

WETLANDS

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List of MnDOT wetland contacts:

http://www.bwsr.state.mn.us/sites/default/files/2019-11/MnDOT_district_wetland_contacts_20190523_v1.pdf

The requirement to address wetland impacts in the environmental assessment and documentation process is driven by wetland regulations.

Wetlands are a subset of a larger resource category that is termed “Aquatic resources,” which also includes surface water features/water bodies that don’t meet the wetland definition (i.e. lakes, ponds, rivers, streams, channels, public ditches). To complicate matters, wetlands are sometimes located on the edges/fringes of the above-mentioned surface water features/water bodies. Wetlands located on the fringes of other aquatic features should be identified/labeled and quantified separately from the aquatic features that they fringe.

Guidance on other aquatic resources can be found in several other areas of subject guidance in the HPDP, namely “stream or water body modification” and “wild & scenic rivers.” Some of the agencies and regulations listed in the tables in this section involve these other aquatic resources.

PURPOSE

The purpose of this wetland guidance is threefold. First, this guidance should help the environmental document writer prepare a robust wetland section for the project document. Second, this guidance should help the project manager(s) manage their expectations regarding the timeline for their project. Third, this guidance should promote the assembly of the basic information required for the various permit applications that may be required later in project development. Although permit applications require more detail and specifics compared to what is required for an environmental document, it is prudent to anticipate the subsequent/eventual permit application and to assemble information that is available.

The purpose of the regulations and guidelines is to protect aquatic resources (including wetlands), while allowing reasonable development through fair, flexible and balanced permit decisions. This section provides guidance in documenting the avoidance and minimization of the direct or indirect loss of wetlands when a practicable alternative is possible that may achieve a no net loss of wetland quantity and quality. This section provides guidance in developing a wetland impact sequencing discussion that can be used in wetland permit applications. This section also provides guidance in developing supporting information and rationale for the preferred alternative being the least environmentally damaging alternative (LEDPA).

INVENTORY OF THE RESOURCE

Wetlands are defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” (40 CFR 230.3(t)) Due to their dependence on hydrology, wetlands are closely aligned with water resources. Wetlands can be located on the fringes of streams, rivers and lakes, therefore projects that affect wetlands may also affect waters and vice versa. The confluence of the three “wetland parameters” (hydrology, hydric soil and hydrophytic vegetation) dictates that a wetland is present, at least in a regulatory sense. Because the presence of the three parameters assigns wetland status to an area, it is important to identify all such areas as wetlands, even if they are the man-made or artificial in nature. As a result, areas of hydrophytic vegetation in the bottom of roadway ditches that themselves were excavated in uplands should be identified as “wet ditches” and quantified separately from natural wetlands.

Inventory of the wetland resource (including other aquatic features) is important because it forms the basis for all of the subsequent steps in documentation and permitting. The level of wetland inventory/assessment is dependent on the magnitude of the project and the timetable of the project.

Two-step approach. A two-step approach is recommended for large-scale projects with a range of alignment and/or corridor alternatives, whereby the wetlands are first inventoried using a Level 1 wetland delineation (described in the following paragraphs) and then inventoried again later in project development using a Level 2 wetland delineation. In these cases, the wetland delineation report should be reviewed and approved by the regulatory entities during selection of the preferred alignment/corridor.

One step approach. A one-step approach is recommended for small-scale projects with short timelines, whereby the wetlands are inventoried a single time using the appropriate level of wetland delineation. In these cases the wetland delineation and the permit application are

submitted for review in tandem. For assistance with determining which level of wetland delineation to use, please refer to the “Wetland Delineation Guidance index (see “helpful links” at the end of this section).

Wetland inventory – Level 1 wetland delineation.

Definition. A “Level 1 wetland delineation” is essentially an offsite mapping exercise, whereby a variety of mapped information is analyzed to identify the presence or absence of wetlands in the project area. “Guidance for Offsite Hydrology and Wetland Determinations” can be found on the Board of Water and Resources website (see “helpful links” at the end of this section). Please note that even though a Level 1 wetland delineation is defined strictly as an offsite exercise, field review of Level 1 wetland delineation areas is recommended by MnDOT OES. If a Level 1 wetland delineation has been field reviewed, make sure to make a note of that in project documentation.

Suggested uses for a Level 1 wetland delineation

- a) When using a 2-step approach. A Level 1 wetland delineation is appropriate early in project development and/or as a precursor for a subsequent Level 2. When a project is at the development stage where alignment and/or corridor alternatives are being analyzed, the information contained in a Level 1 wetland delineation should be adequate for the purpose of comparing the potential wetland impacts of the various location alternatives.
- b) When identification of the wetland boundary is not relevant.
 - When the activity incurring the wetland impact is completely surrounded by wetland, thus making the location of the wetland edge immaterial (e.g. replacement of a culvert in a location where the wetland borders the roadway and surrounds the end of the culvert).
 - When the wetland impacts are expected to be temporary.
 - When the Corps project manager has indicated that a Level 1 wetland delineation is sufficient.

As noted previously, because the confluence of the three wetland parameters in the bottom of ditches confers wetland status on the area from a regulatory perspective, project areas should be field-reviewed for “wet ditches” regardless of the results of a Level 1 wetland delineation (i.e., even in cases where the Level 1 wetland delineation shows that no mapped wetlands are present).

Wetland inventory – Level 2 wetland delineation.

Level 2 wetland delineations are typically a required component of wetland permit applications and are used to determine the wetland impacts associated with analysis of avoidance and minimization measures. Level 2 wetland delineations should be submitted to the Corps of Engineers for approval. For larger projects with an extended timeline, the Corps approval of wetland delineations may be obtained separately from - and prior to- development of the permit application.

Wetland inventory – Level 3 wetland delineation.

A Level 3 wetland delineation is merely the notation for using a combination of Level 1 and Level 2 (i.e., conducting a Level 1 for some wetlands and a Level 2 for others).

THRESHOLD CRITERIA

If a proposed project has the potential to impact any measurable amount of wetland, the anticipated wetland impacts must be addressed in project documentation. Wetland impacts include fill (i.e., conversion of wetland to non-wetland), excavation (to a depth greater than two meters), and conversion of wetland type (either through draining or alteration of vegetation). Impacts can be permanent or temporary (typically lasting between 90 and 180 days).

PREPARED STATEMENTS OF NO EFFECT

If the results of a Level 1 Wetland Delineation indicate that there are no wetlands within the project area, the following statement may be used:

“A Level 1 wetland delineation indicates that the project area does not contain any wetland resources.”

If the results of a Level 1 wetland delineation indicate that wetlands are present within the project area, but are outside the proposed construction limits, the following statement may be used:

“A Level 1 Wetland Delineation indicates that wetlands are present within the roadway right of way, however, the activities of the proposed project will not affect these areas.”

The above is an important distinction to make, especially in cases where wetlands are adjacent to a highway corridor but the project consists of discreet activities that will not occur in the vicinity of the wetlands. In such cases it is recommended to specify the types of activities and

their location to support the assertion that the project will not affect wetlands. This statement is best supported by attaching a map of the project area showing the location of the proposed activities relative to the wetlands in the project corridor.

STATEMENTS OF EFFECT

If a resource inventory suggests that the proposed project may affect wetlands, potential and/or proposed wetland impacts should be addressed in the project documentation via a wetland assessment. Each wetland assessment must describe the type and amount of wetland that might be affected and must contain a wetland impact sequencing process by addressing the three components: avoidance, minimization, and replacement of unavoidable impacts.

“Two Part Finding.” This finding is a statement acknowledging that the first two steps in the sequencing process (avoidance and minimization) have been accomplished. The standard suggested statement is below:

Conclusion Statement

Based upon the above factors and considerations, it is determined that there is no practicable alternative to the proposed construction in the identified wetlands, and that the proposed action includes all practicable measures to minimize harm to the wetlands.

RELATIONSHIP TO THE HPDP

(Considerations for environmental document preparation)

Class I Actions (EIS)

- If no wetland impacts are anticipated, use prepared statements of no effect.

Scoping Documents (SD) & Scoping Decision Document (SDD)

- Conduct early assessment of magnitude of potential wetland impacts -- assess need for further study.

Draft Environmental Impact Statement (DEIS)

- Conduct inventory of wetland resources (a Level 1 wetland delineation is recommended).
- Develop wetland assessment, which should include project purpose & need, as well as identifying location alternatives and avoidance and minimization measures.
- Identify wetland replacement strategy (e.g. use of wetland banking).
- Conduct early inter-agency coordination with Corps of Engineers, and WCA TEP as appropriate.

Public Hearing

- Include wetlands information as required by 23 CFR 777.

Draft Final Environmental Impact Statement (draft FEIS)

- Conduct a more comprehensive inventory of wetland resources using a Level 2 or Level 3 wetland delineation.
- Identify any changes in wetland impacts or sequencing measures.
- Assess wetland functions and values if requested (MnRAM is recommended).
- Conduct follow-up inter-agency coordination if project scope changes or if more than five years have elapsed since previous coordination.
- Conduct re-evaluation of wetland delineation if more than five years have elapsed since original field review. Wetland delineation approvals older than 5 years must be renewed.

FEIS

- Include summary statement with explanation of why the preferred alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA). Identify wetland replacement strategy (e.g., use of wetland banking).

Record of Decision (ROD)

- Include summary statement explaining why the preferred alternative is the LEDPA.
- Include summary statement on wetland impact and wetland replacement measures.

Class II Actions (Categorical Exclusions) and**Class III Actions- Environmental Assessment (EA)**

If no wetland impacts are anticipated, use prepared statements of no effect.

- Conduct inventory of wetland resources (a Level 1, 2 or 3 wetland delineation as appropriate).
- Develop wetland assessment, which should include project purpose & need, as well as identifying location alternatives and avoidance and minimization measures.
- Identify wetland replacement strategy (e.g., use of wetland banking).
- Conduct early inter-agency coordination with Corps of Engineers, involving the WCA Technical Evaluation Panel (TEP) members as appropriate. Case-by-case coordination is recommended for projects with greater wetland impact potential. Discussion of smaller projects may be best achieved through an annual meeting.
- Conduct follow-up inter-agency coordination if project scope changes or if more than five years have elapsed since previous coordination.

For Class III Actions (EA) include summary of wetland issues in the Finding of No Significant Impact (FONSI)

For Class I, II, and III Actions, ensure that all wetlands mitigation commitments are incorporated during detail design. When projects are delayed from their original schedule or when the scope of the project and its design elements change, additional wetland impacts may occur. Regardless, if more than five years have elapsed from the date the wetlands were last field reviewed, the wetlands should be re-visited in the field to insure that the projected impacts are still accurate.

AGENCIES INVOLVED

In Minnesota, the agencies involved in regulating wetlands are the U.S. Corps of Engineers (USACE), the Minnesota Department of Natural Resources (DNR), local governments through the Wetland Conservation Act (WCA), and the Watershed Districts. The Minnesota Board of Water and Soil Resources (BWSR) oversees the implementation of the Wetland Conservation Act (WCA). Tribal governments have authority over lands within their reservation boundaries.

U.S. Army Corps of Engineers (USACE)

The USACE has jurisdiction over and issues Section 404 permits for non-exempt discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands.

U.S. Fish and Wildlife Service (USFWS)/ U.S. Forest Service (USFS)

The USFWS and the USFS have authority over wetlands located on lands that they administer. When wetlands located on federal lands (wildlife and waterfowl refuges, national forests) are impacted, coordination with the appropriate federal agency (e.g., USFWS or USFS) is required. The USFWS and USFS review and comment on the project's environmental documentation when such wetlands are affected.

Minnesota Department of Natural Resources (DNR)

The DNR has jurisdiction over and issues permits for “public waters and public waters wetlands” as defined in Minnesota Statute 103G.005. Public waters are identified on DNR’s map of public waters and wetlands (PWI) for each county in Minnesota (see helpful links).

The Minnesota Pollution Control Agency (MPCA)

The MPCA is involved through application of its delegated authority under Section 401 of the Clean Water Act.

Wetland Conservation Act (WCA) Local Government Units (LGUs)

The WCA has jurisdiction over all wetlands that are not Public Water Wetlands. The WCA is implemented by Local Government Units (LGUs), with oversight provided by the BWSR. MnDOT is its own LGU on lands administered by the department (this includes areas under temporary easement during construction).

** Although there is no physical overlap in jurisdiction between DNR and the WCA, the DNR may waive their wetland jurisdiction to the WCA LGUs at their discretion, as allowed by WCA.

Watershed Districts

The watershed districts have jurisdiction over the water resources within their boundaries through legislative authority found in MS 103D.345 Subd. 5, as well as Chapter 8420.0200. Through Chapter 8420, watershed districts in the Metro Area have a WCA LGU role for non-state project applicants within their boundaries, however, they do not have WCA authority over state agency activities.

AGENCY REVIEW AND COORDINATION

Projects involving wetlands require coordination with regulatory agencies. The extent of that coordination can vary and may involve pre-application meetings early in project development, submittal of a finalized project document, or formal correspondence. The type and timing of coordination depends on the magnitude of the wetland impact and agency interest involved. Contact the MnDOT Office of Environmental Stewardship for assistance in determining the appropriate level of coordination for projects involving wetlands.

If more than five years have elapsed since the last inter-agency meeting, convening an update meeting should be considered. If the anticipated impacts or proposed replacement measures have not changed, notifying all interested parties with a summary of changes may suffice.

Responsibilities within MnDOT

MnDOT Districts (and entities within Central Office) are the project applicants, and as such, are responsible for submitting joint applications to the permitting agencies (USACE, DNR, MPCA and Watershed Districts). Some Watershed Districts use the joint application form, while others have developed their own forms. Each MnDOT district has designated staff that prepare permit applications; typically these are the Wetland Coordinators or Environmental Coordinators (see MnDOT Contacts map in helpful links section). The Office of Environmental Stewardship (OES) fulfills the WCA LGU responsibilities on behalf of MnDOT, and as such should receive copies of joint applications that are sent to the permitting agencies. In its role as WCA LGU, OES distributes Notices of Application, Notices of Decision and Public Road Project Notifications to the WCA TEP (BWSR, County SWCD, DNR WCA Contact and local LGU). The DNR WCA Contacts are not necessarily the same DNR staff that process DNR Public Waters permits (a list of the DNR WCA Contacts can be found on the BWSR homepage). The MnDOT Chief Environmental Officer (CEO) is the signatory for WCA Decisions regarding Replacement Plans and Bank Plans. All other WCA Decisions (Exemption, No Loss, Wetland Boundary & Type, and Sequencing) are signed by the Wetland Program Coordinator in OES. The Wetland Coordinator also determines the wetland replacement options in consultation with the Corps Liaisons.

PERMIT AND APPROVAL APPLICATION FORMS

Permit or Approval	Issuing Agency	Name of Form
Section 404 permit	USACE St. Paul District	Joint Application Form for Activities Affecting Water Resources in Minnesota <i>**please discard pages 1 & 2 and pages 9-11 before submitting</i>
Public Waters Work Permit Program Permit	DNR	MPARS on-line permitting
WCA Approval or WCA Notification	MnDOT (as LGU for activities on its R/W)	Joint Application Form (see above)

LEGAL BASIS

Description	Citation
Federal	
Federal Clean Water Act (CWA)	33 U.S.C. Section 404 b (1) and Section 401
Protection of Wetlands	Executive Order No. 11990 May 24, 1977, 42 F.R. 26961
Wetland Mitigation	Mitigation of Environmental Impacts to Privately Owned Wetlands 23 CFR 777
Wetland Preservation	Preservation of the Nation's Wetlands DOT Order 5660.1A
Rivers and Harbors	Rivers and Harbors Act of 1899 Section 10
State	
No-Net Policy in Regard to Wetlands	Governor's Executive Order 11-08 (continuation of original E.O. 00-02)
Wetland Conservation Act	Minnesota Statutes 103G.222 Minnesota Rules Chapter 8420
State Water Law (DNR and PCA)	Minnesota Statutes 103A through 103G Minnesota Rules Chapter 7050 and 7090
Local	
Watershed Districts	Minnesota Statutes 103D.345 Subd 5 Chapter 8420.0200

HELPFUL LINKS

Summary of wetland regulations in Minnesota:

www.bwsr.state.mn.us/wetlands/publications/MNRegulations.pdf

DNR Public Waters Inventory maps & information:

www.dnr.state.mn.us/waters/watermgmt_section/pwi/download.html

List of DNR WCA TEP contacts

http://www.bwsr.state.mn.us/wetlands/wca/DNR_TEP_contacts.pdf

Minnesota Local Road Authority Reference Guide

<http://www.dot.state.mn.us/stateaid/projectdelivery/environmental/section404-section10-permit-reference-guide.docx>

Wetland delineation guidance

http://bwsr.state.mn.us/wetlands/delineation/2015_Guidance_for_Submitting_Delineation_Reports_in_Minnesota.pdf

http://bwsr.state.mn.us/wetlands/wca/Wetland_Delineation_Method_Guidance7-1-10.pdf

http://bwsr.state.mn.us/wetlands/delineation/Guidance_for_Offsite_Hydrology_and_Wetland_Determinations.pdf

<http://bwsr.state.mn.us/wetlands/forms/Delineation-Review-Checklist.pdf>

Corps example exhibits:

*** This information should hopefully be available spring of 2019