



Wetland Conservation Act

2009 Permanent Rule Training



Introduction, Background, and Overview of Changes



2007 Statutory Amendments

- Administrative Penalty Orders.
- Stormwater Ponds.
- Wetland Replacement Siting.
- Exemptions: Agricultural Activities, Drainage, Approved Development, De minimis.
- Exemption Implementation, Estimates, & Reporting.
- Appeals.
- Rulemaking.



Scope of Permanent Rulemaking

- Exempt Rule Changes.
- Statute Changes not in Exempt Rule.
- WCA Assessment/Wetland Mitigation MOU.
- Changes identified by BWSR and Stakeholders.
- Organizational/Formatting Changes.



Permanent Rulemaking Process

1. Solicitation of input, including the initial comment period, LGU input sessions, meetings with stakeholder groups, etc.
2. BWSR Staff Rule Team.
3. WCA Rule Technical Review Committee.
4. WCA Permanent Rule Advisory Committee.
5. BWSR Board Wetland Committee.
6. BWSR Board.



Rulemaking Process (Cont'd)

7. Formal Review Period, including public hearings, submittal of comments, and agency responses.
8. Administrative Law Judge review and recommendations.
9. BWSR Board approval of final draft that incorporates changes resulting from the formal comment period and ALJ recommendations.
10. Review by ALJ, Governor's Office, etc.



Goals of Permanent Rulemaking

- Consistent with purpose of WCA.
- Simplify.
- Implementable.
- Clarify.
- Tangible result.
- Improve accountability.



Other Rulemaking Considerations

1. LGU workload.
2. Limit unintended consequences.
3. Balance public costs and benefits.
4. Stakeholder support.
5. Consistency with Federal Mitigation Rule.



Significant Issues/Proposed Changes to WCA Rule

- Rule format and order.
- Scope, No-Loss, and Exemption Framework.
- Administrative procedures & reporting.
- Wetland replacement standards, buffers, & ratios.
- Replacement crediting system.
- Actions eligible for credit.
- Replacement wetland monitoring & construction standards.
- Wetland planning.
- Enforcement & Appeals



Rule Format and Order

- 1) Purpose, Scope and Definitions
- 2) Local Government Unit Duties and Procedures
- 3) Application Procedures
- 4) Boundary or Type, No-Loss, & Exemption Standards
- 5) Wetland Replacement
- 6) Wetland Banking
- 7) Inspection & Monitoring of Replacement Wetlands
- 8) Wetland Planning
- 9) Enforcement, Appeals, and Compensation
- 10) Activities Under DNR Authority



Scope, No-Loss, and Exemption Framework

Issue:

- The current Rule does not logically and understandably distinguish between wetlands and activities in wetlands that are addressed in the scope of the regulations, what is considered to be a no-loss, and what is exempt from replacement.



Scope, No-Loss, and Exemption Framework (Cont'd)

Solution:

- Exemptions: Defined as wetland impacts that are exempt from replacement (8420.0420).
- No-Loss: Defined as activities that do not impact wetlands or result in a permanent loss of wetland functions (8420.0415).
- Scope: Specifies the wetlands and activities that are “non-jurisdictional” to WCA (8420.0105).



Timeframe for new rule adoption

- **The current “Exempt” Rule expires August 5th.**
- The goal was to publish the new rule in the state register on July 27, making it effective August 1.
- However, due to some unexpected delays, **the rule will not take effect until August 8!**
Decisions made on August 6 or 7 will revert to the 2002 Permanent Rule and current statute (where different).
- **LGUs should plan ahead to avoid decisions and 15.99 complications on August 6 & 7.**



Focus of Training

- This training will focus mainly on areas of rule language that have changed notably from the previous rule or areas that may have only changed slightly but are important to emphasize.
- Changes to the rule's format and order alone are significant.
- Other parts, particularly wetland replacement, contain significant changes as well.



Section 1

PURPOSE, SCOPE, AND DEFINITIONS



8420.0105 SCOPE

- Subp. 2B: “This chapter does not regulate normal farming practices in a wetland. “Normal farming practices” means ranching, silvicultural, grazing, and farming activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands.”
- **This language was relocated from the Agricultural Activities Exemption.**



SCOPE (Cont'd)

- Subp. 2D: “This chapter does not regulate impacts to incidental wetlands. “Incidental wetlands” are wetland areas that the landowner can demonstrate, to the satisfaction of the LGU, were created in non-wetland areas solely by actions, the purpose of which was not to create the wetland. Incidental wetlands include drainage ditches, impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention or detention, drainage, soil and water conservation practices, and water quality improvements and not as part of a wetland replacement process that may, over time, take on wetland characteristics.”
- **This language was relocated from the previous Incidental Wetlands Exemption and modified.**



8420.0111 DEFINITIONS

- “Application means a formal request for a decision by a LGU, made under this chapter and the act, for an exemption, no-loss, wetland boundary, wetland type, sequencing, replacement plan, or banking plan. The board shall provide forms to be used for applications.”
- **This definition was added for consistency and is used throughout the rule to refer to all application types.**



DEFINITIONS (Cont'd)

- “Approve or approval means the formal authorization by a local government unit of an activity described in an application.”
- “Decision means a formal action by the LGU or delegated staff to approve, approve with conditions, or deny an application.”
- “Determination or determine refers to a technical finding by the TEP or LGU staff.”



DEFINITIONS (Cont'd)

- “Indirect impact means an impact that is the result of an activity that occurs outside of the wetland boundary.”
- “Plant community means a wetland plant community classified according to Wetland Plants and Plant Communities of Minnesota & Wisconsin, incorporated by reference under part 8420.0112, item P.”



Section II

LOCAL GOVERNMENT UNIT DUTIES AND PROCEDURES



8420.0200

**DETERMINING LGU;
DUTIES**



State Agency Coordination

- Subp. 1C: “...state agencies must coordinate with LGUs that would otherwise have jurisdiction, according to items A and B, when conducting or making decisions on activities in wetlands.”
- **For example: For state road projects, trails, and mining projects that are approved by a state agency, the agency must coordinate with local governments.**



Delegation

- Subp. 1E: “Implementation of this chapter and the act may be delegated... to a SWCD or other governmental entity by the passage of resolutions by both parties.”
- “The delegation becomes effective when resolutions have been passed by both parties, or on a date specified in the resolutions, whichever is later.”
- “Both parties must provide a copy of the resolution and a description of the applicable geographic area to BWSR, the DNR, and the SWCD within 15 business days of adoption of the resolution.”



Resolution delegating WCA

See BWSR Website

EXAMPLE of resolution where LGU delegates WCA implementation authority to another government entity

A RESOLUTION REGARDING THE ADMINISTRATION OF THE WETLAND ACT OF 1991

WHEREAS, the Minnesota Wetland Conservation Act of 1991 (WCA) requires local governmental units (LGUs) to implement this law by adopting the rules and regulations promulgated by the Board of Water and Soil Resources (BWSR) pertaining to wetland draining, filling and excavation; and

WHEREAS, the BWSR is requesting notification of an LGU's decision adopting or excepting administrative responsibility for another LGU in accordance with Minn. Rules part 8420.0260, item A; which requires each local government unit of the State to acknowledge in writing to the (BWSR) that it is assuming its responsibilities under the Wetland Conservation Act; and

WHEREAS, the LGU is responsible for following the WCA rules as stated in 8420.0200, Determining Local Government Unit Duties;

NOW, THEREFORE, BE IT RESOLVED BY THE that it

hereby **designates** the administrative responsibility as the LGU to

as delegated by for the WCA within the legal boundaries of as of within the guidelines as set forth by the WCA rules.

ADOPTED: _____

SIGNATURE: _____

ATTESTED: _____ **BY:** _____



Resolution accepting WCA delegation

See BWSR Website

*EXAMPLE of resolution accepting WCA delegation
from an LGU*

**A RESOLUTION REGARDING THE ADMINISTRATION
OF THE WETLAND ACT OF 1991**

WHEREAS, the Minnesota Wetland Conservation Act of 1991 (WCA) requires local governmental units (LGUs) to implement this law by adopting the rules and regulations promulgated by the Board of Water and Soil Resources (BWSR) pertaining to wetland draining, filling and excavation; and

WHEREAS, the BWSR is requesting notification of an LGU's decision adopting or excepting administrative responsibility for another LGU in accordance with Minn. Rules part 8420.0260, item A; which requires each local government unit of the State to acknowledge in writing to the board that it is assuming its responsibilities under the Wetland Conservation Act; and

WHEREAS, the LGU is responsible for following the WCA rules as stated in 8420.0200, Determining Local Government Unit Duties;

NOW, THEREFORE, BE IT RESOLVED THAT THE
as delegated by hereby **accepts** the administrative
responsibility as the LGU for the WCA within the legal boundaries of
as of within the guidelines as set forth by the WCA rules.

ADOPTED: _____

SIGNATURE: _____

ATTESTED: _____ **BY:** _____



LGU Staff Qualifications

- “A local government unit must provide knowledgeable and trained staff with expertise in water resource management to manage the program or secure a qualified delegate.”
- Otherwise, the board may declare a moratorium...



Staff Qualifications (Cont'd)

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.

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

- Subp. 2C: “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.**



Resolution delegating authority to staff

See BWSR Website

Example of resolution delegating WCA functions to LGU staff

A RESOLUTION REGARDING THE ADMINISTRATION OF THE WETLAND CONSERVATION ACT

{ LGU NAME }

Resolution No. _____

WHEREAS, the { County Name } is authorized by Minnesota Administrative Rules Part 8420.0200, Subpart 2, to delegate certain functions with regard to implementation of the Wetland Conservation Act, including decision authority for exemption, no loss, wetland boundary and type, replacement plan, and wetland banking determinations with its staff.

THEREFORE; BE IT RESOLVED by the Board of Commissioners of the { County Name } that decision authority for exemption, no loss, wetland boundary and type, sequencing determinations, replacement plan, and wetland banking determinations are placed with the { Position Title } { Staff Name }.

Dated: _____

{ COUNTY NAME }

By: _____
Chair of the Board of Commissioners

Resolution No. _____: Offered by Commissioner _____, seconded by Commissioner _____, adopted by a vote of _____ at the regular meeting of the Board of Commissioners of the { County Name } on { Date }.

{ Staff Name }

{ Position Title }



LGU Decisions and TEP Recommendations

- Subp. 2E: “... 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!



Feedback and Advice

- Subp. 2F: “In the absence of an application, the LGU may evaluate information related to a potential activity upon the request of the landowner. The evaluation provided does not constitute a decision...”
- The intent behind this provision is to encourage early communication and pre-application conferences.
- **There is a fine line between providing feedback or advice and making a decision!!!**



Examples of feedback/advice

- “WCA requires that you avoid and minimize wetland impacts. It appears that you have an alternative location to place the driveway that will avoid wetlands. In your application, you will need to provide documentation that demonstrates why the road cannot be placed in the upland location in order to justify the wetland impacts.”



Examples of feedback/advice

- “The de minimis exemption in this area is 400 sq. ft. If you can keep the cumulative wetland impacts from this project under that amount and meet all other exemption conditions, you can qualify for the exemption. I strongly recommend that you submit an application to reduce your risk of any unforeseen problems.”
- **Describe the requirement, but keep the onus on the landowner to comply with them.**



Example of decision

- You are in the field with a landowner who is describing what they plan to do and you tell them their project is exempt.
- **THIS IS A DECISION!!! This is OK, but you need to notice the decision and document what you approved!**
Your understanding of the conversation may be very different from the landowner's understanding of it. You should obtain some type of documentation or evidence before making a decision.
- As a general rule, when giving advice make sure you convey to the landowner that you are not making a decision and explain how they can apply for a decision.



Record Retention

- Subp. 2G: “The LGU must retain a record of all decisions for a minimum of 10 years after all applicable requirements and conditions pertaining to the project are fulfilled.”
- **Consultants come and go – it is the responsibility of the LGU to keep and maintain records!**
- For replacement plans, records must be maintained for 10 years after monitoring has been completed.



Annual Reporting to BWSR

- Subp. 2(I): “The LGU must annually report information to the board regarding implementation of this chapter in a format and time period prescribed by the board.”
- **This applies to ALL LGUs, not just those receiving NRBG funds, including cities and townships!**



Annual Reporting (Cont'd)

- **A separate report must be submitted for each LGU.**
- **Calendar year 2010 will be the first year of mandatory reporting.**
- Using a spreadsheet to track activities throughout the year will simplify reporting and significantly reduce the time needed to complete the report.



Annual Reporting Form

Page 1

Minnesota Board of Water and Soil Resources
Wetland Conservation Act 2008 Annual Reporting Form
 Implementation Activities Information

Local Government Unit (LGU): _____
 County (if different than above): _____
 Name and Title of Person Completing Report: _____

NOTE: Completion of this report is required for all of Minnesota's LGUs that receive WCA funding through the Natural Resources Block Grant, and must be received by the BWSR St. Paul office on or before February 1, 2009. Completion of this report is strongly encouraged for all other LGUs. See the accompanying guidance for additional details on selected questions.

1. Number of **landowners** for which wetland related technical assistance was provided during the calendar year: _____

2. Number of applications that were:

Type of Application	# Approved	# Denied	# Withdrawn
A. Replacement Plan:			
B. Exemption:			
C. No-Loss:			
D. Boundary or Type:			

3. Number of **replacement plans approved** that included replacing impacts by the following methods:

- A. Wetland Banking: _____
- B. Project Specific Replacement: _____
- C. Combination of Wetland Banking and Project Specific Replacement: _____

4. Acres of wetland to be **impacted** via an approved replacement plan: _____

5. For approved replacement plans, list the **project specific replacement** approved in the following categories:

Action Eligible for Credit	NWC	PVC
A. Restoration of completely drained wetland areas.		
B. Restoration of partially drained wetland areas.		
C. Exceptional natural resource value projects.		
D. Restoration of farmed wetlands.		
E. Upland buffer areas.		
F. Wetlands previously restored via conservation easements.		
G. Restoration of wetland vegetation.		
H. Wetlands established via mineral extraction site reclamation.		
I. Water quality treatment areas.		
J. Wetland creations.		
TOTAL:		



Annual Reporting Form

Page 2

6. Number of **exemption determinations** approved and acres of wetland impact for each category. (Provide best estimate for acreages that are not easily quantified.)

Type of Exemption	Number of Exemption Determinations	Acres of Wetland Permanently Impacted*
A. Agricultural Activities		
B. Drainage		
C. Federal Approvals		
D. Wetland Restoration		
E. Incidental Wetlands		
F. Utilities; Public Works		
G. Forestry		
H. De Minimis		
I. Wildlife Habitat		
TOTAL:		

* See WCA reporting guidance.

7. For project specific **replacement wetlands**, list the number of the following completed or received this reporting year:

A. Construction Sites Inspected	B. Corrective Actions Ordered	C. Monitoring Reports Received	D. Findings of Satisfactory Replacement

8. Number of potential violation sites investigated: _____

9. Number of **enforcement actions** that were taken **under local ordinances** and/or that did not result in DNR-issued cease and desist, restoration, or replacement orders (including informal resolution of violations): _____

10. Number of **local appeals** heard: _____

11. Does the LGU have a **certified delineator** available (excluding BWSR or SWCD)?

- A. On staff: _____
- B. On call (i.e. consultant): _____
- C. Not at all: _____

12. For LGU staff responsible for implementing WCA, please provide the following for **WCA/wetland training attended** this reporting year (attach additional if necessary):

Name and Date of Training Session Attended	Sponsoring Organization	# of Days

13. **Optional:** Please provide information regarding unusual circumstances, time spent on enforcement or major violations, banking application reviews, known exempt activity for which a formal decision was not made, additional detail or clarification of above data, or any other information or comments you would like to share. _____



Annual Reporting

- For calendar year 2009, supplemental information will be required regarding new rule provisions.
- For calendar year 2010, the reporting form will be revised to correspond exclusively to the new rule.



8420.0240

**TECHNICAL EVALUATION
PANEL PROCEDURES**



TEP membership clarified

- “Panel membership consists of: a technical professional employee of the board, a technical professional employee of the SWCD..., and a technical professional with expertise in water resource management appointed by the LGU.”
- **TEP membership consists of 3 technical staff** (4 with DNR in shoreland). Others can assist and provide technical expertise, but they are not TEP members and do not have a vote.



TEP Procedures

- Two members of the TEP must be knowledgeable and trained in “Wetland Plants and Plant Communities of Minnesota & Wisconsin” (Eggers and Reed).
- The scope of TEP responsibilities is expanded to include all technical aspects of WCA.
- **TEP review is required for public road projects, banking, and monitoring.**



TEP Procedures

- “For violations of this chapter that may result in the issuance of an enforcement order, the panel must consult with the enforcement authority.”
- There is a greater role for the TEP in the technical aspects of wetland violations. Early involvement of enforcement will improve coordination and strengthen case documentation.



8420.0255

**LOCAL GOVERNMENT UNIT
APPLICATION AND
DECISION PROCEDURES**



WCA and MN Statute 15.99

- “Notices and LGU decisions made under this chapter must be in compliance with MN Statutes, section 15.99.”
- **FAILURE TO COMPLY WITH 15.99 IS THE MOST COMMON MISTAKE BY LGUs!**



Determining Complete Application

- “The LGU must determine that an application is complete... **For incomplete applications, the LGU must notify the applicant within 15 business days of receipt of the application and list in writing what items or information is missing.**”



Determining Complete Application (Cont'd)

- **Rule of thumb: If you receive any type of written request seeking approval of an activity, you must take some action!**
- If you do not determine the application incomplete and notify the applicant within 15 days, you must make a decision.
- This applies to all applications, including delineations.



Notice of Application

- **Within 15 business days of receipt of a complete application, the LGU must send a copy of the application and a notice of application on a form provided by the board...**
- This applies to all applications (except noticing no-loss and exemption applications is optional) regardless of the size of impact.
- 15 business days is the same timeframe for determining an application complete.



Revisions to an approved plan.

- **Revisions to an approved and valid replacement plan must be noticed by sending a summary of the proposed revisions if:**
 - the area impacted is:
 - increased by >10%
 - a different type
 - part of a different wetland
 - >500 ft. from the approved impact
 - the replacement is:
 - a different type
 - >500 ft. from the approved location
 - a different action eligible for credit



Decisions

- “The LGU’s decision must be based on the standards and procedures required by this chapter and on the TEP’s findings and recommendation, when provided.”
- “The LGU must consider and include in its record of decision the TEP’s recommendation...”
- **Include this information in the notice of decision!**



Timeframe for Decisions

- “The LGU’s decision must be made in compliance with the time period prescribed by MN Statutes , section 15.99, which... generally requires a decision in 60 days.”
- **If a decision is not made within 60 days (or as properly extended), the application is approved by default!**
- The LGU can extend an additional 60 days by written notice that includes the reasons for the extension.



On-Site Exemption Decisions

- “The LGU may make on-site exemption and no-loss decisions if the decisions are noticed according to subpart 5 and project details are provided sufficient to document eligibility.”
- **DOCUMENT YOUR DECISIONS!!!**
- Poorly or undocumented decisions allow for landowner/contractor uncertainty and can result in unfavorable court rulings.



How long is an approval valid?

- “The LGU’s decision is valid for three years or as otherwise specified in the LGU’s decision when the TEP advises that a longer period is justified...”
- **This applies to all decisions, not just delineations!**



Notice of Decision

- “The LGU’s decision must be mailed to the landowner within 10 business days of the decision.”
- A summary of the decision must be sent to those required to receive notice.
- Mail the notice even if the applicant is present.
- **Provide detailed reasons for denials!**



Decisions and notice for replacement via banking.

- “For replacement plan applications proposing the use of banking credits, the LGU must verify, **before approving the application**, that the credits to be withdrawn are available and the applicant has a purchase agreement with the seller.”
- See “Available Wetland Bank Credits” on the BWSR Website at:
<http://www.bwsr.state.mn.us/wetlands/index.html>
- Contact Char Sokatch or Natasha DeVoe at BWSR to verify “when its close” (see BWSR website for phone numbers and e-mail addresses).



Replacement via banking (Cont'd)

- When approved, the LGU must notify the board's banking administrator. The notification must be sent concurrent with the notice of decision and must include the bank account, the user of credits, and the amount of credit approved for withdrawal.
- BWSR will modify the notice of decision form to include the above information.



Section III

APPLICATION PROCEDURES



8420.0305 GENERAL APPLICATION REQUIREMENTS

- This part specifies the general information that must be provided for ALL applications.
- Information specific to the different application types is provided in subsequent parts and must be provided in addition to the general requirements.



General Application Requirements (Cont'd)

- Item B(7): “an accurate map, survey, or recent aerial photograph showing the boundaries of the project area and boundaries, size, and type of each wetland relevant to the type of decision requested;”
- **All of this may not be relevant for every application. Have a reason for requiring the information!**
- For example, a delineation may not be relevant for:
 - Removal of debris blocking a culvert.
 - Agricultural activities in a type 2 wetland with sufficient cropping history.



8420.0315 No-Loss Applications

- “This part also applies to applications requesting a decision on whether an activity or wetland falls within the scope of this chapter.”
 - Normal farming practices
 - Incidental wetlands
 - Excavation



8420.0325 Sequencing Applications

- An applicant may apply separately for a preliminary sequencing decision, but must provide a written application that documents the project's compliance with sequencing standards.
- Sequencing applications and decisions must be noticed.



8420.0330 Replacement Plan Applications

- Subp. 3B Additional detail regarding the replacement wetland is required. These are new:
 - (1) the proposed action eligible for credit
 - (4) special considerations criteria
 - (5) a description of how the proposed replacement meets the ecological suitability and sustainability criteria in part 8420.0522, subp. 5.
 - (16) the size, type, and credits expected to result from the proposed replacement actions



Replacement Plan Applications – Subp. 4, Approval Conditions

- A landowner must not impact a wetland under an approved replacement plan until submittal of the following, to the satisfaction of the LGU:
 - Financial assurance for project-specific replacement that is not in advance.
 - **Evidence that deed restrictions have been recorded.**
 - Confirmation that any bank credits proposed for use have been withdrawn from the bank by BWSR.



8420.0335 Contractor's Notification Responsibility

- Contractors cannot drain, fill, or excavate in a wetland until they have obtained a statement from the landowner that either a replacement plan has been obtained or that replacement is not required and sent it to the LGU.
- **The LGU should review these forms for possible violations and keep a copy for their records**, particularly those involving exemptions.



Contractor Notification Form

Minnesota Wetland Conservation Act Contractor Responsibility and Landowner Statement Form

Pursuant to Minnesota Statutes Chapter 103G .2212 an agent or employee of another may not drain, excavate or fill a wetland, wholly or partially, unless the agent or employee has obtained a signed statement from the property owner stating that the wetland replacement plan required for the work has been obtained, or that a replacement plan is not required; **AND** this statement is mailed to the local government unit (LGU) with jurisdiction over the wetland.

Work in violation of the above statement and Minnesota Statutes § 103G.2212 to § 103G.237 is a misdemeanor punishable by up to a \$700 fine and 90 days in jail.

A replacement plan is required for any wetland draining, excavation, or filling activity that is not exempted under Minnesota Rules Chapter 8420.0122.

National wetland inventory maps are available for review at the County Soil and Water Conservation District (SWCD) offices. Many wetlands may not be identified on the maps but are still restricted from draining, excavating, or filling.

Contact the LGU or SWCD office for assistance. You can also call the Board of Water and Soil Resources at 651-296-3767 for LGU or SWCD location information.

Property Owner Name

Address

Phone

Work Site Location:

(address or property location)

Contractor Name: (by company and individual):

Address:

Phone:

Description of Work:

See BWSR website for the form.

BWSR and the DNR plan to consolidate forms so there will be one form for WCA wetlands and Protected Waters wetlands.

<http://www.bwsr.state.mn.us/wetlands/forms/index.html>

This form is continued on the next page.



Section IV

BOUNDARY OR TYPE, NO-LOSS, AND EXEMPTION STANDARDS



8420.0405 Boundary or Type

- Wetland type must be identified according to USFWS Circular 39, “Wetlands of the United States.” (Types 1-8)
- Statute requires use of Circular 39.
- “Wetland Plants and Plant Communities of Minnesota & Wisconsin” (Eggers & Reed) is incorporated into vegetative replacement requirements.



8420.0415

No-Loss Criteria



Excavation

- Item B: excavation in wetlands when limited to removal of sediment or debris such as trees, logs, stumps, beaver dams, blockage of culverts, and trash, provided the removal does not result in alteration of the original cross-section of the wetland or watercourse...
- **Some of the language currently contained in this item was relocated from the previous incidental wetlands exemption.**



Utilities

- Item F: an activity associated with the operation, routine maintenance, or emergency repair of existing utilities and public works structures, including pipelines, provided the activity does not result in additional wetland intrusion or additional impacts, either wholly or partially;
- **This language was relocated here from the utilities exemption.**



Forestry

- Item G: 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;
- **This language was relocated here from the forestry exemption.**



8420.0420

EXEMPTION STANDARDS



Subp. 1, Scope of Exemption Standards

- Item C: “Exemptions may not be combined on a project.”
- **This applies to the project, regardless of the number of wetlands being impacted.**



Affidavit

- **Use of an “affidavit” is no longer specified as evidence of qualification for an exemption.**
- This doesn't prevent submittal of an affidavit, but the focus is on evidence and documentation.
- **An affidavit can supplement evidence or fill gaps, but shouldn't override evidence.**



Subp. 2, Agricultural Activities

- Item D: “filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage;”
- **This language was relocated to the Ag Exemption from Scope.**



Agricultural Activities (Cont'd)

- Item G: impacts resulting from ag activities that are subject to federal farm program restrictions... and have been approved by BWSR, DNR, Ag and PCA.
- **An exemption under this item is not valid until such agency agreement is obtained!**
- If approved, the conditions and standards shall be noticed by the board to LGUs and published in the State Register.

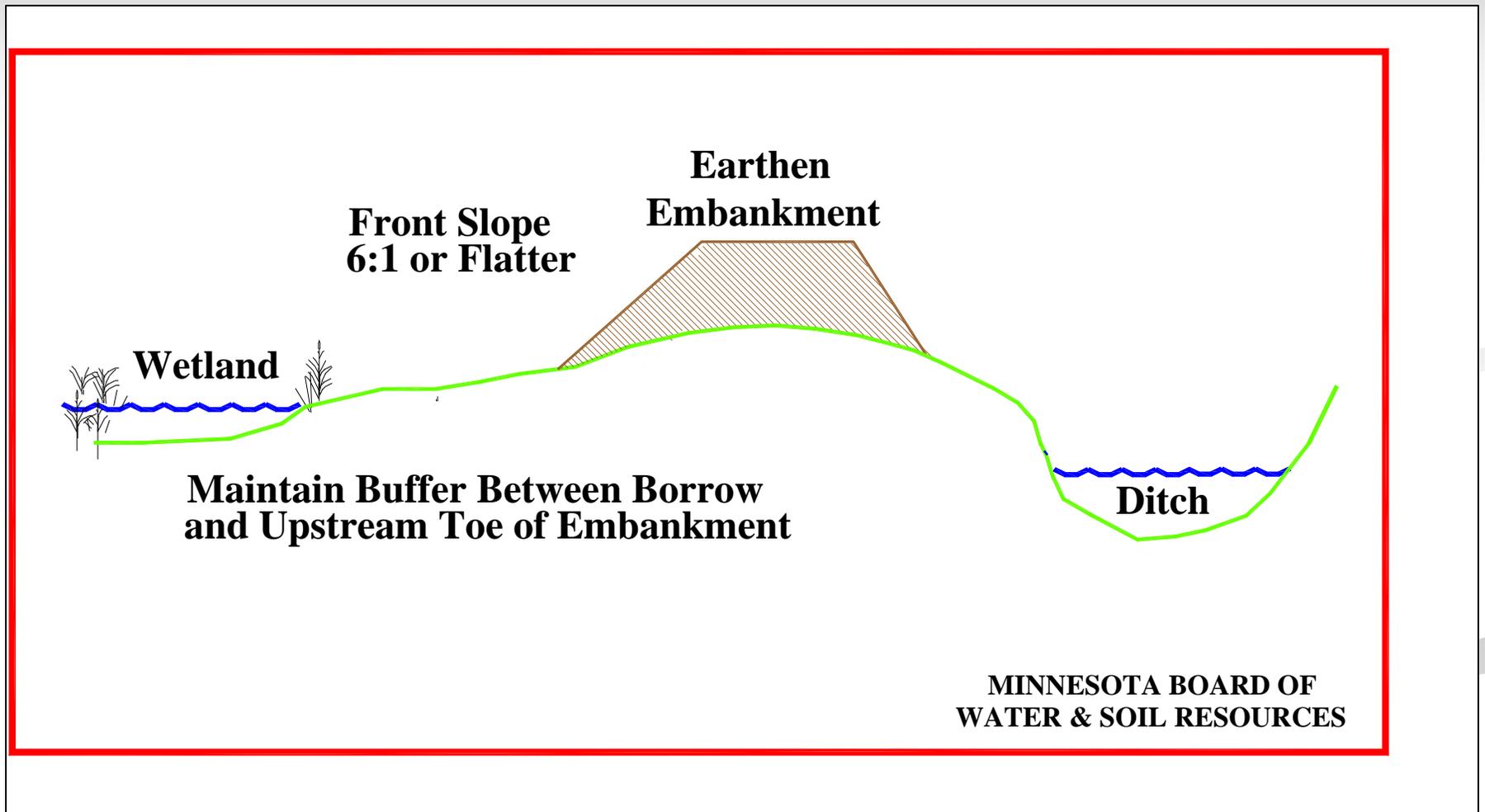


Subp. 3, Drainage Exemption

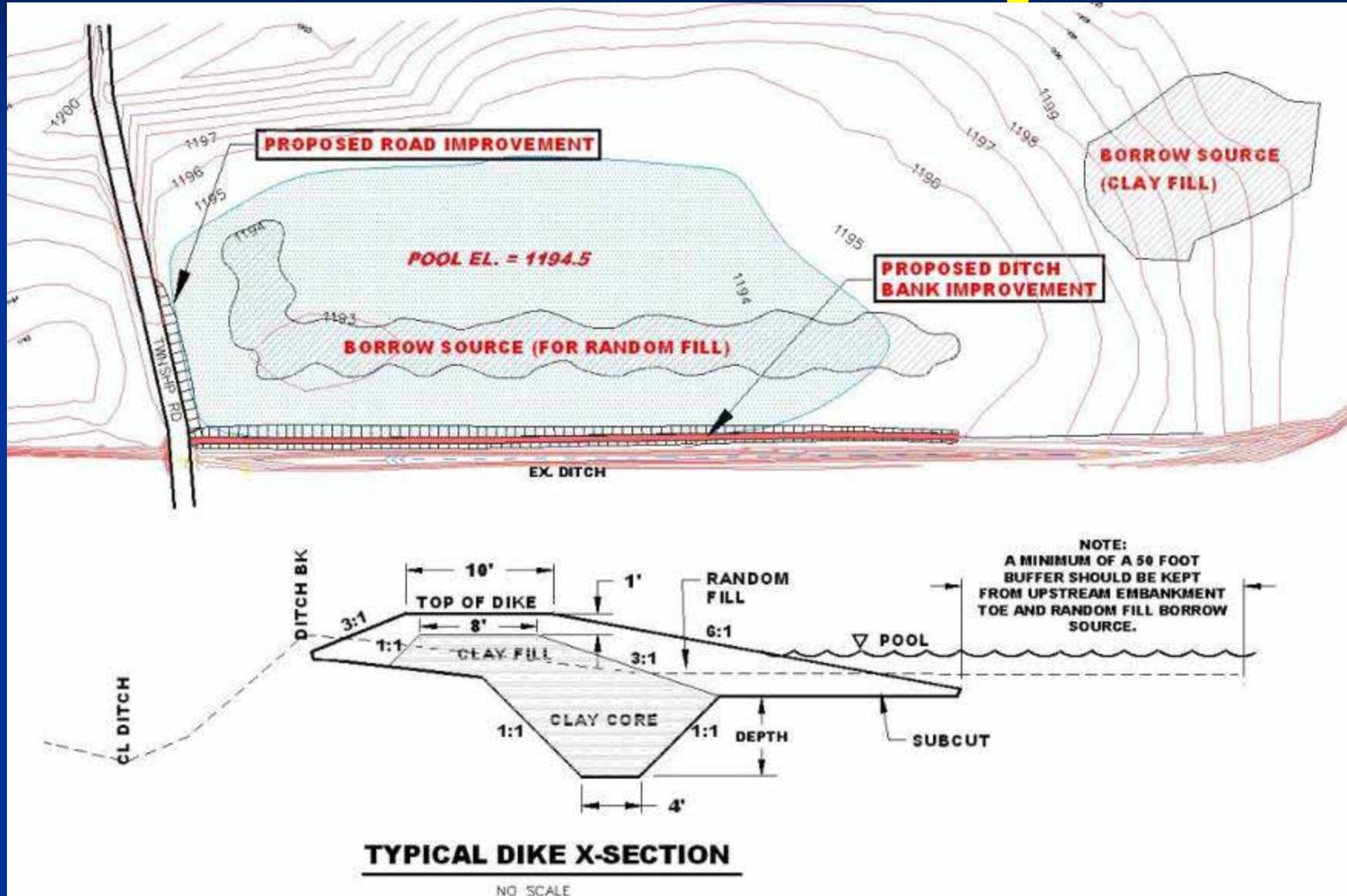
- Item D: “For projects completed under this subpart, spoil must be placed and stabilized in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch or contributing to the degradation of downstream water quality.”
- Promotes a big picture view of resource protection.
- **Hydrology, soil structure, and slope stability are key to proper spoil placement!**



Spoil Placement and Impact Minimization



Ditch Bank Improvement Plan and Cross Section Example





Design Considerations for Impact Minimization

- Stability (Structure/Strength) of Bank Soil Material
- Shape of Existing Bank
- Hydrology: Flow Rates, Fluctuations, Inundation Periods, Lateral Flow, etc.
- Outlet Situation
- Availability and Feasibility of Alternatives
- Minimize Lateral Effect (where indicated)
- Cost



Subp. 4, Federal Approvals Exemption

- ...impacts authorized under section 404 of the federal Clean Water Act... that have been approved by BWSR, Ag, DNR, and PCA.
- **This exemption is not valid until such agency agreement is obtained!**
- If approved, the conditions and standards shall be noticed by the board to LGUs and published in the State Register.



Subp. 5, Restored Wetlands Exemption

- Item A: "...draining a wetland that was restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland to preproject hydrologic conditions."
- **A wetland that was only partially drained prior to enrollment in the conservation program cannot be completely drained under this exemption.**



Subp. 6, Utilities Exemption

- Item A(2): “...impacts resulting from repair or updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations.”
- This exemption does not apply if the wetland impacts are the result of the treatment system being expanded to accommodate increased use.”



Subp. 7, Forestry Exemption

- “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.”
- **These additions should not change the proper and legitimate use of this exemption.** The changes are intended to clarify its applicability and prevent misuse, i.e. the construction of driveways for houses or cabins under this exemption.



Subp. 8, De minimis Exemption

- This subpart was reorganized to improve readability by providing completely separate listings for each pre-settlement wetland area, but no substantive changes were made.
- Item D: **“Property may not be divided to increase the amounts listed in item A [de minimis] or to gain an exemption.”**



Subp. 9, Wildlife Habitat Exemption

- A replacement plan is not required for:
- A. excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat improvement, if:
 - (1) the total area of deposition, and excavation if within the permanently or semipermanently flooded areas of type 3, 4, or 5 wetland, does not exceed 5% of the wetland area or 1/2 acre, whichever is less, and the spoil is stabilized to prevent erosion and native, noninvasive vegetation is established;