

MITIGATION PROCESS FOR WETLAND CONSERVATION COMPLIANCE

1. **Producer/landowner** notifies NRCS of intent of developing a mitigation plan by completing the Request for Mitigation Plan for areas to be converted, restored and/or created.
2. **Producer/landowner** identify the planned conversion and mitigation areas on an aerial photo and attach to request.
3. **Producer/landowner and NRCS** will determine if a certified wetland determination exists on the land identified on the maps. If not, an AD-1026 or NRCS-CPA-38 will be completed.
4. **Producer/landowner and NRCS** will review areas for existing easements, such as US Fish and Wildlife Service easements or utility company easements.
5. **Producer/landowner and NRCS** will review potential permit requirements of other agencies, such as the ND State Water Commission or US Army Corps of Engineers.
6. **NRCS** will complete a wetland certification for the field of the conversion area and mitigation easement site if one does not exist.
7. **Producer, private consultant, or NRCS** will develop a mitigation package that includes: certified wetland determination and maps; HGM Report(s); Mitigation Plan; Mitigation Agreement; and Warranty Easement Deed (WED), when required.
8. **Producer/landowner** will deliver completed mitigation package to State mitigation specialist.
9. **NRCS** will approve the mitigation package and will review it with the **producer/landowner** prior to signing the Mitigation Agreement.
10. When required, the **producer/landowner** will submit Mitigation Plan to the US Army Corps of Engineers, local county Water Resource Board, ND State Water Commission, US Fish and Wildlife Service, for their review and comment.
11. When applicable, **Producer/landowner** provides signed, notarized Warranty Easement Deed, to State mitigation specialist.
12. **NRCS State Conservationist** signs Warranty Easement Deed and returns it to the producer/landowner.
13. **Producer/landowner** files the Warranty Easement Deed at the County Register-of-Deeds office and provides a copy of the executed agreement to the NRCS field office.
14. **NRCS** records the easement in the Wetland Mitigation Tracking System.
15. **Producer/landowner** installs activities required for mitigation as noted in the plan. Technical assistance may be provided by NRCS depending on workload.
16. **NRCS** will complete field verification and review of mitigation easement site implementation.
17. **NRCS** will update and issue certified wetland determinations (CPA-026E) with appropriate labels, MIW for the converted wetlands and MWM for the wetland mitigation site
18. **NRCS** will complete an annual easement review until all activities are successfully established.
19. After successfully established, **NRCS** will conduct an onsite mitigation review every five years.

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Important Information When Considering Wetland Mitigation

- ◆ Wetland mitigation requires the replacement of all lost wetland functions, values, and acres.
- ◆ Mitigation sites should possess the physical, chemical, and biological characteristics to support establishment of desired aquatic resources and functions.
- ◆ Restoring Prior Converted (PC) or Farmed Wetlands (FW) that are drained at or near the bottom of the wetland are the most suitable areas to use as mitigation acres. They are easily restored and are typically available to mitigate at a 1:1 ratio.
- ◆ Somewhat poorly drained soils can be used for successful wetland creation sites, ensure that:
 - ◇ An adequate drainage area/watershed exists to supply water to the creation site.
- ◆ High water table sands are excellent areas for wetland creation.
- ◆ Sodium affected soil materials are highly susceptible to failure and should not be used in dams, dikes, and plugs. Sodium disperses clay particles which causes a loss of soil structure and promotes piping and tunneling erosion.
- ◆ Limitations in wetland vegetation potential must be recognized on sites with saline and sodic soils.
- ◆ Areas that have encumbrances such as US Fish and Wildlife Service easements, USDA easements or any other Federal government easement are likely not eligible for USDA wetland mitigation sites.
- ◆ Wetlands restored under the Conservation Reserve Program **are eligible** as wetland mitigation sites once the contract expires or is bought out from Farm Service Agency.
- ◆ If a proposed mitigation site is not labeled as a wetland on a certified wetland determination map, and onsite verification determines the area to meet wetland criteria, it is not eligible as a mitigation site for compliance purposes.



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