

NRCS Wetland Mitigation



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Wetland Conservation Compliance

1985 Farm Bill

To remain eligible for most USDA programs producers must certify that:

- They have not planted or produced an agricultural commodity on a converted wetland.
- They have not manipulated a wetland to make Ag production possible.

The Role of NRCS in Conservation Compliance

- NRCS is a non-regulatory agency.
- NRCS is a technical agency responsible for determining whether wetland conversions have occurred.

The Role of NRCS in Conservation Compliance

- NRCS assists producers by providing them with certified wetland determinations.
 - Certified wetland determinations identify the location of the wetlands on the producers land and the scope of required protection in order to maintain eligibility for USDA programs.

Wetland Conservation Compliance & Crop Insurance

- In the 2014 Agriculture Act (Farm Bill) Congress re-linked a producer's participation in USDA crop insurance programs to their compliance with the protection of NRCS identified wetlands.
- This requirement affects the vast majority of America's agricultural producers who must adequately protect USDA identified wetlands or conduct mitigation where adverse impacts will occur.

Wetland Conservation Compliance 1985 Farm Bill

Options for Producers

1. Avoid the wetland.
2. Minimize any potential impact to the wetland.
3. Mitigate the wetland through on or offsite restoration, enhancement, or creation.

On-Site Mitigation

- Mitigation opportunities are supported by the ASTC (State Wetland & HEL Specialist) and the Compliance Team
 - Steve Stensgard serves as the coordinator, facilitator or the process. Have completed 18 mitigation plans in FY2016



So...what is the process?

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Natural Resources Conservation Service

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.
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.

Request for Mitigation Plan

1. OWNER NAME AND ADDRESS:

2. OPERATOR NAME AND ADDRESS:

1 a. Phone Number:

2 a. Phone Number:

3. Who do you intend to develop the mitigation plan?

I will A consultant NRCS

4. Location of property where wetlands will be impacted:

4 c. Farm No.: _____ 4 d. Tract No.: _____

4 e. Acres in Tract: _____

4 a. County: _____

4 f. Map or aerial photograph with the locations of wetlands impacted.

5. Provide location of property where wetlands will be restored, created or enhanced (attach maps):

6. Have you previously received a certified wetland determination (CWD) on this tract(s) from the Natural Resources Conservation Service (formerly Soil Conservation Service)?

Yes, CPA-026's attached No, I have signed an AD-1026 or NRCS-CPA-38

I certify that I am the USDA participant or agent of the owner for the property(s) previously described.

I grant the Natural Resources Conservation Service (or their designated agent) the right to enter the property previously described to complete a mitigation plan.

6 a. Signature of Participant: _____

6 a. Date: _____

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.
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.

Helping People Help the Land

USDA is an equal opportunity provider and employer.



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So...what makes a good site?

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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.

MITIGATION BANKING PROGRAM

The purpose of the NRCS Mitigation Banking Program is to provide agricultural producers with an affordable option to meet their conservation compliance responsibilities.



- The 2014 Farm Bill provides funding for NRCS to operate a program or work with third parties to establish agricultural wetland mitigation banks.



QUESTIONS?

