Day One

WCA Exemptions Overview
Federal Approvals Exemption
Wetland Banking Program - State and Federal
TEP Procedures and Technical Findings
TEP Review Exercise

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

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General Exemption Requirements for ALL

- Only has to fit one; not disqualified if not exempt by another
- If impacts exceed max allowed ≠ nothing is exempt
- Max may not apply to all situations or wetlands-very specific
- May not be combined on a project
- Must stabilized to prevent sedimentation/erosion.

Exemptions 8420.0420

- Impacts to wetlands that DO NOT require replacement
  - The activity is still regulated.
  - WCA does not REQUIRE an application; some LGUs may.
  - May not be combined on a project.
- Exemptions do not apply to: calcareous fens, wetland bank sites, project-specific replacement sites (8420.0420 Subp 1B)

Standard Exemption Conditions

- Every activity in wetland, regardless of whether an application is submitted must:
  - Implement erosion control measures to prevent sedimentation of wetlands
  - Not block fish activity
  - Comply with all other applicable local, State, Federal requirements, including best management practices
- Exemptions cannot be combined on a project!
**Agricultural Exemptions**

Impacts from Agricultural Activities

- [A] Type 1,2 Planted 6 of 10 prior to 1991
- [B] Agricultural pasture land, except bottomland hardwood type 1
- [C] SWCD conservation practices
- [D] Wheeled booms on irrigation
- [E] Aquaculture
- [F] Wild rice
- [G] Farm program MOU

**Drainage Exemption**

- [A] Drainage Exemption
- [B] Public drainage maintenance
- [C] Private drainage maintenance
- [D] Planted 8 of 10 years
- [E] Assessed benefits
- [F] Reminder – review the WCA language details and project specifics

**Private Drainage/Ditch Maintenance**

Replacement not required for maintenance or repair of existing private drainage systems

**WHEN:**

The work does not drain Wetland that have existed more than 25 years.

**Private VS. Public Drainage Ditch Maintenance Illustration**

Conditions:

- Spoil must be placed and stabilized to minimize impacts.
  - Remove
  - Place on existing spoil
  - Incorporate
  - Side cast
- Ditch must be stable and not degrade water quality downstream.

**Ditch Maintenance Illustration**
Private Drainage/Ditch Maintenance

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

• Past records of maintenance (receipt to contractors)
• Aerial Photos with review
• Amount of Sediment Proposed to be removed (can be critical)
• Depth of ditch/soil types
• Culvert elevation and location
• Site visit/confirmation of wetland type (growing season)
• Lateral Effect Calculations or estimates

Exemptions

• Federal Approvals B420.0420 Subp 4
  • Impacts authorized by Corps of Engineers that meet standards agreed to by BWER, Dept. of Ag., DNR, and MPCA.
  • Pipelines, electrical, telephone, etc.

• Utilities B420.0420 Subp 6
  • Installation, maintenance, repair or replacement of utility lines if impacts are avoided and minimized and less than ½ acre.

Subp. 7. Forestry. The exemption under this subpart is for roads and crossings solely constructed, and primarily used, for the purpose of providing access for the conduct of silvicultural activities. A replacement plan is not required for impacts resulting from construction of forest roads and crossings so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not include, or result in, the access becoming a dike, drainage ditch, or tile line; impacts are avoided wherever possible, and there is no drainage of the wetland or public waters.

Wildlife Habitat B420.0420 Subp 9

• Lesser of 5% or ¼ acre of Type 3,4,5
• No adverse effect on T&E
• Certified by SWCD or TEP
• All spoil must be stabilized with native, noninvasive vegetation.

Excavation in Types 1, 2, 6, 7, 8 not regulated unless deeper than 8.2 feet depth.

De minimis B420.0420 Subp 8

• The de minimis exemption covers small impacts to wetlands typically used for driveways, roads, small projects by landowners, etc.
• Very specific requirements depending on location in state, local area, shoreland, etc.
• Review all nuances of each part for every project

Limits of wetland (depth)- Deepwater Habitat

Important Considerations for Wetlands

• Must be capable of supporting rooted, emergent vegetation.
• Must have soil.

If the water is too deep or fast flowing, cannot support rooted vegetation and soil cannot form (unconsolidated bottom).

Table 1: Base de minimis exemption areas for all of Minnesota

<table>
<thead>
<tr>
<th>Wetland Type</th>
<th>De minimis exemption area (acres)</th>
</tr>
</thead>
</table>
| 0-0.5 feet    | 0.0125
| 0.5-1 feet    | 0.025
| 1-2 feet      | 0.05
| 2-3 feet      | 0.1
| 3-4 feet      | 0.2
| 4-5 feet      | 0.4
| 5-6 feet      | 0.8
| 6-7 feet      | 1.6
| 7-8 feet      | 3.2
| 8-9 feet      | 6.4
| 9-10 feet     | 12.8

(areas shown in parentheses may be allowed if wetland’s isolation from the public water, or public water system, or shoreline is established in proportion to the impact development is proportioned by the impacted area or by using the de minimis exemption)
**De Minimis Exemption**

- Can’t be combined
- 5% limitation if shared
- May not divide property simply to get more

**Scenario 1**

A project is located outside of metro and outside of shoreland in a 50-80% area of the State and proposes to fill and impact 4,975 ft^2 of a type 2 wetland. The applicant owns the entire wetland basin.

*Qualifies*

**Scenario 2**

A project is located within the building setback zone in a >80% area of the State and proposes to fill and impact 320 ft^2 of a type 2 wetland.

*Does not Qualify*

**Scenario 3**

A project is located outside of shoreland in a greater 80% area of the State and proposes to fill and impact 5,800 ft^2 of a type 2 wetland. The applicant owns 120,000 ft^2 of the wetland basin.

*Qualifies

5% of 120,000 equals 6,000

**Scenario 4**

A project is located outside of shoreland in the less than 50% area of the State and proposes to fill and impact 175 ft^2 of a type 5 wetland. The applicant owns the entire wetland basin.

*Does not Qualify*

**Federal Approvals**

"Administrative" exemption with the goal of reducing regulatory redundancy

MN Statute 103G.2241 Subdivision 3

MN Rule 8420.0420 Subpart 4:

"A replacement plan is not required for impacts authorized under Section 404... that meet minimum state standards..."
Federal Approvals

Benefits:
- Reduce LGU workload while still allowing opportunities for the LGU and TEP to provide input.
- Treat long linear projects as one project under one process.
- Allow applicants to submit their project application to one agency instead of multiple LGUs.
- Doesn’t result in the less review
  - Typically mitigation involved

Federal Approvals

When should it be considered?
- Utility projects- installation or maintenance of any pipe or pipeline for the transport of gas or liquid or any transmission cable, line, or wire.
- All wetlands impacts under Corps jurisdiction
- Crosses multiple jurisdictions

Federal Approvals

How do I know if all the wetland affected will be regulated by the Corps?
- Application to Corps will include either:
  - Preliminary Jurisdictional Request: this assumes all wetlands are waters of the US
  - Full Jurisdictional Determination: (must conclude all wetlands are waters of the US

Federal Approvals

• The Federal Approvals Exemption for Utilities will be most applicable for projects with more than ½ acre of wetland impacts, particularly when multiple LGUs are involved.

Federal Approvals

• How is it different from the WCA utility exemption (Subpart 6)?
  - If a project qualifies for one, it is exempt regardless of whether it qualifies for the other. When a Corps permit is required, the Federal Approvals Exemption for Utilities can apply regardless of whether the 40 CFR 226, Subp. 6 utility exemption applies. In effect, the existing Subp. 6 WCA exemption will likely only be applicable to projects with under ½ acre of impacts that do not require a Corps permit or for which the Corps is not requiring mitigation.

Federal Approvals- Process

1. Applicant submits the following items to the affected LGUs prior to or concurrent with application to the Corps:
   - (a) Project description,
   - (b) Proposed alignment,
   - (c) Notification of Intent to use exemption,
   - (d) Notification that comments can be provided to the Corps, specifying to whom.

Federal Approvals- Process

2. Applicant submits complete application to Corps.

Federal Approvals- Process

3. Corps Project Manager sends public notice posting link to designated BWSR point of contact (POC).
4. BWSR POC sends notification to appropriate BWSR Wetland Specialist(s).
5. BWSR Wetland Specialist coordinates with LGU(s) and Corps Project Manager.

Federal Approvals- Process

6. LGU staff (and TEP when requested) review and comment to Corps Project Manager to the extent the LGU and TEP deem necessary.
7. Corps considers all comments and makes a decision on the project application.
8. Applicant receives a signed individual permit or general permit verification letter from the Corps and sends a copy to all affected LGUs.
Corps Project Manager Role:
1. Make jurisdictional determination
2. Provide notification to BWSR and DNR POCs upon receipt of a complete application. Early coordination with draft alignments and delineations is also suggested and encouraged.
3. Give full consideration to comments received from LGUs and TEP.
4. Send copies of issued permits to BWSR and DNR POCs.

State Agency Roles
BWSR Wetland Specialist Role:
1. Coordinate communication between the affected LGUs, Corps, and applicant.
2. Provide technical and WCA-related interpretive assistance to any and all parties.

DNR Role:
1. Identify issues relating to Endangered or Threatened Species and Rare and Natural Communities.
2. Review and Comment as LGU for impacts on state land.

LGU Role
WCA Local Government Unit Role:
1. Review complete application and provide comments to the Corps project manager.
2. A delineation approval is only required when a delineation approval request is received.

What about the wetland delineation?
Do I need to make a WCA decision on the delineation?

- A delineation is submitted that includes a notice of intent to use the federal approvals exemption: Review and comment to Corps as you deem necessary.
- A delineation is submitted along with a request for a WCA decision: Process as a WCA application.
- If a delineation is submitted without any indication as to whether the federal approvals exemption for utilities will be utilized and without a request for a WCA decision: Proceed as a WCA application.

Example of project:
U.S. ARMY CORPS OF ENGINEERS
Leslie Day (Corps)
John Overland (BWSR)
Wetland Replacement

State and Federal regulations require wetland impacts to be offset by actions that add or improve wetlands on the landscape.

**Replacement Types**
- PRM (Project-specific)
- ILF
- Wetland Bank

**Replacement Types**
- The person impacting a wetland is fully responsible for providing replacement.
- Design, build, manage, maintain, and monitor.
- Directly tied to the replacement site for at least 5 years.

**Replacement Types**
- Once the fee is paid (ILF) or credits are purchased (Bank), the person impacting a wetland is done.
- The ILF or bank "Sponsor" takes on the replacement responsibility and must manage, maintain, and monitor the site.

Wetland Bank

Market-based commodity system

Wetlands are restored, enhanced, created, or preserved to generate wetland “credits.”

Credits deposited into account

Credits sold to others to offset wetland losses somewhere else

Goal is no-net-loss
2008 Federal Rule – wetland banks are preferred replacement type
• Larger more ecologically valuable sites
• Bank instrument/plan approved using rigorous scientific and technical analysis, planning, and implementation
• Entire site is permanently protected by a conservation held by BWSR
• Success must be demonstrated BEFORE credits are released
• No temporal loss of wetland function or area
• Reduced risk and uncertainty

Bank sponsor’s plan is approved
Project is built and protected
Demonstrate success
Credits are released/deposited.
Credits can be sold to offset impacts

MN Wetland Bank Types
• Standard
• Agriculture(Ag) – Single Use(SUB)

How are Credits Generated
• Preserve
• Vegetation
• Hydrology
• Area
• Offset wetland losses elsewhere
How are Credits Generated

**General Action Categories**
- Restoration
- Enhancement
- Creation
- Preservation
- Buffer

- Fully or partially drained wetland
  - Vegetation, Hydrology, and Area*
  - High credit yield (typically 50-100%)
  - Re-Establishment* vs. Rehabilitation

- Wetland with no significant drainage
  - Vegetation only
  - Low to moderate credit yield (33-50%)

- Wetland created where none existed
  - Vegetation, Hydrology, and Area
  - Moderate to high credit yield (50-100%)
### How are Credits Generated

#### General Action Categories
- Restoration
- Enhancement
- Creation
- Preservation
- Buffer

#### Existing high-quality unique wetland protected and sustained
- Under credible threat of loss, important functions, contributes to watershed sustainability
- No Vegetation, Hydrology, or Area
- Low credit yield (12.5%)

#### Upland adjacent to wetland improved or protected.
- Improves or protects wetland function and sustains functional improvements from adjacent actions
- Required when feasible
- Low credit yield (10-25%)

### WCA Credit Actions

- Subp. 2 – Buffer
- Subp. 3 – Restoration, completely drained
- Subp. 4 – Restoration, partially drained
- Subp. 5 – Vegetation on farmed wetland
- Subp. 6 – Protection, previously restored
- Subp. 7 – Creation
- Subp. 8 – ENRV
- Subp. 9 – Preservation

### Corps Credit Actions

- Buffer
- Re-Establishment
- Rehabilitation
- Enhancement
- Extended Restoration
- Establishment
- Any or None
- Preservation

### What about the new Cultivated Field Credit (CFC)?

#### WCA Credit Actions

- Subp. 2 – Buffer
- Subp. 3 – Restoration, completely drained
- Subp. 4 – Restoration, partially drained
- Subp. 5 – Vegetation on farmed wetland
- Subp. 6 – Protection, previously restored
- Subp. 7 – Creation
- Subp. 8 – ENRV
- Subp. 9 – Preservation

#### Corps Credit Actions

- Re-Establishment
- Rehabilitation
- Enhancement
- Extended Restoration
- Establishment
- Any or None
- Preservation

#### Guidance Document
- Wetlands must be drained
- Subject to effects of cultivation
- Read and use the guidance document

#### Call it “CFC – Rehabilitation”
Review Teams

- WCA LGU and Corps use review teams
- Review teams provide comments to each program lead
- Public comments can be received
- Program lead responds to the bank sponsor

Review Teams

WCA Technical Evaluation Panel (TEP)
- LGU
- SWCD
- BWSR
- DNR

Corps Interagency Review Team (IRT)
- Corps
- EPA
- BWSR
- DNR
- FAA
- Others

Review Teams

BWSR Review Roles:
• WS is BWSR’s lead and coordinates BWSR comments to TEP
• Evaluate easement issues
• Engineering comments
• Statewide consistency
• Technical answers and interpretations
• Coordinate with Corps

Review Teams

WCA Technical Evaluation Panel (TEP)
- LGU
- SWCD
- BWSR
- DNR

Corps Interagency Review Team (IRT)
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- EPA
- BWSR
- DNR
- FAA
- Others

Bank Phases

WCA
- Draft Prospectus (optional)
- Prospectus (required)
- Mitigation Plan (required)

Corps
- Draft Prospectus (optional)
- Final MBI (required)
- Final MBI (required)
- Final MBI (required)

Bank Review Phases
Draft Prospectus

- Optional
- No decisions required
- Complex or difficult projects
- Minimal investment
- New Form!

Corps Review Process:
- Optional submittal but is strongly recommended
- Timeline: The Corps has 30 days to provide comments to the sponsor. IRT review included in that 30 days
  - Corps distributes to IRT members for review
  - IRT reviews and provides comments to Corps PM
  - Corps PM determines if the project has potential to generate federal credits
- Purpose: Identify potential "fatal flaws" and challenges that sponsors will need to address in later phases

WCA Review Process:
- LGU distributes document to TEP member for review
- Optional phase for WCA, no NOA or 15.99 time-limits
- TEP members comment and discuss the project’s potential
- No engineering review
- TEP plans a site visit

Site Description
- Tell us a little about the site

Project Plans
- Tell us what you plan to do to generate credits

Issues to Address
- Identify common challenges, constraints, and easement items
**Draft Prospectus**

### Project Expectations
- Tell us what you expect to happen

### Figures
- Only 3 needed!
  - Location
  - Project Boundary and features
  - Simple drawing of what’s planned

### WCA Outcome:
- Comments received and project discussed at TEP meeting
- TEP writes Findings and recommendation for bank sponsor
- Sponsor decides what to do
- Goal of TEP findings within 30 days

### Corps Outcomes:
- IRT comments received and meeting held if needed
- Recommendation: contact Corps to schedule a site visit if you’re within the growing season
- Corps PM writes letter to bank sponsor indicating whether the site has good potential for approval or not.
- Goal: Corps determination on potential within 30 day.
- Sponsor decides to proceed or not

### General Outcome Options
- Your project has potential to generate bank credits! Proceed to the Prospectus phase!
- Or...there are some opportunities and obstacles to address as you move forward.
- Or...there are some significant challenges you face, and we recommend you not proceed
- Comments are commensurate with information provided

### Other Information
- Anything else we should know about?
Prospectus

• Required by Corps
• Not required by WCA
• Baseline Information
• Concept Plans
  • Justify Credit Actions
  • Justify Credit Allocation

Corps Review Process

• Initiated with a complete Prospectus
• 90 Days Total
  ➢ Notice of completeness
  ➢ Public Notice
  ➢ 30 day IRT comment period
  ➢ Complete public comments
  ➢ Corps decides if the site has potential or not
  ➢ Corps provides determination and comments to Sponsor

Prospectus

• Required by Corps

Prospectus

• Initiated with a complete Prospectus
• 90 Days Total
  ➢ Notice of completeness
  ➢ Public Notice
  ➢ 30 day IRT comment period
  ➢ Complete public comments
  ➢ Corps decides if the site has potential or not
  ➢ Corps provides determination and comments to Sponsor

WCA Review Process

• LGU distributes Prospectus to TEP members for review
• Optional phase for WCA, no NOA or 15.99 time-limits
• Engineering review requested
• TEP site visit if needed
• TEP members assemble comments for meeting and discussion

Prospectus

General Considerations

• Baseline information must justify credit actions and allocations
• Some credit actions require more information
• Use the form and read the headings to provide what is requested
• Project concept considered but no detailed plans required
• Comments commensurate with information provided*
Prospectus

Section 1 - Review Status/History
• Summarize important DP comments received
• Don’t need to attach comments
• Identify how/where they are addressed in the Prospectus

Section 2 - Project Participants
• Identify Bank Sponsor
• Property Owner (if different)
• Credit Owner (if different)
• Long-term Manager (if different)
• Agreements or arrangements for any of the above

Section 3 - Easement
• Describe easement boundary (Accurately show on all figures)
• Describe inclusions or exclusions
• Access corridor (if needed)
• Must be acceptable to BWSR

Section 4 - Historical Conditions
• Describe site from pre-altered to current condition
• Historical wetland types and extent
• What was done and when

Section 5 - Existing Conditions
• General
• Vegetation
• Hydrology
• Soils
• Existing Wetlands

Section 6 – Objectives, Need, & Feasibility
• Expected outcome
• Can it be done
• Describe constraints
Section 6 – Credit Eligibility and Allocation
• Baseline information must support credit actions and allocations
• Include a projected credit table
• Standard number format (Area = 1 decimal, Credits = 4 decimals)
• No release schedule or performance standards

Section 7 – Ecological Suitability & Sustainability
• Natural restoration
• Emulates other natural wetlands
• Adequate buffers
• Resiliency and good design

How are Credits Generated

Section 8 – Vegetation Establishment
• Generalities, details not necessary
• Planned communities
• Anticipated actions

Section 9 – Design
• General strategies and concept
• Consider soils, topography, and hydrology
• Are investigations needed
• More detail produces more specific engineering comments

Section 10 – Supplemental Info.
• Previously Restored/Extended Restoration
• ENRV
• Preservation
Prospectus

No performance standards needed
No credit release schedule needed
No monitoring plan needed
Focus on Baseline Conditions and credit eligibility
Title opinion recommended

WCA Outcome:
• TEP and engineering comments received and project discussed at TEP meeting
• TEP writes Findings based on comments and discussion
• Sponsor decides to proceed or not
• Goal of TEP findings within 60 days

Corps Process:
• IRT and engineering comments received and meeting held if needed
• Site visit with Corps needed if one wasn’t done at draft Prospectus
• If the project has potential the sponsor can proceed to the next phase, if not they must repeat the Prospectus phase
• Corps decides whether the Sponsor can proceed to draft Mitigation Bank Instrument or not

Option 1:
• Site has potential, sponsor may begin preparing draft Instrument

Option 2:
• If site has no potential, sponsor informed of reasons for that determination. Sponsor cannot move on to draft Instrument. Sponsor may revise the prospectus to address those deficiencies and resubmit.

Mitigation Banking Instrument (MBI)

What is an MBI?
• Required by the Corps (it is not a WCA document)
• Legal agreement signed by bank sponsor and the Corps
• Dictates operation, establishment, and conditions of the bank
• MBI includes a Mitigation Plan as an attachment

Draft MBI/Mitigation Plan

Corps Review Process:
• Starts with a completeness determination
• If not all these items are included, you get a letter listing what’s missing
• If incomplete, clock doesn’t start, IRT doesn’t comment, no Corps letter

Corps Review Process: 90 Days Total
➢ 30 days to determine completeness
➢ Comment period starts 5 days after Corps determines the DMBI complete and provides it to IRT
➢ 30 Days for IRT review and comments
➢ 60 Days to collaborate with IRT to discuss comments and seek resolution to any disagreements
➢ DE provides status update to Sponsor indicating whether the draft Instrument is generally acceptable
Draft MBI/Mitigation Plan
• Required for both programs
• NOA required
• Section 15.99 time-limits!
• LGU Decision Required*
• “Attachment A” to Corps MB
• Plan Details and Final Crediting

WCA Review Process
• 15.99 applies so LGU reviews for completeness and sends NOA
• LGU distributes to TEP members for review
• Engineering review if construction included
• TEP site visit if needed
• TEP members assemble comments for meeting and discussion
• 15.99 time limit extension should be planned

Draft MBI/Mitigation Plan
• Button-up baseline information (Sections 2-7)
• Accurate credit calculations needed
• Credit release schedule needed
• Performance standards needed
• Detailed vegetation plans needed
• Detailed construction plans needed
• Detailed monitoring plans needed

Section 1 - Review Status/History
• Summarize important Prospectus comments received
• Don’t need to attach comments
• Identify how/where they are addressed in the Mitigation Plan

Draft MBI/Mitigation Plan
• Sections 2 - 5
• Same as Prospectus
• Update based on comments and modifications

Section 6
• Update and finalize
• Include credit allocation table
• Apportion buffer credits into wetland groups using “area”
• Credit release schedule (when)
• Performance Standards (if)
Credit Release Schedule

Determines “when” credits can be released and in what proportion

Typical release schedule*

• Initial (≤15%)
• Hydrology (0 - 45%)
• Interim 1 (variable)
• Interim 2 (variable)
• Final (≥20%)

Common release schedule elements*

• Hydrology release approved before vegetation releases occur
• Buffer credits released at same time and rate as wetland credits
• Final release requires 1 growing season after Interim 2 approved
• Final release should not be approved before annual monitoring has ended

Performance Standards

Performance standards determine “if” credits can be released

• Observable or measurable physical, chemical, and/or biological attributes confirming project objectives are met
• Demonstrate improvement beyond baseline condition
• Show progression to the Final release
• All credit areas and actions need to achieve their standard(s) for credits to be released

Common hydrology metrics*

• Meet standard for 2 full growing seasons
• Reference site (±20%)
• Water table/inundation timing and duration measurements
• Expect wells with daily readings

Common vegetation metrics:

• Interim 1 met for 2 consecutive seasons
• Interim 1 NNI relative cover ≥ 50%
• Final NNI relative cover ≥ 70% - 90%
• Species richness of 5, 10, and 15 NNI species for most communities
• >50% hydrophytes for wetland communities
• Maximum bare ground/open water area
• Multi-strata communities may have metrics in each stratum

Draft MBI/Mitigation Plan

Section 7

• Same as Prospectus
• Update based on comments and modifications
Draft MBI/Mitigation Plan

Section 8
• Detailed vegetation establishment and management plans
• Methods, timing, equipment, seed mixes proposed, site preparation, weed control, schedule, etc.
• Performance-based!

Section 9
• Detailed construction plans, investigations, and explanations
• Projects are “Perpetual”
• Tom’s domain

Section 10
• Same as Prospectus
• Update based on comments and modifications

Section 11
• Detailed monitoring plan including methods and timing
• Measure success relative to goals
• Identify corrective action or adaptive management triggers
• Document performance standard achievement
• Annual reports produced

WCA Review Results
• Expect multiple MP submittals
• Track 15.99 time-limit and extend as needed
• TEP and engineering comments received and discussed at TEP meeting
• TEP writes Findings and recommendations to LGU based on comments and discussion
• If plan approval is not recommended the TEP instructs the sponsor to resubmit a revised MP to address findings

WCA Review Results
• If plan approval is recommended the LGU makes their decision and sends NOD
• Clearly identify and retain the approved Mitigation Plan
• WCA and Corps should approve the same plans whenever possible
• Goal of TEP findings within 90 days (for each version)
Draft MBI/Mitigation Plan

**Corps Outcome**
- Corps PM considers IRT comments and notifies sponsor whether the Draft MBI is generally acceptable and whether they can proceed to Final MBI or not
- **Options:**
  - If the Draft MBI is acceptable the sponsor can proceed to the Final MBI phase, usually with minor edits
  - If the Corps determines the draft Instrument is NOT generally acceptable, the sponsor cannot automatically proceed to FMBI.
  - There may also be times when the Corps wants to review just a couple parts of a DMBI before letting the sponsor proceed to FMBI (ex. Updated performance standards)

**Final MBI**
- This is a Corps only step and is required
- Sponsor submits Final MBI to IRT members
- FMBI content:
  - All the same items as were needed for a complete Draft Instrument, updated
  - PLUS “other information deemed necessary by the DE”
  - aka...items identified in previous Corps letters
  - PLUS a narrative from the sponsor documenting how they addressing previous Corps and IRT comments

Final MBI
Day 0 - Sponsor submits Final Instrument to All IRT members

**After Approval**

Once both programs approve the MBI/Mitigation Plan a check should be completed to identify programmatic differences.

Bank sponsor implements their plan, monitors the site, and if performance standards are achieved they request credit deposits in accordance with approved release schedule

Easement Acquisition

Typically initiated after Mitigation Plan approval

Sponsor/landowner initiates the easement acquisition process

Managed by BWSR Easement staff, not Wetland Specialists

May take 6 months or more

No easement = no bank = no credits

<table>
<thead>
<tr>
<th>Key Step</th>
<th>Description</th>
<th>BWSR Processing Time</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Easement Initiation</td>
<td>Preliminary ownership and boundary review</td>
<td>15 - 30 Days</td>
<td>$3,000 (Initial Easement Acquisition Fee)</td>
</tr>
<tr>
<td>Legal Boundary Survey</td>
<td>Certified boundary surveyed; certificate of survey provided for BWSR review and comment</td>
<td>30 - 60 Days</td>
<td>$1,000 - $6,000 (Surveyor defined)</td>
</tr>
<tr>
<td>Title Commitment</td>
<td>Title commitment prepared for BWSR review and comment; title must be cleared by landowner as directed by BWSR</td>
<td>45 - 90 Days</td>
<td>$1,000 - $1,000 (Title Agent defined)</td>
</tr>
<tr>
<td>Easement Recording / Title Insurance Policy</td>
<td>Easement executed by landowner and state and sent to title agent for recording and title policy</td>
<td>30 - 60 Days</td>
<td>$2,400 (Final Easement Acquisition Fee)</td>
</tr>
</tbody>
</table>

121 122 123 124 125 126
Easement Acquisition

Title opinion highly recommended to identify title issues early

- Liens and other easements
- Severed rights
- Mortgage holders must consent to BWSR easement

Access

Multiple easements

Other

Technical Evaluation Panel

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

Key Roles in WCA Implementation

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

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

**The TEP does not:**
- Make decisions
- Perform LGU duties (notices, extensions, etc.)

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

**TEPs can and do operate informally**

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

**Who can Request a TEP?**
- LGU
- TEP member
- Landowner

**When should you hold a TEP meeting?**

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

**When is TEP required to make findings?**

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

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

TEP findings & recommendations:

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

Well-written TEP findings:

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

Efficiency

There are ways to be more efficient such as:

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

Tips on Well-Written TEP Findings

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

Purpose & Audience

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

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

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

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

Avoid Subjective/Emotional Lingo

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

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

Avoid Legal-Ease

“herein” “hereby”
“thereto” “let the record show”

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

Leave the legal-ease to the lawyers.

Findings should be Relevant to the Decision

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

Individual TEP members can provide their own comments, but they do not all have to be part of the findings.

Findings are not Meeting Minutes

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

TEP recommendations

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

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

What if the LGU doesn’t agree with TEP?

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

I’m not arguing, I’m just explaining why I’m right.

Detailed reasons for not following TEP recommendation?

“The Board felt that the TEP’s recommendation to deny the application was unreasonable and therefore we approve the application.”

Reasons for not following TEP recommendation

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

Critique Exercises

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

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

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

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

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

What TEP findings should not include:
- Delineation report.
- Past violations.
- Federal Farm program participation.
- TEP members' statements about potential downstream impacts and raising tile outlet.

Noticing Requirements

<table>
<thead>
<tr>
<th>Summary of LSU Application Types</th>
<th>Decision Type</th>
<th>NOA Required</th>
<th>NOD Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boundary or Ty.</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>No-Loss</td>
<td>No</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Exemption</td>
<td>No</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Sequencing</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Replacement Pl</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Bank Plan</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
When should I notice a no-loss or exemption application?

- Close call
- Complex
- Controversial
- Part of a violation
- WCA history

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

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

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

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

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

Typically constructed on posts or pilings.

Definition of fill excludes posts

Does the solar panel project result in a significant alteration of the wetland function or value?

Don’t forget about other aspects of project that may impact wetlands.


TEP evaluation of solar panel projects

1) Evaluate the existing wetland condition
   - ecological integrity
   - level of disturbance

2) Determine current wetland functions
   - landscape setting
   - surrounding land use
   - proximity to other resources

3) Evaluate the potential effect of the project on the condition and function of wetland
   - amount of wetland covered
   - changes to the surrounding land use
   - sensitivity of plant community
   - post disturbance factors
   - revegetation and management plans

Sequencing - Avoidance Alternatives for Replacement Plans

- Avoid
- Minimize
- Replace

How does applicant demonstrate sequencing?

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

Impact Avoidance

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

What is feasible and prudent?

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

- Can be done from an engineering perspective
- Is in accordance with accepted engineering standards and practices
- Is consistent with public health, safety, and welfare requirements
- Is environmentally preferable based on social, economic, and environmental impacts
- Would not create any truly unusual problems
Evaluating Alternatives (continued)

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

What if an avoidance alternative DOES exist?

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