



WCA 101 – Session II: Replacement Plans

BWSR Academy 2013



Purpose and Requirement

- To ensure adequate replacement of lost public value from unavoidable impacts.



Purpose & Requirement

- If not eligible for an exemption or no loss, a replacement plan must be approved by the LGU.
- MNRAM (Minnesota Rapid Assessment Method) is an approved method for evaluating functions of a wetland.



Purpose and Requirement

- LGU must ensure that sequencing requirements have been met.
- Meet replacement requirements or deny.

Special Considerations





Special Considerations

- Special considerations must be considered by applicant and LGU before submitting or approving.



Special Considerations

- Endangered and threatened species
- Rare natural communities
- Special fish and wildlife resources
- Archaeological, historic, or cultural resource sites
- Groundwater sensitivity
- Sensitive surface waters
- Education or research use
- Waste disposal sites
- Consistency with other plans



Special Considerations

- Conflict with a Special Consideration factor, and LGU may be required to deny.

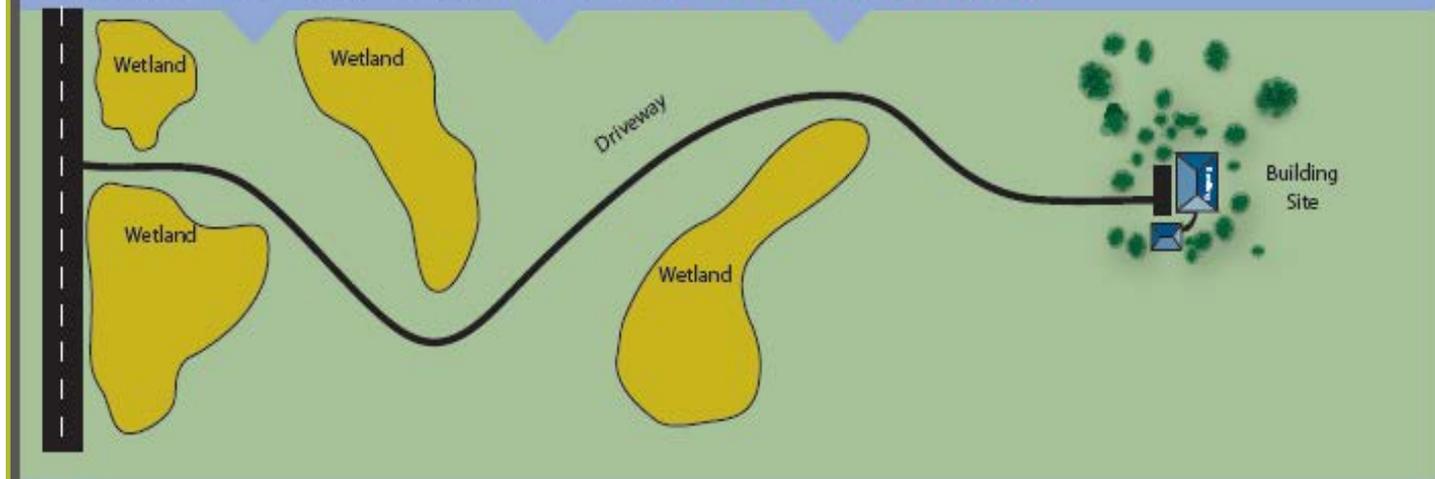
Sequencing



Sequencing

1 Avoidance

A. No Wetlands Impacted (Recommended)



Sequencing

2 Minimization

Route A (Recommended) - Route B (Not Recommended)



Sequencing



Sequencing



Sequencing





Sequencing

- Avoid
- Minimize
- Rectify
- Reduce
- Replace



Avoidance

- Avoidance may be required.
- Wetland Dependent
 - Wetland features or functions essential to fulfill the basic purpose of the project.



Avoidance

- At least two alternatives.
- Must be good faith efforts



Avoidance

- Feasible and prudent
 - Done from engineering point of view
 - Accordance with accepted standards and practices
 - Public health, safety, and welfare
 - Environmentally preferable
 - No truly unusual problems



Avoidance

- Other sites
- General suitability of the site
- Size, scope, configuration, density
- Remove constraints
- Physical, economic, and demographic requirements
- Wetlands and associated resources



Minimization

- Spatial requirements
- Existing features
- Project purpose
- Design sensitivity
- Wetlands on site
- Individual and cumulative impact



Minimization

- Also consider efforts to
 - Modify size, scope, configuration, density
 - Remove or accommodate constraints
 - Confine impacts to fringe



Sequencing Flexibility

- Allowed at discretion of LGU if:
 - Wetland is degraded
 - Avoidance would still result in severe degradation
 - Upland has greater ecosystem function
 - Human health and safety is a factor



Sequencing Flexibility

- Alternatives must be considered
- Replacement certain to provide greater public value
- Based on functional assessment



Wetlands on Cultivated Fields

- Can skip sequencing if:
 - Replaced through restoration
 - Not converted to nonag. use within 10 years
 - May require recording of notice



Replacement Standards

Quality Water



Water Quality



Floodwater Retention



Habitat/ recreation



Project-Specific Replacement



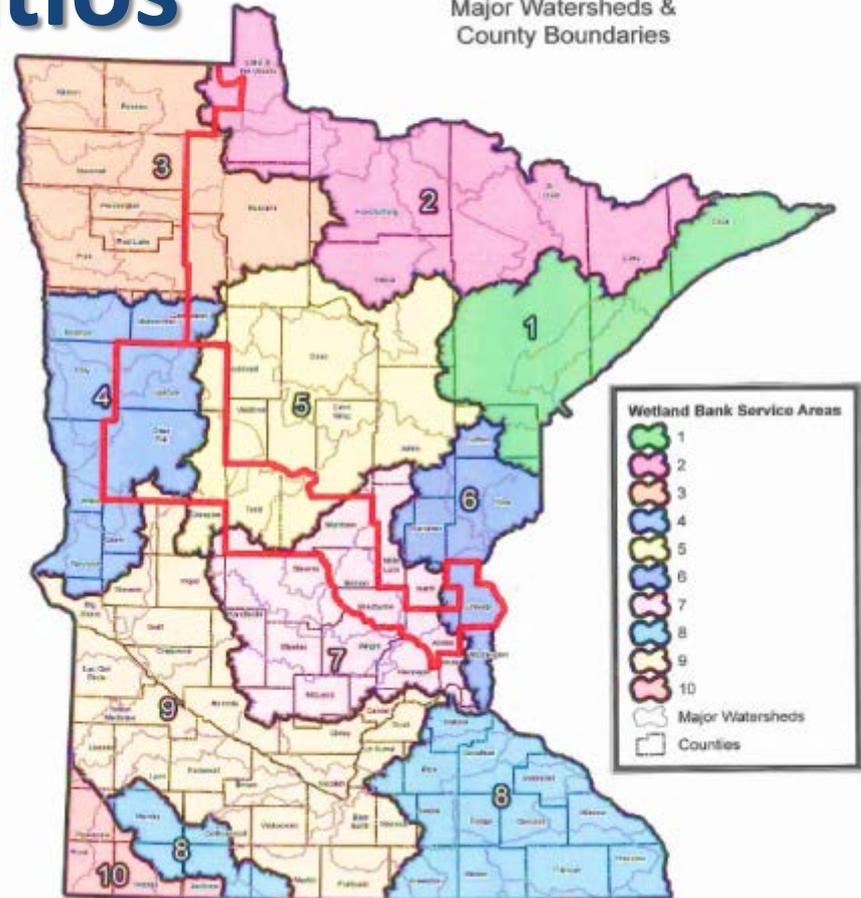
Replacement via banking



Minimum Replacement Ratios

- Location?
- Type of Replacement?
- Wetland Type?

Wetland Bank Service Areas
With
Major Watersheds &
County Boundaries





Replacement Ratios

Minimum Replacement Ratios: Banking

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



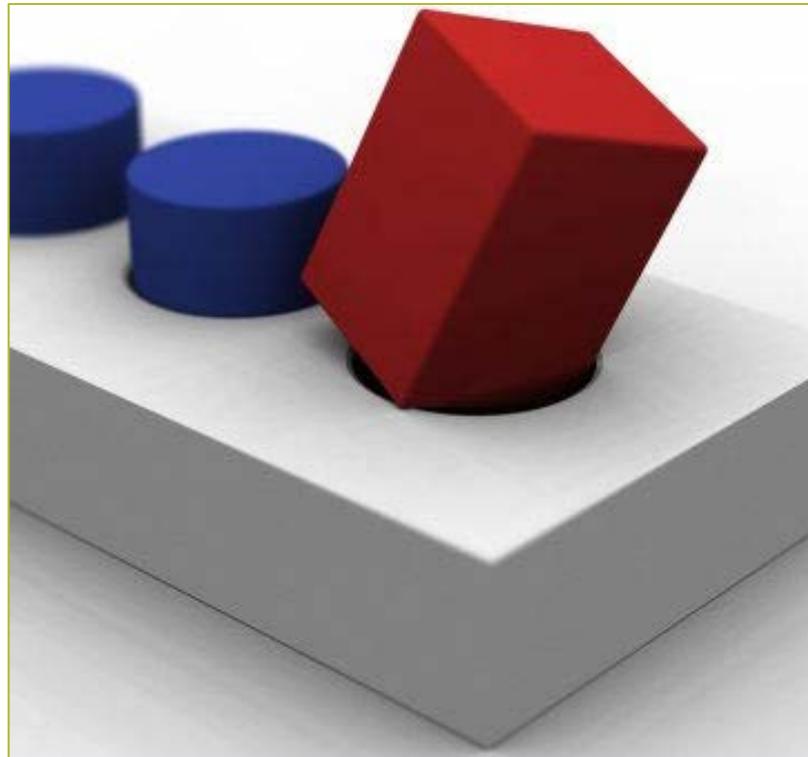
Replacement Ratios

Minimum Replacement Ratios: Project-Specific		
Location of impact	Replacement	Minimum replacement ratio
> 80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
	Inside major watershed and in-of-kind	1:1
<50%area, 50-80% area, and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Inside major watershed and in-of-kind	2:1

Replacement Ratios



Ecological Suitability and Sustainability

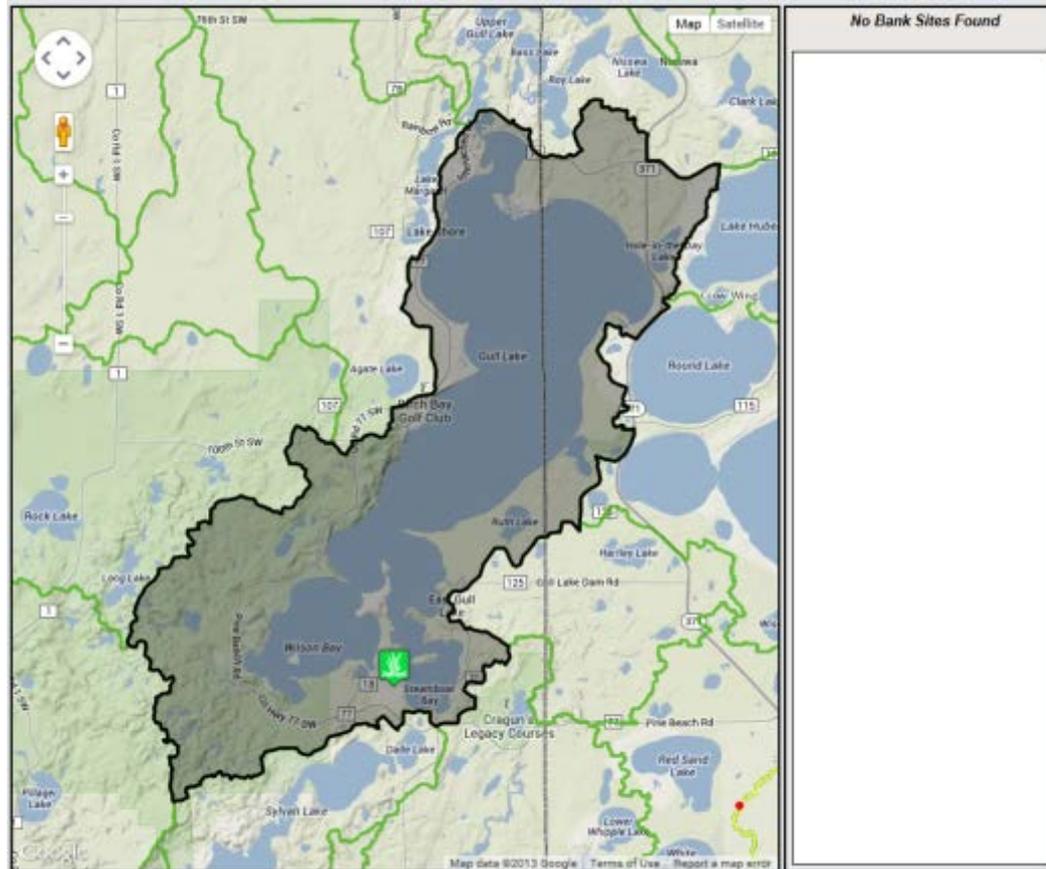




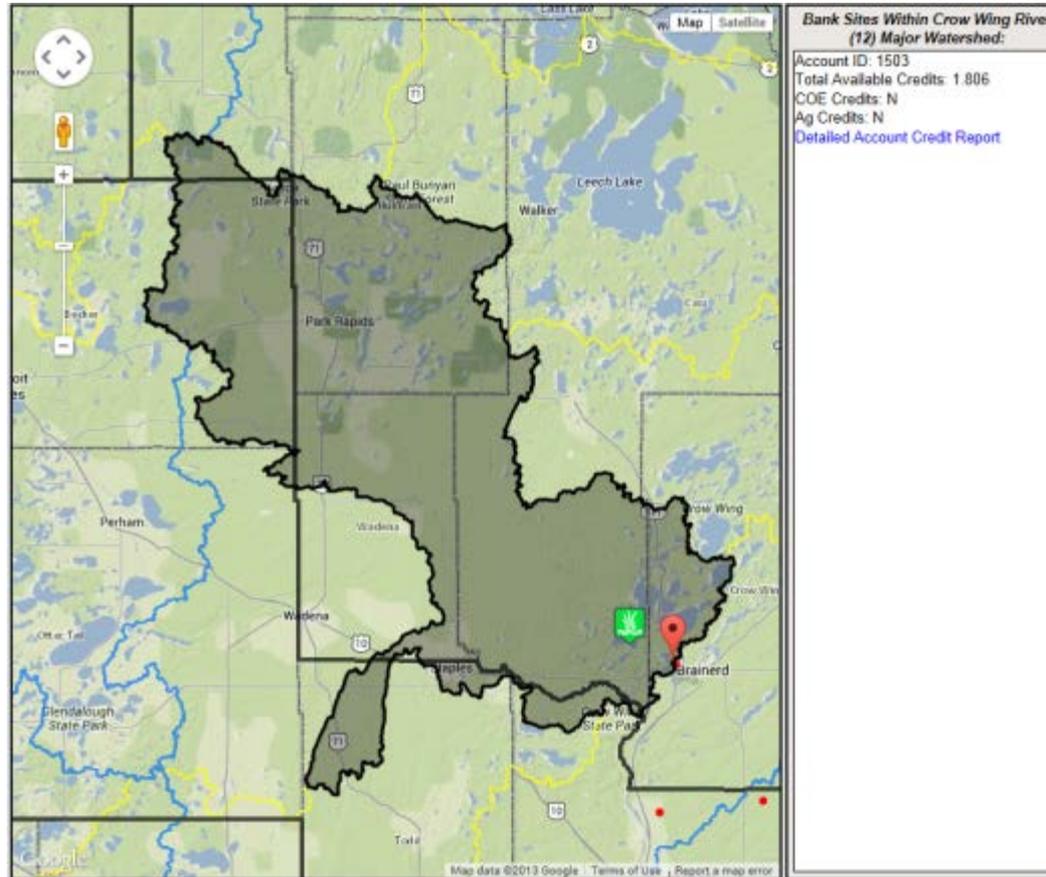
Siting of Replacement

- Priority order for replacement
 - On site or minor watershed
 - Same major watershed
 - Same BSA or County
 - Another BSA

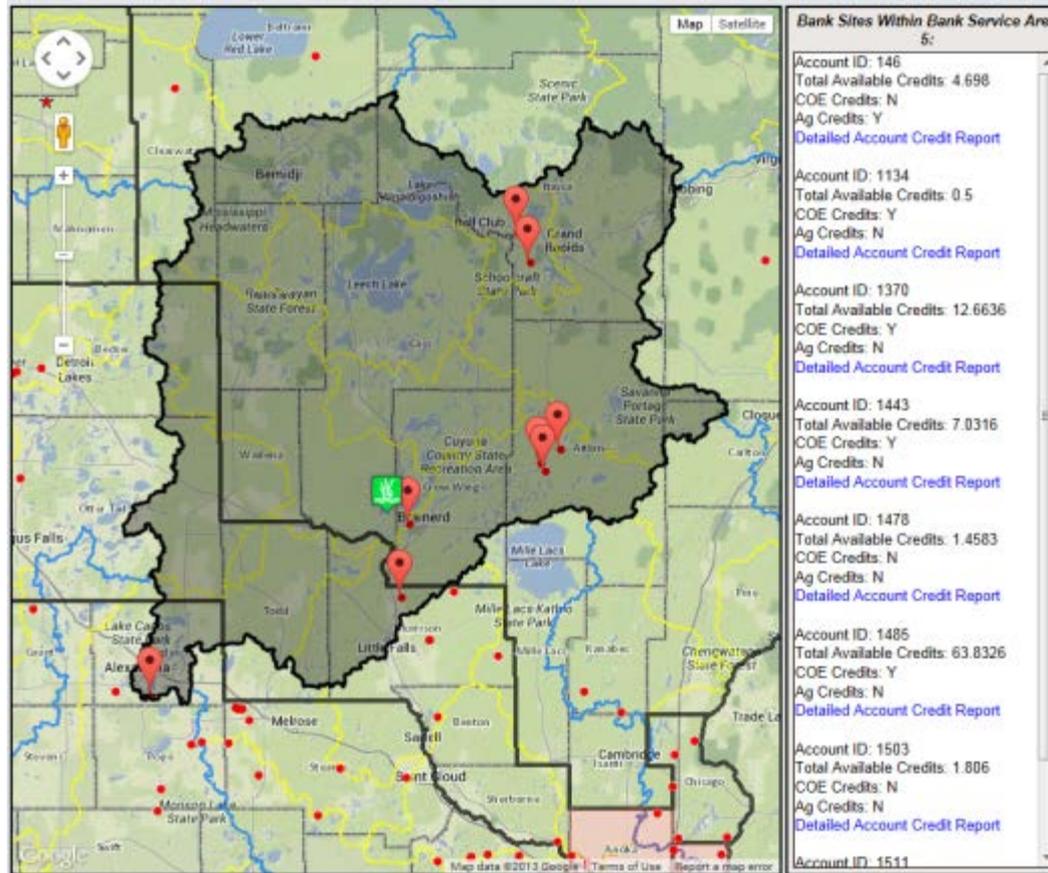
Siting of Replacement



Siting of Replacement

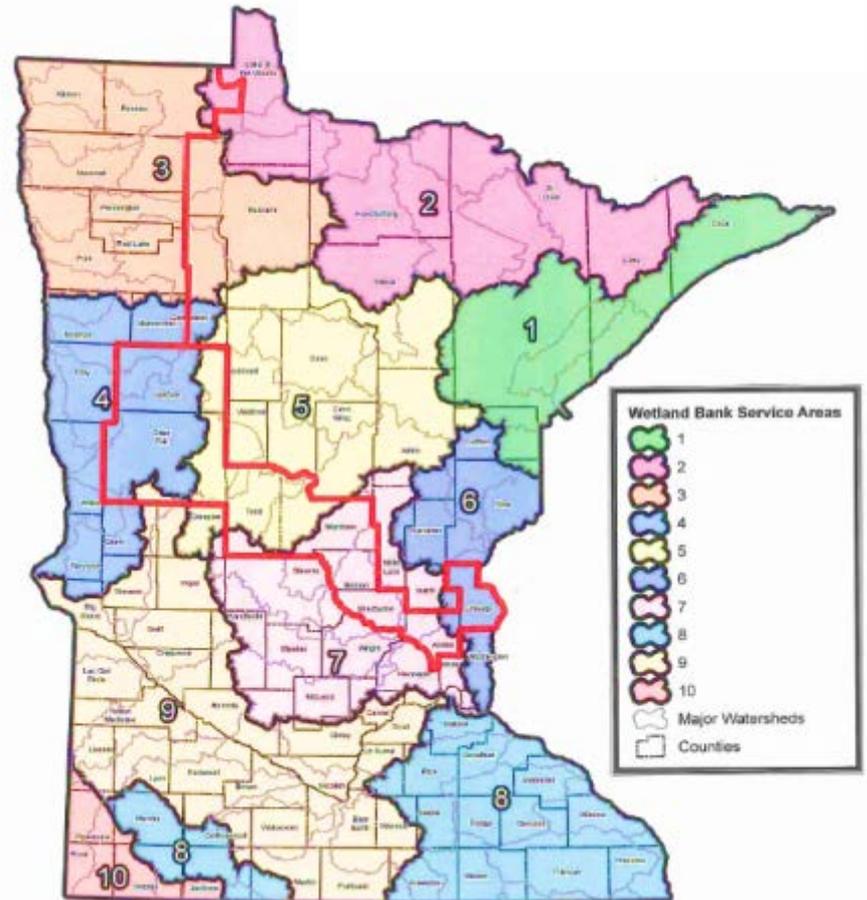


Siting of Replacement



Siting of Replacement

- Remember pre-settlement wetland zones!
- Cannot replace in a county with a higher pre-settlement concentration.





Actions Eligible for Credit

- See “Crediting for Wetland Banking” Session on Wednesday Oct 30 from 1:00-2:30pm



Replacement Wetland Construction Standards

- This information will not be covered today.



Replacement for Public Transportation

- This information will not be covered today.



Wetland Banking

- See Tuesday October 29th
2:45-4:15 Session, “WCA
Banking”



Replacement Wetland Monitoring

- See also Tuesday October 29th's 8:30-10 am session, "Monitoring and Assessment of Conservation/Restoration Practices"

Monitoring



- Who Monitors: Applicant
- How Often: Annually
- How Long: 5 years (generally)
- Who checks : LGU
- Who determines when satisfactory: TEP



Enforcement Procedures

- Please attend the “WCA Violations- Are we missing anything?”
- Tuesday 1:00-2:30

Work Near a Wetland is Brought to your Attention



- Is work still occurring?
 - Cease and desist (WREO)
- Gather info (off site and on site)
 - Permission
 - Document
 - Is there a wetland?
 - Did the activity impact it?

Drafting Restoration/ Replacement Orders

- Responsibility of the SWCD
- Restoration required unless not feasible or prudent
- Can be a combination
 - Incentives
- Issued by the WREO



When to Involve Enforcement?

- Potential violation in progress.
- After replacement/restoration order is drafted (they will issue it).
- RO needs to be extended or rescinded.
- Failure to comply with a C&D or RO.
- Assistance going on-site.
- Certificate is issued.





Certificate of Satisfactory Restoration

- SWCD issues certificate
- Conditions can be met in the future.
- If conditions are not met a new RO must be issued.

CDO# _____

**Minnesota Wetland Conservation Act
Certificate of Satisfactory Restoration/Replacement**

Date _____ LGU _____
Country _____ LGU contact _____
Project Name or Number _____
Location of Project _____
 1/4 1/4 1/4 Sec. Twp. Range

Dear _____ :

The action you have taken to comply with the conditions of the restoration/replacement order dated _____ has been determined to be complete based on our site inspection conducted on _____. Therefore, the restoration/replacement order is hereby fulfilled.

If you plan any further work that may impact wetlands, please contact this office or the LGU before commencing any work.

Should you have questions regarding this letter, contact me at _____.

Signature _____ Date _____

Title _____

cc: DNR Conservation Officer
BWSR Board Conservationist
LGU Official
DNR Wetland Enforcement Officer
Contractor
Other: _____



Other Agency Coordination

- Inform other regulatory agencies
- Process to waive authority if needed
- Coordinate restoration plans
- Keep WREO in the loop



Appeals



Who can appeal?

- Landowner
- Anyone required to receive NOD
- 100 residents of county in which majority of the wetland is located (petition)

Appeals

- Generally, 30 days from receipt of RO or NOD
- In writing
- \$500 fee (non-refundable)



Appeals



- Types:
 - Appeals of LGU Decisions
 - Appeals of Restoration Orders
- All appeals now go to BWSR (2011 statute change)

Appeal of Restoration Orders



- Terms & Conditions of RO may be appealed to BWSR.
- 60 days to render decision.
- BWSR may stay the order and remand for additional info.

Appeal of LGU decisions



- Decision appealed to BWSR.
- BWSR has 30 days to grant petition and hear the appeal.
- BWSR may remand back to LGU for more info.
- If granted, appeal must go to DRC for decision within 60 days of filing.



Appeal of LGU decisions

- BWSR shall affirm the LGU decision unless findings of fact are:
 - Clearly erroneous,
 - If the LGU incorrectly applied the law to the facts, or
 - If the LGU made procedural errors that were prejudicial to a party.

Appeals of BWSR Board Decisions



- Appeals of BWSR board decisions are made to state Court of Appeals.



End of Session II