

Identification of Statewide High Priority Areas for Wetland Mitigation

1-21-16

Background

In 2015, the State Legislature amended Minnesota Statutes § 103B.3355 to require the Board of Water and Soil Resources (BWSR) to identify and establish “high priority areas for wetland replacement” (mitigation). The intent of this change is to improve the targeting and public value outcomes of wetland mitigation, particularly when that mitigation occurs outside the watershed or bank service area of the impact. The new statute also provides the opportunity for local governments to establish priority areas for wetland replacement in local water plans, which can be submitted to BWSR for statewide consideration.

These and other 2015 WCA statute changes can be found on the BWSR website at:

http://www.bwsr.state.mn.us/wetlands/wca/Summary_of_2015_WCA_Statute_Changes.pdf See also the “Relevant Statutes” section at the end of this document for the specific statute language.

Designation of High Priority Areas was one of the recommendations included in the “*Siting of Wetland Mitigation in Northeast Minnesota*” report developed by the Interagency Northeast Mitigation Siting Team (March 7, 2014). Specifically, the report recommended improved targeting of mitigation by establishing priority areas for wetland restoration based on recognized and approved state planning documents. See the full report on the BWSR website at:

http://www.bwsr.state.mn.us/wetlands/wca/NE_MN_mitigation/siting_NE_MN_mitigation.html

Process for Statewide High Priority Area Designation

The focus of this process will be solely to identify and establish statewide High Priority Areas for wetland mitigation; it will not address siting criteria, replacement ratios, or other considerations of rule and/or statute. BWSR intends to develop the requirements or incentives to use High Priority Areas for out-of-watershed mitigation through the Wetland Conservation Act Rulemaking process. Identification and establishment of High Priority Areas, however, will occur outside of rulemaking.

In accordance with statute, BWSR must consider the functional benefits that wetlands provide, the historic abundance and loss of wetlands, current applicable natural resource plans, and any relevant watershed studies that identify watershed needs. Designation of High Priority Areas should consider all reasonably available, relevant information and agency priorities.

To ensure a fully informed process, BWSR proposes to utilize multi-agency expertise similar to the collaborative process of the Interagency Northeast Mitigation Siting Team, for the purposes of providing information and recommendations for the designation of High Priority Areas for wetland mitigation. Specifically, BWSR proposes to utilize the Interagency Wetlands Group (IWG) to achieve this interagency coordination. At a minimum, the following agencies will be requested to participate on an ad hoc IWG team:

- MN Department of Natural Resources
- MN Pollution Control Agency
- MN Department of Agriculture
- US Army Corps of Engineers, St. Paul District
- US Environmental Protection Agency
- US Fish and Wildlife Service
- USDA Natural Resources Conservation Service

BWSR will also request information and feedback from local governments and non-governmental organizations as appropriate. Utilizing the information and recommendations obtained in the interagency process, BWSR staff will recommend approval/designation of the High Priority Areas by the BWSR Board. Board-designated High Priority Areas will be noticed in the State Register and posted on the BWSR website.

Goals of Interagency Process

The objective of this process is to provide information, agency priorities, and to the extent possible, interagency consensus recommendations to BWSR for designating Statewide High Priority Areas. Such designation will consist of the identification of specific geographic areas on a map. Agency staff should consider the following goals in developing recommendations:

- **Historic Loss** - Areas of the State that have experienced the greatest loss of wetlands (i.e. the prairie pothole region) should be the starting point for HPA.
- **Targeted** - The statewide HPA designation(s) need to be small enough to be effective in achieving the benefits of targeting, but large enough to ensure adequate landowner interest and availability of quality mitigation projects.
- **Stability** – The Statewide HPA needs to be relatively stable over time. Frequent changes would increase risk and inhibit investment in establishing wetland mitigation in HPAs.
- **Consistency** – Target areas that will complement existing plans and associated priorities.
- **Functional Benefits** - Prioritize areas that will provide multiple functional benefits related to functional impairments or watershed and statewide needs.
- **Multi-Purpose** – HPA designation should identify areas important for wetland restoration regardless of purpose (i.e. mitigation of regulated impact vs. voluntary conservation program). This will provide greater opportunities for coordination between programs and will make the HPA designation more useful and effective.

Meetings and Timeline

BWSR is required to report on proposals to implement High Priority Areas (and other initiatives) to the legislature by March 15, 2016. This report will not contain final High Priority Area designations, but it will need to indicate progress and direction in the designation process. As such, BWSR would like to convene a meeting in late January and a second meeting in mid to late February. The need for additional meetings would be assessed after the March report has been submitted and reviewed. Ultimately, the Statewide High Priority Areas will need to be designated at or before the effective date of the new WCA Rule (likely late 2017).

Statute does not establish minimum or maximum timeframes for review and potential update of Statewide HPA boundaries. BWSR will establish guidelines for potential updates, with the goal of consistency in mind, through rule or policy. Any future updates would likely include review by the same IWG team or something similar. Feedback from the IWG will also be solicited for this and other items.

Info/Plans with Potential Relevance to Establishing HPAs

- MN Prairie Conservation Plan
- MN Wetlands Conservation Plan
- Mn Wetlands Restoration Strategy
- Minnesota Statewide Conservation and Protection Plan
- MN Nutrient Reduction Strategy
- Restorable Wetlands Inventory
- Pheasant Action Plan
- Impaired Waters
- State (DNR) Wildlife Action Plan
- MN DNR Long Range Duck Recovery Plan
- Working Lands Initiative
- Locations of existing public lands/easements
- Available info on groundwater recharge/discharge
- Others?

Relevant Statutes

2015 amendments to Minn. Stat. § 103B.3355, Wetland Functions for Determining Public Values:

(e) The Board of Water and Soil Resources, in consultation with the commissioners of natural resources and agriculture and local government units, ~~may~~ must identify ~~regions~~ areas of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. The board, in consultation with the commissioners, ~~may~~ must identify high priority ~~wetland regions~~ areas for wetland replacement using available information relating to the factors listed in paragraph (a), the historic loss and abundance of wetlands, current applicable state and local government water management and natural resource plans, and studies using a watershed approach to identify current and future watershed needs. The board shall notify local units of government with water planning authority of these high priority ~~regions~~ areas. Designation of high priority areas is exempt from the rulemaking requirements of chapter 14, and section 14.386 does not apply. Designation of high priority areas is not effective until 30 days after publication in the State Register.

(f) Local units of government, as part of a state-approved comprehensive local water management plan as defined in section 103B.3363, subdivision 3, a state-approved comprehensive watershed management plan as defined in section 103B.3363, subdivision 3a, or a state-approved local comprehensive wetland protection and management plan under section 103G.2243, may identify priority areas for wetland re-placement and provide them for consideration under paragraph (e).

The changes to paragraph (e) eliminate the optional BWSR identification of high priority wetland regions, replacing it with clear direction for BWSR to designate “high priority areas” for wetland replacement (mitigation).