

# Wetland Mitigation

## Considerations for Wetland Mitigation



### What is mitigation?

Wetland Conservation provisions, introduced in the 1985 Farm Bill as the Food Security Act, are meant to discourage conversion of wetlands to produce agricultural commodities. The Act states people who convert wetlands after December 23, 1985, for the purpose of making production of agricultural commodities possible, will be ineligible for certain USDA benefits until the functions of the converted wetlands are mitigated or restored. Converted Wetlands (CW) are those that have been manipulated after the enactment date by draining, dredging, filling, or removing woody vegetation.

Producers who alter wetlands must mitigate or replace the lost functions, values, and acres to restore their eligibility for certain USDA programs. Functions and values are replaced through restoration or enhancement of manipulated or degraded wetlands. Mitigation plans must be approved by the Natural Resources Conservation Service (NRCS).

Mitigation sites may be restored on your land, another person's land, or land held by a mitigation bank.

### When is mitigation required?

Mitigation is required when a landowner wants to conduct activities that alter wetlands to make the production of an agricultural commodity possible. Conversion activities may include:

- Filling
- Altering the surface or subsurface drainage from the December 23, 1985, condition
- Land leveling
- Clearing woody vegetation and removing the stumps
- Diverting run-off water from a wetland.

### What do I need to do to mitigate?

Mitigation requires the replacement of all lost functions, values and acres. With differing functions, the most effective method is replacing wetlands type for type, such as depressional wetland for depressional wetland or forested wetland for forested wetland.



Landowners are responsible for developing a mitigation plan, which is then approved by NRCS. Plans may be developed by NRCS, though this is at the discretion of NRCS and may not always be possible due to current workload. Plans may also be developed by [qualified consultants](#). Landowners are encouraged to research qualified, reputable wetland contractors to seek assistance for wetland restoration and other aspects of wetland mitigation planning.

Upon plan approval, the landowner and the local NRCS district conservationist must sign a mitigation agreement to implement the plan. An easement is required on the restored wetland acres if the mitigation site is not in the original wetland footprint. This easement is recorded with the local Register of Deeds and allows for quiet enjoyment of the land, such as hunting, hiking, and wildlife viewing, as long as the activity does not degrade the functions and values of the wetland.

### Conservation Compliance

To be in compliance with the highly erodible land conservation and wetland conservation provisions, producers must agree, by certifying on Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification), that they will not:

- Produce an agricultural commodity on highly erodible land without a conservation system;
- Plant an agricultural commodity on a converted wetland;
- Convert a wetland to make possible the production of an agricultural commodity.

Producers planning to remove fence rows, convert woodlots to cropland, combine crop fields, divide a crop field into two or more fields, install new drainage, or improve or modify existing drainage, must notify the FSA and update Form AD-1026.

FSA will notify NRCS and NRCS will then provide highly erodible land or wetland technical determinations.

## Are my lands subject to the Wetland Conservation Provisions?

It is always best to have a conversation with your local NRCS office to discuss details of wetland mitigation. You may wish to have NRCS certify wetlands by signing form AD-1026 at the Farm Service Agency (FSA) office. NRCS will then determine if there are wetlands subject to the provisions.

## When do I need to mitigate?

To retain USDA program eligibility, mitigation should be completed prior to, or concurrently with, planned conversions. Post-conversion mitigation, as part of a Good Faith Agreement, must be completed within 12 months of FSA granting good faith.

## How does mitigation benefit me?

Mitigating wetlands allows you to maintain USDA eligibility. It also allows you to “move” wetlands to areas of your farm that are more convenient for your operation.

## What options should I consider?

For conversions, the easiest and fastest mitigation is to restore the wetland’s functions in its original location. If that is not feasible, Prior Converted (PC\*) wetlands are the most easily restored and quickest to show gains in function, though Farmed Wetlands (FW\*\*) can show high and rapid increases in wetland functions as well. Existing wetland (W) functions may be improved by removing invasive species, planting trees, or by disabling artificial drainage.

After a Conservation Reserve Program contract expires, landowners can use restored wetlands as mitigation.

*\*Prior Converted (PC): Areas manipulated and converted to cropland use prior to December 12, 1985, which did not support woody vegetation on that date and meet the Farm Bill hydrology criteria for Prior Converted cropland (PC). An agricultural commodity was produced at least once prior to December 23, 1985. There are no Farm Bill restrictions on use.*

## Instead of doing my own mitigation, can I buy credits from a wetland mitigation bank?

Mitigation banking is an efficient and effective method to meet wetland mitigation needs for projects or activities that impact wetlands. The mitigation bank will have an NRCS-approved number of mitigation credits available for sale and will vary depending on the acres and types of wetlands restored.

The wetland conversion must occur in a specific service area or watershed in order for the bank to sell credits to a producer. Currently, two entities provide agricultural wetland mitigation bank services in southern lower Michigan: [Michigan Municipal Alliance](#) and [Wetland Mitigation, LLC](#). A wetland mitigation agreement with NRCS must be in place prior to purchasing credits from a mitigation bank.

*\*\*Farmed Wetlands (FW): Cropland areas manipulated and planted prior to December 23, 1985, but still meet Farm Bill wetland criteria. They can continue to be farmed as long as no additional manipulation is conducted, such as adding additional surface or subsurface drainage, and the area is not abandoned.*



Michigan  
Natural  
Resources  
Conservation  
Service

[nrcs.usda.gov/](https://nrcs.usda.gov/)

