

Chapter NR 353

WETLAND CONSERVATION ACTIVITIES

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NR 353.01 Purpose and policy. c1d This chapter will facilitate the regulation of projects whose purpose is wetland conservation by establishing a process to review activities associated with the restoration of former wetlands, the enhancement of degraded wetlands, and the maintenance or management of existing wetlands.

c2d Wisconsin has lost almost half its historic wetland acreage and it is recognized that the protection, management and restoration of wetlands in the state will benefit fish, wildlife, water quality, flood control, biodiversity and natural scenic beauty. Pursuant to s. NR 1.95, it is the policy of the department to reverse the loss of wetlands in Wisconsin and to encourage and facilitate the protection, management and restoration of wetlands.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.02 Applicability. This chapter applies to projects whose purpose is wetland conservation and which are reviewed by the department under ss. 281.36, 30.12, 30.124, 30.19, 30.195, 30.20, 31.02 and 31.12, Stats., and s. NR 1.95 and chs. NR 103, 107, 115, 116, 150, 216, 299, 300, 333 and 350.

Note: This chapter does not authorize an activity unless the purpose of the project is wetland conservation. For example, this chapter does not authorize the construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement. Similarly, this chapter does not authorize a flood control project that may also result in creation or enhancement of some wildlife habitat.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.03 Definitions. For the purposes of this chapter:

c1d XAquatic communityY means lake or river biological resources.

c2d XComplete applicationY means a completed and signed application form, the information specified in s. NR 353.06 c2d and any other information which can reasonably be required from an applicant and which the department needs to make a decision.

c3d XDegraded wetlandY means a wetland subjected to deleterious activities such as drainage, excess nutrient runoff, grazing, cultivation, increased stormwater input and partial filling, to the extent that natural wetland characteristics are compromised and where wetland function is reduced.

c4d XEarly successional hydrophyteY means a plant adapted to quickly colonize open, disturbed wetlands, which do not persist over time and are replaced by perennials that hold space and persist over time. Examples of these plants include nut sedge c*Cyperus* spp.d, nettle c*Urtica dioica*d, smartweed c*Polygonum* spp.d, wild millet c*Echinochloa* spp.d, ragweed c*Ambrosia* spp.d, Beggar[s ticks c*Bidens* spp.d and foxtail c*Setaria* spp.d.

c5d XEnhancementY means the manipulation of the physical, chemical or biological characteristics of a degraded wetland to heighten, intensify or improve specific functions or for a purpose such as water quality improvement, flood water retention or wildlife habitat.

c6d XFunctional valuesY means the physical, chemical and biological processes or attributes that occur in a wetland and how society finds certain functions beneficial as listed in s. NR 103.03 c1d.

c7d XInvasive plantY means plant species that invade natural plant communities and wild areas and replace desirable native vegetation. Plants known to be invasive in Wisconsin wetlands include, but are not limited to: purple loosestrife c*Lythrum salicariad*; reed canary grass c*Phalaris arundinacead*; cattails c*Typha latifolia* and *T. angustifolia* and their hybridd; common and glossy buckthorn c*Rhamnus cathartica* and *R. frangulad* and common reed c*Phragmites australisd*.

c8d XMaintenanceY means the removal of a threat to, or preventing decline of, wetland conditions and includes activities commonly associated with preservation.

c9d XManagementY means actions taken at a wetland to establish and maintain desired habitat and human use conditions including water level manipulations, herbicide application, wetland species introduction and control, fencing, monitoring, signage and vandalism repair.

c10d XMonocultureY means a single species occupying a large area.

c11d XPost settlement depositionY means sediment accumulated over original hydric surface soils since European settlement of the area.

c12d XPreservationY means the protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal and physical mechanisms.

c13d XRestorationY means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to former or degraded wetland.

c14d XWetlandY means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

c15d XWetland conservationY means activities used in the restoration, enhancement, preservation and management of wetlands.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.04 Eligibility for a shortform wetland conservation permit. c1d To be eligible for a shortform wetland conservation permit, the department shall determine that all of the following conditions are met:

cad The project purpose is wetland conservation.

cbd The project proponent has demonstrated that site conditions exhibit impacts to topography, soils, native vegetation or hy-

drology that have degraded a wetland and are potentially reversible.

ccd The project proponent has demonstrated that the project involves only listed wetland conservation activities as specified in s. NR 353.05 or that the proposed activity is maintenance of a preexisting wetland conservation project under s. NR 353.10.

cdd The project does not involve any activities in navigable waters with prior stream history, or is otherwise determined to not cause significant adverse impacts to those waters.

ced The project does not cause significant adverse impacts to a cold water community, as defined in s. NR 102.04 c3d cad.

cfđ The project does not cause significant obstruction of fish passage to existing spawning areas.

cgđ The project does not cause significant adverse impacts to state threatened or endangered resources.

chđ The project does not cause significant adverse impacts to historical or cultural resources and will comply with s. 44.40, Stats.

cid Any proposed dikes, embankments or low berms as defined in s. NR 353.05 c3d, will have a height of less than 6 feet measured from natural ground to design top of the structure and will result in less than 50 acre-feet total storage, and have been designed by a professional engineer registered in the state of Wisconsin or submitted by a county, state or federal agency. A project with a design embankment height 2 feet or less above the natural ground and with less than 50 acre-feet of storage does not have to be designed a professional engineer.

cjd The project does not involve the planned introduction of non-native or invasive wetland plants.

ckđ The project does not involve the control of native wetland plant species unless the project proponent has demonstrated that the activity is to maintain a wetland community or to diversify a monoculture or a monotypic stand of invasive wetland plants. Removal of monotypic stands of invasive herbaceous vegetation may include excavation only if incidental soil removal and deposition occurs on uplands or like monoculture adjacent to the area of removal.

Note: This provision applies only to incidental soil associated with plant removal and is not intended to allow conversion of wetlands to uplands.

c2d Project proposals which include activities listed in s. NR 353.05 c3d to c5d and have existing wetlands on or adjacent to the project area are eligible for the shortform wetland conservation permit only if both of the following conditions are met:

cad Agricultural crops, invasive wetland species or early successional hydrophyte species dominate the project area.

cbd The proposed activities will not cause significant adverse impacts to undisturbed wetland plant communities on-site or adjacent to the project area.

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NR 353.05 Wetland conservation activities and design specifications. Unless otherwise specified in this section, wetland conservation activities should be designed and constructed to applicable Natural Resources Conservation Service Field Office Technical Guide Standard Conservation Practice 378] Pond c7{01d, 410] Grade Stabilization Structure c7{01d, 638] Water and Sediment Control Basin c7{01d and 657] Wetland Restoration c9{00d. Wetland conservation activities include:

Note: These materials are available at the United States Department of Agriculture Wisconsin Natural Resources Conservation Service website: www.wi.nrcs.usda.gov or from the county NRCS office or the Wisconsin Land and Water Conservation Association office, Madison, WI at c608d 833 -1833. Copies of the materials are available for inspection in the offices of the department of natural resources, secretary of state and legislative reference bureau in Madison, Wisconsin.

c1d Removing or disabling a section of drain tile in the project area.

c2d Disabling surface drains by filling lengths of the ditch downstream of the drainage system to be altered. Ditch fills may be added upstream of ditch plugs.

c3d Constructing dikes, embankments and low berms to Natural Resources Conservation Service Field Office Technical Guide Standard Conservation Practice 657, 378, 410 or 638, that impede surface water drainage or runoff.

c4d Removing soil and vegetation or post European settlement deposition that has accumulated over historic wetland soils or creating micro-topography to enhance hydrologic diversity including shallow scrapes, channels, submerged islands and interconnected open water areas.

c5d Altering the hydrology of an area by removing pumps, breaching structures such as dikes, or re-routing artificial drainage features or manipulation of water control structures.

c6d Introducing plants by planting, cultivating, stocking or releasing. Controlling plants by cutting, removing, destroying or suppressing using manual or mechanical methods, introducing United States department of agriculture approved biological agents, manipulating water levels, burning, or using United States environmental protection agency registered herbicides and chemicals applied according to the label instructions.

c7d Installing and maintaining devices such as staff gauges, water level recording devices, small weirs and flumes whose purpose is to measure and record scientific data for monitoring of the conservation activity, periodic water quality testing and periodic sampling to show changes in flora and fauna composition and abundance.

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NR 353.06 Application and information requirements. **c1d** An application to the department is required before commencing any regulated wetland conservation activity.

c2d In addition to the information listed in s. NR 353.04, the applicant shall provide the following information:

cad Location of the project site delineated on the appropriate United States geological survey 1:24,000 quadrangle map or map copy.

cbd A general description of the site and any adjacent wetlands including any aerial photographs of the proposed restoration area.

ccd A description of existing site conditions including soils, hydrologic conditions, current land-use, plant communities present and wetland delineation, if applicable.

cdd A narrative description of the planned project including how it meets the eligibility requirements listed in s. NR 353.04.

ced A sketch of the project with dimensions, including a top, cross-sectional and side view of the project. For projects under s. NR 353.05 c3d, design plans and specifications shall be provided.

cfđ Goal and objectives for the project including long-term site management.

cgđ Sufficient information to demonstrate compliance with s. 88.91 c1d, Stats.

chđ If the department determines the proposed project will reduce the effective flood flow capacity of the waterway by obstruction of existing flow area, information sufficient for the department to conduct a hydrologic or hydraulic analysis.

c3d This section is not applicable to a person applying to the

department under s. NR 353.10 for maintenance of a preexisting wetland conservation project.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.07 Department determinations. Upon receipt of a complete application, the department shall determine:

c1d Whether the project purpose is wetland conservation.

c2d If the department determines that the project purpose is not for wetland conservation, the department shall notify the applicant of his or her option to do any of the following:

cad Apply for a permit under other authorities.

cbd Revise the project to comply with the requirements of this chapter.

ccd Withdraw the request.

cdd Appeal the department[s decision under s. 227.42, Stats.

c3d If the department determines that the project purpose is for wetland conservation and is maintenance of a project constructed prior to August 1, 1991, the procedures established in s. NR 353.10 shall be followed.

c4d If the department determines that the project purpose is wetland conservation and that the proposed project activities comply with s. NR 353.04, the project may proceed upon receipt of written notice from the department.

c5d If the department determines the project is not eligible for a shortform wetland conservation permit, the procedures in s. NR 353.09 shall be followed.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.08 Wetland conservation permit conditions. All approvals issued under ss. NR 353.04, 353.07 c4d and 353.10 shall be subject to the following conditions:

c1d The applicant submits a completed and signed application form.

c2d The proposed project shall be constructed in compliance with this chapter and applicable statutes, and the conditions in the wetland conservation permit.

c3d The project proponent shall maintain the project in compliance with the terms and conditions of the shortform wetland conservation permit, this chapter and applicable statutes. The applicant may conduct maintenance activities described in the application without any further approval by the department.

c4d Approvals issued in compliance with this chapter and applicable statutes are valid only if all other necessary approvals are received from local, state or federal jurisdictions.

c5d Wherever possible, project sites should include an adjacent zone of vegetated upland pursuant to NRCS Technical Guide Standard Conservation Practice 657- Wetland Restoration c9{00d, unless the site conditions or configuration will not accommodate such a zone.

Note: This practice is available at the United States Department of Agriculture Wisconsin Natural Resources Conservation Service website: <http://efotg.sc.egov.usda.gov/references/public/WI/657.pdf> or from the county NRCS office or the Wisconsin Land and Water Conservation Association office, Madison, WI at c608d 833 -1833. A copy of the practice is available for inspection in the offices of the department of natural resources, secretary of state and legislative reference bureau in Madison, Wisconsin.

c6d Any removed vegetation or soil shall be deposited on uplands or used in other approved wetland conservation activities.

c7d During project establishment, all applicable provisions of NRCS Technical Guide Standard Conservation Practice 657 shall apply. Applicable practices shall be those that adequately control or prevent erosion, and prevent damage to waterways and wetland soils. Where purple loosestrife *cLythrum salicariad*; reed canary grass *cPhalaris arundinacead* or common reed

cPhragmites australisd are present, equipment washing or other practices to prevent accidental dispersal shall be utilized.

c8d If the department determines that species of special concern listed in the Wisconsin natural heritage inventory are known to be present in the project area, the department may notify and advise the applicant of reasonable activities to prevent significant adverse impacts or to enhance the habitat for the species of concern. Notification and recommendation shall take place within the permit review period specified in ch. NR 300.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.09 Individual permits for wetland conservation projects. **c1d** If the department determines that the proposed project is for wetland conservation but is not eligible for a shortform wetland conservation permit under s. NR 353.04 or 353.10, the project may not proceed without an individual permit from the department issued pursuant to applicable laws.

c2d The department shall give full consideration to the benefits to wetland functional values together with the potential adverse effects on aquatic community values and public rights and uses. The department shall grant the individual wetland conservation permit if it finds:

cad That the primary purpose of the project is wetland conservation;

cbd The proposed project will meet the requirements of the applicable laws.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.10 Maintenance of pre-existing wetland conservation projects. **c1d** An owner of any wetland conservation project constructed prior to August 1, 1991, may conduct maintenance activities if all the following conditions are met:

Note: The construction and maintenance of wetland conservation projects has been regulated since August 1, 1991, the effective date of ch. NR 103, Wetland Water Quality Standards.

cad The owner submits to the department a description and a diagram of existing site conditions which includes: the location of the project; hydrologic characteristics of the site; existing plant communities on the site; the location and condition of existing dikes, ditches, nesting islands, water level control structures and pumps, and other project infrastructures; current land use for the site; and past management and maintenance activities that have occurred on the site.

cbd The owner submits to the department a description of proposed maintenance activities including areas to be excavated and cross-sections of proposed enhancements to existing dikes and nesting islands. A hydrologic or hydraulic analysis may be required if the proposed project includes alteration to the height or cross-section of the dike. If the analysis is required, the applicant may be required to retain an engineer registered in the state of Wisconsin, to prepare this analysis.

ccd Upon receipt of the descriptions and diagram under pars. cad and cbd, the department and the applicant shall conduct a field review of the project.

cdd After field review and modifications deemed necessary to the maintenance project, the department shall approve the maintenance activities if it determines the plan is consistent with the purpose of enhancing wetland functional values.

ced The applicant shall allow department employees access to make inspections to assure that the maintenance activities are in compliance with the approved plan.

c2d The department may approve excavation of material from a wetland or from any existing ditches, if the purpose of the

excavation is to enhance wetland functional values related to wildlife habitat.

c3d Upon approval of the plan under sub. **c1d cdd**, the applicant may conduct the maintenance activities described in the plan without any further approval by the department.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.

NR 353.11 Enforcement. c1d Violations of this chapter shall be subject to enforcement under the enforcement and penalty provisions of chs. 23, 29, 30, 31, 281 and 283, Stats.

c2d Department employees may obtain access under applicable statutes to make inspections for the purpose of assuring that activities performed under this chapter are in compliance with the applicable provisions of law.

c3d A violation of a permit issued relating to a project under this chapter is a violation of the statutes or rules relating to the issuance of that permit.

History: CR 01-144: cr. Register January 2003 No. 565, eff. 2-1-03.