MWPCP Regional Training

Day One
- LGU Duties & TEP Procedures
- Enforcement Procedures
- WCA Agricultural and Drainage Exemptions
- Agricultural Wetland Replacement
- Local Government Road Wetland Replacement Program Process
- Reviewing & Submitting Wetland Delineations

Day Two
- Offsite Aerial Methods
- Wetland Bank Review Process
- Chapter 5: Difficult Wetland Situations
- 3 Parameter Field Stations

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

WCA Local Government Duties

WCA

LGU

BWSR

DNR

LGU?

MINES

DELEGATION

ZONING

MULTIPLE

LOCAL GOVERNMENT

DNR

By resolution

Zoning authority

Most impacts

WCA

MN Rule 8420
Who is the LGU?

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

Who is the LGU (cont.)

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

Who is the LGU (cont.)

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

Example

Scenario 1 – Shakopee delegates duties to PL but is still noticed and comments. Prior Lake responsible for LGU duties.
Scenario 2 – Per rule (most impact) Shakopee reviews entire application and is responsible for LGU duties
Scenario 3 – Cities agree that both review and approve application within their respective jurisdictions, and both administer LGU duties. Result: two applications.

Who defines a project?

The LGU defines the project

Definition of “project” (8420.0111 Subp. 54):

Project means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by a local government unit. As used in this chapter, a project may not be split into components or phases for the purpose of gaining additional exemptions.

LGU List

WCA Contacts
Delegation of Decision-Making Authority to Staff

- Decision authority by default rests with the elected/appointed governing board (City Council, County Board, WMO Board, etc.)

- However, the LGU may, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes.

Notice of Decision

Notice of Decision (NOD) should include:

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

Notice of Decision Example

TEP Form Attached to NOD
If the LGU is not following WCA:

1) BWSR notify LGU in writing of its concerns
2) Spot Checks, PRAP, Audits
3) Can then impose moratorium on making decisions

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

Who can Request a TEP?

- LGU
- TEP member
- Landowner

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 “they said this” (verbal discussions) issues.
- Are concise and focused on the decision that needs to be made.
Efficiency

There are ways to be more efficient such as:

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

Tips on Well-Written TEP Findings

We will cover the following topics:

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

Purpose & Audience

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

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

Timing

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

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

Avoid Subjective/Emotional Lingo

“The TEP feels.....”

“The TEP believes ......”

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

Avoid Legal- Ease

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

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

Leave the legal-ease to the lawyers.
Findings should be Relevant to the Decision

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

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

Findings are not Meeting Minutes or Testimony

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

TEP recommendations

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

What if the LGU doesn’t agree with TEP?

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

Detailed reasons for not following TEP recommendation?

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

Reasons for not following TEP recommendation

“The Board finds that the TEP’s recommendation to reject the application based on the availability of a reasonable and prudent alternative alignment to the proposed road (impacting less wetland) did not give due consideration to the decreased public safety associated with alternative alignments. The alternative alignments mentioned in the TEP’s recommendation result in unsafe sighting distances at road intersections according to national safety standards. Therefore, the Board finds that there are no feasible and prudent alternatives and approves the application.”
8420.0900 Subp. 3.
Restoration and Replacement orders.

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

SWCD Role in a violation

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

LGU Role in a violation

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

BWSR’s Role in a violation

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

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

Resource Protection Notices

Used as a notice when activity is complete and no sign it will continue

Cease & Desist Orders

- Used when equipment is onsite and it appears the activity will continue to impact wetlands.

Data Collection

Who – landowner and/or responsible party, contractor
  - RO will go to all

What – type of disturbance or activity that occurred
  - Useful for determining impact

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

Data Collection

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

Data Collection

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

Data Collection

- When – estimated time of activity occurrence
  - Helpful in determining responsible party if ownership change has occurred
  - Aerial photos/PID information
  - Did the activity work?

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

Restoration Order Gives the Landowner Options
- Restoration is priority
- Apply for replacement, exemption, no-loss
- Appeal w/in 30 days + $500 fee
- Court/Deed Restriction if no action is taken by landowner

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

Is a formal Restoration Order Always Required?
- No, voluntary restoration is allowed but should consider
  - Willingness to cooperate
  - Past history
  - Shortened timeframe for completion to allow for formal RO process
  - Some kind of written plan or agreement with deadlines
  - Communication and agreement with DNR Enforcement
  - No formal way to make other responsible parties liable

Certificate of Successful Restoration
Prepared and issued by the SWCD.

RO Non-Compliance
The landowner does not comply with the RO. Now what?
- Enforcement will work with you!
  - CO Sends a Letter
  - CO Makes a Phone call
  - Deed restriction in some cases
  - Landowner Served a Criminal Citation
  - Court

Voluntary Restoration
Contractors Responsibility

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

Appeals

• Landowner has 30 days to appeal Order
• RO must allow minimum of 30 days to comply with Order
• TEP, in consultation with DNR Enforcement, may allow longer to complete restoration.

Scenario - lake fringe fill

• What kind of information is relevant to collect?
  • Who, when, why?
  • Extent of fill and depth
  • Wetland boundary and type
  • Impact amount
  • Applicable exemptions?
  • Jurisdiction(s)?
  • How should this be handled?

WCA Agricultural Exemptions

What is regulated by WCA?

What is considered Impact?
A loss in quantity, quality, or biological diversity of a wetland caused by draining or filling or by excavation in types 3, 4, or 5.
**What is Drainage?**

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

**What is Fill?**

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

**Wetland Fill**

- Does not include posts for walkways, bridges, powerline poles, etc.
- Does not include slash or woody vegetation as long as it originated from vegetation growing in the wetland and does not impair flow or circulation of water.

**What is Excavation?**

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

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**Application Types and Procedures**

- Boundary
- Use
- Exception
- Sequencing
- Replacement Plan
- Ranking

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Exemption Basics

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

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

Typical Exemption Categories

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

General Exemption Requirements for ALL

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

General Information

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

Application and Noticing

- WCA does not REQUIRE an application; some LGUs may.
- NOA or NOD is not a requirement but...
- LGU can seek TEP evaluation w/o NOA
- LGU should push for application and notification when the project is complex, controversial, likely to be denied.
Agricultural Exemptions (Subp. 2)

Sub-Categories of Ag Exemptions

Impacts from Agricultural Activities

- 8420.0420 Sub 2
  - (A) Type 1,2 Planted 6 of 10 prior to 1991
  - (B) Agricultural pasture land, except bottomland hardwood type 1
  - (C) SWCD conservation practices
  - (D) Wheeled booms on irrigation
  - (E) Aquaculture
  - (F) Wild rice
  - (G) Farm program MOU

Agricultural Exemptions (2A)

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

Ag 2A - Can the Landowner Tile?

1990  1989  1988

Ag 2A

1987  1986  1985

Ag 2A

1984  1983  1982
What IF?

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

Agricultural Exemptions (2A)

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

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

Agricultural Exemption (2B) - Pastureland

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

Agricultural Exemption (2B cont.)

- Excludes Bottomland hardwood forest
- Type 2/6 (Fresh Wet Meadow/Shrub Swamp) if the wetland is less than 2 acres in size
Agricultural Exemptions (2A)

What items may be needed?
- Demonstrated current pasture use
- Imagery (fencing, watering ponds, other infrastructure)
- Estimate of Wetland size if type 2/6 (NWI, Soils map, etc.)

Agricultural Exemptions (2C)

Impacts Resulting from Soil & Water Conservation Projects
- Must be certified by SWCD Technical Staff
- After TEP Review
- No specific guidance in rule, but must minimize adverse biological/hydrological effects
  - TEP can/should consider alternative layouts where applicable
  - Projects are highly variable (i.e. erosion control projects, manure storage areas, cattle crossings)

Agricultural Exemptions (2C) - Example

Agricultural Exemption (2D)

Fill for irrigation boom track

Agricultural Exemption (2E)

Impacts Resulting from Aquaculture Activities
- Includes Pond excavation, Access roads & dikes
- In Accordance with Army Corps of Engineers Permit

Agricultural Exemption (2F)

• Impacts from Wild Rice Production Activities (dikes)
• Requires Army Corps Approval
Agricultural Exemption (2G)

- Impacts from Agricultural Activities for Farm and Non-Farm Program Participants meeting certain criteria
- Process functions more like an exemption, but results function like replacement

Drainage Exemptions (Subp. 3)

Drainage Exemption (3B)

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

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

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

Applying the rule is Not always Easy.
- When was it dug? Maintained?
- How much sediment is planned for removal?
- Do we have past records?
- Are there culverts/other hydro controls?
- Downstream conditions?
- Can the impacts be quantified?
(1)(a) • Must be on ag land
• Must demonstrate cropping in 8 of 10 most recent years
• Annually seeded prior to July 5
• Can be new drainage or other impact

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

Exempt? Further Review?

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

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

Drainage Exemptions, Subp. 3C (2) a. & b.
• Applies to Type 1 or up to 5 acres of Types 2 or 6
• Must be within an area where drainage benefits for a public system has been assessed
• Must be in an unincorporated area

AND...

AND - Wetlands cannot be impacted for conversion to
• Platted lots
• PUD, commercial or industrial
• Any development more than 1 residential per 40 acres unless Zoning allows

Expenditure from the public drainage account occurred 1972-1992

OR
the system was repaired/maintained as approved by DA

OR
the DA determined no repair/maintenance is required
Resources for Drainage Project Evaluation

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

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

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

**Public Drainage Example**

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

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

Is it exempt??

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

Modified Scenarios

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

Determining Impacts of Improved Drainage

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

Private Drainage Example
**Private Drainage**

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

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**Private Drainage**

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

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**Is it Exempt to allow the 1.5 ft sediment cleanout?**

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

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**Private Drainage**

Additional Information is necessary to make the determination...
- Culvert Elevations/Fall; Is outlet restricted?
- Prior cleanout?
- Conditions of wetland 25 yrs ago or near last clean out time – comparison?
- Soil type and Estimated LE of additional 1.5 ft clean out?

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**Private Drainage**

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

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**Take Aways...**

Failed to demonstrate an exemption is met – however, consider if modifications can allow some maintenance to be exempt...
The Minnesota Agricultural Wetland Bank: History, procedures and application review tips

Lynda Ponting/BWSR Wetland Specialist

Topics Covered

- The origins of the Ag Bank
- Agency roles in the Partnership
- How the Ag Bank works
- Things to watch out for

Opportunity for a Partnership

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

The BWSR-NRCS Partnership - Utilize Agency Strengths

NRCS:
- Working directly with agricultural producers.
- Identifying wetland impacts on ag land.

BWSR:
- Established wetland banking program and procedures.
- Wetland mitigation expertise.

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

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

The Minnesota Ag Bank - Some Key Roles in the Partnership

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

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

LGU:
- Review and process applications requesting use of the Ag Bank per the MOU (or notify applicant if not eligible!)
Wetlands Eligible for AB credit replacement

6. Use of the Agricultural Wetland Bank:
   A. For farm programs participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:
      1. Farmed Wetland (FW)
      2. Farmed Wetland Feature (FWF)
      3. a Wetland (A) located by an activity for which the landowner can provide evidence (i.e., Local Government Unit (LGD) determination of qualification of wetland under WCA Rule 10 CR 2000, Item 5) that has been impacted by land use change or development (as defined in WCA Rule 10 CR 2000, Item 6).
      4. a Wetland (A) less than five acres in size that is predominantly bordered by land that has been impacted or if the last 10 years when a wetland was degraded according to the INDIAN Agricultural Wetland Evaluation Tool, as amended. The tool assesses vegetation density, downstream water quality parameters, presence of floodplain, and WCA habitat. A wetland qualifies as degraded when the tool results in a ranking of 3 for vegetation and use or in more severe conditions, and no higher than condition for any feature.
      5. Converted Wetland (CW) that, prior to conversion, equates under Item one through four above as determined by NLCC staff.

Credit generation:
- wetland restorations only (hydrology & vegetation restored).
- No creations

Any eligible action in WCA Rule

Standards:
- Agricultural Bank Site (Wetland Evaluation Tool)
- WCA Rule replacements standards

Fees:
- Less than SWB fees
- More than AWB fees

Credit Use:
- Degraded wetlands on Ag land only (must remain in ag use for 10 years after replacement)
- No restrictions – any wetland impact

Current Status

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

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

How is the Ag Bank Different?

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

“Typical” Ag Bank Wetland Replacement Process

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

Public Interface – Bank Information

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

Available Wetland Bank Credits:

<table>
<thead>
<tr>
<th>ID</th>
<th>Site ID</th>
<th>Type</th>
<th>Name</th>
<th>Location</th>
<th>Available Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>CW</td>
<td>Farmed</td>
<td>St. Louis</td>
<td>5,000</td>
</tr>
<tr>
<td>2</td>
<td>002</td>
<td>AWB</td>
<td>Wetland</td>
<td>Madison</td>
<td>10,000</td>
</tr>
<tr>
<td>3</td>
<td>003</td>
<td>SWB</td>
<td>Wetland</td>
<td>Johnson</td>
<td>15,000</td>
</tr>
</tbody>
</table>

*Company name*
“Typical” Ag Bank Wetland Replacement Process

1. If the CWD shows a “W”, NRCS/consultant/LGU completes Ag Wetland Evaluation Tool assessment (AWET):
   - MNRAM based assessment – vegetation diversity, downstream water quality protection, flood water attenuation and wildlife habitat.
   - “Degraded” = a scoring of “Low” for vegetative diversity + “Low” for one other function, and no other score may be higher than “Medium”
2. NRCS/consultant/LGU assists the producer filling out form, and producer submits it to the LGU

Wetlands Eligible for Ag Bank credit replacement

1. Use of the Agricultural Wetland Bank:
   - For farm program participants, the Agricultural Wetland Bank can be used to restore impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:
     1. Normal Wetland (NW):
     2. Normal Wetland Feature (NWF):
     3. A wetland feature is an activity for which the landowner can provide evidence (e.g. Landowner Mitigation (LHM determination) of qualification for a WPCA exemption under 36 CFR 604.601(2); form A or B; form C, form D, or form F).
     4. A wetland feature is considered to be a wetland as determined by the NRCS Agricultural Wetland Evaluation Tool, or is determined to be a wetland by another tool that is accredited by NRCS. The tool assesses vegetation diversity, downstream water quality protection, flood attenuation, and wildlife habitat – a wetland qualifies as degraded when the tool results in a rating of low for vegetation and one or more other functions, and no higher than medium for any function(s) or converted wetland (CWD) that, prior to conversion, qualified under items one through four above as determined by NRCS staff.

Functional Assessment Tool

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

Application Process (Use of the Ag Bank)

1. The LGU should review CWD accuracy against recent imagery and NWI, and the AWET for concurrence (wetlands identified, size, degraded?).
2. If accurate, the LGU can sign the form and return it to the producer.

Things to Watch For …

Are all wetlands identified correctly?
Things to Watch For …

- Delineation methods differ between Swampbuster & WCA
- NRCS evaluates the “best drained condition” of the wetland prior to Dec. 23, 1985
- Wetland had a ditch and 1-2 years of planting prior to Swampbuster, thus “prior converted”.
- For WCA, it hasn’t been planted for almost 35 years therefore not exempt.
- Lack of drainage maintenance isn’t an issue for NRCS

Things to Watch For …

- Review the wetland polygon size using some representative imagery
- Review the wetland label
- Do you agree?

Things to Watch For …

- NRCS evaluates by tract – pay attention to tract boundaries!
- What if the property line is also a county boundary???
- You may need to work with another LGU!
Things to Watch For …

- Review all wetland labels, but key into the “Ws”
- Remember Ws have a three-part eligibility criteria;
  - Confirm the acreage
  - Confirm the history of the land bordering the wetland
  - Confirm it is degraded per the Ag Wetland Evaluation Tool
- If not eligible for AB MOU replacement – NOTIFY THE APPLICANT!!!!!
- MN Statute 15.99 timelines apply

Things to Watch For …

Is the form signed by NRCS staff?

- This must be signed by NRCS prior to your review and approval.
- The only time an application may not be signed by NRCS is for non-farm program participants

The Minnesota Ag Bank
A “Win-Win” for Agriculture and our Natural Resources

- WCA “exempts” certain local road projects from State wetland replacement requirements
- BWSR is required to replace the associated wetland impacts so the local governments don’t have to (it’s a service to them)
- BWSR has generated approximately 4,500 credits to offset 3,000 acres of wetlands impacted by local road projects since 1996
- These wetland credits are certified by the Corps of Engineers and thereby satisfy Section 404 permit requirements

Local Government Road Wetland Replacement Program (aka “LGRWRP”, or the Road Program)
Project Eligibility and Application

Local Road Program - Eligibility

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

Boundary Accuracy

- Wetland boundary accuracy is always important
- For LGRWRP it’s even more important since credit availability is limited
- Make sure to identify incidental wetlands separately
  - Remember the Corps does not ‘recognize’ incidental wetlands

Application Requirements

Local Road Unit should provide the TEP the following:

- Project plans depicting wetland boundaries
- Description of wetland impacts by type
- Information demonstrating wetland impact minimization

Project Plans
Joint Application Form

For Local Road Projects:

• Parts 1-5; Attachments C and E

• May need Attachment D if there will be impacts that do not meet the Local Road Program eligibility requirements.

Attachment E – Joint Application

What’s missing?
Good?

<table>
<thead>
<tr>
<th>Wetland Impact ID</th>
<th>Type of Impact</th>
<th>Size of Impact</th>
<th>Existing Plant Community Type</th>
<th>Eligibility Area</th>
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<tr>
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<td>0.11 ac</td>
<td>Wet Meadow</td>
<td>deductible</td>
</tr>
<tr>
<td>W1.B</td>
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<td>Wet Meadow</td>
<td>deductible</td>
</tr>
<tr>
<td>W1.C</td>
<td>Fill</td>
<td>0.11 ac</td>
<td>Wet Meadow</td>
<td>deductible</td>
</tr>
<tr>
<td>W1.D</td>
<td>Fill</td>
<td>0.11 ac</td>
<td>Wet Meadow</td>
<td>deductible</td>
</tr>
<tr>
<td>W1.E</td>
<td>Fill</td>
<td>0.11 ac</td>
<td>Wet Meadow</td>
<td>deductible</td>
</tr>
<tr>
<td>W1.F</td>
<td>Fill</td>
<td>0.11 ac</td>
<td>Wet Meadow</td>
<td>deductible</td>
</tr>
</tbody>
</table>

What makes it eligible for LGRWRP?

- Minor or emergency maintenance impacting less than 10,000 Square Feet = submit required information within 30 days of commencing work
- Otherwise = submit required information at least 30 days before construction
- Emergency work less than 10,000 SF can start prior to submission – just make sure you submit the appropriate information within 30 days or replacement cannot be completed through the Local Road Program**

More “safety” examples

Currently, the roadway structure has diminished, the width is narrower than standards, slopes within clear zones are steeper than standards, and the current bridge does not allow for unsupervised and pedestrian use. The purpose of the project is to reconstruct this segment of County Road 540 to meet State Aid Standards (Winn. Res 35.09.05) in order to meet the transportation needs of the public. Attached is a set of plans for the area of impact.

Emergency traffic on CR 540 appears to have been the focus of this project, with the goal of improving safety. Specifically, the sidewalk on the east side of the road was narrowed, and a new crossing point was added. This project was intended to improve safety for pedestrians and cyclists using the road. The new crossing point was designed to accommodate the increased traffic volume and provide a safe crossing for pedestrians. **The project also included the installation of new signage and road markings.**

Link to Standards

**MinDOT’s Road Design Manual (2006)** also recommends turn and/or hipster lanes for rural undivided roadways with traffic volumes over 1,500 AADT and speed limits above 70 mph. Current road conditions compared with required and proposed expected the need for the safer solutions.**

Timelines!

- Minor or emergency maintenance impacting less than 10,000 Square Feet = submit required information within 30 days of commencing work
- Otherwise = submit required information at least 30 days before construction
- Emergency work less than 10,000 SF can start prior to submission – just make sure you submit the appropriate information within 30 days or replacement cannot be completed through the Local Road Program**
Where do I send all this stuff??

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

Guidance for Submitting Delineation Reports in MN

- Delineation report content
- Delineation Method and data collection
- On-site field demarcation
- Critical Definitions
- Guidance on each parameter

Wetland Delineation Reports

- Field Notes
- Basic Report Components
- Report Contents
- Field Review
- Non-Routine Wetland Delineations

Table of Contents

<table>
<thead>
<tr>
<th>Nature and Condition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vegetation Impacted</td>
<td>Vegetation type and density</td>
</tr>
<tr>
<td>Wetland Type</td>
<td>Wetland classification</td>
</tr>
<tr>
<td>Hydrology</td>
<td>Flow characteristics</td>
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Guidance on each parameter:

- Shallow Marsh
- Sedge Meadow
- Ditch Plug
- Upland Prairie
- Outlet to forested wetland
- Upstream wetland connected via intermittent drainage

Guidance:

- WCA Application Type Examples
  - Construction/Development
  - Agricultural activities
  - Industrial/Commercial
  - Wetland restoration
  - Water supply development
  - Wetland monitoring
  - Hazard mitigation
  - Environmental assessment

- Considered Local Delineation Method
  - Routine Level 1
  - Routine Level 2
  - Comprehensive

- Complete WCA Data Forms
  - Site visit
  - Sampling approach
  - Field review

- Field marking of Wetland Boundaries
  - Routine Level 1
  - Routine Level 2
  - Comprehensive

- Enforcement actions
  - Routine Level 1
  - Routine Level 2
  - Comprehensive
Take Good Field Notes

What to Record

- Plant communities
- Describe and sketch on aerial photograph
- Landscape settings
- Topographic changes from wetland to upland
  - Gradual, abrupt?
- Vegetation
  - Dominant veg
  - Changes from wetland to upland
- Soil
  - Changes from wetland to upland
  - Textures, Colors
- Hydrology indicators
  - Changes from wetland to upland

What to Record

- Wetland type
  (Circular 39, Cowardin, Eggers & Reed)
- General site description
  - Buildings, ditches, culverts, etc
- Field conditions
- Raining, temperature, drought, etc.
- Note taking skills improve with experience as you figure out what is important and what is not
- Take time to organize, refine, and augment field notes immediately following your field visit.
- Label and organize photos so you know where you took them and what they are intended to show.

Marking Wetland Boundaries

- Mark with:
  - Flagging tape, lath, pin flags
  - Will vary depending on situation.
- Locate via GPS or land survey methods (find out local requirements).
- Wetland boundaries must be usable for the regulatory purposes intended (grading plans, plat maps, etc.).

Guidance

This guidance provides specific standards and procedures for conducting wetland delineations and affirming wetland delineation reports for regulatory purposes in Minnesota. It supplements and modifies information in the U.S. Army Corps of Engineers’ Wetland Delineation Manual and Manual on Wetlands and Aquatic Habitat Classification. The guidance is based on current science and best practices and is designed to assist the Corps and other states and local governments in conducting wetland delineations in Minnesota. The guidance is also intended to clarify the requirements of the U.S. Army Corps of Engineers and the Minnesota Pollution Control Agency’s standards for wetland delineations.
Typical Report Format

- **Introduction**
- **Methods**
- **Results**
- **Discussion (optional)**
- **Figures**
- **Field Data Forms**

**Introduction**

- Who did you do this for?
  - Developer, public entity
- Where is the project?
  - General location and size of project area
  - General description of plant communities: Wooded, meadow, urban etc
- Why are you doing it?
  - Identify wetlands on potential development site
  - Identify wetlands in road corridor
- When did you do it?

**Methods**

- Level 1 or 2?
- Off site aerial review?
- Monitoring data?
- Reference wetlands?
- Problem area or atypical procedures?

**RESULTS and Discussion**

Describe wetlands AND uplands

- **Wetland Type** – Circular 39, Cowardin, Eggers & Reed
- **Dominant Vegetation** for each community/type

**Text Examples**

Wetland Type & Vegetation:

“Wetland 1 is a Type 3 (PEMC/F) with an interior shallow marsh community surrounded by a fringe of wet meadow.

Dominant vegetation in the shallow marsh includes broadleaf cattail, and water plantain.

The wet meadow fringe include reed canary grass, with a few scattered willow shrubs.”

Soils:

“Soils in the wetland consisted of a deep layer of organic sapric material overlying fine sand consistent with the mapped soil unit. Indicator A1 (histosol) was observed in the wetland.

Adjacent upland soils lacked the organic surface layer and consisted of high chroma loamy fine sand over sand. No hydric soil indicators were observed in the upland.”
Report Components – Figures

1. Site Location
2. National Wetland Inventory (NWI)*
3. Soils
4. Public Waters Inventory (PWI)*
5. Wetland Boundary Map
*often combined

Identify all aquatic resources

Report figures

Reports
Data Forms

- Completely filled out
- Correspond to sample locations indicated on a map
- Remember that sample locations should be representative
- Not needed if doing a Routine Level 1
- Do a complete job, but keep in mind that these are field assessments, not a scientific study, spend a reasonable amount of time.

Data Sheets Common Errors

- Normal circumstances checked on ag land
- Normal circumstances vs normal climatic conditions
- Noting disturbance on ag land
- Recognizing naturally problematic areas
- Indicating water table depth with A1, A2, A3 hydrology indicators
- Not using remarks

Data Sheet Common Errors

- Absolute % Cover always adding up to 100
- Using wrong indicator status for the LRR
- Must have 5% cover to be considered dominant in 50/20 rule
- Meets prevalence index at 3 or less
- Presence of hydrology and soil indicators when doing prevalence index
- Not using remarks

Data Sheet Common Errors

- Using wrong indicator group for texture
- Estimating redox percentages
- Assuming A11 all the time
- Every data sheet describes horizons exact same color across site
- Using uncommon indicators with no remarks
Who should conduct site review?

- At least 1 member of TEP
- LGU may request assistance from TEP (SWCD and BWSR) or other tech. prof.
- Corps invited/coordination
- Delineator invited (but does not need to be present)

Non-Routine Wetland Delineations

- Informal Delineations
- Landowner wanted to fill an area mapped as non-hydric soil
- Site visit to estimate and stake wetland boundary