU cannot make a decision regarding work within the public water according to 8420.0105 Subp. 2. E.

The Avoidance and Minimization section of appendix 2. is not needed for a No-Loss application due to the fact there should be No impacts to avoid and minimize.

The TEP through multiple meetings, phone calls, and emails with the Mr. Brazier and Steve Anderson where expecting an after the fact application that encompassed addressed all aspects of impacts identified in the restoration order. The application that was submitted met the bare minimum of a complete application and does not thoroughly cover the aspects of the restoration order.

Based on the Findings stated above the TEP recommends the Kittson SWCD board deny this No Loss application because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

Attachment(s) (specify): Aerial imagery from 1966,1991,2009,2015,2019

DNR Protected Waters and Shoreland Protection Zone

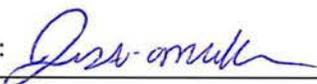
Will the project/activity affect DNR public waters, DNR public waters wetlands or wetlands within the shoreland protection zone? Yes No If yes, DNR representative is a member of the TEP.

Signatures

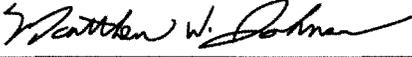
LGU TEP Member:

Agree with Findings & Recommendations: Yes No

Signature:



Date: 7/13/2-21

<input type="checkbox"/> SWCD TEP Member:		Agree with Findings & Recommendations: <input type="checkbox"/> Yes <input type="checkbox"/> No
Signature:		Date:
<input type="checkbox"/> BWSR TEP Member:	Matt Johnson	Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature:		Date: 7/12/2021
<input type="checkbox"/> DNR TEP Member:		Agree with Findings & Recommendations: <input type="checkbox"/> Yes <input type="checkbox"/> No
Signature:	Stephanie Klamm Digitally signed by Stephanie Klamm Date: 2021.07.12 19:16:29 -05'00	Date:

An aerial photograph showing a landscape with a prominent ridge. A road or path runs diagonally from the bottom left towards the top right. The ridge is a dark, elevated feature that runs roughly parallel to the road. The surrounding terrain is relatively flat and appears to be covered in vegetation or low-lying shrubs. The image is in black and white, with some visible grain and a few small white spots, possibly artifacts or debris.

Current location of Wagon Wheel Ridge in 1966. This photo shows no evidence of a ditch referenced in the application.

Wagon Wheel Ridge 1991

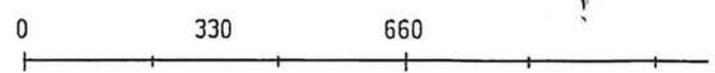
by: Justin .Muller
Kittson County



Current location of Wagon Wheel Ridge in 1991.
This photo shows no evidence of a ditch referenced in the application.

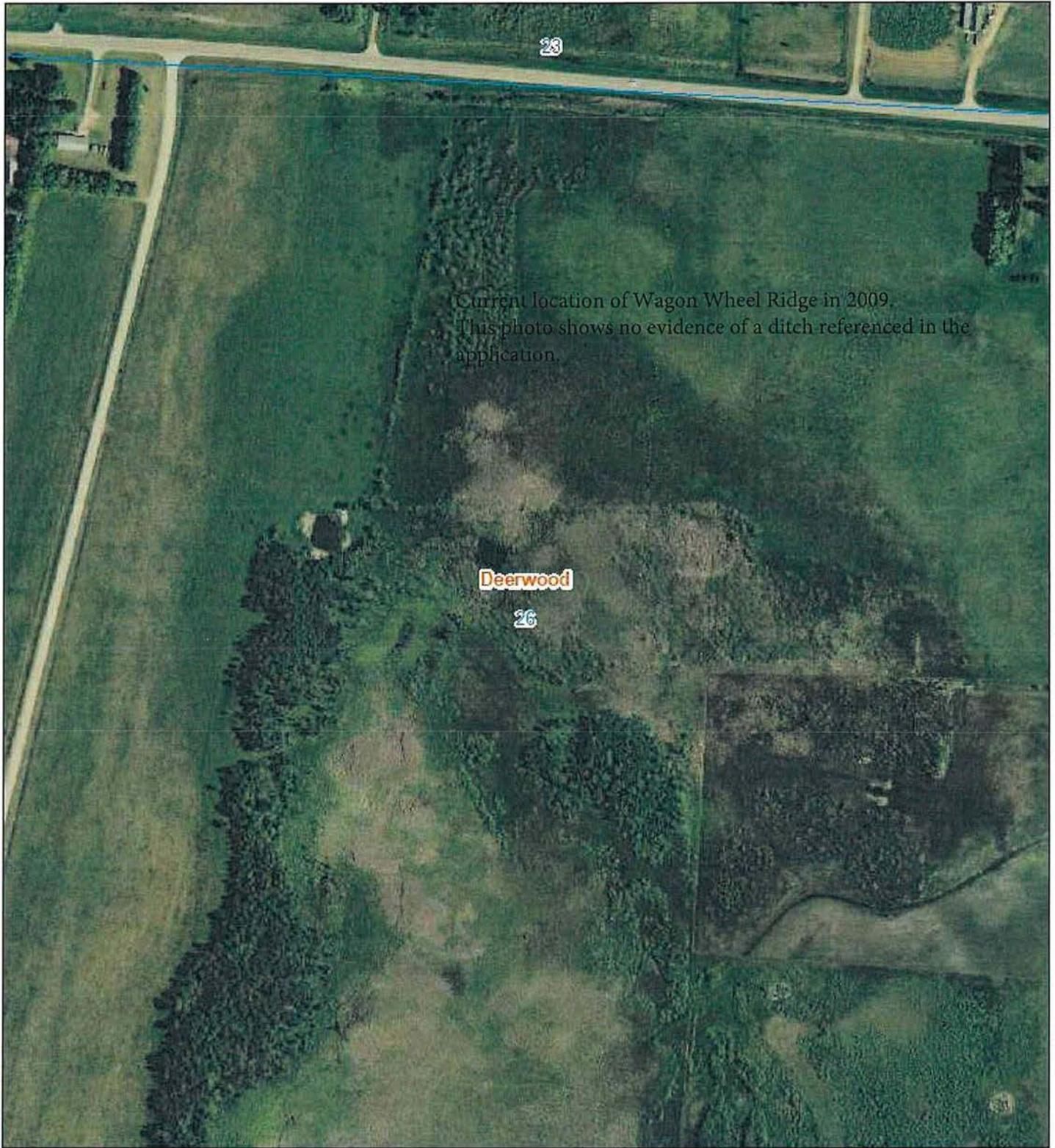
 Townships
 Sections

1 inch = 318 feet 1:3,816



Wagon Wheel Ridge 2009

by: Justin Muller
Kittson County



Current location of Wagon Wheel Ridge in 2009.
This photo shows no evidence of a ditch referenced in the application.

Deerwood

26

-  Townships
-  Sections

1 inch = 318 feet 1:3,816

0 330 660



Wagon Wheel Ridge 2015

by: Justin Muller
Kitson County



 Townships
 Sections

1 inch = 318 feet 1:3,816

0 330 660



Wagon Wheel Ridge 2019

by: Justin Muller
Kittson County



-  Townships
-  Sections

1 inch = 318 feet 1:3,816

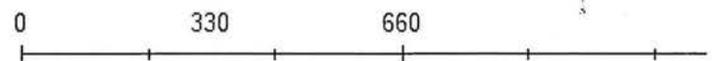


Exhibit 3

From: [Muller, Justin - NRCS-CD, Hallock MN](#)
To: [Steven Anderson](#)
Subject: Extension of Decision Making Period Wagon Wheel Ridge
Date: Thursday, July 1, 2021 2:41:00 PM

Steve,

The decision timeline for the Wagon Wheel Ridge WCA application will be extended for 60 days. Our board plans to make a decision at our July board meeting.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”



Minnesota Wetland Conservation Act Notice of Application

Local Government Unit: Kittson SWCD	County: Kittson
Applicant Name: Glen Brazier	Applicant Representative: Steven Anderson
Project Name:	LGU Project No. (if any):
Date Complete Application Received by LGU: 05/03/2021	
Date this Notice was Sent by LGU: 5/19/2021	
Date that Comments on this Application Must Be Received By LGU¹: 06/28/2021	

¹ minimum 15 business day comment period for Boundary & Type, Sequencing, Replacement Plan and Bank Plan Applications

WCA Decision Type - check all that apply

<input checked="" type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Impact Area Proposed:
--

Application Materials

<input checked="" type="checkbox"/> Attached <input type="checkbox"/> Other ¹ (specify):

¹ Link to ftp or other accessible file sharing sites is acceptable.

Comments on this application should be sent to:

LGU Contact Person: Justin Muller
E-Mail Address: justin.muller@mn.nacdnet.net
Address and Phone Number: 410 South 5th Street Suite 106 Hallock, MN 56728 218-843-2619 Ext. 3
Decision-Maker for this Application:
<input type="checkbox"/> Staff <input checked="" type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other (specify):

Notice Distribution (include name)

Required on all notices:

<input checked="" type="checkbox"/> SWCD TEP Member: Justin Muller	<input checked="" type="checkbox"/> BWSR TEP Member: Matt Johnson
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Stephanie Klamm	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input checked="" type="checkbox"/> Applicant (notice only): Glen Brazier	<input type="checkbox"/> Agent/Consultant (notice only): Steve Anderson

Optional or As Applicable:

<input type="checkbox"/> Corps of Engineers:
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):
<input type="checkbox"/> Members of the Public (notice only): <input type="checkbox"/> Other:

Signature:	Date: 5/19/2021
-------------------	------------------------

Joint Application Form for Activities Affecting Water Resources in Minnesota (After-The-Fact)

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

Regulatory Review Structure

Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

Submission Instructions

Send the completed joint application form and all required attachments to:

U.S Army Corps of Engineers. Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact Information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

Section 401 Water Quality Certification: Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

Wetland Conservation Act Local Government Unit: Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

DNR Public Waters Permitting: In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name: Glen Brazier
Mailing Address: 126 6th St. Unit PO Box 116, Greenbush, MN
Phone: 218-436-7000
E-mail Address: gbrazier@mattacks.com

Authorized Contact (do not complete if same as above): Steven Anderson
Mailing Address: 1010 Dale Street North, St. Paul MN 55117
Phone: 651 253 8289
E-mail Address: steve@andersonlgnm.com

Agent Name: Steve Anderson
Mailing Address: 1010 Dale Street North, St. Paul MN 55117
Phone: 651 253 8289
E-mail Address: steve@andersonlgnm.com

PART TWO: Site Location Information

County: Kittson **City/Township:** Deerwood
Parcel ID and/or Address: 060264080

Legal Description (Section, Township, Range): SW ¼ of the NE ¼ of Section 26, T159N R46W (Deerwood Township)
In Kittson County.

Lat/Long (decimal degrees): 4834328N 09630823W

Attach a map showing the location of the site in relation to local streets, roads, highways. See Appendix 1

Approximate size of site (acres) or if a linear project, length (feet): 78,692 square feet

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵
0602064080	wetland	excavate	permanent	15,932 sq ft	na	2, 3	Kittson County Two Rivers, Bank service area 3, ,

¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

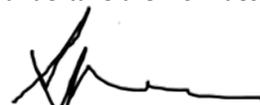
If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

See Item

PART FIVE: Applicant Signature

Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature:  _____ Date: May 3, 2021

I hereby authorize Steve Anderson to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

Wetland Type Confirmation

Delineation Concurrence. Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

Preliminary Jurisdictional Determination. A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

Approved Jurisdictional Determination. An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

Attachment B

Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part *if* you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR *if* you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

8420.0415 NO-LOSS CRITERIA.

"No-loss" means no permanent loss of, or impact to, wetlands from an activity according to the criteria in this part. The following qualify for a no-loss:

- A. an activity that will not impact a wetland;
- B. excavation in wetlands when limited to removal of sediment or debris such as trees, logs, stumps, beaver dams, blockage of culverts, and trash, provided the removal does not result in alteration of the original cross-section of the wetland or watercourse. Wetland areas created solely by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and related drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged;

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

The applicant recognizes that no single exemption in either the wetland rules or the public water rules applies to his request for creating a firebreak on his property. That said, Attachment B appears to be irrelevant to this application. A separate after the fact application will be filed for a road constructed partly on wetlands.

Attachment C

Avoidance and Minimization

Project Purpose, Need, and Requirements. Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:

Avoidance. Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:

Minimization. Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

See Appendix 2, Attachment C discussions.

Attachment D Replacement/Compensatory Mitigation

Complete this part *if* your application involves wetland replacement/compensatory mitigation not associated with the local road wetland replacement program. Applicants should consult Corps mitigation guidelines and WCA rules for requirements.

Replacement/Compensatory Mitigation via Wetland Banking. Complete this section if you are proposing to use credits from an existing wetland bank (with an account number in the State wetland banking system) for all or part of your replacement/compensatory mitigation requirements.

Wetland Bank Account #	County	Major Watershed #	Bank Service Area #	Credit Type (if applicable)	Number of Credits

Applicants should attach documentation indicating that they have contacted the wetland bank account owner and reached at least a tentative agreement to utilize the identified credits for the project. This documentation could be a signed purchase agreement, signed application for withdrawal of credits or some other correspondence indicating an agreement between the applicant and the bank owner. *However, applicants are advised not to enter into a binding agreement to purchase credits until the mitigation plan is approved by the Corps and LGU.*

Project-Specific Replacement/Permittee Responsible Mitigation. Complete this section if you are proposing to pursue actions (restoration, creation, preservation, etc.) to generate wetland replacement/compensatory mitigation credits for this proposed project.

WCA Action Eligible for Credit ¹	Corps Mitigation Compensation Technique ²	Acres	Credit % Requested	Credits Anticipated ³	County	Major Watershed #	Bank Service Area #

¹Refer to the name and subpart number in MN Rule 8420.0526.

²Refer to the technique listed in *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota*.

³If WCA and Corps crediting differs, then enter both numbers and distinguish which is Corps and which is WCA.

Explain how each proposed action or technique will be completed (e.g. wetland hydrology will be restored by breaking the tile.....) and how the proposal meets the crediting criteria associated with it. Applicants should refer to the Corps mitigation policy language, WCA rule language, and all associated Corps and WCA guidance related to the action or technique:

Attach a site location map, soils map, recent aerial photograph, and any other maps to show the location and other relevant features of each wetland replacement/mitigation site. Discuss in detail existing vegetation, existing landscape features, land use (on and surrounding the site), existing soils, drainage systems (if present), and water sources and movement. Include a topographic map showing key features related to hydrology and water flow (inlets, outlets, ditches, pumps, etc.):

Project Name and/or Number:

Attach a map of the existing aquatic resources, associated delineation report, and any documentation of regulatory review or approval. Discuss as necessary:

For actions involving construction activities, attach construction plans and specifications with all relevant details. Discuss and provide documentation of a hydrologic and hydraulic analysis of the site to define existing conditions, predict project outcomes, identify specific project performance standards and avoid adverse offsite impacts. Plans and specifications should be prepared by a licensed engineer following standard engineering practices. Discuss anticipated construction sequence and timing:

For projects involving vegetation restoration, provide a vegetation establishment plan that includes information on site preparation, seed mixes and plant materials, seeding/planting plan (attach seeding/planting zone map), planting/seeding methods, vegetation maintenance, and an anticipated schedule of activities:

For projects involving construction or vegetation restoration, identify and discuss goals and specific outcomes that can be determined for credit allocation. Provide a proposed credit allocation table tied to outcomes:

Provide a five-year monitoring plan to address project outcomes and credit allocation:

Discuss and provide evidence of ownership or rights to conduct wetland replacement/mitigation on each site:

Quantify all proposed wetland credits and compare to wetland impacts to identify a proposed wetland replacement ratio. Discuss how this replacement ratio is consistent with Corps and WCA requirements:

By signature below, the applicant attests to the following (only required if application involves project-specific/permittee responsible replacement):

- All proposed replacement wetlands were not:
 - Previously restored or created under a prior approved replacement plan or permit
 - Drained or filled under an exemption during the previous 10 years
 - Restored with financial assistance from public conservation programs
 - Restored using private funds, other than landowner funds, unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.
- The wetland will be replaced before or concurrent with the actual draining or filling of a wetland.
- An irrevocable bank letter of credit, performance bond, or other acceptable security will be provided to guarantee successful completion of the wetland replacement.
- Within 30 days of either receiving approval of this application or beginning work on the project, I will record the Declaration of Restrictions and Covenants on the deed for the property on which the replacement wetland(s) will be located and submit proof of such recording to the LGU and the Corps.

Applicant or Representative:

Title:

Signature: _____

Date:

Attachment E

Local Road Replacement Program Qualification

Complete this part **if** you are a local road authority (county highway department, city transportation department, etc.) seeking verification that your project (or a portion of your project) qualifies for the MN Local Government Road Wetland Replacement Program (LGRWRP). If portions of your project are not eligible for the LGRWRP, then Attachment D should be completed and attached to your application.

Discuss how your project is a repair, rehabilitation, reconstruction, or replacement of a currently serviceable road to meet state/federal design or safety standards/requirements. Applicants should identify the specific road deficiencies and how the project will rectify them. Attach supporting documents and information as applicable:

Provide a map, plan, and/or aerial photograph accurately depicting wetland boundaries within the project area. Attach associated delineation/determination report or otherwise explain the method(s) used to identify and delineate wetlands. Also attach and discuss any type of review or approval of wetland boundaries or other aspects of the project by a member or members of the local Technical Evaluation Panel (TEP) or Corps of Engineers:

In the table below, identify only the wetland impacts from Part 4 that the road authority has determined should qualify for the LGRWRP.

Wetland Impact ID (as noted on overhead view)	Type of Impact (fill, excavate, drain)	Size of Impact (square feet or acres to 0.01)	Existing Plant Community Type(s) in Impact Area ¹	County, Major Watershed #, and Bank Service Area # of Impact ²

¹Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

²Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

Discuss the feasibility of providing onsite compensatory mitigation/replacement for important site-specific wetland functions:

Please note that under the MN Wetland Conservation Act, projects with less than 10,000 square feet of wetland impact are allowed to commence prior to submission of this notification so long as the notification is submitted within 30 days of the impact. The Clean Water Act has no such provision and requires that permits be obtained prior to any regulated discharges into water of the United States. To avoid potential unauthorized activities, road authorities must, at a minimum, provide a complete application to the Corps and receive a permit prior to commencing work.

By signature below, the road authority attests that they have followed the process in MN Rules 8420.0544 and have determined that the wetland impacts identified in Part 4 are eligible for the MN Local Government Road Wetland Replacement Program.

Road Authority Representative:

Title:

Signature: _____

Date:

Technical Evaluation Panel Concurrence:

Project Name and/or Number:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

Upon approval and signature by the TEP, application must be sent to: **Wetland Bank Administration
Minnesota Board of Water & Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155**

Appendix 1



Appendix 2.

Answers to Attachment C of Joint After the Fact Application.

Project Purpose, Need, and Requirements. *Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:*

1. Purpose.

The purpose of the project is to create a firebreak that protects higher ground containing approximately \$3.5M of buildings and infrastructure developed specifically to host the Kickin' Up Kountry Festival. The festival brings thousands of people to Karlstad each year and serves as the primary fundraiser for Hopes, Dreams and Smiles, a Minnesota non-profit company that benefits critically and terminally ill-children in local hospitals and hospices. The development immediately borders protected waters (Exhibit 1).

2. Need.

In October 2012, a massive fire nearly destroyed Karlstad MN (Exhibit 2). The fire, driven by strong winds, ultimately caused several million dollars of damage and destroyed a warehouse and product housed in the warehouse totaling \$1.5M. The warehouse was owned by Mattracks, Inc. Mattracks is owned by Glen Brazier, the applicant for this permit. Mr. Brazier also owns all the land used to host the Kickin' Up Kountry as well as additional acreage near the site (Exhibit 3).

The fire came right up to the Kickin- Up Kountry buildings (Exhibit 4). The fire was fueled by acres of an invasive cattail species that dominates the vegetation in protected waters owned by Mr. Brazier (Exhibit 5), although other Wetland 2 and 3 plant varieties are also present (Exhibit 6).

Mr. Brazier met with multiple fire departments that helped extinguish the 2012 fire just in time to save the Kickin' Up Kountry buildings and infrastructure. The consensus was to build a fire break that fire departments could use as a starting point for back burning in the event of another fire.

Although this is an after-the-fact application for permit, the fact remains a critical need still exists to create a firebreak on the WWR property.

3. Role of Water Management.

The existing ditch currently meets the definition of ditch in Minnesota Statute Section 103E.005 (subd. 8). The ditch actually follows an older ditch that had grown over (Exhibit 7). A culvert was located at the starting point of the old ditch as well.

Prior to excavating the new ditch, Mr. Brazier was asked by the highway maintenance to unblock the culvert and dig out a portion of the old ditch to allow water to flow from two sources. First, the property across Highway 11 had been flooding. Part of the flooding was caused by a broken water main that increased volume, but the bulk of the flooding was caused by natural run off of water on the north side of the highway that ultimately blocked by the highway and clogged culvert.

Second, the volume of water was increased even more by opening of an additional culvert near the Karlstad American Legion building directly across from more property owned by Mr. Blazier. (See Exhibit 7). The city asked Mr. Brazier to unclog the culvert and let the flow of the water on the north side of the highway enter the south side ditch and run west. Other culverts were also allowing water to enter the south side ditch.

Mr. Brazier opened the clogged culvert and dug out the old ditch and immediately realized the volume of water was more significant than he first thought (Exhibit 8). Thinking he was in the Tamarac River watershed, he then contacted the Tamarac River Watershed and got approval to continue digging out the old ditch thinking it would serve as the fire break envisioned by Mr. Brazier and the fire chiefs.

The ditch, however, has two main failings. First, it should have been wider to serve as an effective fire break, especially in the southern half of the ditch. Second, the invasive cattails keep growing into the ditch.

4. Project Description

The project involves three elements and all three are necessary to accomplish the project's primary purpose – create a fire break sufficient to protect the property and infrastructure on Wagon Wheel Ridge that services Kickin' Up Kountry and Hope, Dreams and Smiles.

All three elements assume keeping the original ditch created prior to obtaining a permit. The elements are:

- A. Maintain the ditch from highway 11 to the disputed road.¹
- B. Create a “pond” in the ditch past the disputed road.
- C. Extend the existing ditch approximately 78 feet to a high point and create a natural stop point.

A. Maintain the existing, pre-permit ditch.

The ditch starting at Highway 11 commencing to the disputed road is the “north half of the ditch,” (See Exhibit 9) is necessary to feed the pond discussed below with water. Although the ditch can fill up with cattails thus impeding water flow, the ditch is easily accessed from the WWR grounds for mowing and maintenance. In addition, a wider ditch is not required for

¹ The disputed road references an access road created while excavating the ditch to allow firefighting equipment easy access to the fire. The road has been ordered removed and will be the subject of later Restoration Plan.

successful firefighting given the proximity north half of the ditch to Highway 11 and roads on WWR property.

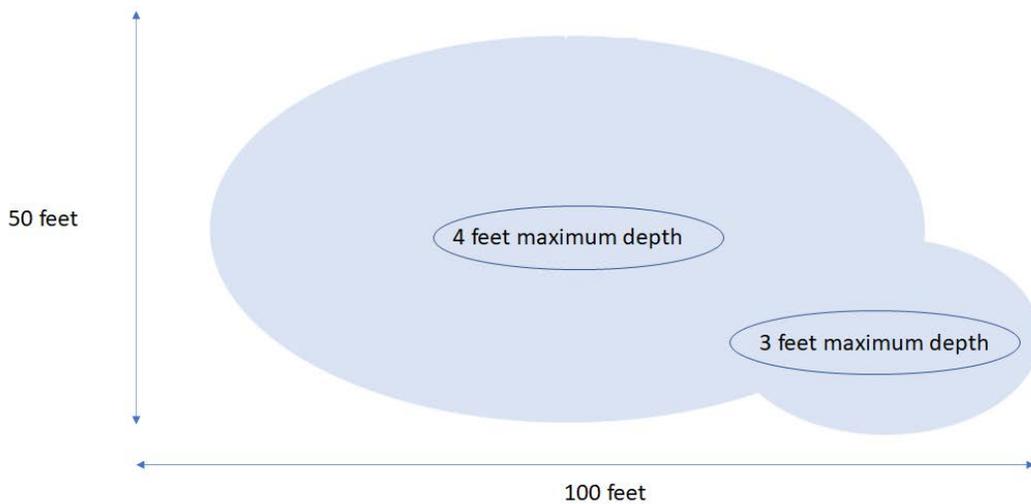
Consequently, Mr. Brazier requests that the north half of the ditch be considered as a part of the pond request for purposes of this application.

B. Excavate a Pond

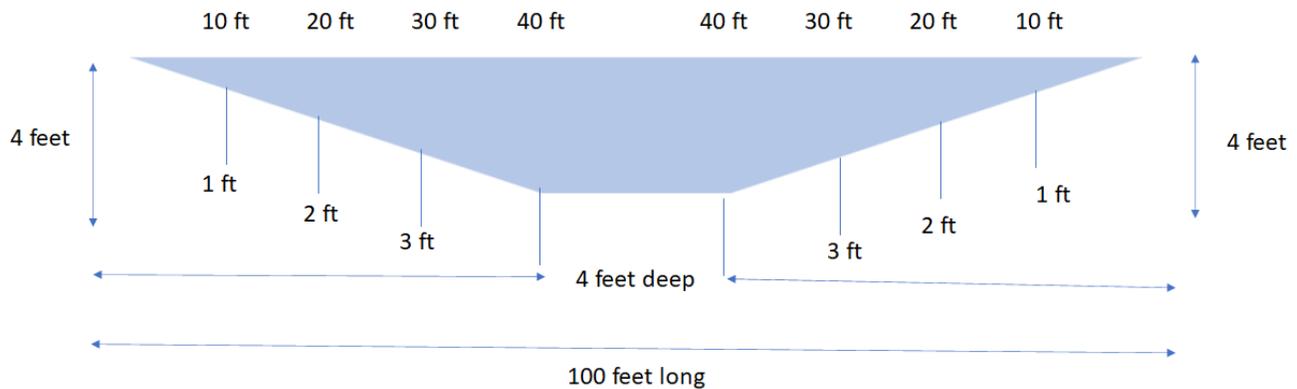
The pond to be fed by the north half of the ditch will be located in the southern portion of the existing ditch (Exhibit 10) and will be created consistent with the following requirements.

1. The pond will be 50 feet wide at its widest point.
2. The pond will be 100 feet at its longest point.
3. The pond will be somewhat irregular in shape to maximize the shoreland area.
4. The pond will follow the Minnesota Department of Natural Resource Construction Guidelines for slope and depth. Specifically:
 - a.

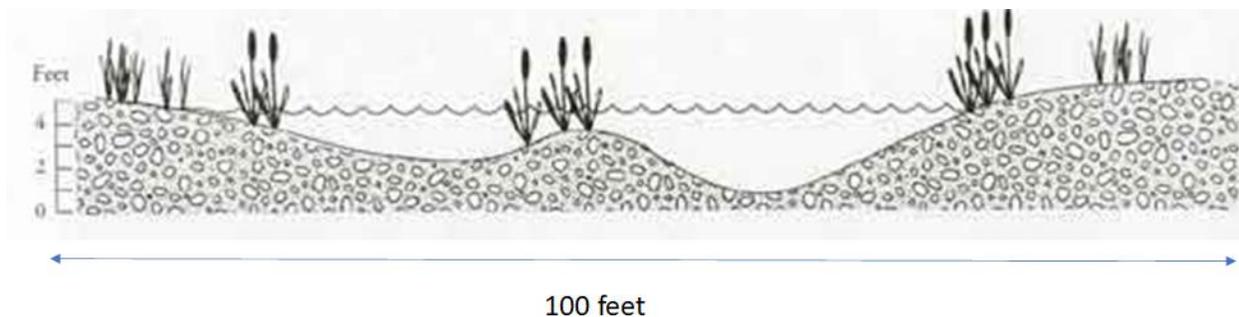
Water Depth (feet)	Percent of Pond at this Depth	Likely Result
0 - 1.5	25 - 40	wet meadow and mixed emergent vegetation; usually dry by July
1.5 - 3	25 - 50	cattails and emergent vegetation/open water; dry in drought
3 - 4	< 20	mostly open water/submerged aquatic plants; dry in severe drought



b. The slope will be 10 – 1.



The floor of the pond will, however, have undulating depths to encourage vegetation diversity.



5. The spoils will be extracted as follows.
 - a. The first 6 to 8 inches will be temporary place near the pond excavation (Exhibit 11)
 - b. The balance of the spoils will be transported to a pit site located on WWR property that is not regulated (Exhibit 12).
 - c. The top 6 to 8 inches of spoils will then be returned to the pond floor evenly

C. Extending the Ditch to higher land

Previous conversations with the DNR suggested we could keep the ditch but needed to remove the spoils. In those conversations, the Kittson County Soil and Water Conservation District asked that the ditch be “capped” off where it ended if it was to remain. Subsequent conversations following input by the DNR required that the ditch be extended to higher ground.

The ditch extension to higher ground will be in the same width dimensions as the North Half ditch (6 to 8 feet), approximately 78 feet long, head in a south west direction and terminate in a natural ridge (Exhibit 13)

The spoils will be handled in the same manner described above for the Pond.

Avoidance. *Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:*

Alternative 1. Do nothing and leave the WWR property completely susceptible to the next fire.

Mr. Brazier is aware that firebreak protection is not an exempt project in either the Minnesota waterway or wetland regulations. Nonetheless, he believes this alternative is the most dangerous and should be avoided.

Alternative 2. Pre-emptive, periodic burning of the southern half of protected lands.

This alternative was rejected for two basic reasons. First, even the most carefully done burn can be dangerous especially with the abundance of fuel created by the invasive cattail species. Second, although some positive results are gained by burning marshland and wetland areas, the bulk of the information suggests the overall impact is negative, particularly to water quality. (See e.g., Battle and Golloday, "Prescribed fire's impact on water quality of depressional wetlands in southwestern Georgia," *The American Midland Naturalist* (2003)). In addition, the burning produces heavy smoke that is an irritant to many people with chronic breathing disorders.

Alternative 3. Bulldoze the higher ground area to the south west of the wetlands.

This alternative was rejected for lack of adequate access to the fire by firefighting equipment.

Minimization. *Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):*

The proposed project does not eliminate any wetlands or water ways. In fact, the ditch and the pond can be viewed as enhancing the wetlands by encouraging waterfowl habitat. High areas of invasive species cattails were selected for hosting the ditch and pond. Admittedly, the selection of the location was primarily designed to eliminate as many cattails as possible, but the overall impact limits the destruction of other vegetation.

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your

application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

Not applicable.

Exhibit 1



Exhibit 2

Shock, dismay, hope in the aftermath of Karlstad fire

KARLSTAD, Minn. -- A cool rain started falling early Wednesday afternoon, washing away a bit of anxiety and exhaustion from the fight to protect the community from a raging wildfire that that struck almost exactly 24 hours earlier.

Written By: Kevin Bonham | 9:32 pm, Oct. 3, 2012



Picture of wildfire in Karlstad, Minn. (Photo by Mary Balzum of Warren, Minn.)

KARLSTAD, Minn. -- A cool rain started falling early Wednesday afternoon, washing away a bit of anxiety and exhaustion from the fight to protect the community from a raging wildfire that that struck almost exactly 24 hours earlier.

"The rain is beautiful," Mayor Nick Amb said as he visited with a couple of volunteer firefighters at the Karlstad Volunteer Fire Department Fire Hall. "I don't know if I ever prayed for 6 to 8 inches of snow before."

Eleven homes, including seven mobile homes, two garages and 22 other outbuildings in and around Karlstad were destroyed by the fire which swelled from 500 acres to more than 4,400 acres Tuesday afternoon, fueled by 40-mph winds.

An estimated 150 firefighters from about 16 fire departments, as well as Minnesota National Guard, Minnesota Department of Natural Resources and other and other agencies, brought the fire under control before nightfall Tuesday.

"It was the epitome of a wind-driven fire," said Ron Sanow, spokesman with Minnesota Department of Natural Resources. "This fire hit this town hard. But it could have been so much worse. The fire department did an astronomical job."

'Rolling flames'

The Karlstad fire, known as the County 27 Fire, is one of eight covering more than 30,000 acres in northwest Minnesota. The largest, the North Minnie fire near Fourtown, Minn., grew from about 4,000 acres to more than 20,000, according to the Minnesota Incident Command System.

The Karlstad fire, jumped U.S. Highway 59 Tuesday afternoon, crossing Kittson County Highway 9 and Minnesota Highway 11 on the west edge of town, but for the most part skirted the community.

"The head of the fire was aimed right for town," Minnesota Fire Marshal Bruce Roed said. "They basically split it. It went east a ways and then went north."

"When I came here, you could see rolling flames about 14 feet high," said Tom Bokowiec, a paramedic with Warroad (Minn.) Rescue Unit.

Volunteer firefighters concentrated their efforts on protecting homes and other property.

Recovery efforts

The Red River Chapter of the American Red Cross established an office Wednesday afternoon at the Karlstad fire hall, offering food, shelter, clothing, as well as counselors to fire victims.

Resurrection Community Church in Karlstad is serving as a drop-off center for donations of clothing, toiletries, and other items, according to the Rev. Scott Wolff.

Donated goods, from food to bottled water, began rolling into the town of 800 long before any official calls for assistance were made.

"Truckloads were just showing up," said Lori Wikstrom, a volunteer relief logistics coordinator.

The mayor and fire officials briefed community members on details of the fire and mop-up efforts in a meeting Wednesday evening.

Saving property

Alan and Jennifer Hicks nearly lost their rural home and their stable of prized registered Pintabian horses. The Hicks family was among those evacuated at about 2 p.m. Tuesday, as the fire swept across the prairie.

Believing the fire was headed away from the farmstead, they left their horses behind.

"Then the wind changed again, and all of a sudden it changed again and was moving toward our place," Jennifer Hicks said Wednesday. "So we stopped and turned around to open all the gates to let the horses out."

They got the job done just in time.

"The fire was right there," she said. "A big chunk of smoke knocked me down. It was kind of freakish. The flames were 20 or 30 feet in the air. I thought I had lost my husband, my Pintabians."

Volunteer firefighters were on the scene within moments.

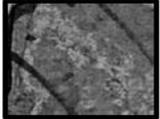
After she caught her breath, she said she watched in awe as firefighters saved the property and those of her neighbors. She saw trucks from Fosston, Crookston, Warroad, Lancaster, Red Lake Falls and Duluth in Minnesota, from Drayton and Grafton in North Dakota, as well as a belly-gulper aircraft from Canada.

Excerpt from the Grand Forks Herald, October 12, 2012

Exhibit 3



Exhibit 4



Area Burned



Fire fueled by dense invasive Cattails and pushed by heavy winds.

Wind Direction

Exhibit 5



View from road just Kickin' Up Kountry
Entrance



View from the Adventureland Ride

View from ditch immediately next to Highway 11 and culvert requested by the State.

Exhibit 6



Exhibit 7



Old ditch near
highway 11

Other ditch
remnants

Exhibit 7



Drainage direction

Area north of highway 11 flooded in heavy rains and spring



Culvert drains to south side of Highway 11

Exhibit 8



Exhibit 9

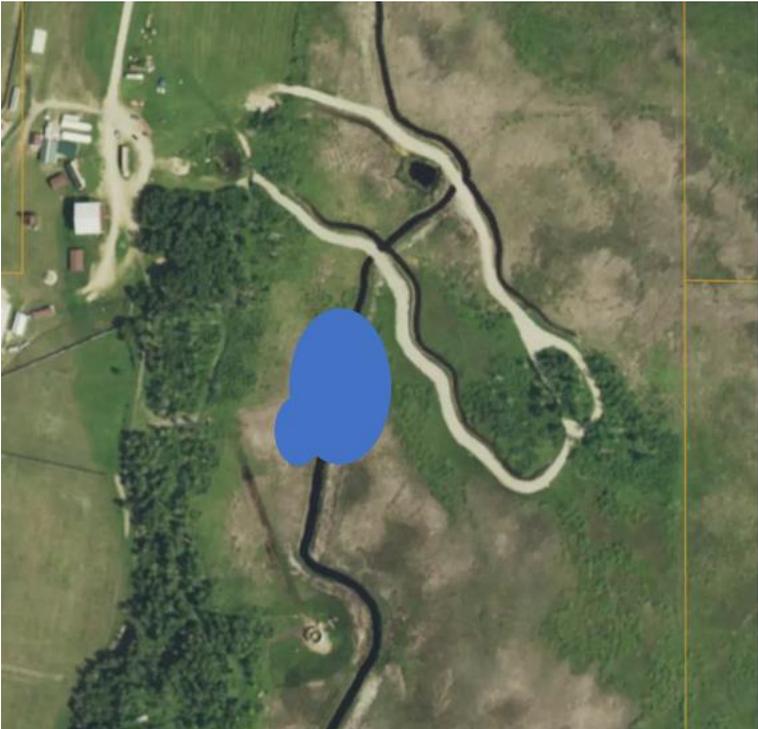
Highway 11



North half
of ditch

South half
of ditch

Exhibit 10



Proposed
Pond

Exhibit 11

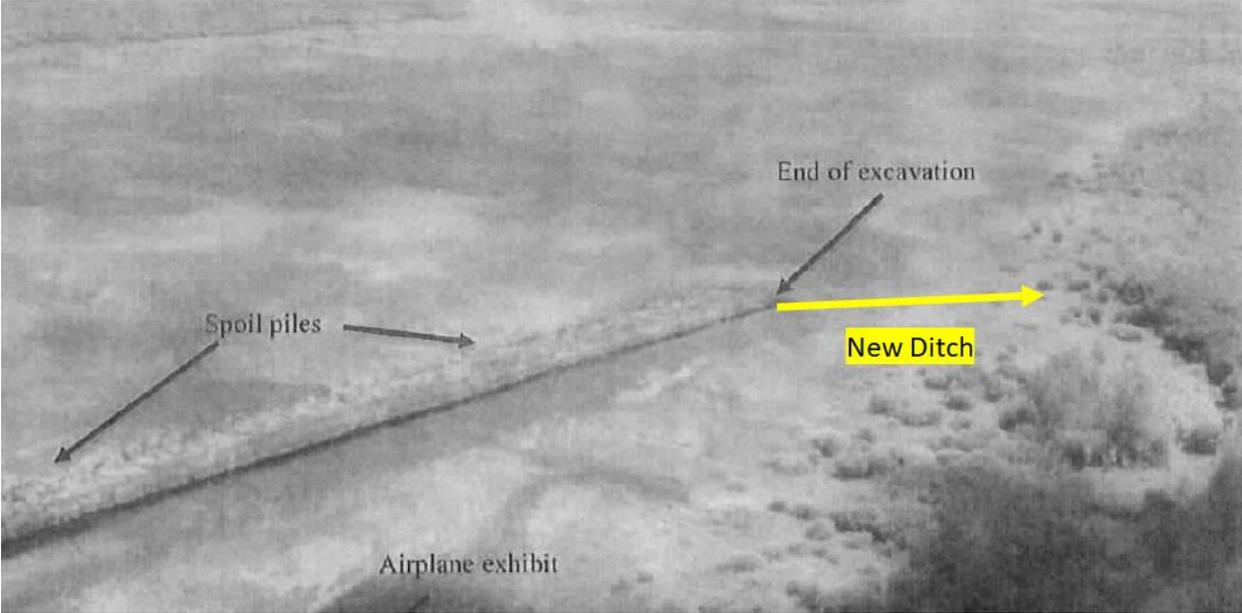


Temporary
Storage of
Topsoil Spoils

Exhibit 12



Exhibit 13



*Helping Producers Implement
Best Management Practices
For Conservation Purposes in
Kittson County*



410 South 5th Street - Suite 106 - Hallock MN 56728 - Phone (218) 843 2619 - Fax (855) 744-0398 - kittsonswcd.org

Steven Anderson
1010 Dale Street N
St. Paul MN, 55117

RE: Wagon Wheel Ridge Pre-application review of After the Fact Application

Mr. Anderson,

The pre application that you submitted on the behalf of Mr. Brazier has been reviewed by the Technical Evaluation Panel (TEP) which included Matt Johnson (Wetland Specialist BWSR), and Stephanie Klamm (Area Hydrologist DNR), and myself. The TEP's comments are in RED following a section/paragraph of the submitted application that the TEP thought warranted a comment. This document is enclosed with this cover letter.

If there are questions or would like clarification on the comments provided. We would gladly schedule a meeting/conference call to discuss further.

Thank You,

A handwritten signature in blue ink that reads "Justin Muller".

Justin Muller
District Technician

Enclosure: TEP Comments/Findings

CC: Glenn Brazier, Matt Johnson (BWSR), Stephanie Klamm (DNR),

WWR maintains the UFO display does not “permanently” impact existing wetlands for multiple reasons.

1. The UFO is not a “structure” “placed” in a wetland as defined by Mn Rules.

Mn Rule 8420.0111 Subp. 68 states "Structure" means any object erected or placed in, under, or over or anchored or attached to a wetland area.” The “UFO” is actually an old fair ride. It has no ceiling. It has no floor. It sits on a platform built for this specific purpose Exhibit 4) More important, it was not originally “placed” in a recognized wetland (Exhibit 5).¹ In fact, WWR carefully placed the display on a small section of high land based on the best information known at the time.

RESPONSE:

The UFO may be located within the boundaries of the public water wetland and therefore subject to MN Rule Chapter 6115.

If it is determined by the DNR that the UFO is located outside of the Public Water Wetland, then the following response applies:

MN Rule 8420.0111 Subp. 68 defines **Structure** as “any object erected or placed in, under, or over or anchored or attached to a wetland area”. Despite being an old fair ride and having no ceiling it meets the definition as *any object*, which in fact was placed *in, over, anchored or attached* to a wetland. The electrical components and functionality of the exhibit as well as the platform on which it was built constitute an attachment to the wetland.

MN Rules 8420.0111 Subp. 26. Defines **fill** as “any solid material added to or redeposited in a wetland that would alter the wetland’s cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland....” The sand material used to support the UFO that was placed in the wetland meets the definition of fill.

MN Rules 8420.0111 Subp. 32 defines **impact** as “a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling wetlands wholly or partially...” The sand fill placed to support the UFO structure results in a loss of quantity of wetland acres and the resulting coverage and loss of wetland plants results in a loss in biological diversity of the wetland.

The wording references exhibit 5, which depicts an approximation of the location of the boundary of the public water wetland under the jurisdiction of the MN DNR per MN Rules 6115. Wetland characteristics were identified by the TEP, using the procedures outlined in the 87 Manual (specifically the rapid test Definition: All dominant species across all strata are rated OBL or FACW, or a combination of these two categories, based on a visual assessment.), immediately adjacent to and surrounding the UFO and associated fill pad. The consultant hired by WWR also concluded the same.

The applicant states a small area of high land was used for the placement of the UFO. If applying for no loss 8420.0315 B. states “the landowner applying for a no-loss is responsible for submitting the proof necessary to show qualification for the claim.”... No supporting information was provided that supports the area the UFO is located was upland prior to placement.

2. The UFO does not create a *permanent* loss of wetlands.

KG Consultants,² hired by WWR to observe the site, nonetheless found wetland characteristics in and around the UFO as evidenced by plant life consistent with Type 2 and Type 3 wetlands. However, after studying historic photos, KG also concluded that the wetland characteristics very likely grew into the UFO site after placement. This expansion demonstrates that the UFO does not permanently impact wetlands. In fact, the UFO hasn't even obstructed the expansion of wetland characteristics possibly caused by other, human interference consistent with the Klopp study.

8420.0111 Subp 26 defines **fill** as “any solid material added to or redeposited in a wetland that would alter the wetland’s cross section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland.”... Additionally 8420.0111 Subp. 32 defines impact as “a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands wholly or partially...” The TEP Finds that the sand fill alters the wetland’s cross section and changes the natural hydrologic characteristics by creating further separation between the soil surface and the water table. Additionally, the presence of fill alters the wetlands ability to function naturally.

TEP Finds that if the WWR consultant identified wetland species persisting despite the impact from fill as further justification that wetland existed prior to the placement of fill and the UFO exhibit.

3. The UFO complies with No Loss requirements found in Mn. Rule 8420.0410.

Mn Rule 8420.0410 creates three requirements beyond 8420.0415 that any No Loss applications need to address

a. 8420.0410(A)

Subsection A requires that “erosion control measures” be taken to prevent sedimentation of the wetlands.” Despite the fact that the UFO was placed in its current location when the location was not designated a wetland, WWR asked KG to consider if sedimentation control measures could be helpful.

As indicated above, KG’s inspection of the UFO site determined that the UFO was placed on the site prior to becoming a wetland. Now, however, the wetlands have encroached the UFO site and established wetland characteristic. Any kind of containment would be futile and, in fact, isolate a small portion of the new wetland causing damage.

TEP Finds that the location of the UFO exhibit is not in danger of contributing to erosion and therefore further erosion control measures would be unnecessary if approval was granted.

b. 8420;0410(B)

8420;0410(B) requires that fish activity not be disturbed. There is no fish activity on the property.

The TEP concurs.

c. 8420.0410(C) and Minn. Stat. § 104H(4)

Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part:

"Best management practices" means practicable voluntary practices that are capable of preventing and minimizing degradation of groundwater, *considering economic factors*, availability, technical feasibility, implementability, effectiveness, and environmental effects. Best management practices apply to schedules of activities; design and operation standards; restrictions of practices; maintenance procedures; management plans; practices to prevent site releases, spillage, or leaks; application and use of chemicals; drainage from raw material storage; operating procedures; treatment requirements; and other activities causing groundwater degradation.

If the Board concludes a management site plan is required, KG will be available to work with them.

TEP has no comment on this part.

The Aircraft Fuselage.

WWR acknowledges that the aircraft fuselage was placed at least partially in wetlands (Exhibit 6). The fuselage is also part of a Mattracks Adventureland ride. The fuselage does not, however, create a permanent impact on the wetland.

Exhibit 6 depicts a line that is approximating the boundary between a public water wetland under DNR jurisdiction per MN Rules 6115 and wetland under jurisdiction of the Local Government Unit per MN Rules 8420. If the Aircraft Fuselage is located within the WCA jurisdictional wetlands the following comments apply:

The TEP finds that the aircraft fuselage constitutes an impact to wetlands and if it remains within the wetland boundary and wetland characteristics are not restored within 6 months the impact is permanent according to 8420.0415 H.

1. The fuselage is not a “structure”.

The Fuselage is a small piece of a salvaged aircraft with just enough available to discern what it is. WWR acknowledges that a part of the display is sometimes in the wetland. However, the fuselage is easily carried without the need for equipment.

The TEP Finds the aircraft fuselage is a structure because it meets the definition of structure according to 8420.0111 Subp. 68 as follows: meets the definition as *any object*, which in fact was placed *in, over* a wetland.

2. The fuselage does not create a *permanent* loss of wetlands.

The fuselage was place directly on the top of the wetland. It has no base. It has no floor or walls that would keep any water from entering and leaving the display. It has no evidence of niche plant life around it to suggest any impact at all.

The TEP finds that the aircraft fuselage constitutes an impact to the wetland due to the loss of quality and biological diversity of wetlands caused by filling and/or placement of the structure (8420.0111 Subp. 32 Impact, 8420.0111 Subp. 26 Fill). The TEP finds the impact to be permanent because it remains within the wetland boundary for longer than 6 months according to 8420.0415 H.

4. The Fuselage complies with No Loss requirements found in Mn. Rule 8420.0410.

a. 8420.0410(A)

Subsection A requires that “erosion control measures” be taken to prevent sedimentation of the wetlands. KG inspection of the fuselage site and determined that sedimentation is not a problem given the nature of the placement on the site prior to becoming a wetland.

TEP Finds that the Fuselage exhibit is not in danger of contributing to erosion and therefore further erosion control measures would be unnecessary if approval was granted.

b. 8420;0410(B)

8420;0410(B) requires that fish activity not be disturbed. There is no fish population on the property.

The TEP concurs.

c. 8420.0410(C) and Minn. Stat. § 104H(4)

Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part. Again, if the Board concludes a management plan is required for this poertion of WWR’s project, they will be available to discuss the plan.

The TEP has no comment.

The Ditch

Mn Rule 8420.415(B) allows excavation limited to “removal of sediment or debris such as trees, logs, stumps...provided the removal does not result in altercation of the original cross-section of the wetland or wetland course.”

Glen Brazier was approached by the Department of Transportation requesting that he use his resources to clean out the roadside of the highway where the highway went through Mattrack and WWR property. The Karstad fire department also contacted Glen Braizer to create a firebreak on his property to avoid a repeat of a fire that occurred in 201x (See Appendix 2). The fire destroyed Mattrack’s warehouse facilities and nearly crossed into the buildings and structures used during the Kickin’ Up Kountry event. (Exhibit 7).

One of the main problems experienced during the fire was the density and height of invasive cattails. Then fire, occurring in October, found ample fuel in dry, tall cattails.

After working with fire departments, Mr. Braizer and fire experts determined that a ditch running

east and west just north of the WWR buildings would substantially improve firefighting capabilities. WWR excavated an old ditch to minimize impact (Exhibit 9)

The TEP finds the ditch in question is generally oriented north and south and is adjacent to the WWR event grounds and along the road. The ditch in question crosses wetlands under jurisdiction of the Kittson SWCD and MN Rules 8420 and the MN DNR and MN Rules 6115. The ditch in Wetland Conservation Act (WCA) jurisdiction is approximately 1900 ft long with an average width of 15 ft. The ditch extends in to DNR Public Water Wetlands another 1400ft and maintains the same average width. Spoil piles were placed adjacent to the excavated ditch. No information was submitted nor approved prior to commencement of work to gain concurrence with the exemption provisions of 8420.0420, no loss provisions of 8420.0415, or a replacement plan as required under MN Rules 8420 if an exemption or no loss does not apply. In addition after reviewing historic aerial photographs the TEP finds no evidence of a previous ditch in this location.

Exhibit 9 and the photograph labeled “WWR B6” identifies the location of the ditch in an area not reviewed by the TEP or LGU. If a ditch exists in this location as well no information was submitted nor approved prior to the commencement of work to gain concurrence with either the exemption provisions of 8420.0420, no loss provisions of 8420.0415, or a replacement plan as required under MN Rules 8420 if an exemption or no loss does not apply. Therefore, an additional ditch may be in violation as well.

WWR and Justin Muller have reached an agreement regarding the ditch. WWR can keep the ditch as a firebreak and was ordered to clear the spoils. The spoils have since dropped below ground level. KG concluded that digging up the spoils at this point could disrupt wetland characteristics even more.

The TEP finds that the ditch as currently constructed does not meet the no loss provisions of 8420.0415. Currently the ditch is considered an impact according to 8420.0111 Subp. 32 because the ditch has the capability of draining wetlands and the adjacent spoil piles result in fill as defined under 8420.0111 Subp. 26.

The TEP will review information presented in an application for No Loss under 8420.0415 A. provided a detailed plan is included that shows how permanent impacts are adequately restored and prevented from occurring in the future. Specifically, present a plan to remove spoil that remains in the wetland as well as permanently block the ditch from discharging and lowering water levels.

The TEP Finds that the requirements outlined in the Public Waters Restoration order apply within the jurisdiction of MN Rules 6115 and are in addition to the requirements of MN Rules 8420.

The Road.

To enhance the effectiveness of the ditch by accommodating firefighting equipment, WWR built an access road exiting near the Kickin’ Up Kountry building sites running basically north and south (Exhibit 9). The road was constructed in a loop to eliminate the need for large vehicles to back up on a narrow surface.

The Department of Natural Resources calculated the road accounts for 38,500 Square Feet of wetland impact. The measurements used to reach this calculation are not provided (See Minnesota Wetland

Conservation Restoration Act). Regardless, as the overhead photo demonstrates, WWR calculates that the road only impacts 47% of the total calculated by the DNR, or approximately 18,100 square feet.³

³ The WWR estimate is based totally on measurements made using the overhead picture in Exhibit 8.

The TEP used a 300 ft fiberglass tape measure to take several width measurements along the entire length of the road in order to come up with an average road width. The measurement was taken from the toe slope of the fill on both sides of the road. Total road length was measured using hand held GPS equipment and points recorded at the wetland boundaries. The TEP finds that the WWR road with is incorrect and as indicated in the footnote on an “estimate...totally on measurements made using the overhead picture in Exhibit 8.”

Mn Rules don't allow the use multiple exceptions in a single application. See Mn. Rule 8420.0420(1)(C), requiring the No Loss exception to be used for the road as well. In fact, the road meets the majority of criteria found in Mn Rule 8240.0410 and 8420.0415(A).

The road is constructed from fill material as defined by 8420.0111 Subp. 26 and therefore constitutes an impact as defined by 8420.0111 Subp. 32. The road does not qualify for no loss because the aforementioned findings and references are in direct conflict with 8420.0415 A. The road also doesn't qualify for any exemption's defined by 8420.042.

Mn Rule 8240.0415(A)

MN Rule 8420.0410(A) allows activities “that will not impact a wetland.” WWR understands that the road on first impression looks as though it could have impact on the Wetland. However, WWR notes that one side of the road is predominately in the wetlands, the other side of the road is not, meaning the road is built on or close to a high ground ridge that was there before the road was built. The road itself has culverts to allow water on either side of the road to inter-act. More significantly, KG found no evidence of niche plant growth between the two sections of road.

8420.0315 requires an applicant applying for no loss under 8420.0415 to submit proof necessary to show qualification for the claim. This may include historic photos, aerial imagery, soil borings, or any other information supporting the road was placed in upland. The TEP utilized proven methods of determining wetland in an atypical situation according to the 1987 Corps of Engineers Delineation Manual and finds that the road was placed in a jurisdictional wetland.

Mn. Rule 8240.0410 (A) – (C)

The road, with slight accommodations, can easily meet the requirements of Mn Rule 8420.10.

Because the road will does not qualify for either an exemption or no loss restoration following the provisions of 8420.0410 are a moot point.

Mn. Rule 8240.0410(A).

Mn Rule 8240.0410(A) requires appropriate erosion control measures to prevent sedimentation of the wetland. Although there are several options available, KG concluded that a silt fence would be least intrusive and most effective given the after the fact nature of the application.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

Mn Rule 8240.0410(B)

There are no fish in the WWR wetlands.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

Mn Rule 8240.0410(C) 6

Again, Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part:

"Best management practices" means practicable voluntary practices that are capable of preventing and minimizing degradation of groundwater, *considering economic factors*, availability, technical feasibility, implementability, effectiveness, and environmental effects.

WWR will work with Justin Muller to finalize a management plan that includes annual assessment of the effectiveness of the silt fence and further establish the change in wetland boundaries going forward.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

Wetlands After-The-Fact Plan

Sect - 26 Twp - 159 Range 046 119.00 ACSE1/4 & W1/NE1/4 Parcel Number 060264080



Prepared For:

Mr. Brazier
PO Box 125
Karlstad, MN 56732

Prepared By:

Anderson Law Group, PLLC
1010 Dale Street North
St. Paul, MN 55117

I. Background.

A. The Applicant.

Glen Brazier founded Mattracks in 1995, incorporated the Company 1996 and remains the CEO. According to Mattracks' website:

Over the past years Mattracks have gained popularity in many industries, proving themselves time and time again as a cost-effective solution for mobility over some of the world's most extreme terrain.

Mattracks world headquarters are in Karlstad, Minnesota. Karlstad is home to approximately 900 people and is in the southeast corner of Kittson County at the junction of U.S. Highway 59 and Minnesota State Highway 11.

<https://mattracks.co/about/company/>

The Mattracks manufacturing facility is in Karlstad city limits. Mattracks also owns 81.39 acres just outside of Karlstad (zoned as Industrial Land and Buildings). Mattracks warehouse facilities are located on this lot.

However, to develop, manufacture and test Mattracks products requires significant amounts of geographically diverse land. Consequently, Mr. Brazier also owns five connected parcels of land a short distance from the manufacturing facility totaling just under 340 acres. All five parcels are zoned Agricultural and include wooded areas, prairie, and some wetlands (Property ID numbers 060264075, 06064080, 060264200, 060264170, 060264180).



The 340 acres owned by Mr. Brazier are associated with Wagon Wheel Ridge Inc. (“WWR”). WWR was founded by Mr. Brazier in April 2012. Wagon Wheel Ridge Club, Inc a non-profit, was formed in 2014.

B. Hope, Dreams and Smiles and Kickin Up Kountry.

Mr. Brazier has been involved as a sponsor of Hope, Dreams and Smiles, a Minnesota 501(C)(3) non-profit organization since its creation in 2007. The organization selects names of children from Sanford Hospital in Fargo, ND and Altru Hospital in Grand Forks, ND with life threatening illnesses (along with their parents) who are country music fans. The families are invited as guests of honor to the Kickin’ Up Kountry Music Festival co-sponsored by Mr. Brazier. The festival began in 2004 and was located on land outside of Karlstad. The festival raises money for the Hopes, Dreams and Smiles organization, but more important, the selected families get backstage passes, limo rides to and from the event, and the chance to leave the hospital for a day.



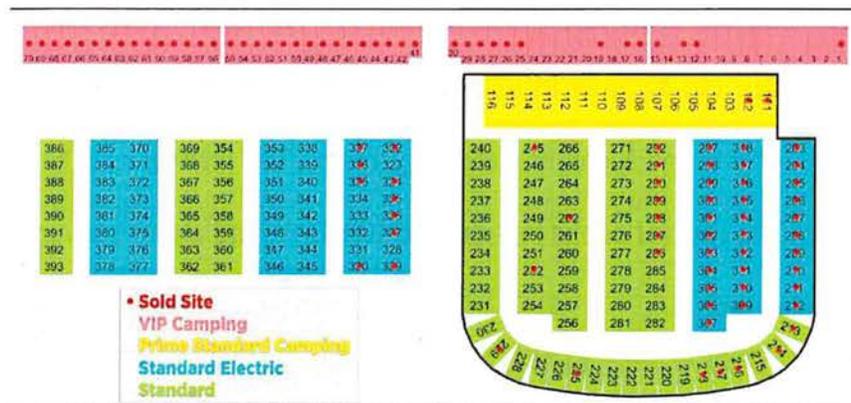
The festival grew rapidly after its inception. In 2011, Mr. Brazier opened up WWR property to host the festival and accommodate the growth. The festival now has over 70 corporate sponsors. The festival books big-name entertainers and attracts several thousand people over a four-day period.



The move to WWR property allowed Mr. Brazier to make accommodation for the thousands of festival attendees that come from outside the Karlstad area. A stage and dressing room facilities sufficient to support big name entertainers was built as well.



Several campsites were created on site.



As a result of the improvements to the WWR land and growth of the festival, the four-day event is a major contributor to Karlstad's economy, especially grocery stores, gas stations, convenience stores, off sale liquor, motels and restaurants.¹

C. Adventure World

Mr. Brazier built Mattracks Adventure World as part of the festival experience.

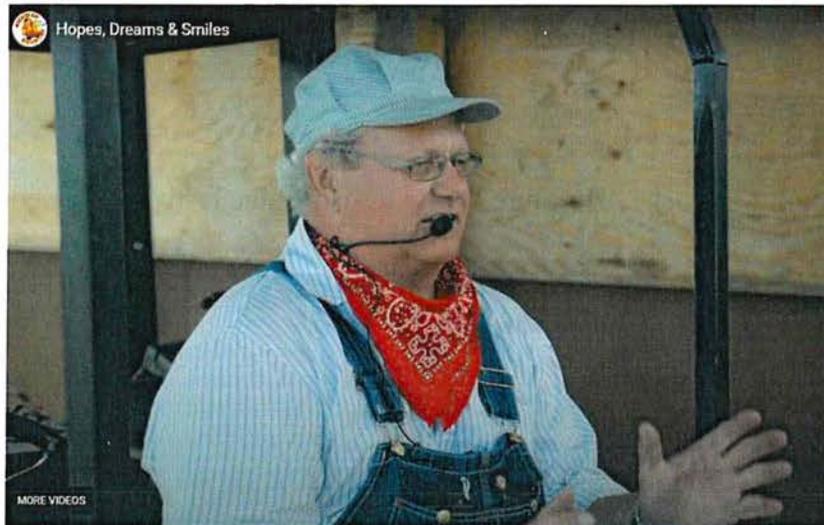


The attraction currently takes people on a trip using a specially created “train” equipped with Mattracks rubber track conversion systems. The train travels away from the festival area, through wetlands, and onto various attractions.



¹ Based on a 5/8/2020 phone call with Dale Nelson, Karlstad MN Mayor.

Adventure World was designed to help keep festival attendees, especially children, busy during festival down times. Mr Brazier is the primary engineer of the train.



D. The Fire

In October 2012, a devastating fire occurred in Kittson County near Karlstad.



The fire created significant physical and financial destruction:

Eleven homes, including seven mobile homes, two garages and 22 other outbuildings in and around Karlstad were destroyed by the fire which swelled from 500 acres to more than 4,400 acres Tuesday afternoon, fueled by 40-mph winds.

An estimated 150 firefighters from about 16 fire departments, as well as Minnesota National Guard, Minnesota Department of Natural Resources and other and other agencies, brought the fire under control before nightfall Tuesday.

"It was the epitome of a wind-driven fire," said Ron Sanow, spokesman with Minnesota Department of Natural Resources. "This fire hit this town hard. But it could have been so much worse. The fire department did an astronomical job."(Exhibit 1, Grand Forks Herald, October 3, 2012).



Although the fire did not harm Mattracks' main manufacturing center in the city limits, it did reach the 81 acres owned by Mattracks outside of the city destroying a warehouse causing \$1.5M in damages. The Town was evacuated temporarily and marked a significant event in the history of Kittson County. The fire lasted three days and consumed over 4,400 acres of land. During this time, 16 fire departments were involved.

E. The fire break on WRR property ("the ditch").

In 2018, Mr. Brazier was approached by MDOT to clean the ditch along the road parallel to his property (Exhibit 2, WWR First After-The-Fact Application History, 1):

Last year we were approached by the MN DOT to see if we could clean the ditch on our property as they had cleaned the highway ditch and replaced culverts on Highway 11 from the city of Karlstad west to my property . I had ear li er dealing with the Middle, Snake, Tamarac Rivers Watershed District. **It** was our understanding that they were the controlling authority agency. We contacted them, told them what we wanted to do and they said we didn't

need a permit and that this property was zoned agriculture.

We checked with 6 local fire departments to find out the best way to stop a wildfire such as the one that ravaged this property and the whole town of Karlstad in 2012. They all indicated that the best way was to have a ditch to create a backburn line and also it is imperative to have easy access to the high grounds on both sides to allow firefighting equipment easy access. Figure WWR B6 shows how they used a ditch to stop the wildfire in 2012.

Mr. Brazier cleaned the ditch along the road and then created the fire break ditch recommended by the fire departments as a precaution against another fire.

We hired a contractor to clean the ditch and he used his gps elevation to follow and clean the ditch from State Highway 11 south as indicated in figure WWR B1 A (1991 photo), WWR B2 A (2016 satellite photo). He also cleaned the ditch along the existing trails from east to west, WWR B2, WWR B3, as suggested by the fire departments to have easy access to the high ground on both side as well as a fire break. We used sand to stabilize the trails. These were existing cattle trails that had been made from the pond material on the north side and from years of beaver dam reminisces on the south side.

Id. The contractor indicated that the ditch followed an old ditch already on the property. After the ditch was created, Mr. Brazier began inquiring whether the ditch was wide enough to be effective against another fire like 2012.

F. The “Dam” and Klopp Controversy

Steven and Karen Klopp own and farm several acres of land to the south east of the WWR 340 acres (See Exhibit 3). The land was registered with the Conservation Reserve Program (CRP). Steven and Karen Klopp had been enrolled in CRP since 2008 but pulled their property out of CRP in 2018 and could not even plant the agricultural land in crops in 2019 due to flooding (Exhibit 4, Klopp CRP Land Incidental Request, August 19, 2019, Bates Stamp 5).

It is generally believed by members of the CRP farming community that something changed in the amount of retained water and thus farmable land in local the local CRP district after 2012.

Based on communication with people from the area, there was something that happened in 2012 to provide a fire break that was built across the outlet drainageway south of the property in question within the Tamarac watershed. *There were claims that the water level was held higher than the normal outlet flow for a period of time, which caused more cattails to develop within the path of the flowing water; this increased amount of cattails was claimed to have slowed the flow rate from the historically stabilized rate and thus it was claimed that water was impounded and flooded lands upstream of this location. (Id. Emphasis Added).*



The Klopps had, in fact, experienced unusual flooding beginning in the fall of 2012 on the land they had been farming for several years and they also believed the earthen barrier constructed to contain the 2012 fire was causing excess water on their properties. They began asking the Marshall County Board of Commissioners prompting the Board to pass a resolution:

During a meeting on August 6, 2019 with the Marshall County Board of Commissioners, a resolution was made as follows:

BE IT RESOLVED, Marshall County Board of Commissioners support Steve and Karen Klopp in efforts to return drainage lands in Section 3 of Nelson Park Township in Marshall County and Sections 34 and 35 of Deerwood Township in Kittson County to the Karlstad pre-fire (2012) conditions, and encourage the Minnesota Department of Natural Resources to help with efforts to alleviate the drainage issue.

The goal of the landowner is to be able to return the land that was put into CRP for 20 years back into agricultural crop production.

If there are flooded conditions on the agricultural land, it would appear that they would be incidental.

(Exhibit 4, Bates Stamp 6.

The DNR did nothing.

In 2019, the Klopps hired Aquatic EcoSolutions, Inc. to conduct a study and draft the request. After reviewing historic Soil Surveys (*Id.* at Bates Stamp 7), NWI Studies (*Id.* at Bates Stamp 7), PWI records (*Id.* at Bates Stamp 7), Arial Photos showing historic spring flooding levels (*Id.* at Bates Stamp 8) and Hydraulic Studies (*Id.* at Bates Stamp 8), Aquatic EcoSolutions, Inc. concluded:

This flooding has been regularly happening since approximately 2012. It would appear that there would be an expectation that land that was mapped as HEL and enrolled into CRP would not regularly experience flooding. *The land to the east of this historic farmland seems to have become wetter sometime after 2012* and does not appear to have normalized back to its normal hydrologic level through 2017 and 2018 even though the following table shows 2017 and 2018 were normal or less than normal water levels.(Emphasis Added, *Id.* at Bates Stamp 5).

Nonetheless, the Kittson County Soil and Water Conservation District (KCSWCD) determined that although it is possible the increase in water could be incidental and caused by the earthen structure, the study was insufficient.

Conclusion:

The wetland(s) that are claimed to be incidental wetland(s) are not clearly defined. To make a decision, the office would need more detail on what areas are being claimed incidental. Details should include: clearly defined boundaries of natural wetlands and proposed incidental, and detail how incidental wetlands were created in nonwetland areas solely by actions, the purpose of which was not to create the wetland. Incidental wetlands include drainage ditches, impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention or detention, drainage, soil and water conservation practices, and water quality improvements and not as part of a wetland replacement process that may, over time, take on wetland characteristics

(*Id.* 1). In short, the impact the earthen damn has on WWR's property is also undetermined.

However, Mr. Brazier has continuously experienced unusual flooding on the WWR lands since 2012 as well.

G. Procedural Overview.

a. The Site Visit in July 2019.

On June 19, 2019, Mr. Brazier was notified by Officer Tony Elwell and informed that issues had been raised about the fire ditch on the WWR (Exhibit 5, June 19, 2019 Transcript of phone call, xx). Mr. Brazier was also informed that a site visit would be done, but at that time Officer Elwell was thinking the only problem would be the spoils left on the side of the ditch (*id.*).

On July 10, 2019 he was notified that the property would be inspected on Monday, July 15, 2019 and he was encouraged to be there (Exhibit 6, Transcript of July 10, 2019 phone call with Officer Elwell). The site was also flown over by the local and state agencies after the on the ground visit.

b. Findings and Orders.

On October 15, WWR and Glen Brazier were served two separate sets of Findings and Orders. First, The KCSWCD report found that:

Findings of Fact: A site visit conducted on July 15, 2019 at Sect-26 Twp-159 Range-046 119.00 AC SE1/4NW1/4 & W1/2NE1/4 parcel number 060264080, those present where BWSR Wetland Specialist Matt Johnson, DNR Area Hydrologist Stephanie Klamm, DNR Conservation Officer Anthony Elwell, and Kittson SWCD District Technician Justin Muller. During the site visit it was observed a newly constructed road along with a newly dug ditch was observed in a Type 2/Type 3 wetland. The new road was measured at 1900 feet long averaged 20ft wide with the fill being approximately 15 inches deep on average. There was excavation adjacent to the new road this material appeared to be used as a base for the road. There was also a newly dug ditch observed within a Type 2/Type 3 wetland. This ditch starts at the Right of Way of State Hwy 11 and travels south through the property and is located entirely within the wetland. The length of ditch that is in the Wetland Conservation Act jurisdiction is 1650ft. long with an average width of 6ft. the spoil from the ditch was side cast leaving a spoil pile that was 15ft. wide on average and 6in in depth the width of the ditch averaged 8 ft . Further south on the property there was gravel fill placed within a wetland area that was used for amusement ride this has a circumference of 138 ft.

(Exhibit 7, Bates Stamp 1). Based on the above, the KCSWCD issued an order in the alternate:

You must either:

- A. Provide for restoration of the wet land in the manner required by this order. Complete restoration must be accomplished on or before June 1, 2020;
- B. Submit it a complete wetland replacement plan, exemption, or no-loss application to the Kittson SWCD within 30 days of receipt of this order.

Restoration shall be accomplished by doing the following: Removing the constructed road and filling all ditches shown on Attachment A to pre-altered conditions. This shall be accomplished by removing all the gravel and sand fill and placing it an upland site and placing the native wetland material bade in the constructed ditches. No additional excavation is allowed and pre-altered grades shall be re-established. The site should be allowed to revegetate to wetland plant species. You must contact the SWCD office upon completion of the restoration work (Exhibit 3, Bates Stamp 6).

Second, Mr Brazier was served with Findings and an MN DNR Public Waters Restoration and Replacement Order (PWRR). The PWRR document, also served October 15, 2019 is much more detailed, including failure to seek a permit prior to starting the projects:

9. The excavation and filling and placement of the UFO Exhibit and the Airplane Exhibit that took place below the OHWL of Public Waters Wetland (#35-28W) by Glen Brazier or a contractor on his behalf, or by others, ***without a permit violated several Minnesota Statutes and Rules***. Specifically, the excavation of the ditch, filling in the wetland and placement of structures is in violation of Minnesota Statutes Chapter 103G.245, Subdivision 1 and 7; MN Rules Chapter 6115.0190 Subpart 3 items B and C, MN Rules Chapter 6115.0200, Subpart 3, items F, G and H, MN Rules 6115.0200 Subpart 5, items B, C, D and F; and MN Rules Chapter 6115.0201 Subpart 3, items A and B. and MN Rules Chapter 6115.0210 Subpart 1, MN Rules Chapter 6115.0210 Subpart 3, item D. (Emphasis Added, Exhibit 7, Finding 9, Bates Stamp xx).

The PWRR's findings explained the alleged violations regarding the UFO exhibit referenced above:

12. Minnesota Rules 61 15.0190 Subpart 3, item B prohibits tilling where it is used to create upland areas, except where expressly provided herein; As indicated above, the fill would change [he wetland dimensions (i.e. pattern, profile or cross-sections) and is a prohibited activity as the 611 is being used to create an upland location for the UFO Exhibit.

The Order issued by PWRR is similar to and overlaps the KCXXXXCX.

Mr. Glen Brazier is hereby ordered and directed to undertake the following:

1. To restore approximately 1,430 feet of channel in the bed of the Public Waters Wetland (#3528W) by:

a. Fill in the approximate 1,430 feet of channel that was excavated though the bed of the public waters wetland without authorization. The channel shall be filled using the on-site spoil materials from the excavation. Any additional fill materials needed must come from an approved location by the DNR Area Hydrologist. The entire length of the channel should be filled to a crest elevation of 1020 (NAND 1988 dahn). Materials being replaced should match pre-existing contours and elevations.

b. Remove the UFO Exhibit and the Airplane Exhibit from the wetland.

c. Remove all fill (sand/gravel) placed as a pad for the UFO Exhibit from the wetland and restore back to pre-existing conditions.

d. Install adequate erosion control measures as appropriate to limit sedimentation to the wetland from the UFO Exhibit, including but not limited to silt fencing.

e. Dispose of the fill material from the area of the UFO Exhibit in accordance with all local ordinances and state and federal laws and rules and to obtain <~ 1 I necessary permits and approvals for such disposal. All removed fill material shall be deposited on upland sites at least 150 feet from the OHWL of the public waters wetland

and outside of the floodplain and other wetland areas. Fill materials removed from area of the UFO Exhibit shall not be used to fill in the excavated channel.

f. Once the fill is removed, allow the area of the UFO Exhibit site to naturally revegetate as part of the restoration.

2. To do no further excavation, filling, or placement of structures on Public Waters without first obtaining a written permit from the Commissioner of the Department of Natural Resources.
3. Complete Restoration Order from the Kittson County SWCD/Board of Water and Soil Resources on the Wetland Conservation Act (WCA).
4. To obtain future state, federal or local permits needed for work in and around the wetlands.
5. The restoration work described above must be completed by June 1, 2020.
6. You must contact Stephanie Klamm at (218) 681-0947 or Stephanie.Klamm@state.mn.us within seven days of completing the work required by this Order. The culmination of successful restoration is the issuance of a Certificate of Satisfactory Restoration.

Although the PWRR order is specifically void of direct references to the road, the Order does require WWR to comply with the entirety of the KCSWCD order which does include the road. Consequently, the joint site visits found that Applicant's recent and previous work impacted 74,500 sq. ft of wetlands, specifically:

New Road with adjacent excavation.	38,500 sq. ft
New Ditch with adjacent spoil.	34,650 sq. ft
Amusement Ride Fill	1,350 sq. ft
Total	74,500 sq. ft

Both Orders originally required compliance by June 1, 2020 or filing an After-The-Fact Application within the 30 days of the Order. Compliance has been extended to July 1, 2020 but WWR can file a New After-The-Fact Application before that compliance is required.

H. WWR's first After-The-Fact Application.

WWR and Mr. Brazier filed an After-The Fact Application on _____. On November 22, WWR received a letter from Justin explaining the decision regarding WWR's application.

I have reviewed your WCA application in its current state it is incomplete. The following bullet points lay out, comments and the minimum information that would be needed to make an application complete.

- The application can be for an exemption, but Per MN Rules 8420.0320 the current application does not and must identify which exemption is being applied for and submit the proof necessary to show qualification for the exemption. Exemption standards can be found in MN Rule 8420.0420 the following are the exemptions with corresponding subparts: Subp.2 Agricultural, Subp 3. Drainage, Subp. 4 Federal approvals, Subp. 5 Restored Wetlands, Subp. 6 Utilities, Subp. 7 Forest, Subp. 8 De minimis, or Subp. 9 Wildlife habitat.

- The application states it is for an exemption, but there are also claims of that would fit a No-Loss (MN Rule 8420.0415) application. The application should clearly state what is being applied for and how it qualifies for each standard.

- The information that would be helpful to show qualification for a No-Loss Application (MN Rule 8420.0415):
 - o Historic aerial photos showing the presence of the ditch, Survey and design of the ditch to prove that it was a maintenance action.
 - o Information that show the trails and UFO display where constructed on upland areas. I.e: Historic photos, wetland determination, subsurface soil data.
 - o For a No-Loss decision we need information that proves that the work done, was performed on non-wetland areas. The information that was submitted isn't sufficient to show the qualification for a no loss decision.

- An application can also be submitted for a Restoration Plan (MN Rule 8420.0330) Information that would be helpful to show a qualification of replacement plan would be:

- o A detailed explanation on why there is a need for the impact and detailing why the work can't be on adjacent upland and the steps that were taken by the landowner to avoid and minimize the impact to the wetland.
- o Fill out the appropriate section of the application.

- A complete application doesn't mean that there wouldn't be a request for more information made by the Technical Evaluation Panel (TEP) or the Kittson SWCD board (Exhibit 9, Denial Letter).

WWR worked with Justin Muller of the KCSWCD to draft a new After-The-Fact Application after receiving the October 15, 2019 Orders. It was decided in a January 7, 2019 meeting that WWR would assume the following position in the new application

A. The Ditch

WWR agreed to remove the spoils from digging the ditch and Justin agreed the KCSWCD would allow the ditch itself remain and serve as a fire break (Exhibit 8, Transcript of November xx, 2019 meeting between Glen Brazier, Roger Brazier, and Justin Muller). As a result, the ditch would be considered a “no loss” exemption as well as “temporary” because the spoils will be removed. This would eliminate 34,650 sq. ft that would need to be restored or mitigated.

B. The Road

The parties discussed the road during the November xx meeting. Glen Brazier acknowledged the road did not need to be as wide as it is (Id., xx), but argued that its footprint on Wetlands is less than the Findings of the site visits and fly overs (Id. xx). Justin explained WWR would need to explain the specific reasons the road needs to be in its exact location to qualify for sequencing (Id. Xx). The restoration process using Wetland Bank Units was discussed. They also noted the nearest land available was outside of Kittson County.

C. The UFO Exhibit

The parties disagreed as to whether the UFO exhibit is in public water ways.

VII. New After-The-Fact Plan.

1. Overview.

This Plan represents a different approach compared to the first After-the-Fact Application submitted by Mr. Brazier and WWR. Consistent with Mr. Brazier’s current charitable activities, the core of the WWR proposal allows significant portions of WWR land to be used to educate the public about wetlands per MN Rule 8420.0515 Subpart 8.

[Map being created here to show what land will be available for groups]

At the same time, the proposal maintains the work conducted and financed by Mt. Brazier in conjunction with fire departments to create an effective fire break for WWR and the surrounding area pursuant to MN Rule 8420.0515 Subpart 10. Consequently, WWR proposes that the total 74,500 sq. ft. of wetland impact found by the Kittson Soil and Water Conservation District and the Minnesota Department of Natural Resources, as well as any penalty assessed by either entity, be resolved pursuant to the following plan and in the following sequence:

1. Per conversations with the Justin Muller during the January 7, 2020 meeting (See Exhibit 8, Transcript of Meeting), WWR will remove the spoil pile associated with the construction of the 1,650 ft long ditch on the property originally designed as a fire break. The ditch itself will not be filled in and, in fact, plays a key role in providing educational activities on the land.
 - Impact reduction: $74,500 \text{ sq. ft.} - 38,500 \text{ sq. ft.} = 36,000 \text{ sq. ft.}$
2. The Road measured at 1900 ft. in length shall remain in place pursuant to the new application based on MN Rule 8420.0515 Subp. 8 (Education or Research Use) consistent with WWR's proposal to allow elementary, secondary, post-secondary institutions as well as civic groups, access to the land at issue (0602640800) as well other adjacent parcels owned WWR for purposes of environment study.
 - Impact reduction: $36,000 \text{ sq. ft.} - 34,650 \text{ sq. ft.} = 1,350.00 \text{ sq. ft.}$
3. The Amusement Ride constituting the reaming 1,350 sq. ft. impact shall remain in place pursuant to a new application based on MN Rule 8420.0420 Subp. A(3)(a) (De minimis).
 - Impact reduction: $1,350 \text{ sq. ft.} - 1,350. \text{ sq. ft.} = 0$
4. Any penalty assessed by Kittson Soil and Water Conservation District and the Minnesota Department of Natural Resources for failing to seek permits prior to actions that led to

alleged violations shall be resolved by a proposed “WWR Environment Scholarship” offered and managed by Wagon Wheel Ridge Club, Inc., a non-profit entity. The scholarship will be offered to college students entering their senior year majoring or minoring in environmental sciences and that promise to return to Minnesota and work for a minimum to 2 years in Wetland related jobs.

1. Educational Use.

Kittson County does not have as much wetlands as other counties and no Kittson County land is available in the District 3, Wetlands Bank.² Worse, by definition, wetlands are difficult to observe up close because they are inherently wet. WWR proposes that the road and the ditch be allowed to create seasonal access to lands the State classifies as type 2/ type3. Specifically:

1. Invite science teachers from local middle and high schools to bring students on wetland field trips using the ditch and the road as access.
2. Invite community groups to take similar field trips consistent with existing programs and exhibits in place. (See Exhibit 5).
3. Invite professors from the area colleges to study any of the land owned by WWR as part of their environmental and agricultural classes. (See Exhibit 6).

Admittedly, the educational exemption is not applicable currently because this program is not in immediately place. However, WWR is certain that invitations and educational materials can be ready by September 2020. (See Exhibit 7).

a. The Ditch

The August 25, 2019 Minnesota Wetland Conservation Act Restoration Order stated that WWR must fill in all ditches to “pre-altered conditions.” (Exhibit 7, pages 1 - 2).

² Kittson County is classified as a less than 50% county pursuant to the De Minimis standards, the lowest classification, See MN Rule 8429.0420, subp 8(a)(3).



Red Arrows point to spillage

However, the ditch was constructed to serve as a fire break to protect the buildings on WWR property necessary to host the Kickin' Up Kountry fund raising event, WWR warehouse property and the town of Karlstad. The ditch is consistent with methods deployed during the 2012 fire as well as standard fire control procedures. In fact, fire protection protocols may determine the ditch should be wider.

Discussions with the Kittson Soil and Water Conservation District after the order was issued determined that although the spoil piles must be removed, the importance of the fire break created by the channel was recognized (Exhibit 8, Phone Call Transcript January 7, 2020). This removal of spoils is consistent with MN Rule 6115.0200 Subpart. 3 that allows excavation where the spoils will be properly disposed of as well as 8420.0515 subpart 10 that considers other government entities land use needs.

More important, the ditch serves as the access point to wetlands as defined by State and Local for agencies.



Obviously, younger children will not be able to access the ditch. But college students and wetland researchers in general can walk the areas on either side of the ditch and easily identify wetland types and corresponding plant and animal presence.

2. The Road.



The July Order requires the removal of the road it identifies as running along the newly created ditch. The road is 1900 feet long and averages 20 feet wide with a base of 15 inches. The Order basically views the road as part of the ditch project that includes impact on type 2 and type 3 wetlands. But to WWR, the new road was created to facilitate easier access to areas critical for the Kinkin' Up Kountry Event including the Adventure World ride.

The road also plays a critical role in accessing the land for educational purposes. Younger children and the general public will use the road, especially where it follows portions the ditch, to gain access to plants and wildlife consistent with wetlands.



As a result, the ditch and the road form the foundation for WWR’s plan to open the land up to educational experience consistent with MN Rule 8420.0515 Subp. 8 (Education or Research Use).

UFO Display

The Amusement Ride constituting the remaining 1,350 sq. ft. impact shall remain in place pursuant to a new application based on MN Rule 8420.0420 Subp. A(3)(a) (De minimis).

- Impact reduction: 1,350 sq. ft. – 1,350. sq. ft. = 0

a. Assessed Fines.

The July Order and recommended paths of restoration and resolution contains “penalties” for failing to file an application before acting. For example, although the multiple used to calculate the amount of Wetland Bank units required to comply with restoration is normally 2 – 2.5, WWR is assessed a 4 multiple. WWR asserts that the extent of the penalty

should be reduced given WWR received approval from the Middle, Snake, Tamarac, Rivers Watershed District and local fire departments.

Instead of a “penalty,” the WWR non-profit entity will create, offer and maintain a \$3,000.00 annual scholarship for a minimum for six years. The scholarship will be offered to returning seniors majoring in environmental sciences and will be open to area, four-year colleges, as well as 5 other colleges with highly ranked environmental science programs. (See Exhibit 8, the WWR Scholarship).

I. Conclusion

Under construction

Helping Producers Implement Best Management Practices For Conservation Purposes in Kittson County



410 South 5th Street - Suite 106 - Hallock MN 56728 - Phone (218) 843 2619 - Fax (855) 744-0398 - kittsonswcd.org

Glen Brazier
PO Box 116
Greenbush, MN 56726

November 22, 2019

Mr. Brazier,

I have reviewed your WCA application in its current state it is **incomplete**. The following bullet points lay out, comments and the minimum information that would be needed to make an application complete.

- The application can be for an exemption, but Per MN Rules 8420.0320 the current application does not and must identify which exemption is being applied for and submit the proof necessary to show qualification for the exemption. Exemption standards can be found in MN Rule 8420.0420 the following are the exemptions with corresponding subparts: Subp.2 Agricultural, Subp 3. Drainage, Subp. 4 Federal approvals, Subp. 5 Restored Wetlands, Subp. 6 Utilities, Subp. 7 Forest, Subp. 8 De minimis, or Subp. 9 Wildlife habitat.
- The application states it is for an exemption, but there are also claims of that would fit a No-Loss (MN Rule 8420.0415) application. The application should clearly state what is being applied for and how it qualifies for each standard.
- The information that would be helpful to show qualification for a No-Loss Application (MN Rule 8420.0415):
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 - Fill out the appropriate section of the application.
- A complete application doesn't mean that there wouldn't be a request for more information made by the Technical Evaluation Panel (TEP) or the Kittson SWCD board.
- Don't forget to sign the application

- The bottom line is the TEP and the Kittson SWCD board need clear and thorough information that show the qualification for the type of application that is being submitted.

If there are any questions or concerns, please let me know. I appreciate your willingness to work with us to achieve a solution to this issue.

Thank You,

Justin Muller

District Technician

Joint Application Form for Activities Affecting Water Resources in Minnesota

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

Regulatory Review Structure

Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

Submission Instructions

Send the completed joint application form and all required attachments to:

U.S Army Corps of Engineers. Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

Section 401 Water Quality Certification: Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

Wetland Conservation Act Local Government Unit: Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

DNR Public Waters Permitting: In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name: Glen Brazier
Mailing Address: 126 6th St Unit, PO Box 116, Greenbush, MN 56726
Phone: 218-683-9800
E-mail Address: gbrazier@mattracks.com

Authorized Contact (do not complete if same as above):

Mailing Address:
Phone:
E-mail Address:

Agent Name:
Mailing Address:
Phone:
E-mail Address:

PART TWO: Site Location Information

County: Kittson **City/Township:** Deerwood Township
Parcel ID and/or Address: 060264080, 060264200
Legal Description (Section, Township, Range): Sect-26 Twp-159 Range-046 119.00 AC SE1/4NW1/4 & W1/2NE1/
Lat/Long (decimal degrees): 48°34'09.2"N 96°32'52.1"W

Attach a map showing the location of the site in relation to local streets, roads, highways.

Approximate size of site (acres) or if a linear project, length (feet):

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵
0602064080	Wetland	Fill, excavate	permanent				

¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

PART FIVE: Applicant Signature

Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature: _____ Date: _____

I hereby authorize _____ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

Wetland Type Confirmation

Delineation Concurrence. Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

Preliminary Jurisdictional Determination. A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

Approved Jurisdictional Determination. An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

Attachment B

Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part *if* you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR *if* you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

Attachment C

Avoidance and Minimization

Project Purpose, Need, and Requirements. Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:

Avoidance. Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:

Minimization. Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

Attachment D Replacement/Compensatory Mitigation

Complete this part *if* your application involves wetland replacement/compensatory mitigation not associated with the local road wetland replacement program. Applicants should consult Corps mitigation guidelines and WCA rules for requirements.

Replacement/Compensatory Mitigation via Wetland Banking. Complete this section if you are proposing to use credits from an existing wetland bank (with an account number in the State wetland banking system) for all or part of your replacement/compensatory mitigation requirements.

Wetland Bank Account #	County	Major Watershed #	Bank Service Area #	Credit Type (if applicable)	Number of Credits

Applicants should attach documentation indicating that they have contacted the wetland bank account owner and reached at least a tentative agreement to utilize the identified credits for the project. This documentation could be a signed purchase agreement, signed application for withdrawal of credits or some other correspondence indicating an agreement between the applicant and the bank owner. *However, applicants are advised not to enter into a binding agreement to purchase credits until the mitigation plan is approved by the Corps and LGU.*

Project-Specific Replacement/Permittee Responsible Mitigation. Complete this section if you are proposing to pursue actions (restoration, creation, preservation, etc.) to generate wetland replacement/compensatory mitigation credits for this proposed project.

WCA Action Eligible for Credit ¹	Corps Mitigation Compensation Technique ²	Acres	Credit % Requested	Credits Anticipated ³	County	Major Watershed #	Bank Service Area #

¹Refer to the name and subpart number in MN Rule 8420.0526.

²Refer to the technique listed in *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota*.

³If WCA and Corps crediting differs, then enter both numbers and distinguish which is Corps and which is WCA.

Explain how each proposed action or technique will be completed (e.g. wetland hydrology will be restored by breaking the tile.....) and how the proposal meets the crediting criteria associated with it. Applicants should refer to the Corps mitigation policy language, WCA rule language, and all associated Corps and WCA guidance related to the action or technique:

Attach a site location map, soils map, recent aerial photograph, and any other maps to show the location and other relevant features of each wetland replacement/mitigation site. Discuss in detail existing vegetation, existing landscape features, land use (on and surrounding the site), existing soils, drainage systems (if present), and water sources and movement. Include a topographic map showing key features related to hydrology and water flow (inlets, outlets, ditches, pumps, etc.):

Project Name and/or Number:

Attach a map of the existing aquatic resources, associated delineation report, and any documentation of regulatory review or approval. Discuss as necessary:

For actions involving construction activities, attach construction plans and specifications with all relevant details. Discuss and provide documentation of a hydrologic and hydraulic analysis of the site to define existing conditions, predict project outcomes, identify specific project performance standards and avoid adverse offsite impacts. Plans and specifications should be prepared by a licensed engineer following standard engineering practices. Discuss anticipated construction sequence and timing:

For projects involving vegetation restoration, provide a vegetation establishment plan that includes information on site preparation, seed mixes and plant materials, seeding/planting plan (attach seeding/planting zone map), planting/seeding methods, vegetation maintenance, and an anticipated schedule of activities:

For projects involving construction or vegetation restoration, identify and discuss goals and specific outcomes that can be determined for credit allocation. Provide a proposed credit allocation table tied to outcomes:

Provide a five-year monitoring plan to address project outcomes and credit allocation:

Discuss and provide evidence of ownership or rights to conduct wetland replacement/mitigation on each site:

Quantify all proposed wetland credits and compare to wetland impacts to identify a proposed wetland replacement ratio. Discuss how this replacement ratio is consistent with Corps and WCA requirements:

By signature below, the applicant attests to the following (only required if application involves project-specific/permittee responsible replacement):

- All proposed replacement wetlands were not:
 - Previously restored or created under a prior approved replacement plan or permit
 - Drained or filled under an exemption during the previous 10 years
 - Restored with financial assistance from public conservation programs
 - Restored using private funds, other than landowner funds, unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.
- The wetland will be replaced before or concurrent with the actual draining or filling of a wetland.
- An irrevocable bank letter of credit, performance bond, or other acceptable security will be provided to guarantee successful completion of the wetland replacement.
- Within 30 days of either receiving approval of this application or beginning work on the project, I will record the Declaration of Restrictions and Covenants on the deed for the property on which the replacement wetland(s) will be located and submit proof of such recording to the LGU and the Corps.

Applicant or Representative:

Title:

Signature: _____

Date:

Attachment E

Local Road Replacement Program Qualification

Complete this part *if* you are a local road authority (county highway department, city transportation department, etc.) seeking verification that your project (or a portion of your project) qualifies for the MN Local Government Road Wetland Replacement Program (LGRWRP). If portions of your project are not eligible for the LGRWRP, then Attachment D should be completed and attached to your application.

Discuss how your project is a repair, rehabilitation, reconstruction, or replacement of a currently serviceable road to meet state/federal design or safety standards/requirements. Applicants should identify the specific road deficiencies and how the project will rectify them. Attach supporting documents and information as applicable:

Provide a map, plan, and/or aerial photograph accurately depicting wetland boundaries within the project area. Attach associated delineation/determination report or otherwise explain the method(s) used to identify and delineate wetlands. Also attach and discuss any type of review or approval of wetland boundaries or other aspects of the project by a member or members of the local Technical Evaluation Panel (TEP) or Corps of Engineers:

In the table below, identify only the wetland impacts from Part 4 that the road authority has determined should qualify for the LGRWRP.

Wetland Impact ID (as noted on overhead view)	Type of Impact (fill, excavate, drain)	Size of Impact (square feet or acres to 0.01)	Existing Plant Community Type(s) in Impact Area ¹	County, Major Watershed #, and Bank Service Area # of Impact ²

¹Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

²Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

Discuss the feasibility of providing onsite compensatory mitigation/replacement for important site-specific wetland functions:

Please note that under the MN Wetland Conservation Act, projects with less than 10,000 square feet of wetland impact are allowed to commence prior to submission of this notification so long as the notification is submitted within 30 days of the impact. The Clean Water Act has no such provision and requires that permits be obtained prior to any regulated discharges into water of the United States. To avoid potential unauthorized activities, road authorities must, at a minimum, provide a complete application to the Corps and receive a permit prior to commencing work.

By signature below, the road authority attests that they have followed the process in MN Rules 8420.0544 and have determined that the wetland impacts identified in Part 4 are eligible for the MN Local Government Road Wetland Replacement Program.

Road Authority Representative:

Title:

Signature: _____

Date:

Technical Evaluation Panel Concurrence:

Project Name and/or Number:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

Upon approval and signature by the TEP, application must be sent to: **Wetland Bank Administration**
Minnesota Board of Water & Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155

Application for After the Fact Exemption Permit

History

Last year we were approached by the MN DOT to see if we could clean the ditch on our property as they had cleaned the highway ditch and replaced culverts on Highway 11 from the city of Karlstad west to my property. I had earlier dealing with the Middle, Snake, Tamerac Rivers Watershed District. It was our understanding that they were the controlling authority agency. We contacted them, told them what we wanted to do and they said we didn't need a permit and that this property was zoned agriculture.

We checked with 6 local fire departments to find out the best way to stop a wildfire such as the one that ravaged this property and the whole town of Karlstad in 2012. They all indicated that the best way was to have a ditch to create a back burn line and also it is imperative to have easy access to the high grounds on both sides to allow firefighting equipment easy access. Figure WWR B6 shows how they used a ditch to stop the wild fire in 2012.

Hopes Dreams and Smiles (HDS) is a nonprofit organization that brings children with life threatening illnesses and their families to Kick'n Up Kountry in first class fashion for the best seats in the house, to ride the Theme park train and to meet the stars

We are applying for an after the fact exemption permit.

So below is what we did.

We hired a contractor to clean the ditch and he used his gps elevation to follow and clean the ditch from State Highway 11 south as indicated in figure WWR B1 A (1991 photo), WWR B2 A (2016 satellite photo). He also cleaned the ditch along the existing trails from east to west, WWR B2, WWR B3, as suggested by the fire departments to have easy access to the high ground on both side as well as a fire break. We used sand to stabilize the trails. These were existing cattle trails that had been made from the pond material on the north side and from years of beaver dam reminiscences on the south side.

We also have two display items for the HDS Theme park. A UFO and an airplane fuselage.

The airplane fuselage may be within the boundaries of the public water wetland as draw in on figure 1 of the DNR attachments, WWR B4. It is only an aluminum shell that was carried out and set in place by several people. It is no different than a deer stand and has no ill effects on anything.

The UFO is outside the boundaries of the Figure 1 of the DNR attachments. It is the highest point in that area and that's why it was chosen and that is why the boundary map goes around it. If you look at WWR Figure B5 the boundaries are drawn to coincide with The DNR boundary's drawn in their Figure 1. The entire UFO is clearly outside of the boundary. Even so the UFO display is not a structure, has no roof and no foundation see DNR figure 3, is portable and is, in fact, a semi-trailer.

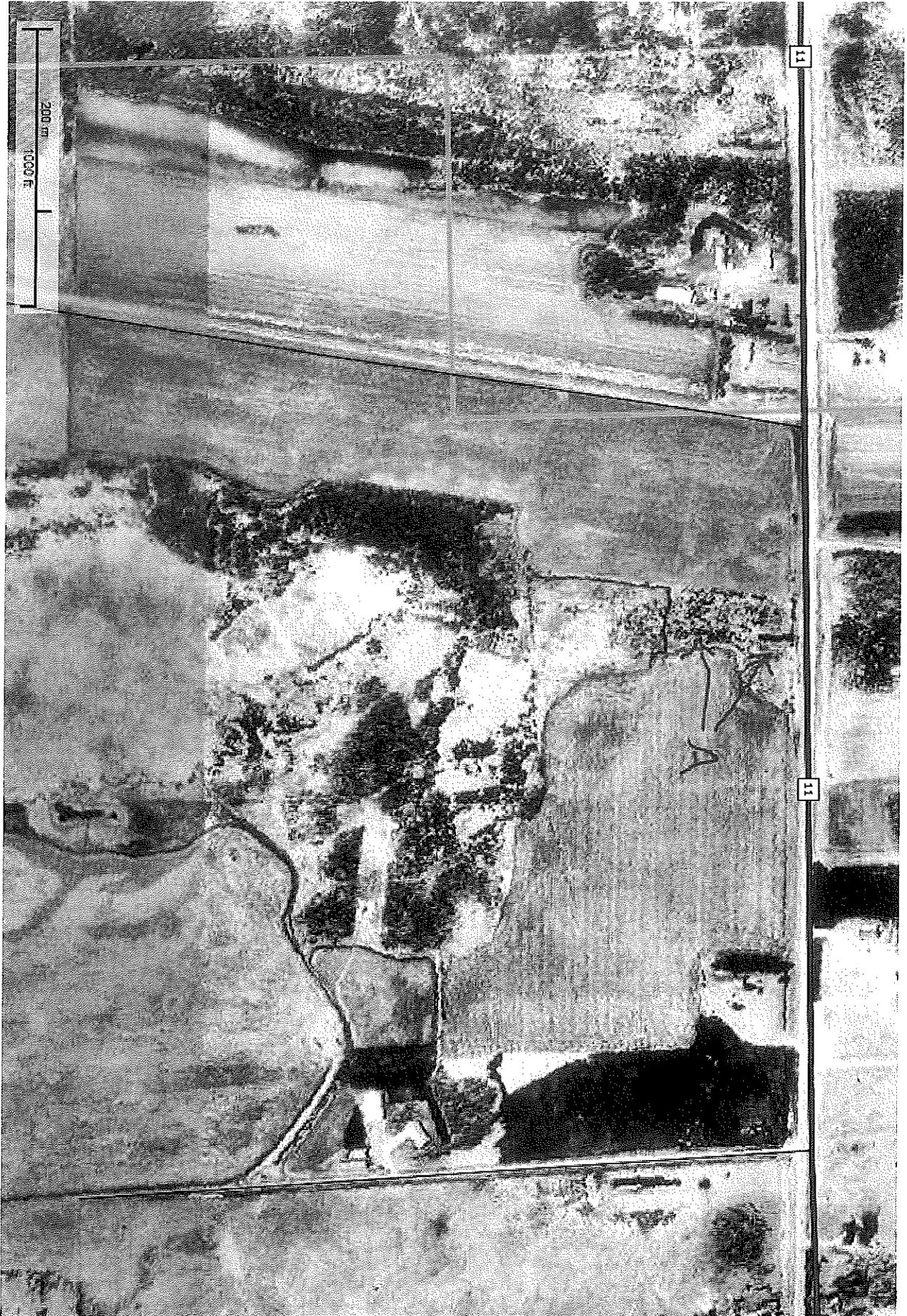
There was no gravel used anywhere. There was no sand or gravel used for a path to the UFO display.

There was sand used to level the high spot that the UFO display sits on but again that is outside the boundary.

In any of the DNR's presented documents, there is no visible water, except in the ditch, even though there had been record rains. As you can see in WWR B5 (DNR figures 4 and 5) the only visible water is in the ditch. Making it impossible to see the boundary line by the UFO from the helicopter.

Cleaning the ditch is meant to act as a fire break in order to protect life and property from the devastating wildfires that are common to this area. There is no benefit to us to clean the ditch other than for a fire break. It is not meant to nor does it move water from here to there any different than in the past as it is almost level.

We understand that spoils of the cleaned ditch may be considered to be displacing wetlands but the cleaned ditches are not and we would gladly remove those spoils. The east and west trails were already there as were the cleaned ditches. They were already displaced wetlands and we simply added the spoils to them and we ask to be able to leave them to provide access to the high grounds on both sides, by fire equipment etc.



WWR B1 1991



WUR

B2

2016

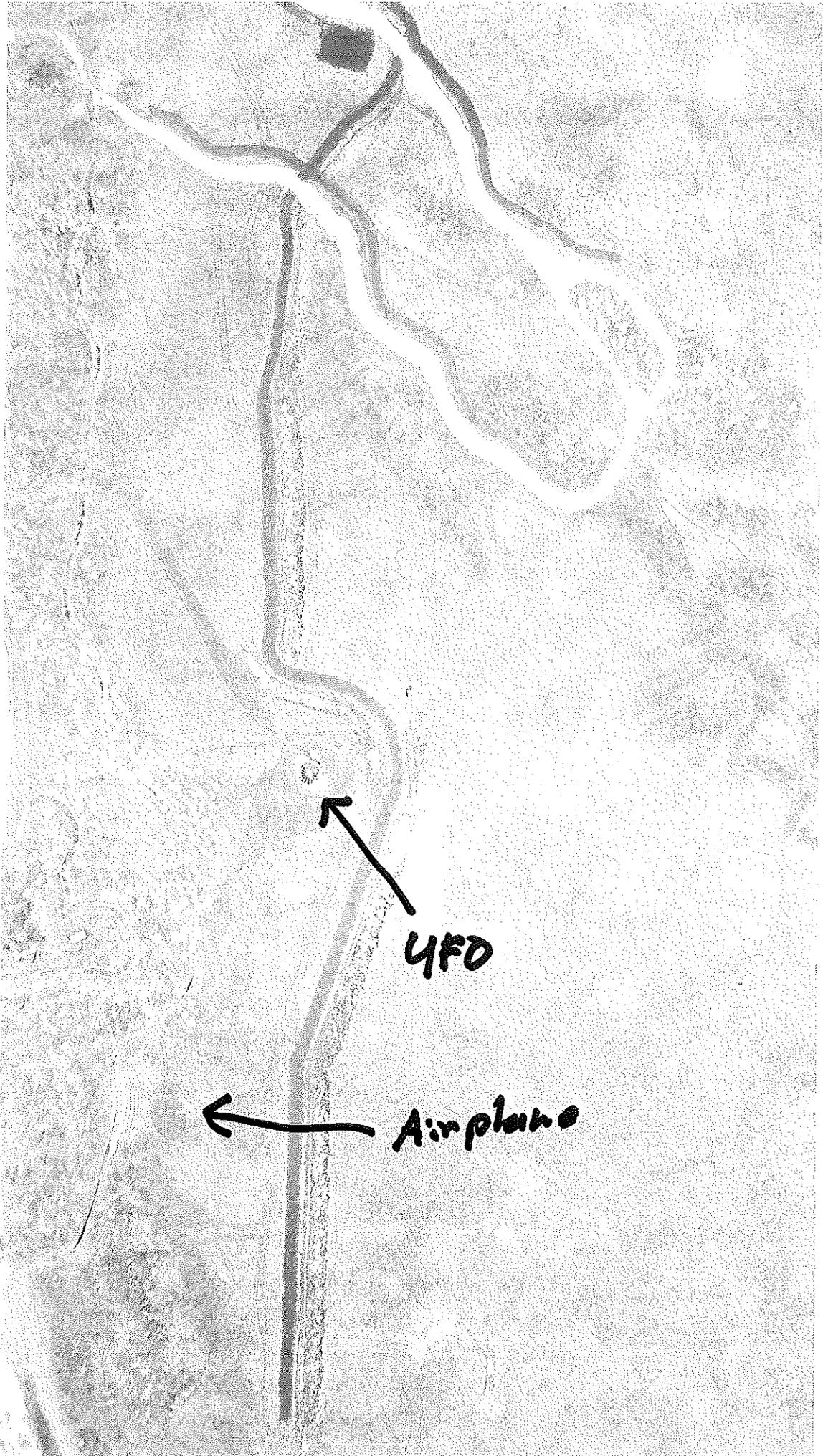
A.D.H.A.

trail path

Barron Dam

WWR B3





UWR 134

WWR Figure 20

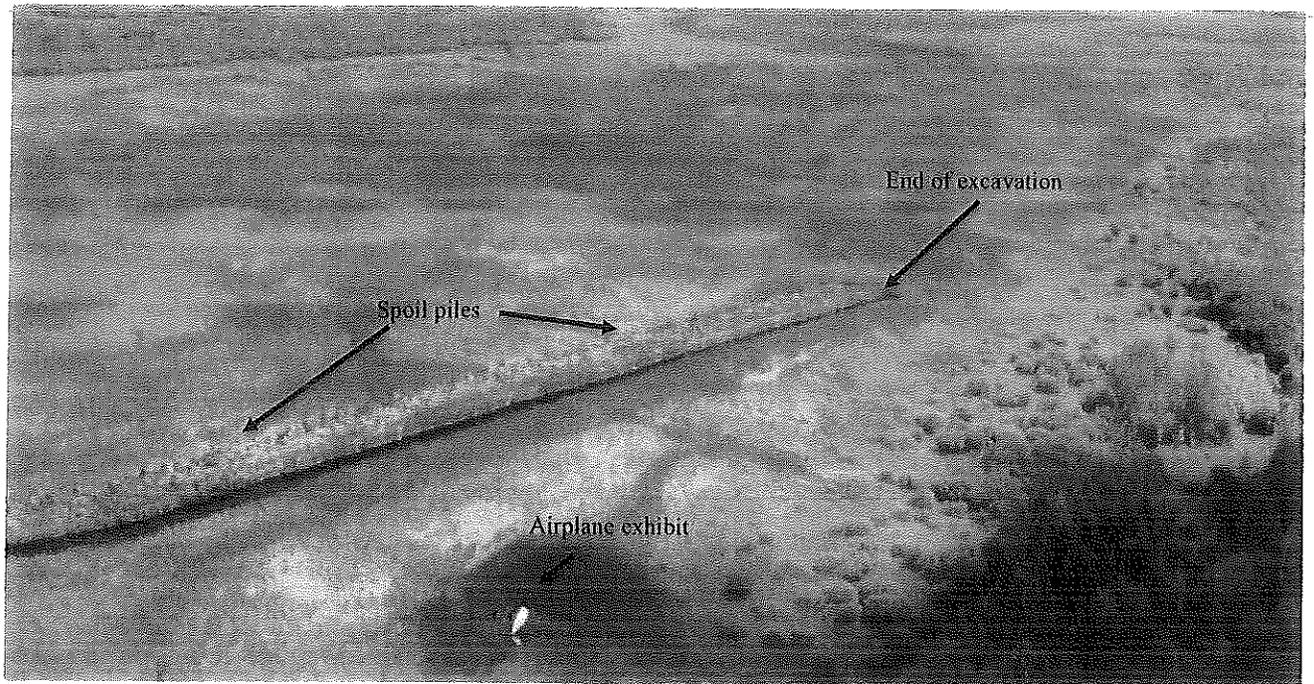


Figure 4. Image shows a closer view of the spoil piles left in the wetland, the end of excavation of the ditch and a clearer view of the airplane, all in the public waters wetland. (Source DNR aerial video recorded on 8-1-19).

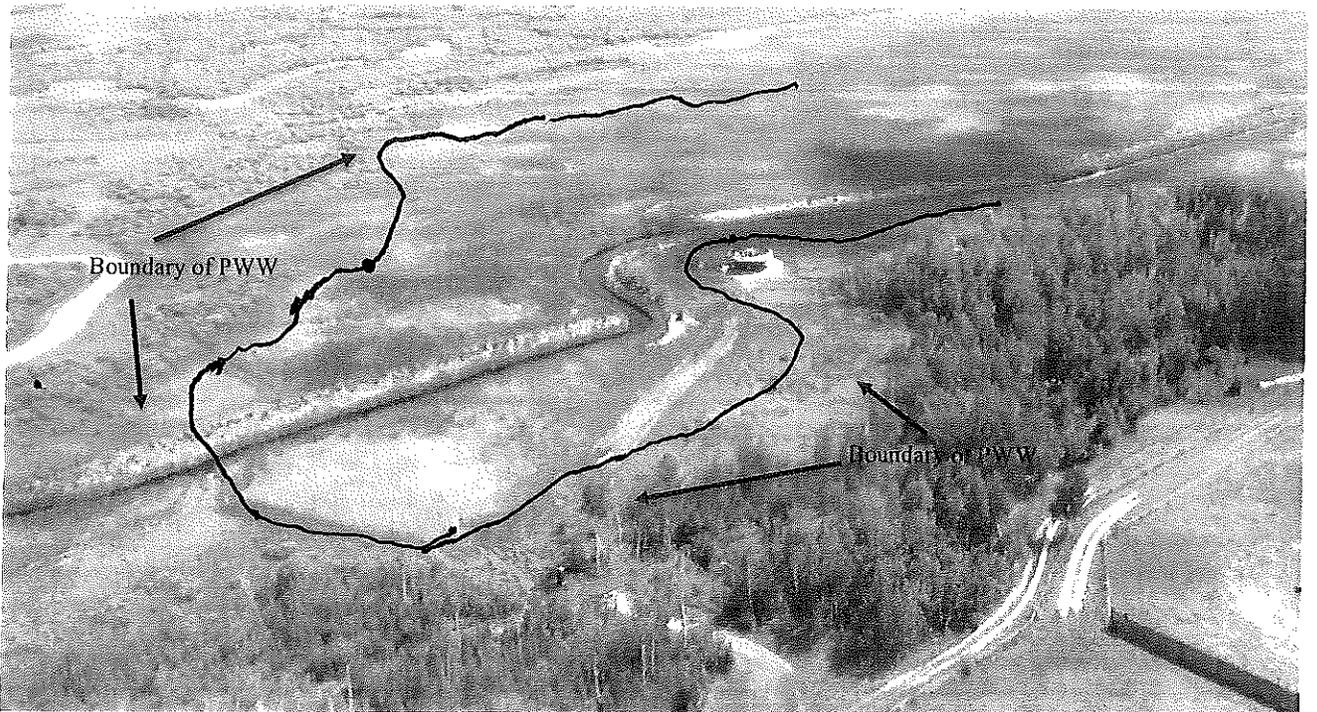
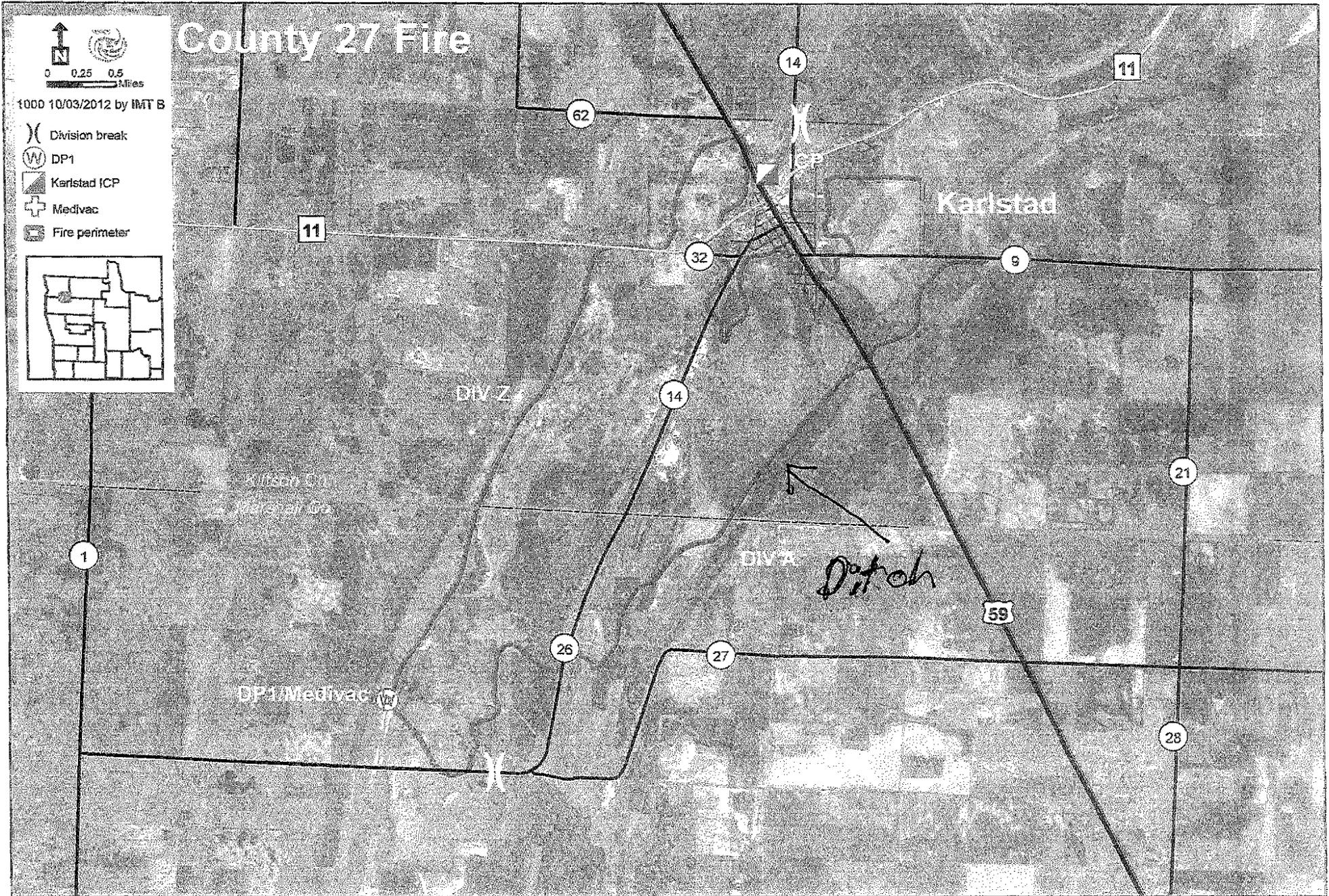


Figure 5. Image of the boundary of the public waters wetland along with the view of the overall impacts (ditch, UFO display/pad of fill). (Source DNR aerial video recorded on 8-1-19).

Revised 01/24/2017

WWR BS

WWR B6



Photos are from a Flight that was preformed by the DNR on 8/1/19

Photo 1: Shows new ditch with spoil, Hwy 11 is in the very lower left of the photo. North is toward the left of the photo and South is toward the right side of the photo.



Photo 2: Showing the newly constructed road with sand/gravel fill along with adjacent ditch



Photo 3: Showing ditch with spoil extending past the new road. Also showing the gravel fill for the amusement ride.



Photo 4: Showing the ditch extending further south on the property with spoil.





Minnesota Wetland Conservation Act Restoration Order



REF #

CDO#

RPN#

The Commissioner of Natural Resources hereby orders Glen Brazier and his/hers/its heirs, successors, and assigns to complete restoration of the wetland located at **(legal description)** Sect-26 Twp-159 Range-46W W1/2NE1/4; Kittson County State of Minnesota.

Name:	Glen Brazier
Address:	126 6th St, Unit PO Box 116, Greenbush, MN 56726

Findings of Fact: A site visit conducted on July 15, 2019 at Sect-26 Twp-159 Range-046 119.00 AC SE1/4NW1/4 & W1/2NE1/4 parcel number 060264080, those present where BWSR Wetland Specialist Matt Johnson, DNR Area Hydrologist Stephanie Klamm, DNR Conservation Officer Anthony Elwell, and Kittson SWCD District Technician Justin Muller. During the site visit it was observed a newly constructed road along with a newly dug ditch was observed in a Type 2/Type 3 wetland. The new road was measured at 1900 feet long averaged 20ft wide with the fill being approximately 15 inches deep on average. There was excavation adjacent to the new road this material appeared to be used as a base for the road. There was also a newly dug ditch observed within a Type 2/Type 3 wetland. This ditch starts at the Right of Way of State Hwy 11 and travels south through the property and is located entirely within the wetland. The length of ditch that is in the Wetland Conservation Act jurisdiction is 1650ft. long with an average width of 6ft. the spoil from the ditch was side cast leaving a spoil pile that was 15ft. wide on average and 6in in depth the width of the ditch averaged 8 ft . Further south on the property there was gravel fill placed within a wetland area that was used for amusement ride this has a circumference of 138 ft.

The Impacts of total sq. ft are listed below:

- New road with adjacent excavation: 38,500 Sq. Ft
- New Ditch with adjacent spoil: 34,650 Sq. Ft.
- Amusement Ride Fill: 1,350 Sq. Ft.
- Total wetland impacts: 74,500 Sq. Ft.

This work was completed without an approved WCA application from the appropriate LGU and no exemption would apply to this size and type of impact.

This order is issued pursuant to Minn. Stat. § 103G.2372 and MN Rule part 8420.0900.

**VIOLATION OF THIS ORDER IS A MISDEMEANOR
AND A DEED RESTRICTION COULD BE PLACED ON THE PROPERTY.**

You must either:

- A. Provide for restoration of the wetland in the manner required by this order. Complete restoration must be accomplished on or before June 1st 2020; or
- B. Submit a complete wetland replacement plan, exemption, or no-loss application to the Kittson SWCD within 30 days of receipt of this order.

Restoration shall be accomplished by doing the following: Removing the constructed road and filling all ditches shown on Attachment A to pre-altered conditions. This shall be accomplished by removing all the gravel and sand fill and placing it an upland site and placing the native wetland material back in the constructed ditches. No additional excavation is allowed and pre-altered grades shall be re-established. The site should be allowed to revegetate to wetland plant species. You must contact the SWCD office upon completion of the restoration work.

Attachments are a part of this document (check one) Yes No

Attachment A - Map showing approximate loaction of roads and ditches

The enforcement authority shall rescind this order if the landowner obtains approval for an after-the-fact replacement plan, exemption determination, or no-loss determination from the Kittson SWCD. The contact person is Justin Muller at (218)843-2619 Ext.3. If an after-the-fact approval is not received, the landowner/responsible party must restore the wetland as specified in this order. Upon completion of the restoration required by this order, the landowner must contact Justin Muller at the Kittson County Soil and Water Conservation District (218)843-2619 Ext. 3 and request that a Certificate of Satisfactory Completion be issued.

If you choose to appeal the terms or conditions of this order, a written request must be submitted to the Minnesota Board of Water and Soil Resources (BWSR) Executive Director within 30 days of receiving this order, along with a minimum filing fee of \$500. If a written request and filing fee is not submitted to BWSR within 30 days, this restoration order shall become final.

Order Prepared by Justin Muller Justin Muller 8/23/19
 Signature Printed Name Date

Order Served by [Signature] 605 Anthony Elwe 10/15/19
 Conservation Officer Signature Badge # Printed Name Date

Officer Issuance Record: in person; or by certified mail on 10 17 2019
 [Date]



PUBLIC WATERS RESTORATION AND REPLACEMENT ORDER

REF# 2019-3502
CDO#
RPN# F890605923804

Pursuant to Minnesota Statutes, Section 103G.2372, and Minnesota Rules, part 6115.0255, the Commissioner of Natural Resources hereby orders: **Glen Brazier** (*126 6th St Unit, PO Box 116, Greenbush, MN 56726*) [representing himself and Wagon Wheel Ridge, Inc.] to **restore Unnamed Wetland (#35-28W)** located in: **SW ¼ of the NE ¼ of Section 26, T159N, R46W (Deerwood Township) in Kittson County.**

Findings of Fact:

1. On Monday, July 15, 2019, DNR Area Hydrologist Stephanie Klamm, DNR Conservation Officer Tony Elwell, BWSR Wetland Specialist Matt Johnson, and Kittson County SWCD District Technician Justin Muller visited the site with permission from Glen Brazier, owner of Wagon Wheel Ridge Inc. During the site visit it was observed that there was a newly excavated ditch and a road constructed in or near public water wetland #35-28W. It was also observed that a structure intended to be a Unidentified Flying Object exhibit (UFO Exhibit) had been constructed in or near public water wetland #35-28W. The UFO Exhibit appears to be an old fair ride. Additionally, an airplane (Airplane Exhibit) was placed near or in public water wetland #35-28W, apparently as an exhibit. See Figure 1.
2. The newly excavated ditch generally flows north to south from County Road 11 into public water wetland #35-28W. At the time of the July 15, 2019 site visit, due to water conditions and vegetation coverage, it was not determined if the road, UFO Exhibit, and Airplane Exhibit were in public water wetland #35-28W. For the same reasons, it was also not possible to determine how far the ditch extended into public water wetland #35-28W. When returning from the site and speaking Mr. Brazier in his office, he did state that the ditch ended near the Airplane Exhibit.
3. On Thursday, August 1st, 2019, DNR staff flew over public waters wetland #35-28W in sections 26 & 35 of Deerwood Township (T159N, R46W) in Kittson County. The pilot took video of the public water wetland (#35-28W). In the videos, it is very obvious that a ditch had been excavated and fill placed into public water wetland (#35-28W) as foundation for the UFO Exhibit in the SW ¼ of the NE ¼ of section 26, adjacent to the Wagon Wheel Ridge Inc. property. Excavation took place from the northern boundary of public waters wetland #35-28W southward to the Airplane Exhibit. A fill pad of sand and gravel was placed in public water wetland #35-28W as a foundation for the UFO Exhibit. Please see attached images from DNR aerial video recorded on August 1, 2019. See Figures 2 – 5.
4. The UFO Exhibit appears to be an old fair ride that is being used as a display for the Wagon Wheel Ridge train ride interactive displays as well as the Airplane Exhibit. There is a pad of sand and gravel installed for a path to and underneath the UFO Exhibit that is approximately 1,600 sq. ft. measured in ArcGIS using an aerial photo from 2017, in public water wetland #35-28W. There does not appear to be any fill used around the Airplane Exhibit display, based on interpretation of the DNR aerial video from August 1, 2019.

5. Public Water Wetland #35-28W is a public water of the State of Minnesota as defined in Minnesota Statutes 103G.005, Subd. 15.
6. Public Water Wetland #35-28W was identified and inventoried pursuant to Minnesota Statutes, Section 103G.201 (a) and is listed on the Kittson County Protected Waters and Wetlands Inventory dated 1984 and Marshall County Protected Waters and Wetlands Inventory dated 1985.
7. The Department of Natural Resources' jurisdictional boundary for Public Waters is defined in Minnesota Statutes 103G.005 Subd. 14 as all public waters areas below the Ordinary High Water (OHW) Level. For public water wetland #35-28W, the OHWL is the boundary where the vegetation changes from predominately aquatic vegetation to predominately terrestrial vegetation. An established surveyed elevation for the OHWL has not been done, but there is evidence of vegetation changes from aquatic to terrestrial apparent in aerial imagery.
8. According to the Kittson County online parcel database, Glen Brazier (PO Box 214, Karlstad, MN 56732) is the owner of the Wagon Wheel Ridge, Inc. (1160 410th Ave., Karlstad, MN 56732), section 26 of T159N, R46W, Deerwood Township, Kittson County. The property is noted as parcels 060264075, 060264080, 060264170, 060264180, 060264200.
9. The excavation and filling and placement of the UFO Exhibit and the Airplane Exhibit that took place below the OHWL of Public Waters Wetland (#35-28W) by Mr. Glen Brazier or a contractor on his behalf, or by others, without a permit violated several Minnesota Statutes and Rules. Specifically, the excavation of the ditch, filling in the wetland and placement of structures is in violation of Minnesota Statutes Chapter 103G.245, Subdivision 1 and 7; MN Rules Chapter 6115.0190 Subpart 3 items B and C, MN Rules Chapter 6115.0200, Subpart 3, items F, G and H, MN Rules 6115.0200 Subpart 5, items B, C, D and F; and MN Rules Chapter 6115.0201 Subpart 3, items A and B. and MN Rules Chapter 6115.0210 Subpart 1, MN Rules Chapter 6115.0210 Subpart 3, item D.

Following is a list of specific violations of the MN Work in Public Waters rules along with a narrative of the specific violation:

10. Minnesota Statutes, Section 103G.245, Subdivision 1 states that a person must have a public waters work permit to change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.
As indicated above, work has been completed within the Public Waters Wetland (#35-28W) without a permit. As of September 6th, 2019 no permit application has been received. The excavation and filling work that was completed in the public waters wetland changed the course, current and cross-section of said public waters.
11. Minnesota Statutes, Section 103G.245, Subdivision 7 states that a permit may only be issued if the project involves a minimum encroachment, change or damage to the environment, particularly the ecology of the water.
The project is not the minimal encroachment or change to the ecology of the waters. The act of excavation of approximately 1,430 long channel through a public waters wetland will provide additional drainage from upland areas and the surrounding wetland, which will increase the speed at which water reaches downstream properties. Recurrent sedimentation from the new ditch and

exposed soils can result in an overall net decrease in ecological function with negative consequences which include but are not limited to: wetland habitat degradation, direct habitat loss, wetland type conversions, aquatic species loss and impairment, and reductions in downstream water quality.

Since practical alternatives that do not include excavation are available, the project as completed does not represent one involving “a minimum encroachment, change or damage to the environment, particularly the ecology of the water.”

The act of draining/excavation of a channel through the wetland has a direct result of draining adjacent riparian wetland areas. The effect of such drainage will result in a conversion to wetland to upland adjacent to the channels and/or in a conversion of wetland type. The result of such conversion will be a loss in ecological function. Important wetland functions lost would include but are not limited to: nutrient uptake, floodwater retention, fish and wildlife habitats, and groundwater recharge.

Filling to allow for placement of theme park exhibits is prohibited as it is not the least impact solution. There are upland areas where the UFO Exhibit and Airplane Exhibit could be placed. The act of filling removes aquatic vegetation from the landscape and potentially changes the wetland type.

12. Minnesota Rules 6115.0190 Subpart 3, item B prohibits filling where it is used to create upland areas, except where expressly provided herein;
As indicated above, the fill would change the wetland dimensions (i.e. pattern, profile or cross-sections) and is a prohibited activity as the fill is being used to create an upland location for the UFO Exhibit.
13. Minnesota Rules 6115.0190 Subpart 3, item C prohibits filling where it is used to stabilize beds of public waters which cannot support fill materials because of excessive depths of muck, steep bank, bed slope of other conditions;
The fill material is being used as a support to stabilize the wetland soils and vegetation so the UFO Exhibit does not fall over or sink into the substrate of the wetland.
14. Minnesota Rules 6115.0200 Subpart 3, item F prohibits excavation where excavation would not provide an effective solution to a problem because of recurrent sedimentation and there are feasible and practical alternative solutions which do not require excavation
As indicated above, changes in wetland dimensions (i.e. pattern, profile, or cross-section) can result in changes in wetland type, additional drainage and more changes for destabilization of the ditch and recurrent sedimentation from excavation. The act of digging a channel through a wetland is not an effective solution to the perceived issue of damage to up gradient properties due to wetness. Even if excavation in the wetland had been proposed as part of a project application, it would have been dismissed since other less ecologically damaging practical alternatives are available which do not require excavation or changes in the cross-section of the public waters wetland.
15. Minnesota Rules 6115.0200 Subpart 3, item G prohibits excavation unless the excavation project includes provisions for acceptable disposal of excavated materials as provided in the rules.
Excavated materials have been placed in the wetland alongside the excavated channel on the property. This is not an acceptable disposal of excavated materials. The spoil piles will push down the wetland substrate and cause compaction in this area making water not flow as it normally would through this wetland, likely keeping water levels higher on the western side of

the spoil pile instead of being able to spread out in the wetland.

16. Minnesota Rules 6115.0200 Subpart 3, item H prohibits excavation where the excavation would cause increased seepage of water which would lower the water level of public waters and result in subsurface drainage.

The excavation that took place in the public waters wetland will lower the water levels of the non-DNR jurisdictional wetland up gradient of the site and allow for seepage of the surrounding public waters wetland into the excavated channel. This may change wetland type. The spoil piles will push down the wetland substrate and cause compaction in this area making water not flow as it normally would through this wetland, likely keeping water levels higher on the western side of the spoil pile instead of being able to spread out in the wetland.

17. Minnesota Rules 6115.0200 Subpart 5, item B requires that the disposal of excavated materials be removed from the floodplain to ensure that the materials are not redeposited into the channel.

The excavated materials from the newly constructed ditch were not removed from the floodplain or the shoreline but instead placed alongside the excavated channel. This is not an effective disposal of the excavated materials. Natural drainage and water movement were lost during as a result of this activity.

18. Minnesota Rules 6115.0200 Subpart 5, item C requires that the project represent the “minimal impact” solution to a specific need with respect to all other reasonable alternatives and does not exceed more than a minimum encroachment, change or damage to the environment, particularly the ecology of the waters.

As indicated above, excavation of a new channel is not the minimum impact solution with respect to other reasonable alternatives nor does the work completed represent, “a minimum encroachment, change or damage to the environment, particularly the ecology of the waters”. In this situation the need was for drainage to upland properties, and by excavating a new channel through the wetland, the property owner has caused damage to the environment by allowing water to sit in the channel and not free flow through the wetland as it normally would. The work done does not solve any problems for the up gradient landowner nor solve any standing water issues on properties. The excavation is not the minimal impact solution to the particular need (drainage issues) and the minimal impact solution would have been to leave the wetlands alone and work on getting drainage in another location not associated with the wetlands elsewhere on the property or in the up gradient properties. The existing channel does not provided adequate and proper drainage for the landscape as it dead ends into the wetland.

19. Minnesota Rules 6115.0200 Subpart 5, item D requires that the excavation is limited to the minimum dimensions necessary for achieving the desired purpose.

See above discussion. Based on measurements from BWSR and SWCD, the channel is 16 feet wide and estimated to be 2' deep. Other options exist to meet the need for drainage improvements at this location that would not require excavation in the wetland, such as creating a ditch in the uplands from County Road 11 following 250th Ave., which would help alleviate flooding or wet conditions north of County Road 11.

20. Minnesota Rules 6115.0200 Subpart 5, item F requires that the biological character of the waters and surrounding shorelines be affected to the minimum degree feasible and practical.

See above discussion. The biological character of the water has been damaged as this newly excavated, unauthorized channel in the wetland will allow for invasive species and cattails to encroach into the open channel which will block flows and hold back water, which is the stated reason for the excavation to begin with.

21. Minnesota Rules 6115.0201 Subpart 3, item A requires that a public need for the excavation has been established by local governmental resolution specifying the public interested to be improved or enhanced, except where the project is state sponsored.

The excavation through the wetland and terminating in the wetland was not an established project by local government.

22. Minnesota Rules 6115.0201 Subpart 3, item B requires that the proposed project is intended to achieve one or more of the following public purposes: 1) to improve navigation, swimming or other recreational opportunities, 2) to reduce winter fish-kill potential 3) sediment removal to eliminate a source of nutrients and/or contaminants.

The excavation through the wetland and terminating in the wetland does not achieve any of the three items mentioned. The area is not navigable nor would it be with the excavation, it was not for swimming or other recreational related opportunities, it was not done to reduce winter fish-kill nor was it to remove sediment to eliminate nutrients or contaminants.

23. Minnesota Rules 6115.0210 Subpart 1 lists; it is the goal of the department to limit the occupation of public waters by offshore navigational facilities, retaining walls, and other structures in order to: 1) preserve the natural character of public waters and their shorelands, 2) provide a balance between the protection and utilization of public waters; and 3) encourage the removal of existing structures which do not serve the public interest from the beds of public waters at the earliest practicable date.

Installation of a UFO Exhibit and Airplane Exhibit within the bed of the public waters wetland is not preserving the natural character, as the displays can block the natural flow of water, change the wetland type, and occupy public waters for private benefit.

24. Minnesota Rules 6115.0210 Subpart 3, item D states that prohibited structures are those that are designed to include walls, a roof or sewage facilities.

The UFO Exhibit and Airplane Exhibits are consider structures per the DNR Public waters rules 6115.0170 Subp. 3 and are prohibited in the bed of the public waters as both has walls and a roof.

The excavation, fill and placement of structures is a change to the public waters wetland. The excavation of channel through the wetland will drain the surrounding wetlands by lateral movement of water and also affects the processes by which the wetland recharges ground water. Spoil piles that have been left on the site of the excavation within the wetland increase the potential for lateral connectivity issues such as disconnection of lateral water movement and may prevent water and some organism and species from laterally moving back and forth in the wetland. The placement of spoils and channelization within the wetland can also increase the risk of flooding downstream, erosion in the wetland, and sedimentation downstream. Soils may erode from the newly constructed channel during rain events or spring runoff events.

A permit from the Commissioner of the Department of Natural Resources was not applied for, nor issued to Mr. Glen Brazier or Wagon Wheel Ridge, Inc. A permit to excavate a ditch through the public waters wetland and to add fill and structures into the public waters (fill pad for structures, UFO Exhibit and Airplane Exhibit) is not the least impact solution to the need (drainage/filling). A permit could not be issued as other least impactful solutions exist.

Conservation Officer Tony Elwell issued a Resource Protection Notice (RPN) to Glen Brazier on August 6, 2019 for the public waters wetland violations.

The DNR has incurred expenses as a result of investigating this matter. Minnesota Rules Part 6115.0080, Subpart 2 requires that field inspection fees be charged when projects are undertaken without a permit. Mr. Brazier is responsible for paying a field inspection fee. The fees are to be the actual cost of the field

inspection but shall not be less than \$100. Total expenses incurred for the field inspection completed on July 15, 2019 are \$258.50.

Order:

Mr. Glen Brazier is hereby ordered and directed to undertake the following:

1. To restore approximately 1,430 feet of channel in the bed of the Public Waters Wetland (#35-28W) by:
 - a. Fill in the approximate 1,430 feet of channel that was excavated though the bed of the public waters wetland without authorization. The channel shall be filled using the on-site spoil materials from the excavation. Any additional fill materials needed must come from an approved location by the DNR Area Hydrologist. The entire length of the channel should be filled to a crest elevation of 1020 (NAVD 1988 datum). Materials being replaced should match pre-existing contours and elevations.
 - b. Remove the UFO Exhibit and the Airplane Exhibit from the wetland.
 - c. Remove all fill (sand/gravel) placed as a pad for the UFO Exhibit from the wetland and restore back to pre-existing conditions.
 - d. Install adequate erosion control measures as appropriate to limit sedimentation to the wetland from the UFO Exhibit, including but not limited to silt fencing.
 - e. Dispose of the fill material from the area of the UFO Exhibit in accordance with all local ordinances and state and federal laws and rules and to obtain all necessary permits and approvals for such disposal. All removed fill material shall be deposited on upland sites at least 150 feet from the OHWL of the public waters wetland and outside of the floodplain and other wetland areas. Fill materials removed from area of the UFO Exhibit shall not be used to fill in the excavated channel.
 - f. Once the fill is removed, allow the area of the UFO Exhibit site to naturally revegetate as part of the restoration.
2. To do no further excavation, filling, or placement of structures on Public Waters without first obtaining a written permit from the Commissioner of the Department of Natural Resources.
3. Complete Restoration Order from the Kittson County SWCD/Board of Water and Soil Resources on the Wetland Conservation Act (WCA).
4. To obtain future state, federal or local permits needed for work in and around the wetlands.
5. The restoration work described above must be completed by **June 1, 2020**.
6. You must contact **Stephanie Klamm** at (218) 681-0947 or stephanie.klamm@state.mn.us within **seven days** of completing the work required by this Order. The culmination of successful restoration is the issuance of a *Certificate of Satisfactory Restoration*.

This Order is final and binding on you, unless within 30 days of the date on which it was served on you, you appeal the terms and conditions of this restoration order to the commissioner by filing a written request for review. Please mail any such request to: DNR Ecological and Water Resources, Violations Coordinator, 500 Lafayette Rd., St. Paul, MN 55155-4032.

Violation of this order is a misdemeanor.

Order
Created by

Stephanie Klamm

Stephanie Klamm

10-11-19

DNR Hydrologist Signature

Printed Name

Date

Order
Served by

Conservation Officer Signature

Badge #

Printed Name

Date

Officer Issuance Record: in person; or by certified mail on / /
[Date]

- cc: Pat Znajda, DNR Enforcement Supervisor
- Joseph Stattelman, DNR Water Resources Enforcement Officer
- Joel Praska, Middle Snake Tamarac Watershed District Administrator
- Stephanie Klamm, DNR EWR Area Hydrologist
- Tom Groshens, DNR EWR District Manager
- John Gleason, DNR EWR Violations Coordinator
- Matt Johnson, BWSR Wetland Specialist
- Justin Muller, Kittson County SWCD (WCA)

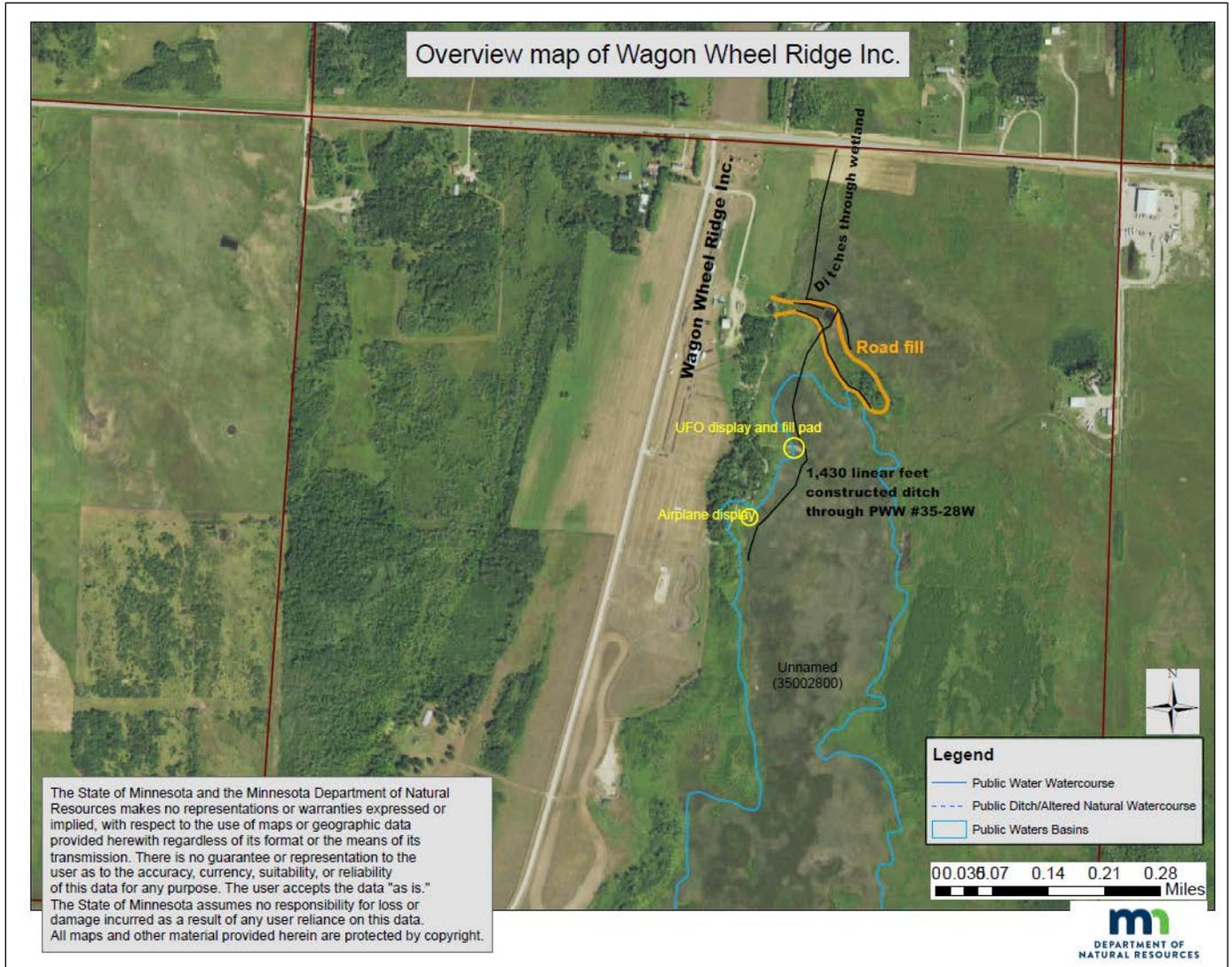


Figure 1. Overview map of Wagon Wheel Ridge Inc, showing the UFO and airplane exhibits, the 1,430 linear feet of excavated ditch in the PWW #35-28W along with the WCA road fill and excavated ditch north of the PWW #35-28W. (Source: Hand drawn measurements on 2017 air photo in ArcGIS using DNR aerial video recorded on 8/1/19 and GPS points taken during site visit on 7-15-19).



Figure 2: Image shows the constructed ditch and UFO display and pad of fill in wetlands (Source: DNR aerial video recorded on 8/1/19)



Figure 3. Image shows a closer view of the UFO and fill pad, the airplane exhibit and constructed ditch in the background terminating in the public waters wetland. (Source: DNR aerial video recorded on 8-1-19)

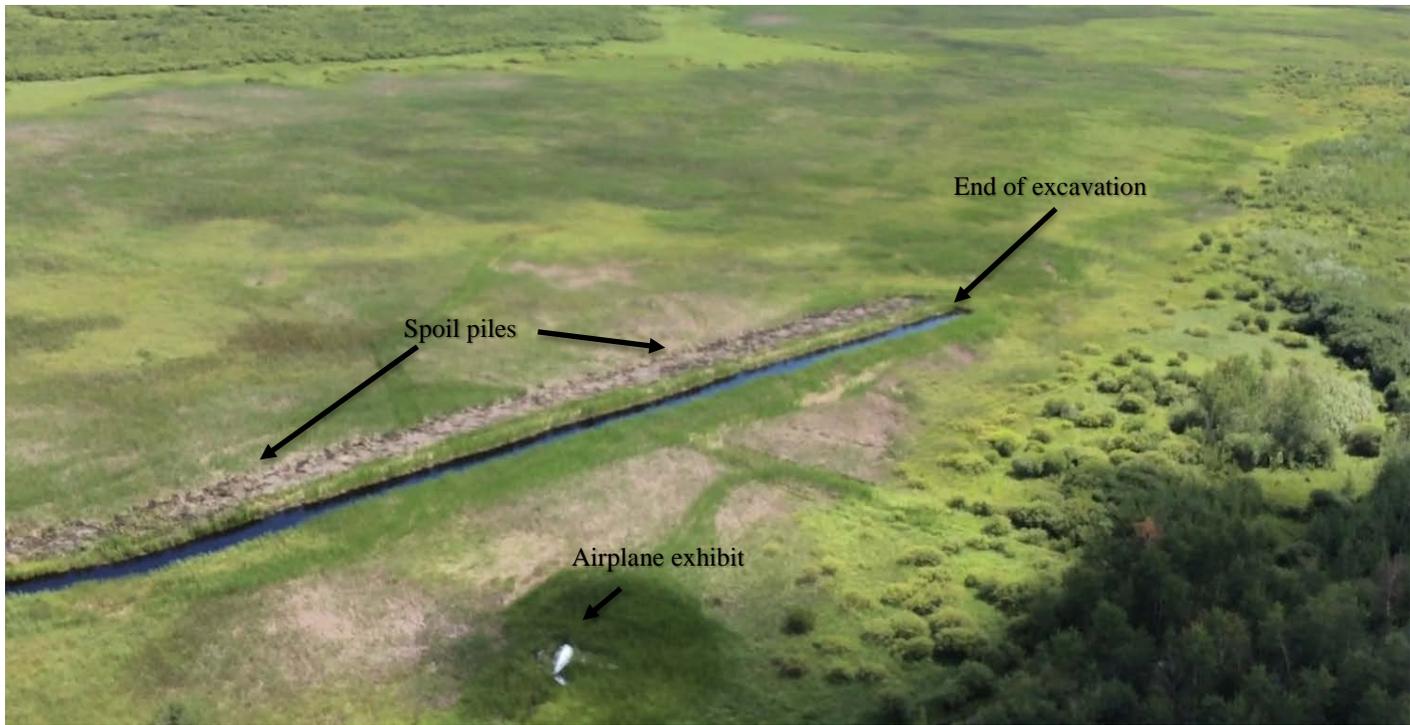


Figure 4. Image shows a closer view of the spoil piles left in the wetland, the end of excavation of the ditch and a clearer view of the airplane, all in the public waters wetland. (Source DNR aerial video recorded on 8-1-19).



Figure 5. Image of the boundary of the public waters wetland along with the view of the overall impacts (ditch, UFO display/pad of fill). (Source DNR aerial video recorded on 8-1-19).

Exhibit 13

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, April 15, 2020 1:16 PM
To: Steven Anderson
Subject: RE:

That is just fine.

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Wednesday, April 15, 2020 1:15 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject:

I'm running late! Be right on the phone if that's ok?

Steve Anderson
Anderson Law Group PLLC
(o) (651)-253-2228
(c) (651)-253-8289
(f) (651)-344-0784
1010 Dale St. N.
St. Paul, MN 55117
www.andersonlgnm.com

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[REDACTED]

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Thursday, April 16, 2020 11:10 AM
To: Steven Anderson
Subject: Wagon Wheel Ridge
Attachments: BWSR_Purchase Agreement_2019_6-11.doc

Steve,

I did clarify with the BWSR wetland Specialist (Matt Johnson) it is a 4:1 replacement ratio (Min Statue 8420.0522 subpart 4). I have also attached a Purchase Agreement template. A purchase agreement would be needed for a complete application.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

The following is a sample of a possible Purchase Agreement for the sale of Wetland Banking Credits. This Purchase Agreement does not necessarily cover all of the issues that would be important to Sellers and Buyers, nor does it address the terms that would be appropriate for any particular transaction. Sellers and Buyers should obtain the services of qualified legal counsel to adapt this Purchase Agreement to meet their specific needs.

**PURCHASE AGREEMENT
FOR
WETLAND BANKING CREDITS**

THIS AGREEMENT is made this ___ day of ___, 20__ between
_____(Seller) and _____ (Buyer).

1. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the wetland banking credits (Credits) listed below:

Credits to be Sold									
Credit Subgroup	Credit Type SWC or AGC		Wetland Type/Plant Community Type			Cost per Credit	Credit Amounts		
Per Credit Withdrawal Fee by BSA*						Enter the Withdrawal Fee for the BSA of the account:	Total Cost:	Total Credits:	
	SWC	AGC		SWC	AGC				
BSA 1	\$520	\$270	BSA 6	\$1,083	\$586		<i>Withdrawal Fee x total credits = fee</i>		
BSA 2	\$371	\$191	BSA 7	\$1,992	\$1,060		Withdrawal Fee:		
BSA 3	\$725	\$389	BSA 8	\$2,577	\$1,348	Easement Stewardship Fee:	<i>Easement Stewardship fee x total credits = fee</i>		
BSA 4	\$1,412	\$724	BSA 9	\$2,628	\$1,332		Stewardship Fee:		
BSA 5	\$685	\$367	BSA 10	\$3,099	\$1,580	\$302	Total Fees:		
							Grand Total:		

*AGC is for Ag bank credits and SWC is for standard bank credits.

2. Seller represents and warrants as follows:
- a) The Credits are deposited in an account in the Minnesota Wetland Bank administered by the Minnesota Board of Water and Soil Resources (BWSR) pursuant to Minn. Rules Chapter 8420.0700-.0760.
 - b) Seller owns the Credits and has the right to sell the Credits to Buyer.

3. Buyer will pay Seller a total of \$_____ for the Credits, as follows:
- a) \$_____ as earnest money, to be paid when this Agreement is signed; and
 - b) The balance of \$_____ to be paid on the Closing Date listed below.
4. Buyer, Seller agrees to pay to a withdrawal fee of \$_____ to the State of Minnesota based on the per credit fee of _____ for Bank Service Area _____ and a stewardship fee of \$_____ based on the per credit fee of \$_____. At the Closing Date, Buyer, Seller will execute a check made out for this amount, payable to the Board of Water and Soil Resources.
5. The closing of the purchase and sale shall occur on _____, 20__ (Closing Date) at _____. The Closing Date and location may be changed by written consent of both parties. Upon payment of the balance of the purchase price, Seller will sign a fully executed Transaction Form to Withdraw Credits provided by BWSR, provide a copy of the Transaction Form to Withdraw Credits to the Buyer and forward the same to the BWSR along with the check for the withdrawal fee and stewardship fee.
6. Buyer has applied or will apply to _____ (Local Government Unit (LGU) or other regulatory authority) for approval of a replacement plan utilizing the Credits as the means of replacing impacted wetlands. If the LGU has not approved the Buyer's application for a replacement plan utilizing the Credits by the Closing Date, and no postponement of the Closing Date has been agreed to by Buyer and Seller in writing, then either Buyer or Seller may cancel this Agreement by giving written notice to the other. In this case, Seller shall return Buyer's earnest money, and neither Buyer nor Seller shall have any further obligations under this Agreement. If the LGU has approved the replacement plan and the Seller is ready to proceed with the sale on the Closing Date, but Buyer fails to proceed, then the Seller may retain the earnest money as liquidated damages.

 (Signature of Seller) (Date)

 (Signature of Buyer) (Date)

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, May 22, 2020 7:59 AM
To: Steven Anderson
Subject: Wagon Wheel Ridge Call @ 9

Hello Steve,

Just wondering if we are still scheduled for a call at 9.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Tuesday, June 2, 2020 10:13 AM
To: Steven Anderson
Subject: WWR Plan

Hello Steve,

I have done a first review of the plan and I need some clarification on how you would like me to respond.

Do you want to me to respond to this as a pre-application review or as an application submittal?

If It is treated a pre application the 15.99 timeline don't apply also when reviewing, comments would be made on mainly the content of the plan.

If it is treated as an application, a determination will be made on completeness then comments (at a later date) will be made regarding the content for approval.

I think it would be best if it was treated as pre application the comments and review will be more beneficial.

Let me know what you feel is best.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Thursday, June 18, 2020 8:39 AM
To: Steven Anderson
Subject: RE: WWR Plan

Hello Steve,

Are we still on for 9:00 this morning?

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Friday, June 12, 2020 10:55 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: RE: WWR Plan

Thursday is fine. 9:00?

Steve Anderson
Anderson Law Group PLLC
(o) (651)-253-2228
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From: [Muller, Justin - NRCS-CD, Hallock MN](#)
Sent: Friday, June 12, 2020 10:42 AM
To: [Steven Anderson](#)
Subject: RE: WWR Plan

Steve,

I will be out of the office Monday – Wednesday next week. Thursday we could schedule something.

Thanks,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Friday, June 12, 2020 10:17 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: RE: WWR Plan

Justin.

Do you have time on Monday to review a few things?

Steve Anderson
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From: [Steven Anderson](#)
Sent: Tuesday, June 2, 2020 10:14 AM
To: [Muller, Justin - NRCS-CD, Hallock MN](#)
Subject: RE: WWR Plan

Hi Justin.

That makes sense to me. I will call later today to set up a time to talk.

Thanks Justin.

Steve Anderson
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From: [Muller, Justin - NRCS-CD, Hallock MN](#)
Sent: Tuesday, June 2, 2020 10:13 AM
To: [Steven Anderson](#)
Subject: WWR Plan

Hello Steve,

I have done a first review of the plan and I need some clarification on how you would like me to respond.

Do you want to me to respond to this as a pre-application review or as an application submittal?

If it is treated as a pre application the 15.99 timeline don't apply also when reviewing, comments would be made on mainly the content of the plan.

If it is treated as an application, a determination will be made on completeness then comments (at a later date) will be made regarding the content for approval.

I think it would be best if it was treated as pre application the comments and review will be more beneficial.

Let me know what you feel is best.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

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From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, June 19, 2020 11:02 AM
To: Steven Anderson
Subject: WWR Site Visit

Hello Steve,

Myself and Matt Johnson (BWSR) are available for a site visit on June 29th. When you know a time please let us know.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Tuesday, June 23, 2020 8:13 AM
To: Steven Anderson; Roger Brazier
Subject: RE: FYI

Steve and Roger,

My preference would be option 2 also.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Tuesday, June 23, 2020 8:06 AM
To: Roger Brazier <rbrazier@mattracks.com>; Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: FYI

Roger and Justin.

Just a heads up. I will learn later this week whether I will be quarantined for a while. It's a remote connection but I may have been exposed to the virus.

If that's the case, we have two options:

1. We use Zoom to hold our meeting next Monday,
2. We push the meeting out until after the I'm free to leave the house (about a week from this Thursday).

I prefer option 2 because I believe in person meetings get more done, but it's obviously up to the entire group.

I should know more about the situation in a couple days.

Let me know your thoughts.

Steve Anderson
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[REDACTED]

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, June 24, 2020 3:15 PM
To: Steven Anderson
Subject: RE: all clear

That all sounds doable. I will let Matt know.

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Wednesday, June 24, 2020 2:18 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: RE: all clear

I would like to meet with you before the larger meeting for an hour if possible. I also want to talk on the phone this Friday.

I spoke with Roger today and we came up with the follow schedule.

You and I will meet at 10:30 at the Mattracks Office.

Mr. Johnson should join us 11:15.

Its that doable?

Steve Anderson
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From: [Muller, Justin - NRCS-CD, Hallock MN](#)

Sent: Wednesday, June 24, 2020 11:54 AM

To: [Steven Anderson](#)

Subject: RE: all clear

35 miles, but Matt Johnson BWSR, would be coming from Bemidji which 2.5 hours

From: Steven Anderson <steve@andersonlgnm.com>

Sent: Wednesday, June 24, 2020 11:52 AM

To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>

Subject: RE: all clear

How close are you to their offices?

Steve Anderson
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From: [Muller, Justin - NRCS-CD, Hallock MN](#)

Sent: Wednesday, June 24, 2020 11:28 AM

To: [Steven Anderson](#)

Subject: RE: all clear

Do you have a time set to meet?

From: Steven Anderson <steve@andersonlgnm.com>

Sent: Tuesday, June 23, 2020 4:39 PM

To: Roger Brazier <rbrazier@mattracks.com>; Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>

Subject: all clear

My Doctor just called. I'm in the clear. I will see you on Monday.

Steve

Steve Anderson

Anderson Law Group PLLC

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From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Tuesday, November 17, 2020 8:44 AM
To: Steven Anderson
Subject: Deerwood Officials
Attachments: 2020 Twp-City List.xlsx

Hello Steve,

Leon Olson stopped in and asked if we could email the list of Deerwood Township official to you.
The attachment has all the township officials for the county so you will have to scroll to Deerwood Township.

If there are any questions, let me know.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

2020 - KITTSON COUNTY - List of Townships & Cities

6/2020

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
ARVESON (MB)		Clerk		Darwyn Anderson andersond@wktel.com	4771 110th St Karlstad MN 56732	218.436.2199 218.289.1169	2016	Jan-21
		Treasurer		Everett Englund	1111 US Hwy 59 Karlstad MN 56732	218.436.2101	2018	Jan-23
	CHAIR	Supervisor	A	Steve Andersen	Box 9 Karlstad MN 56732	218.436.2160	2018	Jan-25
		Supervisor	B	Brian Wikstrom	PO Box 217 Karlstad MN 56732	218.436.2599	2014	Jan-21
		Supervisor	C	Keith R Lindgren	4844 120th St Karlstad MN 56732	218.436.2707	2016	Jan-23
Arveson Townhall, 4415 120th St, Karlstad								6 yrs
CANNON (MB)		Clerk		Melinda Coffield mcoffield@lancaster.k12.mn	3832 290th St Lake Bronson MN 56734	218.762.4161	2016	Jan-21
		Treasurer		Hayley Coffield	3906 300th St Lake Bronson MN 56734	218.474.0114	2018	Jan-23
	CHAIR	Supervisor	B	Glen R Anderson	3601 345th St Lancaster MN 56735	218.762.7431	2018	Jan-23
		Supervisor	C	Randy Coffield	3832 290th St Lake Bronson MN 56734	218.762.4161	2018	Jan-23
		Supervisor	A	Carl Christopherson	3626 310th St Lake Bronson MN 56734	218.762.2006	2016	Jan-21
Glenn Anderson Shop CannonTownhall, 3700 300th St, LB								4 yrs
CARIBOU (MB)		Clerk		Carolyn Weleski bcweleski@yahoo.com	4250 355th St Lancaster MN 56735	218.762.5311	2016	Jan-21
		Treasurer		Heather Anderson	4619 380th St Lancaster MN 56735	218.762.6555	2018	Jan-23
	CHAIR	Supervisor	B	Bruce Weleski	4250 355th St Lancaster MN 56735	218.762.5311	2014	Jan-21
		Supervisor	A	Cody Schmalz	4529 400th St Lancaster MN 56735	218.762.2195	2018	Jan-25
		Supervisor	C	Arnold Frame apptd 12/2018	4242 355th St Lancaster MN 56735	218.762.6901	2016	Jan-23 special 2020
Caribou Townhall, 4697 380th St, Lancaster								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
CLOW (MB)		Clerk		Mark Wiese mkw@invisimax.com	PO Box 72 Humboldt MN 56731	218.379.3243 © 843-5143	2016	Jan-21
		Treasurer		Vernon Bahr	Box 69, 1864 360th St Humboldt MN 56731	218.379.3117 218.689.4757	2018	Jan-23
		Supervisor	C	Paul Gatheridge	PO Box 66 3436 US Hwy 75 Humboldt MN 56731	218.843.1122	2016	Jan-23
	CHAIR	Supervisor	B	Tim Dexter	Box 49, 2061 360th St Humboldt MN 56731	218.988.2370	2014	Jan-21
		Supervisor	A	Shawn Lyberg apptd 5/2019	1842 360th St Humboldt MN 56731	218.341.7313	2018	Jan-25 special 2020
Vernon Bahr shop, 1864 360th St, Humboldt 6 yrs								
DAVIS (MB)		Clerk/Treas		Thomas Dowdle tom.dowdle@plantpioneer.com	2844 150th St Kennedy MN 56733	218.674.4500 © 218-843-1230	2016	Jan-21
		Supervisor	B	Dennis Winge	1074 270th Ave Kennedy MN 56733	218.466.2465	2014	Jan-21
		Supervisor	C	Brian Dahl	3044 130th St Kennedy MN 56733	218.466.2545	2016	Jan-23
	CHAIR	Supervisor	A	Roger Dziengel	1535 290th Ave Kennedy MN 56733	218.674.4466	2018	Jan-25
Dowdle Farm Seed Office 6 yrs								
DEERWOOD (MB)		Clerk		Todd Fossell July_314ever@yahoo.com	4075 St Hwy 11 Karlstad MN 56732	218.436.3132 © (218) 689-2875	2016	Jan-21
		Treasurer		Arvid Bagaas	4089 St Hwy 11 Karlstad MN 56732	218.436.3179	2018	Jan-23
		Supervisor	C	Gary Johnson	204 Cleveland Ave E Karlstad MN 56732	218.436.2994 3714 St Hwy 11	2016	Jan-23
	CHAIR	Supervisor	A	Scott Fossell	4057 St Hwy 11 Karlstad MN 56732	218.436.2523	2018	Jan-25
		Supervisor	B	Doug Clark	1245 385th Ave Karlstad MN 56732	218.436.2171	2014	Jan-21
Deerwood Townhall, 1253 390th Ave, Karlstad 6 yrs								

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires	
GRANVILLE (MB)		Clerk		Jeff Deere jeffdeere60@gmail.com	2883 260th Ave Lancaster MN 56735	218.762.8631 843.1295	2016	Jan-21	
		Treasurer		C J Peterson	3381 270th Ave Lancaster MN 56735	218.843.1766	2018	Jan-23	
		Supervisor	B	Joel Deere	2587 290th St Lancaster MN 56735	218.843.1293	2014	Jan-21	
		Supervisor	A	Jon Vold	2418 310th St Lancaster MN 56735	218.843.1042	2018	Jan-25	
		CHAIR	Supervisor	C	Brent Pearson	3265 270th Ave Lancaster MN 56735	218.988.2404	2016	Jan-23
	Jeff Deere home Lancaster Fire Hall, 203 2nd St W, Lanc								6 yrs
HALLOCK (MB)		Clerk		Jodi E Johnson djbbki@ruralaccess.net	2224 190th Ave Hallock MN 56728	218.843.2496 843.1272	2016	Jan-21	
		Treasurer		Hugh Hunt	Box 187 Hallock MN 56728	218.843.1139	2018	Jan-23	
		Supervisor	C	Tom Swanson	2455 210th Ave Hallock MN 56728	218.526.0257	2016	Jan-23	
		Supervisor	B	Robert Lindegard	2257 200th Ave Hallock MN 56728	218.843.1225	2014	Jan-21	
		CHAIR	Supervisor	A	Ronald C Anderson	1954 240th St Hallock MN 56728	218.843.1529	2018	Jan-25
	Hlk City Hall, 163 3rd St SE, Hlk								6 yrs
HAMPDEN (MB)		Clerk		Lee Pemberton lpemberton1968@yahoo.com	Box 655 Hallock MN 56728	218.843.2074	2016	Jan-21	
		Treasurer		Wm Moore	1818 280th St Hallock MN 56728	218.843.2874	2018	Jan-23	
		Supervisor	C	Eric Younggren	2041 308th St Hallock MN 56728	218.843.1234	2016	Jan-23	
		CHAIR	Supervisor	A	James Younggren	2174 280th St Hallock MN 56728	218.843.1052	2018	Jan-25
		Supervisor	B	Scott Slusar	2258 Co Rd 4 Hallock MN 56728	218.686.9859	2014	Jan-21	
	Caribou Grill KC Courths Mtg Rm, 410 5th St SE, Hlk								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
HAZELTON (MB)		Clerk		Richard Lambert rl7503635@gmail.com	2726 300th Ave Hallock MN 56728	218.754.6171 c-218.689.8246	2016	Jan-21
		Treasurer		Matthew Vig	3211 St Hwy 175 Hallock MN 56728	218.526.0101	2018	Jan-23
	CHAIR	Supervisor	C	Eric Ristad	2457 320th Ave Hallock MN 56728	218.754.8126	2016	Jan-23
		Supervisor	B	Owen Westerberg	2754 340th Ave Lake Bronson MN 56734	218.754.7242	2014	Jan-21
		Supervisor	A	Faron Johnson	3011 St Hwy 175 Hallock MN 56728	218.754.6825	2018	Jan-25
Ristad Farm Shop, 2457 320th Ave, Hlk								6 yrs
HILL (MB)		Clerk		Traci Olsonawski nathantraci@gmail.com	1609 310th St Hallock MN 56728	218.526.0457	2016	Jan-21
		Treasurer		Margaret Dykhuis	3307 140th Ave Hallock MN 56728	218.379.3213	2018	Jan-23
	CHAIR	Supervisor	B	Wm Dykhuis wamdykhuis@invisimax.com	3307 140th Ave Hallock MN 56728	218.379.3213	2014	Jan-21
		Supervisor	C	Blake Skinner apptd 6/2019	3397 140th Ave Hallock MN 56728		2016	Jan-23 special 2020
		Supervisor	A	Nathan Olsonawski	1609 310th St Hallock MN 56728	218.526.0048	2018	Jan-25
Bill Dykhuis Farm, 3307 140th Ave, Hlk								6 yrs
JUPITER (MB)		Clerk		Ryan Schwenzfeier ryanschwenzfeier@gmail.com	2060 310th Ave Kennedy MN 56733	c 218.843.1394	2016	Jan-21
		Treasurer		Ronald Petersen	1919 320th Ave Lake Bronson MN 56734	218.754.4631	2018	Jan-23
		Supervisor	C	Arnold Hilde	3326 190th St Lake Bronson MN 56734	218.754.7381	2016	Jan-23
	CHAIR	Supervisor	A	Ronald Fossell	1637 320th Ave Kennedy MN 56733	218.674.4286	2018	Jan-25
		Supervisor	B	R Jon Swenson	1746 340th Ave Lake Bronson MN 56734	701.330.0822	2014	Jan-21
Jupiter Townhall, 1751 320th Ave, Kdy								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
NORWAY		Clerk		Kayla Anderson kayla.klegstad2@gmail.com	1817 430th Ave Halma MN 56729	218.265.3456	2016	Jan-21
(MB)		Treasurer		Julie Spilde	1779 390th Ave Halma MN 56729	218.265.2874	2018	Jan-23
		Supervisor	A	Scott Billings	4125 220th St Lake Bronson MN 56734	218.754.2911	2016	Jan-21
		Supervisor	C	Chris Davis	3775 180th St Halma MN 56729	218.265.2836	2018	Jan-23
	CHAIR	Supervisor	B	Daryl Klegstad	4151 210th St Halma MN 56729	218.265.2073	2018	Jan-23
Halma Community Ctr, 102 Roosevelt St NE, Halma								4 yrs
PELAN		Clerk		Raechelle Folland	4339 170th St Karlstad MN 56732	701.215.0797	2016	Jan-21
(MB)		Treasurer		Idell Klegstad	1980 430th Ave Halma MN 56729	218.265.2843	2018	Jan-23
		Supervisor	B	Kyle Folland	4339 170th St Karlstad MN 56732	701.740.2500	2014	Jan-21
		Supervisor	C	June Minske	4561 170th St Karlstad MN 56732	218.436.2268	2016	Jan-23
	CHAIR	Supervisor	A	Wayne Cummins	1896 480th Ave Karlstad MN 56732	218.436.2575	2018	Jan-25
Kyle Folland Farm								6 yrs
PERCY		Clerk		Judy Bronson gbronson@wktel.com	3724 240th St Lake Bronson MN 56734	218.754.7971	2016	Jan-21
(MB)		Treasurer		Gary Bronson	3724 240th St Lake Bronson MN 56734	218.754.7971	2018	Jan-23
	CHAIR	Supervisor	C	Rick Levenhagen	3668 250th St Lake Bronson MN 56734	218.754.7361	2016	Jan-23
		Supervisor	B	Virgil Lindstrom	3811 240th St Lake Bronson MN 56734	218.754.6355	2014	Jan-21
		Supervisor	A	Al Johnson	2499 405th Ave Lake Bronson MN 56734	218.754.7585	2018	Jan-25
Gary Bronson Farm, 3724 240th St, LB								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires	
POPPLETON (MB)		Clerk		Nikki Larson nlarson9@live.com	3280 320th St Lancaster MN 56735	218.988.2424	2016	Jan-21	
		Treasurer		Mark Larson	3280 320th St Lancaster MN 56735	c 218.689.7499	2018	Jan-23	
		Supervisor	C	Steven Sjostrand	3305 320th Ave Lancaster MN 56735	218.762.2017	2016	Jan-23	
		Supervisor	A	Matthew Przekwas	3326 340th Ave Lancaster MN 56735	218.452.0058	2018	Jan-25	
		CHAIR	Supervisor	B	Dennis J Anderson	3480 320th St Lancaster MN 56735	218.684.4838	2014	Jan-21
	Dennis Anderson garage Poppleton Townhall, 3253 340th Ave, Lanc								6 yrs
RICHARDVILLE (MB)		Clerk		Bruce Nielsen bruvn@wktel.com	3936 270th Ave Lancaster MN 56735	218.762.8471	2016	Jan-21	
		Treasurer		Tammy Nielsen	3936 270th Ave Lancaster MN 56735	218.689.1973	2018	Jan-23	
		Supervisor	C	Joe Olsonawski	2554 380th St Lancaster MN 56735	218.762.4611	2018	Jan-23	
		CHAIR	Supervisor	A	Richard Nicholson	3442 270th Ave Lancaster MN 56735	218.762.1601	2016	Jan-21
		Supervisor	B	Greg Wilson	4084 280th Ave Lancaster MN 56735	218.762.7836	2018	Jan-23	
Bruce Nielsen residence								4 yrs	
SKANE (MB)		Clerk		Mark Lundberg hammer1755@hotmail.com	1755 220th Ave Kennedy MN 56733	218.674.4392	2016	Jan-21	
		Treasurer		Glen Lundberg	2052 190th St Kennedy MN 56733	218.674.4463	2018	Jan-23	
		Supervisor	A	Robert Rynning	1835 210th Ave Kennedy MN 56733	218.674.4321	2018	Jan-25	
		Supervisor	B	Charles Mortenson	1767 200th Ave Kennedy MN 56733	218.674.4322	2014	Jan-21	
		CHAIR	Supervisor	C	Chris Mortenson	1890 200th Ave Kennedy MN 56733	c 218.843.1133	2016	Jan-23
Mark Lundberg farm Skane Town Hall, 1884 200th Ave, Kdy								6 yrs	

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
S RED RIVER <i>(MB)</i>		Clerk		Terry Osowski terryo@invisimax.com	1878 210th St Hallock MN 56728	218.843.3371 c 218.843.5046	2016	Jan-21
		Treasurer		Tanner Samuelson	1979 175th Ave Hallock MN 56728	c 218.526.0430	2018	Jan-23
	CHAIR	Supervisor	C	Noel Peterson	1808 210th St Hallock MN 56728	218.843.2865 c 218.843.1765	2016	Jan-23
		Supervisor	B	Dwight (Herb) Johnson	1601 180th St Kennedy MN 56733	218.843.1599	2014	Jan-21
		Supervisor	A	Jerod Hanson	1952 175th Ave Hallock MN 56728	218.843.5032 c 218.526.0566	2018	Jan-25
	Terry Osowski farm SRR Townhall, 1993 175th Ave, Hlk							
SPRINGBROOK		Clerk	Apptd 4/20/20	Shawna Aakre springbrooktwp@gmail.com	3479 St Hwy 11 Karlstad MN 56732	218.688.2347	2016	Jan-21
		Treasurer		Beverly Folland Heppner	1244 360th Ave Karlstad MN 56732	218.436.2709	2018	Jan-23
		Supervisor	B	Dean Johnson deanj@wktel.com	1273 350th Ave Karlstad MN 56732	218.436.2817	2014	Jan-21
		Supervisor	C	Chris Oliver	3576 St Hwy 11 Karlstad MN 56732	830.261.0396	2016	Jan-23
	CHAIR	Supervisor	A	Justin Dagen	1148 360th Ave Karlstad MN 56732	218.436.2156	2018	Jan-25 special 2020
Springbrk Townhall, 1454 350th Ave, Kdy								6 yrs
ST JOSEPH <i>(MB)</i>		Clerk		Virginia LeDoux gingerathome@hotmail.com	3263 400th St Lancaster MN 56735	218.762.6251	2016	Jan-21
		Treasurer		Peggy Wilebski	3988 320th Ave Lancaster MN 56735	218.762.7251	2018	Jan-23
		Supervisor	C	Danny Lyberg	3129 350th St Lancaster MN 56735	218.762.8101	2016	Jan-23
		Supervisor	B	Joe Wilebski jpwilebski@wktel.com	3988 320th Ave Lancaster MN 56735	218.762.7251	2014	Jan-21
	CHAIR	Supervisor	A	Tom Miesner thm@wktel.com	Box 16 Lancaster MN 56735	218.762.4141	2018	Jan-25
LeDoux Farm, 3263 400th St, Lanc								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
ST VINCENT (MB)		Clerk		James D Gatheridge jimdgather@gmail.com	Box 43 Humboldt MN 56731	218.379.3226	2016	Jan-21
		Treasurer		Lorna Hemmes	Box 27 Humboldt MN 56731	218.379.3205	2018	Jan-23
		Supervisor	C	Daniel Finney	1659 390th St St Vincent MN 56755	218.379.3245	2016	Jan-23
		Supervisor	B	Paulette Gatheridge	Box 43 Humboldt MN 56731	218.379.3226	2014	Jan-21
	CHAIR	Supervisor	A	Roger J Loer	Box 45 Humboldt MN 56731	218.379.3112	2018	Jan-25
St Vincent Townhall-City Humboldt, 810 3rd Ave, Humboldt								6 yrs
SVEA (MB)		Clerk		Jeff Mortenson mort.jcm@gmail.com	1914 150th St Kennedy MN 56733	218.686.7443	2016	Jan-21
		Treasurer		John Webster	2430 140th St Kennedy MN 56733	218.674.4497	2018	Jan-23
		Supervisor	C	Darron Benson	1973 140th St Kennedy MN 56733	218.455.3306 c 218.686.2745	2016	Jan-23
	CHAIR	Supervisor	A	Rich Deere rfarm@ruralaccess.net	1577 250th Ave Kennedy MN 56733	218.674.4370	2018	Jan-25
		Supervisor	B	Harold Moose	1007 230th Ave Stephen MN 56757	218.478.3575	2014	Jan-21
Kennedy Café Svea Townhall, 1302 230th Ave, Kennedy								6 yrs
TEGNER (MB)		Clerk		Kimberley Johnson kimj@wiktel.com	1733 300th Ave Kennedy MN 56733	218.674.4228 c 218.689.4521	2016	Jan-21
		Treasurer		Neil A Johnson	1733 300th Ave Kennedy MN 56733	c 218.689.4522	2018	Jan-23
	CHAIR	Supervisor	B	Robert Gunnarson robert.gunnarson@gmail.co	1873 270th Ave Kennedy MN 56733	218.674.4101 c 218.988.2020	2014	Jan-21
		Supervisor	C	Gary Hultgren	1847 310th Ave Kennedy MN 56733	c 218.526.0665	2016	Jan-23
		Supervisor	A	Keith Dziengel	1643 300th Ave Kennedy MN 56733	(218) 674-4200	2018	Jan-25
Gunnarson Farm Shop, 1873 270th Ave, Kdy								6 yrs

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
TEIEN		Clerk		Tim Bloomquist	1737 130th St Drayton ND 58225	218.455.6522	2016	Jan-21
		Treasurer		Becky Johnson	1207 145th Ave Drayton ND 58225	218.843.1390	2018	Jan-23
		Supervisor	B	Jeremy Peterson	1290 160th Ave Drayton ND 58225	701.360.4727	2018	Jan-23
	CHAIR	Supervisor	A	Mark Tungseth	1377 180th Ave Drayton ND 58225	218.455.3559	2016	Jan-21
		Supervisor	C	Jason Sobolik	1784 140th St Drayton ND 58225	218.455.3558	2018	Jan-23
					jasonjames_s@hotmail.com	218.843.1595		4 yrs
Teien Covenant Church Skjeberg Lutheran Church, 1327 160th Ave, Drayton								
THOMPSON		Clerk		Bradley Glad	2859 280th St Lancaster MN 56735	218.762.1797 (952) 237-9941 ©	2016	Jan-21
		Treasurer		Angie Sobolik	2589 270th Ave Hallock MN 56728	218.843.2822	2018	Jan-23
		Supervisor	B	Greg Snare	2539 270th Ave Hallock MN 56728	218.988.2579	2014	Jan-21
	CHAIR	Supervisor	C	Edward Lehrke	2506 240th St Hallock MN 56728	218.689.4000	2016	Jan-23
		Supervisor	A	Gary L Johnson	2416 250th St Hallock MN 56728	218.843.3528	2018	Jan-25
Angie Sobolik residence Brad Glad residence								

Note: Clk & Treas

Supervisors

Voting power: Supervisors (ex: for a job)

Voting @ Election: all

4 yr term eff 2008

4 yr term eff 2008

6 yr term eff 1/2011 "C"

Supervisor: 4 Yr Term
all others: 6 Yr Term

Vote at POLLS Hlk/Karlstad

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
DONALDSON (MB)		Clerk	Apptd	Lisa Kraulik klkraulik@invisimax.com	2380 St Hwy 11 Kennedy MN 56733	218.466.2681		
		Treas	Apptd	Karyl Grochowski	212 1st St, Box 205 Donaldson MN 56720	218.466.2741		
		Mayor	4yr	James Larson	215 2nd Ave S Donaldson MN 56720	218.466.2112	2016	Jan-21
		Council	4yr	Lon Thompson	510 Minnesota St Donaldson MN 56720	218.466.2321	2018	Jan-23
	Stan Utesch			609 North St Donaldson MN 56720	218.689.6359	2016	Jan-21	
	Tito Vasquez <small>apptd 2019</small>			202 2nd St, POB 184 Donaldson MN 56720	218.466.2495	2018	Jan-23 special 2020	
				Mary Pinnock	115 Front St Donaldson MN 56720	218.466.2091	2016	Jan-21
Kittson Marshall Rural Water, 110 Commercial St Ste 105								
HALLOCK		Clerk/Treas	Apptd	Aimee Sugden	Box 336, 163 3rd St SE Hallock MN 56728	218.843.2737		
		Mayor	4yr	David Treumer	Box 65 Hallock MN 56728	218.843.3373 c 218.843.1380	2016	Jan-21
		Council	4yr	Kevin Waller	Box 312 Hallock MN 56728	218.843.2056 c 701.739.3622	2016	Jan-21
	Mike Totleben			Box 414 Hallock MN 56728	218.843.2032	2018	Jan-23	
	Jennifer Peterson			128 6th St NE Hallock MN 56728	218.988.2434	2018	Jan-23	
				Naomi Larson	PO Box 58 Hallock MN 56728	218.843.1532	2016	Jan-21
		Office Clerk		Kendra Johnson	kjohnson@hallockmn.org	218.843.2737		
Hlk City Hall, 163 3rd St SE, Hlk								
HALMA (MB)		Clerk	4yr	Ronda Davis mnggram5@gmail.com	116 Minnesota Ave S Halma MN 56729	218.265.2084	2018	Jan-23
		Treas	4yr		101 McKinley St Halma MN 56729	218.265.2724	2016	Jan-21
		Mayor	4 yr	Shane Olson	216 Railroad Ave S Halma MN 56729	218.265.2849	2016	Jan-21
		Council	4yr	Deric Erickson	103 Minnesota Ave S Halma MN 56729	218.265.3041	2018	Jan-23
	Jeff Nobles			504 Cleveland St Halma MN 56729	218.265.3418	2016	Jan-21	
	Mark A Olson			107 Minnesota Ave S Halma MN 56729	218.265.2029	2016	Jan-21	
Halma City Hall, 206 Main St, Halma								

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
HUMBOLDT (MB)		Clerk	4yr	Brad Hemmes brad.hemmes@candmford.com	Box 52, 1002 Rice St Humboldt MN 56731	218.379.3153	2016	Jan-21
		Treas	4yr	Lynda Cassels	Box 9 Humboldt MN 56731	c 701.520.9839	2018	Jan-23
		Mayor	2yr	Rick Bakken	1301 US Hwy 75, Box 4 Humboldt MN 56731	218.843.1604	2018	Jan-21
		Council	4yr	Ron Gatheridge	Box 53 Humboldt MN 56731		2016	Jan-21
				Becky Bakken	1301 US Hwy 75, Box 4 Humboldt MN 56731		2018	Jan-23
				Susan Gatheridge	Box 53 Humboldt MN 56731		2018	Jan-23
Humboldt City Hall, 305 Ramsey St, Humb								
KARLSTAD		Clerk/Treas	Apptd 9/1/2018	Garnette Hanson karlstadcity@wiktel.com	Box 299, 104 1st St S Karlstad MN 56732	218.436.2178		
		Mayor	4yr	Dale Nelson	304 Cleveland Ave E Karlstad MN 56732	218.689.7872	2018	Jan-23
		Council	4yr	Peter Kautzman III	412 Cleveland Ave E, Box 245 Karlstad MN 56732	218.436.4028	2018	Jan-23
				Connie Nordin	107 Valleyview Rd Karlstad MN 56732	218.469.0247	2018	Jan-23
				Michael Wade	109 Harding St S Karlstad MN 56732	218.762.4100	2016	Jan-21
				George Hultgren	206 Lincoln Ave E Karlstad MN 56732	701.740.4468	2016	Jan-21
Karlstad Comm Ctr, 104 Main St S, Karlstad								
KENNEDY (MB)		Clerk/Treas	Apptd 9/1/19	Kelsey Dawson cityofkennedy@ruralaccess.net	414 Atlantic Ave N, Box 7 Kennedy MN 56733	218.674.4142		
		Mayor	4yr	Earl Mattson	506 4th St W Kennedy MN 56733	218.843.5182	2018	Jan-23
		Council	4yr	Cynthia Urbaniak	Box 132 Kennedy MN 56733	218.674.4389	2016	Jan-21
				Mark Holman	503 Pacific Ave Kennedy MN 56733	701.270.1519	2018	Jan-23
				Jason Christian	501 Manila Ave Kennedy MN 56733	970.988.2652	2018	Jan-23
				Jonathan Pietruszewski	511 Kittson Ave Kennedy MN 56733	218.674.1107	2016	Jan-21
Kdy City Office, 414 Atlantic Ave N, Kdy								

TOWNSHIP	CHAIR	POSITION		NAME	ADDRESS	PHONE	ELECTION Year	TERM Expires
LK BRONSON (MB)		Clerk	Apptd	Sandra Lund lakebronson@wiktel.com	Box 70, 112 Main St E Lake Bronson MN 56734	218.754.2710		
		Treasurer	Apptd	Shelly Westerberg	2754 340th Ave Lake Bronson MN 56734			
		Mayor	2yr	Ryan Rector <small>apptd 8/2019</small>	226 Main St E Lake Bronson MN 56734	701.552.2153	2018	Jan-21
		Council	4yr	Patti Jo Shablow	114 State Ave S Lake Bronson MN 56734	218.754.6611	2018	Jan-23
				Leana Kowalik	325 3rd St N Lake Bronson MN 56734	218.526.0136	2016	Jan-21
				Phillip Matthew <small>apptd 8/2019</small>	107 Marshall St, Box 3 Lake Bronson MN 56734		2016	Jan-21
				Clarence Strom	211 Main St W Lake Bronson MN 56734		2018	Jan-23
<small>Greg Sandahl resigned 5/2018</small>								
<small>"no liquor Sundays"</small>								
<small>City Hall/Comm Ctr, 112 Main St E, LB</small>								
LANCASTER (MB)		Clerk/Treas	Apptd	Carol Johnson lancastercity@wiktel.com	PO Box 97, 95 2nd St W Lancaster MN 56735	218.762.6472		
		Mayor	2yr	Michael Olson	PO Box 76 Lancaster MN 56735	218.843.5033	2018	Jan-21
		Council	4yr	Jim Hilman	306 5th St E Lancaster MN 56735	218.843.1830	2016	Jan-21
				Faye Potrament	Box 185 Lancaster MN 56735	218.988.2153	2018	Jan-23
				Kathy Bernstrom	Box 217 Lancaster MN 56735	218.689.9345	2018	Jan-23
				Luke Nordin	303 1st St W, POB 175 Lancaster MN 56735	218.843.1008 218.762.2051	2016	Jan-21
	<small>Bldg permits to Zoning</small>							
<small>Lanc City Hall, 122 Central Ave S, Lanc</small>								
ST VINCENT (MB)		Clerk	4 yr	Cheryl Phillips cityofstvincentmn@gmail.com	1310 Pacific Ave St Vincent MN 56755	701.520.8723	2016	Jan-21
		Treas	4yr	Kris Ohmann	1 Taylor Ave St Vincent MN 56755	218.823.6767	2018	Jan-23
		Mayor	4yr	Evan Herberg	431 Atlantic Ave St Vincent MN 56755	701.521.0585	2018	Jan-23
		Council	4yr	Daniel Ohman	1 Taylor Ave St Vincent MN 56755	218.823.6767	2018	Jan-23
				Elizabeth Lapp <small>moved to Hallock 2-2019</small>	142 8th St S St Vincent MN 56755	218.823.9722	2016	Jan-21
				Faith Khalaf	1110 Pacific Ave St Vincent MN 56755	701.331.4600	2018	Jan-23
<small>Agassiz Education Inc, 532 Pacific Ave, St Vinc</small>								

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Monday, December 7, 2020 11:52 AM
To: Steven Anderson
Subject: RE: Does this time work for you?

Steve,

That time will work for me.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Monday, December 7, 2020 11:45 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: Does this time work for you?

Steven Anderson is inviting you to a scheduled Zoom meeting.

Topic: My Meeting
Time: Dec 7, 2020 03:00 PM Central Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/7950410869?pwd=MUtER3pORFFmYjlmN3ZxZWxYnB1QT09>

Meeting ID: 795 041 0869
Passcode: 2K46aR
One tap mobile
+19292056099,,7950410869#,,,,,0#,,480883# US (New York)
+13017158592,,7950410869#,,,,,0#,,480883# US (Washington D.C)

Dial by your location
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington D.C)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)

Meeting ID: 795 041 0869

Passcode: 480883

Find your local number: <https://us02web.zoom.us/j/8442111111>

Let me know.

Thanks.

Steve Anderson
Anderson Law Group PLLC
(o) (651)-253-2228
(c) (651)-253-8289
(f) (651)-344-0784
1010 Dale St. N.
St. Paul, MN 55117
www.andersonlgnm.com

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From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, January 6, 2021 11:13 AM
To: steven anderson
Subject: RE: Call

Steve,

9:30 am tomorrow (1/7) works for me. Can you remind me of the rule you are going to use for the fire break and then the UFO/air plane?

Thanks

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgnm.com>
Sent: Wednesday, January 6, 2021 11:07 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: Call

Hi Justin

I basically have the Cover memo, exhibits and etc. ready to go, however, I'm having the same problem I did earlier. Specifically, filling out one application for multiple events. I see the firebreak events requiring different Rule solutions than the UFO and aircraft display. Can we talk tomorrow morning for a few minutes? I'm thinking 9:30 am. I want to get this to you ASAP and keep getting hung up on this logistical issue.

Thanks Justin.

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 256 – 8289
steve@andersonlgnm.com

Sent from [Mail](#) for Windows 10

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Thursday, January 28, 2021 12:28 PM
To: steven anderson
Subject: RE: new version

That will work

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgnm.com>
Sent: Thursday, January 28, 2021 12:26 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: RE: new version

11:30

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 253 – 8289
steve@andersonlgnm.com

Sent from [Mail](#) for Windows 10

From: [Muller, Justin - NRCS-CD, Hallock MN](#)
Sent: Thursday, January 28, 2021 12:25 PM
To: [steven anderson](#)
Subject: RE: new version

Steve,

I do have time tomorrow, what time works for you?

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgmn.com>
Sent: Thursday, January 28, 2021 12:19 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: RE: new version

Do you have time to talk tomorrow

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 253 – 8289
steve@andersonlgmn.com

Sent from [Mail](#) for Windows 10

From: [steven anderson](#)
Sent: Friday, January 15, 2021 8:25 AM
To: [Muller, Justin - NRCS-CD, Hallock MN](#)
Subject: RE: new version

Pre-application review

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 256 – 8289
steve@andersonlgmn.com

Sent from [Mail](#) for Windows 10

From: [Muller, Justin - NRCS-CD, Hallock MN](#)
Sent: Friday, January 15, 2021 8:24 AM
To: [steven anderson](#)
Subject: RE: new version

Steve,

Do you want this treated as a full application or treated as pre application review? I know we discussed a pre application review, so I am just making sure.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgmn.com>
Sent: Thursday, January 14, 2021 4:44 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: new version

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 256 – 8289
steve@andersonlgmn.com

Sent from [Mail](#) for Windows 10

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From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Monday, February 8, 2021 12:02 PM
To: steven anderson
Cc: Glen Brazier; Johnson, Matthew W (BWSR); Klamm, Stephanie (DNR)
Subject: Pre Application Response
Attachments: Wagon Wheel Ridge Pre Application Letter&Comments.pdf

Hello Steve,

Please see attached document that includes a cover letter and the Technical Evaluation Panel's Comments/Finding's

Any question please let me know.

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

"Happiness is a choice, Joy is a way of life"

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, February 12, 2021 10:03 AM
To: steven anderson
Subject: Meeting Reminder

Steve,

Here is a meeting reminder

<https://kittsonswcd.webex.com/kittsonswcd/j.php?MTID=m04bca06f500c4b6cbec1375d3682240a>

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, February 12, 2021 10:39 AM
To: Steven Anderson
Subject: WWR NWI Screen Shot
Attachments: WWR_NWI_2021.png

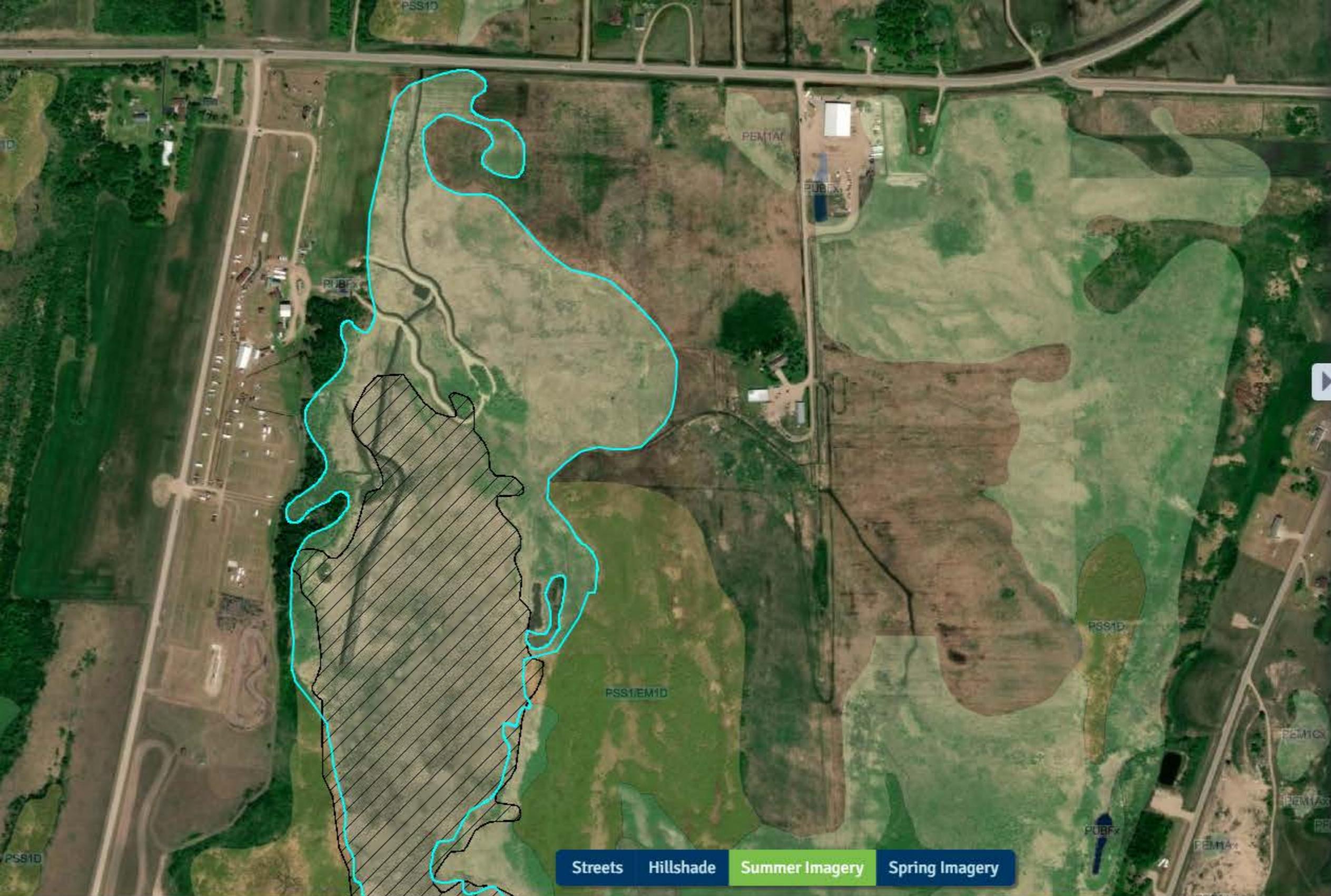
Steve,

See attached NWI Screen Shot.

Thanks,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

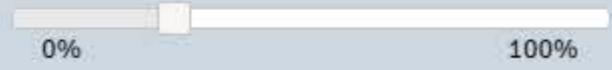


Circular 33

Simplified HGM

Simplified Plant

Select Opacity:



Cowardin Class

-  Aquatic Bed
-  Emergent Vegetation
-  Forested
-  Moss/Lichen
-  Rock Bottom
-  Rocky Shore
-  Streambed (Intermittent)
-  Scrub-Shrub
-  Unconsolidated Bottom (Open Water)
-  Unconsolidated Shore (Banks & Sandbars)

Public Waters Layer

-  Public Waters Basins
-  Public Water Watercourse
-  Public Ditch/Altered Natural Watercourse

Streets Hillshade Summer Imagery Spring Imagery

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Thursday, February 18, 2021 1:29 PM
To: steven anderson
Subject: RE: [External Email]WWR

Steve,

Sequencing comes down to how the applicant avoided, and then minimized the impact to the wetland. Which is going to be hard to do, if there isn't a proposal in the application to modify some of the larger impacts ie: Road and Ditch. After avoidance and minimization have been demonstrated then the applicant has to show the need for the impact that is left. Which I am sure you know.

A better way to maybe answer your question is if you have any ideas you can pitch them to me and I could tell you which ones have a better chance than others.

Thanks,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgn.com>
Sent: Thursday, February 18, 2021 11:50 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: [External Email]WWR

[External Email]

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Hi Justin.

Any ideas about how I can overcome some the sequencing issues?

Steven Anderson
Anderson Law Group
1010 Dale Street North
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(651) 253 – 8289

steve@andersonlgnm.com

Sent from [Mail](#) for Windows 10

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, March 5, 2021 10:19 AM
To: steven anderson
Subject: RE: [External Email]

Yep, what time works for you?

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: steven anderson <steve@andersonlgnm.com>
Sent: Friday, March 5, 2021 10:16 AM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: [External Email]

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Can we talk on Tuesday?

Steven Anderson
Anderson Law Group
1010 Dale Street North
St. Paul MN 55117
(651) 253 – 8289
steve@andersonlgnm.com

Sent from [Mail](#) for Windows 10

[REDACTED]

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Monday, April 26, 2021 9:55 AM
To: steven anderson
Subject: TEP Comments
Attachments: Wagon Wheel Ridge Pre Application TEP Comments.pdf

Hello Steve,

Attached are the TEP comments from February.

If there are any questions let me know.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

WWR maintains the UFO display does not “permanently” impact existing wetlands for multiple reasons.

1. The UFO is not a “structure” “placed” in a wetland as defined by Mn Rules.

Mn Rule 8420.0111 Subp. 68 states "Structure" means any object erected or placed in, under, or over or anchored or attached to a wetland area.” The “UFO” is actually an old fair ride. It has no ceiling. It has no floor. It sits on a platform built for this specific purpose Exhibit 4)

More important, it was not originally “placed” in a recognized wetland (Exhibit 5).¹ In fact, WWR carefully placed the display on a small section of high land based on the best information known at the time.

RESPONSE:

The UFO may be located within the boundaries of the public water wetland and therefore subject to MN Rule Chapter 6115.

If it is determined by the DNR that the UFO is located outside of the Public Water Wetland, then the following response applies:

MN Rule 8420.0111 Subp. 68 defines **Structure** as “any object erected or placed in, under, or over or anchored or attached to a wetland area”. Despite being an old fair ride and having no ceiling it meets the definition as *any object*, which in fact was placed *in, over, anchored or attached* to a wetland. The electrical components and functionality of the exhibit as well as the platform on which it was built constitute an attachment to the wetland.

MN Rules 8420.0111 Subp. 26. Defines **fill** as “any solid material added to or redeposited in a wetland that would alter the wetland’s cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland....” The sand material used to support the UFO that was placed in the wetland meets the definition of fill.

MN Rules 8420.0111 Subp. 32 defines **impact** as “a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling wetlands wholly or partially...” The sand fill placed to support the UFO structure results in a loss of quantity of wetland acres and the resulting coverage and loss of wetland plants results in a loss in biological diversity of the wetland.

The wording references exhibit 5, which depicts an approximation of the location of the boundary of the public water wetland under the jurisdiction of the MN DNR per MN Rules 6115. Wetland characteristics were identified by the TEP, using the procedures outlined in the 87 Manual (specifically the rapid test Definition: All dominant species across all strata are rated OBL or FACW, or a combination of these two categories, based on a visual assessment.), immediately adjacent to and surrounding the UFO and associated fill pad. The consultant hired by WWR also concluded the same.

The applicant states a small area of high land was used for the placement of the UFO. If applying for no loss 8420.0315 B. states “the landowner applying for a no-loss is responsible for submitting the proof necessary to show qualification for the claim.”... No supporting information was provided that supports the area the UFO is located was upland prior to placement.

2. The UFO does not create a *permanent* loss of wetlands.

KG Consultants,² hired by WWR to observe the site, nonetheless found wetland characteristics in and around the UFO as evidenced by plant life consistent with Type 2 and Type 3 wetlands. However, after studying historic photos, KG also concluded that the wetland characteristics very likely grew into the UFO site after placement. This expansion demonstrates that the UFO does not permanently impact wetlands. In fact, the UFO hasn't even obstructed the expansion of wetland characteristics possibly caused by other, human interference consistent with the Klopp study.

8420.0111 Subp 26 defines **fill** as “any solid material added to or redeposited in a wetland that would alter the wetland’s cross section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland.”... Additionally 8420.0111 Subp. 32 defines impact as “a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands wholly or partially...” The TEP Finds that the sand fill alters the wetland’s cross section and changes the natural hydrologic characteristics by creating further separation between the soil surface and the water table. Additionally, the presence of fill alters the wetlands ability to function naturally.

TEP Finds that if the WWR consultant identified wetland species persisting despite the impact from fill as further justification that wetland existed prior to the placement of fill and the UFO exhibit.

3. The UFO complies with No Loss requirements found in Mn. Rule 8420.0410.

Mn Rule 8420.0410 creates three requirements beyond 8420.0415 that any No Loss applications need to address

a. 8420.0410(A)

Subsection A requires that “erosion control measures” be taken to prevent sedimentation of the wetlands.” Despite the fact that the UFO was placed in its current location when the location was not designated a wetland, WWR asked KG to consider if sedimentation control measures could be helpful.

As indicated above, KG’s inspection of the UFO site determined that the UFO was placed on the site prior to becoming a wetland. Now, however, the wetlands have encroached the UFO site and established wetland characteristic. Any kind of containment would be futile and, in fact, isolate a small portion of the new wetland causing damage.

TEP Finds that the location of the UFO exhibit is not in danger of contributing to erosion and therefore further erosion control measures would be unnecessary if approval was granted.

b. 8420;0410(B)

8420;0410(B) requires that fish activity not be disturbed. There is no fish activity on the property.

The TEP concurs.

c. 8420.0410(C) and Minn. Stat. § 104H(4)

Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part:

"Best management practices" means practicable voluntary practices that are capable of preventing and minimizing degradation of groundwater, *considering economic factors*, availability, technical feasibility, implementability, effectiveness, and environmental effects. Best management practices apply to schedules of activities; design and operation standards; restrictions of practices; maintenance procedures; management plans; practices to prevent site releases, spillage, or leaks; application and use of chemicals; drainage from raw material storage; operating procedures; treatment requirements; and other activities causing groundwater degradation.

If the Board concludes a management site plan is required, KG will be available to work with them.

TEP has no comment on this part.

The Aircraft Fuselage.

WWR acknowledges that the aircraft fuselage was placed at least partially in wetlands (Exhibit 6). The fuselage is also part of a Mattracks Adventureland ride. The fuselage does not, however, create a permanent impact on the wetland.

Exhibit 6 depicts a line that is approximating the boundary between a public water wetland under DNR jurisdiction per MN Rules 6115 and wetland under jurisdiction of the Local Government Unit per MN Rules 8420. If the Aircraft Fuselage is located within the WCA jurisdictional wetlands the following comments apply:

The TEP finds that the aircraft fuselage constitutes an impact to wetlands and if it remains within the wetland boundary and wetland characteristics are not restored within 6 months the impact is permanent according to 8420.0415 H.

1. The fuselage is not a "structure".

The Fuselage is a small piece of a salvaged aircraft with just enough available to discern what it is. WWR acknowledges that a part of the display is sometimes in the wetland. However, the fuselage is easily carried without the need for equipment.

The TEP Finds the aircraft fuselage is a structure because it meets the definition of structure according to 8420.0111 Subp. 68 as follows: meets the definition as *any object*, which in fact was placed *in, over* a wetland.

2. The fuselage does not create a *permanent* loss of wetlands.

The fuselage was place directly on the top of the wetland. It has no base. It has no floor or walls that would keep any water from entering and leaving the display. It has no evidence of niche plant life around it to suggest any impact at all.

The TEP finds that the aircraft fuselage constitutes an impact to the wetland due to the loss of quality and biological diversity of wetlands caused by filling and/or placement of the structure (8420.0111 Subp. 32 Impact, 8420.0111 Subp. 26 Fill). The TEP finds the impact to be permanent because it remains within the wetland boundary for longer than 6 months according to 8420.0415 H.

4. The Fuselage complies with No Loss requirements found in Mn. Rule 8420.0410.

a. 8420.0410(A)

Subsection A requires that “erosion control measures” be taken to prevent sedimentation of the wetlands. KG inspection of the fuselage site and determined that sedimentation is not a problem given the nature of the placement on the site prior to becoming a wetland.

TEP Finds that the Fuselage exhibit is not in danger of contributing to erosion and therefore further erosion control measures would be unnecessary if approval was granted.

b. 8420;0410(B)

8420;0410(B) requires that fish activity not be disturbed. There is no fish population on the property.

The TEP concurs.

c. 8420.0410(C) and Minn. Stat. § 104H(4)

Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part. Again, if the Board concludes a management plan is required for this poertion of WWR’s project, they will be available to discuss the plan.

The TEP has no comment.

The Ditch

Mn Rule 8420.415(B) allows excavation limited to “removal of sediment or debris such as trees, logs, stumps...provided the removal does not result in altercation of the original cross-section of the wetland or wetland course.”

Glen Brazier was approached by the Department of Transportation requesting that he use his resources to clean out the roadside of the highway where the highway went through Mattrack and WWR property. The Karstad fire department also contacted Glen Braizer to create a firebreak on his property to avoid a repeat of a fire that occurred in 201x (See Appendix 2). The fire destroyed Mattrack’s warehouse facilities and nearly crossed into the buildings and structures used during the Kickin’ Up Kountry event. (Exhibit 7).

One of the main problems experienced during the fire was the density and height of invasive cattails. Then fire, occurring in October, found ample fuel in dry, tall cattails.

After working with fire departments, Mr. Braizer and fire experts determined that a ditch running

east and west just north of the WWR buildings would substantially improve firefighting capabilities. WWR excavated an old ditch to minimize impact (Exhibit 9)

The TEP finds the ditch in question is generally oriented north and south and is adjacent to the WWR event grounds and along the road. The ditch in question crosses wetlands under jurisdiction of the Kittson SWCD and MN Rules 8420 and the MN DNR and MN Rules 6115. The ditch in Wetland Conservation Act (WCA) jurisdiction is approximately 1900 ft long with an average width of 15 ft. The ditch extends in to DNR Public Water Wetlands another 1400ft and maintains the same average width. Spoil piles were placed adjacent to the excavated ditch. No information was submitted nor approved prior to commencement of work to gain concurrence with the exemption provisions of 8420.0420, no loss provisions of 8420.0415, or a replacement plan as required under MN Rules 8420 if an exemption or no loss does not apply. In addition after reviewing historic aerial photographs the TEP finds no evidence of a previous ditch in this location.

Exhibit 9 and the photograph labeled “WWR B6” identifies the location of the ditch in an area not reviewed by the TEP or LGU. If a ditch exists in this location as well no information was submitted nor approved prior to the commencement of work to gain concurrence with either the exemption provisions of 8420.0420, no loss provisions of 8420.0415, or a replacement plan as required under MN Rules 8420 if an exemption or no loss does not apply. Therefore, an additional ditch may be in violation as well.

WWR and Justin Muller have reached an agreement regarding the ditch. WWR can keep the ditch as a firebreak and was ordered to clear the spoils. The spoils have since dropped below ground level. KG concluded that digging up the spoils at this point could disrupt wetland characteristics even more.

The TEP finds that the ditch as currently constructed does not meet the no loss provisions of 8420.0415. Currently the ditch is considered an impact according to 8420.0111 Subp. 32 because the ditch has the capability of draining wetlands and the adjacent spoil piles result in fill as defined under 8420.0111 Subp. 26.

The TEP will review information presented in an application for No Loss under 8420.0415 A. provided a detailed plan is included that shows how permanent impacts are adequately restored and prevented from occurring in the future. Specifically, present a plan to remove spoil that remains in the wetland as well as permanently block the ditch from discharging and lowering water levels.

The TEP Finds that the requirements outlined in the Public Waters Restoration order apply within the jurisdiction of MN Rules 6115 and are in addition to the requirements of MN Rules 8420.

The Road.

To enhance the effectiveness of the ditch by accommodating firefighting equipment, WWR built an access road exiting near the Kickin’ Up Kountry building sites running basically north and south (Exhibit 9). The road was constructed in a loop to eliminate the need for large vehicles to back up on a narrow surface.

The Department of Natural Resources calculated the road accounts for 38,500 Square Feet of wetland impact. The measurements used to reach this calculation are not provided (See Minnesota Wetland

Conservation Restoration Act). Regardless, as the overhead photo demonstrates, WWR calculates that the road only impacts 47% of the total calculated by the DNR, or approximately 18,100 square feet.³

³The WWR estimate is based totally on measurements made using the overhead picture in Exhibit 8.

The TEP used a 300 ft fiberglass tape measure to take several width measurements along the entire length of the road in order to come up with an average road width. The measurement was taken from the toe slope of the fill on both sides of the road. Total road length was measured using hand held GPS equipment and points recorded at the wetland boundaries. The TEP finds that the WWR road with is incorrect and as indicated in the footnote on an “estimate...totally on measurements made using the overhead picture in Exhibit 8.”

Mn Rules don't allow the use multiple exceptions in a single application. See Mn. Rule 8420.0420(1)(C), requiring the No Loss exception to be used for the road as well. In fact, the road meets the majority of criteria found in Mn Rule 8240.0410 and 8420.0415(A).

The road is constructed from fill material as defined by 8420.0111 Subp. 26 and therefore constitutes an impact as defined by 8420.0111 Subp. 32. The road does not qualify for no loss because the aforementioned findings and references are in direct conflict with 8420.0415 A. The road also doesn't qualify for any exemption's defined by 8420.042.

Mn Rule 8240.0415(A)

MN Rule 8420.0410(A) allows activities “that will not impact a wetland.” WWR understands that the road on first impression looks as though it could have impact on the Wetland. However, WWR notes that one side of the road is predominately in the wetlands, the other side of the road is not, meaning the road is built on or close to a high ground ridge that was there before the road was built. The road itself has culverts to allow water on either side of the road to inter-act. More significantly, KG found no evidence of niche plant growth between the two sections of road.

8420.0315 requires an applicant applying for no loss under 8420.0415 to submit proof necessary to show qualification for the claim. This may include historic photos, aerial imagery, soil borings, or any other information supporting the road was placed in upland. The TEP utilized proven methods of determining wetland in an atypical situation according to the 1987 Corps of Engineers Delineation Manual and finds that the road was placed in a jurisdictional wetland.

Mn. Rule 8240.0410 (A) – (C)

The road, with slight accommodations, can easily meet the requirements of Mn Rule 8420.10.

Because the road will does not qualify for either an exemption or no loss restoration following the provisions of 8420.0410 are a moot point.

Mn. Rule 8240.0410(A).

Mn Rule 8240.0410(A) requires appropriate erosion control measures to prevent sedimentation of the wetland. Although there are several options available, KG concluded that a silt fence would be least intrusive and most effective given the after the fact nature of the application.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

Mn Rule 8240.0410(B)

There are no fish in the WWR wetlands.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

Mn Rule 8240.0410(C) 6

Again, Mn Rule 8420.0410(C) requires management best practices. Minn. Stat. § 104H(4) states in relevant part:

"Best management practices" means practicable voluntary practices that are capable of preventing and minimizing degradation of groundwater, *considering economic factors*, availability, technical feasibility, implementability, effectiveness, and environmental effects.

WWR will work with Justin Muller to finalize a management plan that includes annual assessment of the effectiveness of the silt fence and further establish the change in wetland boundaries going forward.

An approved replacement plan would be required in order to allow the road to remain rendering the above citation moot.

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, May 19, 2021 9:31 AM
To: Steven Anderson; Glen Brazier
Subject: Notice of Application
Attachments: WWR_NOA_5_21.pdf

Hello Glen and Steve,

The Kittson SWCD has deemed the application received on May 3, 2021 to be complete. We will be taking a more detailed look at the application in the next couple of weeks to formulate comments.

If you have any questions let me know.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

Minnesota Wetland Conservation Act Notice of Application

Local Government Unit: Kittson SWCD	County: Kittson
Applicant Name: Glen Brazier	Applicant Representative: Steven Anderson
Project Name:	LGU Project No. (if any):
Date Complete Application Received by LGU: 05/03/2021	
Date this Notice was Sent by LGU: 5/19/2021	
Date that Comments on this Application Must Be Received By LGU¹: 06/28/2021	

¹ minimum 15 business day comment period for Boundary & Type, Sequencing, Replacement Plan and Bank Plan Applications

WCA Decision Type - check all that apply

<input checked="" type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Impact Area Proposed:
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Application Materials

<input checked="" type="checkbox"/> Attached <input type="checkbox"/> Other ¹ (specify):

¹ Link to ftp or other accessible file sharing sites is acceptable.

Comments on this application should be sent to:

LGU Contact Person: Justin Muller
E-Mail Address: justin.muller@mn.nacdnet.net
Address and Phone Number: 410 South 5th Street Suite 106 Hallock, MN 56728 218-843-2619 Ext. 3
Decision-Maker for this Application:
<input type="checkbox"/> Staff <input checked="" type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other (specify):

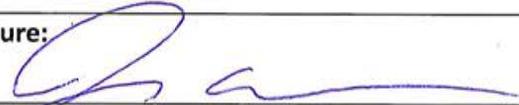
Notice Distribution (include name)

Required on all notices:

<input checked="" type="checkbox"/> SWCD TEP Member: Justin Muller	<input checked="" type="checkbox"/> BWSR TEP Member: Matt Johnson
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Stephanie Klamm	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input checked="" type="checkbox"/> Applicant (notice only): Glen Brazier	<input type="checkbox"/> Agent/Consultant (notice only): Steve Anderson

Optional or As Applicable:

<input type="checkbox"/> Corps of Engineers:
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):
<input type="checkbox"/> Members of the Public (notice only): <input type="checkbox"/> Other:

Signature: 	Date: 5/19/2021
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From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Thursday, July 1, 2021 2:41 PM
To: Steven Anderson
Subject: Extension of Decision Making Period Wagon Wheel Ridge

Steve,

The decision timeline for the Wagon Wheel Ridge WCA application will be extended for 60 days. Our board plans to make a decision at our July board meeting.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Friday, July 16, 2021 11:24 AM
To: Steven Anderson; Glen Brazier
Subject: Notice of Decision
Attachments: Wagon_Wheel_Ridge_July_2021_TEP_Signed.pdf; Wagon Wheel Ridge NOD July 2021.pdf

Steve & Glen,

The No-Loss Application that was submitted May 3rd was a decision topic on the July board meeting of the Kittson SWCD. The board has Denied the No-Loss application that was submitted. The board agreed that because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

Attached to this email is the Notice of Decision along with the Technical Evaluation Panel find of facts.

Please let me know if you have any questions.

Thank You,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

Minnesota Wetland Conservation Act Technical Evaluation Panel Form

This form can be used to document TEP findings and recommendations related to WCA decisions, determinations, enforcement and pre-application reviews.

Local Government Unit:	Kittson SWCD	County:	Kittson
Landowner/Applicant:	Glenn Brazier	Agent/Representative(s):	Steve Anderson
Project Name:	Wagon Wheel Ridge		Project No. (if any):
Project Location:	Deerwood Township Sec. 26		

Purpose of TEP Findings/Recommendation - check all that apply and describe

<input type="checkbox"/> Pre-application review <input checked="" type="checkbox"/> Application Review (related to WCA Decision)
<input type="checkbox"/> Local Government Road Wetland Replacement Program Eligibility <input type="checkbox"/> WCA Determination Request
<input type="checkbox"/> Other (specify):
Describe:

Meeting Type – check all that apply and specify dates as applicable

<input checked="" type="checkbox"/> In-Person Meeting(s), Date(s): Multiple	<input checked="" type="checkbox"/> Electronic Exchanges (email, skype, etc.)
<input checked="" type="checkbox"/> Onsite Review(s), Date(s): Multiple	<input type="checkbox"/> Other (specify):

Findings and Recommendations

Background: Steve Anderson has submitted an After the Fact Joint Application on behalf of Glen Brazier on May 3, 2021. The After the Fact permit is in response to a Restoration Order that was written in August of 2019. The Restoration order had three impacts identified: a road that was constructed, a ditch with adject spoil and, fill for an amusement ride these impacts total 74,500 Sq. Ft. This application only covers the ditch and the corresponding spoil of the Restoration Order. The submitted application also proposes to extend the ditch to higher ground and to excavate a new wildlife pond.

TEP Findings:
 The After the Fact Application was received from Steve Anderson via Email on May 3rd, 2021, the application was reviewed for completeness by Justin Muller (Kittson SWCD) and Matt Johnson (BWSR). It was deemed complete on May 19th, 2021. Comments were requested from Stephanie Klamm (DNR) and Matt Johnson (BWSR).
 On July 1, 2021 Steve Anderson was notified via email the decision timeline was extend another 60 Days to September 3, 2021.
 A TEP meeting was held on July 2, 2021 via Webex that included Matt Johnson, Stephanie Klamm, And Justin Muller. The TEP members would like it noted that Glenn Brazier and Steve Anderson have submitted multiple pre applications for review and the TEP members have provided Steve and Glenn clear and concise comments on these pre applications. The TEP finds despite providing substantial feedback on previous applications, meetings, and discussions, the current application fails to address all wetland impacts. It should also be noted that the restoration and after-the-fact application deadline has passed. The LGU in a good faith effort to work with the applicant is considering this application for decision. Also, no recognizable restoration work has been done to satisfy the order nor has a complete comprehensive application/plan to address all impacts been received.
 TEP found inconsistencies through pages 4-6 on what type of application the applicant was applying for i.e. Filling out the Aquatic Resource Table and listing permanent impacts on pg. 4., Checking the Delineation

Concurrence box on pg. 5 without submitting delineation information to review, and reference to No Loss and Exemptions.

The TEP reviewed the application as a No-Loss Application as that was referenced on Page 6 and the narrative in the application fits best to a No-Loss request. The TEP concurs that no exemptions fit this application.

Appendix 2. a Purpose and Need are stated. The purpose and need are clear and well stated. Under the section of Appendix 2 Titled Role of Water Management the TEP would like to make it clear that the WCA LGU and DNR Area Hydrologists are the appropriate contacts for the type of work performed and requested by Mr. Brazier and that neither entity was contacted prior to any work being done.

Under the section of Appendix 2 Titled Project Description: The TEP finds that a ditch is not necessary to keep the pond full. Hydrology for the wetland is likely a combination of ground water and overland runoff.

The ditch in its current state of being an open channel and its ability to convey water is an impact. According to the definition of ditch in MS 103E.005, Subdivision 8 ditch means an open channel to conduct the flow of water. Further WCA recognizes the same definition of ditch, which in this case is capable and will divert or remove hydrology from a wetland per the definition of drain or drainage in 8420.0111 Subp. 22. Per the definition of impact under 8420.0111 Subp. 32 because water can freely leave the wetland through the excavated channel (ditch), the ditch will result in draining the wetland. Even further, the excavation of the ditch currently passes through type 3 wetlands, which by definition if impact, excavation in type 3 wetlands is a wetland impact.

Furthermore, the TEP finds that the ditch from HWY 11 south labeled the "north half of the ditch," in the project description does not qualify for is not a No-Loss scenario because of the above definitions of ditch, drainage, and impact. The TEP has reviewed aerial imagery from 1979 to present (attached) and Exhibit 7 submitted by the applicant and determined that there is no evidence of a ditch in this location prior to the work performed in 2019.

The TEP find that Pond Excavation and the extension of the ditch described in Appendix 2 would happen outside of WCA jurisdiction and in a DNR protected water. The DNR believes that these to actions would be a further impact and no additional work will be allowed. The WCA LGU cannot make a decision regarding work within the public water according to 8420.0105 Subp. 2. E.

The Avoidance and Minimization section of appendix 2. is not needed for a No-Loss application due to the fact there should be No impacts to avoid and minimize.

The TEP through multiple meetings, phone calls, and emails with the Mr. Brazier and Steve Anderson where expecting an after the fact application that encompassed addressed all aspects of impacts identified in the restoration order. The application that was submitted met the bare minimum of a complete application and does not thoroughly cover the aspects of the restoration order.

Based on the Findings stated above the TEP recommends the Kittson SWCD board deny this No Loss application because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

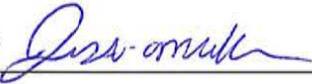
Attachment(s) (specify): Aerial imagery from 1966,1991,2009,2015,2019

DNR Protected Waters and Shoreland Protection Zone

Will the project/activity affect DNR public waters, DNR public waters wetlands or wetlands within the shoreland protection zone? Yes No If yes, DNR representative is a member of the TEP.

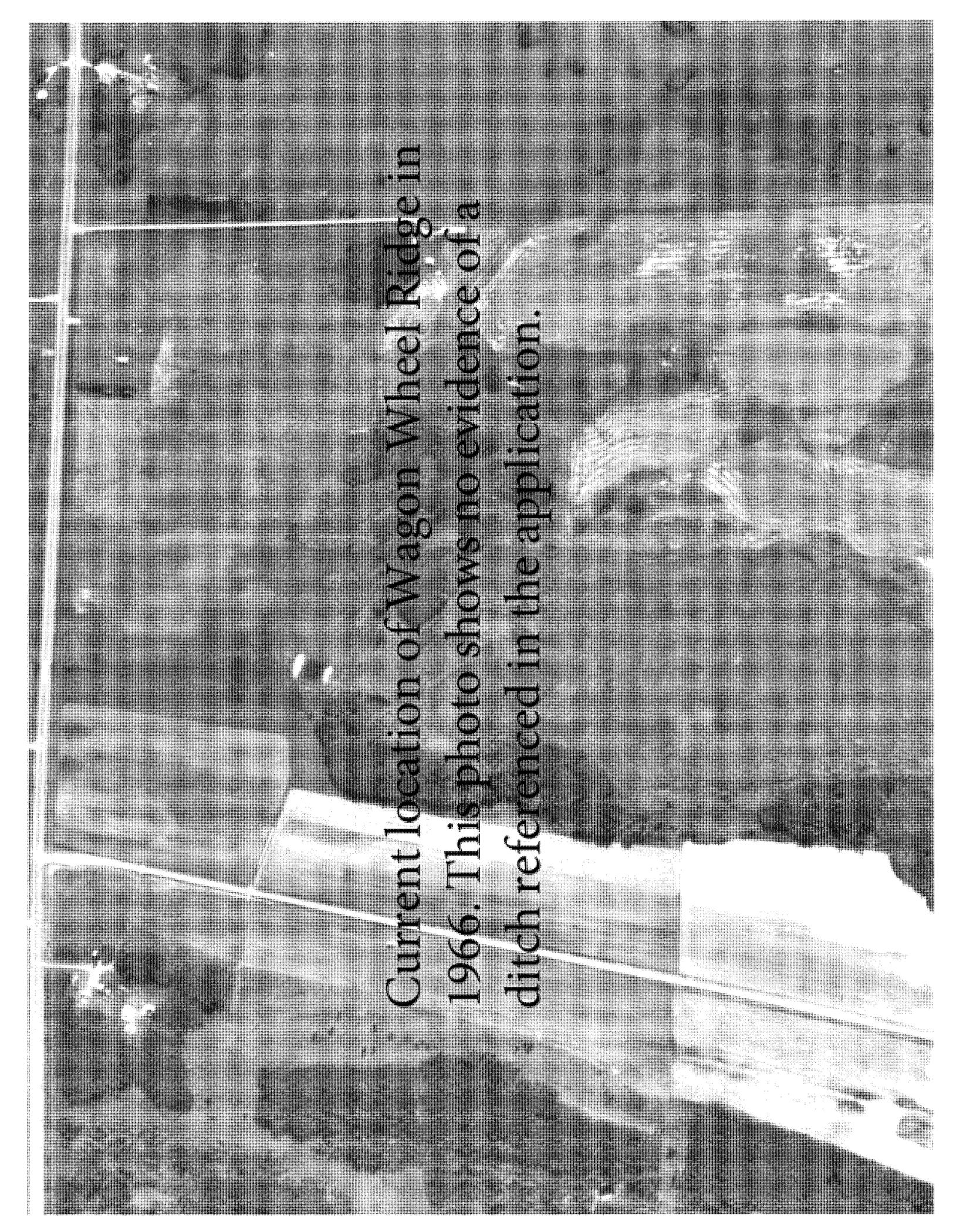
Signatures

LGU TEP Member: _____ Agree with Findings & Recommendations: Yes No

Signature: 

Date: 7/13/2-21

<input type="checkbox"/> SWCD TEP Member:		Agree with Findings & Recommendations: <input type="checkbox"/> Yes <input type="checkbox"/> No
Signature:		Date:
<input type="checkbox"/> BWSR TEP Member:	Matt Johnson	Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature:		Date: 7/12/2021
<input type="checkbox"/> DNR TEP Member:		Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Signature:	Stephanie Klamm Digitally signed by Stephanie Klamm Date: 2021.07.12 19:16:29 -05'00	Date:



Current location of Wagon Wheel Ridge in 1966. This photo shows no evidence of a ditch referenced in the application.

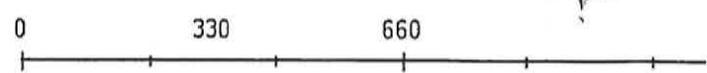
Wagon Wheel Ridge 1991

by: Justin Muller
Kitson County



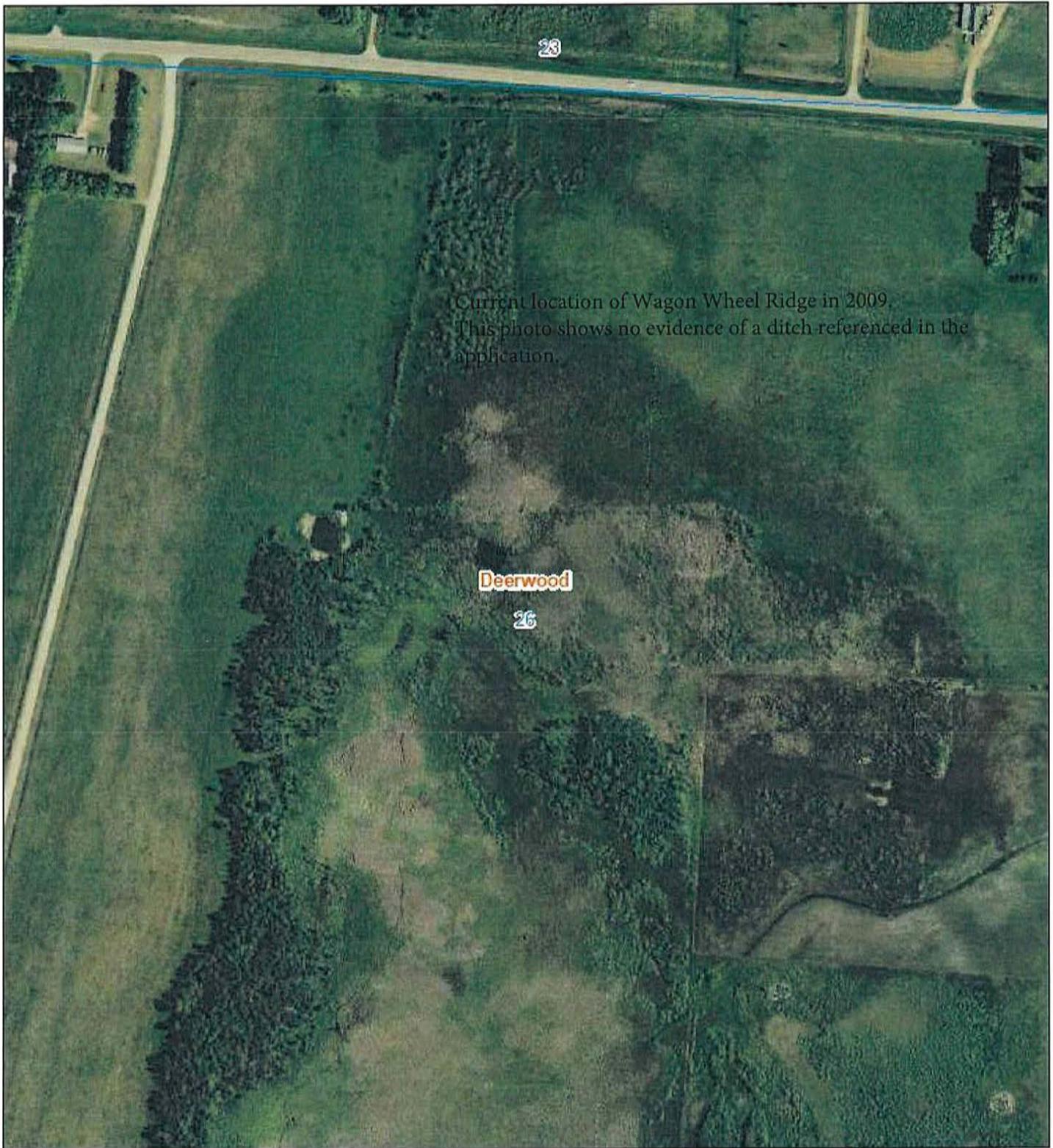
 Townships
 Sections

1 inch = 318 feet 1:3,816



Wagon Wheel Ridge 2009

by: Justin Muller
Kittson County



 Townships
 Sections

1 inch = 318 feet 1:3,816

0 330 660



Wagon Wheel Ridge 2015

by: Justin Muller
Kittson County



Deerwood

26

Current location of Wagon Wheel Ridge in 2015.
This photo shows no evidence of a ditch referenced in
the application.

 Townships
 Sections

1 inch = 318 feet 1:3,816

0 330 660



Wagon Wheel Ridge 2019

by: Justin.Muller
Kittson County



 Townships
 Sections

1 inch = 318 feet 1:3,816

0 330 660



Minnesota Wetland Conservation Act Notice of Decision

Local Government Unit: Kittson SWCD	County: Kittson
Applicant Name: Glenn Brazier	Applicant Representative: Steven Anderson
Project Name: Wagon Wheel Ridge	LGU Project No. (if any):
Date Complete Application Received by LGU: 05/03/2021	
Date of LGU Decision: 07/14/2021	
Date this Notice was Sent:	

WCA Decision Type - check all that apply

<input type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Wetland Impact Area:
Wetland Replacement Type: <input type="checkbox"/> Project Specific Credits: <input type="checkbox"/> Bank Credits:
Bank Account Number(s):

Technical Evaluation Panel Findings and Recommendations (attach if any)

<input type="checkbox"/> Approve <input type="checkbox"/> Approve w/Conditions <input checked="" type="checkbox"/> Deny <input type="checkbox"/> No TEP Recommendation
--

LGU Decision

<input type="checkbox"/> Approved with Conditions (specify below) ¹ List Conditions:	<input type="checkbox"/> Approved ¹	<input checked="" type="checkbox"/> Denied
Decision-Maker for this Application: <input type="checkbox"/> Staff <input checked="" type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other:		
Decision is valid for: <input type="checkbox"/> 5 years (default) <input type="checkbox"/> Other (specify):		

¹ *Wetland Replacement Plan approval is not valid until BWSR confirms the withdrawal of any required wetland bank credits. For project-specific replacement a financial assurance per MN Rule 8420.0522, Subp. 9 and evidence that all required forms have been recorded on the title of the property on which the replacement wetland is located must be provided to the LGU for the approval to be valid.*

LGU Findings – Attach document(s) and/or insert narrative providing the basis for the LGU decision¹.

<input type="checkbox"/> Attachment(s) (specify):
<input checked="" type="checkbox"/> Summary: The Kittson SWCD with the recommendation of the TEP, has Denied the No-Loss application received May 03, 2021 submitted by Steve Anderson on behalf of Glenn Brazier. The board agreed that because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

¹ Findings must consider any TEP recommendations.

Attached Project Documents

Site Location Map Project Plan(s)/Descriptions/Reports (specify):

Appeals of LGU Decisions

If you wish to appeal this decision, you must provide a written request within 30 calendar days of the date you received the notice. All appeals must be submitted to the Board of Water and Soil Resources Executive Director along with a check payable to BWSR for \$500 *unless* the LGU has adopted a local appeal process as identified below. The check must be sent by mail and the written request to appeal can be submitted by mail or e-mail. The appeal should include a copy of this notice, name and contact information of appellant(s) and their representatives (if applicable), a statement clarifying the intent to appeal and supporting information as to why the decision is in error. Send to:

Appeals & Regulatory Compliance Coordinator
Minnesota Board of Water & Soils Resources
520 Lafayette Road North
St. Paul, MN 55155
travis.germundson@state.mn.us

Does the LGU have a local appeal process applicable to this decision?

- Yes¹ No

¹If yes, all appeals must first be considered via the local appeals process.

Local Appeals Submittal Requirements (LGU must describe how to appeal, submittal requirements, fees, etc. as applicable)

[Empty box for Local Appeals Submittal Requirements]

Notice Distribution (include name)

Required on all notices:

<input type="checkbox"/> SWCD TEP Member:	<input checked="" type="checkbox"/> BWSR TEP Member: Matt Johnson
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Stephanine Klamm	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input type="checkbox"/> Applicant:	<input type="checkbox"/> Agent/Consultant:

Optional or As Applicable:

<input type="checkbox"/> Corps of Engineers:	
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):	
<input type="checkbox"/> Members of the Public (notice only):	<input type="checkbox"/> Other:

Signature: 	Date: 07/16/2021
--	----------------------------

This notice and accompanying application materials may be sent electronically or by mail. The LGU may opt to send a summary of the application to members of the public upon request per 8420.0255, Subp. 3.

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, August 4, 2021 8:13 AM
To: Steven Anderson
Subject: RE: [External Email]June and July Board Minutes
Attachments: June 2021 Minutes.pdf

Steve,

I have attached the June minutes, the July meeting minutes will be approved next week at our August meeting.

Thanks,

Justin Muller
Kittson SWCD
District Technician
(218) 843-2619 Ext. 3

“Happiness is a choice, Joy is a way of life”

From: Steven Anderson <steve@andersonlgrmn.com>
Sent: Tuesday, August 3, 2021 4:51 PM
To: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Subject: [External Email]June and July Board Minutes

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.

Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Hey Justin.

Are the June and July Board Minutes published anywhere? It looks like the most recent minutes on your website are from March 2021.

Let me know. Thx.

Steve Anderson
Anderson Law Group PLLC
1010 Dale Street North
St. Paul, Minnesota 55117
(651) 253 – 8289

Sent from [Mail](#) for Windows 10

*Helping Producers Implement
Best Management Practices
For Conservation Purposes in
Kittson County*



410 South 5th Street - Suite 106 - Hallock MN 56728 - Phone (218) 843 2619 - Fax (855) 744-0398- www.kittsonswcd.org

Minutes of the Meeting of

Kittson Soil & Water Conservation District Board of Supervisors

Held on Wednesday June 9th, 2021 at 8:00 AM at the Kittson County Courthouse.

The Board of Supervisors of the Kittson Soil and Water Conservation District held its regular scheduled meeting on Wednesday June 9th, 2021 at 8:00 AM at the Kittson County Courthouse. Members present included: Chairman CJ Peterson, Vice Chairman Andrew Muir, Secretary Carey Mortenson, Public Relations Sam Anderson and Treasurer Joe Wilebski.

Others present were District Technician Justin Muller, District Technician Jeremy Benson, District Manager Jamie Osowski, District Conservationist Jim Schwab and Dan Money from the Two Rivers Watershed District.

Upon motion by Wilebski and seconded by Mortenson and unanimous vote of supervisors, New Business agenda items including 1W1P Letter from TRWD, Hugh Hunt State Cost Share and DNR Ob Well Contract were added to the agenda.

The minutes from the May 12th, 2021 board meeting were approved upon motion by Wilebski and seconded by Muir and unanimous vote of supervisors.

The treasurers report from June 2021 were presented to the board by District Manager Osowski. Upon discussion on the June 2021 financials, motion was made by Muir and seconded by Mortenson and unanimous vote of supervisors.

New Business:

Letter from the Two Rivers Watershed District withdrawing from Two Rivers Plus One Watershed One Plan: The Two Rivers Plus 1W1P policy and steering team received a letter from the TRWD with intent not to adopt the plan and to withdraw from the planning group. Dan Money was in attendance and explained the districts reasonings behind their decisions, he stated that state agencies sending letters the night before a meeting with what they want to see changed and with the group not being able to come together to decide on implementation efforts were some of the reasons behind this decision. Andrew asked Dan on the timing aspect of withdrawing and Dan

stated that it has been coming for a while and if we wanted more of an explanation, they would have to talk to his board members.

Soil Health Demo: Justin reported to the board that the office had a meeting with the interested producers in the program to bring them up to speed on the funding and any changes that were made after the last discussion. Justin laid out the timeline we are looking at for implementing the program. Discussion on equipment was had next, Justin presented the board with a quote he received from Soil Warrior. Following discussion on all the pros and cons to owning versus custom, the board stated that having a custom service for this program would be best.

Lake of the Woods Livestock Workshop: Justin discussed with the board the opportunity to provide test kits for Kittson County attendees. Motion was made by Muir and seconded by Anderson and unanimous vote of supervisors to support the workshop and provide test kits to all Kittson County residents attending.

SFA Soil Health sponsorship: Jeremy presented the Soil Health Field Day to the board stating that it will be held on Wednesday June 30th at Michael Larson's farm near Drayton. He had been asked by SFA if we would be interested in helping advertise the field day and if we could demonstrate our rainfall simulator. Upon motion by Anderson and seconded by Mortenson and unanimous vote of supervisors, the board is in favor of sponsoring the Michael Larson Field Day on June 30th.

SSTS Upgrade Grant: Justin reported that he received an estimate for Jason Gohman's septic upgrade, the estimate came in at \$9,881.48 and we will cost share on 85% of the project cost which is \$8,399.26. Motion was made by Muir and seconded by Anderson and unanimous vote of supervisors to approve the SSTS Upgrade contract.

TSA Upgrade: Jamie spoke to the board on the 5 new budgets drafted for the TSA. The reason for more budgets is to work toward all 16 districts agreeing on one option. Following office discussion, the staff still feel that budget option 1 is the best for the Kittson SWCD. The executive committee is looking for a vote to bring to the next TSA board meeting on June 24th in Mahanomen. Upon motion by Mortenson and Seconded by Muir and unanimous vote of supervisors, the Kittson SWCD will continue to support budget option 1.

Computer Upgrades: Jamie reported to the board that all the staff computers through NRCS are out of warranty. Our IT Specialist from NRCS sent us over information on new computers for all the staff. If we all upgraded now, the cost would be \$6,627.90. Upon motion by Wilebski and seconded by Mortenson and unanimous vote of supervisors, all staff will receive new computers through NRCS.

Hugh Hunt Grade Stabilization Project: Justin reported that he received the final estimate for the Hugh Hunt project. The total cost of the project is \$12,081.60 and State Cost Share will cover 75% of the total project cost which is \$9,061.20. These funds will be coming out of both FY 2019 and 2020. Motion was made by Muir and seconded by Wilebski and unanimous vote of supervisors to approve the Hugh Hunt State Cost Share Contract number FY19-11/20-01 for \$9,061.20.

DNR Ob Well: Jamie presented the 2022 DNR Ob Well Contract to the board and asked if they would still like us to participate with the DNR in the contract. Upon motion by Muir and seconded by Wilebski and unanimous vote of supervisors, the Kittson SWCD will continue to work with the MN DNR in 2022 with the Observation well.

Staff Reports:

Jim Schwab gave the NRCS report, he stated at this time he doesn't know anything new on CRP, EQIP or CSP. Jim stated he will be going out in the field to do CRP checks.

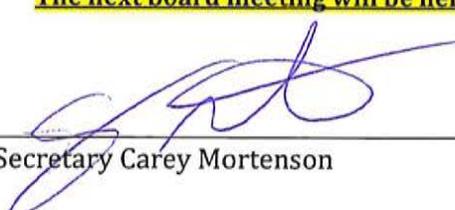
Heather is still on FMLA leave, she called and asked if she could extend her maternity leave out to August 3rd. Upon discussion with the board, they would like to see if she could come back part time to get caught up on the strip till program. Jamie stated she will talk to her and see what options we can come up with.

Justin gave his District Technician report, he stated that he received the Wagon Wheel Ridge application. He stated that he will now send this through the decision-making process, there will be a TEP meeting in June and the decision will be brought to the board at the July meeting. Next Justin spoke to the board on a tile permit that was submitted to the TRWD for 1600 acres of tile in Davis Township. He will be looking into the WCA implications of this project. Justin stated he has been doing site checks for Cover Crops and has been signing a few more cover crop contracts with producers and landowners. The seeding services have been steady with more sites to be done and the Truax has been busy around the county.

Jeremy gave the District Technician Report, he reported that they will be busy wrapping up the Buffer seedings. He also stated that the TRWD inquired on a Buffer Cost Share contract for 16 SWI's along JD 3, they are hoping to get this done this year. Jeremy is also working with the TRWD to have the Kittson SWCD's seeding service seed County Ditch 21 following the cleanout. Next Jeremy spoke on the BWSR Northern Region Committees unanimous vote to approve the Two Rivers Plus 1W1P, he stated that staff sat in on the meeting and were asked a couple questions on the plan and process. Jeremy stated that the KC Commissioners met and there was no entertainment from the Commissioners on an entity, discussion was had on who would do the Fiscal Agent for an Entity. Jeremy stated that Roseau SWCD would be open for doing the position if we could all agree on it. Discussion was had on what directions we can go, and we are out of options, Jeremy stated that a draft of the agreement will be presented to the Policy committee on June 17th.

Jamie gave her report, she reported on upcoming meetings including the Local Work Group meeting, Area 1 meeting, TSA, SFA field day, Kittson County Fair, and the financial audit on August 17th.

The next board meeting will be held on Wednesday July 14th, 2021 at 8 AM at the Kittson County Courthouse.


Secretary Carey Mortenson

7-14-21
Date

From: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>
Sent: Wednesday, August 18, 2021 9:00 AM
To: Steven Anderson
Subject: RE: [External Email]Explanation

Steve,

I have received a 22 page appeal document and 118 pages of exhibits. If I am missing anything please send it my way.

Thanks

Justin

From: Steven Anderson <steve@andersonlgnm.com>
Sent: Monday, August 16, 2021 9:48 PM
To: Germundson, Travis (BWSR) <travis.germundson@state.mn.us>
Cc: Muller, Justin - NRCS-CD, Hallock MN <Justin.Muller@mn.nacdnet.net>; Klamm, Stephanie (DNR) <stephanie.klamm@state.mn.us>
Subject: [External Email]Explanation

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

I've been trying to send five documents to all of you representing WWR's appeal. I've been experiencing bad karma with my email tonight. Travis, I think they all arrived one at a time, but frankly I'm not sure.

The check was delivered to your office earlier today.

Comp hard copies will be there tomorrow.

Justin and Stephanie.

I'll keep trying in the morning.

Steve Anderson
Anderson Law Group PLLC
1010 Dale Street North
St. Paul, Minnesota 55117
(651) 253 – 8289

Sent from [Mail](#) for Windows 10

Exhibit 14

Photos from Glen Brazier-Wagon Wheel Ridge property Parcel #060264080 T-159-N, R-46-W, Section 26, Deerwood Township.

Photos taken by Area Hydrologist Stephanie Klamm on 7-15-19 during site visit with BWSR BC Matt Johnson, Kittson SWCD staff Justin Muller and DNR CO Tony Elwell.



Photo 1: Looking north towards Hwy 11 along new ditch (can just see it in the right hand side of photo). Ditch spoil in wetland (center of photo). Spoil pile measured out to be 17' wide. Depth unknown. Standing on newly developed road.



Photo2: Looking north towards Hwy 11 at new ditch (can just see spoil in left hand side of photo). Ditch was dug sometime between 2018 Winter and Spring 2019.



Photo 3: Looking east towards buildings across wetland along new ditch (can just see ditch in foreground of photo, buildings in background). Standing on left side of newly developed road, just down from north-south ditch coming from Hwy 11



Photo 4: Looking west towards Wagon Wheel Ridge building site down the newly developed road (can see another ditch on the right and center site of photo, buildings in background).



Photo 5: Looking south easterly at pond, standing in center of newly developed road. Pond was historically visible in air photos back to at least 1991 (stock pond for pasture).



Photo 6: Looking south on down newly dug ditch near culvert 1, looking at culvert 2 and new road (center of photo), standing in center of newly developed road. This ditch does not appear in any air photos.



Photo 7: Looking northeast from culvert 1 across wetland at buildings, standing in center of newly developed road, culvert is in bottom center of photo. Culvert was measured out at approximately 20". This ditch does not appear in any air photos.



Photo 8: Looking west from culvert 1 down newly developed road back at church on Wagon Wheel Ridge property.



Photo 9: Looking southwest on down newly dug ditch at culvert 1, looking at culvert 2 and new road (center of photo), standing in center of newly developed road. This ditch does not appear in any air photos.



Photo 10: Looking east down newly developed road at "Snake Island" (center of photo). Standing in center of road near culvert 1.



Photo 11: Looking east at buildings, standing in center of newly developed road, showing view of newly dug ditch in center of photo. This ditch does not appear in any air photos.



Photo 12: Looking southeast at right side of road around "Snake Island", standing in center of newly developed road. There is a road that go on the left side of "Snake Island" see photo 14.



Photo 13: Looking east on left side of road around "Snake Island", standing in center of newly developed road. There is a road that go on the right side of "Snake Island" see photo 14.



Photo 14: Looking straight on with "Snake Island", standing in center of newly developed road. This road goes around and through "Snake Island". There is a road that goes on the backside of "Snake Island" as well.



Photo 15: Looking straight south at large wetland (Public Waters wetland) boundary on road that goes on the backside of "Snake Island", standing in center of newly developed road.
Airplane display can be seen in the background.



Photo 16: Looking south and west at large wetland (Public Waters wetland) boundary on road that goes on the backside of "Snake Island", standing in center of newly developed road.
UFO display can be seen in the background.



Photo 17: Looking north and east at newly dug ditch and culvert 1 from culvert 2 location and ditches



Photo 18: Looking south and east back down the newly developed road back at "Snake Island". Standing on the newly developed road at culvert 2.



Photo 19: Looking south down newly dug ditch towards UFO display in background. Standing on the newly developed road at culvert 2. It is unclear during the time of the site visit on 7-15-19 if the newly dug ditch went back the UFO display. Water was too high to walk into public waters wetland which is near the UFO display.

Exhibit 15

7/15/19 – met in office with Glen Brazier to request permission to enter his property to take data on possible wetland impacts. Attendees were Tony xxx Conservation officer, Stephanie Klamm DNR Area Hydrologist, Justin Muller Kittson SWCD, Matt Johnson BWSR, and Dan xxx? On the phone via conference.

- during the conversation Glen Brazier admitted to constructing the road
 - Mr. Brazier indicated the road was part of his amusement park attraction
 - Mr. Brazier also indicated the road and open water is for fire suppression
 - Mr. Brazier granted permission to walk through the property
 - When asked if we could dig soil pits Mr Brazier did not say no, but expressed concern due to the amount of infrastructure and electrical components underground.
-
- During the visit the TEP walked the newly constructed road starting generally from the north out to “snake island” back toward the west and then south to where the new road intersected with a path containing field turf. We continued to follow the field turf path south to a fill pad constructed for an amusement park ride as part of the attraction. Finally we exited the path on the south end near the camping area.
 - Wetland indicators were observed along much of the route and a wetland boundary was placed near the wooded portion of “snake island”.
 - o Hydrophytic vegetation was determined using the rapid dominance test. Vegetation species observed were – narrow leafed cattail, soft stem bulrush, marsh milkweed, giant goldenrod, common spikerush, bebb’s willow, sandbar willow, lake sedge, and other sedge species that were unidentified.
 - At the upland boundary dominant species included quacking aspen in the tree stratum, bur oak and quaking aspen in the shrub stratum, and kentuck and fowl bluegrass in the herb stratum – herb stratum had minor components of wild rose, Canada thistle, strawberry, dwarf raspberry, sweet clover.
 - The upland boundary coincided with a very slight rise in elevation. The elevation change appears to provide enough separation from hydrology to change the plant community to a drier community
 - o Hydrology was observed in the open ditches and ponds adjacent to the road. Hydrology ranged from approximately 6 inches below virgin soil surface to approximately 12 inches below virgin soil surface. Antecedent precipitation has not been determined yet. The hydrology depth estimate does not include capillary fringe, which will bring the saturation even closer to the soil surface.
 - o Soils could be readily observed via the open ditches. A typical soil profile appeared to be approximately 8 inches of organic 10 YR 2/1 or darker, immediately below 8 inches was sand with color 10YR 5/1. This meets the NRCS hydric soil indicator of depleted below dark surface.
 - Five soil pits were dug using a dutch auger. One pit was through the fill to a depth of approximately 30 inches. At the 30 inch mark the auger pulled undecomposed cattail plant material and had a strong hydrogen sulfide odor. Four more soil pits were dug (2 on the upland side and 2 on the wetland side) of the wetland boundary on “snake island”. All soil pits contained the same profile

as previously described, however in the upland pits soil saturation began at approximately 14 inches versus approximately 9 inches in the wetland pits.

- Following the field visit we met back with Mr. Brazier at his office per his request.
 - o During the follow-up I explained to Mr. Brazier that we observed wetland on his property that was determined using the techniques of the 87 manual.
 - o I explained that the road was fill in the wetland in an amount that exceeds exemption
 - o I explained that the next step would involve him receiving a restoration order
 - o I explained that the restoration order would detail how he could regain compliance with WCA and also provide him an opportunity to make a WRP Application.
 - o Mr. Brazier contested that the area was a wetland, but later on referenced the potential for wildfires within the "swamp" and that even with a tracked vehicle it would not be possible to drive in the area
 - o Mr. Brazier indicated he felt a fire break installed at some point downstream of his property was acting as a dike thus making his site wetter than normal
 - I replied to Mr. Brazier that the TEP would look into the possibility of this claim
 - o Mr. Brazier asked questions about farming and draining wetlands on agricultural land to which I answered that under certain circumstances wetland are allowed to be drained and drainage features maintained on agricultural lands.
 - o Mr. Brazier indicated he intends to construct similar roads/trails on other parts of his property in the near future.
 - o Mr. Brazier maintained that he thought the area was not wetland to which I replied that he would be welcome to have his own wetland delineation performed and that the TEP would be happy to review the information.
 - o Mr. Brazier mentioned involving lawyers to which I suggested that perhaps a better first step would be a wetland delineation performed by his own consultant.

- Meeting adjourned.

Exhibit 16

Helping Producers Implement Best Management Practices For Conservation Purposes in Kittson County



410 South 5th Street - Suite 106 - Hallock MN 56728 - Phone (218) 843 2619 - Fax (855) 744-0398- www.kittsonswcd.org

Minutes of the Meeting of

Kittson Soil & Water Conservation District Board of Supervisors

Held on Wednesday July 14th, 2021 at 8:00 AM at the Kittson County Courthouse.

The Board of Supervisors of the Kittson Soil and Water Conservation District held its regular scheduled meeting on Wednesday July 14th, 2021 at 8:00 AM at the Kittson County Courthouse. Members present included: Chairman CJ Peterson, Vice Chairman Andrew Muir, Secretary Carey Mortenson, Public Relations Sam Anderson and absent was Treasurer Joe Wilebski.

Others present were District Technician Justin Muller, District Technician Jeremy Benson, District Manager Jamie Osowski, and District Conservationist Jim Schwab

The minutes from the June 9th, 2021 board meeting were approved upon motion by Muir and seconded by Mortenson and unanimous vote of supervisors.

The treasurers report from June 2021 were presented to the board by District Manager Osowski. Upon discussion on the June 2021 financials, motion was made by Anderson and seconded by Muir and unanimous vote of supervisors.

NRCS Report: Jim had a field visit and had to leave the meeting early so he gave his presentation first. Jim reported that he will be busy with CRP as he works to get all 168 expiring CRP checks done before he retires. Jim reported that the RC&D employees will be coming up to conduct site checks, just not sure exactly when. He reported that he had 1 EQIP contract approved for Younggren Farms for 2 drop pipes. He also stated he anticipates a few more CRP CLEAR 30 contracts, so he will be working on them.

New Business:

Wagon Wheel Ridge WCA Application: Justin reported to the board that he held a TEP meeting with BWSR and the DNR on July 2nd and presented the findings from that meeting. The findings from the meeting show that the TEP recommends denying this application due to the inconsistency of the application and they stated that they want to do more impacts to the area. Discussion was had on the findings and on the next steps. Following more discussion, Motion was made by Muir and

seconded by Mortenson and unanimous vote of supervisors to deny the Wagon Wheel Ridge application and move on.

Soil Health Demo: Next Justin presented the Kittson SWCD Strip Till/Conservation Tillage demonstration contract to the board, he touched on a couple areas and discussion was had on section 7.4 of the contract on producer repayment. The board stated they would like to see this at 100% pay back instead on 150% since this is a demonstration plot. Motion was made by Muir and seconded by Anderson and unanimous vote of supervisors to approve the Kittson Soil and Water Conservation District Strip Till/Conservation Tillage Demonstration Contract with the changes discussed for section 7.4.

Hill Township: Justin reported that he has been in contact with Erik Younggren on a potential project in Hill Township Sections 32 & 33. Staff flew the project with the drone and showed a video and pictures from it. Staff asked the board if they would like to use Houston Engineering for this project similar to the Anderson Project in Thompson Township. Following discussion, Motion was made by Mortenson and seconded by Muir and unanimous vote of supervisors to handle this project the same way we are the Anderson project with Houston Engineering and provide 75% cost share on the engineering while 25 % will come from Hill Township. Justin stated that funding for this project could come from the 1W1P fund the plan and he will meet with the Hill Township Board to discuss this further.

Adoption of the Two Rivers Plus One Watershed One Plan and Entity Agreement: BWSR approved the plan for the Two River Plus, but it needs to be locally adopted by all participating LGU's. Motion was made by Muir and Seconded by Mortenson and unanimous vote of supervisors to approve the resolution to adopt the plan. Next discussion was had on the Entity agreement, Jeremy laid the agreement out for the board and following discussion, motion was made by Mortenson and seconded by Anderson to approve the Two Rivers Plus Joint Powers Agreement. Next Jeremy stated we need to appoint members for the JPE, following discussion, motion was made by Mortenson and seconded by Anderson to appoint Andrew Muir as the primary member of the JPE and motion was made by Mortenson and seconded by Muir and unanimous vote of supervisors to appoint Sam Anderson as alternate member for the JPE. The next JPE meeting will be Thursday July 22nd at 9 AM at the Kittson County Courthouse. Locations for these meetings will be between Greenbush, Lake Bronson and Hallock.

Staff Reports:

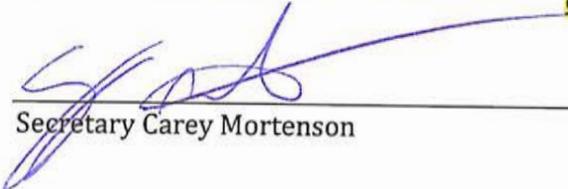
Heather is still on FMLA leave until August 3rd.

Justin gave his District Technician report, he stated that he attended a grazing training in Mahnomen. He gave an update on the last TSA board meeting that he attended with Joe, he stated that we will be receiving \$12,000 but we will also be paying in dues for the services. The TSA will be conducting a PRAP to evaluate what they can do to improve the services. Justin reported that he attended the SFA Workshop at Michael Larson's, the Walsh County Soil Health workshop, and he has been working on spraying CRP and doing project and cover crop site checks.

Jeremy gave the District Technician Report, he reported that they have not done any buffer seedings since it is so dry. He has been calling those on the list to keep them updated on where we are with the seedings and they are not in violation of the law since they are not planted due to mother nature. Jeremy stated that he has received no contract from Dan Hunter on his Notice of Noncompliance. Jeremy also stated that he attended the last TRWD board meeting along with Matt Fischer from BWSR to ask some more questions on withdrawing. Jeremy stated that he ran the rainfall simulator at the SFA Workshop and Michael Larson's and it went well.

Jamie gave her report, she reported she is prepping for the upcoming financial audit. Next, she stated that following the Kittson County Fair we are running low on promotional items. She showed the board some ideas and mentioned that she will get some samples from a couple different companies. Next Jamie reported that she was summoned to jury duty on July 7th and presented her work release. Finally, Jamie reported that County Administrator Dillon Hayes has resigned from his position in Kittson County, his last day will be August 13th. She updated the board on upcoming meetings.

The next board meeting will be held on Wednesday August 11th, 2021 at 8 AM at the Kittson County Courthouse.


Secretary Carey Mortenson

8-11-21
Date

**Addendum to: Appeal of Wagon Wheel Ridge
TEP's July 16, 2021 Findings and Order**

To: Kittson County Board of Water and Soil Resources and Travis
Germundson

From: Steve Anderson, Anderson Law Group, PLLC on behalf of Glen
Brazier and Wagon Wheel Ridge Inc.

Copies. Marcus B. Jardine; Amy Mace Justin Muller, Matthew Johnson
Glen Brazier and Roger Brazier

Re: Submitting additional evidence and argument into the record for
appeal

Respondents respectfully submit the following evidence received by Respondents after the original date the of Appeal in this matter and asks that this Addendum be included in the record for the consideration by the Dispute Resolution Committee (DRC) and the full BWSR Board.

ADDITIONAL EVIDENCE

ITEM 1.

Following the filing of Appeal and at the request of Travis Germundson, the Respondents and the BWSR agreed to place the Appeal in abeyance to allow one more attempt to reach a settlement between the parties (Exhibit 1). During conversations between the parties, Justin Muller provided a drawing defining the position of the BWSR regarding a ditch at issue (Exhibit 2). In the course of these conversations, Mr. Muller indicated that he had not contacted the City of Karlstad, the Minnesota Highway

Department, or the Airport Commission to determine the impact of the BSWR's desire to block the flow from the culvert under Highway 11.

Respondents request Exhibits 1 and 2 be placed into the official record as well as acknowledgment by Mr. Muller that the City of Karlstad, the Minnesota Department of Transportation (Highway Maintenance), nor the Airport Commission were consulted prior to the creation of Exhibit 2.

ITEM 2.

Page 9 of the original Appeal describes a July 15, 2019 meeting that occurred between Glen Brazier, Matt Johnson, Justin Muller Stephanie Klamm and Anthony Ewell. Anthony Ewell (DNR officer at the time) sought permission to access Wagon Wheel Ridge Property. The meeting was recorded by Mr. Brazier and portions of the recording appear in the original Appeal. Since that time, the Respondents received additional information about the meeting and the actions taken on July 15, 2019 by Matt Johnson, Justin Muller Stephanie Klamm and Anthony Ewell that demonstrate their actions exceeded the permission granted by Mr. Brazier.

At this time, Respondents have only a "rough draft" of the July 15, 2019 transcription. (Exhibits 3, 4 and 5). Respondent will provide a more complete version of the transcriptions prior to the hearing. At this time, Respondents ask that the rough drafts become part of the official record as well as a summary of the meeting written by Mr. Ewell (Exhibit 6) and a summary of the meeting written by Ms. Klamm (Exhibit 7). In addition, Mrs. Klamm references a map she brought to the July 15 meeting. Respondents ask that the map be added to the record as well.

ADDITIONAL ISSUES

Given the new evidence that became available after the original Appeal was filed, Respondents request that the following additional issues be addressed in the Appeal hearing.

1. Whether the actions taken by Matt Johnson, Justin Muller, Stephanie Klamm and Anthony Ewell on July 15, 2019 exceeded the permission granted requiring all evidence gathered by Matt Johnson, Justin Muller Stephanie Klamm and Anthony Ewell be omitted from the record.
2. Whether any actions should be taken by the DRC and BWSR until the City of Karlstad, Minnesota Highway Department and the Airport Commission are specifically joined in this action.

Submitted by:



Steven Anderson.
Anderson Law Group PLLC
1010 Dale Street North
St. Paul, Minnesota 55117
steve@andersonlgmn.com
(651) 253 - 8289

Exhibit 1

Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, Minnesota 55155

In the Matter of an appeal filed for
Glenn Brazier of a Wetland Conservation Act decision
located in part of the NE¼ of Section 26, T. 159N, R.45W,
Deerwood Township, Kittson County

**ORDER APPEAL
IN ABEYANCE
AND STAY THE DECISION**

Whereas, a petition was received on August 16, 2021 from Steve Anderson with Anderson Law Group PLLC on behalf of Glenn Brazier to appeal a Wetland Conservation Act (WCA) Notice of Decision, involving property located in part of the NE¼ of Section 26, T. 159N, R. 45W, Deerwood Township, Kittson County, and;

Whereas, the Local Government Unit (LGU) administering WCA at the location of the Notice of Decision is the Kittson County Soil and Water Conservation District (SWCD), and;

Whereas, an after the fact WCA no-loss application was submitted by Steve Anderson with Anderson Law Group PLLC on behalf of Glenn Brazier on May 3, 2021 in response to a WCA Restoration Order, and;

Whereas, the October 15, 2019 Restoration Order identifies three areas of impacts to wetland associated with the excavation of a ditch, construction of a road, and placement of fill material totaling 74,500, and;

Whereas, the timeline to make a final decision on the application was extended by the LGU, and;

Whereas, the LGU issued a final decision denying the application for a no-loss on July 14, 2021, and;

Whereas, the July 14, 2021 decision was based on certain findings and recommendations from the Technical Evaluation Panel (TEP), and;

Whereas, the TEP findings indicated that the application failed to address all of the wetland impacts and does not qualify for a no-loss, and;

Whereas, to qualify for a no-loss under Minn. Rule 8420.0415 the landowner must prove that no permanent loss of, or impact to wetlands will occur from an activity, and;

Whereas, the petition contends that the appellant generally agrees with a majority of the TEPs July 14, 2021 procedural findings but objects to several statements, and;

Whereas, the petition contends that the Department of Natural Resources (DNR) created a fire break through a portion of the wetland in October 2012 that resulted in piles of organic material deposits, and;

Whereas, there is no documentation that the alleged DNR fire break caused impacts to wetlands, and;

Whereas, the petition contends that the landowner cleanout an existing ditch along the property and constructed a road to gain access to a fire break, and;

Whereas, no historic aerial photographic evidence has been submitted that documents the existence of a previous functioning ditch in that location, and;

Whereas, the petition indicates that Mr. Brazier obtained approval from Middle Snake Tamarac River Watershed District (MSTRWD) in 2016 for the construction of the ditch and road on the property, and;

Whereas, MSTRWD is not the LGU responsible for making decisions under WCA, and;

Whereas, the petition indicates that the excavation of the ditch and construction of the road took place late in 2018, two years after communication with MSTRWD, and;

Whereas, procedures should be established to allow the appropriate designated LGU responsible for the administration of the WCA the opportunity to be noticed on any proposed projects affecting wetlands, and;

Whereas, the Notice of Decision indicates that a portion of the alternations listed in the application are located within a public water wetland not subject to WCA jurisdiction, and;

Whereas, the impacts described in a DNR Public Waters Restoration Order issued for an adjacent public water wetland (#35-28W) need to be addressed separately with the DNR, and;

Whereas, TEP has indicated that they would be willing to reviewing a new no-loss and replacement plan concept if adequate sequencing measures are taken and the project purpose is clearly defined, and;

Whereas, a replacement concept plan generated by members of the TEP was presented to Mr. Brazier's legal counsel, and;

Whereas, Legal counsel for Mr. Brazier has requested that the appeal be placed in abeyance to discuss a plan to minimize the existing wetland impacts and components of restoration and replacement, and;

Whereas, the Board of Water and Soil Resources' Executive Director may place the appeal in abeyance and stay the LGU's decision until the appeal is resolved, and;

Whereas, the request to place the appeal in abeyance extends the time period BWSR has to render a final decision on the appeal;

Now Therefore, the Board makes the following Order.

ORDER

The Board hereby places in abeyance the WCA petition for appeal filed by Steve Anderson with Anderson Law Group PLLC on behalf of Glenn Brazier to appeal a WCA Notice of Decision made by Kittson County SWCD on July 14, 2021, involving property located in part of the NE ¼ of Section 26, T. 159N, R. 45W, Deerwood Township, Kittson County. The appeal will be held in abeyance and the decision stayed for 30 days from the date of this order to allow time for the submittal of a complete application. Upon submittal of a complete application to Kittson County SWCD this order further extends the abeyance another 60 days until December 13, 2021 for Kittson County SWCD to make a final decision on a no-loss/replacement plan application, pursuant to Minnesota Rules Chapter 8420.0905 Subp. 4 B.

Dated at Saint Paul, Minnesota this 13th day of September 2021.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

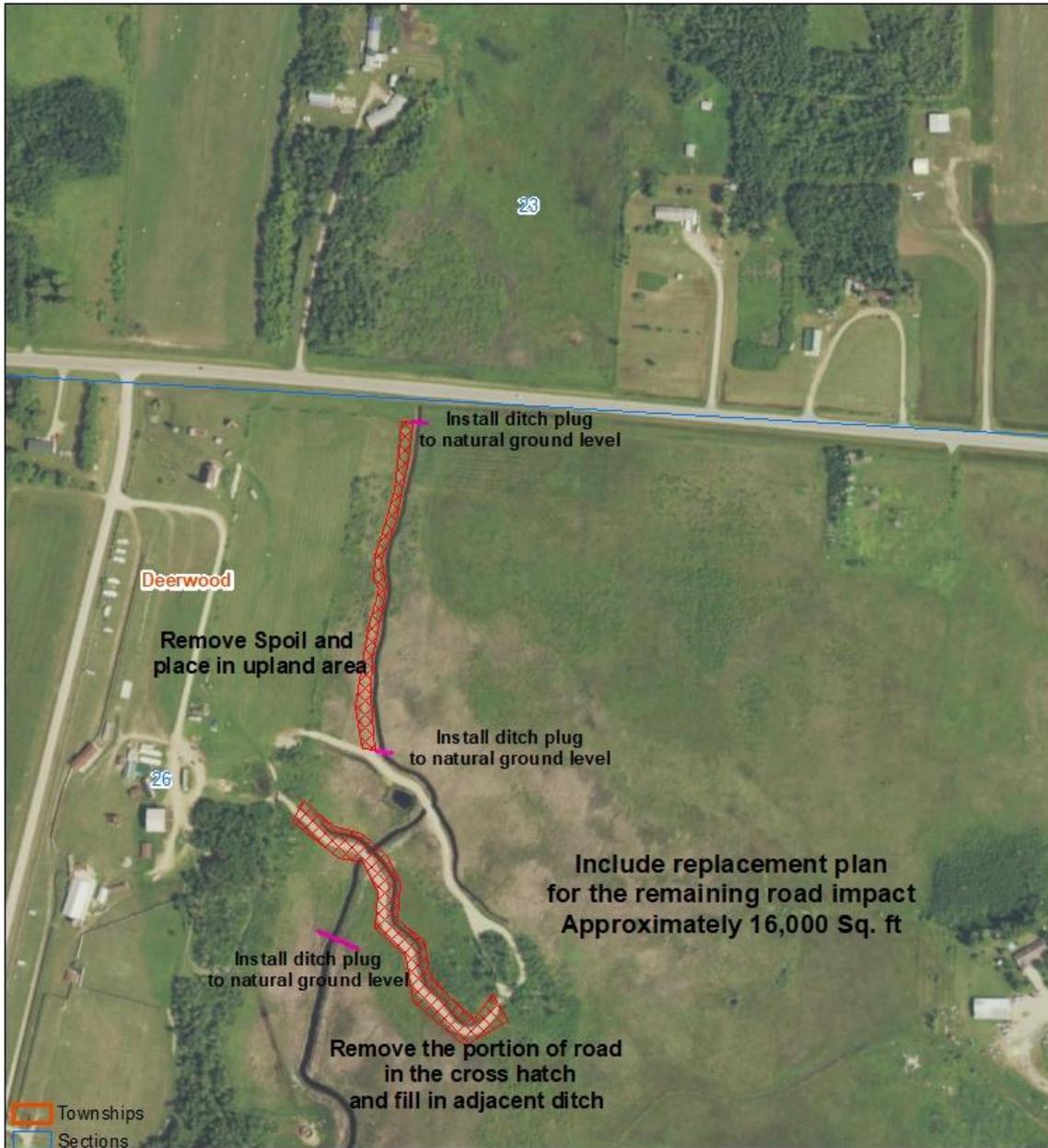
By: _____

John G. Jaschke, Executive Director

Exhibit 2

Wagon Wheel Ridge Replacement Guidance

9/2/2021
by: Justin .Muller
Kittson County

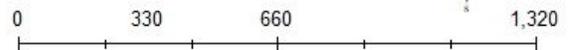


Best Available 2019 NAIP (non-public)

RGB

- Red: Band_1
- Green: Band_2
- Blue: Band_3

1 inch = 373 feet 1:4,473



Exhibits 3, 4 and 5

Speaker 1 ([00:12](#)):

Yeah. A little bit. Just have a seat there. Yeah.

Speaker 2 ([00:37](#)):

I'd like to put my vice president on the line if I guess now, what were you doing either, Dan? Okay. I got, uh, I got some of the people from the, uh, this is Anthony. He's the first one, the officer from the DNR and the Ferber. I've got Stephanie clam and you are in our area hydrologists out of deep river area hydrologists. And I've got

Speaker 3 ([01:19](#)):

Johnson, the Minnesota board of water and soil resources, the wetlands.

Speaker 2 ([01:23](#)):

Okay. And Justin Mahler. Couldn't SWCD what does that tell them? Water conservation. Okay. Okay. Uh,

Speaker 3 ([01:40](#)):

Thanks sir. So basically we're here. Um, these folks are here to come out and check, check the area. There was a report of a possible violation that they want to come out, take a look to mustache. She had, there is a violation, um, if not or whatever. And if there is, you know, do what they need to do to determine, you know, the extent, anything like that. So that's the reason they're here. There isn't, you know, we're not here to where the cops on you or anything like that.

Speaker 2 ([02:13](#)):

Well, I would hope not, you

Speaker 3 ([02:15](#)):

Know, it's a friendly visit for the most part. Do you mean no, that cordial as we can be with each other, it's going to make things a lot easier. We just want to get through this and figure out what we need to do and move on from there. Okay. Okay.

Speaker 2 ([02:32](#)):

So first question I have is there was a complaint filed. It was okay. So what was the complaint I want to, I want to see the substantive side of complaint. So I want to see that we take verbal complaints, phone calls, so anybody can call up. You don't get their name. You don't have their phone number. You don't have nothing anonymous complaint. Yeah. Okay. So you really have no complaints then. Well,

Speaker 3 ([02:57](#)):

Somebody drove by and saw the equipment ditch and they called somebody at the DNR and then they informed Oscar, Jeremy. And I came up to take a look because we're allowed to do that.

Speaker 2 ([03:09](#)):

So you have no record of who called him, who made the complaint? We can't give you a on what's the hard for me to give him information if I don't know who's making the accusation, right?

Speaker 3 ([03:21](#)):

Yeah. But you know, I mean, it's the, the person that can all watch to remain anonymous. You know, obviously we have the legal right to okay. To, uh, you know, you

Speaker 2 ([03:32](#)):

Have a legal right to investigate, right?

Speaker 3 ([03:34](#)):

We do. Okay. You have a complaint and you know, you can come on Jeremy and I, or any law enforcement officer, we have the right to come on to private property without permission, um, to take a look and we did in the shot. And then we came back and from there we contacted you and you know, we want to get you involved as much as possible, obviously.

Speaker 2 ([03:59](#)):

Okay. So you went on my property without my permission. We did. Okay. All right. Who, who went up?

Speaker 3 ([04:04](#)):

Myself and conservation officer during the war,

Speaker 2 ([04:07](#)):

Jeremy. Okay. All right. How do you spell winter, Robert w oh, I forget it. I can do that. Good at it. Oh, how was it? W O I N

Speaker 3 ([04:20](#)):

R O w I E low in a row. I Shinji, I suppose. And then from there, um, you know, since we're allowed to come on, they are not obviously, because they're not licensed peace officer. So from there we contact you, you know, you have 100% right to not allow these folks to be on your property. Um, that's fine. Um, the other option is from that point, uh, we would apply for warrants to allow them, um, in the past generally landowners, they allow them to come off and it a hundred percent on you. It's your, it's your property. You can, you have the right to do that.

Speaker 2 ([05:04](#)):

Great. So then, uh, so then you contacted me and sent me this year thing without, without even checking with anybody to see, uh, how the lamp was zoned and if it was indeed wetlands or not wetlands,

Speaker 3 ([05:16](#)):

That, that piece of paper there, um, basically it's a notice to you that there's a possible violation and that you will be investigated. That's what the RPM notices. It's not a citation. It's not a cease and desist order. It's not anything that's gonna get you any lawful reprimand, anything that's just basically occurred. She and I stopped by the office to anywhere I was going to give it to the person.

Speaker 2 ([05:45](#)):

Do you find, it's awful funny that you find it. It's awful funny to look at this year. Uh, Tony, they call him Tony. Yeah, I heard it actually. Okay. Um, that I get up, I get a DNR officer come into my office right at the first day of the, of the kicking up country event off there, which we spend all this time getting ready for and doing all this. You find that that's maybe just a little bit strange,

Speaker 3 ([06:11](#)):

You know, I, to be honest with you, I had no idea.

Speaker 2 ([06:14](#)):

Okay. So the guy calling in, he had no idea that he was going to cop some probable here and both said that. Do you suppose you would investigate if this fine talked not to be anything? Are you going to investigate that guy wherever called in or person? I should say like non-gender um, are you gonna investigate that then? Because that's harassment. And does this, does this guy, does this guy know that that was wetlands guy person? Does this person, does he know that that's my plans.

Speaker 3 ([06:44](#)):

I don't know. Okay. This one. Do you know if it's wetlands? I don't. That's why these phones. Okay. All right. Termin, whether or not it uses a wetland. Okay. All right. That's all reasonable. Okay. All right. Um,

Speaker 2 ([06:56](#)):

You're taking my time though. And you understand that I'm a pretty, I got a lot of stuff going on here. You do understand, we appreciate it. Okay. All right. You understand that? I try and do everything by the book, everything by the book, because I don't have time for any of this stuff. Okay. So

Speaker 3 ([07:16](#)):

What was the, uh, call symbolic and I wasn't involved with this. Maybe you can shed some light on that person that called in about doing work out there, that you talked

Speaker 1 ([07:28](#)):

To, how this came about was that there was a faculty, um, uh, long, not necessarily kicking up country

Speaker 4 ([07:36](#)):

Further down.

Speaker 1 ([07:38](#)):

And so when there's a Bacco and it looks like it's by wetlands and I've got my protective waters map, Justin's got his wetlands map. We have to investigate because lots of times it does come to where they are filling in the wetland

Speaker 2 ([07:52](#)):

And you're doing

Speaker 1 ([07:54](#)):

Our job. So that's how that all came about.

Speaker 2 ([07:56](#)):

She's like, you guys want some coffee by chance or no. Sure. Fine. No, thanks.

Speaker 3 ([08:04](#)):

I don't have to type, I got a drink.

Speaker 1 ([08:13](#)):

So when we get calls like that, or reports of activity, potential activity, conservation officers have to go investigate that. Yep. And that's when Jeremy, I came on, take a look at the property that we were looking at. It was probably one. Who was it there?

Speaker 3 ([08:31](#)):

I'm not sure if we're allowed to say that. Okay.

Speaker 1 ([08:38](#)):

So the first thing I do when I get complaints is I find out township section range locations. I pulled out my public waters map and I look at our GIS layers. Our GIS is basically computer program that has a bunch different files in it. The files delineated, Butland boundaries, rare, sensitive features. So I have to look at that your property borders kicking them country borders, a big, large linear public waters. Wetland was delayed back in the seventies. So it's under the jurisdiction of the department of national resources that if you want to fill or excavate in the space, then you have to get permits from mine. And so what my job is, I would like to go out there. There's a, there's a border, roughly a border, usually in to see if any work done out there is in the public waters. If it's not, then I step out of it. And of course to these guys. So that's what we want to try to get out there and take a look at it, to make sure that we're still following our rules and regulations to when there's a violation, I have to follow up with every complaint. Okay.

Speaker 2 ([09:52](#)):

Specifically, we'd like your permission

Speaker 3 ([09:55](#)):

For these guys to go up there to take a look. She just sits actually anything.

Speaker 2 ([09:58](#)):

Well, I will, I will tell you right now that it's a theme park and somebody trespassing on the theme park. What they're going to do is they're going to set off some stuff. It's all electronics. It's all this here. It's not just a little, a little thing. Okay. There's all of this under underground infrastructure. And if you walk by and up something and something goes off and you get hurt, can't allow that. Okay. Okay. I mean, and or if something, if something I broke, all right. So, um, uh, so I have to be, I have to be very, very careful to make sure everything is shut off all this here stuff, because it's a, it's a, uh, it's, it's like a universal studios. Okay. You know, if you walked into universal studios and you started poking around and all their stuff, I don't think that they would go out and you might get hurt, you know? So that's the same thing there. So, um, and, uh, um, and you gotta, excuse me, cause I talk loud cause they talked on a speaker phone a lot and they can't hear me. It's like, I'm used to talking a lot with them. Okay. So you understand that anyway. Um, I just want to be, I just want to be very clear here.

Speaker 2 ([11:07](#)):

You guys start to come and push me. You understand? I'm going to push back though. Okay. You understand that? I've had, I went along with everything all the way up to this. Let me, let me, let me explain a little something here. Let me explain a little something here. Um, I had a call from an officer. It must have been, uh, this was, uh, this was uh, oh, I don't know, two years back. And I got, got a call from somebody down there. Enforcement officer that I had. I R one of my people at, do you have a non DNR lab? And I said, I have no clue what you're talking about. We don't break the law. You know, we don't, we don't break any rules. We try and do everything we can. So I mean all checked, but I don't think we'd have any have anybody. This was so salt. That's on here. Okay. All right.

Speaker 4 ([12:01](#)):

And, uh, uh,

Speaker 2 ([12:04](#)):

So I checked and I, my, uh, shop foreman had taken the ex KGB general from Russia. I'm not kidding up for the ride. And we're riding out there on, on, on the land that we have permission to drive on. And in general, when we spoke, spoke, Russian had an interpreter behind in the backseat. How much vodka? They say, this is not a laughing matter. It's not a laughing matter because, because it in somethings get insulted, you take her to, you have two nations. All right. I got you. All right. So Jeremy told me, um, Jeremy told me that, you know what? I bet it was me that was driving. This was in the winter time though where the map tracks, uh, Hummer. Okay. Okay. No different than a snowmobile, you know? And he said, I was driving up along this way and I was cutting the crops. And then I was, I was looking back at the interpreter and I went over one vehicle with, and the signs are two, 300 yards apart. And I went one vehicle with over and I said, oh, and I turned back. And the general action is the interpreter what's wrong. And Jeremy sent the interpreter as well. We went on DNR lands here a little bit. And the general says, are they that picky here? Okay. And I got a call from that. Okay.

Speaker 4 ([13:36](#)):

So

Speaker 2 ([13:38](#)):

When that was a state school land over there state school lab, and I think they heated it over to the DNR. Okay. And it was, it was the summer before it was the summer before when they put those signs up. But along that, and this is, this is a, this is a wetland. This is swampy comes up to a Ridge. And I, you know, because it, because it's, uh, my, my, uh, stop off there and I was using this land. I went over and I took pictures out of the helicopter. And you guys, I'm sorry, drove on everybody. Else's land without permission to put those signs up. Great. Big rush through the whole thing when the group, some big track machine. Okay. So when I told that officer that I said, yeah, yeah, my guy accidentally went on 20 feet. I said, so, so, uh, yeah, come on over.

Speaker 2 ([14:31](#)):

And I'll, I'll, I, I got the, I got the pictures where you guys trespassed and everybody else was laughing. That caused an incident for me. It made me, it made this, uh, Russian, uh, customer, not even being able to trust what we do in the United States. So it's not a laughing matter. It's not a laughing matter. You got a coffee. He was money this year thing. So anyway, that's that, um, 2012, 2012, I lost a building over

here and that fire million and a half dollars. It cost me a million and a half dollars. And that's because the DNR refused to let our fire department back backward. Now I didn't make a big thing at the sink out of it because there was 11 other people and thought that lost their homes. So I didn't made a big stake about that, but I tell you what, I'm not losing any more money because of, uh, because of, uh, because of, uh, uh, uh, inadequacies of the DNR and, and not allowing the fire department to do this. You can't, you can't predict that black Hawk helicopters out there dropping water in that. And I have started this theme park. I started to see Brett before the year before that. So I lost everything I had done. Okay. It's not going to happen again. All right. So I don't have a real good taste in my mouth for who you work for. Okay. I'm sorry. I understand. So, so, um, you're, you're you, you get what I'm saying?

Speaker 2 ([16:01](#)):

So yeah. There's going to be some push back now, obviously you want to take that that's a wetland.

Speaker 3 ([16:08](#)):

Well, that's what I'm here to determine whether or not the work that you did was in the wetland or not the only reason we're here. We're not trying to push you. I mean, I know you've had some bad experience with the Minnesota department of ed just a little bit, so I totally understand your frustration and all that. I can appreciate that for what that's worth. You know, we'd like to allow these people to take a look,

Speaker 2 ([16:34](#)):

What did they need to look for? You? You must have a map

Speaker 1 ([16:38](#)):

Math, but what my, what I'm looking at is I can not tell if it's public owners or there's lack of class. That's what I'm looking at. So I have a rough boundary, probably a little bit better, some, a rough boundary. This is kind of drawn out by people's interpretation. I think the boundary probably goes a little more this way, but I don't know exactly where the work was done. I have photos, but without having a GPS

Speaker 3 ([17:07](#)):

And we walked up to the edge, you know, we didn't walk out onto the road. We walked up to where you had the snow fence to here and took pictures from, from where we were. Well, first off this school, this school,

Speaker 2 ([17:22](#)):

This school was right here. This goes out here through here and back here is that loader a ditch. That's the rule that put it and here's that. And here's the, uh, you've probably see the crop, the culvert here. They went from here to there and clean that out. Okay. And we built that road out of, uh, the tailings Fort. And then we went from here and we went back here. Now

Speaker 4 ([17:42](#)):

I think it goes around here and we are right, right. Uh, right here. I have my alien invasion thing right here. So he went around that. Then I think they went this

Speaker 3 ([17:55](#)):

Way in the west. Yeah. She was Jeremy and I, we went up right there, here. I think we might've stepped over the fence. You get a look at the ditch. And I was, as far as we went, we didn't walk in where we could have, but out of respect you, we wound up. All right. We had to go out there to take a look, to see if it was worth. All right. Um,

Speaker 2 ([18:15](#)):

When I bought this land it's I bought agriculture. And if you and I, and I checked with the, uh, with the central or the mid states, the Midstate, okay. The middle of state, Tamarac river watershed district. They told me it's agriculture and I can do anything I want on that land. Okay. And, and you guys had called me before, because you guys had called me before another time here, where we put, we put some drain tile in that little triangle, across from the Legionnaire, you know where that is. So they'll try and go there. We put some drains out there to, to, to, to, uh, I'm trying to get rid of some of the surface water there. Okay. Cause it's kinda like, uh, anyway, you guys call me and, and uh, uh, no, um, Nope. Nope. I think that back the Tamarac river watershed called me, said that you had called them and that we put this area and I didn't have a permit.

Speaker 2 ([19:37](#)):

And I thought we didn't have a permit. Like I said, I do everything by the book and the drain tile off, it was supposed to have gotten the permit. They didn't, there was nothing I had to fill out the thing and there it was okay. So they got jurisdiction over that. They got jurisdiction over mine because you had went to them. And so I went to them and that's, it's agriculture, Latin it's private land, even do what you want. So that's, that's the reason I went ahead and did it, you know, I don't know if you're supposed to hire an attorney and go through 10 different outfits every time you do something to figure out who thinks they got authority and what's, what's what, so, so, uh, that's my case. All right. Okay.

Speaker 3 ([20:17](#)):

You know, we're dealing with Wildlands on the enforcement side, so it's tough for me to interpret. So I can imagine it's probably hard for a property owner to understand there's a lot of different things going on. And, uh, you know, the best advice I could have for anybody is to contact the DNR, the county, soil, and water anytime,

Speaker 2 ([20:39](#)):

Or maybe the guy that's in that has to say the San rock river watershed.

Speaker 3 ([20:43](#)):

Yeah. One of the things that keep in mind here is yours overlapping jurisdictions. Right. Okay. So yeah, you own the property. And what happens with water movement, water, drainage, culverts, things like that. There may be a tie to, in the middle of snake, Tamra ag watershed district, right? So then there's a wetland out there. Also the, the Kipton county jurisdiction for wetland regulation is with the Tony's soap and water conservation district. And then in this case where there's a, also a public water, that's been identified out there, the public water think of lakes and rivers, but there's also been certain wetlands that have been designated as a public water wetland, meaning big enough, that's maybe gumption features that are more beneficial to the public that would be held in jurisdiction by the DNR. And that's just, um, regulating impacts like draining and filling excavation, those types of things that happen in those areas.

Speaker 3 ([21:50](#)):

You know, you Ms. Bell on the property of the property, around it. And, uh, given, you know, zoning, if there is, or wetland regulations, those things, how they all interact, how appetite to what you do with actually in, you know, the public water basin or the wetland, the shelf sort of process here, um, you know, Tony's been out and he's seeing what it looks like. It could be a wetland and he maybe doesn't know where the boundaries of those areas are, or the extent of a potential impact off there. So the notice you received from him that resource production notice say, Hey, I found something I'd like to bring some experts on wetlands and public waters in that's us. And what our job is, is to try to figure out where, what ones are and are not. And if whatever activity you've done occurred in those, and then from there, we can steer you toward a path of, um, application to keep it, or maybe come out or depending on how the regulation applies in those certain scenarios. And we give that feedback to you and to Tony, and then we've got a path going forward. Basically,

Speaker 2 ([23:11](#)):

Let me backtrack a little bit after the fire, after the fire, 2012, you guys built a that's at the south end down there. And when, when, when was this made? What, when was his main wetland?

Speaker 1 ([23:28](#)):

They started the inventory. The maps were finalized from 1980. Okay. Because

Speaker 2 ([23:34](#)):

All this, when I bought this, this was all pasture and it was all, it was all pastor. And then when I, when I, uh, when I see Steph pasture is that of course it to grow up in, in, uh, in grass and cocktails and what have you, but there was never any water here. And, and, uh, and I mean, I saw the stuff too, that if you guys did down there. And so when you talked about the impact and somebody impacting a wetland and all this here stuff, that's okay for you guys to dam it up down there, but you dam that up four inches. Not at that end, there's an eight foot drop from this culvert. So the next road down there, there's eight foot drop. It's eight foot elevation. This water, shouldn't be standing here, okay. Something in between this holiness. And that's exactly what it is. And it means everything on usable for all the landowners have all this here and that's the DNR. And, uh, and I think that's Steve co-op, but I'm sure you, I'm sure that's the guy who used to have to sell with the backhoe out there or whatever he had or whatever, and, and, uh, the extent of steel for that. So just be ready

Speaker 3 ([24:41](#)):

To put it that way. He'd already talked to his lawyer.

Speaker 2 ([24:43](#)):

Yup, yup. Yup. So, I mean, again, that's a sour taste in my mouth now. I normally don't get involved in anything and I just try to stay clear of everything because I just don't need all this here, stuff. I don't need any aggravation. I don't need any, any bad feelings community on neatly back from discrimination from the state. They wouldn't have to black on black Hawk helicopters off protecting my stuff. If they wouldn't have been, if they wouldn't have been important, I'm going to tell you that right now. So, so, um, anyway, but I want to do what I can and if we did, if we did something wrong, well, we'll just do something director fight, but I want to be darn sure that I'm not doing your work for you. Oh no, because you're the one that should investigate and said, okay here. See, I said, you know, what are you

doing here? You know? And this has devastated instead of coming in, asking me and telling me if I, if I, if I, if I know I did something wrong or, or asking me what the deal is, so your job to investigate it, right. Not my job to tell you.

Speaker 3 ([25:37](#)):

And that's why we bring premium experts then. Okay. But we need your permission to go out there so they can look at, okay, what do you say

Speaker 4 ([25:48](#)):

Hello? I mean,

Speaker 2 ([25:49](#)):

As I already stated, you know, if there's, we're just here to see if there is a violation, we don't even know if there's a violation because we haven't been out there. We haven't, we can see some stuff. Justin Malek, Josh Hutton. Yep. I got it. Oh, I got it right here. Justin Moore. Yep. And you're from Hopkins, is it? Or

Speaker 3 ([26:14](#)):

No, it was only me originally, originally I'm from all over. I grew up in central farm town. Okay. Okay. Yeah.

Speaker 2 ([26:24](#)):

So continue. I'm sorry. No, bro. Yeah. If we go out there and if you'll allow us on her property and we go out there and go, this isn't what we thought it was. Um, that was great. Then I know we unfortunately wasted everybody's time, but if there is a problem, then we just work to a solution. Everybody can live with it and, you know, list solutions. Some people are going to be happy and they'll be blocked. So it was, we tried to find that middle ground where everybody can be happy, but sometimes, unfortunately it's not the way to work. you there. Yep. Yep. Yep. Okay. Um, they don't have a satellite image of this. Uh, let me see here. It's right there. Okay. That's right there. This is bear comes through here. It might have crossed across here. So you're saying here now, um, uh, Stephanie, Stephanie, right? Yep. That, yeah, I apologize. I can't can ask my grandkids name anyway. So this is wetland. So this is not

Speaker 1 ([27:52](#)):

Well, no, we think it's all wetlands based on, wait a second. My interpretation, my interpretation. All right. I have my rough delineation at blue line.

Speaker 2 ([28:01](#)):

So all, anything when a cat tail on them is your interpretation is wetlands. Yeah. Okay. Well that don't mean much. Okay. Anyway.

Speaker 3 ([28:11](#)):

So for an order, for an area to be wetland attest to meet three specific criteria has to have wetland plants because they have a wet lender. What we call a hydric soil and I need to have a water source or hydrology. And we look for that hydrology within 12 inches of the soil surface. So when we go out and look for whether or not, whatever you've done is in a wetland, that's what we're going to look for is the

point on the landscape where those three parameters are met. And if we find that it's not the case at any point along the project area, then it's not a wetland. Um, looking at the maps and photos looks like there's some pretty good water out there. And generally when you've got water standing on the landscape and that's part of the state worldy event for about two weeks and

Speaker 2 ([29:03](#)):

The state did up on the salt, then that's okay. The back up the water and then call it a wetland is what you're saying.

Speaker 1 ([29:09](#)):

Well, no, that wetland has been established in 1984. Yeah. It's been there for a long time. So

Speaker 2 ([29:18](#)):

No, but you just said that this is a wetland and this

Speaker 1 ([29:22](#)):

We don't, I don't know if that's a wetland or not. I haven't been on

Speaker 2 ([29:27](#)):

Foundry. Is that okay?

Speaker 3 ([29:31](#)):

Uh, public waters, lot one. So there may be other wetland out there. That's not under the jurisdiction of the public portion of the state law. What ones that are not public waters are regulated by the state wildlife conservation act. And so there they're similar rules, but they're administered a little bit different. So the agency that makes decisions on what can happen in those is different to absolutely look for is that, you know, try to help fine tune that blue line. Stephanie can say, well, here's where the DNR jurisdiction and that portion of the rule applies. And if there's wetland on the other side of it, then it would be the jurisdiction of the conservation act similar but different.

Speaker 2 ([30:24](#)):

And you know, all I did was clean this, clean this out, that's all I did. I cleaned it up. So,

Speaker 4 ([30:35](#)):

Um, and, and

Speaker 2 ([30:40](#)):

We better get together on this here,

Speaker 3 ([30:43](#)):

Down here,

Speaker 2 ([30:45](#)):

Because there will be a fire fire, uh, suppressing put in there. So, you know, whether that's, uh, whether, whether that's a 20 foot wide gets or whatever, and that's where the water or whatever, it's, we're going to have a fire suppressant. But I mean, not gonna, I'm not going to sit here and I don't think anybody would want to sit here. And, uh, yeah, you can put a 30 foot Knight down there. We can, we can at least have something here that we can get across to fight the fires. Cause I can't afford, I've got several million dollars invested in this and I can't afford to have that come through here. One more nap if you got the whole thing, you know, and last, last time the fire was right up to those right up to the deal. So I'm talking about down here, there was no way to the black Hawk helicopters could even, and they were definitely not a right here or a pond right here. And there's no way that they could have knocked the flames down. And the next one by the 10, the next month, they'd still be a hundred feet arrogant. So that's, that's not cocktails, that's fuel, that's fuel. And, and um, and like I said, it's, uh, it's uh, so something's going to have to be done there. Something's going to have to be done.

Speaker 3 ([31:52](#)):

Right. And there's, there's processes to how we're all work in wetlands in both regulatory programs. So oftentimes it's a, what we prefer is identify where wetland boundaries are and are not first. And then you've got a goal for your project in mind and you would put that down on an, on an application typically if it's in the wetland and then we evaluate that basically and make sure it's consistent with the regulatory aspect of the program. So, um, that's not to say that, you know, whatever you've done out there has to come undone. We don't know that yet because we don't really know what your goal and project out there.

Speaker 2 ([32:40](#)):

Well, I like that. I'll just give you a heads up. If I got to undo anything, it's going to be a fight all the way to the state Capitol. And you're not going to like the outcome, but because then, then you're gonna lose a whole bunch of power by the time it's all over with. I'm just, I didn't do anything. I didn't do anything that affects any wildlife, any drainage, anything. I didn't do anything.

Speaker 3 ([33:04](#)):

That's why I'm here to figure that out. Okay. You're still locked up. Tell me you called in. Um, so I guess at this point, it's up to you, um, allow permission for the spokes to go out there and check it out. That'd be great. We'd probably end up, no, I don't know much about it, but we'd apply for a warrant to allow them to go out there and take samples or do whatever it

Speaker 2 ([34:25](#)):

Is. Two days have drones. We

Speaker 3 ([34:27](#)):

Can do that, but if they need to physically take something out of the ground, if you don't want to give them permission, you know, I mean, we can take a helicopter and hover this far out or something. Okay.

Speaker 2 ([35:00](#)):

And according to your complaint here, I think you admitted a to that. I cleaned a dish, right.

Speaker 3 ([35:13](#)):

Ditch there. And I don't know if there was, you know, they have record of a drainage niche there at all on or not. Um, you know,

Speaker 2 ([35:22](#)):

Well, I don't know they got a call, but then the thing and then runs through there, you know? So, I mean, you could make all kinds of, I don't know this, and I don't know that because it was brought over with the cap tables and in may the cattails and new creatives. And it's, like I said, uh, eight years ago when I bought the land, this was all, this was all your drive anywhere around here. So anyway. Yeah. That's, you know, and that, and I mean that you have dry years and wet years and this year as a with your obviously, you know, and, uh, and, uh, and, and the other thing to remember here, who do you, I think you've got more power here than what you think. Okay. So I'm on the airport commission here in town. All right.

Speaker 2 ([36:11](#)):

This water is backed up all the way up to enter the airport. The airport is to wet. You can't use the airport. That's not a good thing. The state went through and they replaced the call works in easier niches so that the water would flow flows down to here. There was no place for the water to go. All right. So the drain is year stopped to do this. And this just naturally gets built up and in, in this, in this ditch to get it out to here. When I, when I did this, all that does is it just takes it and moves it down still the same spot, but it just moves it. It moves it across here where it had, it had grown back up, grew back up. Yeah,

Speaker 3 ([36:49](#)):

Watch my grammar here. But that's the worst. That's not so bad. Okay. And when they did here

Speaker 2 ([37:03](#)):

Is what I did here is I need to keep these, I need to keep these ponds full by the way. All right. This is called snake island. Nope. Okay. We have to have giant snakes in the pond here. I'm keeping mine that that's upon that that's not agriculture in the middle of what your stuff is, supposedly a wetland or the pond. You shouldn't need a pond and a wetland. Okay. So anyway, that's pasture. Okay. That's agriculture. So anyway, I went out to snake island to come back and he got to come by this pond. Then of course, we got called Hertz in the, in the end of things to the same size as under the highway, you know, so everything is fine. And, uh, and, uh, so that's what that role is. Okay. And that's for a part of the theme park and we'd grab a track bus back there, this up there, we got a track train and the rest of it,

Speaker 3 ([38:00](#)):

Uh, attraction, ah, new attraction.

Speaker 2 ([38:03](#)):

It's just a new attraction. Yeah. Have you been there? How come you haven't let us out there yet? What do you mean four days? Where are you from grand rapids? Well, that's nothing three hour drive, I suppose. Well, not even that or an engineer's in grand rapids

Speaker 3 ([38:26](#)):

Here. Okay. Anyway. Well, that's you that signed this complaint

Speaker 2 ([38:38](#)):

Is the more you the site, his name

Speaker 3 ([38:43](#)):

Contact. I had to write his name. Oh, populate in our program contact. Okay. All right. Okay. All right. Okay.

Speaker 2 ([39:07](#)):

Well, it isn't going to do any good for us not to let you on there. I guess just, uh, just be extremely careful. I would suggest, uh, you gotta walk. Yeah. You gotta walk and if you can we access

Speaker 4 ([39:23](#)):

Your,

Speaker 2 ([39:24](#)):

Okay. Where's the best place? Well, you just follow the sand that thinks I'm there pinched off or no, no, no, no, but it's, it's, uh, it's just sand under the knee to get a base over there.

Speaker 3 ([39:36](#)):

[inaudible] drive

Speaker 2 ([39:38](#)):

To grab up backstage right up to the pond.

Speaker 3 ([39:43](#)):

All right. You might be shocked. Um,

Speaker 4 ([39:47](#)):

And then, uh, right here,

Speaker 2 ([39:54](#)):

Right here, I have my UFO as part of the alien invasion and that this, this, uh, water comes through, the pitch comes from right here to right here across this. I think it goes down. I think it comes around here, around here. And then from here, close out here. And that's all that's, that's the, that's the road. That's the dance. That's the ditch over here. Is there a road that follows? Nope, Nope, Nope. This trail. You can see it from there. And uh, you know, if he comes out to us all down here, you know, again, I prefer, if you walked here, you guys like to walk on ya, you gotta be careful. I mean, there's all kinds of electrical, Daron, all kinds of stuff there. And I mean, I got, uh, this is drastic parking. I'm serious. Just stay on the trail. And if you went over there and you turned a breaker on, you could get hurt to hurt somebody

Speaker 3 ([40:53](#)):

Or ran something. Okay. So yeah, we don't want to recognize

Speaker 2 ([40:57](#)):

Stuff anyway. It's right. It's right here. That's where the UFO is here. And we came down here when Ronnie left for, because I needed the need to put the, uh, the height. It, they needed to put, uh, um, well, okay. I hid it from the highway and you know, so, so I need a little height and stuff there. That's what we did there.

Speaker 3 ([41:19](#)):

So all that is ditch that had to happen this summer or no last winter, last winter. Okay. So what happened this spring? Nothing. Okay. Well that last fall

Speaker 4 ([41:34](#)):

And yeah,

Speaker 2 ([41:36](#)):

I don't know if the last fall or spring, I don't know. It was, this was, this was done under the, under the, under the freeze up and, and, and I will know.

Speaker 3 ([41:47](#)):

Okay. Part of what we'd prefer to do is ideally we need to look at some soils. Are there any absolute, no. Dig a hole.

Speaker 2 ([41:57](#)):

You can't dig a hole up there unless you call 9 1, 1 or up out you can't. There is so much infrastructure under there. I can't tell you where it all is. I mean, I got, if I, if I punch a hole, I got to go through and have everything located. There's some running all over him all over, including everything else here, all along here, everything. So you shouldn't do the church. I mean, what do you need to sample? All right. There,

Speaker 3 ([42:27](#)):

We look at the soils and what we look for is colors, soil, colors, and textures, and then, uh, look for evidence of, or hydrology in the soil. So whether it's saturated or, or, uh, has standing water and things like that. So,

Speaker 2 ([42:45](#)):

Well, they're standing water all over. If you wait till the right time of the year, and you've got to thank them for the salt them. So you can't use that as a, as a needle here. Yeah. I come from right here. One year cross, there was down to here.

Speaker 1 ([00:00](#)):

And then around here, then we went down to about here. Uh, let's see here. Yeah. About there and, and, and the, in the water. And that's just the, that's a drain. Anything it's just to get, you know, and to be honest with you, I, I tell me here, you know, I need the water and I need to keep that bond at a given level. So I might have to, you know, so you gotta follow up, say if it's really dry, bond will go down three feet. They can't have a three because my snake is bigger now.

Speaker 2 ([00:43](#)):

So just for reference, when the event is going on, how much of that mold looking areas fill up with Pampers and the campsite is already much well,

Speaker 1 ([00:57](#)):

That's why you should be here. Here's where he got the Baha. When you come in down here, you'll see the, uh, you'll see, the, this is an old picture here. Let me see here. Yeah. This stolen yet. Our track on here, we have this stuff. There's a bar racetrack right here. Here's where we used to have the sharp shooting and the special events he had. Period racists and Joe stirs, jealousy, jealous. We had all started wrestlers. We had a whole ball of wax here and that's, and that's part of my ideal of finding out who was behind all this here stuff. Because, you know, whenever you do something, whenever you do something, there's all these people that think it's so easy. And you're jealous at MBS and all this here stuff. But you know that we're the ones that sit up at the cafe and they don't do anything, you know?

Speaker 1 ([01:59](#)):

So I can talk about, it's a small town here, you know? So, um, and I'm spending so much time on this stuff that started to tick me off. But go ahead. You guys can go up there. That's all artificial turf, by the way, all this year is artificial turf. So some of the best bet is to come in here or you can, well, you can do this. You can come, just come in right here. You can just, you've been there. And there's just two parts of this, your thing you can walk down around there. Okay. And then if you want to, you can walk down this way. You can give all the way back here, back here. Do you see that? You'll fall back here. Okay. He come out over here and whenever I go out and take you out there, but I don't have a vehicle that could shell form that I can reach you at.

Speaker 1 ([02:49](#)):

We got to get ahold of, I got an email in which you failed to email me, by the way, I asked you to email at Matt tracks, correct? What's that? G or G Brasier, right? Yup. All lowercase. Yeah. Yeah. I emailed you a minutes after we spoke. Yeah. Can you do it again? Cause I didn't get it. Maybe it's not. Maybe it's tracks.net. No, not Tom. And I did.com. I tend to do not. Matt. M a T T R a C K S. Let me just to be on my phone. Oh, you got my card. It's on here. I just want to see what I put in a T T R E k.com. Yep. Yep. D breeder. G B R a G G. Yeah. B R a Z I E R V I E R a R I E R. Yeah. That's it right. Well, I could have deleted it possibly too, because we didn't want you to jump.

Speaker 1 ([03:55](#)):

I mean, maybe it went to junk, but that's correct. That is correct. My son, you met falsely presented. Didn't want it to look for it. And I giving you a reminder. I got it here. Yeah. Yep. I got it here. You got my email and my phone number, Greg Glenn, take one, take a look at it and then come on back and then let's discuss a little bit. Okay. Now I'll tell you this much. I'll tell you this much. If you're talking about

soils along the side. Well, obviously I gotta have, I gotta have, uh, I got to have material to build the road to get out there. Okay. Now just for, I don't know if you've noticed, but there's a church out there. You notice the church, you don't tell the churches. The church is 11 feet off the ground. I now have to have a feel for that to build landscape up to the, up to the bottom of the basement of the church. Where do you suppose that the field is going to come from?

Speaker 1 ([04:59](#)):

Hello? Once a soil set, you're talking about that. I left on here and, and uh, and, uh, you can't, you can't pick that out of there until it's dry or frozen. One of them too. So, and this was done. This was done and it's been wet ever since. So that's in the end. If you think about it from the highway 11 to the pond there, why would I put that on that side? If I wasn't gonna take it off of there? You know what I mean? So that's going to be gone. That's going to be useful. You're talking about the spoiled. So that's the great big deal that you've got in here and all this here stuff. So you understand what it was like. That's what I, that's what I could see from there. Yep, yep. Yep. No, no, I'm not. And I'm not complaining about nothing. I mean, I'm you people I've got a job to do except Justin. Okay. I'm just kidding. Not the first time. And you know, you gotta go ahead and take a look up there and then come back and let me know what you're doing. Okay. Thank you. Absolutely. Absolutely. We're all on the same page. I think you bet. Absolutely. Excellent. Yeah. Thanks Dan. Yeah, go ahead. I'll call you back.

Speaker 1 ([00:40](#)):

[inaudible] Nope,

Speaker 2 ([00:41](#)):

I ain't got the I got, uh, this, uh, Steve Cudi look like they're all tuckered out. It must have to walk away. Lisa wasn't in the rain. Yeah. [inaudible] what'd you find? I don't think there's any doubt that there's wetland up there, um, and fill in the wetland and what, and fill in the wetland, which, um, is regulated and fill in the wetlands. Yes. Okay. So basically the road is going out, um, especially the newest stuff out to the Aspen island out there. Yes. We called it Jessica. Yeah. So what we did is we marked with some pink ribbon along the road where the wetland starts and stops. So as you go out towards the islands, when you first started in there, you'll see a couple of things plagues on either side of the road. Yeah. I know. Go out a ways. And as you come up on the island, there's kind of a, the wetland boundary going in a diagonal. So as the road forks and those kind of around the island. Yeah. Some of that to the right and to the left is in a wetland when he hit those pig plagues there on either side of both of those sides would mark the end of the wetland and then coming around, going back the other side as the exit, then there'd would be another set of pink flags. That'll mark, where the wetland starts again. And it goes all the way up to, uh, least where the, um, AstroTurf.

Speaker 2 ([02:38](#)):

Okay. Okay. So we can get some, some totals and try to put it down on some maps for you guys and know where it is, but yes. Um, so the one thing we look for is whether or not it exceeds, what's allowed with gimme, we call them exemptions. Okay. And your exemption around here for, for that type of wetland is quite small. Um, so you've clearly exceeded it. And what normally happened then next is we will kind of gather our findings and thoughts and put those down in a paragraph type form. And they'll be put into what's called the restoration order and basically after detailing what we found out there and, um, uh, well, the best recommended route to coming back into compliance. And with that, this is what it's going to be worded basically, as we move, fulfill in the wet one, and I'll give a timeline to do that, um, and finding out what insight for it.

Speaker 2 ([03:54](#)):

So with that order, then you have the option to apply, to keep it and vehicle for that it's called a wetland replacement plan application. And you would fill that out and kind of make your case on, um, what the purpose of it is with the need and the project, the nature of it. And then, um, there's a component in there called sequencing that a basic outline of the wetland regulation is, uh, anyone who proposes the project in a wetland mini the first try to avoid any impacts to the wetland if possible. And that's not possible that minimize the impacts to the wetland, to the extent possible. And at the end of that, you come up with a number and that number is the impact in the wetland. Then that would require mitigation. And there's a couple of different avenues or roads to go about mitigation when looking at restoring what wasn't somewhere else.

Speaker 2 ([05:01](#)):

Uh, there was, uh, a state wetland tank that offers credits from people that have already done that you can purchase their, uh, raped or their credit that they've developed for your project provided that you make it through the, this sequencing portion of it. And that's kind of what the [inaudible] viewers of the application will look for. Are there other options to accomplish your project goal and do it on the wetland? Or is this something that's really justifiable? Um, an application then comes to the Gibson soil

and water district who would send it out for review and comment, and then ultimately a decision made there another, not the application's approved or needs modification, or didn't want to go that route. Then the order would detail how would come into compliance.

Speaker 2 ([06:03](#)):

Okay. So Stephanie you've now come here and you have that other than other piece in there, right. That blue piece in there. Okay. And that was, that was a, you, you said that was a public, uh, public waters weapon. Okay. And are you just, you just went out here and then in an hour you made a determination that all this is wet land, all the way up, all the way up to my other pond, then that's wetland all the way. Okay. That's what the twist is. That, is that correct? Where we could walk on the road looking on either side up to the island and coming back around. Yeah. Yeah. And, and, and, and you just made that determination and, and, uh, you know, you tell me how you made that determination, that that was wetland, the open ditches help when we can observe the water table there.

Speaker 2 ([06:57](#)):

And one of the criteria for being a wetland is that you need water or water source hydraulic. You can typically, typically we look for that within the top 12 inches of the soil surface and for almost the whole stretch of that, except for when we got up here, the snake island that water and standing in the, in the open channel was, uh, anywhere from the snake stub, right around 12 inches. And so the water table is one thing, and then there's a saturation zone, um, actually extends up from the water table. And so we're looking at that and looking at some of the soils that are exposed on that ditch, um, combining with the plant species that were out there, all three parameters then. And so are you taking in consideration, you know, there's the rain three inches here a couple of days ago, and they're reading this right now and the rain right now.

Speaker 2 ([07:56](#)):

Yes. And, and you understand that, that, uh, that a couple of before that last ring, that it was dry, was dry from there all in the pond. Okay. So again, again, you know, there's a, there's a thing here. And I think, I think I got to turn this into you and you've got to make a determination here because, uh, because that's the legal premise for this. One of the things is, is that, is that this thing can't be manmade and you guys liked it up on that end, and I'm telling you to get that figured out. I don't think you should do anything here because you'd like that up on that end, that's holding all this water back and it's doing all the sheer stuff. And that makes the plants grow the aquatic plants girl, because, because you backed it up, it's not, that's manmade.

Speaker 2 ([08:44](#)):

That's not, uh, that's not, and that's very important for you. So, um, we're gonna, we're we're you. So I, I wouldn't suggest that you consider waiting, you get that figured out because, because if that's the case, you guys are the cause of your, your character, trying to create a wetland. That it from just what you've said there, back in the water up the water is there, you don't and the end, the end, the end, the plants, of course, have you got water in there? Different plants are going to grow. I mean, that's just a common sense. And that's clay this far underneath to stuff is clay through grief. Don't the seas. Well, it's clay and it's good clay. So it's not, it's not like it's, uh, uh, that's why the pond holds water because it's clay. That's a pretty common scenario where a clay liner or clay land looks from Sargent in the soil would hold water above it.

Speaker 2 ([09:38](#)):

That's sort of a natural, but that could be the actor in the hydrology as well. So, yep. Well, you know, you know that you got a problem on the other end. I mean, that's, that's, uh, it's been known here for the Britta the whole time, you know, that, that that's been the issue. So, uh, before you make that claim, I think I would, uh, I think I would, uh, just put this on hold until you figure that out. Well, it's certainly something we can look into in the, in the findings and I'm more than willing to do that because there are some scenarios where that happens. Uh, however, um, what probably tells a better story is what was here. Pre-settlement and, um, look back at historic air photos, and it still looks like a wet one from a long, long time ago. And, you know, sometimes we can just revert back whether there's like lack of maintenance on a branch feature or changing property use.

Speaker 2 ([10:45](#)):

So you're telling me that somebody that, that, uh, that, that buys land and in the end, if it was a pasture in any lesson, grow back into stuff that, that, that makes it a wetland. That's what you were saying. I'm saying it probably was a wetland. Well, I don't agree. Anyway, there's, there's more circumstances than that. So I would suggest if you do that and then, and then figure out how that gets resolved, and then it's a whole different story. If there is a, there's a whole different story of their number, one thing is the water there. And we just had three and a half inches of rain. And if you understand a half inch of rain and the water is not got there yet to see it only rain for what, 10, 15 minutes out here, Dwight, it takes a while for the water to get there.

Speaker 2 ([11:31](#)):

You know? So, so, um, that was water moves through a landscape, but now is a hydrology sorters. So, um, yeah, I mean, we'll, we'll look back at the previous three months is what we typically use for whether we're in a wet or dry or a normal time period. And, uh, that, that can play a factor if it shows that it's excessively wet. Um, it can, it can be a factor, however, nothing really replacements on the ground observations, unless there was some sort of long-term and we're talking three, five years worth of hydrology monitoring. Um, we don't have the capacity here.

Speaker 2 ([12:21](#)):

I mean, that's funny, I contend that you hit, you were set on the thing when you started here and now you're just throwing out well, let's whip there. So when a ditch fills a water that makes it a wetland, well, maybe we can clarify, and I'm not a hundred percent in that either. So the blue is classified as any public waters, right? It doesn't mean that the stuff around it isn't classified as well. And I think maybe you're confused with that. We didn't go out there and say, oh, there's public waters moved up. The public waters is public bodies that doesn't change. But what we had to determine the rest of it still classified as wetland. It's not public waters is classified as well right now. And we don't know at this point until we go back and look at some maps that we took some GPS locations to try to help us determine whether or not any of the work was in the public water.

Speaker 2 ([13:11](#)):

But regardless it has characteristics in the public water or anything. That's had water standing on. We'll have wetlands characteristics within the money you are to anything. It doesn't matter. I mean, it reverts back to its nature. It reverts back to the, whatever the heck girl, Sarah, and you don't let the regular regular, uh, grass doesn't grow in water. Okay. So when it's wet again, the pond, yep. Think they had to dig a pond. If there was water standing around for the cattle to drink. I mean, it's, uh, it's, uh, that's that

in itself should, should tell you that there was no reason to put upon there. If that's, if that's the case, one of the things, you know, there's eight different types of wetlands that we recognize. Some have open water all the time and something you may never see standing open water in. And it looks to me like the majority of that is what we would call the tape to, which means what's a type one type. One is what we call seasonal a lot. Like a picture of frogs are croaking in the spring. And then it dries up and goes away mid summer. We're a flood plain or something along the river that comes up real high burden, spring, snow melt, and might go down and not look like a wetland and I'll go to August.

Speaker 2 ([14:36](#)):

So it have been where it looks like a weapon and one month out of the year, then it's declared a wetland, the hydrology and the soils and plants for about two weeks, two consecutive weeks during the growing season. So generally no middle of may ish until September. And, uh, so I take two. So none of the lamb, eight miles, this side of the red river, it's all declared wetland sin because that's underwater for two weeks out of the year during the growing season qualifier. So, I mean, there's a lot of drainage features between the river and here that take water off of landscape faster than it would have prior to human settlement. Right? So those drainage features allow the water to come off fast enough. And if we go out and if we look at their soils and a lot of them, kitchen county, almost entirely, you go look at the soils, you're going to see what we call the hydrant soil.

Speaker 2 ([15:36](#)):

And that oil was formed because there's water in that soil and the drainage features and such that we have created as humans that allow it to be farmed. And then there's, there's many fields that you see, you have crops growing them in them. That would probably still meet the definition of a level, which is so nobody. So nobody can, nobody can ditch that then. And nobody can do anything on all that lab, because all that from Steven, that, that direction, everything is underwater for at least two weeks out of the year, at least at least two weeks out of here. There are. And so none of that land can be did because that's your number one land, then your number of your grades number? What, because that's, that's, if it's two weeks, it's gotta be underwater then. And, and the other thirds grasping, right, there are certain allowances and exemptions and things that apply to agricultural land, uh, crop production.

Speaker 2 ([16:36](#)):

And, uh, let's talk about that for a second. Let's talk about that for a second. When I bought that land, I got a weak base on that land. How can I have a weak base on it? If it's a, if it's a, if it's a pool of water, you mean harvest? Yes. It's got a weak base on it. Yes. That's when I bought it, I don't farm and I don't do any of that, but I mean, I got sent the letter that it says a week based on this much. So now you're contradictory. Now you're contradicting the Golang, um, uh, uh, whatever it is then the federal program. No. So he could have been a wetland that wasn't able to be farmed, I guess that's my guess. Or there may have been other drainage beaches out there that are historic, that may have been taken water off that had been diked up.

Speaker 2 ([17:29](#)):

And if they haven't been maintained for a certain period of time, then that ability to maintain them goes away without being replace. So your example of, um, you don't pick a field out here between here and the river and as green and features in the field or drainage features around the field that may connect to a public system. And once on, um, the cutoff is generally twenty-five years. So if there hasn't been any

maintenance and that twenty-five year, time period, then no, it wouldn't be able to walk without a real good look at what it would do to perform.

Speaker 2 ([18:08](#)):

Okay. And so common sense here now, what did I do that hurt anything with a wetland out there? What did I do? And you're saying, you're saying that I can't cross. So if they, if that isn't really a wetland, I can't cross that. Not necessarily I can't use, I can't use my, my, my, uh, my snake island. I can't use that as my speed law that regulates straining, feeling an excavation. Well, I didn't drain it. I didn't feel it triggers on the home, put on the road. That's the spoils off the thing. That's just a layer of sand as much on it. It's not filling, it meets the definition of basically a bit removed from the water table. And I see the type of plants are able to grow. Okay. Well, I mean, I mean, it's going to be a, it's going to be a big hoopla out here, and I think you'd better just put it on hold until you see what happens on the other hand, if it gets determined that you guys didn't do this and that, that this, all this stuff isn't man made.

Speaker 2 ([19:23](#)):

And I don't care if it's 1978 when they did it, or when you guys did it or when the state did it, or whoever did it, whoever did it, I don't care if it's a pipeline that went through there that made a and it's all there. It's all backed up the whole way. Okay. So, so if that's the case, then it's man made that this man made. And again, if it's manmade Justin, that's your baby, because, because he'll make the determination that this is his office. Well, you can't have, you can't have a man-made thing, be declared a wetland. Yeah. That's a good

Speaker 3 ([19:57](#)):

Point. Glenn, is that when the restorations order to get served, it comes to our office and then it will be in conjunction with the DNR, if there's any public water wetlands. Yeah. So then it will go to our board as a decision-maker, you know, I'll be put in an application then we'll take in DNRs and Bowser's comments. So it is a local process besides the public waters. That is that's the DNRs jurisdiction. So yeah. I will see it no matter what.

Speaker 2 ([20:31](#)):

Yep. Yep. Okay. Any public waters? So the question, one question that we have is for ditch, that goes towards the end up the UFO, or is it going down a little bit first? It goes around that elbow further back then. I don't know. I mean, that is what, right. So, I mean, we're probably gonna have to get an aircraft nor does it to get a really good look at it, but I don't know. Can you think that there's any kind of public waters thing going on there?

Speaker 3 ([21:08](#)):

It's tough to tell, but you know, if you stayed up closer to your train tracks, I would say you're out of the public water.

Speaker 2 ([21:14](#)):

Yeah. So that has yet to be determined. We need to get an aerial view of it really. She had, but you know, in my layman observations, I don't really shave my public waters. Okay. So, but we don't know that a hundred percent. Yeah. It looks like there's you probably do it in that respect. Okay. All right. So I mean, things will come together. Justin, I'm going to show you the restoration order. And then from

there you can go ahead and apply. Like Matt was saying all the specs don't I get your card? Uh, no, I might have one on the car.

Speaker 2 ([22:00](#)):

Any thing that will come once you batched on that comes to me, right. Recipe is shorter. And then I'll be contacted with you with that. Whenever that might be Matt, what was your name? Matt Johnson. I can't believe, I couldn't remember that. What's your title? Well, I'm specialist, the board of water and soil resources, the Florida board of board of water and soil resources. What was that? Spider? You did all of that stuff. Let me tell you, we wouldn't be surprised. Somebody on the train is most of the stuff's on the part of the train. So he didn't go to a Jurassic park. [inaudible]

Speaker 2 ([23:07](#)):

I don't. And now that Stephanie here, get your phone number. Um, Matt. Yeah, two one eight seven seven zero two 1-828-010-ZERO. An email. Matthew w M a T T H E w T T H E w. Yeah. Johnson, state.mn.us. Johnson's som yes. Again, I'd recommend that you wait, nothing's going to change and, uh, uh, wait until you get this so that it doesn't cause a whole bunch of you. You don't have to go through it twice. Yeah. So, I mean, it's, it's no sense to it. I mean, there's, as I can say, as, as, as I said, it didn't hurt anything dinner to thing. So, um, you know where the is located or the property left on it's in the Marshall felony or out? Yeah. Marshall told me that. Yeah.

Speaker 3 ([24:37](#)):

I went down there. I looked at the clock earlier this year and without a survey of some time type, there would be no way to tell. I mean, satellite imagery from that era, you can definitely tell there was something there, but LIDAR

Speaker 2 ([24:59](#)):

So far, she wouldn't call it covered elevation. Yeah. LIDAR doesn't show a foot. You know what I mean? And that's all it takes is a foot tier to hold it all up all.

Speaker 3 ([25:09](#)):

And with the cat sales that there. Yeah. Or you won't get an accurate measurement, I've done a LIDAR anyway.

Speaker 2 ([25:17](#)):

And like I said, it's eight court fall from here to there. Ain't no reason for the water to be sitting here. It's in between and that's not, and it's not natural because after the fire I drove out there and the again it's pushed up. Okay. And then there's another, there's another that had been there previous. And that may have been from the pipeline. You want to put the pipeline in and the block stuff to keep the water on. This is, this was many, many years ago, but I'd probably pre 78. All right. That's still a man. That's still a man. May deal. That's a that's uh, somebody built a there and then they didn't, they didn't take it out or whatever the reason. So, so you've got to actually got two of them there. And I know you guys got pictures and Steve, Steve says that, uh, Steve says that you guys will not provide them with the pictures.

Speaker 2 ([26:07](#)):

Because after that, after that fire, there was a hell of, a lot of pictures took over everything. So, and at the time, you know, I didn't, uh, I didn't, uh, I was too busy trying to salvage what I could, you'd have to go out there and to look at this. So let's talk about the real issue here. That's this isn't the real issue. The real issue is fire protection here. And if the DNR and the one, the kitchen county saw them water. So when water comes to the water, that's when they want to aid me on this year, then you're going to be when that's, when that's what burns again, because it's only burnt, uh, eight times in the last, uh, 15 years. Okay. And I got to have protection out there. I got to have a fight and I, and I can't be having my hands, my hands tied because I can't drive on a, a, an a would be wetland and all the serious stuff.

Speaker 2 ([26:59](#)):

I got to have protection. So I'm going to have to do something. I'm going to have to do something so that we can, at least we can, if it's, if it's water there, we can at least drive across the th the burn, this stuff. Or if all I'm saying you, can't just, that's something that you can put in that application because I've seen the session. Well, that's a perfect example, something for you and put in that application, that's going to prove that, right. Something that in some sort of, in some way, you need to have access to that. So that's something. Yep. Okay. Anyway, so you follow what I'm saying? I can't have my hands tied. You can't run, you can't run a prayer truck out there. Okay. So you have to have a special thing to go through here. And, you know, I, I, I, I've been in business 25 years and I'm in here.

Speaker 2 ([27:46](#)):

And I mean, I manufactured tracks. I sell them all over the world. Okay. And I am, but you want to know what your place is. Tracks just won't go to, and, and you certainly don't want to get, you certainly don't want to get, uh, somebody stuck in the middle of a, in the middle of a doggone deal. When there's a hundred foot flames coming at you at 50 miles an hour, I'm sorry. You don't want to do that. So we need to be proactive in that. And so that we can, we can stop that and, and any could hurt me frogs, and they could hurt the turtles and they ain't gonna hurt nothing. Okay. So, uh, as a matter of fact, anything we do will probably help with that. It'll help with that. You want my train ride? I don't know if you noticed, but in that other part in there, there's an alligator out there.

Speaker 2 ([28:32](#)):

You saw the big one, but did you see the one in the water? No, there was one in the water and that thing comes across and it scares the heck out of the, out of none of the people on the train. And then they rock the train and the people almost fall off. And then they, they're all worried about the serious stuff. And one day I come by there and enlist with a lot of people. And there was that turtle sitting on top of that alligator. And I hit the button and the turtle comes across, or the alligator comes across. The turtle builds up. And I told them, I said, do you know how long it took me to train that turtle to do that? It was funny. He had to be there anyway. But my point there is having a pink alligator in the pond.

Speaker 2 ([29:18](#)):

Didn't hurt the aquatic things. One darn bit. The turtle was fine with that, then all this year stuff. So, I mean, we're not, we're not, uh, we're not trying to change anything. We're not trying to destroy anything where you would. We want, when we, when we take somebody out there, we want to make it look like it's a wetland and all this here stuff, because that's what people are scared of. You don't, if you got a hundred long snake, it's got to have something to be him. You know, it's not, uh, yeah. If our purpose is not to destroy anything, not to change anything, but just enough so that we can get around

and do that fly. These guys need to be informed prior to that shot so that they can ensure that the things that you want to do off, yeah. Aren't going to harm it.

Speaker 2 ([30:06](#)):

That's the issue here is that stuff was gone and nobody knew about it. No, well, that's not true. That's not true because I asked that the watershed board about it, and it was all fine. And, and the end, the end, the rest of the people that had jurisdiction there again, what am I supposed to do? You want to watch somebody else maybe have jurisdiction to us? So they made sure that I spent three years finding out who's got jurisdiction on everything, the big, a little, a little. You know what I mean? Anyway, but that's, you know, I mean, it doesn't mean that you're responsible for that, but at the end of the day, things like this happen, I'm challenging you, that, that, that that's not a wetland. And then what you're saying is not so challenging that you could certainly hire a wetland, delineator, hire a wetland deal, surreal plate.

Speaker 2 ([30:59](#)):

That's my taxes. I pay a lot of taxes by the way, and the handle and the, and the, and I'm, and I'm, you know, and, and again, so now we got to hire a lawyer over this. You know what I mean? There's gotta be a, there's gotta be a solution. And that's what you brought up earlier. You know, we want to have a solution to this, if we can get this your thing. So again, if I got to hire a lawyer, it's going to go all the way and it's not going to be pretty for anybody. So I'd start with a wetland delineator over a lawyer. No, probably answer your question on whether or not you like snow on you or not, I guess. Yeah.

Speaker 2 ([31:37](#)):

I'd be happy to look at their results as well. Yep. So, anyway, again, I would suggest that you put it on hold at two because that's, what's going to happen on the south end. So, and there's no, it's no reason to go through it twice. Any other questions? I have no more questions. Okay. Thank you guys for your time, sir. Are you coming to the festival? When is it? It's in June. Middle of June. And you should, for sure. We on the train. I was not. Oh man. He, I tell you, I said I'm going to ask. Yeah. Okay. Sounds good. Alright, thank you guys.

Speaker 1 ([32:25](#)):

Talk to you later. Okay. All right. [inaudible].

Exhibit 6

7/15/19 – met in office with Glen Brazier to request permission to enter his property to take data on possible wetland impacts. Attendees were Tony xxx Conservation officer, Stephanie Klamm DNR Area Hydrologist, Justin Muller Kittson SWCD, Matt Johnson BWSR, and Dan xxx? On the phone via conference.

- during the conversation Glen Brazier admitted to constructing the road
- Mr. Brazier indicated the road was part of his amusement park attraction
- Mr. Brazier also indicated the road and open water is for fire suppression
- Mr. Brazier granted permission to walk through the property
- When asked if we could dig soil pits Mr Brazier did not say no but expressed concern due to the amount of infrastructure and electrical components underground.

- During the visit the TEP walked the newly constructed road starting generally from the north out to “snake island” back toward the west and then south to where the new road intersected with a path containing field turf. We continued to follow the field turf path south to a fill pad constructed for an amusement park ride as part of the attraction. Finally we exited the path on the south end near the camping area.
- Wetland indicators were observed along much of the route and a wetland boundary was placed near the wooded portion of “snake island”.
 - o Hydrophytic vegetation was determined using the rapid dominance test. Vegetation species observed were – narrow leafed cattail, soft stem bulrush, marsh milkweed, giant goldenrod, common spikerush, bebb’s willow, sandbar willow, lake sedge, and other sedge species that were unidentified.
 - At the upland boundary dominant species included quacking aspen in the tree stratum, bur oak and quaking aspen in the shrub stratum, and kentuck and fowl bluegrass in the herb stratum – herb stratum had minor components of wild rose, Canada thistle, strawberry, dwarf raspberry, sweet clover.
 - The upland boundary coincided with a very slight rise in elevation. The elevation change appears to provide enough separation from hydrology to change the plant community to a drier community
 - o Hydrology was observed in the open ditches and ponds adjacent to the road. Hydrology ranged from approximately 6 inches below virgin soil surface to approximately 12 inches below virgin soil surface. Antecedent precipitation has not been determined yet. The hydrology depth estimate does not include capillary fringe, which will bring the saturation even closer to the soil surface.
 - o Soils could be readily observed via the open ditches. A typical soil profile appeared to be approximately 8 inches of organic 10 YR 2/1 or darker, immediately below 8 inches was sand with color 10YR 5/1. This meets the NRCS hydric soil indicator of depleted below dark surface.
 - Five soil pits were dug using a dutch auger. One pit was through the fill to a depth of approximately 30 inches. At the 30 inch mark the auger pulled undecomposed cattail plant material and had a strong hydrogen sulfide odor. Four more soil pits were dug (2 on the upland side and 2 on the wetland side) of the wetland boundary on “snake island”. All soil pits contained the same profile

as previously described, however in the upland pits soil saturation began at approximately 14 inches versus approximately 9 inches in the wetland pits.

- Following the field visit we met back with Mr. Brazier at his office per his request.
 - o During the follow-up I explained to Mr. Brazier that we observed wetland on his property that was determined using the techniques of the 87 manual.
 - o I explained that the road was fill in the wetland in an amount that exceeds exemption
 - o I explained that the next step would involve him receiving a restoration order
 - o I explained that the restoration order would detail how he could regain compliance with WCA and also provide him an opportunity to make a WRP Application.
 - o Mr. Brazier contested that the area was a wetland, but later on referenced the potential for wildfires within the “swamp” and that even with a tracked vehicle it would not be possible to drive in the area
 - o Mr. Brazier indicated he felt a fire break installed at some point downstream of his property was acting as a dike thus making his site wetter than normal
 - I replied to Mr. Brazier that the TEP would look into the possibility of this claim
 - o Mr. Brazier asked questions about farming and draining wetlands on agricultural land to which I answered that under certain circumstances wetland are allowed to be drained and drainage features maintained on agricultural lands.
 - o Mr. Brazier indicated he intends to construct similar roads/trails on other parts of his property in the near future.
 - o Mr. Brazier maintained that he thought the area was not wetland to which I replied that he would be welcome to have his own wetland delineation performed and that the TEP would be happy to review the information.
 - o Mr. Brazier mentioned involving lawyers to which I suggested that perhaps a better first step would be a wetland delineation performed by his own consultant.

- Meeting adjourned.

Exhibit 7

From: Klamm, Stephanie (DNR)
Sent: Wednesday, July 17, 2019 2:50 PM
To: Groshens, Tom P (DNR); Kestner, Nathan (DNR)
Cc: Ebbenga, Theresa (DNR); Gleason, John (DNR); Elwell, Anthony (DNR)
Subject: Site visit summary with Glen Brazier-Wagon Wheel Ridge, Kittson County

Good Morning (now afternoon),

Just thought that I would update you on a site visit and discussion had with Mr. Glen Brazier, owner of Wagon Wheel Ridge in Kittson County, just outside of Karlstad on July 15, 2019.

I am typing up this email to you all in case you receive a call from Commissioner Strommen, Gov. Walz, Rep. Fabian or other high ranking officials with the State government.

The reason for our visit was that we had information and photos that lead DNR and BWSR to believe that a violation of the public waters and WCA rules had happened on said property.

I have photos and other information such as emails that I have put on the R drive [here](#).

An initial email came into my office on May 9th and 10th from Nathan Kraulik of Kraulik Construction asking about digging a ditch through a public waters basin. I requested a photo of the location he was talking about and informed him that it is unlikely that I would allow a ditch to be dug in the public waters wetland. I never did hear back from Mr. Kraulik on the status of his request or from any landowners with wet fields. But shortly after this request came in, I received a tip that a backhoe was sitting along 250th Ave. NW. This just happen to coincide near the location that Mr. Kraulik was referencing in his email. The tip provider stated that some trees may have been pushed into the wetland. I sent a Conservation Officer out there to take a look and he could not see for sure where the violation would be from the road, so he did walk on the property. This property is owned by Mr. Steven Kloop of Karlstad and is along his farmstead along 250th Ave. NW. The possible violation would be filling of a wetland by activities occurring above OHWL (Prohibited activity per M.R. 6115.0190 Subp. 3). Officer Woinarowicz spoke with Mr. Kloop about work that was done but did not get permission at that time to enter the property due to some family issues going on with the Klopp's.

I then let Justin Muller (Kittson SWCD WCA Administrator) know that a possible WCA/Public Water violation may have happened on the Kloop property. He had been visiting with Mr. Kloop for another issue related to the 2012 Karlstad fire and a fire break put into a wetland. I was not aware of and was not invited to the meeting. Justin and I thought a site visit would be required to make a determination on if a violation occurred and where on the property and boundary of the wetland. Somewhere around mid-May, Kittson SWCD WCA Administrator requested a site visit on May 22nd in Deerwood Section 26 (Kloop) to see if we could determine what had happened near where the backhoe was seen. This site visit did not happen due to schedule conflicts with Conservation Officer and Conservation Officer Zjanda informing CO Woinarowicz that non-law enforcement folks are not allowed on private property without approval of landowners even if a CO is present. The property owner we were going to visit with has some history with DNR so it's important that we follow all the rules. So a site visit did not happen in May as requested as we could not get approval from the landowner at that time.

Fast forward to early June 2019 CO Woinarowicz was out on duty when he noticed that a ditch had been dug from Hwy 11 (east-west road out of Karlstad), south through a wetland complex. He took a photo from the Hwy and sent it to Area Hydrologist Klamm on June 3, 2019. This property is owned by Mr. Glen Brazier and it's called Wagon Wheel Ridge, which holds a music festival in early June called Kick'In Up Country. (See website <https://www.kicknupkountry.com/>). Since the photo was just of the Hwy 11 culvert crossing looking south, I asked if the CO's would be willing to see where this new ditch lead to. The CO's (Woinarowicz and Elwell) were on site shortly after my request and took photos (Photos from CO.docx). In the photos it shows that a new ditch was dug and a new road was created in the wetland. It was thought that the road went up to an island and back around, though the officers

were only speculating on the route as they did not go past the snow fence in the photos. I then forward the photos and information on to Kittson SWCD WCA Administrator (see email RE: Karlstad Site Meeting).

I also asked for photos of the Kloop property so I could make a determination (since we have not been granted access) if the work was in the public waters or WCA wetlands. Photos were sent over on 6-11-19, unsure of the time/date they were taken.

On June 11th a Resource Protection Notice (RPN) was sent to both Mr. Steve Kloop for work done on his property (trees pushed into wetland-see Photos from CO 6-11-19 Kloop and Mr. Glen Brazier for work that was done). This was one day before the 2019 Kick'In Up Country festival, so we decided to wait until after the music festival to speak with Mr. Brazier about the activities that occurred on the property.

Since access was not granted and June was slipping away, site visit requests were made by the CO's (Elwell and Woinarowicz) for July 15th at 10 am.

On Thursday July 11th I had received a voicemail from Mr. John Udem, Udem Law in Grand Rapids, MN requesting that I call him back regarding the Kloop property. (See pdf'd emails Site visit with Steve Kloop on Monday). I did return Mr. Udem's call on Friday and our conversation summary is in the folder along with other documentation on public waters and a couple of maps.

On Monday July 15th a site visit with Mr. Glen Brazier was to happen. Officer Elwell and myself drove up to the Wagon Wheel Ridge site, Officer Woinarowicz followed and arrived on site at 9:48 am. Matt Johnson, Wetland Specialist arrived on site at 10 am and Justin Muller arrived shortly after. We all parked on the 250th Ave. SE and did not leave our vehicles as we were waiting for Mr. Brazier to come out on site. Shortly after 10 am, CO Elwell called Mr. Brazier to see if he was coming out on site to discuss the work. Mr. Brazier said that he was not coming out and that we could meet with him at his office (Mattracks Inc.) in Karlstad. CO Elwell, myself, Justin and Matt all drove back to Karlstad, Office Woinarowicz did not come with us.

We entered the Mattracks office shortly after 10 am and met with Mr. Brazier. Mr. Brazier was cordial during the handshakes and introductions and let us sit in his conference room. He then dialed up the Vice President (I believe of Mattracks) Dan (I missed his last name).

Those in attendance at the meeting were-CO Tony Elwell, Mr. Glen Brazier, Matt Johnson with BWSR, Justin Muller with Kittson SWCD, Area Hydrologist Stephanie Klamm and on the phone Dan (VP Mattracks).

CO Elwell opened up with an explanation on who we were and what we were there for (see the property and determine if it was a violation) and why Mr. Brazier had received an RPN and what that meant.

Mr. Brazier became irritated and began asking who saw the violation and how it got turned in to the DNR. I tried to explain to him that it was anonymous and that when there is a tip, we have to follow up on if it was a violation or not and that I asked the CO's to look into it for me as I don't have access to the property. He then began yelling that it's really suspicious that this information came in right before his music festival and that it's likely someone that is jealous of him from the town and that he has a lot of money and time investing in this property. He demanded to know who turned him in. CO Elwell explained that as part of the investigation, we don't have to tell them who turned anyone in and that we are here to ask permission to go on the property to look at it to make our determination on if a violation of Public Waters rules or WCA rules occurred.

Mr. Brazier then asked about public waters and what those were, I started to respond and he interrupted and asked if anyone wanted anything to drink and then got up and walked out of the office to get a pop. I stopped explaining and he did not ask me to start over. He then turned to Matt Johnson and asked about wetlands and how we know things are wetland or not. He asked me how I know that land is wetland and I started to explain vegetation like cattails and he laughed and said "cattails" you know nothing. I then stopped trying to explain. Mr. Brazier stated that he has concerns about safety out on site as he has everything booby-trapped and would like no one out there in case they get hurt then he's liable. There are electrical hookups everywhere and if someone trips one fuse they all could get hurt. We assured him that we would stay on the trails and not touch anything.

Mr. Brazier stated that he bought the property for his theme park, and in 2012 the Karlstad fire caused him to lose a 1.5 million dollar building and property due to DNR not back burning or allowing the Karlstad fire department to back burn. He then started getting louder and accusing CO Elwell and myself "DNR" of not doing our jobs during the fire and that the DNR is the blame for all the water standing in the fields and how folks can't farm the same areas now due to the wetland getting larger and he has proof that the fire break that was put in is the problem. The whole time he is pointing and shaking his pencil at me. He then brought up the Kloop issue with the 4" berm from the fire break and told us that if we challenge him, the Kloop one will be worse to deal with.

Mr. Brazier stated that he has a lot of money and this will take a lot of time and he doesn't have time to waste on this and that he will take this harassment all the way up to the Governor's office and hire attorneys.

He told us that he has done everything by the law and always done the right thing. He checked with the MSTRWD on if the property was a wetland and they (according to him) told him no and that he was good to go on building his theme park.

He asked again how we know that the property is wetland because it was pasture in the past and he has a wheat base on it from NRCS.

Matt Johnson jumped in and explained the public waters vs. WCA wetland jurisdiction and how we determine what a wetland is (soils, hydrology and vegetation) and that if all three are there it's a wetland. I showed Mr. Brazier the map of the public waters blue polygon and said that this is where the DNR's jurisdiction would lay and anything else would fall to the Wetland Conservation Act. CO Elwell restated that the reason for our visit is to see if a violation occurred and to determine if it's WCA or public waters, which would help us with our investigation.

CO Elwell explained to Mr. Brazier again that these are the experts in wetlands and that we are asking for his permission to enter the property and look at the work that was done and then we can make a determination on wetland or not.

Numerous times during the meeting, he would make ideal threats about going to the Supreme Court and the Governor about this and that he would work until he took away "all of your powers." Much of the time he was shaking his pencil and loudly talking to CO Elwell and myself about how the DNR screwed up the wetland and it doesn't drain anymore. He told a story on how he was out testing his tracks and crossed over (accidentally) on State property in another wetland and how the DNR harassed him about it and how that almost cost him a huge international contract with Russian military.

He brought up some concerns about the Karlstad airport getting wetter so he dug the ditch under Hwy 11 to help out the airport and how he would like to have fire suppression out around his property because of the 2012 Karlstad fire and "you don't know what it's like to have 100 ft. high flames barreling down on you" and how the Black Hawk helicopter's couldn't keep up dropping water.

He said that he didn't hurt anything out there and that he needed the trails for his theme park and the "Snake Island" where he has a 3' snake that lays out in a pond to scare folks. He stated that the pond was there and he needed water to get to it, so he dug the ditch to the pond and then out again.

He mentioned that the work was either done late last winter (2018) or early this spring (2019) he couldn't remember the specifics of the work.

He said that the ditch does go farther down the wetland possible into the PW wetland near the UFO display.

At around 11 am, Mr. Brazier did agree to let us on the Wagon Wheel Ridge property to view the excavation and filling that occurred. He asked that we come back to his office to discuss our findings.

Shortly after 11 am CO Elwell, Justin Muller, Matt Johnson and myself entered the Wagon Wheel Ridge near the beginning of the trail. I have photos and a diagram showing where the photos were taken in the folder for your viewing.

Once on site, it was very evident that there was a large (24' wide) path that went through a wetland with a ditch that ran along both sides. There was also fresh spoils (17' wide) along the north-south ditch coming from Hwy 11.

The ditch that was dug from Hwy 11 going south met up with the trail and then followed the trail around up to "Snake Island" and back around to the start of the path. Please see photos and diagram. The pond that Mr. Brazier mentioned in our initial meeting was there and it does appear has been around since 1991 when the property was possible pasture. CO Elwell, Justin and Matt along with myself walked the site and identified wetland vegetation, looked at the hydrology of the property and then put in pink flagging to make the start and stopping points of the excavation and filling of the wetland. Portion of Snake Island was not determined at the initial site visit to be wetland, but the majority of the site was wetland. We also walked along the train track path down to the UFO display as that was where I believe the PW wetland may begin based on my maps. Due to the wet conditions, I was not able to get out farther than the UFO display to see how far the ditch was dug into the wetland and may request that this site be flown for a better aerial view of the extent of the work.

At 1245 pm, we (Elwell, Muller, Johnson and Klamm) all returned back to Mr. Brazier office at Mattracks. Mr. Brazier redialed Dan (VP Mattracks) so he could hear our conversation. He sat down with us in the conference room and asked what we had found out on site.

Matt started to explain that it does appear to be a violation of the WCA rules which does not allow for excavation, filling or draining of a wetland without permission from BWSR/WCA or DNR if it's a public waters. Mr. Brazier stated that we were on site under an hour and we could already make a determination on if it was wetland or not, he doubted our opinion. Matt stated that based on the three criteria (soils, vegetation and hydrology) that yes it does appear to be wetland. Matt explained the WCA process and application materials are needed and that Mr. Brazier could fill that out. CO Elwell and I stated that due to the wetness, I couldn't get out to see how far the ditch went into the public waters.

Matt then stated that Mr. Brazier could hire a wetland delineator if he wanted to get a second opinion, Mr. Brazier said "an attorney" that will cost me money. Matt reiterated that he said "wetland delineator", to which Mr. Brazier said that then we can't be the experts.

He then turned to me and started yelling about how the wetland has gotten wetter and that it's DNR's fault due to the fire break holding back the water and that we better figure this out before we push any more on his violation and how Mr. Kloop has been contacting the DNR and they don't do anything and won't give him photos or information about the site.

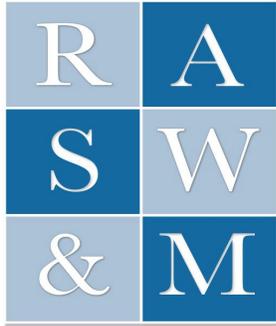
He turned to Justin and told him that "HE" was the only one that could make the decision on wetland and that "HE" better make the right choice and that "WE" better put this one on hold until we figure out the Kloop issue with the fire break or things would become very bad for DNR. He again stated that Justin was the one that would be making the decision on his property. Justin stated that that was correct and that he does take input from the DNR and BWSR comments.

The meeting got quite off and on before Mr. Brazier asked me again if I would tell him who turned the site in. I stated 'no'. It got quite and CO Elwell asked if there were any more questions. We left the conference room around 1:30-1:35 pm.

Since I could not get out on site farther without chest waders or a kayak, I would like to have the site flown.

Tony: If I missed anything in this summary, please clarify or add to it.

Stephanie



RUPP,
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March 8, 2022

Travis Germundson
Appeals and Regulatory Compliance Coordinator
Board of Water and Soil Resources (BWSR)
520 Lafayette Rd N
St. Paul, MN 55155

RE: Kittson County SWCD-BWSR Appeal—Appellant’s Addendum
Our File No. 1070-1030

Dear Mr. Germundson:

As you know, on February 23, 2022, Steve Anderson, counsel for Appellant,¹ submitted a “Final Addendum” with attached exhibits for consideration in the above-referenced appeal. The parties virtually met later that same day for a scheduled prehearing conference. At the prehearing conference, you noted that any documents created or produced after the Board’s July 2021 decision cannot be part of the record that the SWCD Board considered. This letter constitutes the Kittson SWCD’s objection to the submission of the additional documents that Appellant wishes to include in the record.

This evidence is:

- A video recording and transcript of a July 15, 2019 meeting between the Technical Evaluation Panel and Mr. Brazier that appears to take place in Mr. Brazier’s conference room.
- Various other documents associated with this meeting, including summaries and a map.

Under BWSR Rules, the record is the “the written record on which [the local government unit] based its decision.” Minn. R. 8420.0905, subp. 4(F). The Kittson SWCD did not consider the July 15, 2019 transcript or any of the additional evidence

¹ The February 23, 2022 Addendum refers to Mr. Brazier/Wagon Wheel as the “Respondents,” but this is inaccurate—the Respondent is the Kittson SWCD, and Mr. Brazier/Wagon Wheel is the Appellant.

March 8, 2022

Page 2

submitted in the Addendum because they were not submitted by Appellant for the SWCD Board's consideration prior to its decision and Appellant did not raise any issues referencing those documents.

Appellant raises a new issue on appeal that he claims requires consideration of the additional evidence. The alleged issue is that conservation enforcement officers from the Minnesota Department of Natural Resources and/or Kittson SWCD illegally trespassed on Mr. Brazier's land and all the data they collected should therefore be "omitted from the record." At the outset, Appellant never raised this issue below with the Kittson SWCD and cannot now raise it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to or considered by the district court); *see also Hentges v. Minn. Bd. of Water & Soil Res.*, 638 N.W.2d 441, 448 (Minn. App. 2002) (applying *Thiele* principles to an administrative appeal), *review denied* (Minn. Mar. 27, 2002).

Furthermore, the submitted documents are irrelevant to the issues in this case. Under Minnesota Statutes section 97A.205(a), an "enforcement officer is authorized to . . . (2) enter *any land* to carry out the duties and functions of the division." (Emphasis added). The constitutionality of this statute was challenged and upheld in *State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989), which held that the statute does not violate the Fourth Amendment because field searches and searches of open waters fall under the "open field" doctrine, which "permit[s] government intrusion anywhere except homes, the curtilage of homes and other areas in which a reasonable expectation of privacy can be proven." *Id.* The court held: "Clearly, the open-fields doctrine permits a conservation officer to enter almost any area in order to enforce the state's game and fish laws." *Id.* Accordingly, under established legal precedent, the purported reason for including the July 15, 2019 transcript, recording, and related documents is not legitimate and has no basis in law or fact.

For the above-stated reasons, the Kittson SWCD objects to the inclusion of the additional evidence outlined in the February 23, 2022 Addendum in the record.

Very Truly Yours,



Amy E. Mace
Marcus B. Jardine

cc: Steve Anderson, Counsel for Appellant

RASWM: 206709

April 6, 2022

I declare under penalty of perjury that everything I have stated in this document is true and correct.



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**MINNESOTA BOARD OF SOIL AND WATER RESOURCES
DISPUTE RESOLUTION COMMITTEE
WCA Appeal of No-Loss Decision**

Roger Brazier, individually and as owner of
Wagon Wheel Ridge, Inc.

Kittson County SWCD: 21 -1

Appellant, and

Wagon Wheel Ridge, Inc.

Appellant,

Appellants' Brief

vs.

Kittson Soil and Water Conservation District,

Respondent.

Attorney For Appellants

Attorney For Respondent SWCD

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PROCEDURAL HISTORY

Appellant agrees with much of the procedural findings contained in the July 14, 2021 TEP Evaluation. However, Appellant objects to the following portions of TEP's procedural and context background.

A. Appellant on to the italicized portions of the following paragraph.

The TEP members would like it noted that Glenn Brazier and Steve Anderson have submitted multiple pre-applications for review and the TEP members have provided Steve and Glenn clear and concise comments on the separate applications. It should also be noted that the restoration and after-the-fact application deadline has passed. The LGU in a good faith effort to work with the Appellant is considering this application for decision. Also, no recognizable restoration work has been done to satisfy the order nor has a complete comprehensive application,/ plan to address all impacts been received (Emphasis Added)(July 13, 2021 TEP Form, Findings and Recommendations, p. 1).

Response. Appellants believed both sides were negotiating in good faith.

B. Pre-applications.

WWR did, in fact, submit multiple pre-applications for review and TEP did provide feedback (See e.g., Record Exhibit 7).

Response: The pre-applications included concepts for approval that recognized WWR's circumstance did not fit neatly into Rules 8420 and 6115. The concepts were rejected out of hand and all comments simply reiterated the orders issued in October 2019. (See Record Exhibit 13).

C. Lack of Compliance

WWR is confused by this statement: "Also, no recognizable restoration work has been done to satisfy the order." (Record Exhibit 2)

Response: WWR did not begin restoration work while negotiating with the LGU

about whether the work needed to be completed. It's now clear that at no time did the LGU want to hear anything other than strict compliance with the October 2019 Orders rather than negotiating compromise.

D. Implication of Bad Faith.

TEP states: "The LGU in a good faith effort to work with the Appellant in considering this application for decision (Record Exhibit 2).

Response: Whether intentional or not, this statement appears to suggest that WWR has been acting in bad faith. This is completely false.

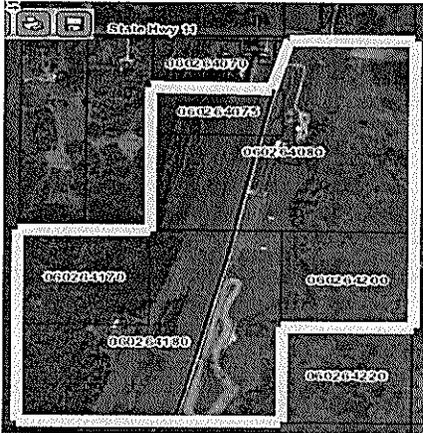
E. Additional Procedure Relevant to Appellants' Request to Include Additional Information.

Following Appellants' submission of their Notice of Appeal and after a delay in Respondent's production of the official record, respondent became aware of actions taken by Respondent during the July 15, 2019 warrantless search of WWR property. Specifically, Respondent knowingly drilled for soil samples despite a clear directive to not drill. As a result, Appellant filed an Addendum to the Notice of Appeal requesting that all evidence samples be quashed from use in all remaining agency proceedings including this appeal. BWSR incorporated this request in the appeal as a matter to be briefed.

BACKGROUND/TIMELINE

(Note: A more complete timeline is available in the Original Notice of Appeal.)

November 2010: Glen Brazier purchases multiple parcels of land in Kittson County just west of Karlstad Minnesota as an individual by Contract for Deed.



June 2011: The Kickin' Up Kountry Music Festival is held for the first time on the land purchased by Glen Brazier outside of Karlstad.

April 2012: Wagon Wheel Ridge Inc. and WWR Club, Inc. are formed. Work on Adventure Land was started.

August 2012: The 2010 Contract for Deed is Assigned to WWR Inc.

October 2012: The DNR created a fire break that crossed wetlands (approximate location 48 degrees 32.135 minutes by 96 degrees 33.720 minutes) resulting in significant piles of organic material deposited on the north side of the dozer line



The dozer line went fairly deep, 1 to 3 feet, and resulted in significant piles of organic material deposited on the north side of the dozer line.

Part of the dozer line was on land owned by Larry Lund, and close to Steven Klopp's land

October 2012:

The Karlstad Fire ruins much of Karlstad, including a Warehouse owned by Mattracks, and burns right up to buildings on Wagon Wheel Ridge property used for the Kickin' Up Kountry Music Festival.

Several local residents, including the Karlstad Fire Chief, expressed concern that if the dozer line is not rehabilitated, that water may become backed up by the piled material and cause flooding.

Larry Lund requested the DNR remove or modify the dozer line to avoid flooding his land (Based on conversations Roger Brazier had with Mr. Lund and Mr. Klopp).

The DNR took no action to address concerns.

May 2016:

Communication was received from the DNR regarding tiling on a small triangular lot on the SW side of Karlstad owned by Glen Brazier.

Mr Brazier, in a July 2019 meeting with DNR and Wetland representatives, described the project and communications as follows:

“And, and you guys had called me before, because you guys had called me before another time here, where we put, we put some drain tile in that little triangle, across from the Legionnaire, you know where that is. So they'll try and go there. We put some drains out there to, to, to, to, uh, I'm trying to get rid of some of the surface water there. Okay. Cause it's kinda like, uh, anyway, you guys call me and, and uh, uh, no, um, Nope. Nope. I think that back the Tamarac river watershed called me, said that you had called them and that we put this area and I didn't have a permit.” (See Appellants’ Notice of Appeal).

December 2018: WWR dugout an older ditch running north and south to provide a fire break in the likely event that another fire and a road was also built running east and west to allow fire-fighting vehicles access to the fire.

Early July 2019: Anthony Ewell and Jeremy Woinarowicz, conservation officers enter WWR property without WWR knowledge following an alleged complaint being received by the DNR.

July 15, 2019: Meeting between Mr. Brazier and Matt Johnson, Stephanie Klamm, Justine Muller, and Anthony Ewell. The purpose of the meeting is to obtain permission to access WWR land with DNR and Kittson SW staff to determine if a violation has occurred, as Officer Ewell explained.

“Thanks sir. So basically, we're here. Um, these folks are here to come out and check, check the area. There was a report of a possible violation that they want to come out, take a look to access there is a violation, um, if not or whatever. And if there is, [00:02:00] you know, do what they need to do to determine, you know, the extent, anything like that. So that's the reason they're here. There isn't, you know, we're not here to where the cops on you or anything like that.”

Mr. Brazier finally gives permission for the attendees to enter his property with restrictions against drilling holes.

October 2019: The DNR and Kittson Water and Soil Resources issued two separate Findings and Order.

November 2019: Appellant submits a new application (Record Exhibit 9) that was ruled incomplete by Justin Muller (Record Exhibit 8). Justin invites WWR to submit an “after-the-fact” application.

February 2021 WWR files another “after the fact application” which is denied which is again (Record Exhibits 7 and 6).

May, 2021 WWR contacts Justin Muller and submits a pre-application pursuant to Minn. Rule 8420.0420, Subpart 1 (Record Exhibit 5) .

July 2021 Stephanie grants an extension of time for compliance with the Restoration Orders.

July 16, 2021: Justin Muller sends WWR the TEP response and Order (Record Exhibits 3, 4 and 5)

August 2021 Appellants file a Notice of Appeal. The appeal is placed into abeyance pending attempts to further negotiate a compromise.

February 2022 A pre-hearing meeting is held with an emphasis on settlement. No settlement is reached. Appellant files an Addendum seeking to submit new evidence based. Respondent objects and the issues are added to the pending briefs of the parties.

ISSUES

- I. Whether Appellant Is Allowed To Present New Evidence At The Appeals That Proves The Original Warrantless Search Of Wagon Wheel Ridge Property Exceeded The Scope of Permission Granted
- II. Whether Respondent Should Be Estopped From Finding Appellants Failed To Apply For Permits Where Appellants First Began Diverting Water From State Ditch Into Appellants' Property In 2016 And Respondent Knew Of The Water Diversion.
- III. Whether Appellant's Excavation Took Place Where A Previous Ditch Was Created.
- IV. Whether Appellants' Accessed 4 To 1 Ratio Is Excessive.

ARGUMENTS

A. The DRC has the authority to accept new evidence in an appeal and remand the case back to the LGU to consider the new evidence.

Generally, an agency appeal is limited to arguments raised in the agency procedures prior to appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to or considered by the district court); see also *Hentges v. Minn. Bd. of Water & Soil Res.*, 638 N.W.2d 441, 448 (Minn. App. 2002) (applying Thiele principles to an administrative appeal), review denied (Minn. Mar. 27, 2002).

In addition, Minnesota Rule 8420.0905 Subp.5 states:

After the petition is granted, the appeal must be heard by the dispute resolution committee and decided by the board within 60 days after filing of *the local government unit's written record, submittal of written briefs for the appeal*, and a hearing by the dispute resolution committee. (Emphasis Added).

However, 8420.0905 Subp. C also states:

The board, its dispute resolution committee, or its executive director may remand the appealed decision back to the local government unit if ... *the local government unit's record is not adequate*. If an appeal is remanded, a new application is not required, and additional information may be submitted before a decision is made by the local government unit (Emphasis Added).

Finally, Minnesota Statute Section 14.60 (4) clearly anticipates the DRC's need to correct an incomplete record by utilizing its authority to take notice of the need:

Official notice.

Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

Page nine of the Appellants' August 16, 2021 Notice of Appeal describes a July 15, 2019 describes a meeting that occurred between Glen Brazier, Matt Johnson, Justin Muller, Stephanie Klamm and Anthony Ewell. (See Notice of Appeal.) At that time, Anthony Ewell (DNR officer) sought permission to access Wagon Wheel Ridge Property. The meeting was recorded by Mr. Brazier and portions of the recording appear in the original Notice of Appeal.

After filing their Notice of Appeal, the Appellants received additional information in response to a Data Request. This additional information is described in a Complaint for Declaratory Relief and Injunction recently filed by Appellants (Exhibit 1). The information includes a memorandum written by Matt Johnson summarizing the events on July 15, 2019 as follows: "Mr. Brazier granted permission to walk through the property. When asked if we could dig soil pits Mr Brazier did not say no but expressed concern due to the amount of infrastructure and electrical components underground." (Record Exhibit 15).

The video and audio of the July 15, 2019 meeting clearly shows this description to be false. In fact, Mr. Brazier gave very order not to drill on the land (See Exhibit 1, Complaint). Mr Johnson then goes on goes to describe the drilling for samples conducted clearly after being denied permission to drill (Record Exhibit 15.).

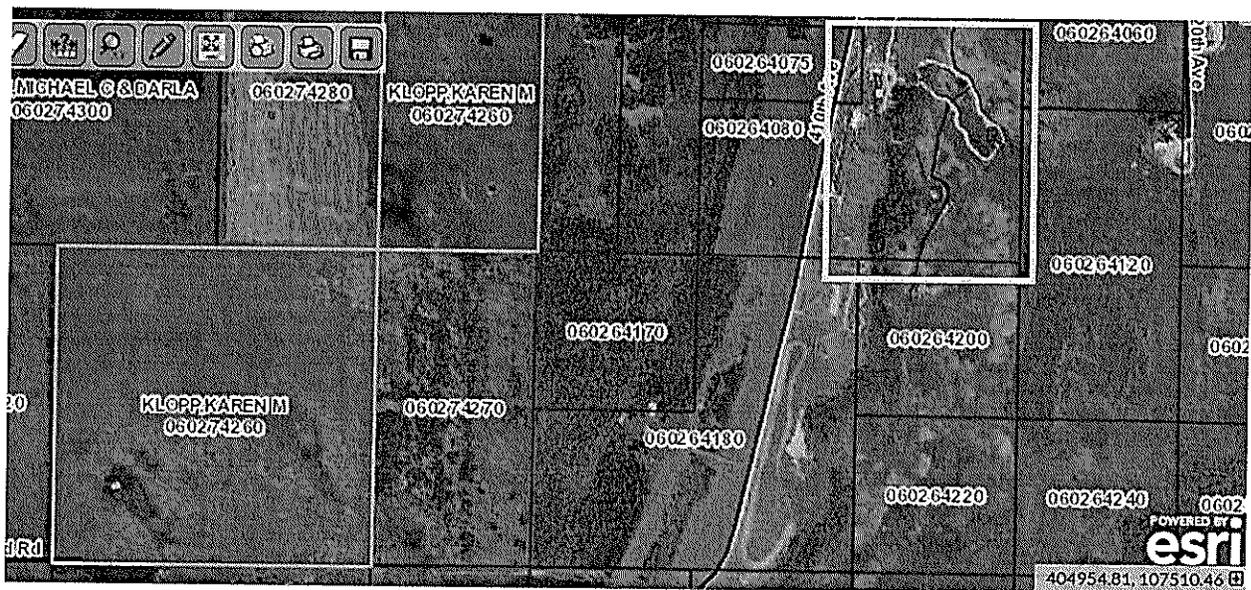
Since that time, the Respondents received additional information about the meeting and the actions taken on July 15, 2019 by Matt Johnson, Justin Muller Stephanie Klamm and Anthony Ewell that demonstrate their actions exceeded the permission granted be Mr. Brazier. The present case clearly established a need for the DNC to use the authority granted in the rules and allow the record to be corrected before the appeal is completed.

B. Respondent is Estopped From Requiring Restoration of the Ditch Created in 2018. The July 16, 2021 TEP Findings and Order appear to contend that that the fire break and road were created in a vacuum without historical context and void of past DNR, Kittson SWCD and

Army Corp of Engineers involvement or similar local issues. This perspective is untrue and misleading.

1. *The 2012 Army Corp of Engineers Fire Break.*

In 2019, Farmers, Steven and Karen Klopp, with the support of the Middle Snake Tamarac River Watershed District and the Marshall County Board of Commissioners, hired Aquatic EcoSolutions, Inc. to investigate what was causing flooding of previous farmland located “adjacent to and east of 410th Avenue, approximately 1 mile south of State Highway 11, approximately one mile of Karlstad in the southeast corner of Kittson County (Appendix B, Bates Number xx). In fact, just west of WWR property.



The final report, entitled Incidental Request Documentation Report, dated August 16, 2019, reported that:

Based on communication with people from the area, there was something that happened in 2012 to provide a fire break that was built across the outlet drainageway south the property in question within the Tamarac watershed. There were claims that the water level was higher than normal outlet flow for a period of time, which caused more cattails to develop within the path of the flowing water; this increased amount of cattails to was claimed to have slowed the flow rate from the historically stabilized rate and thus it was claimed that the water was impounded and flooded lands upstream of this location.

The report continues:

This apparent slowing of the water flow could explain the flooding that has been happening ... even though 2017 and 2018 were not normal precipitation years. (See Appellants' Notice of Appeal, Appendix B).

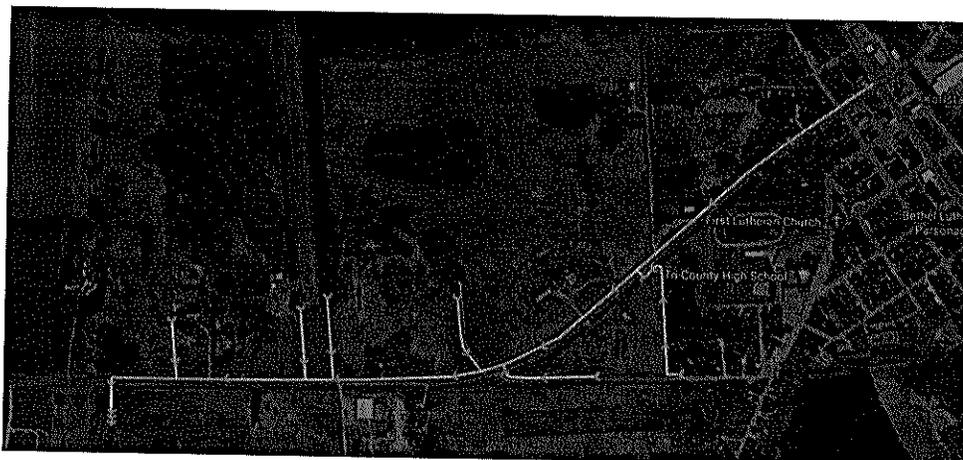
Justin Muller of Kittson SWCD informs Steven and Karen that more information was required to differentiate boundaries of natural wetlands and proposed incidental wetlands. In other words, the Klopps were required to spend more money.

The Report is relevant to the WWR situations for three reasons. First, the Army Corp of Engineer dozer line creates a fire break using identical methodologies deployed by WWR relating to spoils. The spoils were literally stacked up on one side of the line. Second, the location of the dozer line blocks water flow beginning all the way from the north end of Karlstad Minnesota to the dozer line (Id.).

Third, nothing was done to further investigate or remedy the situation.

2. 2016 Tile project.

In 2016, Mr. Brazier installed tile in a triangular piece of property he owned east of WWR and south of Highway 11.



The tile was used to eliminate flooding that had become more extreme and more common.

This flooding has been regularly happening since approximately 2012. It would appear that there would be an expectation that land that was mapped as HEL and enrolled into CRP would not regularly experience flooding. The *land to the east of this historic farmland seems to have become wetter sometime after 2012* and does not appear to have normalized back to its normal hydrologic level through 2017 and 2018 even though the following table shows 2017 and 2018 were normal or less than normal water levels.(Emphasis Added) (Appendix B, Bates Number xxx).

As the email below from Stephanie Klamm, DNR Hydrologist, to Dan Omdahl, a Technician III with the Middle Snake Tamarac Watershed District illustrates, it is clear that the DNR received a complaint and was aware of the tile work and the “channel:”

5/23/2016

To Dan,

I received a complaint about some work that is/has been going on near Karlstad along County Road 11 just on the west side of the town. Sounded like the person was concerned about tiling that had occurred in a piece of property where some contaminated soils were (old junk yard) was. *The tile water is running down the road ditch along County Road 11* and then there **has been a new channel dug into a wetland on the south side of the road** (near a public waters).

A picture provided by Ms. Klamm illustrates the wetland and “channel” identified in the email is the wetland in the present case.



Mr. Omdahl then notified members of the Kittson County Soil and Water Conservation District as well as the Minnesota Pollution Control Agency:

Jamie Osowski & Jim Schwab (**Kittson Co NRCS**) & Denise Oakes (**MPCA**) Detroit Lakes,

I was notified by Hydrologist Stephanie Klamm today about some tile that was, or is being installed in the triangular piece, SE sec 24 Deerwood Twp. Apparently the tiled water proceeds west in the CSAH 32 ditch to MN Trunk Highway #11 ditch, then westerly to the W2 NE4 section 26 Deerwood.

The tiled water flows south into a wetland which is also in section 26. The concern I have received from Stephanie is that the tiled parcel in section 24 historically probably had a gas station and/or a scrap yard. If any contaminants are present, it is unknown at this time without water quality sampling. I am unable to locate a permit for the activity. The landowner is possibly Glen A Brazier. Have any of you folks had contact with the apparent landowner? We will be investigating this further and contacting Mr. Brazier.
Danny Omdahl

Despite a complaint being received, the possibility that the water from the ditch could be tainted was directed into the WWR wetlands via a culvert and a “channel,” notification of the complaint never made it to Mr. Brazier’s attention until recently.

In a July 2019 meeting with the DNR and Wetland representatives just prior to the investigation of the WWR property, Mr. Brazier described his view of the 2016 project and accompanying conversations as follows:

And, and you guys had called me before, because [00:19:00] you guys had called me before another time here, where we put, we put some drain tile in that little triangle, across from the Legionnaire, you know where that is. So, they'll try and go there. We put some drains out there to, to, to, to, uh, I'm trying to get rid of some of the surface water there. Okay. Cause it's kinda like, uh, anyway, you guys call me and, and uh, uh, no, um, Nope. Nope. ***I think that back the Tamarac river watershed [00:19:30] called me, said that you had called them and that we put this area and I didn't have a permit*** (See Appellants Notice of Appeal).

After the 2016 encounter, Mr. Brazier felt assured the Tamarac / Middle Snake River Water Shed had jurisdiction to approve or deny his plans to build a fire break in the WWR property identified by Stephanie Klamm. Mr. Brazier contacted the WS and asked if he could dredge out a

ditch already on WWR land and build a road to service the vehicles used in fire-fighting activities. He was informed by the WS he could go forward with the plans and no permit was necessary.

3. The failure to act in the past estops action against WWR now.

Equitable estoppel is best described as preventing one party from using its own misleading comments or conduct to create an equitable right against another. *Firststar Eagan Bank v. Marquette Bank Minneapolis*, 466 N.W.2d 8 (Minn. Ct. App. 1991).

Equitable estoppel is best described as preventing one party from using its own misleading comments or conduct to create an equitable right against another. *Firststar Eagan Bank v. Marquette Bank Minneapolis*, 466 N.W.2d 8 (Minn. Ct. App. 1991).

A party must show that another party's language or conduct induced the party to rely, in good faith, on that language or conduct of the other party to their own detriment. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980). The language and conduct of the other party does not need to be explicit. In fact, in Minnesota:

- the conduct can be silence or a negative omission to act when there is a duty to speak on the matter.
- The facts do not have to be known to the offending party, but merely imputed on the party;
- The conduct does not have to be done with a fraudulent intent to deceive the plaintiff; it is enough if the conduct is done under such circumstances that the offending party should have known that it was probable that the conduct would be acted upon. *Dimond v. Manheim*, 63 N.W. 495, 497 (Minn. 1895); *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449 (Minn. Ct. App. 2005).

The DNR and the SWCD failure to act against the Dozer line and even more particularly, allowing the redirecting water from the triangle owned by Mr. Brazier estops the agencies from now acting against WWR for fire break actions in the WWR wetlands, whether created in 194 or incidental to actions taken in 2012. The 2016 investigation that was allegedly triggered by a complaint about the tile work should have produced, at a minimum, direct conversations with WWR at that time and Mr. Brazier but instead he was left to assume he was not in any violation of environmental rules.

C. TEP Incorrectly Found No Evidence Of A Prior Ditch.

TEP affirmed the Findings by the LUG that no evidence exists supporting the Appellant's contention that a previous ditch existed on the WWR land:

The TEP has reviewed aerial imagery from 1979 to present attached) and Exhibit 7 submitted by the applicant and determined that there is no evidence of a ditch in this location prior to the work performed in 2019.

However, the Appellant contends that despite poor quality of older ariel photographs, significant evidence exists showing signs of a previous ditch. In fact, the photograph attached to TEP's Report taken in 1991 certainly shows evidence that, at the very least, the same "channel" identified by Ms. Klamm existed in 1991. (See Exhibit 7 of Record Exhibit 5). A photograph taken in 2016 just before the tiling began clearly shows images that could easily be older ditches with some over-grow over hiding their existence. Other pictures show that same thing: photographic evidence of a possible ditch or ditches running south from the channel (Exhibit 5 and WWR's first after-the-fact application, Appendix B).

D. The 4:1 Penalty Assessed WWR Is Unreasonable.

In late 2018 while the ground was solid enough to bring in heavy equipment, Mr. Brazier hired an excavation firm to extend the channel identified by Ms. Klamm in 2016 by cleaning out and extending the pre-existing ditch running north and south across WWR property starting at

the Highway 11 culvert to create a fire break (Record Exhibit 2, 2019 arial picture). Appellant also created a narrow road for fire-fighting equipment to gain access to the fire break and conduct back burns well before it hits the Kickin' Up Kountry structures (Id.) Mr. Brazier describes the impetus for the project as follows:

We can, we can at least have something here that we can get across to fight the fires. Cause I can't afford, I've got several million dollars invested in this and I can't afford to have that come through here. One more nap if you got the whole thing, you know, and last, last time the fire was right up to those right up to the deal. So I'm talking about down here, there was no way to the black Hawk helicopters could even, and they were definitely not a right here or a pond right here. And there's no way that they could have knocked the flames down. And the next one by the 10, the next month, they'd still be a hundred feet [apart]. So that's, that's not cattails, that's fuel, that's fuel. And, and um, and like I said, it's, uh, it's uh, so something's going to have to be done there. Something's going to have to be done.

At no time did Mr. Brazier intentionally violate any elements of Rule 8240 or Rule 6115 and instead sought permission from the watershed and county as he believed was required. In response, a 4:1 ratio was imposed as a penalty making any reclamation effort and costs arbitrary and unreasonably expensive.

CONCLUSION

Based on the above, Appellants respectfully ask for the following relief

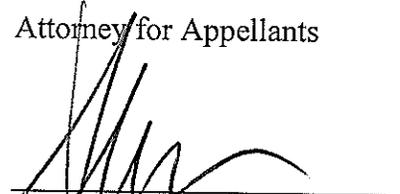
1. That the DRC allow new evidence submitted by Appellant and disallow all evidence unlawfully gathered by Respondent at the July 15, 2019 search and over-rule the TEP recommendation to deny Appellant's application, or in the alternate, remand the finding and order to the Respondent to remove all findings supported by the unlawful drilling.
2. Denying TEP's recommendation denying the Applicants May 2021 Application on the grounds that it is contrary to existing treatment of other ditches in the

Kittson area, or in the alternate, finding Respondent is barred by promissory estoppel for allowing the same activity on Appellants' land since 2016.

3. Finding that the 4 to 1 ration applied to Appellant is excessive and arbitrary.

April 6, 2022

Attorney for Appellants



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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KITTSON

NINTH JUDICIAL DISTRICT

Case Type: Civil - Other

Glen Brazier, individually and as owner of

Court File No. _____

Plaintiffs,

Wagon Wheel Ridge, Inc. A Minnesota Corporation,

COMPLAINT FOR DECLARATORY JUDGMENT AND TO SUPPRESS EVIDENCE PURSUANT TO MINNESOTA STATUTE § 626.26

Plaintiffs

vs.

Minnesota Department of Natural Resources,

Defendant, and

Kittson Soil and Water Conservation District,

Defendant, and

Minnesota Board of Water and Soil Resources,

Defendant.

For their Complaint, Wagon Wheel Ridge, Inc. and Glenn Brazier, by and through counsel, Steven Anderson, Anderson Law Group, PLLC allege for their Complaint as follows:

NATURE OF THE COMPLAINT

1. This is an action to suppress and return evidence gathered by defendants Minnesota Department of Natural Resources (hereinafter DNR) and the Kittson Soil and Water Conservation District (hereinafter SWCD) in violation of Minnesota Constitution, Article 1, Section 10 (2014), Minnesota Statute Section 97A.205 (2021), and the “open field doctrine” described in *State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989).

27. The project included having Plaintiff Brazier clean out the state ditch running north of Highway 11 up to and including the culvert that dumps the water running from Karlstad to WWR land (Exhibit 6).

28. The run-off from the Highway 11 ditch has been pouring into WWR land since 2016.

29. Stephanie Klamm of the DNR was aware of the 2016 project.

30. In late 2018 and early 2019, Plaintiff Wagon Wheel Ridge dug a ditch on the WWR property starting at the Highway 11 culvert and running generally south on the property for approximately 1650 feet to serve as a fire break protecting the buildings and improvements on WWR property.

31. Plaintiffs also constructed an access road for fire-fighting equipment approximately 1900 feet long running generally east and west to allow fire equipment to access any fire as well as back burn.

Current Dispute

32. In the summer of 2019, Plaintiffs were notified that the DNR and SWCD received an anonymous complaint alleging that the ditch and road impacted wetlands and/or water basins requiring that the DNR and SWCD investigate.

33. On July 15, 2019 members of both the DNR and SWCD met with Plaintiffs in the Karlstad offices of Mattracks, specifically, Stephanie Klamm (DNR), Matthew Johnson (BWSR), Anthony Elwell (DNR) and Justin Muller (Kittson SWCD).

34. The July 15, 2019 meetings were recorded by Plaintiff Brazier producing a video and audible copy of the meeting (Exhibits 10, 11. And 12).

35. The audio was electronically transcribed by Rev.com (Exhibit 13).

36. The audio was then clerically transcribed by Maryhelen Tapio using the audio and video recordings of the meeting created by Plaintiffs (Exhibit 13).

37. At the July 15, 2019 meeting, Officer Elwell and Matthew Johnson tried to convince Plaintiff Mr. Brazier to grant access to Plaintiff WWR property, including but not limited to the following remarks:

And then from there, um, you know, since we're allowed to come on, they are not obviously, because they're not licensed peace officer. So, from there we contact you, you know, you have 100% right to not allow these folks to be on your property. Um, that's fine. Um, the other option is from that point, uh, we would apply for warrants to allow them, um, in the past generally landowners, they allow them to come off and it a hundred percent on you. It's your, it's your property. You can, you have the right to do that. (Exhibit 10, minute 4:20)

That, that piece of paper there, um, basically it's a notice to you that there's a possible violation and that you will be investigated. That's what the RPM notices. It's not a citation. It's not a cease-and-desist order. It's not anything that's gonna get you any lawful reprimand, anything that's just basically occurred (Exhibit 10. 5:16)

As I already stated, you know, if there's, we're just here to see if there is a violation, we don't even know if there's a violation because we haven't been out there. We haven't, we can see some stuff (Exhibit10, 25:49).

So, for an order, for an area to be wetland attest to meet three specific criteria has to have wetland plants because they have a wet lender. What we call a hydric soil and I need to have a water source or hydrology. And we look for that hydrology within 12 inches of the soil surface. So, when we go out and look for whether or not, whatever you've done is in a wetland, that's what we're going to look for is the point on the landscape where those three parameters are met. And if we find that it's not the case at any point along the project area, then it's not a wetland. (Exhibit10, 28:11).

[T]hey need to physically take something out of the ground, if you don't give them permission, you know, I mean, we can take a helicopter and hover this far off the ground, but they need to take a core sample..[.] (Exhibit 10, 34:27).

38. At the July 15, 2019 meeting, Matthew Johnson ultimately states: “Okay. Part of what we'd prefer to do is ideally we need to look at some soils. Are there any absolute, no, dig a hole?” (Exhibit 10: 41, 47)

39. In response to Matthew Johnson's request at the July 15, 2019 meeting to dig holes to collect soil samples, Plaintiff Brazier clearly and immediately denied permission to dig holes on the WWR land, specifically stating, "You can't dig a hole up there unless you call 9 1, 1 or up out you can't. There is so much infrastructure under there. (Exhibit 10, 41:57)

40. Officer Elwell led Mr. Johnson, Ms. Klamm and Mr. Muller on to WWR property pursuant to Plaintiff Brazier's limited permission to walk on the property only" (Exhibit 13, 4:59)

41. Despite Plaintiff Brazier's clear instructions not to dig into the ground, Officer Elwell and the others with him drilled multiple holes into the ground up to 30 inches and collected soil samples. The soil samples were shared with the Kittson SWCD and the DNR.

42. Upon information and believe, none of the holes drilled on July 15, 2019 were located in the DNR jurisdiction.

43. On August 10, 2021, Plaintiffs sent a data request to the DNR (*See infra* Exhibit 3). The DNR verified receipt of the data request on August 12, 2021. The data was not received by Plaintiffs until November 2021.

44. In an email sent by Matthew Johnson to Stephanie Klamm following the July 15, 2019 meeting, Matthew Johnson described the meeting discussions as follows:
"When asked if we could dig soil pits Mr Brazier did not say no but expressed concern due to the amount of infrastructure and electrical components underground." (Exhibit 14).

45. In an email sent by Stephanie Klamm to Groshens, Tom P (DNR); Kestner, Nathan (DNR), Cc: Ebbenga, Theresa (DNR); Gleason, John (DNR); Elwell, Anthony (DNR) following the July 15, 2019 meeting, Stephanie Klamm does not mention Matthew Johnson's direct request to drill holes nor Plaintiff Brazier's denial of the request (Exhibit 15).

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Appeal of
Wetland Conservation
Act No-Loss Decision dated July 14, 2021

BWSR File No. 21-1

**KITTSOON SOIL AND
WATER CONSERVATION
DISTRICT'S BRIEF
SUPPORTING DENIAL OF
NO-LOSS APPLICATION**

INTRODUCTION

In this appeal under the Wetlands Conservation Act (“WCA”), Glen Brazier, acting on behalf of Wagon Wheel Ridge, (“Appellant”) challenges the Kittson Soil and Water Conservation District’s (“SWCD”) July 14, 2021 Order denying his no-loss application. The Appellant attempts to raise new “illegal search” and “estoppel” arguments on appeal that have no merit and moreover cannot be raised for the first time on appeal. Appellant’s remaining arguments express mere disagreement with a finding made by the SWCD and assert that the SWCD’s application of an established Board of Soil and Water Resources (“BWSR”) rule is unreasonable without providing any legal authority or argument to support his position. Appellant’s arguments are entirely baseless, and the SWCD’s July 14, 2021 Order denying his application must be affirmed.

BACKGROUND

The property in question is located in Deerwood Township in Kittson County, Minnesota, just west of the City of Karlstad, and it is identified as parcel number 060264080 (“the property”). (Ex. 5 at 3; Ex. 11 at 1).¹ Appellant purchased the property through his company,

¹ “Ex.” is a reference to the record exhibits submitted by SWCD to BWSR for this appeal.

Wagon Wheel Ridge, in 2012. (Ex. 7 at 3). There was a fire near Karlstad in 2012 that allegedly nearly destroyed some of Appellant's buildings. (Ex. 7 at 6-7).

In or around December 2018 to early 2019, Appellant dug a ditch into the protected Type 2/Type 3 wetland within the SWCD's jurisdiction. (A.B.² at 6, Exs. 11, 12). The ditch, which is 1650 feet in length, "travels south through the property and is located entirely within the wetland." (Ex. 2). Allegedly, the Appellant believed the Middle, Snake, Tamarac Rivers Watershed District was the controlling agency, and its staff allegedly told him no permit was required to dig a ditch. (Ex. 4, Appendix 2 at 1-2; Exhibit 7 at 7-8). Along the ditch, Appellant then constructed a new road, which he built over the wetland, and it traversed approximately 1900 feet. (Ex. 11) Appellant also dumped gravel fill into the protected wetland to prop amusement rides (called the "UFO" and the "Aircraft"). (Ex. 11).

After receiving an anonymous complaint about the property, conservation officers and wetland specialists went to the property to observe the alleged violations in July 2019 (Exs. 11, 15). On July 15, 2019, Appellant met with representatives from Minnesota Department of Natural Resources (DNR), BSWR, and the SWCD ("the panel") and granted the agencies permission to enter his property to collect data on possible wetland impacts. (Ex. 15). The panel consisted of:

- BSWR Wetland Specialist Matt Johnson;
- DNR Area Hydrologist Stephanie Klamm;
- DNR Conservation Officer Anthony Elwell; and
- Kittson SWCD District Technician Justin Muller.

(Ex. 11). During this meeting, the panel explained they would need to "dig soil pits" on their walk of the property and Mr. Brazier "did not say no, but expressed concern due to the amount of

² A.B. is a reference to "Appellants' Brief."

infrastructure and electrical components underground.” (Ex. 15). He then “granted permission” for the panel to go on his property to conduct their review. (Exs. 12, 15).

Matt Johnson from BWSR explained to Mr. Brazier *after* walking the property that they “observed wetland on his property that was determined using the techniques of the 87 manual,” which is a reference to the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual. (Ex. 15). This manual provides that, when an on-site visit is necessary, the standard procedure is to “[d]ig a soil pit” using a soil auger or spade.³

Matt Johnson’s notes from the July 15, 2019 site visit also explain that hydrology or the level of soil saturation is a “wetland indicator[.]” (Ex. 15). In significant part, his notes provide that hydrology “was observed in the open ditches and ponds adjacent to the road” and that “[s]oils could be readily observed via the open ditches.” (Ex. 15). The report then states that the soil pits contained “the same profile” as the openly observed soil. (Ex. 15). It is also clear from the description in this document that the pits were dug along the wetland boundary of “snake island,” which the road runs along. (Exs. 14, 15).

On August 23, 2019, the SWCD determined that Appellant had violated the WCA and issued Appellant a Minnesota Wetland Conservation Act Restoration Order for the violations. (Ex. 11). The SWCD Order was served on Appellant on October 15, 2019. (Ex. 11) (“2019 order”). The 2019 Order provided that a newly constructed road and a newly dug ditch were observed in a Type 2/Type 3 wetland, with a total square foot impact of 74,500 Sq. Ft., which was performed without an approved WCA application from the appropriate local government unit and no exemption applies to this size and type of impact. (Ex. 11). The 2019 order required

³ See *U.S. Army Corps of Engineers Digital Library, Corps of Engineers Wetlands Delineation Manual*, <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/> (accessed May 9, 2022).

Appellant to either restore the wetland or submit a wetland replacement plan, exemption, or no-loss application to the SWCD within 30 days. (Ex. 11). The order stated that Appellant could seek approval for an after-the-fact replacement plan, exemption determination, or no-loss determination from the SWCD, which would rescind the order if the application was approved. (Ex. 11). The order further provided that Appellant had to submit “a *complete* wetland replacement plan, exemption, or no-loss application to the Kittson SWCD within 30 days of receipt of this order.” (Ex. 11, emphasis added). If a completed wetland replacement plan was not submitted, compliance was required “on or before June 1st 2020.” (Ex. 11).

Appellant submitted an unsigned application in November 2019, which he deemed an “after-the-fact” application for the property. (Ex. 9). The SWCD determined that the application was incomplete on November 22, 2019. (Ex. 8). This was, in part, because the application did not state “which exemption is being applied for” and did not “submit the proof necessary to show qualification for the exemption.” (Ex. 8).

Around this time, Appellant retained Attorney Steve Anderson, who continues to represent him in this case. In or around February 2021, Mr. Anderson drafted a “wetlands after-the-fact plan” on behalf of Appellant and submitted it as a pre-application for initial comment from the SWCD. (Ex. 7). In the pre-application, Appellant asserts at times he is seeking an exemption, such as an “educational exemption,” but in other places asserts he is seeking a “no loss” determination. (Ex. 7 at 16, 21). The pre-application sought an exemption for all three violations—the road, the ditch, and the amusement rides.

In reviewing the pre-application, the Technical Evaluation Panel (TEP), which makes initial determinations on such applications, opined that the road does not qualify for an exemption and that the fill/sand used for the amusement rides impacts the wetlands. (Ex. 6). The

TEP consisted of Matt Johnson, Stephanie Klamm, and Justin Muller. (Ex. 6). The TEP explained that it “utilized proven methods of determining wetland in an atypical situation according to the 1987 Corps of Engineers Delineation Manual” and found “that the road was placed in a jurisdictional wetland” based on these methods. (Ex. 6). The same section provided that Appellant could obtain his own “soil borings” (consistent with the manual) to challenge the determination. (Ex. 6).

In response to the TEP’s evaluation notes related to the pre-application, the Appellant finally submitted a completed application about two months later in May 2021, which was identified as a “no-loss” application. (Ex. 4). The application did not challenge the amusement ride and the road violations. (Ex. 4). The application only regarded the ditch and the creation of a proposed new pond connected to the ditch. (Ex. 4). The SWCD did not receive a completed application regarding the ride and road violations in May 2021 or anytime thereafter.

The TEP issued its findings and recommendations in July 2021. (Ex. 2). The TEP found that “[t]he ditch in its current state of being an open channel and its ability to convey water is an impact.” (Ex. 2). This is “because water can freely leave the wetland through the excavated channel (ditch),” which will “will result in draining the wetland.” The TEP found that the excavation in type 3 wetlands is by itself a wetland impact. The TEP also stated that it “reviewed aerial imagery from 1979 to present . . . and determined that there is no evidence of a ditch in this location prior to the work performed in 2019.” (Ex. 2). The requested pond excavation was deemed to be in a DNR protected water. (Ex. 2).

The SWCD Board met on July 14, 2021, and Justin Muller presented the TEP’s findings and recommendations. (Ex. 16). Based on the presentation, the SWCD Board accepted the

recommendation of the TEP, which was memorialized in the SWCD's Notice of Decision, which was issued on the same day:

The Kittson SWCD with the recommendation of the TEP, has Denied the No-Loss application received May 03, 2021 submitted by Steve Anderson on behalf of Glenn Brazier. The board agreed that because the work already performed as described in the findings section of the Restoration Order and as proposed by this application results in impacts to wetlands per the definition of impact in 8420.0111 Subp. 32. and is in conflict with and therefore does not qualify for No Loss according to 8420.0415 A. Further, some of the work proposed in the application is located within a public water where the WCA LGU does not have jurisdiction per 8420.0105 Subp. 2. E. and 8420.0255 Subp. 4.

(Ex. 1) ("2021 order"). Appellant then appealed the decision to BWSR.

ARGUMENT

The SWCD's decision to deny the Appellant's no-loss application must be upheld. At the outset, there is a preliminary issue of timeliness. Consistent with Minn. R. 8420.0900, subp 4(D), the 2019 order that SWCD served Appellant on October 15, 2019 stated that Appellant had to submit "a *complete* wetland replacement plan, exemption, or no-loss application to the Kittson SWCD within 30 days of receipt of this order." (Ex. 11, emphasis added). Appellant submitted a no-loss application within this timeline, but it was clearly rejected as "incomplete." (Ex. 8). Appellant then submitted, through his attorney, a pre-application, and the TEP worked with Appellant by providing written comments. (Ex. 6). As outlined above, after a lot of back and forth, a completed no-loss application for the ditch and a proposed pond was accepted by the SWCD on May 3, 2021. (Ex. 4). Although the SWCD accepted this late application in a good faith effort to work with the Appellant, the Appellant *never submitted a completed application for the road and amusement ride violations*. The 2019 order plainly provides that if a completed wetland replacement plan was not submitted, compliance was required "on or before June 1st 2020." (Ex. 11). Appellant never timely submitted a completed application related to the road

and the amusement ride violations and thus, cannot now challenge the SWCD's decision related to those items. This appeal must be limited to the no-loss determination related to the ditch.

Appellant also raises no argument regarding the proposed pond on appeal.

Aside from this preliminary issue of timeliness, Appellant's arguments on appeal have no merit. Appellant seeks to raise new issues on appeal, introduce new evidence on appeal, and raises numerous frivolous arguments that have no basis in law or fact.

I. Standard of review

Appellant bears the burden of proof in this matter. Administrative agencies, such as BWSR, are "creatures of statute" and have "only those powers given to them by the legislature." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). This includes an administrative agency's scope of power to review another agency's decision. "An agency decision generally enjoys a presumption of correctness and will not be reversed unless the party challenging the decision establishes a statutory basis for doing so." *See, e.g., In re Wetland Conservation Act*, No. A10-378, 2010 WL 5292204, at *2 (Minn. App. 2010).

In order to prevail in this matter, the WCA rules provide that the Appellant must prove that the SWCD's findings of fact are "clearly erroneous," that the SWCD incorrectly applied the law to the facts of this case, or that the SWCD made a procedural error that was prejudicial to a party. Minn. R. 8420.0905, subp. 4G. The issues that are appealable are limited, and Appellant bears the burden of proof on all of them. *See* Minn. Stat. § 103G.2242, subd. 9 (listing as appealable "a replacement plan, exemption, wetland banking, wetland boundary or type determination, no-loss decision, or restoration order"). BWSR "shall affirm the local government unit's decision if the local government unit's findings of fact are not clearly

erroneous [and] if the local government unit correctly applied the law to the facts” Minn. R. 8420.0905, subp. 4(G).

A finding is only “clearly erroneous” if the BWSR is “left with a firm conviction that a mistake has been made.” *Nordby v. Peterson*, 207 N.W.2d 735, 736 (1973). The appellant must show more than “mere disagreement” with Kittson SWCD’s findings. *Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 195 (Minn. App. 2001)

II. Appellant failed to preserve an “illegal search” argument in the proceedings below, and the argument has no merit.

“Generally, failure to raise an issue in an administrative proceeding precludes review on appeal.” *Riley v. Jankowski*, 713 N.W.2d 379, 398 (Minn. App. 2006), *review denied* (Minn. July 19, 2006). An agency appeal is limited to arguments raised in the proceedings below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to or considered by the district court); *see also Hentges v. Minn. Bd. of Water & Soil Res.*, 638 N.W.2d 441, 448 (Minn. App. 2002) (applying *Thiele* principles to an administrative appeal), *review denied* (Minn. Mar. 27, 2002).

Appellant agrees with this standard. (A.B. at 9). However, appellant appears to argue that BWSR’s rules under the WCA carve out an exception to the general rule that appellants are not granted a “second chance” to create new lines of argument in their appeal. (A.B. at 9-10). The BWSR rule, however, is entirely consistent with *Thiele v. Stich*. The applicable rule provides that, in an appeal to BWSR, “[t]he board must base its review on the record and the argument presented to the board by the parties” unless a party applies to “the board for leave to present additional evidence on the issues in the case and it is shown to the satisfaction of the board that additional evidence is material and that there were good reasons for failure to present it in the proceeding before the local government unit.” Minn. R. 8420.0905, subp. 4(F); Minn. Stat. §

103G.2242, subd. 9(b)(4). In short, in order for new evidence and argument to be allowed, the evidence must be (1) material *and* (2) there must be “good reasons” for failing to present it below.⁴

Regarding the first element, whether the evidence is material, Appellant presents no argument. The document Appellant purports was newly discovered after filing for appeal is in the record as Exhibit 15, which is Matt Johnson’s summary of the July 15, 2019 meeting. The document provides that hydrology or the level of soil saturation is a “wetland indicator[.]” Appellant fails to mention that the same document states that hydrology “was observed in the open ditches and ponds adjacent to the road” and that “[s]oils could be readily observed via the open ditches.” (Ex. 15). The report then states that the soil pits contained “the same profile” as the openly observed soil, and the hydrology ranged from 6 to 12 inches below the virgin soil surface in the openly observed soil, which was actually closer to the surface than what was found in the pits. (Ex. 15). It is also clear from the description in this document that the pits were dug along the wetland boundary of “snake island,” which the road runs along. (See Ex. 14). Thus, the pits were not dug for the ditch or amusement ride violations. And it is clear that the pits dug around the road were only to confirm the extent of the violation of the road since the soil could be “observed in the ponds adjacent to the road.” The soil pits were not necessary to determine there was a WCA violation. In addition, record documents provide that Mr. Brazier gave them consent to be on the property. (Exs. 12, 15). Provided the contents of these documents is in the

⁴ Appellant fails to cite the applicable standard quoted above and instead quotes the standard for a contested case hearing before an administrative law judge from Minn. Stat. § 14.60, subd. 4. Appellant cites no law stating that this provision applies to BWSR’s review of a local government unit’s decision. And, the legislature has directed the BWSR Board to implement rules addressing “the review and appeal of decisions” of local government units under the WCA. *See* Minn. Stat. § 103G.2242, subd. 1(a). This is exactly what BWSR did in implementing Minn. R. 8420.0905, subp. 4(F). It is the applicable standard here in this appeal.

record, Appellant presents no argument for how the transcript of the July 15, 2019 meeting would provide any material evidence.

Regarding the second element, there are no “good reasons” why this argument could not have been raised below. The same record document, Exhibit 15, provides that Matt Johnson from BWSR explained to Appellant *after* walking the property that they “observed wetland on his property that was determined using the techniques of the 87 manual,” which is a reference to the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual. This manual provides that, when an on-site visit is necessary, the standard procedure is to “[d]ig a soil pit” using a soil auger or spade.⁵ This was yet again described in the TEP’s evaluation of Appellant’s February 2021 pre-application for a wetlands after-the-fact plan where Matt Johnson, Stephanie Klamm, and Justin Muller explained that they “utilized proven methods of determining wetland in an atypical situation according to the 1987 Corps of Engineers Delineation Manual” and found “that the road was placed in a jurisdictional wetland” based on these methods. (Exhibit 6). The same section provided that Appellant could obtain his own “soil borings” to challenge the determination. (Ex. 6). The allegation that Appellant did not know about soil samples has no merit. Appellant had the video and/or transcript of the conversation since July 15, 2019 and failed to raise this argument.⁶

Furthermore, it is not clear what Appellant is arguing. Appellant appears to be claiming that the SWCD conducted an “illegal search,” but he cites no law or legal authority for his position in his principal brief or notice of appeal. Even Appellant’s unsolicited February 23, 2022 “Addendum,” which includes documents outside the record, does not cite any legal

⁵ See footnote 3.

⁶ The footer of the transcript Appellant is attempting to insert into this appeal states that the transcript was “[c]ompleted 08/10/21”).

authority for an “illegal search.” Appellant has accordingly waived the argument under these circumstances. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (holding that “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”).

The only document that does reference a legal authority is a document attached to Appellant’s memorandum that also is not in the record, which is part of a Complaint he has filed in Minnesota District Court. (A.B., Ex. 1). In this new frivolous lawsuit, Appellant is presumably seeking to circumvent his failure to raise his “illegal search” argument in the proceedings below with SWCD and introduce them into state district court, which has no jurisdiction over a matter that is properly pending before the relevant administrative agency. As cited by a state district court, the WCA “neither grants the district court jurisdiction to review a wetland replacement plan, nor gives a private party any right to an action outside of an appeal to BWSR.” *State v. Trahms*, 2004 WL 3570665 (Minn. Dist. Ct. Feb. 5, 2004).

This frivolous lawsuit is a waste of judicial resources and a distraction from the present appeal. Nevertheless, to the extent that BSWR chooses to incorporate the partial Complaint⁷ by reference, the arguments are easily disposed of. The partial Complaint references Minnesota Statutes Section 626.21, which provides that “[a] person aggrieved by an unlawful search and seizure may move *the district court* for the district in which the property was seized or *the district court* having jurisdiction of the substantive offense for the return of the property” and to suppress the evidence. (Emphasis added). The plain language of this statute is applicable only to district courts, so it has no bearing in this proceeding. Moreover, the law has clearly established

⁷ It is clear that the Complaint is cut off in Exhibit 1 to Appellant’s memorandum.

that this statute only applies in *criminal proceedings*. See *Nationwide House Corp. v. Skoglund*, 906 N.W.2d 900 (Minn. App. 2018) (holding that section 626.21 is a criminal statute and does not apply beyond general criminal proceedings). This statute clearly has no application in this proceeding.

It is equally unclear if Appellant is attempting to make a constitutional argument. Presumably, Appellant is attempting to make some kind of argument under the “exclusionary rule” to the Fourth Amendment. However, Appellant does not cite any relevant law, does not cite any caselaw showing that the “exclusionary rule” is an appealable issue to BWSR (or in any civil proceeding), and makes absolutely no effort to demonstrate how the issue of a so-called “illegal search” is properly before BWSR.

There are a multitude of reasons to reject any kind of Fourth Amendment claim. At the outset, Appellant makes no showing that he did not consent to the panel coming on his property on July 15, 2019. During this meeting, Appellant consented to allowing the panel on his land. (Addendum⁸ Ex. 3-5). The panel explained that they would need to look for “hydrology within 12 inches of the soil surface” to help establish the parameters of the wetland. (*Id.*). The panel also explained that they needed to “take samples” (*Id.*). After Appellant expressed concern about his underground electronics, the panel further explained, “We look at the soils and what we look for is colors, soil, colors, and textures, and then, uh, look for evidence of, or hydrology in the soil. So whether it’s saturated or, or, uh, has standing water and things like that.” Appellant then reaffirmed his permission to access the land by stating: “I’m spending so much time on this stuff that started to tick me off. But go ahead. You guys can go up there.” (*Id.*)

⁸ This is a reference to Appellant’s February 2022 Addendum to Appeal.

In any case, even without consent, conservation officers have broad authority to enter private land to conduct their duties. Under Minn. Stat. § 97A.205(a), an “enforcement officer is authorized to . . . (2) enter any land to carry out the duties and functions of the division” (emphasis added). The constitutionality of this statute was challenged and upheld in *State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989), which held that the statute does not violate the Fourth Amendment because field searches and searches of open waters fall under the “open field” doctrine, which “permit[s] government intrusion anywhere except homes, the curtilage of homes and other areas in which a reasonable expectation of privacy can be proven.” *Id.* The court held: “[c]learly, the open-fields doctrine permits a conservation officer to enter almost any area in order to enforce the state’s game and fish laws.” *Id.* The term “open field” has been construed to apply not only to an open field in a literal sense, but also to wooded areas, deserts, vacant lots in urban areas, open beaches, reservoirs and open waters. *Id.* This broad definition, along with the expansion of the doctrine, “appears to permit government intrusion anywhere except homes, the curtilage of homes and other areas in which a reasonable expectation of privacy can be proven” *Id.* With this standard in mind, conservation officers can legally walk on open private land to conduct their duties without consent.

Provided the legal framework, there is no basis for even considering the exclusionary rule here. Nonetheless, in the event that BWSR considers the exclusionary rule, the SWCD provides the below analysis.

The exclusionary rule to the Fourth Amendment “is a prudential doctrine . . . created by [the Supreme] Court to compel respect for the constitutional guaranty.” *Davis v. United States*, 564 U.S. 229, 236, 131 S. Ct. 2419, 2426 (2011). The exclusionary rule is not “a personal constitutional right of the party aggrieved.” *United States v. Calandra*, 414 U.S. 338, 348, 94

S.Ct. 613, 38 L.Ed.2d 561 (1974); *see also Davis*, 564 U.S. at 236, 131 S. Ct. at 2426 (citations omitted) (“Exclusion is not a personal constitutional right” (quotations omitted)). “[B]ecause the rule is prudential rather than constitutionally mandated, [the United States Supreme Court has] held it to be applicable only where its deterrence benefits outweigh its substantial social costs.” *Pennsylvania Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 362, 118 S. Ct. 2014, 2019 (1998). Correspondingly, the exclusionary rule “does not proscribe the introduction of illegally seized evidence in all proceedings or against all persons.” *Id.* The United States Supreme Court has “repeatedly declined to extend the exclusionary rule to proceedings other than criminal trials.” *Id.*; *see also State v. Lindquist*, 869 N.W.2d 863, 868 (Minn. 2015) (“[T]he Supreme Court has declined to apply the Fourth Amendment exclusionary rule in circumstances in which doing so would not serve the central purpose of deterring police misconduct”).

There is no basis here for applying the exclusionary rule because the rule only serves to deter Fourth Amendment violations, and specifically, police misconduct. As provided above, Minnesota law has explicitly held that conservation officers carrying out their duties in an open area on private land do not violate the Fourth Amendment. Further, the panel repeatedly informed Appellant about the reasoning and need for soil samples and the methods used during their site visit both during and after the July 15, 2019 meeting. (Exs. 6, 15). Finally, the five soil pits were only used to verify the extent of the road violation because the hydrology “was observed in the open ditches and ponds adjacent to the road” and the “[s]oils could be readily observed via the open ditches.” (Ex. 15). The soil pits contained “the same profile” as the openly observed soil. (Ex. 15). In this context, there is no basis for applying the exclusionary rule, which serves to deter police misconduct in criminal trials.

III. Appellant’s convoluted “estoppel” arguments were not argued below, rely on evidence not in the record, and have no merit.

A. Estoppel was not argued below and Appellant relies on evidence that is not in the record.

At the outset, there are two preliminary problems with Appellant’s “estoppel” arguments. First, “estoppel” was not an argument raised in the proceedings below. Accordingly, because he failed to preserve this argument in the proceedings below, it cannot be raised for the first time on appeal. *See Thiele*, 425 N.W.2d at 582.

Second, Appellant’s “estoppel” argument relies on evidence that is not in the record. Appellant does not even argue on appeal why this evidence should be introduced in the record at this stage of the appeal. For new evidence to be introduced at this stage, it must be (1) material and (2) there must be “good reasons” for failing to present it below. Minn. R. 8420.0905, subp. 4(F); Minn. Stat. § 103G.2242, subd. 9(b)(4). Appellant introduces entire blocks of text without any citation to the record, including a 2016 email that the DNR allegedly sent to the Middle, Snake, Tamarac Rivers Watershed District, and an undated email from the Watershed District to “members of the [SWCD]” regarding a potential contamination. The emails regard an entirely different parcel of property owned by someone else, and Appellant makes no argument to explain its materiality or for why it was not presented below. The emails do not appear anywhere as exhibits (and contain no citation), but are incorporated directly into the Appellant’s brief without explanation. (A.B. at 13-14).

Appellant introduces more evidence that does not exist in the record regarding a “triangular piece of property”—once again, an entirely different piece of property that is not at issue in this appeal. Appellant provides the citation “See Appellants Notice of Appeal,” however, when reviewing the Notice of Appeal, there is no reference or citation to any exhibit.

(A.B. at 14; Notice of Appeal). Appellant presents no argument for the failure to present this below or its materiality. This new evidence must not be introduced on appeal.

B. Appellant’s “estoppel” arguments have no merit.

In general, it is very difficult to win an estoppel argument against government entities. In *Northern Petrochemical Co. v. United States Fire Insurance Co.*, the Minnesota Supreme Court explained that, although the government may be estopped if justice so requires, estoppel should not be “freely applied against the government.” 277 N.W.2d 408, 410 (Minn. 1979). To be sure, “[t]o estop a government agency, some element of fault or wrongful conduct must be shown.” *Brown v. Minnesota Dep’t of Public Welfare*, 368 N.W.2d 906, 910 (Minn. 1985) (internal citations omitted). An appellant “seeking to estop a government agency has a heavy burden of proof.” *Id.* An appellant must prove that (1) the agency “made representations or inducements,” (2) the appellant reasonably relied on those representations, (3) there is some element “of fault or wrongful conduct” on the part of the agency, and (4) the appellant will suffer harm if estoppel is not applied. *Id.*

Here, Appellant does not even allege that the SWCD made direct representations or inducements, but rather makes a series of convoluted arguments. Appellant first makes an argument involving a different parcel of land belonging to non-parties Steven and Karen Klopp. (“Klopp property”). (A.B. at 11). There is nothing in the record or the proposed new evidence that shows the SWCD made any representations to Appellant regarding the Klopp property. Appellant does not even argue that the SWCD made any such representations. Appellant appears to argue that he disagrees with a determination the SWCD allegedly made regarding this other property and apparently he believes this has some bearing on his property. (A.B. at 12). Appellant also introduces evidence regarding a “dozer line” that does not exist in the record and

is only referenced in the Notice of Appeal. This is a strained argument that clearly does not meet the requirements for estoppel.

Appellant's next argument regarding his "triangular piece of property" cannot comprise estoppel against the SWCD. (A.B. at 12). Appellant argues that the Middle, Snake, Tamarac Rivers Watershed District told him he could dig a ditch into his property and build a road. (A.B. at 14-15). Appellant does not argue or provide *any* facts showing that the SWCD made any "representations or inducements" and only alleges that members of the SWCD received an undated email, which is not in the record, stating that there may have been an issue with contaminants on a different property "possibly" owned by Appellant. (A.B. at 14).

Appellant cites no cases supporting his position that estoppel should be applied to a government entity based on the facts of this case.⁹

One of the cases Appellant cites, *Ridgewood Dev. Co. v. State*, undermines his position. 294 N.W.2d 288 (Minn. 1980) (A.B. at 15). In *Ridgewood*, a property development company obtained approval from the Burnsville City Counsel to proceed with a development project that took advantage of tax-exempt financing in a state law and explicitly requested that its project be financed with approximately \$30 million of tax-exempt municipal bonds. *Id.* at 291. The city, in turn applied to Minnesota Commissioner of Securities for approval of the project, which was granted in November 1978. *Id.* In response, the property development company purchased the property for about \$1.7 million. *Id.* Then, in 1979, the legislature amended the law to eliminate the tax-exempt financing. *Id.* at 290. After this occurred, the property development company

⁹ The first case cited by Appellant, *Firststar Eagan Bank, N.A. v. Marquette Bank Minneapolis, N.A.*, is referring to the doctrine of unclean hands and includes no assertions about "equitable estoppel." 466 N.W.2d 8, 11 (Minn. App. 1991).

did not believe the project was financially feasible, but it had already purchased the land. *Id.* at 291.

The property development company in *Ridgewood* sued in district court seeking to estop the state from enforcing the provisions of the 1979 law with regards to its project. *Id.* The district court granted summary judgment to the property development company on the basis of inducement by the government into purchasing the land. *Id.* at 290.

The Minnesota Supreme Court reversed. In its analysis, the court determined that, with government entities, “the court must first look for the government’s wrongful conduct.” *Id.* at 293. “Only if [wrongful conduct] is found to exist does the balancing begin.” *Id.* The court held that wrongful conduct is “the most important element of equitable estoppel,” and it is missing. *Id.* The Court held that the district court “erred as a matter of law in equitably estopping the state” from applying the revised law to the property development company’s project. *Id.* at 293.

Here, there is likewise no “wrongful conduct.” Appellant has accused the SWCD of being aware of unrelated issues on other properties that are not the property at issue in this case. Based on this, the Appellant appears to believe the SWCD is estopped from ever finding a WCA violation on any of his properties into perpetuity. Nowhere is this extraordinary gap in logic explained, and it comes nowhere near the standard of “wrongful conduct” required to estop a government entity from taking action. *See, e.g. Petition of Halberg Const. & Supply, Inc.*, 385 N.W.2d 381 (Minn. App. 1986) (applying estoppel where Minnesota Department of Transportation sought to deny transportation company permit when it knew *for over a decade* that relator was operating beyond its geographic borders based on “ten or eleven” audits, special permit applications, and other documentation). Notably, Appellant appears to be conceding that he violated the WCA in raising these arguments.

IV. Appellant’s mere disagreement with SWCD’s finding fails to meet the standard for reversal.

Appellant argues that he disagrees with SWCD’s determination that there is no evidence of a ditch prior to 2019. He argues that a photograph in the record shows images that “could easily be older ditches” and that some images show evidence of “a possible ditch” or “ditches.” (A.B. at 16). The exhibits that the SWCD relied on in the record can be found in Exhibit 2. The record contains images from 1966, 1991, 2009, 2015, and 2019. (Ex. 2). The record the SWCD relied on also includes the new images taken in July and August 2019. (Exs. 10, 14). Based on the findings of the TEP, which the SWCD adopted, the new ditches clearly showed new spoils and the location of the ditch did not appear in any historical air photos. (Exs. 1, 2, 14). The TEP stated that it “reviewed aerial imagery from 1979 to present . . . and determined that there is no evidence of a ditch in this location prior to the work performed in 2019.” (Ex. 2).

Appellant does not cite the relevant standard of review, and cites no law supporting his argument. The law is clear: BSWR “shall affirm” the SWCD’s decision if the SWCD’s findings “are not clearly erroneous [and] if the local government unit correctly applied the law to the facts .” Minn. R. 8420.0905, subp. 4(G). Appellant’s own language couches the images as showing a “possible ditch” or what “could” be older ditches. Even if BSWR takes these assertions at face value, this does not rise to the standard of demonstrating a “firm conviction that a mistake has been made.” *Nordby v. Peterson*, 207 N.W.2d 735, 736 (1973). BSWR must dismiss this argument.

V. Appellant’s contention that the 4:1 ratio is “unreasonable” is unsupported by any legal authority.

Next, Appellant argues that the “4:1 penalty” the SWCD assessed against him is unreasonable. He once again references evidence not in the record to support this argument—the

transcript from the July 15, 2019 meeting. Most significantly, he cites no law supporting his argument that the penalty assessed is unreasonable. This alone warrants dismissal. *See Schoepke*, 187 N.W.2d at 135 (holding that “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”).

Furthermore, mere disagreement with the imposed penalty does not provide a basis for relief. Agencies have broad discretion in imposing penalties within their regulatory authority. *See In re Haugen*, 278 N.W.2d 75, 80 n. 10 (Minn.1979) (agency’s assessment of penalties and sanctions is exercise of discretionary grant of power, which may not be disturbed absent abuse of discretion).

Appellant argues that Mr. Brazier did not “intentionally violate” any elements of “rule 8420 or Rule 6115,” therefore, the 4:1 penalty is allegedly “unreasonable.” (A.B. at 16-17). However, he fails to cite the applicable rule or identify what part of the rule requires an intentional violation, and there is none. The 4:1 replacement ratio is authorized by the rules. Minn. R. 8420.0522, subp. 4; Minn. R. 8420.0522, subp. 4.D. Appellant does not assert that the area of impact is “agricultural land” that is currently “used principally for the cultivation or production of plants or farm animals,” so a lower standard ratio does not apply. Minn. R. 8420.0111, subp. 6 (defining agricultural land); Minn. R. 8420.0522, subp. 4 (outlining ratios). In addition, the Rule requires: “Wetland replacement must be of a size sufficient to ensure that it provides equal or greater public value than the impacted wetland it will replace. The actual replacement ratio required may be more than the ratio required . . . if the local government unit determines that a higher ratio is necessary to replace the public value of the wetland lost.” Minn.

R. 8420.0522, subp. 4.D. Finally, because he sought a replacement plan after the wetland impacts, the ratio must be, at a *minimum* 2:1. See Minn. Stat. 8420.0900, subp. 6.

CONCLUSION

For the reasons set forth above, the SWCD respectfully requests the BWSR affirm its denial of Appellant's July 14, 2021 Order.

**RUPP, ANDERSON, SQUIRES,
WALDSPURGER & MACE P.A.**

Dated: May 9, 2022

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**ATTORNEYS FOR DEFENDANT KITTSO
SOIL AND WATER CONSERVATION
DISTRICT**

**MINNESOTA BOARD OF SOIL AND WATER RESOURCES
DISPUTE RESOLUTION COMMITTEE
WCA Appeal of No-Loss Decision**

Roger Brazier, individually and as owner of
Wagon Wheel Ridge, Inc.

Kittson County SWCD 21 – 1

Appellant, and

Wagon Wheel Ridge, Inc.

Appellant Reply Brief

Appellant,

vs.

Kittson Soil and Water Conservation District

Respondent.

PROCEDURAL UPDATE.

Appellant submitted an Addendum to their Appeal on February 22, 2022 claiming critical evidence used against Appellant via an illegal search conduct by SWCD staff be removed from the record for purposes of this appeal. Respondent objected to the request and BWSR decided to consider the issue in as part of the Appeal.

On April 4, 2022, Appellants filed a lawsuit in Minnesota District Court, Kittson County, File Number 35-cv-22-35 pursuant to Minnesota Statute § 626.21 alleging SWCD and the DNR exceeded the permission granted by Appellant when searching WWR property. Specifically, Appellant claims the DNR and Kittson SWCD staff drilled for soil samples on July 15, 2019 despite lack of permission to do so and requests that all evidence gathered on July 15, 2019 be

eliminated from the record in this appeal, returned to the Appellant, and not be used in any subsequent hearing as allowed by Section 626.21.

Respondent alleges this lawsuit to be frivolous (Respondent's Brief, p 11) despite the clear language of the statute. Respondent filed a motion to dismiss which is scheduled for hearing on June 3, 2022.

In this Reply brief, Appellant will refute all of the Respondent's arguments concerning the search and lawsuit contained in the Respondent's Brief by attaching the Plaintiff's Memorandum in Opposition to the Motion to Dismiss filed in district court.

Appellant's Reply to issues addressed by Respondent not involving the lawsuit or addendum appear below.

REPLY ARGUMENT

I. Timeliness of no-loss application.

Appellant does not dispute the technical "untimeliness" of the final no-fault application. However, as the Respondent accurately describes, there was considerable "back and forth" between the parties including informal descriptions of other concepts that would rely on different exemptions in the Rules (e.g., wetland educational site for college and high school students) as well as a pre-application presented to the TEP for comments (Respondent's Brief, p. 6). Consequently, Appellant emphatically denies Respondent's implication of bad faith. Appellants met all timelines as agreed upon during the "back and forth" period.

II. Estoppel issues were raised, and exhibits were provided the only way possible.

Respondent argues that Appellant's "convoluted" estoppel argument relies on evidence not in the record (Respondent's Brief, p. 15). Appellants agree the issue of what is and is not in the "record" may appear convoluted, but only because the issue is clouded by the role that a "Notice of Appeal" plays in this Agency appeal. In fact, Appellant agreed that the record

submitted by SWCD prior to the appeal was complete. In other words, it contains all the applications and related documents. None of those documents included an opportunity to argue legal issues. Consequently, the issues need to be raised in the Notice of Appeal. Further, contrary to Respondents claim (Respondent's Brief, p. 15 -16), the issues and exhibits were raised in the Notice of Appeal. (See Appellants Notice of Appeal, p. 13 -16).

Respectfully Submitted.

May 26, 2022.

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KITTSON

NINTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Court File No. 35-CV-22-35
Assigned Judge: Tamara L. Yon

Glen Brazier, individually and as owner of
Wagon Wheel Ridge, Inc. a Minnesota
Corporation,

Plaintiffs,

vs.

Minnesota Department of Natural Resources,
Kittson Soil and Water Conservation District,
And Minnesota Board of Water and Soil
Resources,

Defendants.

**MEMORANDUM OPPOSING
DEFENDANT’S MOTION TO
DISMISS FOR LACK OF
JURISDICTION AND FAILURE
TO STATE A CLAIM**

INTRODUCTION

The Minnesota Department of Natural Resources (DNR), Kittson Soil and Water Conservation District (SWCD) and the Minnesota Board of Water and Soil (BSWR)(collectively the Defendants) asks this court to dismiss Plaintiffs’ claim for lack of jurisdiction and for a failure to state a claim upon which relief can be granted. Defendants also claim the Open Fields doctrine allowed the Conservation Officers to dig core samples without a warrant even though permission to dig was emphatically denied.

Although veiled in several different arguments, Defendants’ starting point in support of its motion to dismiss is its argument that Minn. Stat. 626.21 is not a “cause of action which is recognized by law.” (Defendant Mem. at 11, 12). Defendants cite *Nationwide House Corp. v. Skoglund* for their proposition that Minn. Stat. § 626.21 has no application in civil actions and only applies to criminal proceedings. In short, Defendants’ jurisdiction argument and Rule 12

arguments both stem from this same conclusion. However, this conclusion is based on Defendants' cursory review of case law and statutory authority. In addition, Defendants' application of the Open Space doctrine is equally flawed and conflates access to property with permission to dig on Plaintiffs' property.

Consequently, Plaintiffs argue this Court must deny the Defendants' Motion to Dismiss because there are binding statutes and case law that establish a Section 626.21 cause of action, that rules unambiguously that the district court has jurisdiction to hear a Section 626.26 cause of action, and that differentiates between access to land and illegal searches conducted on the land.,

STANDARD OF REVIEW

The Court, when reviewing a motion to dismiss, must determine whether the complaint sets forth a legally sufficient claim.” *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted); *see also Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 495 (Minn. 2018). In making this determination, the Court must accept the facts in the Complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

PROCEDURAL BACKGROUND AND STATUS

Both the DNR and Kittson SWCD issued Orders in the fall of 2019 for actions Plaintiff took on the WWR property that Defendants allege impacts SWCD wetlands and a DNR public waters (Complaint, ¶ 51).¹ Both Orders state in bold letters that failure to comply with Orders exposes Plaintiffs to misdemeanor charges.

¹ The Complaint heading mistakenly identifies the critical statute at issue as MN STAT Section 626.26 instead of MN STAT Section 626.21. The balance of the Complaint refers to 626.21.

SWCD offered Plaintiffs an opportunity to reapply. Those conversations and informal pre-applications lasted several months.

The DNR did not offer an opportunity to re-apply but did negotiate limited extensions of time regarding compliance.

On August 10, 2021, Plaintiffs filed a Chapter 13 Data Request with the DNR (Complaint ¶ 43).

On August 12, 2021, Plaintiffs appealed a July 2021 SWCD decision rejecting a new application by Plaintiffs (Complaint ¶ 59 and ¶ 60). Given a series of delays, including one last attempt to settle the matter before proceeding with a full appeal, BWSR has extended dates for briefs and the final hearing.

In November 2021, the DNR supplied documents requested by Plaintiffs in August 2021, substantially beyond the deadline for providing the data. In those documents, Plaintiffs learned that Defendants had drilled for soil samples during the July 15, 2019 search of WWR property.

In February 2022, Plaintiffs met with SWCD staff, SWCD counsel and Travis Germundson, BWSR appeals coordinator. The purpose of the meeting was to discuss final hearing procedures and reach an informal settlement if possible. Plaintiffs, now aware of the unpermitted drilling, requested that all evidence gathered at the July 15, 2021 search be suppressed for purposes of the BSWR Appeal. Counsel for SWCD objected on two grounds. First, that “new evidence” is not permitted in appeal, and second, that no illegal search occurred. BWSR then decided to have the issues briefed in the administrative appeal.

Plaintiffs commenced this Complaint against the Defendants in District Court pursuant to Minnesota Statute § 626.21 on April 4, 2022. The Complaint seeks Declaratory Judgement finding that a DNR enforcement officer, a DNR hydrologist, and SWCD staff (often referred to

by Defendants as “the panel”) conducted an illegal search by drilling for soil samples below the surface of WWR land in direct violation of Mr. Brazier’s specific requirement that no drilling occur.²

Defendants filed this motion to dismiss on May 6, 2022 asking this court to dismiss Plaintiff’s claim on three basic grounds. First, Defendants allege that Section 626.21 does not create a cause action for civil proceedings and therefore should be dismissed for failure to state a claim upon which relief can be granted. Second, Defendants alleges the Court lacks jurisdiction over Plaintiff’s claims arguing Plaintiffs need to exhaust administrative remedies. Finally, Defendants argue that the Court of Appeals has sole jurisdiction to hear this matter.

Plaintiffs’ appeal of the SWCD July 2021 rejection of Plaintiffs’ new application is still pending in BWSR.

There is no administrative appeal pending in the DNR.

FACTUAL CLARIFICATIONS

Plaintiffs reallege facts as stated in the Complaint and generally object to the Defendants’ rendition of events. And of course, in making this determination the Court must accept the facts in the Complaint as true and construe all reasonable inferences in favor of the Plaintiffs. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). Nonetheless, a significant portion of Defendants’ memorandum misconstrues critical facts at the expense of realty in general and the standard above in particular. Consequently, Plaintiffs feels compelled to clarify facts related to three primary questions:

1. Did Mr. Brazier give permission to drill for core samples on Wagon Wheel Ridge property during the morning meeting on July 15, 2019.

² The Complaint also refers to multiple statutes and Constitutional provisions as background. As a point of clarification, Plaintiffs are only asking this Court to decide if Defendants violated Section 626.21.

2. Did the DNR and SWCD staff leave the July 15, 2019 meeting and drill for core samples.
3. Did the DNR officer and SWCD staff effectively disclose that drill samples were gathered on July 15, 2019.

A. No Permission To Drill For Soil Samples Was Ever Provided.

The most egregious examples of the Defendant's mischaracterization of the July 15, 2019 meeting begins on page 3 of the Defendants' memorandum. Defendants correctly state Mr. Brazier met with representatives from DNR and SWCD who explained they *desired* to collect data on possible wetland impact (id.) However, Defendants' memorandum goes on to imply that Mr. Brazier merely "expressed concern about his underground electronics."

This is an extreme misrepresentation of the exchange between Mr. Brazier and the Defendants at the meeting.³ Mr. Brazier made repeated restrictions on drilling throughout the meeting, (Complaint ¶ 39 - ¶ 41). Finally, after the DNR enforcement officer explained that he really needed to drill to gather evidence, the DNR enforcement officer) asked the question again: "Okay, part of we'd prefer to do is ideally we need to look at some samples. Are there any absolute, no. dig a hole" (Complaint ¶ 38). Mr. Brazier was emphatic about his answer – no drilling allowed (Complaint ¶ 39)

Mr. Brazier did however grant permission to merely to enter the land. (Complaint ¶ 40).

Despite the requirement that Plaintiffs' statements in the Complaint be construed in a light most favorable to Plaintiffs, Defendants assert that the result of the conservation officers repeatedly informing Mr. Brazier about the reasoning and need for samples transformed into

³ Defendants' attempt to describe their own version of facts is particularly irrelevant given the standard employed in motions to dismiss, that is, the Court must view the facts most favorably to the party opposing the motion. The Defendants argument at least indicates questions of fact exist.

permission to take samples despite Mr. Brazier's repeated and emphatic requirement that no drilling occur. In other words, Defendants ask this Court to simply conclude that Mr. Brazier *should have known* that drilling would occur because the Conservation Officer told Mr. Brazier that he wanted to drill.

B. Defendants Acknowledge Drilling Occurred Despite Lack Of Permission.

Defendants' transformative theory of permission described above is even refuted by Matt Johnson, a member of the panel searching WWR land in a summary email written to Stephanie Klamm after the July 15, 2019 meeting: "When asked if we could dig soil pits Mr Brazier did not say no but expressed concern due to the amount of infrastructure and electrical components underground." (Complaint ¶ 44). Even without the need to construe Plaintiffs' facts in a light most favorable to Plaintiffs, Mr. Johnson's statement clearly demonstrates no permission to dig was provided.

C. Defendants failed to effectively inform Mr. Brazier that drilling occurred.

Defendants also suggest they informed Mr. Brazier at a meeting immediately following the search that drilling took place because they told Mr. Brazier the panel "observed wetland on his property that was determined using techniques in the 87 Manual." (Defendant Mem. 4.) In an attempt to overcome the "light most favorable" standard, the Defendants *now* explain to the Court and Plaintiffs that this single, verbal reference is to the 1987 US Army Corps of Engineers Wetland Delineation Manual and further states: "This manual provides that, when an on-site visit is necessary, *which it clearly was here*, the standard procedure is to '[d]ig a soil pit' using a soil shovel or spade" and provides a link to the manual (Id.).

Defendants' position regarding the 87 Manual is completely misleading. According to the Manual, multiple methods exist to determine whether wetlands exist. One method reference

digging soil samples where an *onsite visit is required* (See pages 46 - 52 of the 87 Manual). This method, identified as Level 2, is necessary “when there is insufficient information already available to characterize the vegetation, soils, and hydrology” of the project site. Consequently, Defendants’ ask this Court to simply accept that an “on-site visit” was required, that Plaintiffs’ somehow heard this single verbal reference to the 87 Manual, and then immediately understood digging occurred. What appears more likely, and certainly consistent with viewing the facts in Plaintiffs’ most favorable light is that this reference, without any explaining as to the what the manual was, without any written materials about Level 2, was instead designed to hide the fact that soil samples were taken, At the very least, the situation calls for a finder of fact and is not suitable for a legal conclusion.

LEGAL ANALYSIS

I. SECTION 626.21 CREATES A CAUSE OF ACTION OVER WHICH THIS COURT HAS JURISDICTION.

Essentially, Defendants’ primary basis for this motion is its argument that Section 626.21 is not a “cause of action which is recognized by law.” (Defendants’ Mem. at 11, 12). Defendants cite *Nationwide House Corp. v. Skoglund* for the proposition that Section 626.21 has no application in civil actions and only applies to criminal proceedings. Defendants’ lack of jurisdiction argument and Rule 12 argument also stem from this same conclusion. However, Defendants’ argument is based on a cursory review of statutes and case law, and as such is incorrect for two major reasons.

- (1) It ignores the plain language of Section 626.21 and longstanding Appellate Court precedent that Section 626.21 does, in fact, create a cause of action for a person aggrieved by an unlawful search and seizure.
- (2) It misstates the actual holding in *Skoglund* and ignores the longstanding Appellate Court precedent that Section 626.21 unambiguously ruling that a district court has jurisdiction over a Section 626.21 claim in a civil proceeding.

A. Section 626.21 Creates a Cause of Action that May Be Brought in Civil Court.

First, Minn. Stat. § 626.21 does create a civil cause of action against the government. The plain language of the statute dictates this. Section 626.21 says:

“A person aggrieved by an unlawful search and seizure *may move the district court for the district in which the property was seized* or the district court having jurisdiction of the substantive offense for the return of the property *and to suppress the use*, as evidence, of anything so obtained on the ground that (1) *the property was illegally seized The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted* the property shall be restored unless otherwise subject to lawful detention, *and it shall not be admissible in evidence at any hearing or trial*. The motion to suppress evidence may also be made in the district where the trial is to be had. ***The motion shall be made before trial or hearing*** unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.”

Minn. Stat. § 626.21 (emphasis added). Thus, the statute clearly establishes a right to bring a motion in the district court to suppress the use of evidence *at any hearing or trial* on the grounds that the property was illegally seized. This is exactly the claim Plaintiff is making in the present case. Plaintiffs brought a complaint and made a motion to suppress the use of illegally seized evidence at a hearing or trial. There can be no clearer directive that Plaintiff’s claim is a proper cause of action and that this Court is the Court of jurisdiction for this claim. In fact, this point is so well established and uncontroversial that other government entities have simply conceded jurisdiction in such cases.

For example, in *Matter of Death of VanSlooten*, a murder suspect made a motion in civil court for the return of illegally seized property. 424 N.W.2d 576, 578 (Minn. Ct. App. 1988).⁴

⁴ Section 626.21 is not the only statute in the “criminal code” to create a civil cause of action. The Court of Appeals has similarly ruled that “expungement proceedings are special proceedings to which Minn. R. Civ. P. 60.02 does apply.” *State v. T. K. S.*, A17-1365, at *7 (Minn. Ct. App. Aug. 20, 2018). “Special proceedings are civil in nature.” *Fiduciary Foundation, LLC ex rel. Rothfus v. Brown*, 834 N.W.2d 756, 761 (Minn. App. 2013).

The district court granted the motion after arguments and evidence were presented to the trial judge. *Id.* Hennepin County, in that case, appealed but conceded that a Section 626.21 claim can be brought outside of criminal proceedings. *VanSlooten*, 424 N.W.2d at 578. Hennepin County argued on appeal that that the district court lacked jurisdiction to hear the motion because the Plaintiff did not explicitly cite to Section 626.21. *Id.* The Court of Appeals in *VanSlooten* denied the government’s petition for a writ, thus upholding the District Court’s jurisdiction under Section 626.21 to hear this type of motion outside of criminal proceedings. *Id.* at 580.

VanSlooten is not an outlier. The Court of Appeals has continuously ruled that Section 626.21 creates a cause of action in civil court. *Rachuy v. Lake*, A12-2230, at *7 (Minn. Ct. App. May 20, 2013) (“Rachuy’s complaints allege facts that raise an arguable basis for relief under . . . Minn. Stat. § 626.21”); *Shogun Mankato Inc. v. Comm’r of Revenue*, A18-0483, at *6 (Minn. Ct. App. Dec. 31, 2018) (ruling Section 626.21 “provides a cause of action for a person aggrieved by an unlawful search and seizure” whereas 626.04 does not). Indeed, Section 626.21 so clearly creates a cause of action in District Court that appellate courts have used it as the standard by which to judge whether other statutes create a cause of action. *Shogun Mankato Inc.*, A18-0483, at *6; *see also McReynolds v. W. St. Paul Police Dep’t*, A17-1214, at *4 (Minn. Ct. App. May 21, 2018). Consequently, Defendants’ argument that it does not create a cause of action in district court is meritless.

B. *Skoglund* Does Not Bar a Section 626.21 Claim.

Second, Defendants rely heavily and incorrectly on the Court of Appeals ruling in *Nationwide Hous. Corp. v. Skoglund*. Defendants would have this Court believe that *Skoglund* bars anyone from bringing a Section 626.21 claim in a civil proceeding. This argument completely misconstrues *Skoglund* and ignores all the other precedent ruling the very opposite.

1. Defendants overstate the holding of *Skoglund*.

Defendants' argument rests solely on its misinterpretation of *Skoglund*. The *Skoglund* Court never ruled that "Section 626.21 does not apply in civil proceedings" as argued by Defendants. (Defendants Mem. at 12). Instead, the Court in *Skoglund* only held that Section 626.21 was not applicable in the "civil eviction proceeding," partly because that specific case lacked a "criminal context." *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 905 (Minn. Ct. App. 2018) (emphasis added). The Court expressly limited this holding to the "circumstances of this case." *Skoglund*, 906 N.W.2d at 907.

Thus, Defendants' attempt to expand the Court's expressly narrow holding to the situation at hand, where a government enforcement agency wants to use illegally seized evidence for potential criminal proceedings and further government enforcement proceedings, runs contrary to the express holding of *Skoglund*.

2. Defendants' argument ignores binding precedent ruling that Section 626.21 creates only a civil remedy.

The *Skoglund* Court's reasoning discusses the necessity of a "criminal context" to trigger a civil cause of action under Section 626.21. *Skoglund*, 906 N.W.2d at 906-07. Defendants confuses this discussion as a de facto requirement that Section 626.21 apply only in criminal cases. In so doing, Defendants also attempts to completely dispose of the binding precedent relied upon by the *Skoglund* Court in explaining the "criminal context" element: *VanSlooten* and *Bonyngge v. City of Minneapolis*. In reality, *VanSlooten* and *Bonyngge* establish that the opposite of Defendants' argument is true—Section 626.21 applies exclusively in the civil context because if a criminal proceeding were pending, the Rules of Criminal Procedure would apply.

In *Bonyngge v. City of Minneapolis*, the Court of Appeals ruled, in no uncertain terms , that:

“Minn. Stat. § 626.21, however, allows a person aggrieved by a search the opportunity to raise an issue *not necessarily germane to any criminal prosecution*, i.e., possession of property, before a criminal complaint has been filed *and in a court which may not have jurisdiction over the criminal offense.*”

430 N.W.2d 265, 266 (Minn. Ct. App. 1988) (emphasis added). The Court in *Bonyng* expressly rejected Defendants’ current argument, stating: “since the promulgation of the Rules of Criminal Procedure, *the statute is superfluous for purposes of criminal prosecutions.*” *Bonyng v. City of Minneapolis*, 430 N.W.2d 265, 266 (Minn. Ct. App. 1988) (emphasis added). Under *Bonyng*, a plaintiff actually loses their right to bring a Section 626.21 action when a criminal prosecution commences. *See LPOE, Inc. v. City of Duluth*, A13-0243, at *6 (Minn. Ct. App. Sep. 16, 2013) (applying *Bonyng*).

Thus, Defendants’ argument that Section 626.21 applies only to criminal proceedings completely ignores the fact that the Court of Appeals has already ruled that the opposite is true— a criminal proceeding bars a party’s right to bring a Section 626.21 claim because the Rules of Criminal Procedure govern.⁵ Instead, the motion *must* be brought before the trial or hearing, need not be related to a particular criminal prosecution, need not be brought in the court where a related criminal proceeding might be brought, and cannot be brought in criminal proceedings. Defendants’ argument simply does not survive the ruling in *Bonyng*.

3. *The present case properly pled the “criminal context” discussed in Skoglund.*

The Court in *Skoglund* actually explained that a “criminal context” element is met when there are potential criminal charges against the aggrieved party. *Skoglund*, 906 N.W.2d at 906. It

⁵ In fact, the Minnesota Supreme Court found this civil versus criminal distinction so immaterial that it left the question unanswered when upholding a District Court’s order returning illegally seized property to its owner pursuant to Section 626.21. *City of Duluth v. Wendling*, 306 Minn. 384, 386 (Minn. 1975) (“The city, not sure whether the proceedings authorized by § 626.21 are civil or criminal proceedings, has filed two notices of appeal, one pursuant to § 632.11 and one pursuant to the Rules of Civil Appellate Procedure.”)

cited *VanSlooten*, in which a party being investigated for murder brought a motion in civil court requesting return of illegally seized items before charges were ever brought, as an example of meeting the “criminal context” element. 424 N.W.2d at 578. Obviously, a private party cannot bring criminal charges against himself. The only possible avenue to have brought his Section 626.21 claim was through a civil cause of action against the government.

That criminal context is clearly present in this case. The DNR has threatened criminal charges against Plaintiff for the alleged violations. That is enough. Furthermore, Defendants are government entities that want to use evidence illegally seized by the government so that it can punish Plaintiff and enforce government rules against Plaintiff in a government process. That is vastly different than the situation presented to the Court in *Skoglund* where the private landlord wanted to remove a private citizen from the landlord’s private property. Of course, where a private party simply wants to remove another private party from his private property there is no “criminal context.” Here, there is the criminal context because Defendant SWCD, regulatory authority, and the DNR, a law enforcement agency, want to use evidence to punish Plaintiff criminally and through its quasi-criminal process. *See Garcia-Mendoza v. 2003 Chevy Tahoe*, A13-0445, at *2 (Minn. Ct. App. Mar. 2, 2015) (discussing applicability of Section 626.21 in suppressing evidence in civil forfeiture action); *see also Flynn v. Commissioner of Public Safety*, No. A06-1136, at *1 (Minn. Ct. App. June 19, 2007) (discussing applicability of Section 626.21 in civil license revocation proceeding).

Consequently, Minnesota Statute § 626.21 provides the Plaintiffs a cause of action upon which relief can be granted and provides this Court with jurisdiction to hear the case.

II. Exhausting Administrative Remedy Is Not Relevant To Plaintiffs' Claim.

Defendants challenge jurisdiction on the grounds that Plaintiffs did not exhaust administrative remedies and that Plaintiffs' exclusive remedy to challenge the Defendants is through the court of appeals. Obviously, these arguments lack merit because of the binding case law cited above. However, they also lack merit for the following reasons.

A. There is no Administrative Remedy To Exhaust Regarding the DNR.

The DNR has maintained since August 2019 that all DNR administrative proceedings have ended and that no appeal by Plaintiffs regarding the DNR Order is pending or even possible. Consequently, Plaintiff subsequently learning the DNR officer and staff drilling exceeded permission granted by Mr. Brazier on July 15, 2019 leaves Plaintiff with no administrative remedy available in general and particularly within the Plaintiffs' BWSR appeal of the Kittson SWCD order. Instead, as the Plaintiffs' argument above clearly establishes, Plaintiffs' Section 626.21 claim is the only path available against the DNR's unlawful actions.

B. The BSWR Appeal Hearing is not the forum to determine Section 626.21 cases.

As stated above, the plain, unambiguous language of Section 626.21 establishes the only forum to hear the present matter:

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the district court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized[.] Minnesota Statute § 626.21).

The Plaintiffs brought this matter in the proper Court.

C. Waiting for Court of Appeals decision is futile.

To protect administrative agencies' autonomy and promote judicial efficiency, courts generally require exhaustion of the appropriate channels of administrative appeal before granting

judicial review of administrative proceedings. *Doe v. Univ. of Minn., No. A20-1233* (Minn. Ct. App. Sep. 14, 2021); *City of Richfield v. Local No. 1215, Intern. Ass'n of Fire Fighters*, 276 N.W.2d 42, 51 (Minn. 1979).

But the doctrine of exhaustion does have some limitations." *State Bd. of Medical Examiners v. Olson*, 206 N.W.2d 12, 17 (Minn. 1973). When it would be futile to seek redress through administrative channels, a party may seek redress from the courts. *Id.*; see also *City of Richfield*, 276 N.W.2d at 51. "The futility of administrative remedies is a question of law for the court" *Leaon v. Washington County*, 397 N.W.2d 867, 874 (Minn. 1986).

The present case clearly qualifies for the "futile" exception to the administrative exhaustion exception above. Any appellate court challenge, by either party, of any decision made by the BSWR appeal panel regarding Section 626.21 will be met with the reality that the district court, not an agency, is the only forum to make such a decision. .

III. The Open Fields Doctrine Does Not Apply To Digging Underneath The Ground.

Sorenson involved DNR conservation officers stopping vehicles and searching land presumably associated with a hunting camp looking for evidence of drugs and weapons after receiving a tip concerning the behavior of the occupants of the camp. Defendants rely on the open field doctrine defined by the Court to establish that WWR property is an open field:

The term "open field" has been construed to apply not only to an open field in a literal sense, but also to wooded areas, deserts, vacant lots in urban areas, open beaches, reservoirs and open waters. 1 W. LaFave, *Search Seizure* § 2.4(a), at 425-26 (2d ed. 1987). *State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989)

The Defendants then point to the Court's broad scope of permissible intrusion of private land.

This broad definition, along with the expansion of the doctrine in *Oliver*, appears to permit government intrusion anywhere except homes, the curtilage of homes and other areas in ***which a reasonable expectation of privacy can be proven.***" *State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989) (emphasis added).

In this case, Defendants' reliance on the open field exception is misplaced for several reasons.

A. Defendants Again Conflates Access To Land With Actions Taken While On The Land.

The *Sorenson* Court does allow conservation officers access to private lands, but also states:

Conservation officers, like other law enforcement officers, are subject to the requirements of the fourth amendment and other constitutional provisions. *See State v. Richards*, [284 N.W.2d 549](#) (Minn. 1979). Searches by conservation officers are no less intrusive than police searches and the same possibilities exist for abuse." *State v. Sorenson*, 441 N.W.2d 455, 459 (Minn. 1989)

In the present case, Plaintiffs only allowed the conservation officer and other members of the panel to *enter* WWR land. And yet again, Defendants claim that despite the direct denial of permission to dig for samples, digging was nonetheless allowed:

And Plaintiff Brazier admits he even provided consent for the conservation officers to be on his property, and the documents referenced in and attached to the Complaint show that the conservation officers repeatedly informed Mr. Brazier about the reasoning and need for samples and had permission to take samples. (Compl. ¶ 34, 48, Exs. 10, 14, 15; Jardine Aff., Ex. A). (Defendants' Mem, 15).

If repeated statements by the conservation officer telling Mr. Brazier they wanted to dig for soil samples means Mr. Brazier should have known they were going to dig, then Mr. Brazier's repeated denial of permission to dig means the panel should have know no such permission was granted. A warrant was the solution.

B. Sorenson Has Never Been Extended To Allow Unpermitted Or Warrantless Searches.

Plaintiff found no cases that extend the Open Fields concept to allow police or conservation officers to dig into private property without specific permission or a warrant. If such a case existed, Defendants would certainly have included it in their Memorandum.

C. The Conservation Officer Did Not Act on The Open Fields Exception.

On July 15, 2019, the Defendants met with Mr. Brazier for over an hour and tried to get his permission to drill holes in WWR land. Permission was never granted to drill but drilling nonetheless occurred. If the Defendants' analysis is correct, the Conservation Officer did not need to even contact Mr. Brazier before entering the land or seek permission to drill. This is radically at odds with the conversation on July 15, 2019 meeting and, when viewed from a light most favorable to Plaintiffs, is clear evidence that the conservation officer knew permission was needed.

D. Plaintiff had a reasonable expectation of privacy.

Finally, Mr. Brazier not only denied permission to dig on the WWR property, but he also explained exactly why he denied permission. Mr. Brazier explained to the panel that he has expensive and dangerous electronic equipment buried under the surface and didn't want it to be disturbed. (Complaint x). In other words, Plaintiffs had a reasonable expectation of privacy.

Plaintiffs respectfully request that Defendants Motion to Dismiss be denied.

May 20, 2022.

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COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. Clean Water Legacy Partners Grant: Policy and Request for Proposals Ranking Criteria – Annie Felix-Gerth – ***DECISION ITEM***
2. Environment and Natural Resources Trust Fund (ENRTF) Watershed and Forest Restoration: What a Match! Project Partner Grants and Agreements – Lindberg Ekola and Ryan Hughes – **DECISION ITEM**

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Clean Water Legacy Partners Grant: Policy and Request for Proposals Ranking Criteria

Meeting Date: September 28, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Clean water, legacy, partners, policy

Section/Region: Regional Ops, Central Region

Contact: Annie Felix-Gerth

Prepared by: Annie Felix-Gerth

Reviewed by: Grants Program & Policy Committee(s)

Presented by: Annie Felix-Gerth & Shaina Keseley

Time requested: 30 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|--|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input checked="" type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input checked="" type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

In September, the BWSR Board will make a decision to authorize the Clean Water Legacy Partners Grant Program, including the associated policy and RFP criteria. The Board will be asked to make a funding decision on eligible applications in early 2023.

LINKS TO ADDITIONAL INFORMATION

Attached policy, RFP ranking criteria, and draft board order

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

The Legislature appropriated \$400,000 in fiscal year 2022 and \$600,000 in fiscal year 2023 from the Clean Water Fund “for developing and implementing a water legacy grant program to expand partnerships for clean water.” The two fiscal year appropriations are combined for this RFP. The Grants Program and Policy Committee was briefed on the program on August 23 and recommended the policy and RFP criteria at their meeting on September 26.

BOARD ORDER**Fiscal Year 2022/2023 Clean Water Legacy Partners Pilot Grants****PURPOSE**

Authorize Fiscal Year (FY) 22/23 Clean Water Legacy Partners Pilot Grants Program and adopt FY 22/23 Policy and Request for Proposals ranking criteria.

FINDINGS OF FACT / RECITALS

- A. The Laws of Minnesota 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (n) appropriated \$400,000 in fiscal year 2022 and \$600,000 in fiscal year 2023 from the Clean Water Fund “for developing and implementing a water legacy grant program to expand partnerships for clean water.”
- B. The proposed policy and request for proposal criteria were created to provide expectations for applicants and subsequent implementation activities conducted with these funds.
- C. The Grants Program and Policy Committee, at their September 26, 2022 meeting, reviewed the proposed FY 22/23 Clean Water Legacy Partners Pilot Grants Request for Proposals criteria and Policy, and recommended approval to the Board.

ORDER

The Board hereby:

1. Adopts the attached FY 22/23 Clean Water Legacy Partners Pilot Grant Policy.
2. Authorizes the FY 22/23 Clean Water Legacy Partners Grants Pilot Program according to the attached ranking criteria for the Request for Proposal.
3. Authorizes staff to finalize and issue an initial Request for Proposals and issue subsequent Request for Proposals as needed.
4. Authorizes staff to develop grant agreements and related processes and protocols for grant management and oversight consistent with statutes and grant administration policies.

Dated at St. Paul, Minnesota, this September 28, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: _____

FY22-23 Clean Water Legacy Partners Grant Program PILOT

Policy

From the Board of Water and Soil Resources, State of Minnesota

Effective Date: 9/28/2022

Approval: Board Decision #22-XX

Duration: Availability and use of funds appropriated by Laws of Minnesota 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (n).

Policy Statement

This policy provides expectations for activities conducted via the Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) Clean Water Legacy Partners Grant program as defined by the Clean Water Fund appropriation under Laws of Minnesota 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (n). Activities must align with the purpose of Minnesota's CWF and expand partnerships for clean water in Minnesota.

The CWF was established to implement part of Article XI, Section 15, of the Minnesota Constitution, and Minnesota Statute §114D with the purpose of protecting, enhancing, and restoring water quality in lakes, rivers, and streams and to protect groundwater and drinking water sources from degradation.

Reason for the policy

A total of \$1,000,000 was allocated to this program for the FY22/23 biennium. BWSR will use grant agreements for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties or future sanctions on the grant recipient. The associated FY 22/23 Request for Proposal (RFP) for these funds identifies additional requirements.

Program Requirements

1. Eligible Applicants

Non-governmental organizations and tribal governments are eligible for this funding.

- Non-governmental organization are defined as an organization that is a nonprofit, also known as a charitable organization, that is formed for the purpose of fulfilling a mission to improve the common good of society rather than to acquire and distribute profits. The organization meets the definition

in Minn. Stat. §309.50 Subd. 4 and meets the definitions defined in the Internal Revenue Service code, with the most common type being a 501 (c) (3), (Policy 08-06 Minnesota Office of Grants Management).

- Minnesota Tribal Governments refers to the federally recognized sovereign tribal nations that share geography with Minnesota (MINN STAT. 10.65).

2. Match Requirements

A non-state match equal to at least 10% of the amount of the grant received is required. Match can be provided by landowners, land occupiers, private organizations, local governments, or other non-state sources and can be in the form of cash or in-kind for services or materials contributed to the accomplishment of grant objectives. Funds used for match for this program cannot be used as match for any other state grant program.

3. Requirements for Eligible Activities

Eligible activities can consist of structural practices and projects; non-structural practices and programs; program and project support (e.g. education, outreach, marketing), including staffing; technical and engineering assistance necessary to implement these activities; and grant management and reporting.

The FY22/23 Clean Water Legacy Partners Grant Request for Proposal contains information on activities that are considered ineligible for use of these grant dollars.

4. Technical Expertise

The grantee has the responsibility to ensure the appropriate technical expertise, skills and training for the project. BWSR may review the qualifications of all persons providing technical assistance and review the technical project design, particularly if a recognized standard is not available.

5. Grant Agreement

BWSR staff may review grant applicant's financial records to establish capacity to successfully manage state grant funds, develop grant agreements, including requirements and processes for work plans, project outcomes reporting, closeouts, and fiscal reconciliations.

The grant agreement provides information about expectations and terms. Grant work plans are developed as part of the grant agreement. Regular reporting of grant expenditures, technical assistance and accomplishments are required.

History

This policy may be reviewed annually and updated as needed.

Description	Date
This policy was originally created in 2022.	09/28/2022

Ranking Criteria	Maximum Points Possible
<u>Abstract</u> : A brief description of anticipated achievements and outcomes as well as the project area.	5
<u>Water resource(s) identified</u> : Lake, stream/river, or groundwater resource is described and reasons are given for why the resource(s) were chosen.	10
<u>Water Resource Outcome(s) and Longevity</u> : Activities will protect or restore an identified water resource or support future implementation efforts. Activities identified in a natural resource and/or watershed plan are preferred. Activities should provide long-term benefits to the water resource.	30
<u>Readiness and Partnerships</u> : The application has a set of specific activities that can be implemented soon after grant award. Proposed activities being part of a larger effort or partnership working toward clean water, or attempting to build a new partnership, are preferred.	20
<u>Public Benefit</u> : Proposed activities will benefit the public from a local, regional and/or state perspective. Diversity, equity and inclusion is also incorporated.	20
<u>Applicant Performance</u> : Applicant’s history with receiving grants and/or other funding sources and successfully completing planned activities will be assessed.	15
Total Points Available	100



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Environment and Natural Resources Trust Fund (ENRTF) Watershed and Forest Restoration: What a Match! Project Partner Grants and Agreements

Meeting Date: September 28, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Forestry, Tree Planting, Private Forest Management, LCCMR Project

Section/Region: Regional Operations/North & Central

Contact: Lindberg Ekola

Prepared by: Ryan Hughes

Reviewed by: GPPC Committee(s)

Presented by: Lindberg Ekola, Ryan Hughes

Time requested: 15 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input checked="" type="checkbox"/> Other: ENRTF | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval of the Environmental and Natural Resources Trust Fund Watershed and Forest Restoration: What a Match! Project Partner Grants and Agreements and authorize staff to enter into agreements.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

BWSR applied for and received \$3,318,000 in funding from the Environmental Natural Resources Trust Fund (ENRTF) to accelerate tree planting on privately owned lands for water-quality protection and carbon sequestration. This project will be completed in partnership with soil and water conservation districts, the Mille Lacs Band of Ojibwe, and the Department of Natural Resources.

BOARD ORDER

Fiscal Year 2023 Environmental and Natural Resources Trust Fund Watershed and Forest Restoration: What a Match! Project Grants

PURPOSE

Authorize grants for the Watershed and Forest Restoration: What a Match! Project

RECITALS /FINDINGS OF FACT

- A. Laws of Minnesota 2022, Chapter 94, Sec. 2, Subd 8. (j), appropriated \$3,318,000 the second year from the trust fund to the Board of Water and Soil Resources, in cooperation with soil and water conservation districts, the Mille Lacs Band of Ojibwe, and the Department of Natural Resources, to accelerate tree planting on privately owned, protected lands for water-quality protection and carbon sequestration.
- B. On June 27, 2022 the Legislative-Citizen Commission on Minnesota Resources (LCCMR) approved the workplan for this program, which included key goals of bringing together 14 SWCDs and the Mille Lacs Band of the Ojibwe with BWSR and DNR Forestry Cooperative Forest Management Unit to significantly expand the capacity of tree planting to private landowners in three priority watersheds – Rum, Long Prairie and Redeye.
- C. The Grants Program and Policy Committee, at their September 26, 2022 meeting, reviewed the proposed allocations and recommended approval to the Board.

ORDER

The Board hereby:

1. Approves the allocation of funds listed in the attached allocation table.
2. Authorizes staff to approve work plans and enter into grant agreements in an amount up to \$557,500.
3. Authorizes staff to enter into interagency agreements with DNR Forestry Cooperative Forest Management Unit in an amount up to \$1,112,500.

Dated at St. Paul, Minnesota, January 26, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: _____

FY2023 Watershed and Forest Restoration: What a Match!
Project Grants Allocations

East Otter Tail Soil and Water Conservation District	\$164,500
Todd Soil and Water Conservation District	\$164,500
Mille Lacs Soil and Water Conservation District	\$164,500
Mille Lacs Band of the Objwe	\$64,000
Total	\$557,500

DRAFT

NEW BUSINESS

1. 2023 BWSR Board Meeting Schedule –John Jaschke/Rachel Mueller – ***DECISION ITEM***
2. BWSR Climate Change Trends and Action Plan – Suzanne Rhees and Dan Shaw – ***INFORMATION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: 2023 Proposed BWSR Board Meeting Schedule

Meeting Date: September 28, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: _____

Contact: Rachel Mueller

Prepared by: Rachel Mueller

Reviewed by: John Jaschke Committee(s)

Presented by: John Jaschke/Rachel Mueller

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approve the 2023 board meeting dates.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

Meeting dates are being proposed for board meetings in 2023. Most meetings are the fourth Wednesday of the month, unless otherwise noted. The proposed calendar has meetings held in the same months as the 2022 calendar.



Board Resolution # _____

Board of Water and Soil Resources

Proposed 2023 meeting dates

January 25

February – no meeting

March 22

April 26

May 24

June 28

July – no meeting

August 23-24 (Wed-Thurs) – Tour and meeting

September 27

October 25

November – no meeting

December 14 (second Thursday)

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: _____

