



Wetland Conservation Act – Basic Administration

Part 1





WCA – Basic Administration

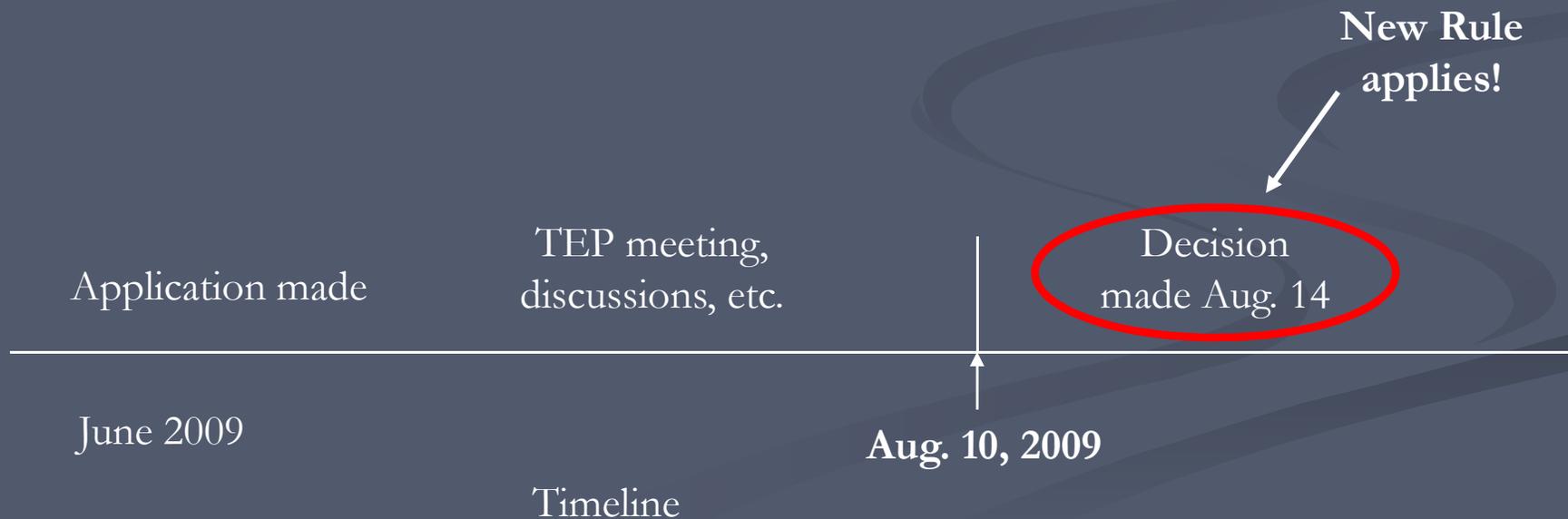
Purpose

- Provide training to those new to WCA;
- Refresh the memories of those experienced with WCA;
- Provide a basic overview of the WCA process;



WCA Rules

- New WCA rule effective August 10, 2009.
- WCA decisions made prior to that date follow whichever version of the rule that was in effect on the date the official decision was made by the Local Government Unit.





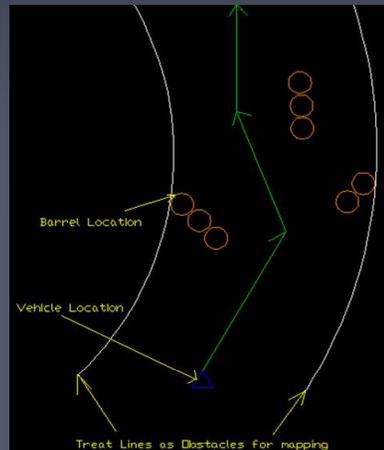
What is the purpose of WCA?

- No net loss in quantity, quality, and biological diversity of *existing* wetlands
- *Increase* quantity, quality, and biological diversity of wetlands via restoration & enhancement
- *Avoid* direct and indirect impacts to wetlands
- *Replace* wetland values where avoidance not feasible and prudent.

Purpose of WCA

In a nutshell:

1. Avoid



2. Minimize



3. Replace





But first, what is a wetland?

Those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support (and do support under normal circumstances) a prevalence of vegetation adapted to life in saturated soil conditions.

So, that is pretty vague, how do we determine it?



Utilize 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and new supplements. These documents use an indicator-based methodology to determine if a wetland is present and the extent of its boundaries.

A photograph of a wetland area. In the foreground, there is a shallow pond with green reeds and some fallen sticks. The water is calm and reflects the surrounding greenery. In the background, there is a dense forest of tall trees under a clear blue sky. The text "Recognizing Wetlands" is overlaid in the center of the image in a yellow, serif font.

Recognizing Wetlands

This is a wetland





Is this a wetland?

Yes, sedge meadow

A photograph of a wet meadow. The foreground is filled with tall, green grasses and several bright yellow flowers with dark centers. The background shows a line of trees under a cloudy sky.

What about this?

Yes, wet meadow



And this?

No, upland prairie



Wetland?

Yes, floodplain forest



Wetland?

No, upland forest



Wetland?

Maybe?



Wetland Classification

- Wetlands are diverse, so we have developed several classification systems to describe them. WCA utilizes 3 different systems:
 - Circular 39 (8 types)
 - Eggers & Reed (12 types)
 - Cowardin (no distinct types – utilizes descriptors)



Main difference is seasonal standing water (1) versus saturated at or near the surface (2).

Type 1

Circular 39

Type 1 wetlands are either **seasonally flooded basins or floodplains**. Vegetation varies according to the season and the amount of flooding. Benefits of Type 1 wetlands include seasonal waterfowl and wildlife habitat, water quality protection and groundwater recharge and discharge.



Type 2

Circular 39

Type 2 wetlands are **wet meadows**. The soil is without standing water during most of the growing season, but is saturated below the surface. Vegetation includes grasses, sedges, rushes and various broad-leaved plants. Type 2 wetlands provide waterfowl and wildlife habitat, water quality benefits and groundwater recharge or discharge.





Main difference is that Type 4 has deeper water and includes some “open areas” relatively devoid of emergents.

Type 3

Circular 39

Type 3 wetlands are **shallow marshes**. The soil is usually waterlogged early in the spring and often covered with six or more inches of water.

Vegetation includes grasses, bulrushes, spikerushes, cattails, arrowheads, pickerelweed and smartweeds. Type 3 wetlands protect water quality and shoreland, retain floodwater, provide habitat for waterfowl, amphibians and fish, and offer recreation, including hunting, fishing and canoeing.



Type 4

Circular 39

Type 4 wetlands are **deep marshes**. The soil is usually covered with water during spring and summer—anywhere from six inches to three feet. Vegetation includes cattails, reeds, bulrushes, spikerushes and wild rice. In open areas, pondweed, naiads, coontail, watermilfoils, waterweeds, duckweeds, waterlilies or spatterdocks may grow. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks and depressions, or they may border open water. Type 4 wetlands provide water quality protection, floodwater detention, wildlife and fisheries habitat, recreation, including hunting, canoeing.





Type 5

Circular 39

Type 5 wetlands are **open water wetlands**, including shallow ponds and reservoirs. The water is less than six feet deep and fringed by a border of emergent vegetation. Type 5 wetlands provide floodwater detention, wildlife and fish habitat, and recreation, including hunting, fishing and canoeing.



Type 6

Circular 39

Type 6 wetlands are **shrub swamps**. Soil is usually waterlogged during much of the growing season, and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, leatherleaf and swamp-privet. Typical benefits of Type 6 wetlands include water quality, floodwater detention, low flow augmentation and wildlife habitat.





Main difference is that Type 8 has a spongy covering of mosses. Plus plant communities are composed of different species.

Type 7

Circular 39

Type 7 wetlands are **wooded swamps**. Soil is waterlogged to within a few inches of the surface during the growing season, and can be covered with as much as a foot of water. Typical trees include tamarack, white cedar, arborvitae, black spruce, balsam, red maple and black ash. Type 7 wetland benefits include water quality, low flow augmentation, floodwater detention and timber harvesting.



Type 8

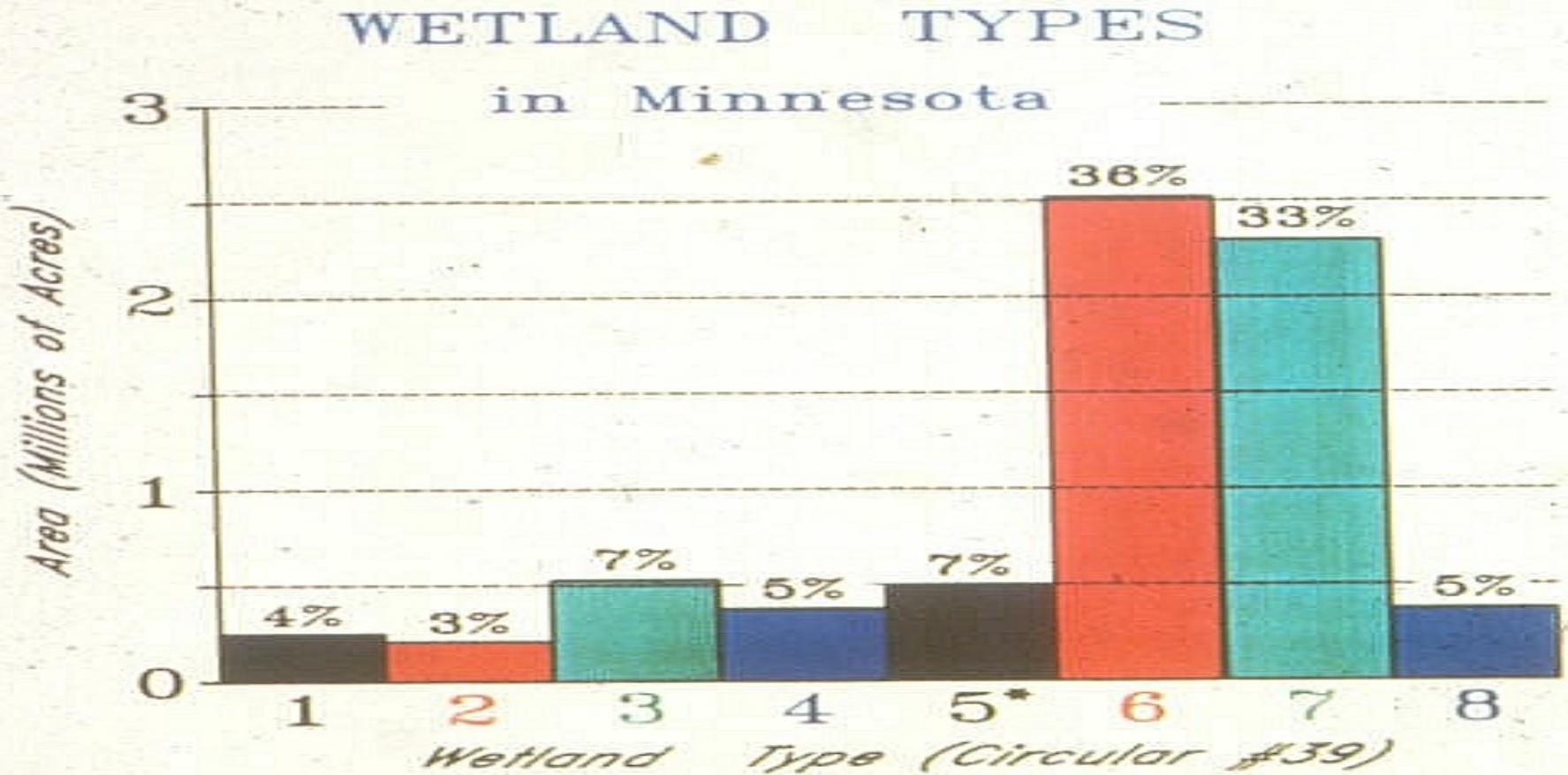
Circular 39

Type 8 wetlands are **bogs**. Soil is usually waterlogged and has a spongy covering of mosses. Typical plants include heath shrubs, sphagnum moss, sedge, leatherleaf, labrador-tea, cranberries and cottongrass, and scattered, often stunted, black spruce and tamarack. Typical benefits include peat harvesting, water quality, low flow augmentation and shoreland protection.





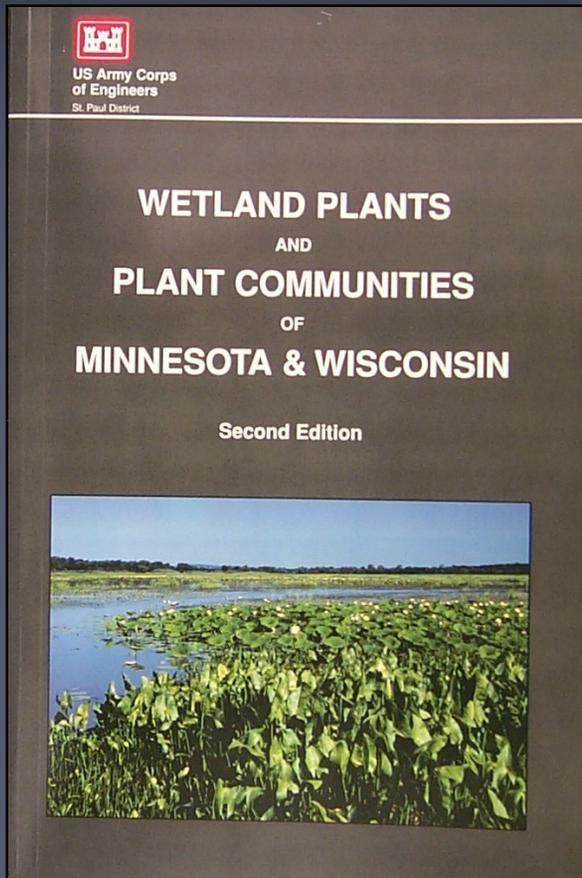
Wetland Types in MN



* Excludes 2,550,000 Acres of Deep Water Lakes and 1,415,000 Acres of Lake Superior



Eggers & Reed Wetland Plant Community Types (12)



Shallow, Open Water	(Type 5)
Deep Marsh	(Type 4)
Shallow Marsh	(Type 3)
Sedge Meadow	(Type 2)
Fresh (Wet) Meadow	(Type 1 or 2)
Wet/Wet-Mesic Prairie	(Type 1 or 2)
Calcareous Fen	(Type 2)
Open Bog/Coniferous Bog	(Type 8)
Shrub-Carr/Alder Thicket	(Type 6)
Hardwood Swamp/Coniferous Swamp	(Type 7)
Floodplain Forest	(Type 1)
Seasonally Flooded Basin	(Type 1)



Cowardin/NWI Basics

- Hydrology, vegetation, and soils
- Classification hierarchy uses System, Subsystem, Class
- In Minnesota, systems used are Riverine (river systems), Lacustrine (lakes), and Palustrine (wetlands)
- Modifiers are used to describe water regime, water chemistry, and soils
- Special modifiers are used for beaver, and human disturbances (dike, excavation, etc)



Palustrine

The Palustrine system was developed to group vegetated wetlands and shallow ponds.

These are considered separately from lake (lacustrine) and river (riverine) systems that they may be adjacent to.



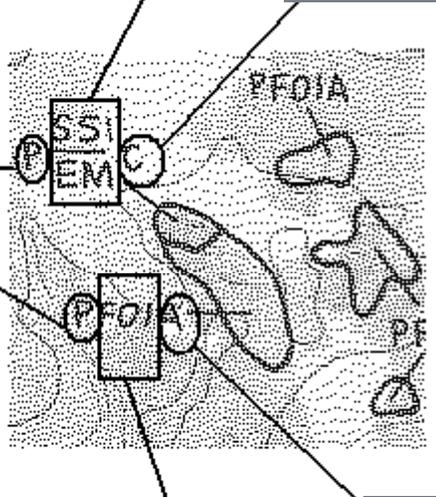
Common Symbols in Cowardin System

- P = Palustrine (system)
- EM = Emergent (class)
- SS = Scrub shrub (class)
- FO = Forested (class)
- OW = Open water (class)
- A = Temporarily flooded (water regime)
- B = Saturated (water regime)
- C = Seasonally flooded (water regime)
- F = Semi-permanently flooded (water regime)
- H = Permanently flooded (water regime)

Class with
modifier

Water Regime

System



Class with
modifier

Water Regime



Why do we care?

Because wetlands provide functions that we as a society value. Examples include floodwater storage, water quality improvement, wildlife habitat, shoreline protection, fisheries habitat, ecosystem diversity, etc.

So, we have developed laws and regulations to protect and restore them.



Also, if we don't know where wetlands are then....

It can lead to this



Or this





Who Administers WCA?

- *Local Government Units (LGUs)* administer WCA
- *MN Board of Water & Soil Resources (BWSR)* provides oversight
- *MN Dept. of Natural Resources (DNR)* provides enforcement
- *Local Soil & Water Conservation Districts (SWCDs)* write restoration orders, serve on Technical Evaluation Panels (more on that later), and other duties.



What Does WCA Regulate?

- Draining or filling of wetlands (wholly or partially)
- Excavation of wetlands (under certain conditions)





Wetland Fill

Any solid material added or redeposited that alters the wetland's x-section or hydrologic characteristics, obstructs flow patterns, changes the wetland boundary, or converts wetland to nonwetland.





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.



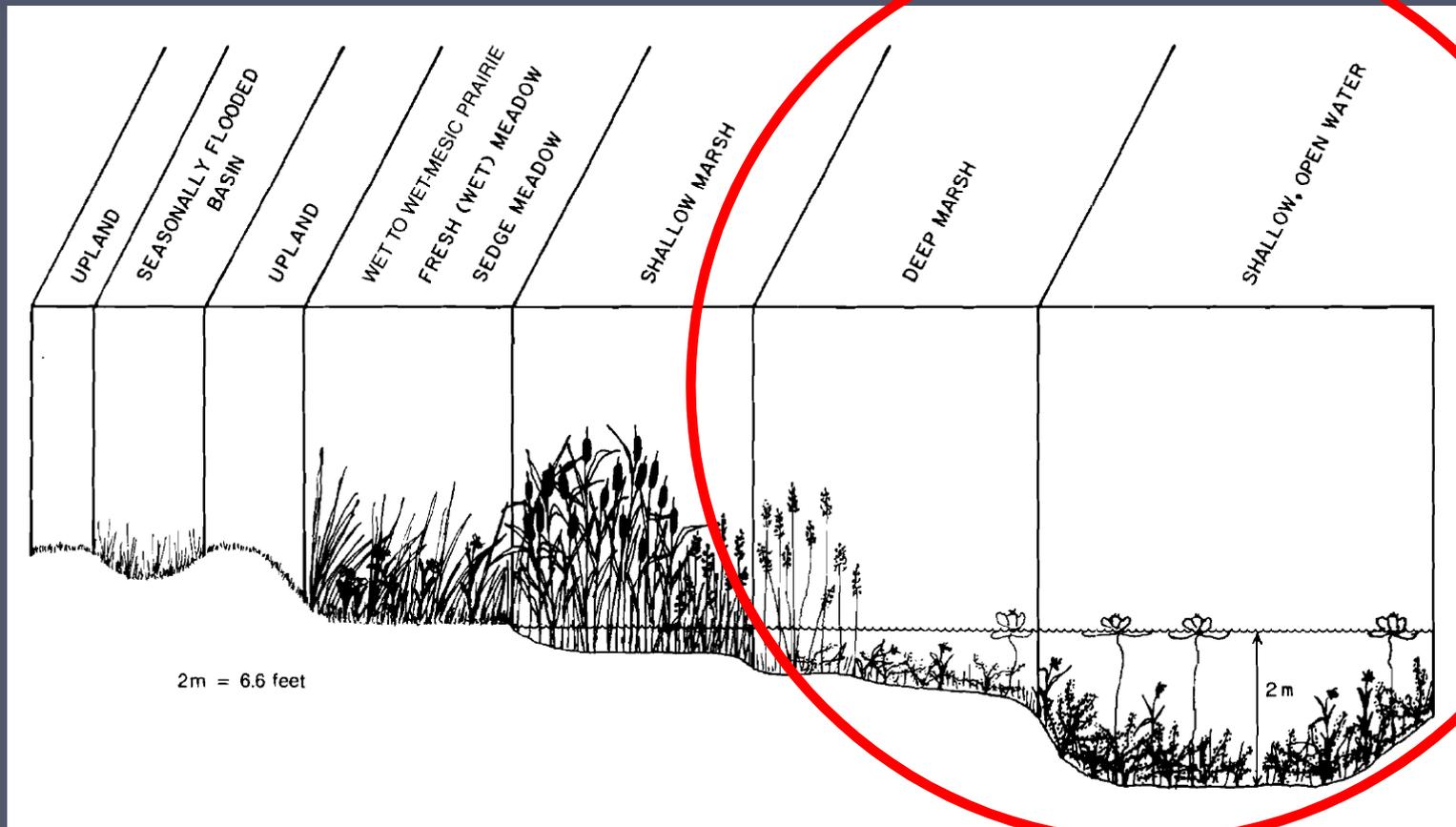


Excavation

WCA regulates excavation in *permanently* and *semi-permanently* flooded areas of *Type 3, 4, or 5* wetlands and in all wetland types if the excavation results in conversion to nonwetland (i.e. deepwater habitat which is defined as average water depth of 6.6 feet or greater).

Excavation

What is permanently and semi-permanently flooded?





What does permanently and semi-permanently flooded areas of type 3, 4, or 5 wetlands mean?





What WCA Does NOT Regulate

- The use of wetlands for pasture or cropland
- Normal farming practices (plowing, seeding, timber harvesting, etc.)
- Control of noxious weeds

Note that the above assumes that there are no wetland impacts associated with it (fill, drainage, excavation)

- Impacts to created (non-natural) wetlands (ditches, ponds, etc. created in upland areas)



DNR Protected Waters

WCA does not apply to wetlands and watercourses covered by the DNR Protected Waters Program unless:

- DNR waives the requirement for a public waters permit

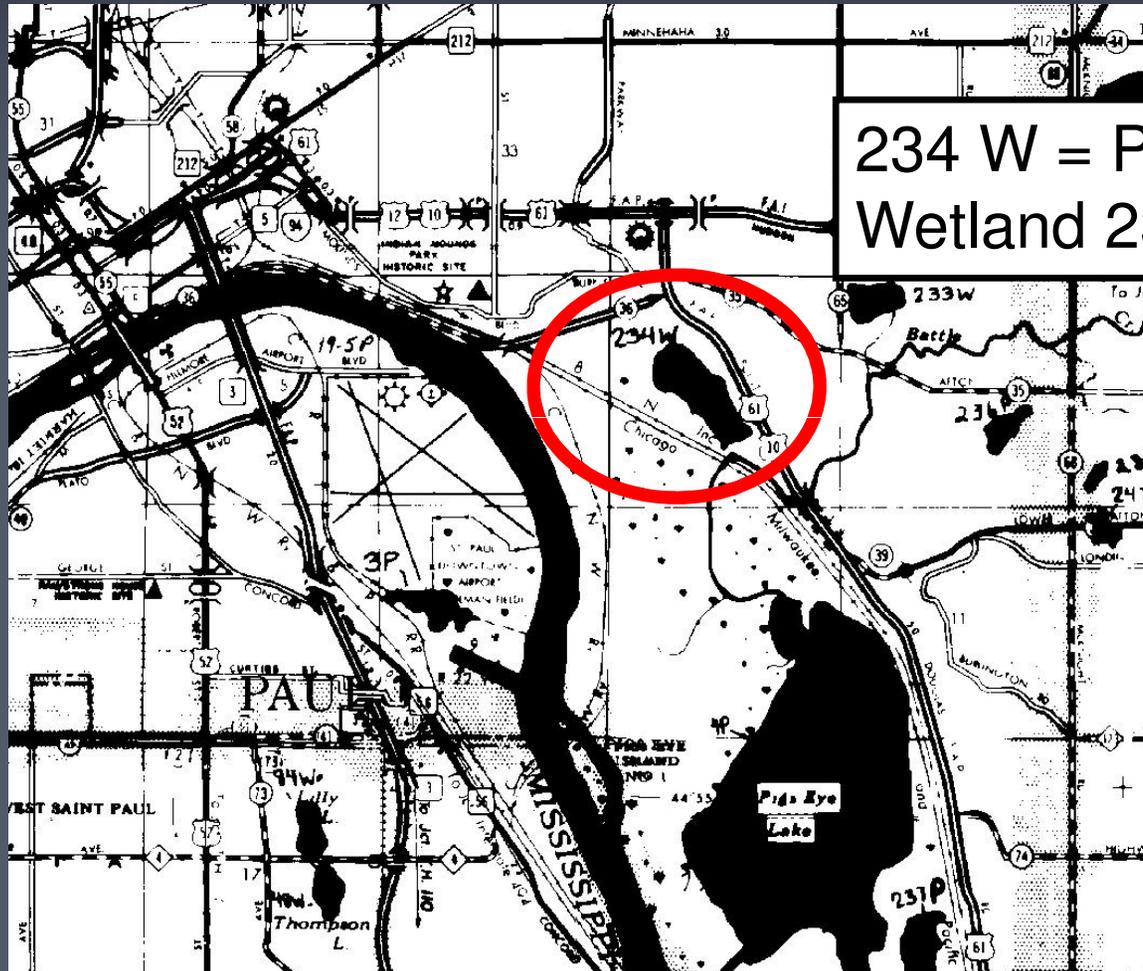
If a project affects public waters wetlands and other wetlands, then the LGU may waive WCA requirements to the DNR via written *agreement* with the DNR.



WCA vs DNR Protected Waters Program

- DNR Protected Waters Program regulates waterbodies and watercourses meeting certain statutory requirements.
- For wetlands, mainly Circular 39 types 3, 4, and 5 wetlands (surface water wetlands) >10 acres in unincorporated areas and >2.5 acres in incorporated areas.
- Public Waters Inventory Maps are County-scale maps showing general location of waters regulated by the program.

Example



234 W = Public Water
Wetland 234



What WCA does not regulate (cont.)

- WCA does not regulate projects requiring a permit to mine from the DNR (Minn. Stat. 93.461)

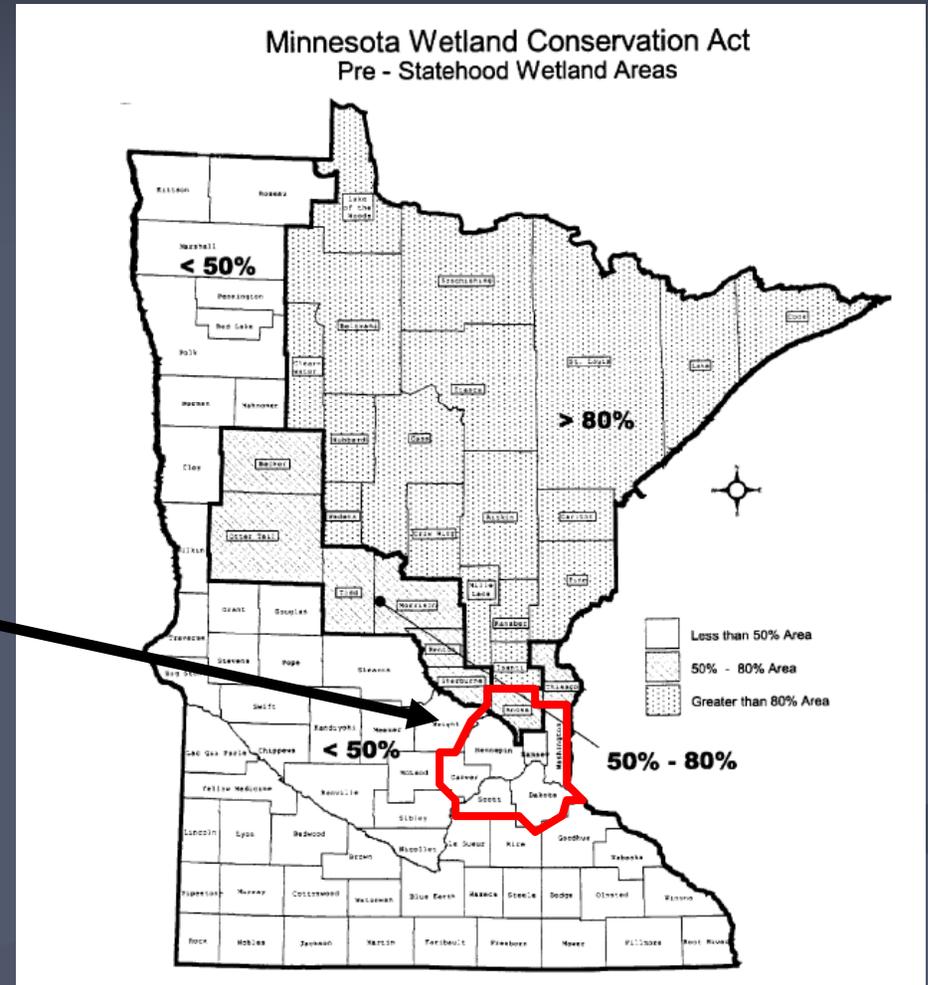


- WCA does not regulate projects affecting calcarious fens (that is regulated by DNR).



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.)

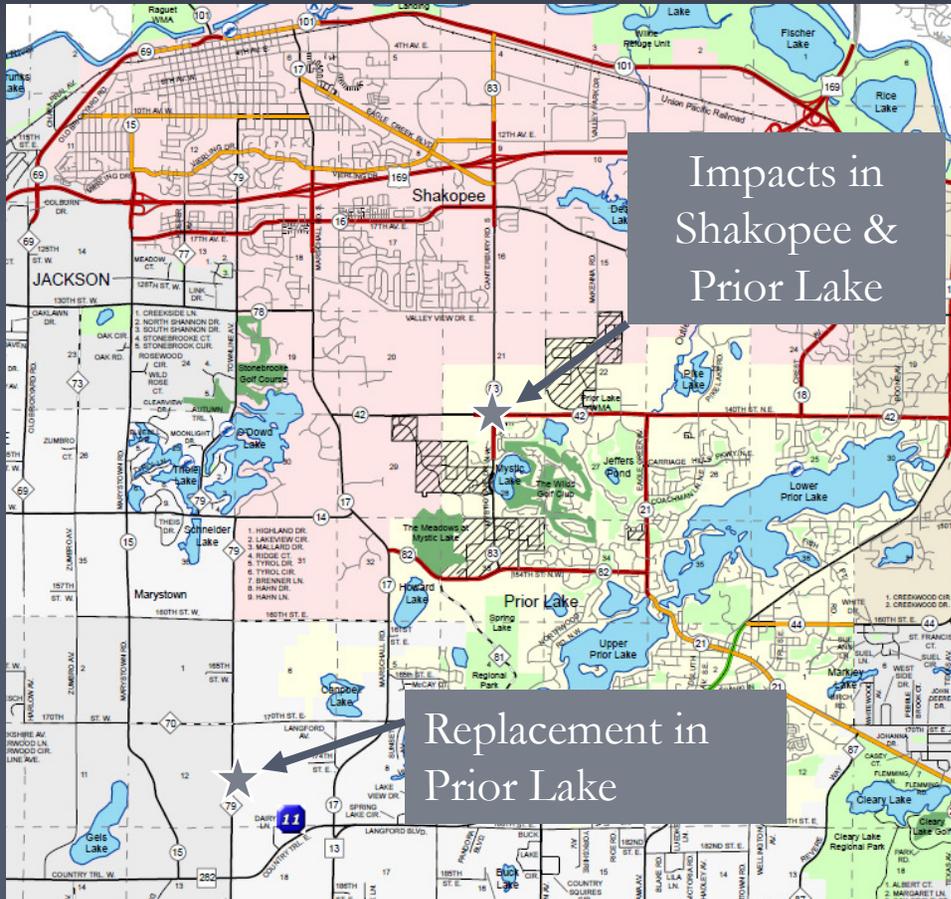
- In 7-County Metro, watershed plan will indicate LGU, but lacking an indication, LGU must be City or town.
- For activities on State land, the LGU is the State agency with administrative responsibility for the land (e.g. DNR, MnDOT). However, State agencies must coordinate with LGU that would otherwise 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 – Both Cities review and approve application in their respective jurisdictions, Prior Lake responsible for monitoring enforcement on replacement site.

Scenario 2 – Cities agree to have Shakopee review entire application and be responsible for monitoring enforcement (or vice versa).

Scenario 3 – Cities agree that both review and approve application within their respective jurisdictions, and monitoring enforcement responsibilities are shared.



LGU Duties

Basic Duties

- Review and approve wetland delineations and determinations (technical expertise required)
- Review and approve wetland exemption/no-loss applications (technical expertise required)
- Review and approve wetland replacement plan applications (technical expertise required)
- Coordinate TEP reviews and meetings

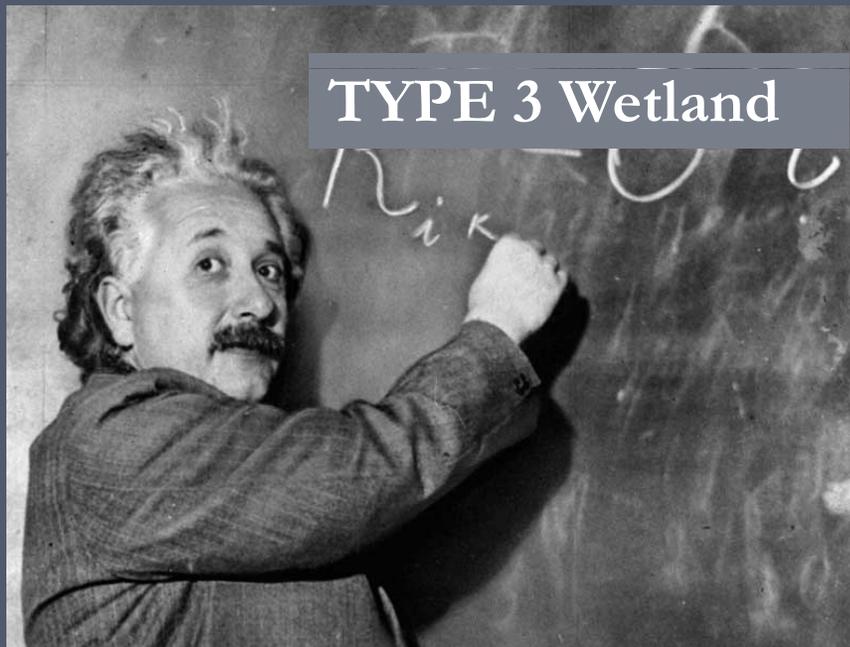


LGU Duties (cont.)

- Prepare and distribute decision notices
- Enforce replacement wetland monitoring requirements (technical expertise required)
- Work with DNR and SWCD to identify and enforce WCA violations

LGU

- Must provide *knowledgeable and trained staff* with expertise in water resource mgmt. to manage the program.





Staff Qualifications

Examples of qualified staff:

- An SWCD technician with a 4 year degree in a natural resources field with up-to-date training.
- County or City staff with training in the areas of hydrology, soils, and vegetation and is a certified wetland delineator.
- Wetland Consultant representing LGU

Examples of unqualified staff:

- A secretary, administrator, assessor, highway engineer, etc. that doesn't have adequate technical expertise and training.
- Township supervisor or city council member (avoid conflicts of interest).



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.
- Board minutes, position descriptions, or “the way we’ve always done it” do not constitute formal delegation of authority from a legal perspective.



LGU

- LGU must submit questions concerning public value, location, size, and wetland type to the Technical Evaluation Panel (TEP) for review.
- LGU is encouraged to evaluate project plans prior to formal application and give landowner/applicant feedback.
- LGU may charge fees for processing applications.
- LGUs must report WCA activities annually to BWSR.
- LGUs must keep decision records for at least 10 yrs.



What is a TEP?

For each LGU there is a TEP of three persons*

- A technical professional of BWSR;
- A technical professional of the SWCD; and
- And a technical professional with expertise in water resource management appointed by the LGU.

*For projects affecting public waters or wetlands adjacent to public waters, the TEP shall also include a technical professional of the DNR.



A TEP



**Too many people for a
TEP**



TEP

Other TEP Requirements:

- **Two members of the TEP must be knowledgeable and trained in applying:**
 - 1987 Wetland Delineation Manual;
 - Circular 39, Cowardin, and Eggers & Reed wetland classification systems
 - Evaluating wetland functions and resulting public value



TEP

What is the TEP's role in WCA?

- TEP provides recommendations to the LGU.
- Only a few items actually require TEP involvement and/or determinations (wetland banking, sequencing flexibility, end of monitoring, comprehensive wetland management plans, public road projects)



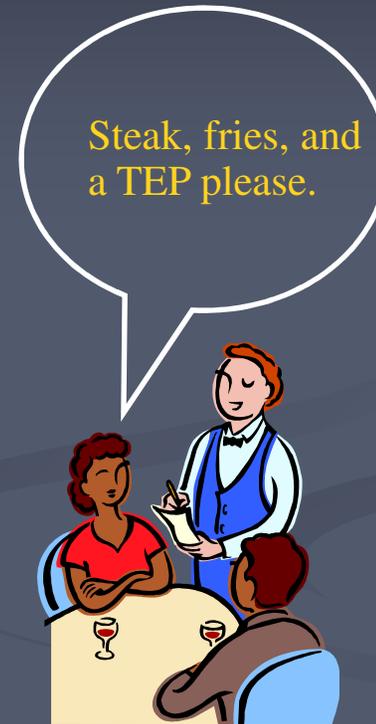
TEP

- TEP *must* make findings and recommendations *if requested* to do so by the LGU.
- TEP can make findings and recommendations without being requested to do so by the LGU.
- If TEP makes findings and recommendations, they *must be considered* by the LGU in making a decision.

TEP

Who can Request a TEP?

- LGU
- TEP member
- Landowner





LGU Decisions and TEP Recommendations

- 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.”



These are not detailed findings!



Detailed 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.”

These are detailed findings!



Questions on Part 1

