

# 2024 Wetland Conservation Act (WCA) Amendments: Agricultural Exemptions

# 2024 WCA Statute Changes

## Significant Amendments to Ag-Related Exemptions

### Removed from Statute:

- X “6 of 10 prior to 1991”
- X Pasture land exemption
- X “8 of 10”
- X Drainage exemption for unincorporated land assessed drainage benefits

### Added to Statute:

- ✓ “Prior Converted Cropland” (PC)
- ✓ NRCS authorized maintenance

# 2024 WCA Statute Changes

## The New Agricultural Exemption

Replacement plan is not required for:

- impacts to wetlands on agricultural land labeled prior converted (PC) cropland and “PC”
- impacts to wetlands resulting from drainage maintenance activities authorized by the Natural Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture, and wetland “Maintenance”

The prior converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service.

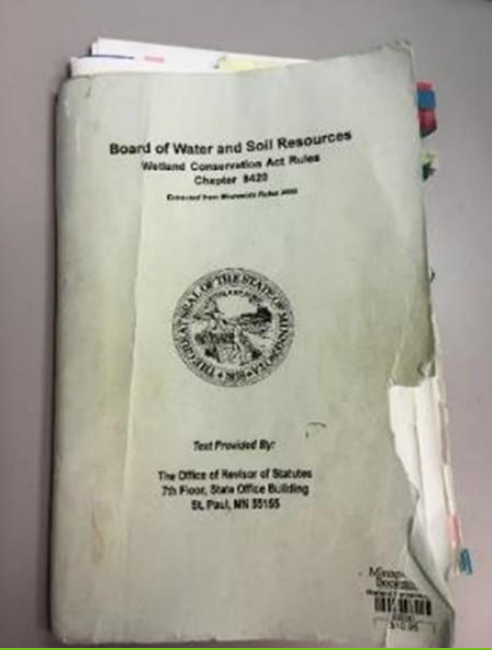
Landowner is responsible to provide a copy of the final certified wetland determination (026 and CWD map) to, and allow the Natural Resources Conservation Service to share related information with, the local government unit and the board for purposes of verification;

Applicable to both

# Agricultural Exemption – Administration and Applicability

- Not a joint program (WCA/Farm Program) exemption.
- Area **MUST** have a Certified Wetland Determination (CWD) with qualifying label.
- CWDs remain with the land through changes in ownership and/or discontinued program participation.
- Current or past farm program participation not required.
- Verification: It is the landowner's responsibility to provide documentation sufficient to demonstrate qualification.





# Certified Wetland Determination (CWD) Verification

“...must be labeled on a valid final certified wetland determination ...”

# Certified Wetland Determination (CWD) Verification



United States Department of Agriculture

Natural Resources Conservation Service

NRCS-CPA-026E  
9/2017

## HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Name	Example Farm Name	Request Date:	6/15/2016	County:	Example
GP Address	example Bellevue WA 98006				
Agency or Person Requesting Determination:	Landowner	Tract No:	1002	FSA Farm No:	3832

### Section I - Highly Erodible Land

Is a soil survey now available for making a highly erodible land determination?	
Are there highly erodible soil map units on this farm?	

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

Field(s)	HEL (Y/N)	Sodbest (Y/N)	Acres	Determination Date
<b>Refer to the Previous HEL determination available on file from your FSA office</b>				

The Highly Erodible Land determination was completed in the

### Section II - Wetlands

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

Field(s)	Wetland Label	Occurrence Year	Acres	Determination Date	Certification Date
13	AW		0.1	6/26/2017	7/26/2017
15 A	W		0.4	6/26/2017	7/26/2017
15 B	NW		0.5	6/26/2017	7/26/2017
15 C	NW		0.8	6/26/2017	7/26/2017
16	NW		64.8	6/26/2017	7/26/2017
16 A	W		0.2	6/26/2017	7/26/2017
17	NW		0.1	6/26/2017	7/26/2017
18	NW		5.5	6/26/2017	7/26/2017
9	NW		38.5	6/26/2017	7/26/2017
9 A	W		0.2	6/26/2017	7/26/2017

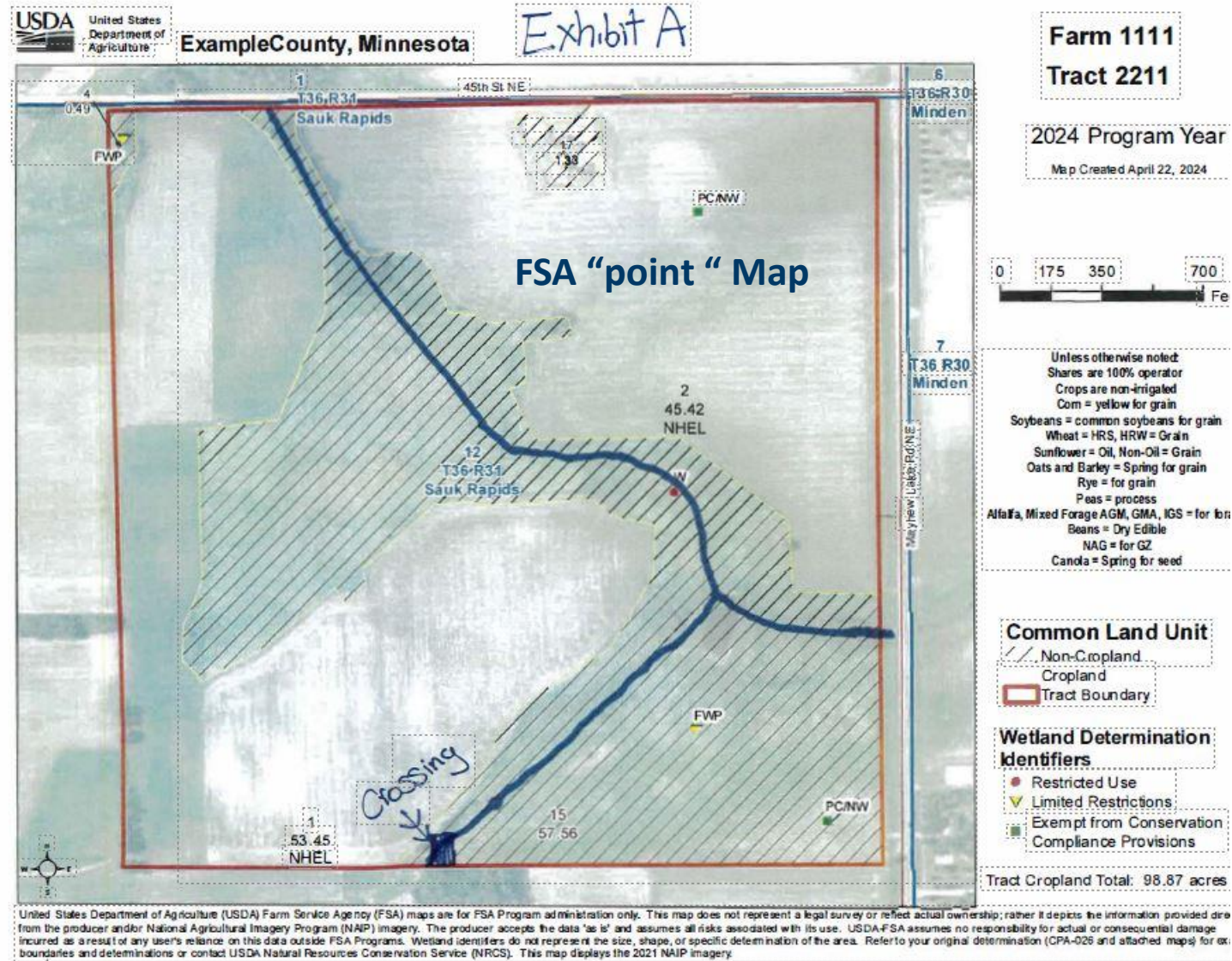
- Required for verification: CWD Map and signed CPA-026.
- As per April 2024 NRCS guidance, certified if:
  - Issued on or after July 3, 1996.
  - Issued before July 3, 1996, AND was appealed and NRCS conducted a site visit in response to the appeal.
- “Final” 30 days after receipt by person, or upon issuance of final technical determination (FTD) in response to an appeal.





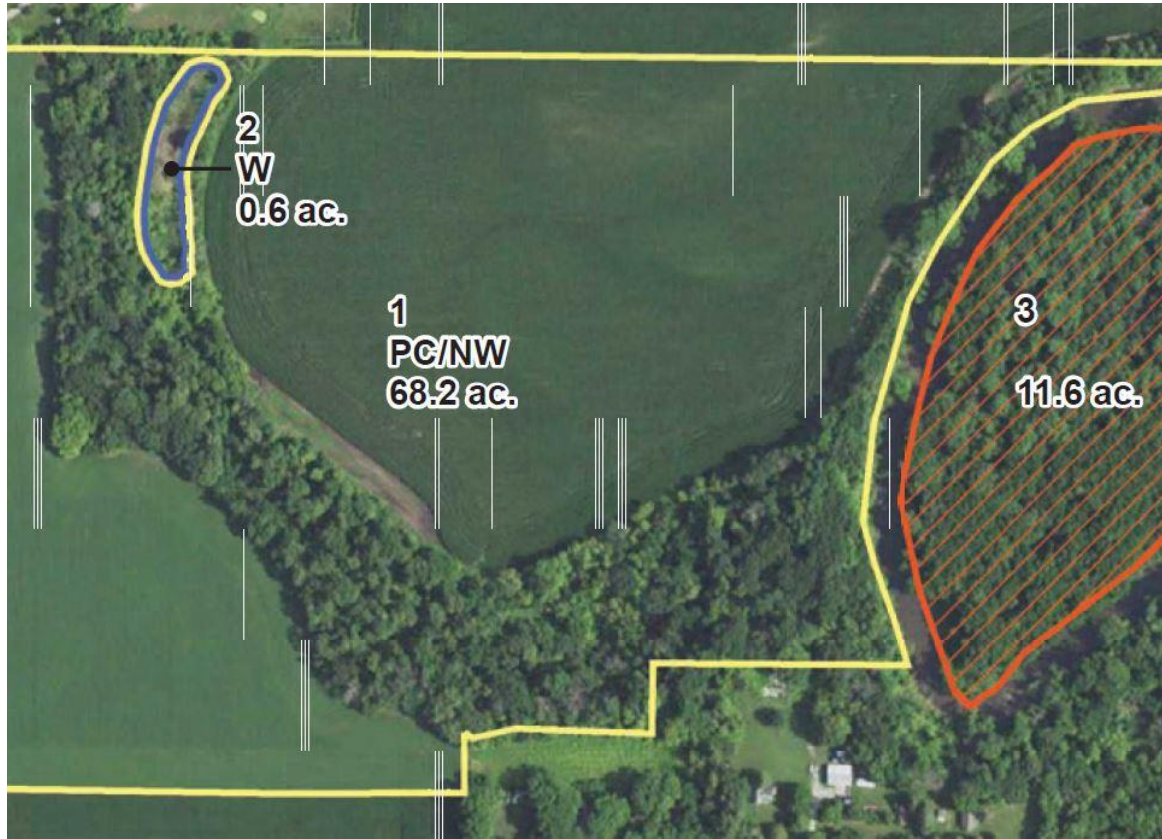
# Certified Wetland Determination – Additional Considerations

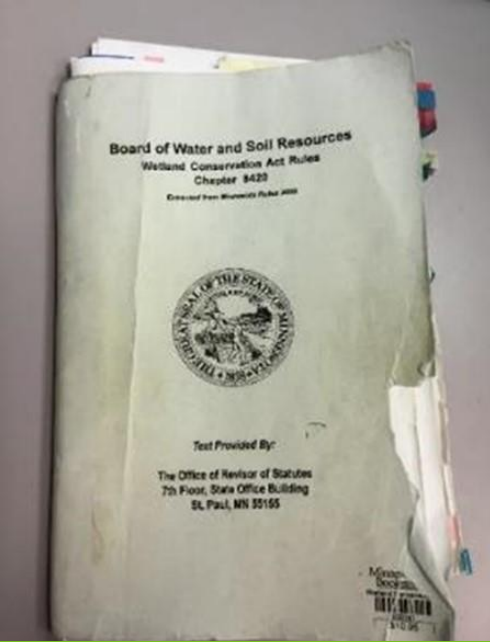
FSA “point maps”  
are not Certified  
Wetland  
Determinations.





# Agricultural Exemption – Applicable Labels





# PC Exemption Implementation

“...impacts to wetlands on agricultural land labeled prior-converted cropland...”



# General Review Procedure – PC Exemption

- Verify that the impacted wetland is on agricultural land labeled PC on a valid, final Certified Wetland Determination (CWD).
  - If yes, and no adjacent wetlands are present, no activity review is required. Impacts are exempt.
- If adjacent wetlands are present, will be impacted by the activity, and do not qualify for an exemption, the proposed activity is not exempt.



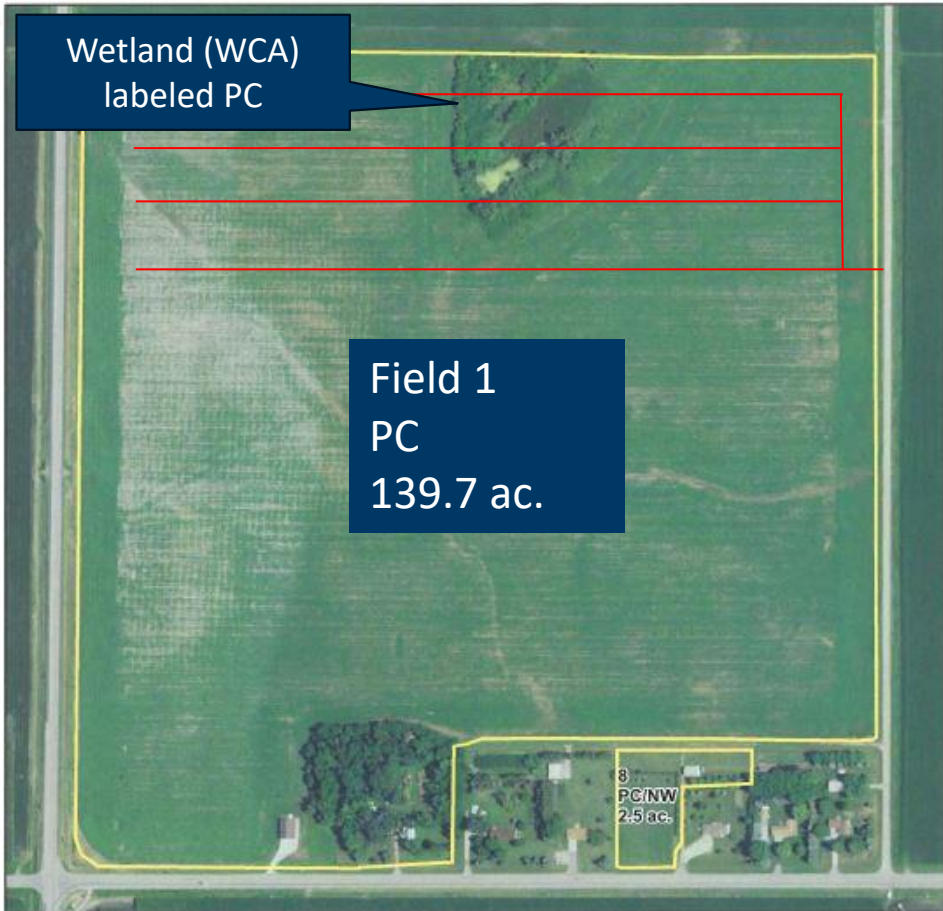


## Certified Wetland Determination

Customer: John Doe

Tract: 4120

5/2/2023



Wetland (WCA)  
labeled PC

Field 1  
PC  
139.7 ac.

8  
PC/NW  
2.5 ac.

T105 R22 S9 Example Twp  
Example County

2021 Imagery

1:4,800 1 inch = 400 feet  
400 200 0 400 Feet



This certified wetland determination has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination may not be used for identifying the extent of the Corps of Engineers' (COE) Clean Water Act jurisdiction for this site. Other federal, state or local permits or restrictions may apply to activities impacting wetlands. Contact the US Fish and Wildlife Service for information concerning conservation assessments. Contact the Local Governmental Unit (LGU) for State Wetland Conservation Act permits and Minnesota Department of Natural Resources for protected water permits prior to initiating wetland activities by completing the "Minnesota Joint Project Notification Form" available from the LGU.

PC

# Example – PC Exemption

## Context:

- ✓ Valid, final CWD w/label of PC.
- ✓ Wetland is on agricultural land.
- ✓ No adjacent wetlands.

## Outcome:

- All impacts to Field 1 (PC) are exempt.



Customer: John Doe

Tract: 4120

5/2/20



Adjacent Wetland (WCA)

1  
PC/NW  
139.7 ac.

8  
PC/NW  
2.5 ac.

# Example – PC + Adjacent Wetlands

## Context:

- ✓ Valid, final CWD w/label of PC.
- ✓ Agricultural land.
- △ Wetland on adjacent land.

## Outcome:

- Impacts to Field 1 are exempt.
- Impacts to adjacent wetland are exempt IF impacts to that wetland qualify for an exemption on their own.



# Areas with Combined Labels: “PC” and “NW”

- PC/NW – Combination of two labels.
- Used by NRCS for simplification.
- If area does not meet NRCS criteria for (PC) label, the area is presumed to be NW and the WCA PC exemption does not apply.





# Interim Guidance for Combined PC/NW Labels

**Areas labeled both “PC” and “NW” will be considered “PC” only when:**

- They did not support woody vegetation on 12/23/1985, and,
- An agricultural commodity was planted on the area at least once before that date.



# Basis of Interim Guidance for Combined PC/NW Label

“Prior-converted cropland... **an agricultural commodity had been produced** at least once before December 23, 1985, and as of December 23, 1985, **the converted wetland did not support woody vegetation** ...”

This definition is from the USDA Wetland Conservation (WC) Rule.

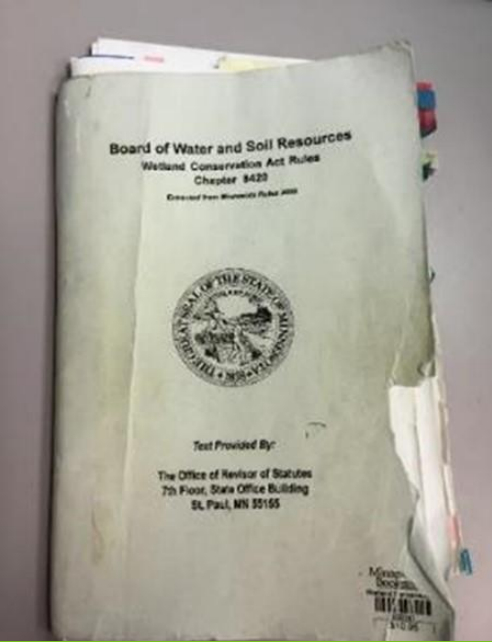


# Verifying PC Criteria Are Met

- Woody vegetation:
  - Aerial imagery showing that woody vegetation was not or could not have been present on 12/23/85.
- Pre-12/23/85 cropping history:
  - Aerial imagery showing planting of an agricultural commodity at least once before 12/23/85.
  - Other records verifying planting of an agricultural commodity on the area in question prior to 12/23/1985.







# FW, FWP and W Maintenance Exemption Implementation

“...impacts to wetlands resulting from drainage maintenance activities authorized by [NRCS] on areas labeled farmed wetland, farmed-wetland pasture, and wetland.”

# Maintenance (FW, FWP, W) Exemption – Key Considerations

- Occurs to (not necessarily on) areas labeled W, FW, or FWP.
- Must be authorized under NRCS' Wetland Conservation (WC) provisions.
- May result in impacts to other wetlands (other labels, unlabeled wetlands, wetlands on non-agricultural land, etc.)

# What is “maintenance?”

## **Maintenance Exemption Fact Sheet**

When you check “YES” to question 7c on the AD-1026 form you are indicating that your drainage activity is maintenance. Maintenance of drainage ditches or tile systems that existed prior to December 23, 1985 is generally exempt under the USDA wetland compliance provisions as described below.

### **Limitations and Requirements for Drainage Maintenance**

1. Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. These actions could include but are not limited to:
  - Cleaning of existing drainage ditches, without deepening or widening the ditch such that the drainage provided by the ditch is improved beyond what existed prior to December 23, 1985;
  - Repairing existing tile systems (including repair, rehabilitation and replacement) without increasing the depth, size or grade of the tile, such that drainage is improved beyond what was provided by the system that existed prior to December 23, 1985, and provided that previously existing tile is rendered ineffective.

“...entitled to farm their land as they did on or before December 23, 1985...”

*Barthel v. United States Department of Agriculture (1999)*



# What is “NRCS authorized maintenance?”

- Based on effect.
- May involve system reconfiguration and/or relocation.
- Disabling and replacement or clean out to same size, same depth, etc., generally qualifies as maintenance.
- Activity is not limited to original specifications.
- May compensate for additional inputs that have occurred over time.
- A project that exceeds the best resulting conditions of the pre-85 drainage manipulation is generally not maintenance.

# What is “authorized by NRCS”?

- **Maintenance activities authorized under NRCS’ WC Provisions.**
  - **Project-specific authorization not required.**
  - **Project-specific authorization typically not given.**

# Verification Procedure

- Verify that wetland is labeled FW, FWP, or W on a valid, final Certified Wetland Determination.
- Verify that the landowner has provided information demonstrating that the maintenance activity is/would be authorized under NRCS' WC Provisions.
  - Consider “same size, same depth”, with documentation of existing system, as maintenance.
- If maintenance involves relocation of a drainage system (e.g. from within to outside of the subject wetland), determine whether impacts to other wetlands may occur.
  - If so, impacts to the other wetland(s) are not exempt unless those impacts also qualify for an exemption.



# Verification Documentation

- As-built specifications or other documentation of existing system characteristics.
- Project-specific evaluation by NRCS.
- Documentation from NRCS file (e.g. – year indicated as “best drained condition”).
- Consultant report.
- Setback table printouts resulting from correctly entered data.
- NRCS compliance investigation, with results confirming compliance.

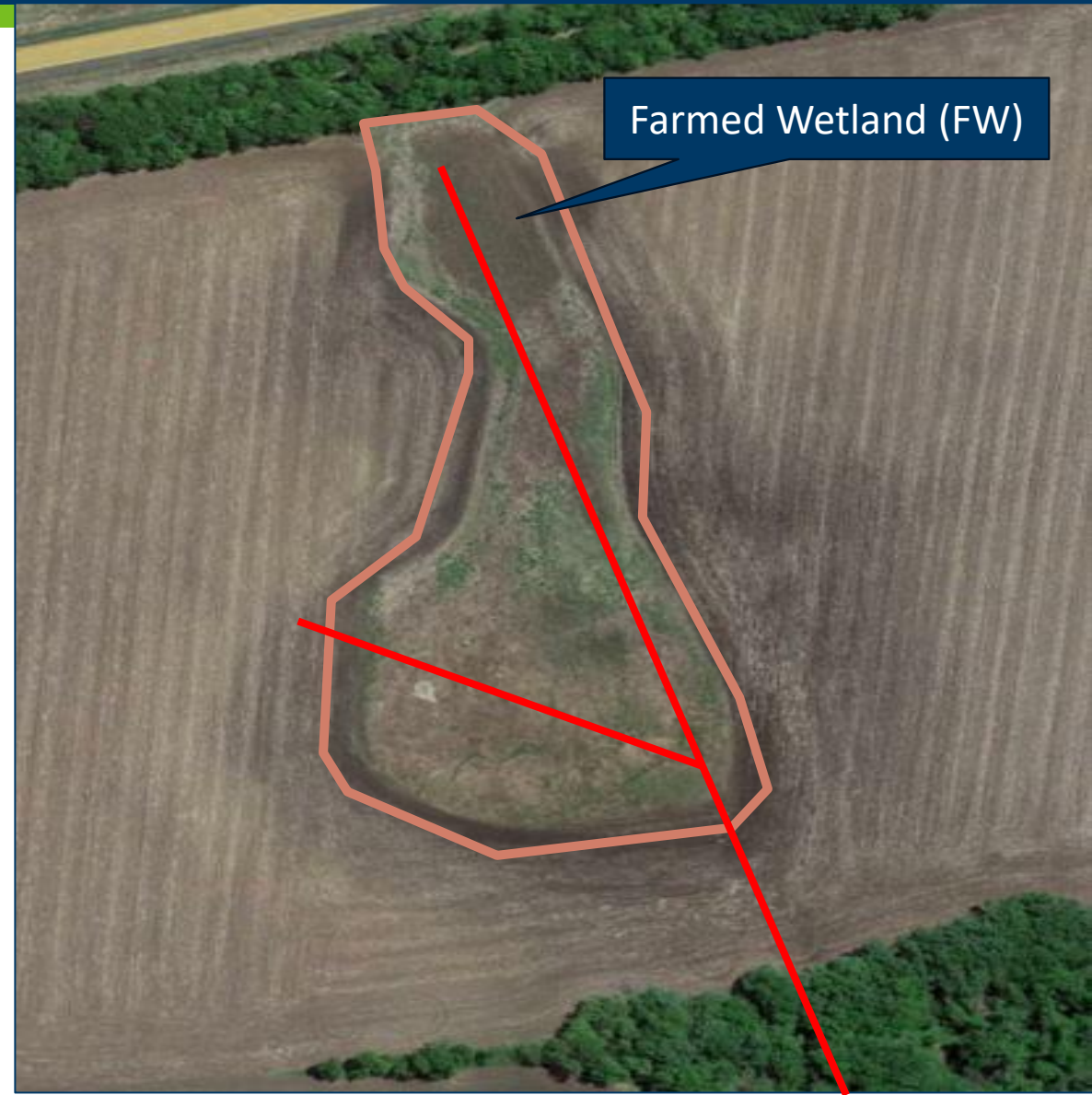
# Drainage Maintenance Example – Tile Replacement

## Context:

- CWD of **FW**.
- Existing tile to be disabled and replaced using same characteristics as existing system.
- Verification: As-built documentation provided.
- Proposal matches existing system capacity/effect.

## Outcome:

- ✓ Impacts are exempt.



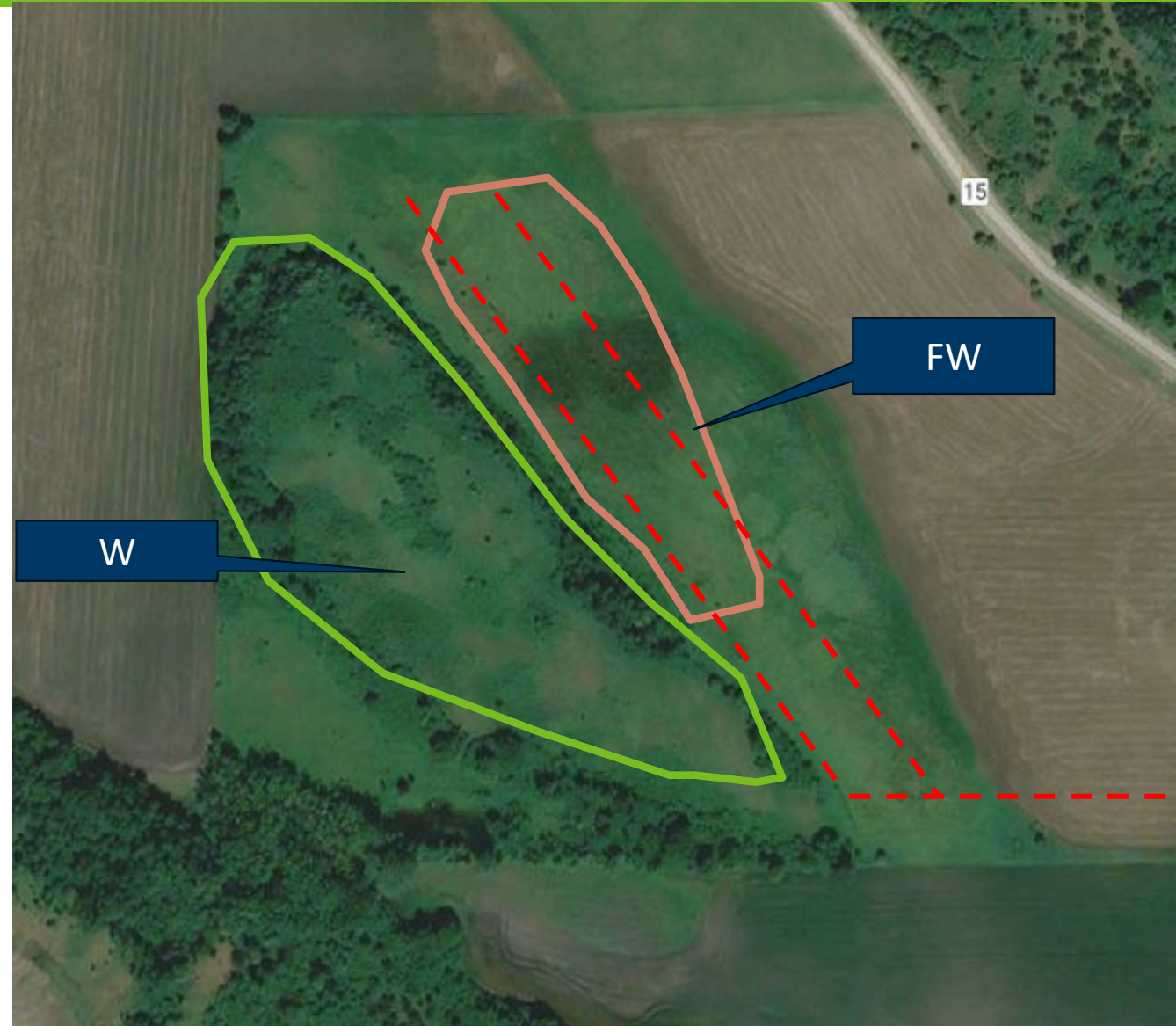
# Drainage Maintenance Example – Clearly Improved Scope and Effect

## Context:

- CWD of **W** and **FW**.
- Existing tile (**red**) in FW replaced at same location and spacing; diameter increased by 2", depth by 2'.
- As-built documentation provided.

## Outcome:

- ✗ Exceeds maintenance on the FW.
- ✗ Effects to other wetland (W) not exempt under agricultural exemption because activity in FW does not qualify as maintenance.





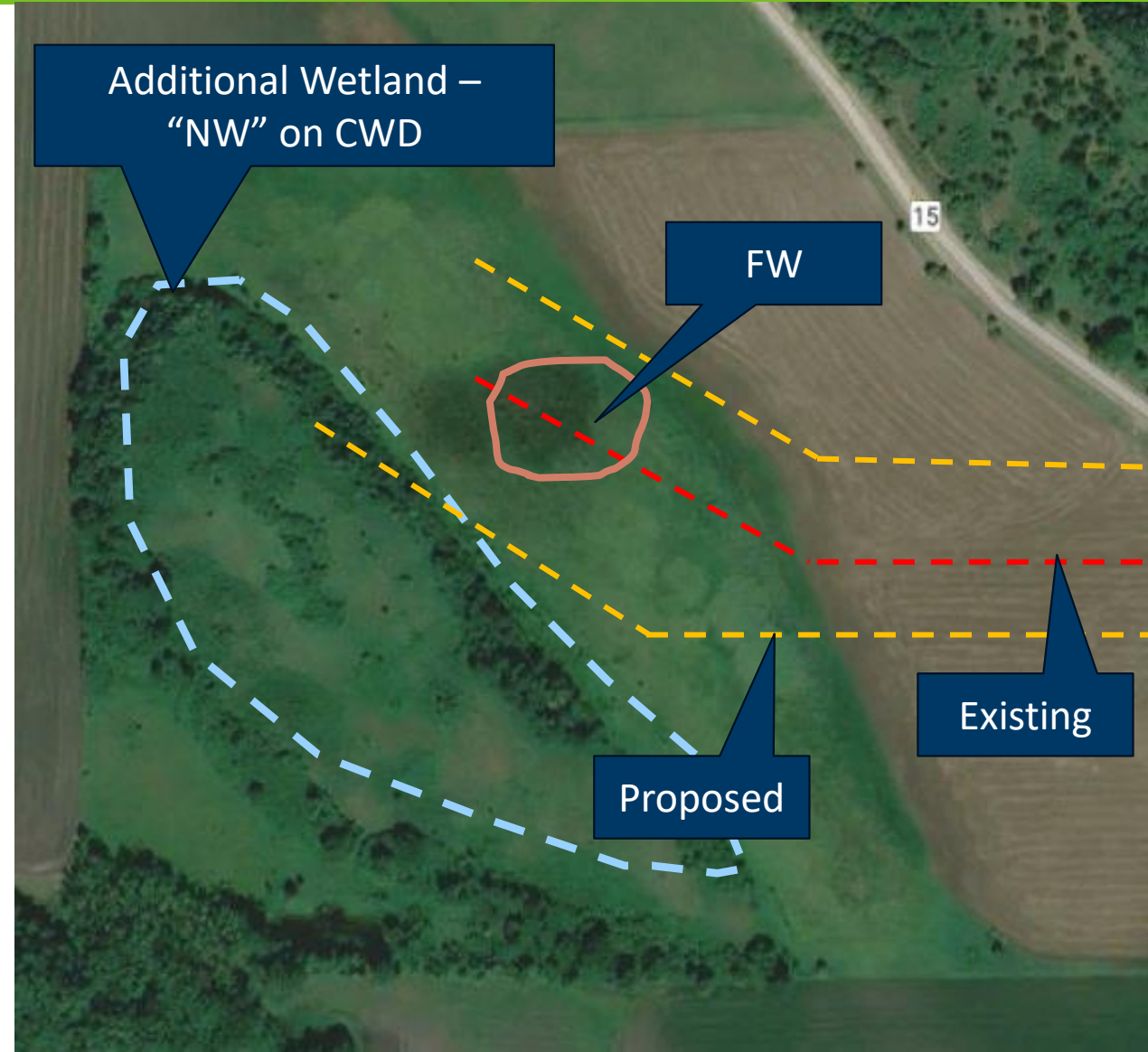
# Drainage Maintenance Example – Other Wetlands/Tile Relocation

## Context:

- CWD of **FW** with remainder of area “NW”.
- Additional wetland exists on “NW” area.
- Existing (**red**) tile in FW to be replaced (**yellow**) by relocation, at increased diameter and depth.
- NRCS-authorized maintenance on FW.
- No other exemption applies to additional (NW) wetland.

## Outcome:

- ✗ Impacts to other wetland result from relocation.
- ✗ Impacts to other wetland are not exempt.
- ⚠ Impacts to the other wetland would have been exempt if original tile had been replaced in-place.



# Breakout Session

## ➤ 25 minutes:

- 10 minutes to develop questions.
- 15 minutes to discuss questions with agency staff.

# Additional Information

**Additional information regarding the 2024 WCA statute changes and rulemaking can be found on the BWSR website at:**  
**<https://bwsr.state.mn.us/wca-rulemaking>**

**Questions about the implementation of the 2024 WCA statute changes should be directed to your BWSR Wetland Specialist.**

**Questions regarding WCA rulemaking or today's presentation can be directed to any the following BWSR staff:**

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