

BENTON COUNTY – MN WETLAND CONSERVATION ACT WILDLIFE HABITAT EXEMPTION

Benton County's goal is to work with landowners to improve wetland wildlife habitat not simply make the habitat different. MN Rule 8420.0122 Subp. 10 requires certification of wildlife habitat projects by the Benton County Soil and Water Conservation District. When reviewing a wetland excavation project the county must assure that the excavation work results in a wildlife habitat improvement.

The following are **violations of State law**:

- Projects converting an existing wetland to non-wetland by excavation to depths exceeding 6 feet.
- Projects jeopardizing an existing wetland which provides moderate or high amount of vegetative diversity.
- Landscaping projects resulting in fill, rip-rap, fountains etc. in wetlands.
- Projects which put at risk an existing site which serves endangered, threatened or special concern species.
- The project site or timing of the project would promote the growth of exotic or invasive species.

The document titled: *Wildlife Habitat Improvements in Wetlands* found at www.bwsr.state.mn.us/wetlands/publications/index.html and the following pages provide guidance in developing a project to meet the requirements of the Soil and Water Conservation District and thus the Minnesota Wetland Conservation Act.

The application for a wildlife habitat exemption follows this document. Fees are required for exemptions and/or other permit processes, some which are due upon application. Incomplete applications will be returned to landowners.

Complete applications will be sent to the Department of Natural Resources (DNR) and Army Corp of Engineers (ACOE). These agencies may have independent regulations and permits that apply to your project. These agencies may contact you directly for additional information. Their numbers are as follows:

Minnesota DNR 218-828-2605
Army Corps of Engineers 651-290-5366

You may feel that your intentions/actions are compliant with applicable laws but please contact this office to ensure that no misunderstanding or violation of regulation occurs. Again feel free to contact this office at 320-968-5065 with any questions or concerns you may have regarding the application process.

Minnesota Local/State/Federal Application Forms for Water/Wetland Projects

USE THIS APPLICATION FOR ANY PROJECT AFFECTING A LAKE, RIVER, STREAM OR WETLAND,
INCLUDING:

Local Government Unit Approval Pursuant to Minnesota Wetlands Conservation Act (WCA)
Minnesota Department of Natural Resources (DNR) Permit to Work in Public Waters
Department of the Army Permit (33 CFR 325)

Note: The U.S. Army Corps of Engineers (COE) will forward application forms to the Minnesota Pollution Control Agency (MPCA) for processing if state water quality certification is required from the MPCA. You **do not** need to send this application to the MPCA.

This application packet includes :

Part I: The **BASIC APPLICATION** and the **COE APPLICATION** to be filled out by all applicants (see Instructions).

PART II: The **REPLACEMENT PLAN SUPPLEMENT** to be completed *only for* projects that impact wetlands and require a replacement plan for wetland mitigation. If you're **not sure** whether your project requires a replacement plan, call your Local Government Unit (LGU) or Soil and Water Conservation District (SWCD) office for guidance.

Do not proceed with your project until you have received all required approvals from your LGU, the DNR and the COE. If you wish to confirm the status of your application at any time, contact the agencies directly (see Instructions, page 2). **Proceeding with work before all required authorizations are obtained may result in fines or other penalties, and may include a requirement to restore the project site to original condition.**

If you have questions or need assistance with filling out these forms, contact your local SWCD office, your LGU, your Area DNR Waters office, or your COE field office (see Instructions, page 2).

If you believe that your project may be subject to watershed district, local zoning, or any other local regulations besides those of your LGU, contact those office(s) directly. If you are a **Federal Farm Program participant** and your project affects a wetland or water body on agricultural land, your eligibility for USDA benefits may be affected. Contact a Natural Resources Conservation Service office for further information.

A QUICK LOOK AT THE PROJECT APPLICATION PROCESS

Electronic files: Forms can be downloaded and filled out using Microsoft Word. Your input will be restricted to fill-in fields where users can enter text or check boxes. These areas appear gray on the screen, but not on the printed document.

Send copies of these completed application forms to your LGU, your Area DNR Waters office, and your COE regulatory office.

Any of the agencies may make initial contact with you to: a) inform you that it has no jurisdiction over your project; b) request additional information needed; or c) inform you of applicable fees.

When your application is considered complete and appropriate fees have been received (if requested) it will be distributed for appropriate review.

Following agencies' reviews, you will be informed if it has been approved, approved with changes or conditions, withdrawn, or denied.

For information about state laws, rules and regulations that direct this process go to the web site www.revisor.leg.state.mn.us. For information on U.S. Army Corps of Engineers regulations go to the web site www.mvp.usace.army.mil.

Instructions for Part I

HELP 1: Every applicant must fill out Section 1. The applicant is the person, agency, company, corporation, or other organization that owns, leases, or holds other legal rights to the land where the project is located. Indicate names of multiple applicants on a separate sheet.

HELP 1A: Fill out Section 1A only if you have designated an authorized agent. An authorized agent may be an attorney, builder, consultant, contractor, engineer, or any other person or organization designated by the applicant to represent him/her in this process. An agent is not required.

HELP 5: Purpose, description and dimensions of project: State briefly (in a sentence or two) what you propose to do and why it is needed. Also, describe whether your project will involve any of the following:

- Construction of structures, filling, draining, dewatering, removing, excavating or repair.
- Construction of an access path, bridge, culvert, dam, ditch, dock, driveway, riprap, road, sand blanket, shore protection, or tile line.
- Construction of any structures on fill, piles or a float-supported platform. If so, describe.
- Dredging or discharging (placing fill material) into a wetland or other water body (including the temporary placement of material). If so, explain the specific purpose of the placement of the material (such as erosion control) and indicate how it will be done (such as with a backhoe or dragline). If dredged material is to be discharged on an upland site, identify the location of the site.

Include an overhead view drawing showing the work to be undertaken and its relative location on the property. Show items such as property boundaries or lot dimensions; location and extent of shoreline, wetlands and water; location and dimensions and footprint of the proposed project, structure or activity (include length, width, elevation and other measurements as appropriate); points of reference such as existing homes, structures, docks or landscape features; indication of north; and location of spoil and disposal sites (if applicable). Hand drawn, computer generated or professionally prepared drawings are acceptable, as long as they contain all necessary information clearly, accurately, and in adequate detail. Please include specific dimensions whenever possible. You may also include photos, if you wish.

HELP 7: For information regarding adjacent landowners, contact the tax assessor where the project is to be developed.

HELP 8: If any part of the work has already been completed, describe the area already developed. Include a description of structures completed; any dredged or fill material already discharged (including type of material and volume in cubic yards); acres or square feet filled (if a wetland or other waterbody); and whether the work was done under an existing permit (if so identify the authorization, if possible).

HELP 9: Other permits, reviews or approval related to the project may include the following: conditional use permit; plat approval; zoning variance; National Pollutant Discharge Elimination System permit; state disposal system permit (includes dredged material disposal); watershed district/watershed management organization permit (stormwater, erosion, floodplain); environmental assessment worksheet/environmental impact statement; hazardous waste site; feedlot permit; groundwater appropriation permit; or county/township driveway/road permit. Are you aware of any archeological or cultural resource determinations or surveys completed concerning the project or replacement site by the State Historic Preservation Office (SHPO) or others? If yes, please explain on a separate sheet or attach a copy of any determinations or surveys.

Final Checklists (Part I)

- Have you completed all of Part I (Page 1), plus the Federal application (Page 2)?
- Did you (and your agent, if applicable) sign Section 10 on page 1?
- Have you signed the Application for the Department of the Army Permit (Page 2) to seek Federal authorization of your project?
- Have you included the necessary attachments for Part I?

Attachments must include:

- Site Locator Map (Section 3)
- Type of Project (Section 4) (if additional space was needed)
- Overhead View of Project (Section 5 and HELP 5)
- Project Purpose, Description and Dimensions (Section 5) (if additional space was needed)

Attachments may also include:

- Applicant Contact Information (HELP 1) (if additional space was needed)
- Project Location (Section 3) (if additional space was needed)
- Project Alternatives (Section 6) (if additional space was needed)
- Photographs
- Adjoining Property Owners (Section 7) (if additional space was needed)
- Work Already Completed Section (Section 8) (if you answered YES)
- State Historic Preservation Office determination or survey

Submitting Your Application

Make three copies of the entire application and all attachments. Keep the original, and mail a complete copy of your application to each of the local, state, and Federal entities listed below. Be sure to include Part I and all attachments with each application.

LOCAL: Send to the appropriate Local Government Unit (LGU). If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

STATE: Send to your Area DNR Waters office, attention Area Hydrologist. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the DNR website (www.dnr.state.mn.us) to locate the Area Hydrologist for your location, or contact a Regional DNR office:

NW Region:

2115 Birchmont Beach Road N.E.
Bemidji, MN 56601
Phone: 218-755-3973

NE Region:

1201 East Highway 2
Grand Rapids, MN 55744
Phone: 218-327-4416

Central Region:

1200 Warner Road
St. Paul, MN 55106
Phone: 651-772-7910

Southern Region:

261 Highway 15 South
New Ulm, MN 56073
Phone: 507 359-6053

FEDERAL: Send to the appropriate U.S. Army Corps of Engineers regulatory field office:

Brainerd:

U.S. COE, Regulatory Branch
10867 E. Gull Lake Drive N.W.
Brainerd, MN 56401-9051
Phone: 218-829-8402

St. Paul:

U.S. COE, Regulatory Branch
Army Corps of Engineers Centre
190 5th Street East
St. Paul, MN 55101-9051
Phone: 651-290-5375

La Crescent:

U.S. COE, Regulatory Branch
1114 South Oak Street
La Crescent, MN 55947-1338
Phone: 507-895-8059

Two Harbors:

U.S. COE, Regulatory Branch
1554 Highway 2, Suite 2
Two Harbors, MN 55616
Phone: 218-834-6630

WEB SITES: BWSR: www.bwsr.state.mn.us U.S. ACOE: www.mvp.usace.army.mil DNR: www.dnr.state.mn.us MPCA: www.pca.state.mn.us

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

For Internal Use Only

Application No.

Field Office Code

Date Initial Application Received

Date initial Application Deemed Complete

PART I: BASIC APPLICATION

"See HELP" directs you to important additional information and assistance in Instructions, Page 1.

1. LANDOWNER/APPLICANT CONTACT INFORMATION (See Help 1)

Name: Phone:

Complete mailing address:

1A. AUTHORIZED AGENT (See Help 1A) (Only if applicable; an agent is not required)

Name: Phone:

Complete mailing address:

2. NAME, TYPE AND SIZE OF PUBLIC WATERS or WETLANDS IMPACTED (Attach Additional Project Area sheets if needed)

Name or I.D. # of Waters Impacted (if applicable; if known):

(Check all that apply): Lake River Wetland type 1 1L 2 3 4 5 6 7 8

Indicate size of entire lake or wetland (check one): Less than 10 acres (indicate size:) 10 to 40 acres Greater than 40 acres

3. PROJECT LOCATION (Information can be found on property tax statement, property title or title insurance):

Project street address: Fire #: City (if applicable):

¼ Section: Section: Township #: Range #: County:

Lot #: Block: Subdivision: Watershed (name or #)

Attach a simple site locator map. If needed, include on the map written directions to the site from a known location or landmark, and provide distances from known locations. Label the sheet *SITE LOCATOR MAP*.

4. TYPE OF PROJECT: Describe the type of proposed work. Attach *TYPE OF PROJECT* sheet if needed.

5. PROJECT PURPOSE, DESCRIPTION AND DIMENSIONS: Describe what you plan to do and why it is needed, how you plan to construct the project with dimensions (length, width, depth), area of impact, and when you propose to construct the project. **This is the most important part of your application. See HELP 5 before completing this section; see What To Include on Plans (Instructions, page 1).** Attach *PROJECT DESCRIPTION* sheet.

Footprint of project: acres or square feet drained, filled or excavated.

6. PROJECT ALTERNATIVES: What alternatives to this proposed project have you considered that would avoid or minimize impacts to wetlands or waters? List at least **TWO** additional alternatives to your project in Section 5 that avoid wetlands (one of which may be "no build" or "do nothing"), and explain why you chose to pursue the option described in this application over these alternatives. Attach *PROJECT ALTERNATIVES* sheet if needed.

7. ADJOINING PROPERTY OWNERS: For projects that impact more than 10,000 square feet of water or wetlands, list the complete mailing addresses of adjacent property owners on an attached separate sheet. (See **HELP 7**)

8. PORTION OF WORK COMPLETED: Is any portion of the work in wetland or water areas already completed? Yes No. If yes, describe the completed work on a separate sheet of paper labeled **WORK ALREADY COMPLETED**. (See **HELP 8**)

9. STATUS OF OTHER APPROVALS: List any other permits, reviews or approvals related to this proposed project that are either **pending** or **have already been approved or denied on a separate attached sheet**. See **HELP 9**.

10. I am applying for state and local authorization to conduct the work described in this application. I am familiar with the information contained in this application. To the best of my knowledge and belief, all information in Part I is true, complete, and accurate. I possess the authority to undertake the work described, or I am acting as the duly authorized agent of the applicant.

Signature of applicant (Landowner)

Date

Signature of agent (if applicable)

Date

This block must be signed by the person who desires to undertake the proposed activity and has the necessary property rights to do so. If only the Agent has signed, please attach a separate sheet signed by the landowner, giving necessary authorization to the Agent.

The public burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT: Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, 33 USC 1413, Section 103. Principal purpose: Information provided on this form will be used in evaluating the application for a permit. Routine uses: This information may be shared with the Department of Justice and other Federal, state, and local government agencies. Submission of requested information is voluntary; however, if information is not provided, the permit application cannot be evaluated nor can a permit be issued.

ITEMS 1 THROUGH 4 TO BE FILLED IN BY THE CORPS

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
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YOU DO NOT NEED TO COMPLETE ITEMS 6-10 and 12-25 in the SHADED AREAS.

All applicants must complete non-shaded items 5 and 26. If an agent is used, also complete items 8 and 11. This optional Federal form is valid for use *only* when included as part of this entire state application packet.

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required)
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6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
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7. APPLICANT'S PHONE NO.	10. AGENT'S PHONE NO.
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11. STATEMENT OF AUTHORIZATION (if applicable; complete only if authorizing an agent)

I hereby authorize _____ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE: _____ DATE: _____

12. PROJECT NAME OR TITLE (see instructions)	
13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)	
17. DIRECTIONS TO THE SITE	18. NATURE OF ACTIVITY
19. PROJECT PURPOSE	20. REASON(S) FOR DISCHARGE
21. TYPES OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS	
22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED	
23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES _____ NO _____ IF YES, DESCRIBE COMPLETED WORK.	
24. ADDRESSES OF ADJOINING PROPERTY OWNERS,	
25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION.	

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

Signature of applicant _____ Date _____ Signature of agent (if any) _____ Date _____

The application must be signed by the person who desires to undertake the proposed activity (applicant), or it may be signed by a duly authorized agent if the statement in Block 11 has been filled out and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up with any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

FOR LGU USE ONLY:

Determination for Part 1:

- No WCA Jurisdiction
- Exempt: No. ____ (per MN Rule 8420.0122)
- No Loss: ____ (A,B, . . . G, per MN Rule 8420.0220)
- Replacement required -- applicant must complete Part II

COMPLETE THE SECTION BELOW ONLY IF REPLACEMENT IS NOT REQUIRED:

Application is (check one): Approved Approved with conditions (conditions attached) Denied

Comments/Findings: _____

LGU official signature

Date

Name and Title

For Agricultural and Drainage exemptions (MN Rule 8420.0122 Subps. 1 and 2B), LGU has received proof of recording of restrictions (per MN Rule 8420.0115):

County where recorded

Date

Document # assigned by recorder

LGU official signature

Date

Minnesota Wetland Conservation Act

Benton County Wildlife Habitat Exemption Standards

The wildlife habitat excavation projects must meet the following requirements:

- **NO:** fountains, aeration, riprap shores or general landscaping
- Side slopes must be no steeper than 5:1 (horizontal to vertical) as averaged around the pond, side slopes of 10:1 or 15:1 are preferred. For naturally occurring slopes steeper than 5:1 maintain existing grade.
- Maximum depth will be five (5) feet with at least 25% less than 3.5 feet deep and 25% greater than 3.5 feet deep.
- Minimum surface area of water is 2,000 square feet.
- Shoreline will be irregular in shape, lending to bays and points.
- Pond should have undulating bottom, rather than flat to provide for a variety of water depths.
- Islands are prohibited as they serve as death traps for nesting waterfowl.
- Provide a 50-foot buffer in urban areas and 25-foot natural vegetation buffer in rural areas around the pond.

Handling Spoil Material:

- Remove spoil from the wetland area. The spoil may be removed off site, incorporated into adjacent annually cropped fields or to other areas of managed vegetation. The spoil material should be kept out of areas of concentrated flow, landscapes with greater than 4% slopes and any other wetland areas.

Upland Seeding: The spoil location site should be seeded immediately with non invasive species of, preferably, a warm season grass mix or a cool season grass mix such as alfalfa, clover, timothy, or orchard grass.

Buffer/Wetland Seeding: Any exposed earthwork within the wetland must be immediately seeded with an appropriate amount of a native wetland plants. At least two grasses or sedges and four forbs are recommended, examples include:

Grasses/Sedges: Prairie cord-grass
Canada bluejoint grass
Big bluestem
Red top
Fox Sedge

Forbs : Swamp milkweed
Blue Vervain
New England Aster
Marsh Aster
Joe-pye weed

The following documents will be provided for application, on to 8½ -by-11 paper or FSA Aerial Photo, to ensure requirements are met:

- Exact location of project on site map/Aerial photo
- Project plans diagramming the dimensions of the project
- Project plan diagramming the cross-sectional view of the excavated area
- Total square footage of excavated area
- Stake locations of proposed excavation and spoil placement on site

Signature of Applicant is concurrence with the standards of Benton County Wildlife Habitat Exemption

Applicant Signature

Date

Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals

Minnesota Interagency Wetlands Group
December 2000

Guidelines

All wetlands provide habitat for certain sets of wildlife species. Any alteration of the habitat is likely to improve the habitat for some species and degrade it for others. Activities authorized under the wildlife habitat exemption must improve the habitat overall, not just make it different. The Wetland Conservation Act (WCA) calls for achieving no net loss in biological diversity and increasing biological diversity by restoring or enhancing diminished or drained wetlands. Habitat exemption proposals should be evaluated in light of these goals, with consideration of biological diversity at various geographic scales.

In the absence of locally developed guidelines, soil and water conservation districts and local government units are encouraged to use the following when certifying and approving wildlife habitat exemption applications:

- X Excavations within wetlands should generally be confined to wetlands that have been previously degraded, particularly those invaded by exotic and/or invasive plants, such as reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), or cattail monotypes (often hybrid cattail *Typha x glauca*). Excavation should generally not be allowed in wetlands having a vegetative diversity rating of "moderate" or higher when evaluated using the Minnesota Routine Assessment Method For Evaluating Wetland Functions (MnRAM).
- X Exceptions to the previous guideline may be appropriate in areas having extensive wetlands that are missing habitat components for one or more wetland-dependent wildlife species that are known to inhabit the area, provided that populations of other wildlife species are not adversely affected. The post-project wildlife habitat rating should be higher than the pre-project rating when evaluated using the MnRAM.
- X Excavations in wetlands known to be utilized by state or federally listed endangered, threatened or special concern species should not be allowed unless the habitat will be improved for such species.
- X Where feasible, excavated material should be removed from the wetland to minimize the loss of wetland habitat. Small, artificial islands should be discouraged because they are usually ineffective at protecting nesting ducks from predation and tend to contribute to nuisance Canada goose problems.

- X The wildlife habitat exemption should not be used to authorize the placement of excavated material in wetlands for the purpose of constructing roads or trails through the wetland.
- X Excavated areas should have irregular shorelines (not square or circular). This increases the amount of shoreline per unit area and will increase waterfowl use by providing isolated areas for feeding and loafing.
- X Bottom contours should be undulating to produce variable water depths. Water depth in shallow areas should be 12 - 18 inches and 3 - 6 feet in the deepest areas. The excavated area should have variable, but generally shallow side slopes (no steeper than 5:1).

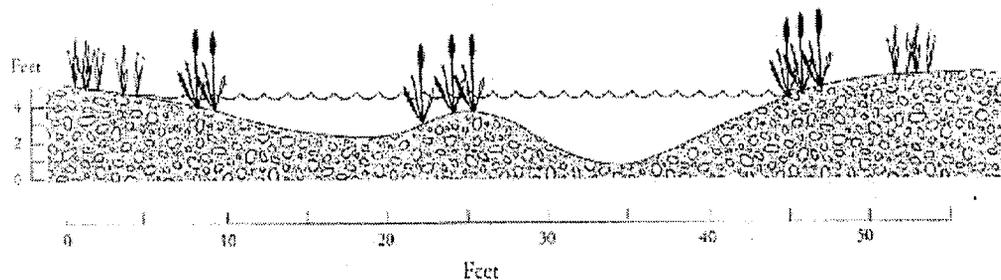


Figure 1. Cross section of wetland showing undulating bottom contours and shallow side slopes.

- X Excavated material deposited within the wetland should be vegetated immediately with a native seed mixture.
- X After operating in areas infested with exotic or invasive plant species, particularly purple loosestrife and reed canary grass, all equipment should be thoroughly cleaned to avoid transporting seeds or live vegetation to other areas. Excavated material that may be contaminated with seeds or propagules of exotic/invasive species should not be deposited within or adjacent to wetlands that have not been previously invaded.

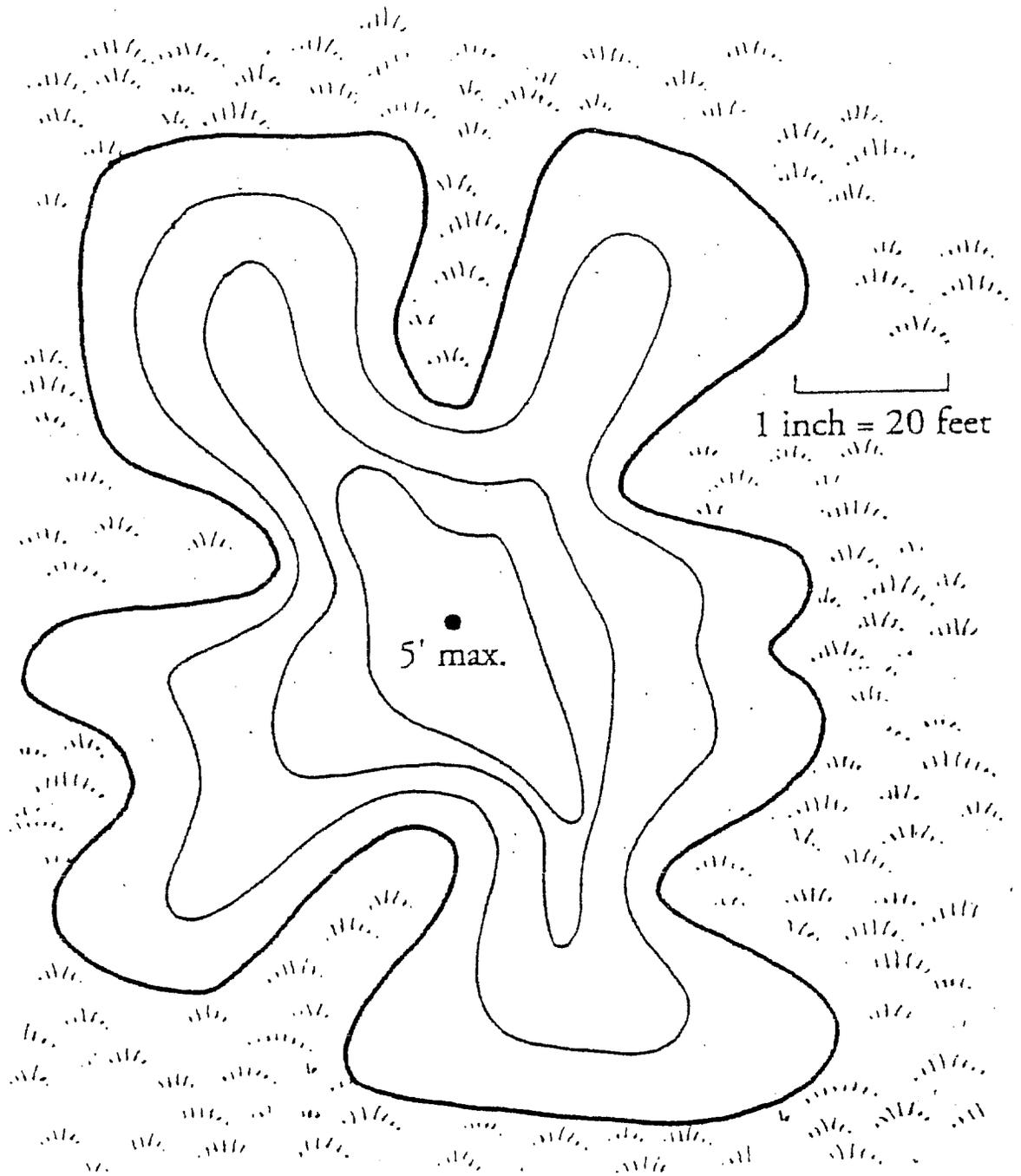


Figure 1. Topographic diagram of a good basin design; this design emphasizes shallow slopes and depths (each line represents one foot of depth), and good shoreline features. Adjacent uplands are seeded to native grasses.

Rationale

1.0 Introduction

The rules for implementing the Minnesota Wetland Conservation Act (WCA) establish the following exemption (Minn. Rules Ch. 8420.0122):

Subp. 10. Wildlife habitat. A replacement plan for wetlands is not required for:

(1) excavation or the associated deposition of spoil within a wetland for a wildlife habitat improvement project, if:

(i) the area of deposition, and excavation if within the permanently and semi-permanently flooded areas of type 3, 4, and 5 wetlands, does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

(ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

(iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

(2) duck blinds.

In order for a project to qualify for this exemption, it must meet the specified size criteria and it *must be certified by the county soil and water conservation district (SWCD) as a wildlife habitat improvement*. The purpose of this document is to provide guidance to SWCD staff on making habitat determinations. Ultimately, the goal is to ensure that projects authorized under the exemption are in fact improving wildlife¹ habitat and to achieve more consistency in the application of this exemption statewide.²

¹ For the purposes of this guidance, the term "wildlife" is used inclusively to refer to all indigenous wild species that utilize wetlands for all or part of their habitat requirements, including birds, mammals, amphibians and reptiles.

² Notes on application of the exemption: Wetland types 1, 2, 6, 7 and 8 – Excavation in these wetland types is not regulated under the WCA. Landowners can legally excavate any area of these wetland types without having to comply with the WCA exemption or replacement requirements *if the excavated material is completely removed from the wetland*. However, if a habitat improvement project involves deposition of fill (usually sidecasting of the excavated material), then the project is regulated under the WCA. To qualify for the habitat exemption, the area excavated is not limited, but the area *filled* must be less than five percent of the wetland area or 0.5 acre, whichever is less and the *entire* project (excavation and fill) should be evaluated and certified by the SWCD as a habitat improvement. Wetland types 3, 4, and 5 – Filling and excavation are both regulated under the WCA. The wildlife habitat exemption applies as long as the *filled and excavated* area combined is less than five percent of the wetland area or 0.5 acre, whichever is less. The entire project should be evaluated and certified by the SWCD as a habitat improvement. The WCA habitat exemption does not apply to Public Waters Wetlands regulated by the Department of Natural Resources.

2.0 Principles and Goals

A basic tenet of wildlife management is that wildlife populations are dependent on the availability of suitable habitat. It's also well known that different wildlife species have different habitat requirements (Weller 1978). For example, wood ducks are typically found in floodplain forests with an abundance of tree cavities while blue wing teal prefer prairie pothole wetlands with grassy upland cover. Furthermore, some species utilize a fairly broad range of habitats, while others have very specific habitat needs. Therefore, it's intuitive that any manipulation of habitat has the potential to benefit some species and harm others. In this context, it becomes somewhat problematic to determine whether an activity qualifies as a habitat *improvement*. Any habitat alteration is likely to improve habitat for some species and worsen it for others, making a determination of the overall effect somewhat subjective.

The subjectivity inherent in such determinations can be reduced to some extent by evaluating each proposal in light of an overall goal. The WCA establishes the following goals:

- (1) achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- (2) increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- (3) avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; (103A.201, Subd. 2)

The criteria that follow are based on these goals.

3.0 Criteria for Evaluating Wildlife Habitat Exemption Proposals

The purpose of the wildlife habitat exemption is to allow some wetland impact (filling for all wetland types and excavation for the permanent and semi-permanently flooded portions of Types 3, 4, and 5 wetlands) to occur without replacement as long as the net effect of the project is to improve wildlife habitat. If the intent of a project is something other than wildlife habitat improvement, such as improved aesthetics, or to gain access through the wetland, then the project does not qualify for the habitat exemption. Assuming that the intent is to improve wildlife habitat, the following criteria should be considered.

3.1 Factors Affecting Wetland Quantity

By definition, the exemption allows a certain amount of wetland loss, up to 0.5 acre of fill (which will usually be dredged material) in all wetland types or, in the case of Type 3, 4, and 5 wetlands, combined excavation and fill. Even though deposition of fill in the

wetland is allowed under the exemption, applicants should generally be encouraged to remove the dredged material to an upland site if feasible to avoid the loss of wetland habitat.

Some applicants may desire to deposit the dredged material in the wetland to create waterfowl nesting islands. When islands are located too close to shore, they are easily accessed by predators, leading to recurrent nesting failure. To provide optimal nesting habitat for ducks, islands should be between 400 and 1500 feet from shore and be located within or near a wetland complex (Lokemoen and Messmer, 1994). Islands constructed under the wildlife habitat exemption will rarely be able to meet these criteria and are therefore not desirable. Distance from shore is not as critical for Canada geese because they aggressively defend their nests from predators. However, in some parts of the state, populations of resident Canada geese have reached nuisance levels. In these areas in particular, nesting islands should be discouraged.

Excavated areas should not be more than two meters deep at normal water levels. Two meters is generally recognized as the depth beyond which rooted aquatic plants will not grow and is considered to be the cutoff between wetland and deep water aquatic habitats (Cowardin et al., 1979).

3.2 Factors Affecting Wetland Quality and Biological Diversity

Generally, wetlands that are biologically diverse are considered indicative of good wildlife habitat. However, this general rule must be tempered by a consideration of wetland type and geographic scale. Some wetland types are naturally more diverse than others. For example, fewer species of plants and animals are found in northern peatlands than in prairie potholes (Mitsch and Gosselink 1993). Yet, for the wildlife species that inhabit northern peatlands, it provides perfectly good habitat. Any alteration of this habitat, conversion to open water for example, would be disadvantageous for those species while perhaps improving it for other species. The net effect would be to make the habitat *different*, but not necessarily better.

It's also important to consider that biological diversity and the quality of wildlife habitat can be measured at different geographic scales. Consider a wetland that, by itself, does not support a wide diversity of wildlife species and appears to rank low in habitat value. However, the wetland may provide particular habitat components that are important for maintaining populations of certain wildlife species over a broader area. Also, if that wetland is the only habitat in the area for the few species it supports, it's contribution to regional biological diversity would be significant. Finally, some species require large areas of unbroken habitat to maintain successful breeding populations. For any of these circumstances, alterations to enhance the diversity *within* the wetland may result in a loss of diversity and a decline in habitat quality at a larger scale.

In light of these considerations, the application of the wildlife habitat exemption should generally be confined to wetlands that have been degraded such that they no longer exhibit the biological diversity that would typically be expected of a particular type of wetland in a specified geographic area. Prime candidates for application of the exemption are wetlands that have been invaded by exotic and/or invasive plants, such as reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), or cattail monotypes (which are often hybrid cattail, *Typha x glauca*). Such wetlands generally exhibit low plant species diversity and do not provide the quality of wildlife habitat that similar type wetlands having an undisturbed plant community would provide. These wetlands would typically have a vegetative diversity rating of "low" as measured by the Minnesota Routine Assessment Method For Evaluating Wetland Functions (MnRAM) (Minnesota Interagency Wetlands Group, 1998). Exceptions to this general rule might be justified in areas with extensive wetlands that are missing habitat components for one or more species that are known to inhabit the area. Even in these areas, excavation proposals should be carefully evaluated to ensure that other species of wildlife will not be adversely affected. Usually, the objective of excavation projects is to improve the habitat for waterfowl. The design guidelines at the beginning of this document reflect this goal, although if implemented properly should also benefit other species, including wading birds and some reptiles and amphibians. Desirable projects would generally be reflected in an improved wildlife habitat rating when evaluated using the MnRAM (Minnesota Interagency Wetlands Group, 1998).

Wildlife habitat exemption proposals should not be approved in wetlands known to be utilized by state or federally listed threatened and endangered species unless it is clear that the activity will improve the habitat. Blanding's turtles, a state threatened species whose range extends throughout much of the east central and southern portion of Minnesota, utilize a variety of wetland types, including shallow wetlands dominated by cattails and sedges (Piepgras, et al. 1998). It has also been observed that Type 6 shrub swamps are important overwintering habitat for Blanding's turtles (Piepgras, et al. 1998). The yellow rail, a state special concern species, primarily inhabits sedge meadows and fresh wet meadows (Coffin and Pfannmuller, 1988). Some SWCD offices have copies of the Minnesota Natural Heritage Program (NHP) database showing known locations of listed species. Additional information on the locations of listed species can be obtained from NHP staff at 651-296-8324.

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