



## Wetland Conservation Act 201 Virtual Training



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### MN Wetland Professional Certification Program

Program goal: Provide relevant, accessible and affordable technical and administrative training for all wetland professionals.

- Nationally recognized voluntary training program that certifies 500 individuals working in both private and public sectors from the upper midwest and beyond.
- Provide technical wetland delineation training and administrative training for implementing the MN Wetland Conservation Act.
- Certified individuals must pass In-training and Professional exams and complete continuing education during 3-year renewal periods.

[bwsr.state.mn.us/minnesota-wetland-professional-certification-program](http://bwsr.state.mn.us/minnesota-wetland-professional-certification-program)



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### 2025 MWPCP Training Courses

#### Introduction to Wetland Delineation and Regulations

- **Introduction to Wetland Delineation and Regulations:**  
MNDOT Training Center, Shoreview- June 9-13
- **Introduction to Wetland Delineation and Regulations:**  
Northland Arboretum, Baxter - September 8-12
- **Introduction to Wetland Delineation and Regulations:**  
MNDOT Training Center, Shoreview - October 6-10

#### Professional Exams

MWPCP Exams will be offered at 1pm on: June 13 in Shoreview, September 12 in Baxter, October 10 in Shoreview



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## 2025 MWPCP Training Courses

### Regulatory Training

- **WCA 101 virtual training-** February 4-5 (2 half days) (3 online CEC per day)
- **WCA 201 Virtual training-** February 19 (1 half day) (3 online CEC)

This virtual training will provide an overview of the 2024 statute amendments relevant to the Wetland Conservation Act. Topics to be discussed include wetland classification, jurisdiction of deepwater habitat, agricultural activities exemption provisions and changes to the drainage, de minimis and utility exemptions.

- **TEP Academy-** St Cloud MNDOT training center- April 16 & 17- Two one-day classes (6 CEC per day)

This course is intended for professionals who serve on a Technical Evaluation Panel (TEP) implementing WCA. The course is designed to focus on roles, procedures, important concepts and some common scenarios TEP members encounter. Participants should have some basic level knowledge of how the WCA is implemented but direct experience on a TEP is not required. The content is introductory to intermediate. Participants can choose either date as they will be identical courses.



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## 2025 MWPCP Training Courses

### Technical Training

- **Soils on the Landscape-** Robert Nye Regional Park- April 29 & 30- Two one-day classes (6 CEC per day)
- **Wetland Delineation Methods w Field Practicum-** Cloquet Forestry Center- May 20-22 (18 CEC)
- **Plant ID-** Shoreview MNDOT Training Center (July 14) and Cloquet Forestry Center (July 16)-Two one-day classes (6 CEC per day)
- **MWPCP Regional Wetland Training- Northeast MN-** Hermantown City Hall- August 12-13 (6 CEC per day)
- **Hydrogeomorphic Method of Classifying Wetlands -** Hartley Nature Center, Duluth- October 28-29- Two one-day classes (6 CEC per day)
- **Wetland Banking & Monitoring for Consultants-** Shoreview MNDOT Training Center- November 12-13 (12 CEC)



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## Registration Information

Registration for 2025 MWPCP courses will be staggered and open on the following dates:

- Registration for Virtual Training Courses- 8am on January 21
- Registration for Introduction to Wetland Delineation & Regulation classes- 8am on February 24
- Registration for April- June Classes- 8am on March 3
- Registration for July-October classes- Week of June 16

Email reminders will go out to the MWPCP and BWSR Wetland Conservation Act (WCA) email contact lists for registration dates.

- Email [bwsr.mwpcp@state.mn.us](mailto:bwsr.mwpcp@state.mn.us) to be added to list
- MWPCP maintains a waitlist for all full classes



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### Certification Updates

- Need 18 continuing education hours (6 online)
- Current renewal period ends on December 31, 2025 for individuals who passed exams in 2022.
- Do not need to report MWPCP classes
- Use Credit Reporting Form
- List of approved classes on MWPCP page
- If not listed, use Credit Determination Form
- Notify us if you change jobs or email



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### Wetland Conservation Act 201 Virtual Training - February 19

- Agenda:
- Overview of 2024 Statute Changes
  - De minimis & utility exemptions
  - Wetland classification system
  - Definitions
  - Agricultural Exemption
  - Drainage exemption



[bwsr.state.mn.us/minnesota-wetland-professional-certification-program](https://bwsr.state.mn.us/minnesota-wetland-professional-certification-program)

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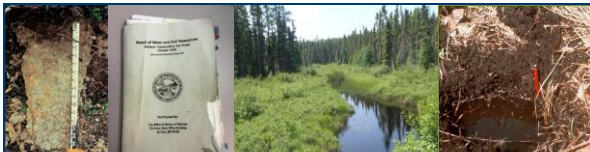
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### 2024 Statute Changes – summary



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### General Questions

- What's the difference between statute and rule?
- Who determines when the statutes become effective?

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### Background

Amendments to WCA Statutes since the current rule was adopted (2009)

- 2011
- 2012
- 2015
- 2017
- 2024

Some amendments require the completion of rulemaking before they become effective, others have been effective since passage.

We will discuss the 2024 amendments, most of which were effective August 1, 2024.

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### Info on BWSR website

A strikeout-underline version of the statutory amendments and a narrated presentation are posted on the BWSR website.




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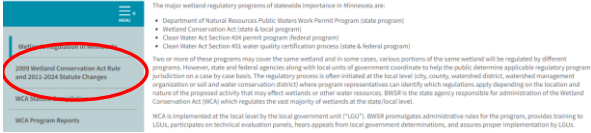
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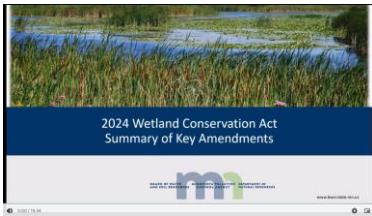
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## Wetlands Regulation in Minnesota



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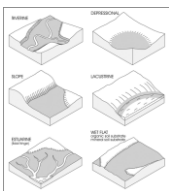


[2024 WCA Statute Changes Webinar](#)

14

## Hydrogeomorphic Classification System for Wetlands

A *Hydrogeomorphic Classification for Wetlands* (HGM for short) was added as an option for identifying "Wetland Type". HGM will be incorporated into WCA rules for implementation and Circular 39 removed.



HGM classifies wetlands based on their position in the landscape (depression, slope, floodplain, etc.) and their source of water (flooding from stream, lake bounce, seep, etc.).

15

Deepwater Habitats

Non-PW Deepwater Habitats Now Regulated by WCA

- Water bodies that are too deep to be wetlands (generally >8.2 feet deep) and are not big enough to meet the criteria for Public Waters (>2.5 ac in metro, >10 ac non-metro) are now subject to WCA regulations.
- This change is **effective August 1**. Most of these water bodies include a fringe of wetland that was already regulated by WCA.

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Streams?

Regulatory Authority for Non-PW Intermittent/Perennial Streams added to WCA

- BWSR can adopt rules that protect or mitigate impacts to watercourses that are upstream of Public Waters watercourses (drainage area >2 sq miles).
- This change is not effective until rules are adopted in a future rulemaking when the necessary resources and expertise are acquired to implement it.

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Streams?



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### Agricultural Exemption

The following provisions were removed from the agricultural exemption:

- Agricultural activities impacting a wetland that was planted, in a crop rotation, or set aside program in six of the 10 years prior to 1991.
- Agricultural activities impacting a wetland on ag pastureland remaining in the same use (restricted to certain wetland types and sizes).

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### Ag Exemption

The following provisions were added to the agricultural exemption:

- Impacts to wetlands on agricultural land labeled as prior-converted cropland (PC) by the USDA Natural Resources Conservation Service (NRCS).
- Impacts to wetlands on agricultural land resulting from drainage *maintenance* activities authorized by NRCS were labeled as farmed wetland (FW), farmed-wetland pasture (FWP) or wetland (W).
- ❖ Labels must be identified on a "Certified" Wetland Determination.

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### Drainage Exemption

The following provisions were removed from the drainage exemption:

- Draining wetlands (certain type restrictions) in an unincorporated area on land that has been assessed drainage benefits for a public drainage system (with various requirements).
- Wetland impacts on lands that were planted with annually seeded crops, in a crop rotation, or set aside 8 of the last 10 most recent years.

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### Drainage Exemption

#### Maintenance/Repair Provision

Now, the "public" drainage maintenance exemption is the same as the "private" drainage maintenance exemption.

- What remains the same for public systems:
  - ✓ Drainage maintenance that drains wetlands that have existed for 25 years or less is still exempt.
- What changed for public systems:
  - ✓ Now all wetlands that have existed for more than 25 years will need to be evaluated for potential impacts, not just types 3, 4, and 5.

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### Utilities Exemption

- Previous exemption: impacts to wetlands resulting from the installation, maintenance, repair or replacement of utility lines meeting certain requirements including a ½ acre threshold.
- New exemption: requires that the project be authorized under a permit issued by the U.S. Army Corps of Engineers. The ½ acre threshold was eliminated.

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### De Minimis Exemption

WCA has a de minimis which exempts relatively small wetland impacts associated with a project. The threshold for this exemption varied by many factors. The exemption was changed as follows:

- Eliminated thresholds based on wetland "type" and location in the 11-county metro area.
- Clarifies that if project wetland impacts exceed the applicable de minimis threshold, all wetland impacts require replacement.
- Additional restrictions added to prevent dividing property to increase de minimis amounts.
- Eliminated previous restrictions related to the landowner's portion of the wetland and the cumulative area drained or filled since 1992.
- Thresholds were changed...more on that later.

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De Minimis Exemption

Splitting Projects to Gain Exemptions

- Previously, statute said that projects can't be split for the *sole* purpose of gaining exemptions. "*Sole*" was deleted. This means that projects can't be split to gain exemptions even if that was not the "sole" purpose of the split.

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Wetland Banking

Review and Comment Timelines

- As with all WCA decisions, a decision on a wetland bank plan must be made in compliance with Minnesota Statutes 15.99 which generally requires a decision within 60 days.
- Statute directs BWSR to establish review and comment period timelines in WCA rule for wetland banking projects. Once adopted, the review timelines would no longer be subject to MS 15.99.
- Does not apply to other WCA application types.

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LGRWRP

Wetland Replacement Responsibility – State Roads

- WCA requires that BWSR provide replacement for wetland impacts associated with public transportation projects meeting certain requirements, except for projects that Minnesota Department of Transportation (MnDOT) is responsible for.
- Statute now clarifies that MnDOT is responsible for wetland replacement on public transportation projects that occur on state roads, regardless of who the project sponsor or co-sponsor is.

27

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## More info

BWSR website WCA Rulemaking page: <https://bwsr.state.mn.us/wca-rulemaking>

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**SPECIAL PROJECTS**  
 Wetland Conservation Act Rulemaking  
 Wisconsin - Minnesota Wetland Functional Assessment Initiative  
 WCA Reauthorization  
 Minnesota Stream-Qualification Tool and Data Calculator  
 Waters of the U.S.

28

## WCA Rulemaking Page

- Includes link to State Register Request for Comments.
- Link to statute changes includes a written summary and narrated presentation.

### Wetland Conservation Act Rulemaking

Wetland Conservation Act Rulemaking

WCA Rulemaking Comments Received

Wetlands Minnesota Wetland Functional Assessment Initiative

The Minnesota Board of Water and Soil Resources (BWSR) is responsible for promulgation of the Wetland Conservation Act (WCA) Rules. The WCA Rules are codified in Minnesota Rules Chapter 6420 based on the standards and authorizations contained in state statute. WCA took effect with an interim program in 2002 and began operating under formally adopted rules in January 2004. The Legislature has passed numerous amendments to WCA since its original passage and the rules have undergone multiple revisions. The current WCA Rule was adopted in 2009 and multiple statute changes have occurred since adoption.

Rulemaking in Minnesota follows the procedures outlined in the Minnesota Administrative Procedure Act (MARA), Minnesota Statutes, Chapter 14. BWSR will utilize the Minnesota Rulemaking Statute as a procedural guide for WCA Rulemaking. The current WCA Rulemaking process started on January 26, 2022. An initial request for comments was published in the State Register. A supplemental request for comments was published on January 26, 2022. Another supplemental request for comments was published on the State Register on January 26, 2022. A final request for comments was published on the State Register on July 6, 2024 edition of the State Register.

This page contains information relating to WCA Rulemaking, WCA statistics, public comments, and information for wetland sector stakeholders. For more information on outreach associated with the 2024 statute changes, visit the [2024 WCA Statute Changes \(2024\)](#) page.

29

## Utility Exemption

- Utilities MS 103G.2241

A replacement plan for wetlands is not required for wetland impacts resulting from:

- new placement or maintenance, repair, enhancement, realignment, or replacement of existing utility or utility-type service, including pipelines, when wetland impacts are **authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act**
- **½ acre threshold was eliminated**
- Repair and updating existing septic systems to comply with local, state and federal regulations



30

### Exemptions – de minimis

- The de minimis exemption covers small impacts to wetlands typically used for driveways, culverts, small projects by landowners, etc.
- Very specific requirements depending on location in state, local area, shoreland, etc.

Table 1: Maximum de minimis exemption amounts for per MS 103G.2241 (Aug. 1, 2024)

Impacts to wetlands, excluding permanent and semipermanently flooded areas of wetland.	Presettlement area of state	Impact area up to (acres):	Impact area up to: (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	50 to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178
Within Shoreland Protection Zone, but beyond structure setback	Statewide	N/A	100
Within Shoreland Protection Zone and structure setback	Statewide	N/A	20 (100)
Impacts to permanent and semipermanently flooded areas of wetlands	Statewide	N/A	400

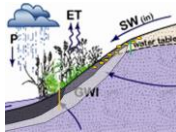
▲ Increased amount shown in parenthesis may be allowed if wetland is isolated from the public water, or if permanent water runoff retention or infiltration measures are established in proximity to the impact and approved by the shoreland management authority.

31

### Change to the how "wetland type" is defined in MN Statute

#### Wetland type.

"Wetland type" means a wetland type classified according to *Wetlands of the United States*, United States Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision or *A Hydrogeomorphic Classification for Wetlands*, United States Army Corps of Engineers (August 1993), including updates, supplementary guidance, and replacements, if any, as determined by the board.



Code	State	Agency	Wetland Type	Wetland Code	Wetland Name	Wetland Description	Wetland Code	Wetland Name	Wetland Description
1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10	10

32

### Hydrogeomorphic Method of Classifying Wetlands

Establishes classes based on geomorphology, hydrology and hydraulic functions of wetlands.

Classification Name	Definition
Lacustrine	Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water and is restricted to the margin of a depressional lake basin.
Riverine	Wetland occurs on a nearly level landform and lies along and is influenced by flooding from a stream, river or flow-through ditch.
Slope	Wetland occurs on a slope (generally >2%) with groundwater discharge as its primary source of hydrology.
Mineral Flat	Wetland occurs on a nearly level landform, is not significantly influenced by flooding from a stream, river or flow-through ditch and has predominantly mineral soils.
Organic Flat	Wetland occurs on a nearly level landform, is not significantly influenced by flooding from a stream, river or flow-through ditch and has predominantly organic soils.
Depression	Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water and is not associated with the margin of a depressional lake basin.

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### Classification System based on Functions

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### Parameters of HGM

- **Geomorphology- landscape position**
  - Where a wetland is situated and the shape of the landscape
- **Hydrology- water source and output**
  - Why the wetland is there
- **Hydraulics- hydrodynamics**
  - What it does

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### In MN, geomorphology is result of glacial geology

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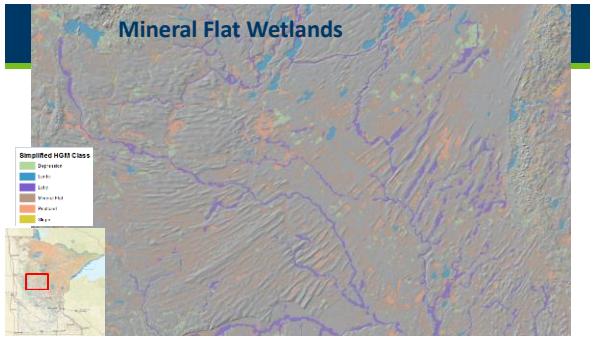
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### How is HGM going to be used in MN?

- Wetland Type
- NWI
- Functional Assessment
- Guidance for Submitting Wetland Delineations in MN



WI, MN Wetland Rapid Assessment Method User Guide

Wetland Type	Color
Emergent	Green
Upland	Blue
Upland	Purple
Shrubland	Orange
Upland	Yellow

**Wetland type.**

"Wetland type" means a wetland type classified according to *Wetlands of the United States*, United States Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision or *A Hydrogeomorphic Classification for Wetlands*, United States Army Corps of Engineers (August 1993), including updates, supplementary guidance, and replacements, if any, as determined by the board.

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### Deepwater Habitat



Deepwater aquatic habitats are areas that are permanently inundated at mean annual water depths >8.2 ft or permanently inundated areas less than or equal to 8.2 ft that do not support rooted-emergent or woody plant species

They have the follow diagnostic characteristics:

- 1) vegetation- no rooted-emergent or woody plant species are present in these permanently inundated areas
- 2) Soil- the substrate technically is not defined as a soil if the mean water depth is >8.2 ft or if it will not support rooted emergent or woody plants

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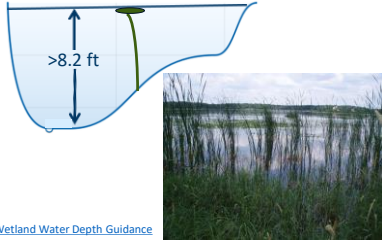
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### Limits of wetland (depth)- Deepwater Habitat

**Important Considerations for Wetlands**

- Must be capable of supporting rooted, emergent vegetation.
- Must have soil.

If the water is too deep or fast flowing, cannot support rooted vegetation and soil cannot form (unconsolidated bottom).



Wetland Water Depth Guidance

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### Permanently and Semipermanently flooded areas

- 2009 Rule language:
- Subp. 51. **Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland.** "Permanently and semipermanently flooded area of a ~~type 3, 4, or 5~~ wetland" means the portion of a ~~type 3, 4, or 5~~ wetland below the level where the water has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.



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### Permanently and Semipermanently flooded areas- Circular 39 & Eggers & Reed

	Eggers & Reed
1	Seasonally Flooded Basins
1	Floodplain Forests
2	Sedge Meadows
2	Fresh (wet) Meadows
2	Wet to Wet-Mesic Prairies
2	Calcareous Fens
3	Shallow Marsh
4	Deep Marsh
5	Shallow, Open Water
6	Shrub-Carr
6	Alder Thicket
7	Hardwood Swamp
7	Coniferous Swamp
8	Open Bog
8	Coniferous Bog

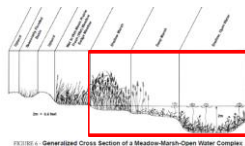


FIGURE 4. Generalized Cross Section of a Meadow-Marsh-Open Water Complex.

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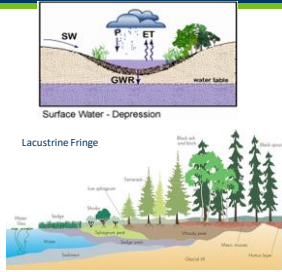
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### permanently and semipermanently flooded areas- Hydrogeomorphic Method

HGM Class	Typical Water Regimes
Mineral Flat	All regimes except permanently flooded (Saturated most of growing season)
Organic Flat	All regimes except permanently flooded (Saturated most of growing season)
Organic Flat	Saturated
Sloped	Saturated
Riverine	Temporary Flooded
Lacustrine Fringe	Semi permanently to permanently flooded (up to 8.2')
Depression	Seasonally Flooded
Depression	Saturated
Depression	Semi permanently flooded (up to 6')




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### Mapping flooded areas



- Nontidal**
- A Temporarily Flooded
  - B Seasonally Saturated
  - C Seasonally Flooded
  - D Continuously Saturated
  - E Seasonally Flooded / Saturated
  - F Semipermanently Flooded
  - G Intermittently Exposed
  - H Permanently Flooded
  - J Intermittently Flooded
  - K Artificially Flooded

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2024 Wetland Conservation Act (WCA) Amendments: Agricultural Exemptions

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2024 WCA Statute Changes  
Significant Amendments to Ag-Related Exemptions

Removed from Statute:

- X "6 of 10 prior to 1991"
- X Pasture land exemption
- X "8 of 10"
- X Drainage exemption for unincorporated land assessed drainage benefits

Added to Statute:

- ✓ "Prior Converted Cropland" (PC)
- ✓ NRCS authorized maintenance

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2024 WCA Statute Changes  
The New Agricultural Exemption

Replacement plan is not required for:

- impacts to wetlands on agricultural land labeled <sup>"PC"</sup> prior converted (PC) cropland and
- impacts to wetlands resulting from <sup>"Maintenance"</sup> drainage maintenance activities authorized by the Natural Resources Conservation Service, on areas labeled farmed wetland, farmed-wetland pasture, and wetland.

Applicable to both

The prior converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service.

Landowner is responsible to provide a copy of the final certified wetland determination (026 and CWD map) to, and allow the Natural Resources Conservation Service to share related information with, the local government unit and the board for purposes of verification.

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Guidance/Clarifying Rule Provisions

- Documentation requirements when LGU requires verification
- Landowner burden of proof
- Qualification criteria for Prior Converted Cropland (PC)
- Prohibition on impacts to other wetlands from drainage maintenance activities on FW/FWP/W that involve relocation of any part of the system
- Ag Drainage Maintenance Exemption – What is "authorized"?

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Agricultural Exemption –  
Administration and Applicability

- Not a joint program (WCA/Farm Program) exemption.
- Current or past farm program participation not required.

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**General Verification Requirements**  
 "...must be labeled on a valid final certified wetland determination ..."

**m** BOARD OF WATER AND SOIL RESOURCES

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**Documentation Requirements for LGU Verification**

- When required by the LGU... for purposes of verifying qualification for the exemption...it is the responsibility of the owner or operator of the land to provide:
  - a copy of the final certified wetland determination, and
  - any other information necessary to **demonstrate** qualification...

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**Certified Wetland Determination (CWD) Requirements**

- Required for verification: CWD Map and signed CPA-026.
- As per April 2024 NRCS guidance, certified if:
  - Issued on or after July 3, 1996.
  - Issued before July 3, 1996, AND was appealed and NRCS conducted a site visit in response to the appeal.
- "Issued" = signature/date
- "Final" 30 days after receipt by person, or upon issuance of final technical determination (FTD) in response to an appeal.

55

**A Common Prior Form Version**

United States Department of Agriculture | Natural Resources Conservation Service | NRCS-CPA-026 9/2012

**HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION**

Name: J-S Farmstead Holdings GP | Address: 18 Commerce KY Unit 18 | Address: WCA 98000 | Request Date: 6/15/2016 | County: Red Lake | Ref Label: 1802 | FSA Farm No: 3833

**Section II - Wetlands**

Field# | Wetland Label | Crosscut Area | Acres | Determination Date | Certification Date

13	A/W	0.1	6/26/2017	7/26/2017
15 A	W	0.1	6/26/2017	7/26/2017
15 B	W	0.1	6/26/2017	7/26/2017
15 C	W	0.1	6/26/2017	7/26/2017
16	W	64.8	6/26/2017	7/26/2017
16 A	W	0.2	6/26/2017	7/26/2017

Signature: [Signature] | Date: 6/26/2017

**New Form Version**

United States Department of Agriculture | Natural Resources Conservation Service | NRCS-CPA-026 9/2012

**CERTIFIED WETLAND DETERMINATION**

1. Name: J-S Farmstead Holdings GP | 2. Location/County: Red Lake

3. Address: 18 Commerce KY Unit 18 | 4. Address/County: Red Lake

5. Request Date: 6/15/2016 | 6. FSA Farm No: 3833

7. Report Date: 6/15/2016 | 8. FSA Field No: 1802

Field#	Label	Determination Year	Year	Average
1	PCW	2016	2016	1.00
2	FW	2016	2016	1.00

Signature: [Signature] | Date: Monday, August 19, 2024

56

**Certified Wetland Determination – Additional Considerations**

- Letter of transmittal and/or appeal response may be helpful for additional verification of CWD and/or maintenance.
- CWDs do not expire and are not periodically updated.
- CWD in effect for so long as the area is devoted to an agricultural use, as determined by NRCS.
- TEP/LGU/Other parties do not have appeal rights.
- Some prior-version CPA-026 forms may indicate "Wetlands Not Certified" in the "Certification Date" column. **This column is not relevant.**

U.S. DEPARTMENT OF AGRICULTURE | NRCS-CPA-026 9/2012

**HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION**

Name: [Redacted] | County: West St. Clair | Request Date: 05/13/2016 | FSA Farm No: [Redacted]

**Section II - Wetlands**

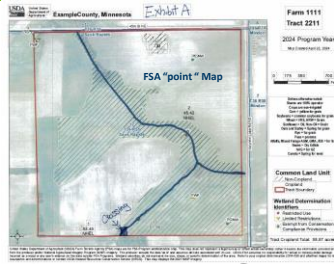
Field# | Label | Acres | Date | Certification Date

1	ECW	44.0	07/20/16	Wetlands Not Certified
2	ECW	12.0	07/20/16	Wetlands Not Certified
3	ECW	10.0	07/20/16	Wetlands Not Certified
40	EC	2.0	07/20/16	Wetlands Not Certified
40	EC	15.0	07/20/16	Wetlands Not Certified

57

### Certified Wetland Determination – Additional Considerations

FSA “point maps” are **not** Certified Wetland Determinations.




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### Agricultural Exemption – Applicable Labels




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### Provision 1: Prior Converted Cropland (PC) & Qualification Criteria

“...impacts to wetlands on agricultural land labeled prior-converted cropland...”




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### Prior Converted Cropland (PC) Qualification Criteria

To qualify, the area labeled **PC** OR **PC/NW**:

- Must not have supported woody vegetation on 12/23/1985, and,
- Must have been planted with an annually seeded crop at least once before that date.



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### Verifying PC Criteria Are Met

- **Woody vegetation:**
  - Aerial imagery showing that woody vegetation was not or could not have been present on 12/23/85.
- **Pre-12/23/85 cropping history:**
  - Aerial imagery showing planting of an annually seeded crop at least once before 12/23/85.
  - Other records verifying planting of an annually seeded crop on the area in question prior to 12/23/1985.



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### Example – PC Exemption

**Context:**

- ✓ Valid, final CWD w/label of PC.
- ✓ Wetland is on agricultural land.
- ✓ No adjacent wetlands.

**Outcome:**

- All impacts to Field 1 (PC) are exempt.

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### Example – PC + Adjacent Wetlands

**Context:**

- ✓ Valid, final CWD w/label of PC.
- ✓ Agricultural land.
- △ Wetland on adjacent land.

**Outcome:**

- Impacts to Field 1 are exempt.
- Impacts to adjacent wetland are exempt IE impacts to the adjacent wetland qualify for an exemption on their own.

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**Provision 2: FW, FWP and W Maintenance Exemption Implementation**

“...impacts to wetlands resulting from drainage maintenance activities authorized by [NRCS] on areas labeled farmed wetland, farmed-wetland pasture, and wetland.”

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65

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### What is “maintenance” under the USDA’s WC Provisions?

**Maintenance Exemption Fact Sheet**

When you check “YES” to question 7c on the AD-1026 form you are indicating that your drainage activity is maintenance. Maintenance of drainage ditches or tile systems that existed prior to December 23, 1985 is generally exempt under the USDA wetland compliance provisions as described below.

**Limitations and Requirements for Drainage Maintenance**

1. Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands ~~as they were used before December 23, 1985~~ as they were used before December 23, 1985. These actions could include but are not limited to:
  - Clearing of existing drainage ditches, without deepening or widening the ditch such that the drainage provided by the ditch is improved beyond what existed prior to December 23, 1985;
  - Repairing existing tile systems (including repair, rehabilitation and replacement) without increasing the depth, size or grade of the tile, such that drainage is improved beyond what was provided by the system that existed prior to December 23, 1985, and provided that previously existing tile is rendered ineffective.

“...entitled to farm their land as they did on or before December 23, 1985...”

*Barthel v. United States Department of Agriculture (1999)*

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What is "maintenance" under the USDA's WC Provisions?

- Based on effect.
- May involve system reconfiguration and/or relocation.
- Disabling and replacement or clean out to same size, same depth, etc., generally qualifies as maintenance.
- Activity is not limited to original specifications.
- May compensate for additional inputs that have occurred over time.
- A project that exceeds the best resulting conditions of the pre-85 drainage manipulation is generally not maintenance.

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What is "maintenance" under the USDA's WC Provisions?

- **Project-specific authorization not required.**
- **Project-specific authorization currently not given.**
  - Many older NRCS files may contain project-specific authorization.

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WCA Ag Drainage Maintenance Exemption  
Key Considerations

- Occurs to (not necessarily on) areas labeled W, FW, or FWP.
- Must be authorized under NRCS' Wetland Conservation (WC) provisions.
- May result in impacts to other wetlands (other labels, unlabeled wetlands, wetlands on non-agricultural land, etc.)

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WCA Ag Drainage Maintenance Exemption Requirements for Verification

The landowner must provide either:

- A. specific written confirmation from NRCS that the activity is authorized under the WC Provisions, OR
  - “Specific”: NRCS evaluated the same activity, with the same specifications, at the same location.

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WCA Ag Drainage Maintenance Exemption Requirements for Verification

- B. documentation sufficient to demonstrate that the maintenance activity does not exceed the hydrologic conditions
  - resulting from drainage manipulations that occurred anytime prior to December 23, 1985, and,
  - that exist during the wet portion of the growing season during normal climatic conditions.

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Verification Procedure

- Verify that wetland is labeled FW, FWP, or W on a valid, final Certified Wetland Determination.
- Verify that the landowner has provided information demonstrating that the maintenance activity is/would be authorized under NRCS’ WC Provisions.
  - Consider “same size, same depth”, with documentation of existing system, as maintenance.
- If maintenance involves relocation of a drainage system (e.g. from within to outside of the subject wetland), determine whether impacts to other wetlands may occur (draft rule)

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### WCA Ag Drainage Maintenance Exemption Relocation Language

Guidance/Draft Rule: Impacts to wetlands resulting from drainage maintenance activities that involve relocating any portion of the drainage system are not exempt under the Ag Drainage Maintenance exemption unless:

- those wetlands are labeled farmed wetland, farmed wetland pasture, or wetland on a valid, final certified wetland determination, and
- the impacts to those wetlands are also authorized by the Natural Resources Conservation Service.

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### Verification Documentation Examples

- As-built specifications or other documentation of existing system characteristics.
- Project-specific evaluation by NRCS.
- Documentation from NRCS file (e.g. – year indicated as “best drained condition”).
- Consultant report.
- Setback table printouts resulting from correctly entered data.

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### Drainage Maintenance Example – Tile Replacement

**Context:**

- CWD of **FW**.
- Existing tile to be disabled and replaced using same characteristics as existing system.
- Verification: As-built documentation provided.
- Proposal matches existing system capacity/effect.

**Outcome:**

- ✓ Impacts are exempt.



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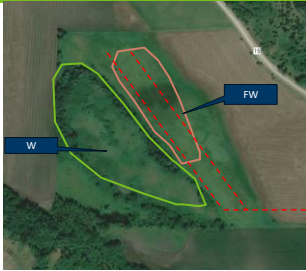
### Drainage Maintenance Example – Clearly Improved Scope and Effect

**Context:**

- CWD of **W** and **FW**.
- Existing tile (**red**) in FW replaced at same location and spacing; diameter increased by 2", depth by 2'.
- As-built documentation provided.

**Outcome:**

- × Exceeds maintenance on the FW, **AND**
- × Effects to other wetland (**W**) not exempt under agricultural exemption because activity in FW does not qualify as maintenance.



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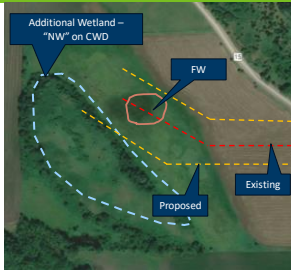
### Drainage Maintenance Example – Other Wetlands/Tile Relocation

**Context:**

- CWD of **FW** with remainder of area "NW".
- Additional wetland exists on "NW" area.
- Existing (**red**) tile in FW to be replaced (**yellow**) by relocation, at increased diameter and depth.
- NRCS-authorized maintenance on FW.
- No other exemption applies to additional (NW) wetland.

**Outcome:**

- × Impacts to other wetland result from relocation.
- × Impacts to other wetland are not exempt.
- △ Impacts to the other wetland would have been exempt if original tile had been replaced in-place.



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### QUESTIONS?

2024 Wetland Conservation Act (WCA) Amendments: Agricultural Exemptions

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**2024 Wetland Conservation Act (WCA) Amendments:  
Drainage Exemption**

*"A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems, including public drainage systems."*

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**2024 WCA Statute Changes  
Significant Amendments to Drainage Exemption**

Removed from Statute:

- X Wetland type for eligibility
- X Public Vs. Private Drainage
- X "8 of 10 most recent years" removed

Added to Statute:

- ✓ Clarifies repairs completed by public drainage authorities to prevent wetland drainage only apply to **public systems**

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**New Statute Language**

Subd. 3. **Drainage.**

- (a) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in **existence for more than 25 years**, resulting from maintenance and repair of existing drainage systems, including public drainage systems.
- (b) A public drainage authority may, as part of the repair of a **public drainage system**, as defined in section 103E.005, subdivision 12, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent the drainage of wetlands.

Statute 103E.005, subdivision 3. Drainage. (a) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems, including public drainage systems. (b) A public drainage authority may, as part of the repair of a public drainage system, as defined in section 103E.005, subdivision 12, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent the drainage of wetlands.

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### WCA Drainage

Any method for removing or diverting waters from a wetland

- Excavation of a ditch
- Tile Installation
- Filling
- Diking
- Pumping
- Diverted water
- Etc.



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### WCA Drainage Impact

A loss in quantity, quality, or biological diversity of a wetland *caused by drainage.*



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### Ditch Maintenance

**CONDITIONS:**

- Spoil must be placed and stabilized to minimize impacts.
  - remove
  - place on existing spoil
  - incorporate
  - side cast (new fill)
- Ditch must be stable and not degrade water quality downstream.



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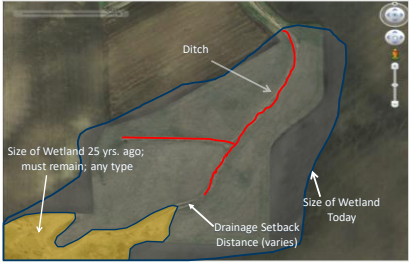
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### Drainage/Ditch Maintenance Illustration



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### Drainage Maintenance Project Review

#### What do we know?

- When was it dug/installed?
- Has it been maintained?
- How much sediment is planned for removal?
- Extent of the project?
- Do we have past records?
- Are there culverts in the system?
- Can the impacts be quantified?



#### Useful Resources

- Offsite data (NW1, Soils, Public Waters Maps, Lidar)
- Aerial Photos
- FSA Crop Records (if available)
- Lateral effect calculator
- Antecedent Precipitation Records
- Elevation data/As-builts
- Field review

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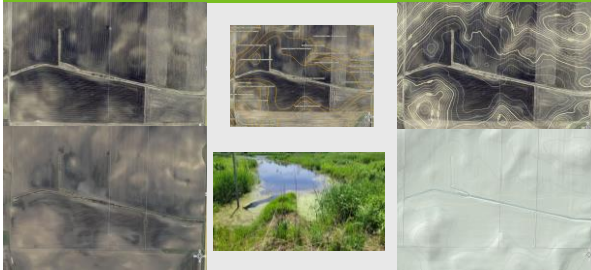
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### Putting it All Together



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### General Review Process for Drainage Projects

- 1) Is the activity drainage maintenance?
  - If yes, review Drainage Maintenance Exemption first.
- 2) Does activity drain wetlands in existence for more than 25 years?
  - If no, Drainage maintenance likely applies
  - If yes, Review for Ag Exemption
- 3) Has a valid final Certified Wetland Determination been provided?
  - If no, wetland impacts not exempt/requires replacement
  - If yes, review label and application of Provisions 1 or 2.




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Questions?




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