



**Wetland Conservation Act 101
Virtual Training**




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MN Wetland Professional Certification Program

Program goal: Provide relevant, accessible and affordable technical and administrative training for all wetland professionals.

- Nationally recognized voluntary training program that certifies 500 individuals working in both private and public sectors from the upper midwest and beyond.
- Provide technical wetland delineation training and administrative training for implementing the MN Wetland Conservation Act.
- Certified individuals must pass in-training and Professional exams and complete continuing education during 3-year renewal periods.

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



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2025 MWPCP Training Courses

Introduction to Wetland Delineation and Regulations

- **Introduction to Wetland Delineation and Regulations:** MNDOT Training Center, Shoreview, MN - June 9-13
- **Introduction to Wetland Delineation and Regulations:** Northland Arboretum, Baxter, MN - September 8-12
- **Introduction to Wetland Delineation and Regulations:** MNDOT Training Center, Shoreview - October 6-10

Professional Exams

MWPCP Exams will be offered at 1pm on: June 13 in Shoreview, September 12 in Baxter, October 10 in Shoreview



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2025 MWPCP Training Courses



Regulatory Training

- **WCA 101 virtual training:** February 4-5 (2 half days) (3 online CEC per day)
- **WCA 201 Virtual training:** February 19 (1 half day) (3 online CEC)

This virtual training will provide an overview of the 2024 statute amendments relevant to the Wetland Conservation Act. Topics to be discussed include wetland classification, jurisdiction of deepwater habitat, agricultural activities exemption provisions and changes to the drainage, de minimis and utility exemptions.

- **TEP Academy:** St Cloud MNDOT training center- April 16 & 17 - Two one-day classes (6 CEC per day)

This course is intended for professionals who serve on a Technical Evaluation Panel (TEP) implementing WCA. The course is designed to focus on roles, procedures, important concepts and some common scenarios TEP members encounter. Participants should have some basic level knowledge of how the WCA is implemented but direct experience on a TEP is not required. The content is introductory to intermediate. Participants can choose either date as they will be identical courses.

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2025 MWPCP Training Courses

Technical Training

- **Soils on the Landscape**- Robert Nye Regional Park -April 29 & 30- Two one-day classes (6 CEC per day)
- **Wetland Delineation Methods w Field Practicum**- Cloquet Forestry Center- May 20-22 (18 CEC)
- **Plant ID**- Shoreview MNDOT Training Center (July 14) and Cloquet Forestry Center (July 16)-Two one-day classes (6 CEC per day)
- **MWPCP Regional Wetland Training- Northeast MN**- Hermantown City Hall- August 12-13 (6 CEC per day)
- **Hydrogeomorphic Method of Classifying Wetlands** - Hartley Nature Center, Duluth- October 28-29- Two one-day classes (6 CEC per day)
- **Wetland Banking & Monitoring for Consultants**- Shoreview MNDOT Training Center- November 12-13 (12 CEC)



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Registration Information

Registration for 2025 MWPCP courses will be staggered and open on the following dates:

- Registration for Virtual Training Courses- 8am on January 21
- Registration for Introduction to Wetland Delineation & Regulation classes- 8am on February 24
- Registration for April- June Classes- 8am on March 3
- Registration for July-October classes- Week of June 16

Email reminders will go out to the MWPCP and BWSR Wetland Conservation Act (WCA) email contact lists for registration dates.

- Email bwsr.mwpcp@state.mn.us to be added to list

MWPCP maintains a waitlist for all full classes



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Certification Updates

- Need 18 continuing education hours (6 online)
- Current renewal period ends on December 31, 2025 for individuals who passed exams in 2022.
- Do not need to report MWPCP classes
- Use Credit Reporting Form
- List of approved classes on MWPCP page
- If not listed, use Credit Determination Form
- Notify us if you change jobs or email



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Wetland Conservation Act 101 Virtual Training - February 4-5

Day One

- Wetland Regulatory Programs in MN
- Local Government Unit Duties & Technical Evaluation Panel Procedures
- WCA Application Procedures
- Enforcement Procedures
- Q/A & Quiz

Day Two

- Basic Decisions
- Replacement Plans
- Wetland Banking
- Q/A & Quiz




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

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Basic WCA Decision Types

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Basic WCA Decision Types

WCA Basic Decision Types	
Boundary and Type	Approves wetland delineation
No-Loss	Approves activities that do not result in permanent impacts
Exemption	Approves impacts exempt from replacement

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- 1 • Is it a *Wetland*?
- 2 • Is the activity *Regulated*?
- 3 • Is the activity an *Impact*?

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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 in all types or by excavation in semipermanently and permanently flooded areas.



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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.



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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.



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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.

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Wetland Fill

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



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What is Excavation?

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



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Application Types and Procedures



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Boundary/Type Applications: Where wetland regulation meets science

- Boundaries must be delineated using USACE 1987 Manual and Supplements (8420.0405.subp 1)
- Wetland Types must be identified using HGM (WCA) and Eggers and Reed (Corps)
- Level 1, 2, or 3 delineation
- Requires NOA and NOD.
- Technical Decision- one member of TEP must make a site visit



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WCA decisions for wetland projects that DO NOT REQUIRE REPLACEMENT



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No-loss and 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



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No Loss Activity Basics

Defined:

No permanent loss of, or impact to, wetlands from an activity.



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No-Loss Criteria

"No-loss" means no permanent loss of, or impact to, wetlands from an activity according to the criteria in this part.

- **Will not impact a wetland** (8420.0415 Subp A.)
- **Excavation limited to removal of sediment or debris** Trees, logs, beaver dams, trash, blockage of culverts (8420.0415 Subp B.)
- **Water level management** (8420.0415 Subp C.)
- **Excavation limited to removal of sediment** in wetlands utilized as storm water basins. (8420.0415 Subp E.)
- **Operation, Maintenance or Emergency Repair.** (culverts) (8420.0415 Subp F.)
- **Temporary impact** if: Returned to previous conditions. Activity completed within 6 months (8420.0415 Subp H.)



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No-Loss

- **Temporarily crossing or entering a wetland to perform silvicultural activities**, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters (8420.0415 Subp G)
- **Activity conducted as part of an approved replacement or banking plan, conducted or authorized by public agencies for the purpose of wetland restoration or fish and wildlife habitat restoration** (8420.0415 Subp D)



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General Exemption Requirements for ALL

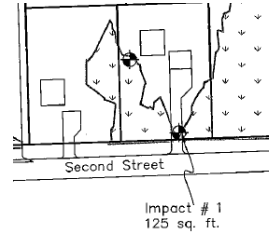
- Only has to fit one; not disqualified if not exempt by another
- If impacts exceed max allowed = nothing is exempt
- Max may not apply to all situations or wetlands-**very specific**
- May not be combined on a project
- Must stabilized to prevent sedimentation/erosion.

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Exemptions 8420.0420

- Impacts to wetlands that **DO NOT** require replacement.
- The activity is still regulated.
- WCA does not REQUIRE an application; some LGU's may via ordinance.
- 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)



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Exemptions – Agricultural Activities

"Agricultural land" means land devoted to the following uses and includes any contiguous land associated with the uses:

- (1) pasture or hayland for domestic livestock or dairy animals;
- (2) producing agricultural crops;
- (3) growing nursery stocks; or
- (4) animal feedlots.



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NEW Agricultural Exemption Statute

Replacement plan for wetlands is not required for:

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

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;

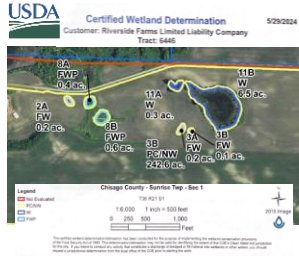
Provision 1
Provision 2
Applies to both

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Exemptions – Ag Activities

- Exempt under Ag Exemption
- Prior Converted Cropland (PC)

- Exempt if applying for drainage maintenance under Ag Exemption
- Wetland (W)
 - Farmed Wetland (FW)
 - Farmed Wetland Pasture/Hayland (FWP)



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Other CWD Labels

DEFINITIONS OF WETLAND LABEL CODES

AW Artificial Wetland. An area that is artificial or originates in wetland.

CD Corps Permit Decision. Code of Exemptions permit decision regarding section 404 of the Clean Water Act or to wetland areas to which the wetland conservation provisions of the Food Security Act of 1985, or amended.

CE Converted Wetland. A wetland converted between December 31, 1985 and November 28, 1991. In any wetland that is agricultural, cropland or pasture or forest wetlands, you will be eligible for 100% credits.

CE/Pre A wetland converted after November 28, 1991. You will be eligible for USDA program benefits until the wetland is restored.

CE/Re Converted Wetland. Wetland area. It was converted based on an incorrect SWDC determination or misclassification from a SWDC or FWS application.

F10 Farmed Wetland. An area that was manipulated and drained before December 31, 1981, but still meets wetland criteria. These may be drained and maintained in the open season so long as they are not abandoned.

F10P Farmed Wetland Pasture. An area that is used for pasture or hay and manipulated before December 31, 1981 but still meets wetland criteria. These may be used and maintained in the open season or time in their wetland status.

F10R Mitigation Exemption. A converted wetland for which the lost wetland average, value, and function has been adequately replaced according to an SWDC approved plan.

F10T Mitigated Wetland. A converted wetland determined to be exempt because the conversion had a natural offset. These wetlands are to be used according to the natural offset approved report of the last successful offset determination on such a wetland.

F10M Mitigation Wetland. An area used as mitigation for replacement of lost wetland average, value, and function.

F10/NO Non-Wetland. An area that does not meet the wetland definition.

F10/NO/NO An area determined to be a non-wetland resulting from a decision from the National Agency.

PC Prior Converted Cropland, which was drained, filled, or manipulated before December 31, 1981, now reapplicable to December 31, 1991; not wet and abandoned, and does not meet PC criteria.

PC/NO Not wet after PC each in SWC definition.

W Wetland. An area that meets wetland criteria, including wetlands formed under natural conditions.

W1 Manipulated Wetland. A wetland area that has been manipulated after December 31, 1981, but not manipulated to the degree of agricultural, cropland, and pasture and was not eligible for the mitigation. These include wetlands manipulated by drainage maintenance agreements.

- Numerous other label codes
- Only PC, W, FW and FWP specific to the new statute

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Exemptions – Agricultural Activities

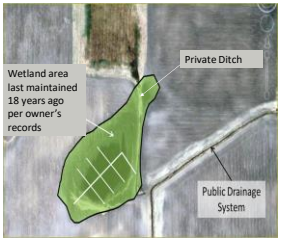
- Subp. 2. C.
- Impacts resulting from soil and water conservation projects that are certified by the SWCD staff after review by TEP
- The projects must minimize impacts to the hydrologic and biologic characteristics of the wetland.



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Exemptions – Drainage Exemption

A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems, including public drainage systems.



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Drainage/Ditch Maintenance

Replacement not required for maintenance or repair of existing drainage systems

WHEN:

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



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Drainage/Ditch Maintenance Illustration



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Ditch Maintenance

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.



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Drainage/Ditch Maintenance

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

- Past records of maintenance (receipt to contractors)
- Aerial Photo review
- Amount of Sediment Proposed to be removed (can be critical)
- Depth of ditch/soil types
- Culvert elevation and location
- Site visit
- Lateral Effect Calculations or estimates



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Exemptions

- **Federal Approvals** 8420.0420 Subp 4
 - Impacts authorized by Corps of Engineers that meet standards agreed to by BWSR, Dept. of Ag., DNR, and MPCA.
 - Pipelines, electrical, broadband, etc.

• **Utilities** MS 103G.2241

A replacement plan for wetlands is not required for wetland impacts resulting from:

- new placement or maintenance, repair, enhancement, realignment, or replacement of existing utility or utility-type service, including pipelines, when wetland impacts are authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act
- Repair and updating existing septic systems to comply with local, state and federal regulations



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Exemptions – de minimis

- The de minimis exemption covers small impacts to wetlands typically used for driveways, culverts, small projects by landowners, etc.
- Very specific requirements depending on location in state, local area, shoreland, etc.

Table 1: Maximum de minimis exemption amounts for per MS 103G.2241 (Aug. 1, 2024)

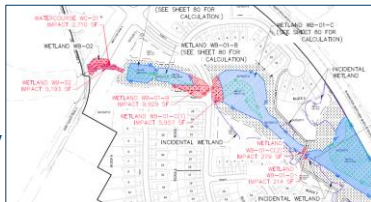
Impacts to wetlands, excluding permanent and semipermanently flooded areas of wetlands	Prosettlement area of state	Impact area up to (acres):	Impact area up to (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	To to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178
Within Shoreland Protection Zone, but beyond structure setback	Statewide	N/A	100
Within Shoreland Protection Zone and structure setback	Statewide	N/A	20 (100)
Impacts to permanent and semipermanently flooded areas of wetlands	Statewide	N/A	400

▲ Increased amount shown in parenthesis may be allowed if wetland is isolated from the public water, or if permanent water runoff retention or infiltration measures are established in proximity to the impact and approved by the shoreland management authority.

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De Minimis Exemption

- Can't be combined
- If total area of impacts exceed de minimis, a replacement plan is required for the entire amount.
- May not divide property simply to get more



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Exempt?

- Located in >80% area
- Not in shoreland
- Wetland = 154,223 SF
- Proposed impact = 7,490 SF



Figure 3: Proposed Driveway

Impacts to wetlands, excluding permanent and semipermanently flooded areas of wetland	Prosettlement area of state	Impact area up to (acres):	Impact area up to (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	To to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178

Qualifies for de minimis exemption MN Rule 8420.0420 Subp. 8

Yes, less than ¼ acre (10,890 SF)

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Exemptions

- 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.



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Exemptions

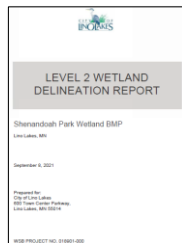
- **Wildlife Habitat 8420.0420 Subp 9**
- Excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat, if:
 - Deposition is less than 5% or 1/2 acre
 - No adverse effect on Threatened & Endangered Species
 - Certified by SWCD or TEP
 - All spoil must be stabilized with native, noninvasive vegetation.



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Summary of Basic WCA Decisions

- **Boundary/Type:** approving wetland delineation that used Corps manual: routine levels 1, 2, 3 (hybrid) or comprehensive method.
- **No-loss:** activity that does not result in wetland impacts
- **Exemptions:** wetland impacts that are exempt from replacement



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Replacement Plan Applications

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Replacement Plans

8420.0330 REPLACEMENT PLAN APPLICATIONS.
 Subpart 1. **Requirement.** A landowner proposing a wetland impact that requires replacement under this chapter must apply to the local government unit and receive approval of a replacement plan before impacting the wetland.



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

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Preapplication Meeting

- Prior to preparation and/or formal submittal of an application
- Meet with the LGU/TEP to provide basic information of the project
- LGU/TEP inform the applicant of sequencing requirements and criteria to evaluate the replacement plan

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Application Contents

- Information necessary to be considered a complete application (Joint Application Subparts 1-5, Attachments C & D)

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Application Contents

Project Name and/or Number:

PART ONE: Applicant Information

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

Applicant/Landowner Name:

Mailing Address:

Phone:

E-mail Address:

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

Mailing Address:

Phone:

E-mail Address:

Agent Name:

Mailing Address:

Phone:

E-mail Address:

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Application Contents

PART TWO: Site Location Information

County: _____ City/Township: _____

Parcel ID and/or Address: _____
 Legal Description (Section, Township, Range): _____

Lat/Long (decimal degrees): _____

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

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

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at: http://www.msp.usace.army.mil/Part4b/278063/regulatory/regulatoryDocs/engform_4345_2013oct.pdf

PART THREE: General Project/Site Information

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

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

Application Contents

PART FOUR: Aquatic Resource Impact¹ Summary

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

Application Contents

PART FOUR: Aquatic Resource Impact¹

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ¹	Overall Aquatic Resource



Application Contents

For the impacted Wetland (info can come from delineation report):

- Soil survey of site, identify hydric soils
- Hydrologic inlets and outlets, adjacent Public Waters (shoreland), floodplain



Application Content - Special Considerations

These factors must be considered by the applicant before submitting a replacement plan and by the LGU during the review: 8420.0515 Subp 1-10

- Subp 2. Endangered and threatened species
- Subp 3. Rare natural communities
- Subp 4. Special fish and wildlife resources (fish spawning, water birds, waterfowl, deer wintering/wildlife corridor)
- Subp 5. Archaeological, historic, or cultural resource sites
- Subp 6. Groundwater sensitivity (Decorah edge, Geologic Sensitivity)
- Subp 7. Sensitive surface waters (trout streams)



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Application Content - Special Considerations

Subp 8. Education or research use (Cedar Creek, Anoka Co)

Subp 9. Waste disposal site (former dump, superfund, TCAAP/AHATS)

Subp 10. Consistency with other plans (watershed management, land use, planning and zoning)



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Application Contents

PART FIVE: Applicant Signature

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

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

Signature: _____ Date: _____

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

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Application Contents

- Attachment C – Avoidance and Minimization
 - Project purpose, need and requirements
 - Avoid
 - Minimize
 - Offsite Alternative
- More on this in a moment....

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Application Contents

• Attachment D – Replacement/Compensatory Mitigation

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

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

- a completed application for withdrawal of wetland credits from the wetland bank in a form provided by the board or a purchase agreement signed by the applicant and bank account holder (more on this later...)

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Application Contents

• Attachment D – Replacement/Compensatory Mitigation

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

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

- Project Specific Replacement – rarely used as the replacement option due to complexities, difficulties, and past failures.

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Application Contents

• Key Concept – COMPLETE APPLICATION

- LGU's should not send a Notice of Application for Replacement Plan Applications that are incomplete.

- Next up.....Reviewing the application - SEQUENCING

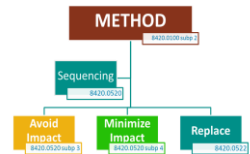
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Sequencing: 8420.0520

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

- Avoid
- Minimize
- Rectify/Reduce
- Replace



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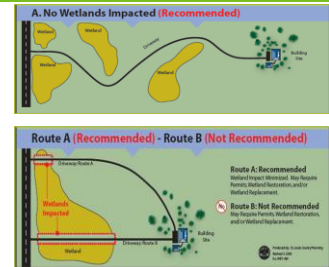
Key Concepts

- Sequencing is a **MUST** for all replacement plans
- **TWO** avoidance alternatives – only one can be “no build”
- Evaluate projects...can wetlands be avoided?
- Are impacts minimized?
- Long term effects
- 8420.0520 Subp C – Page 45 of 2009 Rule book

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Sequencing

- Avoid
- Minimize
- Rectify/Reduce
- Replace



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How does applicant *demonstrate* sequencing?

- Clearly define the **purpose** of the project.
- Identify the physical, economic, and/or demographic **requirements** of the project.
- **Justify** why 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.

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Alternatives Analysis

- LGU must determine if feasible and prudent alternatives are available that avoid wetland impact
- 8420.0520 Subp. 3

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Alternatives Analysis

What is *feasible and prudent*?

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

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

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Evaluating Alternatives (continued)

• LGU must consider (8420.0520 subp 3C(3)):

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

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Impact Avoidance



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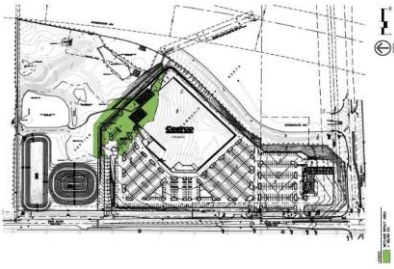
What if an avoidance alternative DOES exist?

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

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Project Example


- Proposed "Preferred" Alternative
- Impact Area = 86,190 sq ft
- Narrative states "avoidance is not possible"
- Front facing street
- 2nd Avoidance alternative was NOT provided
- Offsite analysis was provided



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Project Example


Offsite Analysis



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Project Example

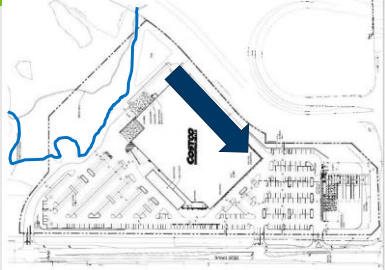
- Applicant is reminded that 2 avoidance alternatives are required
- Avoidance Alternative
- NO impact
- Did not accomplish purpose- too small build site
- Not enough parking
- No space for large trucks



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Project Example

- Applicant is reminded that 2 avoidance alternatives are required
- Avoidance Alternative
- NO impact
- Did not accomplish purpose- too small build site
- Not enough parking
- No space for large trucks



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Project Example

- Avoidance was not feasible
- Next Step – evaluate **minimization**

73

Project Example

Change the project configuration

- Final Approved Alternative
- Side facing street
- Large retaining walls

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Project Example

Change the project configuration

- Final Approved Alternative
- Side facing street
- Large retaining walls

75

Alternatives Analysis Continued...

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

76

Alternatives Analysis Continued...

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



77

What if an avoidance alternative does NOT exist?

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

78

Impact Rectification

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



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Reduction or Elimination of Impacts Over Time

- Once complete, further impacts must be reduced or eliminated and preserve or maintain wetland functions
- Best Management Practices (BMP)
 - Silt fence
 - Storm-ponds
 - Buffers
 - Rip-Rap



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Sequencing Flexibility

- Allowed at the *discretion of the LGU* if:
 1. Impacted wetland degraded;
 2. Avoidance results in severe degradation;
 3. Upland site of the project or replacement has greater function and value;
 4. Human health and safety is a factor.
- Alternatives must still be considered by the applicant and evaluated by the LGU 8420.0520 Subp 7a(B)

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Sequencing – Replacement

Final Review Step

LGU must evaluate if unavoidable impacts will be adequately replaced AND if correctly sited.

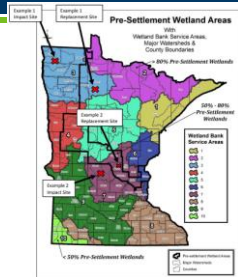
Adequate Replacement

- Must replace the functions and values at an equal or greater level than that which was lost.
- Uses wetland area as the unit of measurement (acreage or sq. ft.)

82

Replacement Siting

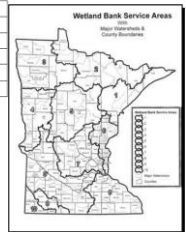
- Must follow a priority order:
 - Minor watershed
 - Major watershed
 - Same BSA (presettlement area restrictions DO NOT apply)
 - Another BSA (presettlement area restrictions apply)



83


Replacement Ratios - Banking

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



84

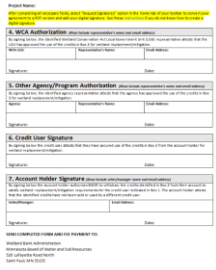
Application to withdraw wetland credits



1. Credit User

2. Wetland Impact Information

3. Credits to be withdrawn




4. WCA Authorization

5. Other Agency/Program Authorization

6. Credit User Signature

7. Applicant/Holder Signature

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Minnesota Wetland Conservation Act Notice of Decision

8. WCA Authorization

9. Other Agency/Program Authorization

10. Credit User Signature

11. Applicant/Holder Signature

Result?

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

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Wetland Banking

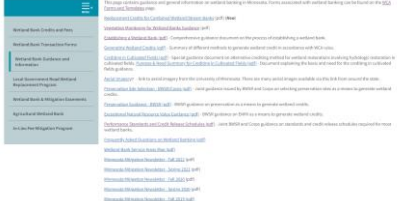


87

- Wetland Bank Guidance and Information

Overview

Wetland Bank Guidance and Information



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Overview

State and Federal regulations require that wetland impacts be replaced with another wetland of at least equal function and value



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Overview

Replacement Types

- Project-Specific (PRM)
- In-Lieu Fee (ILF)
- Wetland Bank



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Overview

Replacement Types

- **Project-Specific (PRM)**
- In-Lieu Fee (ILF)
- Wetland Bank

- 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

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Overview

Replacement Types

- Project-Specific (PRM)
- **In-Lieu Fee (ILF)**
- Wetland Bank

- 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.

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Quick ILF Facts

In-Lieu Fee	Wetland Bank
<ul style="list-style-type: none"> • Credits released and sold BEFORE project is completed or performance standards are met • Only open to government and NGOs • Corps involved in finances • Compensation Planning Framework (CPF) required before approval 	<ul style="list-style-type: none"> • Credits released and sold AFTER project is completed and performance standards are met • Open to anyone • Corps not involved in finances • No CPF

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Quick ILF Facts

Minnesota's In-Lieu Fee Program

- Wetland replacement requirements are satisfied by payment to BWSR or a BWSR-approved sponsor to develop wetland replacement credits.
- Targeted at LGRWRP.
- Not approved yet.

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Overview

- Replacement Types
- Project-Specific (PRM)
 - In-Lieu Fee (ILF)
 - Wetland Bank

95

What are Wetland Banks

- Market-based commodity system using "Credits"
- Credits are generated by wetland restoration, enhancement, creation, or preservation
- Deposited into account
- Sold to others to offset wetland losses

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Why are Banks Preferred

Wetland banks are the preferred replacement type

- Larger more ecologically valuable sites
- Approved using rigorous scientific and technical analysis, planning, and implementation
- Entire site permanently protected by BWSR conservation easement
- Success demonstrated BEFORE credits are released
- Reduced risk and uncertainty

Why are Banks Preferred



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Why are Banks Preferred



Wetland Bank Types

MN Wetland Bank Types

- Standard (SWC)
- Private
- LGRWRP
- Agricultural (AGC)



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Quick Ag Bank Facts

<p>Establishing an Ag Bank:</p> <ul style="list-style-type: none"> • Must use restoration credit action • Mostly state approved • Lower Vegetation Standards 	<p>Using Ag Credits (AGC):</p> <ul style="list-style-type: none"> • Impact on "agricultural land" • Impact remains in agricultural use • Impact is: <ul style="list-style-type: none"> • WCA exemption • "FW" or "FWP" • "W" < 5 acres and "degraded"
--	--

101

Local Government Road Wetland Replacement Program (LGRWRP)

- Standard credits (SWC) with single user (BWSR)
- Qualifying local road projects are exempted from WCA wetland replacement plan requirements
- BWSR replaces qualifying impacts, not the road authority
- LGRWRP credits can satisfy Corps permit requirements



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LGRWRP Qualifications

- **Repair, Rehabilitation, Reconstruction or Replacement** of currently serviceable existing local public road, provided:
 - Impacts are minimized
 - Plans provided to the LGU
- **What does not qualify?**
 - New roads
 - Roads expanded solely for additional capacity or traffic lanes




103

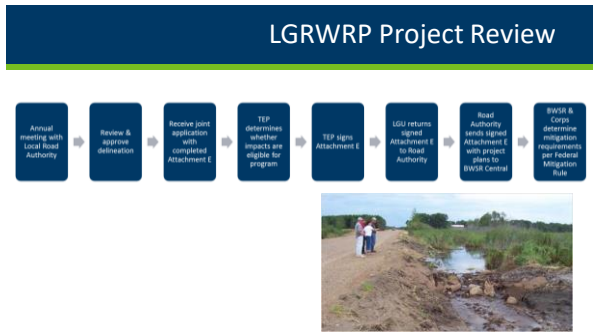
Application Requirements

Road authority should provide the following:

- Project plans showing wetland boundaries
- Description of wetland impacts by type
- Information demonstrating impact minimization
- One alternative



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105

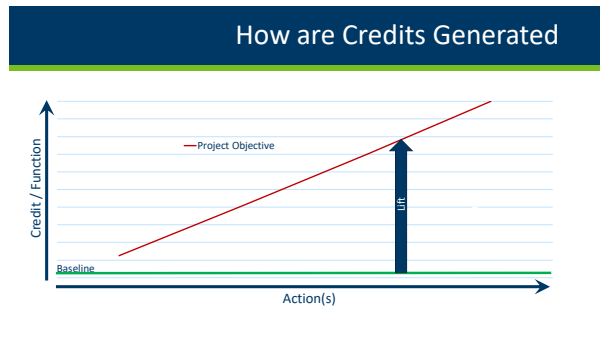
Attachment E

- Fill in table
- Include project/SAP number
- Signatures
- E-mail to LGRWRP.BWSR@state.mn.us

106

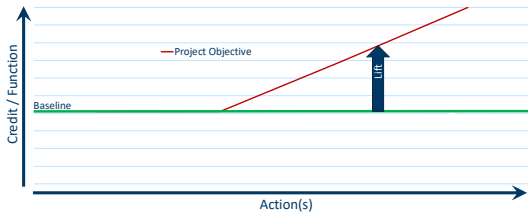
How Credits are Generated

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How are Credits Generated



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How are Credits Generated

WCA Credit Actions	Corps Credit Actions
Subp. 2 – Buffer	Buffer
Subp. 3 – Restoration, completely drained	Re-Establishment
Subp. 4 – Restoration, partially drained	Rehabilitation
Subp. 5 – Vegetation on farmed wetland	Enhancement
Subp. 6 – Protection, previously restored	Extended Restoration
Subp. 7 – Creation	Establishment
Subp. 8 – ENRV	Any or None
Subp. 9 – Preservation	Preservation

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What about the new Cultivated Field Credit (CFC)?

WCA Credit Actions	Corps Credit Actions
Subp. 2 – Buffer	Buffer
Subp. 3 – Restoration, completely drained	Re-Establishment
Subp. 4 – Restoration, partially drained	Rehabilitation
Subp. 5 – Vegetation on farmed wetland	Enhancement
Subp. 6 – Protection, previously restored	Extended Restoration
Subp. 7 – Creation	Establishment
Subp. 8 – ENRV	Any or None
Subp. 9 – Preservation	Preservation

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What about the new Cultivated Field Credit (CFC)?

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

Call it “CFC – Rehabilitation”



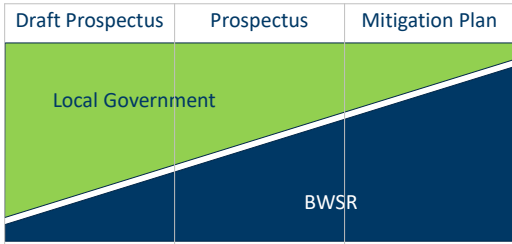
112

Establishing a Wetland Bank



113

Establishing a Wetland Bank



114

Draft Prospectus

- Optional
- No decisions required
- Complex or difficult projects
- Minimal investment


115

Draft Prospectus

- | | |
|--|--|
| <p>BWSR Role:</p> <ul style="list-style-type: none"> • Staff review and comments • Identify easement issues • Identify opportunities and constraints • Evaluate general feasibility | <p>TEP/LGU Role:</p> <ul style="list-style-type: none"> • Provide and compile comments • Site visit • TEP meeting to discuss and review comments • Provide local input • TEP writes Findings and recommendation for bank sponsor |
|--|--|

*Comments commensurate with information provided**

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Prospectus

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

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Prospectus

General Considerations

- Use the form, read the headings, and provide the requested information
- Focus on Baseline Information to justify credit actions and allocations (objectives)
- Some credit actions require more or specific information
- Concept considered but detailed plans not required

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Prospectus

BWSR Role:

- Evaluate easement issues
- Staff comments now include engineering
- Statewide consistency
- Technical answers and interpretations
- Coordination with Corps


*Comments commensurate with information provided**

TEP/LGU Roles:

- Verify previous comments addressed
- Verify sponsor adequately described the site
- Review wetland delineation or determination
- Review ag history (if necessary)
- Provide local perspective

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Mitigation Plan



- Required (WCA Notices)
- LGU Decision Required*
- Section 15.99 time-limits!
- Detailed vegetation, construction and monitoring plans
- Final Crediting and performance standards

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Mitigation Plan

General Considerations

- Button-up baseline information
- Accurate credit calculations
- Credit release schedule
- Performance standards
- Detailed vegetation establishment and management plans
- Detailed construction plans
- Detailed monitoring plans

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Mitigation Plan

BWSR Role

- Evaluate easement Issues
- Verify all components are acceptable and meet WCA requirements
- Engineering review of final plans

TEP/LGU Roles

- Follow WCA notification and decision procedures
- Track 15.99 time-limit and extend as needed (it will be needed)
- Coordinate TEP meeting and site visit
- Compile and evaluate all comments
- TEP findings and recommendation

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Mitigation Plan

- If approval is not recommended comments should be addressed in a revised Mitigation Plan
- Most projects will include multiple plan submittals
- If approval is recommended the LGU makes their decision and sends an NOD
- Clearly identify and retain the approved Mitigation Plan
- WCA and Corps should approve the same plans whenever possible

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Certification and Credit Releases

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Easement Acquisition

BWSR Easement staff will lead this process
 Typically initiated after Mitigation Plan approval
 Often takes 6 months or more



No easement = no bank = no credits
 No credits can be deposited until a perpetual conservation easement is granted to and accepted by the state

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Easement Acquisition

Key Step	Description	BWSR Processing Time	Cost
Easement Initiation	Preliminary ownership and boundary review	15 - 30 Days	\$1,000 (Initial Easement Acquisition Fee)
Legal Boundary Survey	Easement boundary surveyed; certificate of survey provided for BWSR review and comment	30 - 60 Days	\$3,000 - \$6,000 (Surveyor defined)
Title Commitment	Title commitment prepared for BWSR review and comment; title must be cleared by landowner as directed by BWSR	45 - 90 Days	\$1,500 - \$3,000 (Title Agent defined)
Easement Recording / Title Insurance Policy	Easement executed by landowner and state and sent to title agent for recording and title policy	30 - 60 Days	\$2,400 (Final Easement Acquisition Fee)
		120 - 240 Days	\$7,900 - \$12,400

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Construction Certification

Construction as-built documentation provided to LGU:

- Surveyed elevations of slopes, contours, outlets, and embankments
- Seed tags and contractor receipts
- Site preparation activities described
- Surveyed construction and seeding maps
- Construction photos showing relevant work
- Evidence engineered features were designed, overseen, and certified by licensed PE
- Comparison of as-built vs. design specifications and rationale for significant changes

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Construction Certification

Once as-built documentation is received the LGU must:

- Complete an on-site inspection
- Determine whether as-built conditions comply with construction specifications in the approved plan
- Ensure an engineer has certified the construction
- If not in compliance, notify the bank sponsor what is needed to gain compliance
- If in compliance, the initial credit release can be authorized

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Deposits

- Up to 15% of credits can be deposited after construction certification and easement is accepted
- Remaining credits released based on schedule and performance standards in the approved Mitigation Plan
- Releases reviewed by the TEP and LGU
- Deposit form and fee is sent to BWSR banking administrator for entry into the state wetland bank

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Deposits

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Withdrawals

- Submitted to LGU as part of a Replacement Plan
- Reviewed and approved by the LGU with TEP input
- Processed and entered in state ledger by BWSR
- BWSR sends a confirmation email and coordinates ledger transactions with Corps



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Withdrawals

- Make sure all requested information is provided and accurate
- Make sure account information is accurate, each column is filled out, and credits are available in the account
- BWSR will take care of the fees

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Review

- Easement must be accepted by BWSR before credits can be released
- LGUs must certify construction before credits can be released
- Use TEP deposit forms to help with release requests
- Transaction forms need to be completed, accurate, and signed for BWSR to process them

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Questions?

m BOARD OF WATER
AND SOIL RESOURCES

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An exemption is:

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

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

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

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

- a)No-loss criteria
- b)Sequencing
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- d)Replacement order

142

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

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

143

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144