

# Wetland Conservation Act – Basic Administration Part 2





# LGU Noticing and Decision Making

- **LGUS must notice applications and make decisions within strict timelines as set forth in Minnesota Statute 15.99.**
- **Failure to comply with these timelines is the most common mistake made by LGUs.**



# LGU Noticing and Decision Making

- Failure to comply with timelines can result in a default approval of the application without review for compliance with the law.
- BWSR can place a moratorium on all activities that effect wetlands if an LGU continually fails to comply with the law.



# LGU Timelines

Upon receipt of an application:

- 15 days to determine if it is complete:
  - If not complete, then must notify applicant in writing what is missing
  - If complete, then must send out notice of application (if required depending on the type of application)



# LGU Timelines (cont.)

- Notice of Application must designate a comment period of at least 15 days

**Minnesota Wetland Conservation Act**  
**Notice of Wetland Conservation Act Application for Impacts  $\geq$  10,000 Square Feet**

Name of Local Government Unit  
Name of Applicant: \_\_\_\_\_  
Application Number: \_\_\_\_\_

Type of Application (check one):  
 Exemption Decision  
 No Loss Decision  
 Wetland Boundary and Type Determination  
 Replacement Plan Decision  
 Banking Plan Decision

Date of Application: \_\_\_\_\_

Location of Project: \_\_\_\_\_  
Summary of Project: \_\_\_\_\_

You are hereby notified that the above-referenced application was made to the Local Government Unit on the date stated above. A copy of the application is attached. Comments will be accepted on this application until \_\_\_\_\_ (date, 15 day minimum). A decision on this matter will be made (Date, time, location of \_\_\_\_\_).

**New Form Coming Soon**

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_  
List of Addressees:  
Landowner \_\_\_\_\_  
Members of Technical Evaluation Panel \_\_\_\_\_  
Watershed District or Watershed Management Organization (If Applicable) \_\_\_\_\_

Page 1 of 2  
EWSR\_Form\_WCA\_Replacement\_3(App\_More\_10K) (September 2004)

Notice includes information on application and LGU including the decision type requested, applicant information, where to send comments, comment period deadline, and anticipated decision date.

A copy of the application is included with the notice



## LGU Timelines (cont.)

- LGU decision must be made within 60 days of receipt of complete application.
- The LGU can extend an additional 60 days by written notice that includes the reasons for the extension.
- **If a decision is not made within 60 days (or as properly extended), the application is approved by default!**



# LGU Timelines (cont.)

- LGU must mail notice of decision to applicant and those required to receive notice (TEP, DNR) within 10 days of decision date.

**Minnesota Wetland Conservation Act  
Notice of Wetland Conservation Act Decision**

Name and Address of Local Government Unit: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_ Project Name: \_\_\_\_\_

Application Number: \_\_\_\_\_

Type of Application (check one):  Exemption  
 No Loss  
 Replacement Plan  
 Banking Plan  
 Wetland Boundary / Type

Date of Decision: \_\_\_\_\_

Check One:  Approved  
 Approved with conditions (see note on page 2 regarding use of wetland banking credits)  
 Denied

New Form Coming Soon

Landowner: \_\_\_\_\_

Members of Technical Evaluation Panel: \_\_\_\_\_

Watershed District or Watershed Management Organization (If Applicable): \_\_\_\_\_

Department of Natural Resources Regional Office (select appropriate office):

NW Region: Regional Director 2115 Birchmont Beach Rd. NE Bemidji, MN 56601	NI Region: Reg. Env. Assess. Ecol. Div. Ecol. Services 1201 E. Hwy. 2 Grand Rapids, MN 55744	Central Region: Reg. Env. Assess. Ecol. Div. Ecol. Services 1200 Warner Road St. Paul, MN 55106	Southern Region: Reg. Env. Assess. Ecol. Div. Ecol. Services 201 Hwy. 15 South New Ulm, MN 56073
---	--	---	--

DNR TEP Representative (if different than above) \_\_\_\_\_

- Page 1 of 2  
BWSR\_Form\_WCA\_Replacement\_6/Notice\_Dec1100207



## LGU Timelines (cont.)

- There is a 30-day appeal period on all decisions made by the LGU. Applicants may proceed with an approved project during the appeal period, but they risk having the project stopped or having to “undo it” if the appeal is upheld.
- All decisions are valid for 3 years unless otherwise specified.



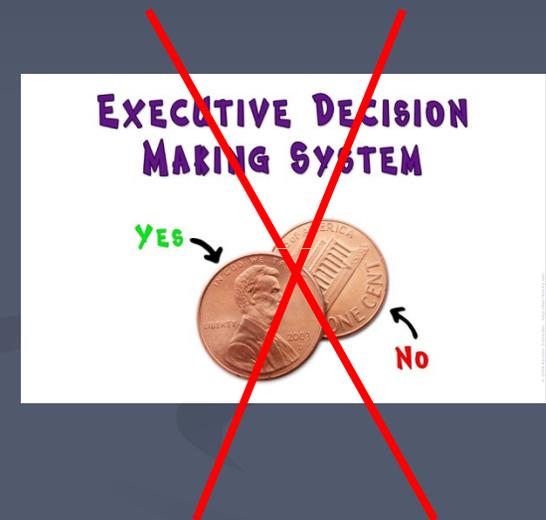
# WCA Timelines Summary

<b>LGU Action</b>	<b>Timeline</b>
Complete Appl. determination	15 days
Application Notice period	15 days (min.)
Decision-making period	60 days
Extension of decision-making period	60 days
Decision Notice sent out	10 days
Appeal period	30 days
Decision validity	3 yrs.
Record keeping requirement	10 years

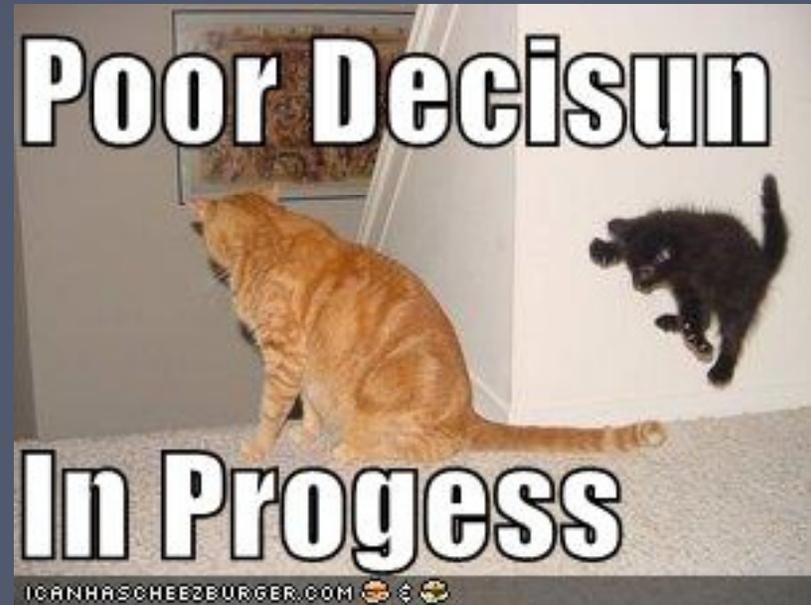


# Decisions

- 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!**

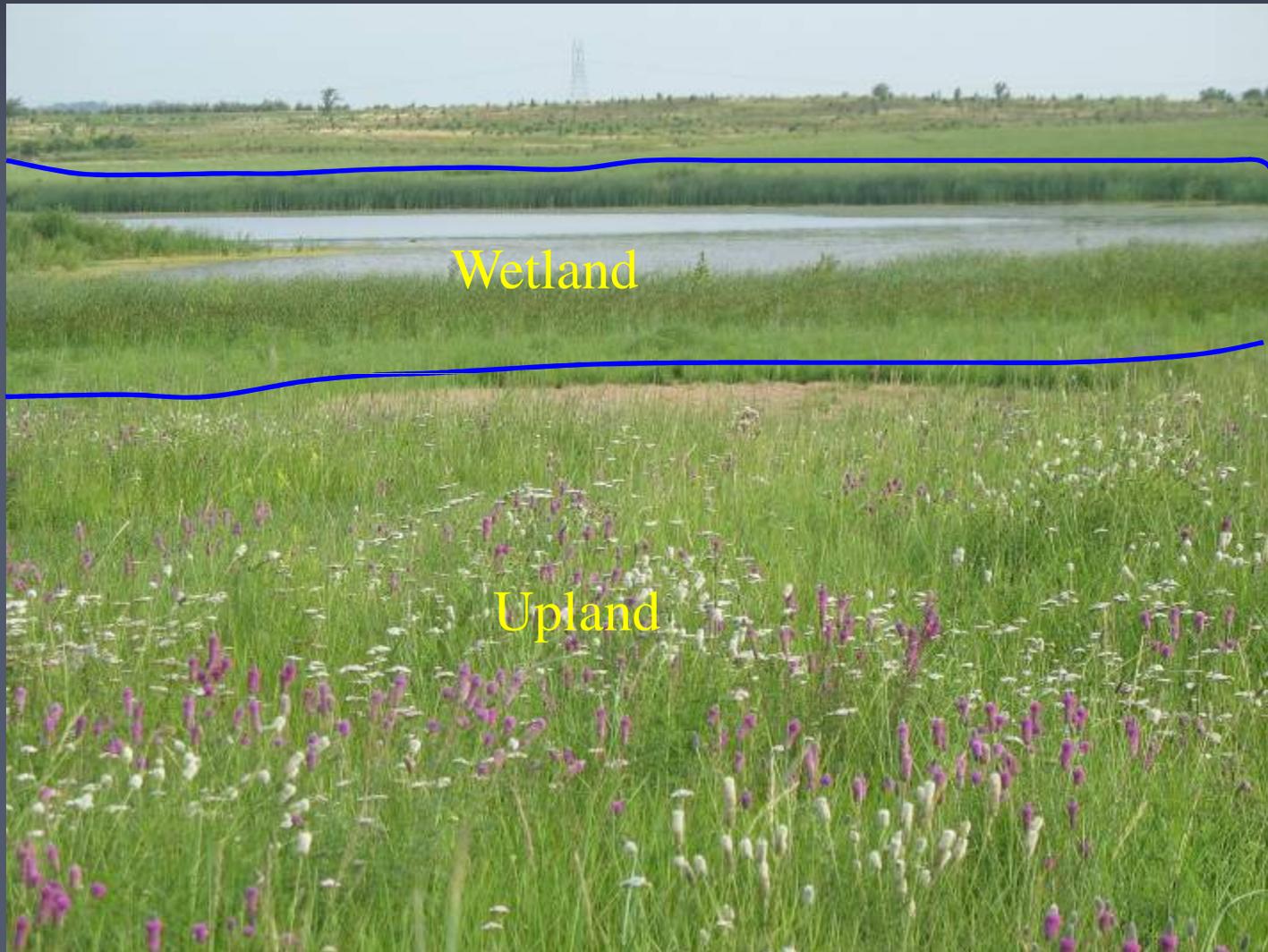


# Types of LGU Decisions





# WETLAND BOUNDARY





# Types of LGU Decisions

- Wetland Boundary or Type
  - Upon receipt of a wetland delineation report conducted in accordance with the 87 Manual and following report guidelines from BWSR/Corps, the LGU must (if requested to by the applicant) decide if the wetland boundaries and types are acceptable for use in implementing the WCA.



# Wetland Delineations

Keep in mind that there are different methods for conducting wetland delineations under the 87 Manual. The method used can be dependent upon the activity proposed.



# Wetland Delineations

- Routine Approach – most common by far
  - Level 1 – use air photos, soil survey, wetland mapping, etc. to identify and delineate wetlands. Most commonly used when exact boundaries are not that important. Example – projects with temporary impacts such as utility lines.
  - Level 2 – your typical onsite determination method – establish transects, dig soil pits, estimate veg coverage, look for hydrology indicators.
- Comprehensive Approach – rarely used. Employs statistical sampling methodology for quantitative results.



# Wetland Determinations

Apply the science first!

- Is it a wetland?
- If yes, where are its boundaries and what is its type?

Apply policy next.

- Exemption, no-loss, replacement, etc.



# Types of LGU Decisions (cont.)

## ■ No-Loss

- There are certain activities in wetlands that are considered as “no loss of wetlands” under WCA rules.
- Applicants may submit information demonstrating that their project qualifies for a no-loss determination, thus requiring a decision from the LGU.
- This also applies to activities that are not under the “scope” of WCA (i.e. not regulated).



# Types of LGU Decisions (cont.)

## ■ Exemption

- There are certain activities that result in impacts to wetlands that are “exempt” from replacement requirements under WCA rules.
- Applicants may submit information demonstrating that their project qualifies for an exemption, thus requiring a decision from the LGU.



# Types of LGU Decisions (cont.)

## ■ Replacement Plans

- Projects that result in wetland impacts that are within the scope of WCA and do not qualify for a no-loss or exemption, must submit a wetland replacement plan for review and approval by the LGU.



# Types of LGU Decisions (cont.)

## ■ Sequencing

- Sequencing refers to the sequential process of demonstrating that a project complies with wetland impact avoidance, minimization, rectification, and replacement requirements.
- Sequencing is a required component of a replacement plan application, however, applicants may apply for a separate sequencing decision prior to submitting a replacement plan application.



# Summary of LGU Decision Types

Decision Type	Notice of Application required?	Notice of Decision required?	Minimum Comment Period on Application Notice
Boundary & Type	Yes	Yes	15
No-Loss	No	Yes	15
Exemption	No	Yes	15
Sequencing	Yes	Yes	15
Replacement Plan	Yes	Yes	15



## NOTE:

LGUs can require an application and noticing period for boundary/type, no-loss, and exemptions, but they have to do so under their own local rule or ordinance.



# No-Loss Criteria

Means no loss of or impact to wetlands.

Qualifying activities/projects:

- A. Activity will not impact a wetland
- B. Excavation in wetlands to remove sediment, debris (trash, beaver dam, etc.):

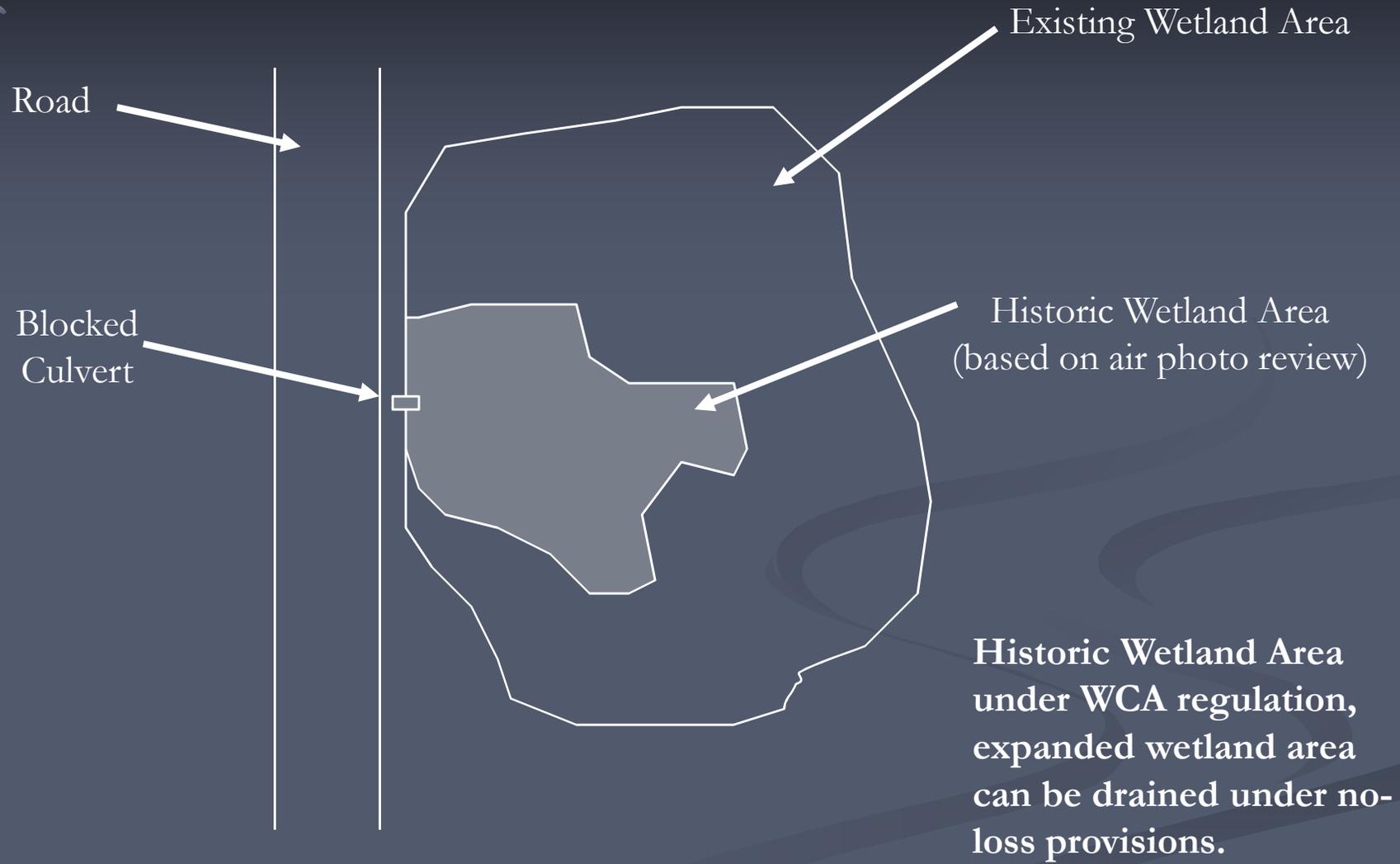




# No-Loss Criteria (cont.)

- B.** Drainage of wetlands that were *created* by beaver activities or other materials blocking culverts and related drainage structures.







## No-Loss Criteria (cont.)

- c. Temporary or seasonal water level mgmt. activities for the purpose of maintenance as part of vegetation or habitat mgmt. activities.



Cannot result in conversion of wetland to non-wetland or wetland type change for nondegraded wetland.



# No-Loss Criteria (cont.)

- D.** Any activity conducted for an approved replacement plan or conducted or authorized by public agencies for the purpose of wetland restoration or fish & wildlife habitat or repair/maintenance of earthen containment structures.





# No-Loss Criteria (cont.)

- E. Excavation limited to removal of deposited sediment in wetlands utilized as stormwater mgmt. basins.





# No-Loss Criteria (cont.)

- F. Activity associated with 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.





# No-Loss Criteria (cont.)

- G. Temporary wetland crossing for silvicultural activities – but impacts on wetlands must be limited and no associated dikes, ditches, tiles, or buildings and the silvicultural activities cannot result in the drainage of wetland.





# No-Loss Criteria (cont.)

## H. Temporary impacts

- physical characteristics of wetlands restored to pre-project conditions (vegetation, substrate, etc.)
- activity is completed and wetland restored within 6 months after start (unless extension granted by LGU after consulting TEP)
- Financial assurance submitted by the applicant to the LGU to insure restoration compliance.



# Exemptions

- Activities or types of impacts that are exempt from wetland replacement requirements.
- This does not mean that they are exempt from *regulation*.



# Exemption Overview

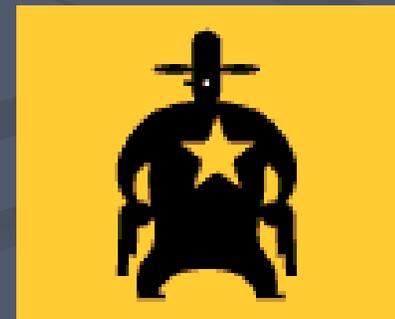
## General requirements for all WCA exemptions:

- No exemptions apply to calcareous fens;
- No exemptions apply to wetlands previously restored or created under an approved replacement plan;
- Wetlands may not be partially drained, excavated, or filled in order to claim an exemption on the remainder;
- Exemptions may not be combined on a wetland that is impacted by a project;



# Exemption Overview

- A landowner is not required to get approval for an exemption or no-loss unless the LGU requires it under their own local authority via ordinance or rule.
- However, landowners pursuing a possible exempt activity could be stopped by enforcement and asked to prove they are exempt.





# Exemption Overview

- Therefore, it is highly recommended that landowners obtain approval from the LGU or at least informally consult with the LGU.
- An LGU must render a decision on an exemption or no-loss if requested to do so by the landowner.
- The landowner applying for an exemption is responsible for submitting the proof necessary to show qualification for the exemption claimed.



# Exemption Overview

- The LGU may evaluate evidence for an exemption without making a determination (*i.e. informal request*).
- A landowner who does not request a determination may be subject to the enforcement provisions of **WCA**.





# Exemptions

- Agricultural Activities
- Drainage
- Federal Approvals
- Restored Wetlands
- Utilities
- Forestry
- De minimis
- Wildlife Habitat



# Agricultural Exemption

## Part A

Replacement plan is NOT required for:

- A. activities in a wetland that was planted with annually seeded crops or crop rotation in six of the last ten years prior to Jan. 1, 1991.
- Applicant is responsible for providing you with information to qualify for the exemption
- Type 1 & 2 wetlands only



# Agricultural Exemption

## Part B



Replacement is NOT required for:

- Activities on type 1 wetlands (except type 1 bottomland hardwood) or type 2 or 6 wetlands (<2 acres) on Ag Pasture land, only if it remains in the same land use.
- It is only for pasture areas that will remain pasture after impact.



# Agricultural Exemption

## Part C

Replacement is NOT required for:

- Soil & water conservation projects that are certified by SWCD technical staff after review by the TEP.
- Project must minimize adverse wetland affects
- Eligible practices are identified in the State Cost Share Program Manual, available at the BWSR website.
- Federally funded demo, research, c/s projects



# Agricultural Exemption

## Part D

- Replacement plan not required for filling a wetland to accommodate wheeled booms on irrigation devices if fill does not impede normal drainage.





# Agricultural Exemption

## Parts E, F, G

- Part E – Aquaculture (Corps permit required)
- Part F – Wild rice production (Corps permit required)
- Part G – Federal Farm Program compliance – currently not a valid exemption until agency agreement. Compliance with the Federal Farm Program does not mean compliance with WCA!



# Drainage Exemption





# Drainage Exemption

## Part B

Replacement plan is NOT required for:

- impacts resulting from maintenance or repair of existing *public* drainage systems provided that:
  - Does not drain Type 3, 4, or 5 wetlands that have existed for more than 25 years prior to the impact.



# Drainage Exemption

## Part B (cont.)

- Replacement plan is NOT required for:
- impacts resulting from maintenance or repair of existing *non-public* (i.e. private) drainage systems provided that:
  - Does not drain wetlands (type does not matter here) that have existed for more than 25 years prior to the impact.



# Drainage Exemption

## Part C

Replacement plan is NOT required for:

- Draining agricultural land that was planted with annually seeded crops prior to July 5<sup>th</sup>, except for crops that are normally planted after that date, in 8 of 10 of the most recent years prior to the impact.
- This includes land that was in a crop rotation seeding of pasture grass, cover crop or legumes, or was fallow for crop production purposes.
- Land enrolled in a conservation program must meet one of the requirements above prior to enrollment.
- *Documentation from the landowner is required, and may include aerial photos, USDA records and/ or landowner affidavits.*



# Drainage Exemption

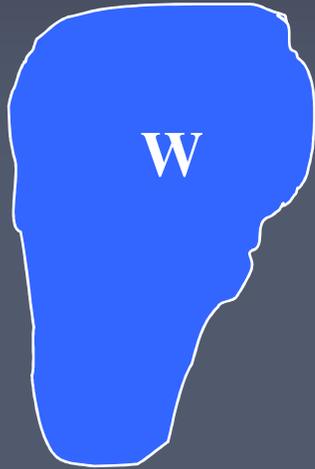
## Part C (Cont.)

Replacement plan is NOT required for:

- **Draining of Type 1, or up to five acres of Type 2 or 6, on land that has been assessed drainage benefits for a public drainage system, provided that:**
  - There was an expenditure from that drainage system account (1971 to 1991)
  - It was repaired or maintained (1971 – 1991) or
  - No repair or maintenance was necessary (1971 – 1991)
  - Wetlands cannot be drained for development (see rule for details)

# Example

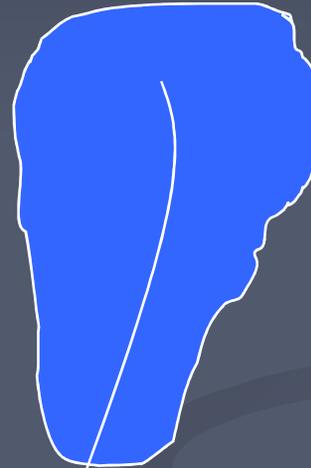
Pre-Settlement



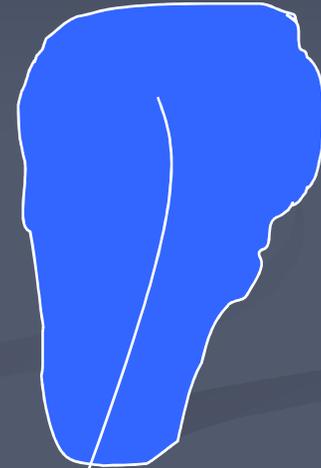
1940  
Tile Installed



1975  
Tile Plugged



2009  
Tile Still Plugged

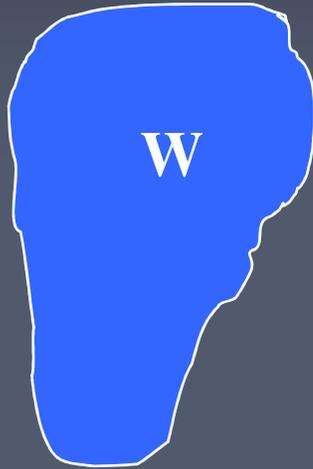


*Can the landowner go in and fix the tile?*

**Wetland has been in existence >25 years.  
No maintenance can be performed.**

# Example

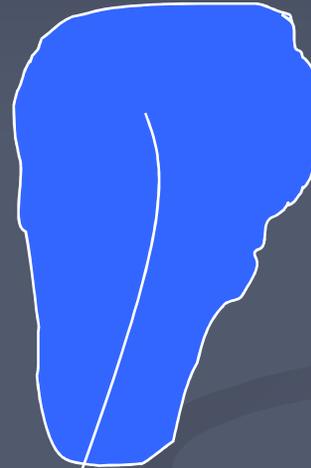
Pre-Settlement



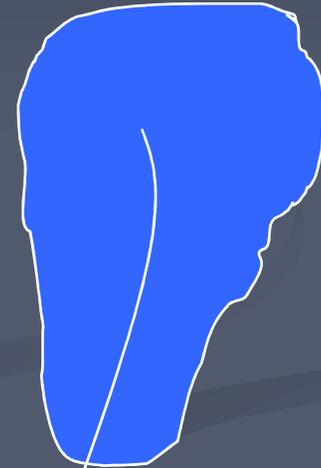
1940  
Tile Installed



1991  
Tile Became Plugged



2009  
Tile Still Plugged



Can the landowner go in and fix the tile?  
**Original size of wetland existed <25 years**

**Yes, it can be maintained.**

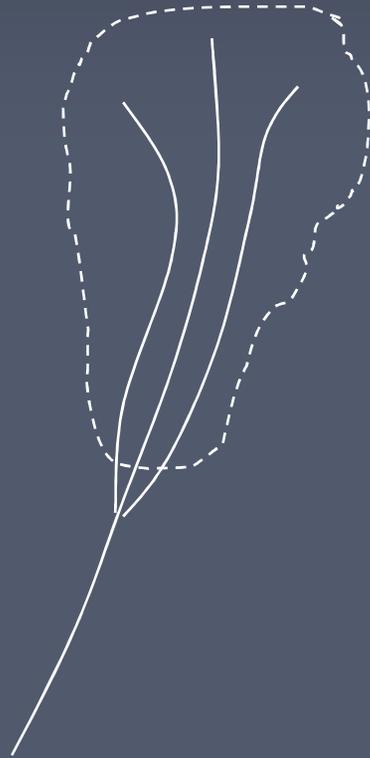
**Careful not to exceed what it looked like in 1940**

# Example

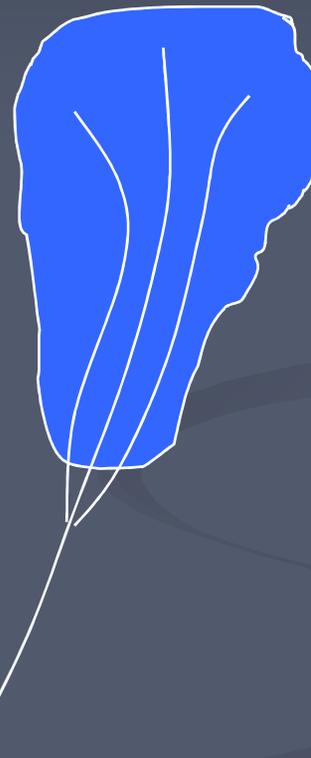
Pre-Settlement



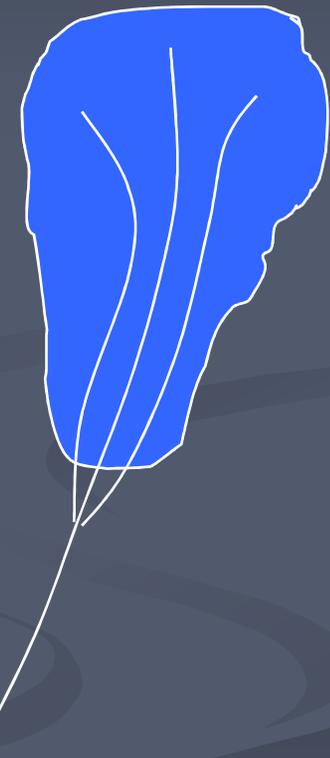
1940  
Completely Drained



1991  
Tile Gets Plugged



2009  
Still Plugged

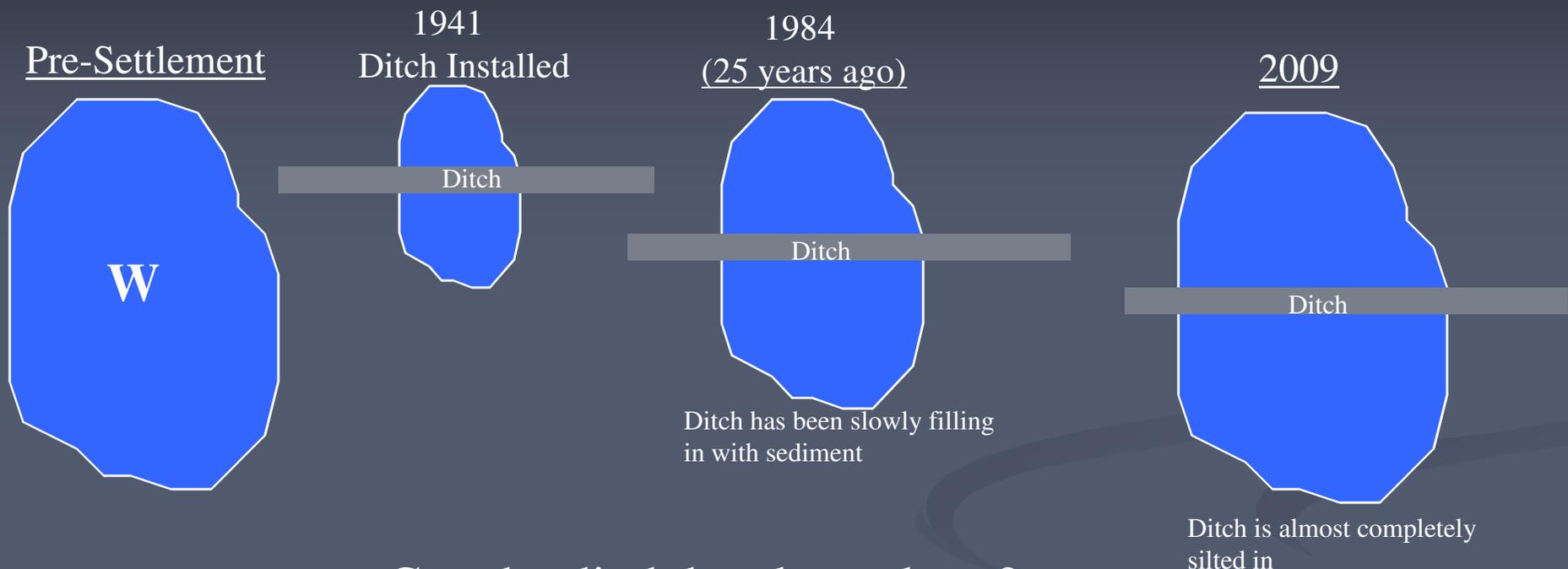


Can the landowner go in and fix the tile line?

**Wetland reformed within the last 25 years**

**Yes, maintenance can be performed and it can be improved!**

# Example



Can the ditch be cleaned out?  
If so, how much and what about the spoil?

**It would be appropriate to allow some cleanout,  
back to the conditions that existed 25 years ago.  
Spoil should not be side-cast into a wetland.  
Does a spoil bank exist that is non-wetland?**



# Wetland Restoration Exemption

Replacement plan is NOT required for:

- A. activities in a wetland that was restored for conservation purposes under a contract or easement.
- B. activities in a wetland restored by a landowner without any financing from a public agency
- Both A. & B. - Landowner must provide information to show it was not a wetland prior to the restoration.

Before



2003 Aerial Photography

After



2008 Aerial Photography



# De Minimis Exemption





# Less than 50% Areas

- Types 1, 2, 6, and 7 (excl. white cedar & tamarack)



- Types 3, 4, 5, 7 (incl. white cedar & tamarack), and 8





# 50% to 80% Areas

- Types 1, 2, 6, and 7 (excl. white cedar & tamarack)



- Types 3, 4, 5, 7 (incl. white cedar & tamarack), and 8





# De minimis Calculation Worksheet

## Minnesota Wetland Conservation Act De Minimis Calculation Worksheet

- 1) Determine the appropriate Circ. 39 wetland type for all wetlands proposed to be impacted by the project, based on predominance of hydrology. For wetlands >40 acres, wetland type may be determined by the deepest water regime, in the basin, and within a 300-foot radius of the proposed impact area. (Note: use a single Circ. 39 Wetland Type for each wetland)

Impact wetland 1:  Impact wetland 2:  Impact wetland 3:  Impact wetland 4:

- 2) Determine the pre-project size of the wetland(s) (as of January 1, 1992) within the project property that are proposed to be impacted by the project. (Note: 1 acre = 43,560 square feet)

Total Wetland Area  ft<sup>2</sup>      5% of the Total Wetland Area:  ft<sup>2</sup>

- 3) Determine the applicable de minimis exemption amount for the project from either a) or b) below. If more than one de minimis amount is applicable to the project, the exemption amount is the lesser of these.

- a) For projects where all wetlands proposed to be impacted are under single ownership and entirely within the project property, the applicable de minimis exemption amount is determined using the following table.

Wetland Type (circular 39)	Shoreland Class	Pre-Statehood Wetland Area	De Minimis Amount <sup>(3)</sup>
1, 2, 6, or 7* *(excluding white cedar and tamarack wetlands)	Non-Shoreland	> 80% <sup>(1)</sup>	10,000 ft <sup>2</sup>
		50 – 80% <sup>(1)</sup>	5,000 ft <sup>2</sup>
		< 50% <sup>(1)</sup>	2,000 ft <sup>2</sup>
1, 2, 6, or 7* *(excluding white cedar and tamarack wetlands)	Shoreland-Outside Building Setback	Any	400 ft <sup>2</sup> <sup>(4)</sup>
		7* (white cedar and tamarack wetlands only)	100 ft <sup>2</sup>
3, 4, 5, or 8	Shoreland-Outside Building Setback	Any	100 ft <sup>2</sup>
Any Wetland Type	Shoreland-Inside Building Setback	Any	20 ft <sup>2</sup>
		1, 2, 6, or 7* *(excluding white cedar and tamarack wetlands)	
	Non-Shoreland	> 80% <sup>(2)</sup>	10,000 ft <sup>2</sup>
		50 – 80% <sup>(2)</sup>	2,500 ft <sup>2</sup>
		< 50% <sup>(2)</sup>	1,000 ft <sup>2</sup>

(1) Outside of the 11-county metropolitan area: Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright

(2) Inside the 11-County Metropolitan Area

(3) If more than one de minimis amount is applicable to the project, the exemption is the lesser of these

(4) Can be increased to 1000 ft<sup>2</sup> by LGU's in >80% areas for certain types of wetlands

- b) For projects where any wetlands proposed to be impacted extend outside of the project property (multiple



# Wildlife Habitat Exemption

- For excavation and associated deposition of spoil
- Limited to lesser of 5% of wetland area or 0.5 acres
- Requires SWCD or TEP certification that project will improve wildlife habitat



# End of Part 2



Still Awake?