

4.0 Wetland Regulations

This section describes State and Federal regulations applicable to the management of wetlands on UMD properties, along with a description of the wetland permitting process. Impacts to wetlands include not only direct impacts such as filling, draining, and excavating, but also indirect impacts from stormwater inputs. Minnesota Rules Chapter 7050 and the Wetland Conservation Act (WCA) prohibit the direct discharge of pollutants to wetlands. *The objective of this section is to provide an outline for UMD on regulations applicable to the protection and use of wetlands on its properties, including wetland regulations, responsible regulatory agencies, and conditions under which the various regulations apply.*

4.1 State Wetland Regulations

4.1.1 Minnesota Wetland Conservation Act

The Minnesota Wetland Conservation Act was passed in 1991 and regulates draining, filling, and excavating in wetlands. The WCA is administered according to Minnesota Rules Chapter 8420 to implement the purpose of the act, which is to:

- Achieve no net loss in the quantity, quality, and biological diversity of MN's existing wetlands;
- Increase the quantity, quality and biological diversity of MN wetlands by restoring or enhancing diminished or drained wetlands;
- Avoid direct and indirect impacts from activities that destroy or diminish the quantity, quality, or biological diversity of wetlands; and
- Replace wetland values where avoidance of activities is not feasible and prudent.

The University of Minnesota (U of M) is the Local Government Unit (LGU) administering the WCA for UMD properties. The U of M is assisted with WCA administration by the Technical Evaluation Panel (TEP), which consists of representatives from the U of M, the South St. Louis Soil and Water Conservation District, and the Board of Water and Soil Resources. Since the U of M is the LGU for projects within their properties, it is suggested that recommendations be solicited from the TEP for all projects involving wetlands (even when the activity is exempt) to avoid last minute appeals or the appearance of a conflict-of-interest.

4.1.1.1 Exemptions

The WCA includes 10 categories of activities that are exempt from the regulations as described in Minnesota Rules 8420.0122 Exemption Standards. *While not required, written authorization for exempt activities is recommended.* There are 3 of these exemptions that are likely to be relevant for UMD properties. A summary of the activities covered by these exemptions is provided below:

4.1.1.1.1 Incidental Wetlands

A wetland replacement plan is not required for activities in wetlands created solely as a result of:

- Beaver dam construction;
- Blockage of culverts through roadways maintained by a public or private entity; or
- Actions by public or private entities that were taken for the purpose other than creating the wetland.

Specifically, impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements; and not as part of a wetland replacement process that may, over time, take on wetland characteristics, are also exempt. The difficulty with this exemption is often in providing evidence, to the satisfaction of the LGU, that the wetland was created in an area that was not historically wetland. This often requires a study by a wetland or soil scientist in conjunction with documentation of the purpose of construction and characteristics of the area when it was constructed. It is advised that written approval be obtained for projects in which this provision applies.

It should be noted in this section that, according to historic aerial photos and UMD records, the Fire Hall Pond and the Erik Clarke Pond were constructed as sedimentation ponds in areas that were historically *wetland*. These sedimentation ponds are both addressed in UMD's approved and active Storm Water Pollution Prevention Program and Plan, including plans for maintenance and dredging of the ponds. Prior to undertaking a project to maintain or dredge these ponds, discussions should be held with the LGU and the TEP.

Wetland 2, on the Main Campus, was created in an upland area (nonwetlands) solely for the purpose of effluent treatment and would be considered exempt from filling or dredging under WCA and CWA.

No determination was completed on Wetland 1 of the NRRI property as to the history of the drainage ditch. Excavation of this ditch would be regulated under WCA unless it can be proven that this ditch was constructed in an upland area for reasons specified above.

4.1.1.1.2 Utilities; Public Works

A wetland replacement plan is not required for some utility projects, including:

- Placement, maintenance, repair, enhancement or replacement of utility-type service if the impacts have been avoided and minimized to the extent possible and the project significantly modifies or alters less than 0.5 acre of wetlands.
- Activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland.
- Emergency repair or normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland.
- Normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland.
- Repair and updating of existing individual sewage treatment systems as necessary to comply with local, state and federal regulations.

4.1.1.1.3 De minimis

A wetland replacement plan is not required for draining, excavating, or filling the following amount of wetlands as part of a project:

- 400 square feet of Type 3, 4, or 5 wetlands or any wetland types within a shoreland protection zone (there are some limited circumstances where this amount may be increased to 1,000 square feet, per Minnesota Rule 8420.0122, Subp. 9(5)).
- 10,000 square feet of Type 1, 2, 6, or 7 wetlands, excluding white cedar and tamarack wetlands, outside of a shoreland protection zone, and are not fringe areas of Type 3, 4, or 5 wetlands.

4.1.2 Public Waters Work Permit Program

The Public Waters Work Permit Program regulates activities that affect the course, current, or cross-section of public waters as implemented by Minnesota Rules Chapter 6115. The MnDNR is responsible for regulating Public Waters. Public waters under the jurisdiction of this program have been identified and mapped within each county in the state and the map covering UMD properties is available at: http://files.dnr.state.mn.us/waters/watermgmt_section/pwi/STLO2OF7.pdf.

There appear to be six Public Waters located within or directly adjacent to UMD properties:

- East Branch Amity Creek – passes through and along the south edge of the Research and Field Studies Center;
- Tributary to Amity Creek – appears to pass through the eastern portion of the Research and Field Studies Center;
- Tributary to Amity Creek – passes through the southwestern corner of the Research and Field Studies Center;
- West Branch of Tischer Creek – follows the north and east borders of the Main Campus;
- Tischer Creek – passes through the southwest portion of the Glensheen property;
- Lester River – discharges into Lake Superior along the edge of the Limnology property; and
- Lake Superior (16-1P) – abuts the Glensheen and Limnology properties.

The Public Waters Work Permit Program rules are extensive and should be consulted for activities that may affect any of the designated Public Waters described above.

4.2 Federal Wetland Regulations

4.2.1 Section 404 of the Clean Water Act

The other major wetland law in Minnesota is Section 404 of the federal Clean Water Act (33 U.S.C. 1344) administered by the U.S. Army Corps of Engineers (Corps), which regulates the discharge of dredge or fill material into navigable waters, and waters hydraulically connected to or adjacent to navigable waters, including wetlands. In Minnesota, this program is administered through a series of General Permits, Letters of Permission, and Individual Permits depending on the type of activity and magnitude of wetland impacts.

4.2.1.1 Individual Permits

Individual permits are required for projects with wetland impacts exceeding 3 acres. A permit application must be submitted and a 30-day public notice is required, which is also sent to various state and federal agencies, including: the U.S. Fish and Wildlife Service (USFWS), the U.S.

Environmental Protection Agency (USEPA), the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Natural Resources (MnDNR), and the Coastal Zone Management (CZM) group within the MnDNR. After the comment period is over, the Corps conducts a public interest review and environmental assessment to determine if the project is contrary to the public interest. In conducting the public interest review, the Corps must ensure that activity will not adversely affect threatened or endangered species or destroy or adversely modify the critical habitat of such species. In addition, the Corps must ensure compliance with Section 106 of the National Historic Preservation Act. Activities that trigger an Individual Permit will typically be required to provide compensatory wetland mitigation in an amount that equals or exceeds the area of impact.

4.2.1.2 Letters of Permission LOP-05-MN

A Letter of Permission is an abbreviated Individual Permit for public and private projects that result in less than 3 acres of wetland impacts or public road projects that result in less than 5 acres of impacts. The Public Notice with procedures for obtaining a Letter of Permission is included in Appendix C and generally described here. A permit application must be submitted and a public notice of the project will be posted on the Corps' website. For all projects affecting more than 0.5 acres of wetlands, threatened or endangered species, critical habitat, or wetlands within 300 feet of state designated trout streams; the notification will also be sent to various state and federal agencies including: the USFWS, USEPA, MPCA, MnDNR, and CZM. After the comment period is over, the Corps conducts a public interest review and completes an environmental assessment to determine if the project is contrary to the public interest. In conducting the public interest review, the Corps must ensure that activity will not adversely affect threatened or endangered species or destroy or adversely modify the critical habitat of such species. In addition, the Corps must ensure compliance with Section 106 of the National Historic Preservation Act. Activities that trigger a Letter of Permission may be required to provide compensatory wetland mitigation in an amount that equals or exceeds the area of impact.

4.2.1.3 General Permits RGP-03-MN

The Corps' General Permit RGP-03-MN authorizes the discharge of dredge or fill material into waters of the U.S. including jurisdictional wetlands, for specific activities. The Public Notice with procedures for use of the General Permit is included in Appendix D. The General Permits generally does not cover activities that will:

- Permanently alter over 500 linear feet of a natural watercourse by channelization or diversion,
- Is part of a project that will divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin,
- Affect state designated trout streams or wetlands within 300 feet of a designated trout stream, or
- Impact federally endangered species or designated critical habitat of the grey wolf or piping plover.

The permit covers 16 specific categories of activities that generally allow between 400 square feet and 0.5 acre of wetland impacts. Compensatory mitigation is required for impacts exceeding 400 square feet within a shoreland protection zone or impacts exceeding 10,000 square feet outside of a shoreland protection zone. Even though certain activities are authorized without written authorization, it is advised to obtain written authorization for all activities affecting jurisdictional wetlands.

4.2.2 Section 401 of the Clean Water Act

Section 401 Water Quality Certification has historically been administered by the MPCA and is required for all projects that require a permit from the Corps. The MPCA has waived Section 401 Certification for all projects authorized under LOP-05-MN and generally waives Section 401 Certification for most projects requiring an Individual Permit from the Corps. The Corps notifies the MPCA of Individual Permit applications during the notification process, at which time, the MPCA will typically determine whether or not they will waive Section 401 Certification.

4.3 Wetland Permitting Process

Following are the sequential steps that should be followed in planning a project that may affect wetlands:

1. Determine land extent encompassed by the proposed project;
2. Consult the UMD Wetland Inventory Maps to determine if wetlands are located within or adjacent to the project;
3. If wetlands are present near the project, have a wetland scientist conduct a formal wetland delineation within the project area and adjacent areas and conduct an evaluation of the origin and use of the wetlands, the jurisdictional status of the wetlands, and a determination of whether or not any regulatory exemptions may apply;
4. Prepare a wetland delineation report that maps the extent of wetland resources and documents the methods and findings of the formal delineation. Submit this report to the TEP and Corps;
5. Hold a field meeting with the TEP and Corps to review the field wetland delineations, the jurisdictional status of the wetlands, the applicability of any regulatory exemptions, and the preliminary project plans and regulatory implications;
6. Prepare a wetland replacement plan and permit applications concurrent with developing project plans including a discussion of the project purpose and a description of the project. The wetland replacement plan must include an analysis of at least two alternative project configurations that would avoid wetland impacts with a discussion why each alternative is not feasible or prudent. The wetland replacement plan should also discuss why the proposed alternative is the only feasible and prudent project configuration and any means employed that minimize wetland impacts. If required, the application should include compensatory mitigation as required by the various state and federal regulations;
7. Submit the wetland replacement plan and permit applications to the TEP, MnDNR, and Corps along with a project notification. Coordinate a follow-up meeting to discuss the submittals.
8. Solicit a TEP findings-of-fact to use as a basis for making a permit decision.
9. Issue a Notice of Decision within 10 days of making a decision and send the notice to the TEP, MnDNR and Corps.

4.3.1 Agency Contacts

While the specific individuals involved in the various regulatory programs may change over time, the addresses should not change. The listed agency contacts can be consulted for regulatory guidance on specific questions that may arise at any time during project planning and permitting.

4.3.1.1 Wetland Conservation Act Contacts

Technical Evaluation Panel members include:

Mark Nelson
Board of Water and Soil Resources
394 South Lake Avenue
Room 403
Duluth, MN 55802
218-723-4923
Fax: 218-723-4794

R.C. Boheim
South St. Louis Soil and Water Conservation District
215 North 1st Avenue East
Room 301
Duluth, MN 55802
218-723-4629
Fax: 218-723-4731

MnDNR for Public Notice

Dave Holmbeck
Minnesota Department of Natural Resources
Ecological Services
1201 East Highway 2
Grand Rapids, MN 55744-4010
218-999-7805
Fax: 218-999-7877

4.3.1.2 MnDNR Public Waters Work Permit Program

Patricia Fowler
Area Hydrologist
Minnesota Department of Natural Resources
1568 Highway 2
Two Harbors, MN 55616
218-834-6620
Fax: 218-834-6635

4.3.1.3 Section 404 of the Clean Water Act

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