

CARLTON COUNTY - THE WETLAND CONSERVATION ACT (WCA)

DEFINITION OF A WETLAND

Essentially, it must meet three criteria to be identified as a wetland: 1) The area must have mostly hydric soils, which are soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic (without oxygen) conditions; 2) The area must be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic (plant adapted to grow in water) vegetation typically adapted for life in saturated soil conditions; 3) Under normal circumstances, support a prevalence of hydrophytic vegetation. Descriptions and pictures of wetland types are in the “Wetland Information Guide,” which is available at the Carlton County Zoning and Environmental Services Office.

STATUTES AND RULES

The Wetland Conservation Act was first passed in 1991 as Minnesota Laws Chapter 354, as amended (codified, as amended, as Minnesota Statutes, section 103G.222-2373 and in other scattered sections). Rules were promulgated by the Minnesota Board of Water and Soil Resources in Minnesota Rules, chapter 8420, as amended.

SCOPE OF THE ACT

Draining, grading, filling and in some cases, excavating in wetlands is prohibited unless (a) the drain, fill, or excavation activity is exempt or (b) wetlands are replaced by restoring or creating wetland areas of at least equal public value. The overall goal is no net loss of wetlands.

The local government unit (LGU) has the primary responsibility for administering WCA and for making key determinations. Generally, the LGU is the city or county. Carlton County is the LGU except in the cities of Cloquet and Wright.

WCA does not supersede other regulations such as those of the Army Corps of Engineers (ACOE) or Minnesota Department of Natural Resources (MDNR). The combined application forms should be used to notify these agencies prior to commencing a project in or near wetlands.

EXEMPTIONS

An impact is exempt from replacement if it qualifies for any one of the listed exemptions. Persons proposing to conduct an exempt activity can contact the Carlton County Zoning and Environmental Services office to verify eligibility for an exemption. A landowner intending to impact a wetland without replacement, claiming exemption, may apply to the LGU for an exemption decision before beginning the activity to verify whether the proposed impact is exempt. A landowner who does not request a decision from the LGU and proceeds with the activity may be subject to enforcement action.

1. Agricultural activities. A replacement plan for wetlands is not required for certain agricultural activities.
2. Drainage. A replacement plan for wetlands may **or may not** be required for maintenance or repair of public or private drainage systems.
3. Federal Approvals. A replacement plan for wetlands is not required for activities authorized under section 404 of the federal Clean Water Act or section 10 of the Rivers and Harbors Act.
4. Wetland Restoration. A replacement plan for wetlands is not required for activities in a wetland restored or created for conservation purposes under a contract or easement providing the landowner has the right to drain the restored or created wetland.
5. Utilities; public works. A wetland replacement plan is not needed for specific types of utility placement, maintenance, repair, enhancement or replacement of utilities or utility-type work.
6. Forestry. A wetland replacement plan is not required for certain silvicultural activities.

7. De minimis. A replacement plan for wetlands is not required for draining, excavating, or filling the following amounts of wetlands as part of a project:
 - a) 10,000 square feet of a type 1, 2, 6 or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone (1,000 feet of a lake or 300 feet of a river).
 - b) 400 square feet of type 1, 2, 6, or 7 wetland, except for white cedar and tamarack wetland, outside of the building setback, but within the shoreland wetland protection zone.
 - c) 100 square feet of type 3, 4, 5, or 8, and white cedar and tamarack wetland outside of the building setback zone.
 - d) 20 square feet of wetland, regardless of type, inside the building setback zone.

For projects where any wetlands proposed to be impacted extend outside of the project property (multiple landowners), the applicable De minimis exemption amount is the lesser of the amount identified above, or 5% of the total wetland area within the project property, but in no case less than 400 square feet. The amounts listed above may not be combined on a project. A project is defined as a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the LGU. A project may not be combined into phases or components. When the total amount of impact exceeds the amount allowed under the applicable exemption, the impact is not exempt and the entire amount of impact must be replaced.

8. Wildlife habitat. A replacement plan for wetlands is not required for wildlife habitat improvement projects that meet certain requirements.

NO-LOSS DETERMINATIONS

A landowner can apply to the LGU (Carlton County) for a no-loss determination. Requests can be made to the LGU for activities that will result in no loss of wetlands. Typical requests for no-loss determinations include projects where the work will not impact a wetland and shallow excavation in wetland types 1, 2, 6, 7 or 8. Shallow excavation in wetland types 1, 2, 6, 7 or 8 are not considered a wetland impact as long as 80% of depth of the total excavated area is 4 feet or less, no draining of the wetland occurs, and no spoils or excavated materials (including brush and roots) are placed in the wetland.

CONTRACTOR RESPONSIBILITY FORM

WCA requires that an agent or employee may not drain, grade, excavate or fill a wetland without first obtaining a signed statement from the landowner that all permits have been obtained or are not required, and said statement is submitted to Carlton County Zoning and Environmental Services Office. Forms are available from Carlton County Zoning and Environmental Services Office and website.

REPLACEMENT PLANS

A landowner intending to drain, excavate, or fill a wetland who does not qualify for an exemption needs to obtain approval of a replacement plan from the LGU before draining or filling activities begin. Applications can be obtained from the Carlton County Zoning and Environmental Services office and website. A person who does not do so is subject to enforcement provisions in Minnesota Statutes, section 103G.2372.

Questions?

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