

2017 WCA Statute Change Related to Wetland Replacement and Presettlement Areas

BWSR, September 1, 2017

Effective Immediately:

- ✓ Presettlement areas are no longer a restriction for replacement proposed within the same Bank Service Area (BSA) of wetland impact.
- ✓ For replacement proposed outside the BSA of wetland impact, the county-based presettlement area restrictions still apply. Specifically those are: 1) wetland impacts in a <50% county cannot be replaced in a 50-80% county or a >80% county; 2) wetland impacts in a 50-80% county cannot be replaced in a >80% county.
- ✓ The priority order for wetland replacement siting is as follows: 1) minor watershed; 2) major watershed; 3) BSA; 4) other BSA.

Background:

The 2017 legislature enacted changes to state law that effect implementation of the Wetland Conservation Act (WCA). Some of the changes are effective now and others will not be effective until the completion of the rulemaking process. There are some important changes related to wetland replacement and presettlement areas.

For purposes of wetland replacement only (not the de minimis exemption), some changes are as follows:

- There are now only two presettlement area designations for replacement, <80% and >80%. The 50-80% presettlement area is essentially combined with the <50% area.
- Presettlement area designations (<80% and >80%) are based on bank service area (BSA) not county boundaries as previously designated.
- “County” has been eliminated as a factor in the priority order for replacement.

The implications of these changes will not be fully realized until BWSR completes an analysis to determine which BSAs are <80% versus >80% for replacement purposes. The immediate implication of the statute change is that if replacement is proposed within the same BSA as the impact, there are no restrictions related to presettlement areas. This change affects several areas where BSA boundaries cross the existing county-based presettlement area boundaries (see examples below). Until BWSR completes an analysis and makes a presettlement area determination for each BSA, any replacement proposed outside of the BSA of impact is subject to the restrictions imposed by the existing county-based pre-settlement areas.

Example 1: A wetland impacted in Kittson County (BSA 3 and <50% presettlement County) can now be replaced in that portion of BSA 3 within Beltrami County (BSA 3 and >80% presettlement County), see map below.

Example 2: A wetland impacted in Stearns County (BSA 7 and <50% presettlement County) can now be replaced in that portion of BSA 7 within Benton County (BSA 7 and 50-80% presettlement County), see map below.

- ❖ Note that these examples are intended to help explain the current effect of the statute change, but they could change if BSA boundaries change as a result of BWSR’s analysis.

Pre-Settlement Wetland Areas

With
Wetland Bank Service Areas,
Major Watersheds &
County Boundaries

> 80% Pre-Settlement Wetlands

50% - 80%
Pre-Settlement
Wetlands

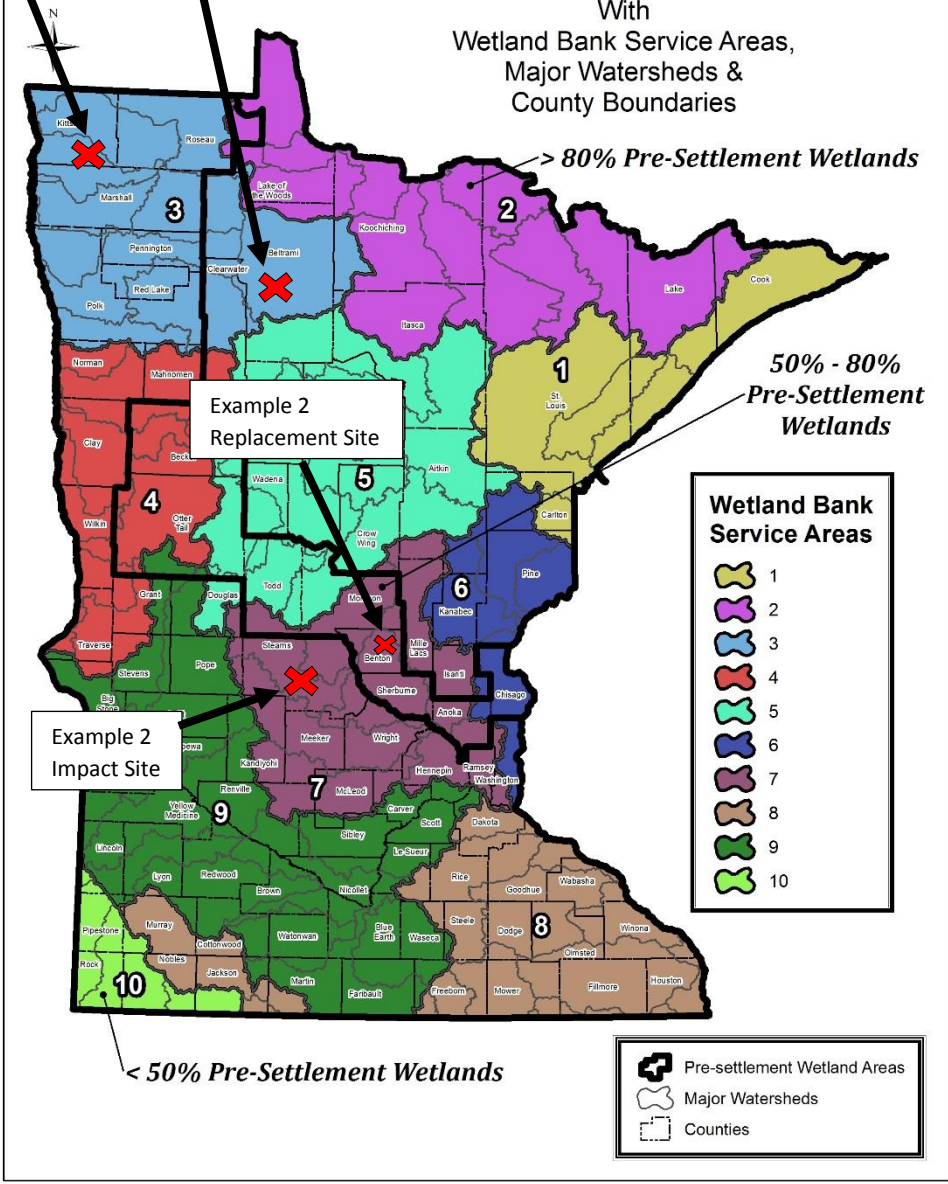
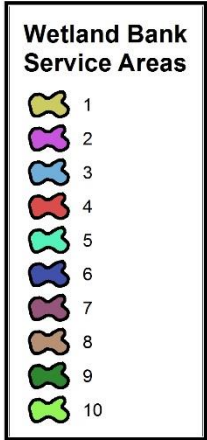
< 50% Pre-Settlement Wetlands

Example 1
Impact Site

Example 1
Replacement Site

Example 2
Replacement Site

Example 2
Impact Site



2017 Statute Changes Related to this Document:

Minnesota Statutes 2016, section 103G.005, subdivision 10b, is amended to read:

Greater than 80 percent area.

"Greater than 80 percent area" means a county ~~or~~ watershed, or, for purposes of wetland replacement, bank service area where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Minnesota Statutes 2016, section 103G.005, subdivision 10h, is amended to read:

Less than 50 percent area.

"Less than 50 percent area" means a county ~~or~~ watershed, or, for purposes of wetland replacement, bank service area with less than 50 percent of the presettlement wetland acreage intact or any county ~~or~~ watershed, or bank service area not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Minnesota Statutes 2016, section 103G.222, subdivision 3, is amended to read:

Wetland replacement siting.

(a) ~~Impacted wetlands in a 50 to 80 percent area must not be replaced in a 50 to greater than 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area.~~ Impacted wetlands outside of a greater than 80 percent area must not be replaced in a 50 to greater than 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area. All wetland replacement must follow this priority order:

- (1) ~~on site or~~ in the same minor watershed as the impacted wetland;
- (2) in the same watershed as the impacted wetland;
- (3) in the same ~~county or~~ wetland bank service area as the impacted wetland; and
- (4) in another wetland bank service area.

(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

(c) Notwithstanding paragraph (a), clauses (1) and (2), the priority order for replacement by wetland banking begins at paragraph (a), clause (3), according to rules adopted under section 103G.2242, subdivision 1.

(d) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.