

**State of Wisconsin  
Department of Natural Resources  
Comment and Recommendation Summary  
Review of Wetlands on Dormant Development Sites  
February 2016**

In July 2015 the Wisconsin Department of Natural Resources (Department) proposed the Review of Wetlands on Dormant Development Sites internal staff guidance. The Department received several comments on the guidance. This document represents the Department's response to the written comments on the guidance. To facilitate the responses, the Department may have paraphrased, rephrased, condensed, or consolidated comments. Thank you to all for taking the time to review and comment on this guidance.

Comment 1: Alice Thompson of Thompson and Associates Wetland Services

- She feels that this may have a negative impact on her business with less revenue.
- She is also recommended a cap on sites that can qualify for this consideration (add page one "The proposed development plan was based on a delineation completed not earlier than 2003 and no later than 2010.")
- She also recommends that the original wetland delineation should have had WDNR COE concurrence.
- Sites that change over time due to farm drainage issues should not be considered under this guidance.
- Mitigation should still be required for an IP.
- Under implementation 4, she is unclear if we are implementing a corps determination or if corps are doing so.
- She does not support 5c under implementation.
- She is requesting a time limit for the redevelopment of a dormant site that are economically not feasible (i.e. economic downturn was not the cause for site not to be redeveloped).

*Recommendations:*

1. *Add to guidance a cap on sites using language mentioned in italics above.*
2. *Add to guidance clarification that the original wetland delineation should have had WDNR and or ACOE concurrence.*

Comment 2: Tom Wordell of D'Onofrio Kottke & Associates, Inc

He commented that the 2003 wetland delineation date will exclude significant areas of developments from the presumption of "no practicable alternatives to avoiding an impact".

*Recommendation:*

*Consider moving original delineation date to 2001 or 2002 instead of 2003.*

Comment 3: Jeff Kramer of Stantec

- Artificial wetland: He believes the scope of this determination could be better defined. Are we talking about whether or not there were "potentially" wetlands present in the location of the newly developed wetland at pre-settlement times?

- Normal Circumstance: The scope of this determination could be better defined.
- Mitigation: Assuming the incidentally created wetland is regulated and requires an individual permit, it seems that the requirement for compensatory wetland mitigation should be waived if as a result of temporary construction activities.

*Recommendation:*

*Further clarify definition and interpretation of normal circumstances in the guidance document.*

Comment 4: John Davel of Davel Engineering

His comments are regarding the 2003 wetland delineation date. He suggests that the department be careful not to exclude projects that are intended to benefit from this guidance by the very criteria you are creating. Specifically the third bullet point that the project was based on delineation no earlier than 2003. He asks that we do not mention a specific date. He offered clarification on the second bullet point in the description. Instead of commenced during— change to project was in progress during or commenced prior to the recession.

*Recommendation:*

*See adjusting original wetland date recommendation under Comment 2 above.*

Comment 5: Dan Carter, SEWRPC

Implementation, #5: Overall, he feels this guidance ignores the potential impacts of increased runoff of storm water from development sites that will occur if the existing, natural ability of wetlands to handle runoff is compromised by fill.

He comments that cases where wetland boundaries have changed due to natural factors (e.g. patterns of weather or climate) factors extrinsic to the development site (i.e. changes to neighboring properties), or initial failure to detect farmed wetlands where they have existed all along should not be included among cases (#s 1-4) presumed to have no practicable alternatives to avoid impacts regardless of the extent to which development at a site has commenced.

He believes that in order to minimize potentially negative environmental impacts of wetland fill under this proposed guidance, no practicable alternative should only be presumed for sites where wetlands are artificial and formed as the result of activities related to the commencement of development on a site and the wetlands concerned have no significant connection to waters of the US.

*Recommendation:*

*Consider adding clarification to the guidance that these are sites where wetlands have no significant connection to waters of the US.*

Comment 6: Tamara Cameron and Rebecca Graser, Army Corps of Engineers

General comments: they feel the guidance lacks clarity, does not accurately apply the ACOE normal circumstances definition, does not take into account the coordination process between WDNR and ACOE, and points to sections of the Clean Water Act Section 404 regulations that are not in effect, subject to change or withdrawal.

Specific comments:

- They would like to work with WDNR to work through this guidance to avoid increased differences in our joint process while to balancing each of our program's needs.
- Rule 33 CFR 328.3(b) is not solely applicable to wetlands, is not in effect as of July 2015, and DNR staff are not trained to implement the rule. They also feel that if WDNR staff implemented this proposed rule, it could cause a miscommunication with the public of implied approval from the ACOE.
- They commented that if normal circumstances are not applied properly in this guidance. They state that if normal circumstances are appropriately applied during the initial delineation, there is no need to discount additional wetlands and boundary expansions.
- They state it is not clear if the evaluation of the practicable alternatives analysis is limited to newly identified wetlands or to the review of all wetland impacts proposed on a dormant wetland site.
- They feel it is not clear if this guidance is applicable to any redevelopment proposed or if it is applicable to only the same type of project as originally proposed.
- They would like to have added to the guidance that the original project received Wetland and Waterways authorization.
- They'd like a timeframe of economic recession to be added or the guidance provides sideboards for duration of the project start and request for authorization.
- There may be some deviations with the understanding of the jurisdictions and practicable alternatives analysis requirements between the two agencies with this guidance.
- They note that wetland boundaries adjust naturally on site and not always as a result of construction activities.
- Recommend farming sentence in "need" section removed because it is unclear.
- They state it is not clear how the evaluation process would be completed using this guidance if the wetland acreage was only an expansion of a previously identified wetland.
- They recommend adding language for a requirement that the original delineation was completed by an assured delineator, received WDNR or ACOE concurrence to eliminate potential review delays.

*Recommendations:*

1. *Set up a meeting with Army Corps to talk through issues and specifics with the definition of normal circumstances and its application within this guidance, the reference and usage of Rule 33 CFR 328.3(b), and work through other clarity issues they expressed.*
2. *Add details to the guidance specifying if the evaluation of the practicable alternatives analysis is limited to newly identified wetlands or to the review of all wetland impacts proposed on a dormant wetland site.*
3. *Add clarification to the guidance if the dormant definition applies to any redevelopment proposed or if it is applicable to only the same type of project as originally proposed.*
4. *Add timeframe of economic recession to be added or the guidance provides sideboards for duration of the project start and request for authorization.*
5. *Add language to for a requirement that the original delineation was completed by an assured delineator or received WDNR or ACOE concurrence.*
6. *Add to guidance a clarification that the original project received state and federal permits as required (if applicable).*

DNR Staff

Comment 7: Carrie Olson

Her suggestion is to include adding some language in the first bullet point area stating that either a permit (grading, stormwater, etc) or a wetland delineation was completed/approved for a proposed development.

*Recommendation:*

*Add to guidance a clarification that the original project received state and Federal permits as required (if applicable). (Same as Corps comment)*

Comment 8: Crystal Von Holdt

She has a couple of question on the guidance.

- Under Implementation Item #5(c), it's explained that an approved plat is one document that can be used to presume there are no practicable alternatives. Does the time threshold of 2003 apply to this as well? Does the plat need to have been approved since/during the recession of 2008?
- Also, under the first bullet points for the description, if a development project was not originally delineated but was platted, does this guidance apply?
- How would this guidance impact a dormant development site that is having renewed interest and so a new delineation shows there is LESS wetland than originally delineated due to perhaps draining or other secondary effects to the wetlands?

*Recommendations/Response:*

1. *Add clarity to the guidance on the timeframe for the approval of the plat. Have it within close proximity of the original wetland delineation.*
2. *Answer to second bullet- No does not apply.*
3. *Answer to third bullet point- Proceeds with permitting and less potential impact to the resource.*

Comment 9: Wendy Peich

Questions and comments she has on scenarios with the guidance.

- I think there is a need to define what constitutes "development activities", "construction activities" and "economic recession".
- It should be clarified that the "original wetland delineation" was an actual delineation meeting the 1987 ACOE wetland delineation manual.
- In order to review whether new wetland areas are "normal circumstances", the project proponent would need to submit complete documentation indicating the extent and duration of any and all areas that have had experienced physical alterations of any kind as well as documentation of any permits that were previously issued.
- What if the project was given informal department authorization only, no official jurisdictional determination or permit history?
- Implementation #2 -should the last sentence read: If newly id areas meet normal circumstance, then not under jurisdiction?
- Implementation #5 (c) allows for elimination of the avoidance requirement if a site simply has an approved plat, sold lots and "previous delineation". Again, "previous delineation" should be clarified as one meeting the 1987 ACOE manual.

*Recommendations/Responses:*

1. *Consider adding definition to guidance for “development activities”, “construction activities” and “economic recession”.*
2. *Add to guidance that original wetland delineation was done according to 1987 manual (goes along with others concurrence comments previously).*
3. *“What if the project was given informal department authorization only, no official jurisdictional determination or permit history?” Guidance may not apply.*
4. *“Implementation #2 -should the last sentence read: If newly id areas meet normal circumstance, then not under jurisdiction? Yes, correction noted.*