

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 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 Planning and Zoning 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. For the purposes of this exemption, a public drainage system means a drainage system as defined in Minnesota Statutes, section 103E.005, subdivision 12 and any ditch or tile lawfully connected to the drainage system.
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 the excavation is not greater than 2 meters, 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 Planning and Zoning Office. Forms are available from Carlton County Planning and Zoning.

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. Applications can be obtained from the Carlton County Planning and Zoning office. A person who does not do so is subject to the enforcement provisions in Minnesota Statutes, section 103G.2372.

If landowners have any questions, please call me at 218-384-9178.

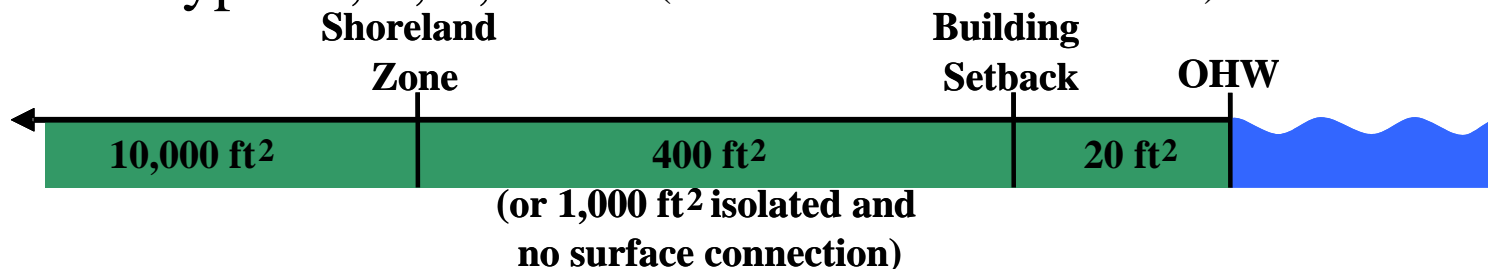
Thanks!

Heather Cunningham

Resource and Recycling Coordinator, Carlton County

CARLTON COUNTY – GUIDE TO DE MINIMIS EXEMPTION

- Types 1, 2, 6, and 7 (excl. white cedar & tamarack)



- Types 3, 4, 5, 7 (incl. white cedar & tamarack), and 8



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.

CARLTON COUNTY - GUIDE TO WCA REPLACEMENT PLAN RATIOS

MINIMUM REPLACEMENT RATIOS: BANKING	
Replacement	Minimum Replacement Ratio
Outside bank service area	1.5:1
Within bank service area	1:1
MINIMUM REPLACEMENT RATIOS: PROJECT-SPECIFIC	
Replacement	Minimum Replacement Ratio
Outside major watershed or out-of-kind	1.5:1
Within major watershed and in-kind	1:1

DEFINITIONS:

After-the-fact replacement: If a landowner or the landowner’s contractor and /or agent seeks approval of a wetland replacement plan after the wetland has been impacted, the County shall require that the wetland replacement ratio be twice the replacement ratio otherwise required.

Bank service area: Carlton County lies within 3 wetland bank service areas: 1, 5, and 6. Replacement for impacts in bank service area 1 can be completed in bank service area 2 with no increase in the replacement ratio.

In-kind: In-kind means a wetland of similar type and function to the impacted wetland. Wetland replacement is in-kind if it is:

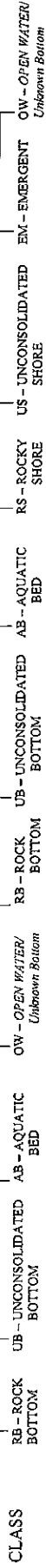
- A. the same type or plant community as the impacted wetland or, for degraded wetlands, the same type or plant community that historically occurred at the same impact site; or
- B. the same hydrologic conditions and landscape position as the impacted wetland.

For the purposes of determining project-specific replacement ratios, the LGU may authorize the use of out-of-kind wetland replacement in the same ratio allowed for in-kind replacement when it consists of a type or a plant community that has been significantly lost in the watershed. To be determined by the TEP based on a review of the evidence.

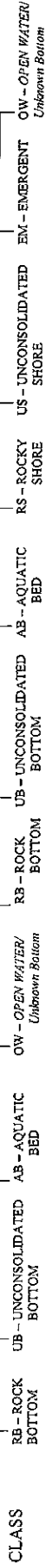
WETLANDS AND DEEPWATER HABITATS CLASSIFICATION

L - LACUSTRINE

1 - LIMNETIC

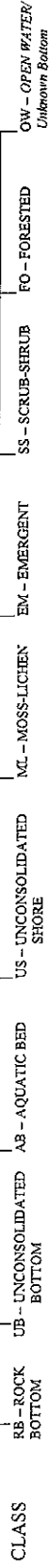


2 - LITTORAL



SYSTEM

P - PALUSTRINE



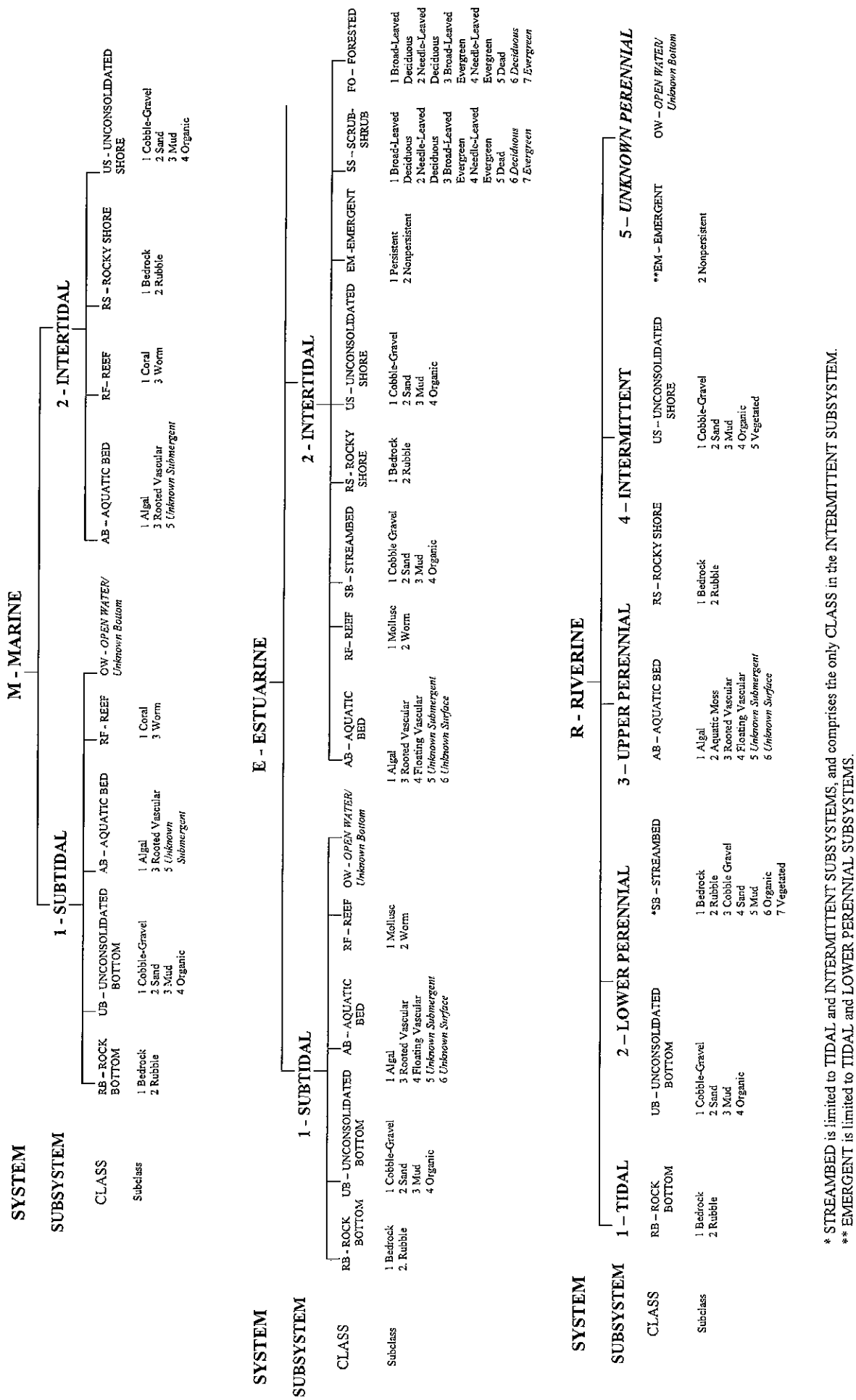
MODIFIERS

In order to more adequately describe the wetland and deepwater habitats one or more of the water regime, water chemistry, soil, or special modifiers may be applied at the class or lower level in the hierarchy. The farm modifier may also be applied to the ecological system.

WATER REGIME		WATER CHEMISTRY		SOIL		SPECIAL MODIFIERS		
Non-Tidal H Permanently Flooded J Intermittently Flooded K Artificially Flooded L Subtidal M Irregularly Exposed N Regularly Flooded P Irregularly Flooded Y Saturated/Semipermanent/ Seasonal Z Intermittently Exposed/Permanent U <i>Unknown</i>		Tidal *S Temporary-Tidal *R Seasonal-Tidal *T Semipermanent-Tidal *V Permanent-Tidal U <i>Unknown</i>		Coastal Salinity 1 Hypersaline 2 Eusaline 3 Mixohaline (<i>Brackish</i>) 4 Polyhaline 5 Mesohaline 6 Oligohaline 0 Fresh		pH Modifiers for all Fresh Water a Acid t Circumneutral i Alkaline		b Beaver d Partially Drained/Ditched f Farmed h Diked/Impounded r Artificial Substrate s Spoil x Excavated

NOTE: Italicized terms were added for mapping by the National Wetlands Inventory program.

WETLANDS AND DEEPWATER HABITATS CLASSIFICATION



* STREAMBED is limited to TIDAL and INTERMITTENT SUBSYSTEMS, and comprises the only CLASS in the INTERMITTENT SUBSYSTEM.
 ** EMERGENT is limited to TIDAL and LOWER PERENNIAL SUBSYSTEMS.

Type 1 - Seasonally Flooded Basin or Flat

- Soil: Usually well-drained during much of the growing season
- Hydrology: Covered with water or waterlogged during variable seasonal periods
- Vegetation: Varies greatly according to season and duration of flooding from bottomland hardwoods to herbaceous plants
- Common sites: Upland depressions, bottomland hardwoods (floodplain forests)
- NWI Symbols: PEMA, PFOA, PUS

Type 2 - Wet Meadow

- Soil: Saturated or nearly saturated during most of the growing season
- Hydrology: Usually without standing water during most of the growing season but waterlogged within at least a few inches of the surface
- Vegetation: Grasses, sedges, rushes, various broad-leaved plants
- Common sites: May fill shallow basins, sloughs, or farmland sags; may border shallow marshes on the landward side and include low prairies, sedge meadows, and calcareous fens
- NWI Symbols: PEMB

Type 3 - Shallow Marsh

- Soil: Usually waterlogged early during growing season
- Hydrology: Often covered with 6 inches or more of water
- Vegetation: Grasses; bulrush; spikerush; and various other marsh plants, such as cattail, arrowhead, pickerelweed, and smartweed
- Common sites: May nearly fill shallow lake basins or sloughs; may border deep marshes on landward side, commonly as seep areas near irrigated lands
- NWI Symbols: PEMC and F, PSSH, PUBA and C

Type 4 - Deep Marsh

- Soil: Inundated
- Hydrology: Usually covered with 6 inches to 3 feet or more of water during growing season
- Vegetation: Cattail, reed, bulrush, spikerush, and wild rice; open areas may have pondweed, naiad, coontail, watermilfoil, waterweed, duckweed, waterlily, and spatterdock
- Common sites: May completely fill shallow lake basins, potholes, limestone sinks, and sloughs; may border open water in such depressions
- NWI Symbols: L2ABF, L2EMF and G, L2US, PABF and G, PEMG and H, PUBB and F

Type 5 - Shallow Open Water

- Soil: Inundated
- Hydrology: Usually covered with less than 10-foot-deep water; includes shallow ponds and reservoirs
- Vegetation: Fringe of emergent vegetation similar to open areas of Type 4
- Common sites: Shallow lake basins and may border large open water basins
- NWI Symbols: L1; L2ABG and H; L2EMA, B, and H; L2RS; L2UB; PABH; PUBG and H

Type 6 - Shrub Swamp

- Soil: Usually waterlogged during growing season
- Hydrology: Often covered with as much as 6 inches of water; water table is at or near the surface
- Vegetation: Includes alder, willow, buttonbrush, dogwood, and swamp privet
- Common sites: Along sluggish streams, drainage depressions, and occasionally on floodplains
- NWI Symbols: PSSA, C, F, and G; PSS1, 5, and 6B

Type 7 - Wooded Swamp

- Soil: Waterlogged within a few inches of the surface during the growing season
- Hydrology: Often covered with as much as 1 foot of water; water table is at or near the surface
- Vegetation: Hardwood and coniferous swamps with tamarack, northern white cedar, black spruce, balsam fir, balsam poplar, red maple, and black ash; deciduous sites frequently support beds of duckweed and smartweed
- Common sites: Mostly in shallow ancient lake basins, old riverine oxbows, flat terrains, and along sluggish streams
- NWI Symbols: PFO1, 5, and 6B; PFOC and F

Type 8 - Bogs

- Soil: Usually waterlogged
- Hydrology: Water table at or near the surface
- Vegetation: Woody, herbaceous, or both supporting a spongy covering of mosses; typical plants are heath shrubs, sphagnum mosses, sedges, leatherleaf, Labrador tea, cranberry, and cottongrass; may include stunted black spruce and tamarack
- Common sites: Mostly on shallow glacial lake basins and depressions, flat terrains, and along sluggish streams
- NWI Symbols: PFO2, 4, and 7B; PSS2, 3, 4, and 7B