WISCONSIN DEPARTMENT OF NATURAL RESOURCES
NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

DOCUMENT ID WT-19-0035

DOCUMENT TITLE WETLAND SCREENING AND DELINEATION PROCEDURES

PROGRAM/BUREAU WATERWAYS PROGRAM

STATUTORY AUTHORITY OR LEGAL CITATION WIS ADM CODE CH NR 151, WIS STAT. 281

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS) 9/9/19

DATE FINALIZED 10/21/19

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

10/11/19

Signature Date

BUREAU OF WATERSHED MANAGEMENT PROGRAM GUIDANCE

Waterway/Wetland, Concentrated Animal Feeding Operation (CAFO) and Storm Water Management Program

Wetland Screening and Delineation Procedures

Effective: June 1, 2016

Guidance #: 3500-2016-01

Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

Pam Biersach, Director
Bureau of Watershed Management

12-15-16
Date

A. Statement of Issue Being Addressed

This guidance outlines a revised process requiring customers applying for certain Department of Natural Resources (Department) permits and approvals to submit accurate wetland information when wetlands are present in or adjacent to a project area. Additionally, the Department has standardized the wetland review process between watershed programs to ensure a consistent approach to permit applications.

B. Scope of This Guidance

The screening process and procedural steps outlined in this guidance apply to waterway and wetland permits, stormwater permits and plans and specifications for the concentrated animal feeding operation (CAFO) program. The screening process does not apply to transportation and energy projects that are administered by the Department's Transportation Liaisons (Department of Transportation projects and the former Trans 207 process) or through the Department's Office of Energy. For energy and transportation projects requiring a storm water permit or wetland permit, applicants must provide correspondence from the Department's Transportation Liaisons or Office of Energy staff regarding the wetland review or concurrence.

C. Background

The Department formed a team to evaluate the methods utilized by programs within the Bureau of Watershed Management (Bureau) to 1) screen for potential wetland impacts during the permit process and 2) educate customers. During this evaluation, the team determined that many factors contribute to wetland impacts not being properly accounted for. First, some customers are unclear about what wetland information (delineations, maps, photos, etc.) is required. These customers may rarely complete projects that impact wetlands and therefore have no previous knowledge of wetland laws and the permit process.

Next, the Team found inconsistencies between Department programs in how screenings and evaluations were being completed for identifying wetland impacts, particularly for those staff whose primary focus does not require expertise in wetland identification. Due to the varying degrees of wetland expertise, some staff are capable of evaluating projects for potential wetland impacts while others require assistance from wetland staff to determine if impacts could occur.

The Team decided to focus on both application requirements of the customer and internal process changes to standardize wetland screenings and reduce permit delays in the waterway and wetland protection program, the storm water program, and plans and specifications delays for the concentrated animal feeding operation (CAFO) program.

D. Discussion

A variety of factors were taken into consideration when creating this guidance. Currently, if an applicant does not submit a wetland determination or delineation with their permit application or plans and specifications for CAFOs, the project can be delayed if the Department determines that there could be

potential wetland impacts and the applicant must then gather the necessary information. By submitting a wetland delineation or documenting that there are no wetlands present in a project area at the beginning of the department approval process, customers will be assured that they are submitting a complete application package, reduce potential for delays in permit processing and plan modification, and more-quickly receive a decision from the Department on their project.

Wetland delineations must have concurrence by the Department or Corps of Engineers. The process before June 2016 allowed applicants to submit wetland delineations or determinations for concurrence prior to the application or plan and specification submittal or to seek concurrence during the permitting process. This guidance establishes a new process making it necessary to obtain concurrence prior to submittal of a permit application for the waterway and wetland program, storm water program and plans and specifications for the CAFO program. While the Team realizes this will require change in process for applicants, as well as Department staff and the Corps of Engineers, the Team felt that this modified process would save time and provide consistency across programs for applicants and staff overall, as well as ensure that applicants are in compliance with state law.

The Team considered many issues to determine when a wetland delineation should be requested from applicants. For example one of the issues the Department had to consider in establishing the screening protocols was how to make the process applicable to a number of different types of projects, such as CAFOs, storm water projects, or surface water impacts, that all vary in size and degree of potential impacts. Next, the Team recognized on-the-ground realities, such as limited permission to enter private land which often prevents access to wetland areas that are not located in an applicant's project area. Finally, the Team also considered that the accuracy of available maps, such as soil or wetland mapping, and that there may be instances when common sense can be used regardless of what these offsite tools suggest.

E. Definition of Terms

Assured Delineator – A wetland professional who the Department has determined meets certain educational criteria and technical skills necessary for conducting wetland delineations and voluntarily requested to participate in a program designed by the Department to provide certainty in project planning and save time in state review of wetland boundaries.

Confirmation – A service provided by the Department of Natural Resources where the Department conducts a wetland determination to determine whether wetlands are present or absent in the project area.

Concurrence - A written statement, based upon an onsite inspection, of whether the Department or US Army Corps of Engineers agrees with the wetland boundaries delineated by a consultant or wetland professional.

Initial Screening – a desktop review of maps, aerial photos, or other records to determine whether or not a wetland may be present in a project area.

Offsite- an area within 75 feet of a proposed project area.

Onsite – within the footprint of the proposed project area.

Project Area - for the purposes of this guidance "project area" has the meaning given to "Construction site" in ss. NR 151.002(7) and NR 216.002(7) and are as follows

> **NR 151.002(7)** "Construction site" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long–range planning document that describes separate construction projects, such as a 20–year transportation improvement plan, is not a common plan of development.
>
> **NR 216.002(2)** "Construction site" means an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more. A long–range planning document that describes separate construction projects, such as a 20–year transportation improvement plan, is not a common plan of development.

The Department has also issued guidance to interpret the term "common plan of development" which may be found at http://dnr.wi.gov/topic/stormwater/documents/GuidanceCommonPlan.pdf

Protective Area – has the meaning given in s. NR 151.125(1), Wis. Adm. Code, a "protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.

Wetland - has the meaning given in s. 23.32(1), Wis. Stats., and "means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

Wetland delineation - A wetland delineation is a more comprehensive onsite review that focuses on the accurate identification of wetland boundaries. Wetland delineations and associated reporting must follow the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, Regional Supplements and the joint Department/U.S. Army Corps of Engineers Guidance for Submittal of Delineation Reports. Detailed information can be found at http://dnr.wi.gov/topic/wetlands/delineation.html

Wetland determination - a determination whether wetlands are present or absent within a project area. When wetlands are present a wetland delineation, as defined above, is necessary. When wetlands are absent from a project area, supporting documentation needs to be provided. This

documentation could include a summary of conditions, data sheets, and appropriate mapping of the project area.

Wetland review - an onsite wetland determination or wetland delineation conducted by trained agency personnel or private consultants.

F. Guidance

If a wetland is present at a project area and permit or plan and specification approvals are sought through the waterway and wetland program, storm water program, or CAFO (Concentrated Animal Feeding Operations) program, the Department requires a wetland delineation that accurately shows the location of the wetland. To reduce delays, a complete application or a plan and specification submittal needs to include a wetland screening prior to submitting permit applications to the Department. This screening process can include a wetland delineation that has been conducted by an assured delineator, a wetland delineation that has been concurred with by the Department or Corps of Engineers or, if the screening outlined below shows no wetland indicators are present, the maps need to be provided with the application or submittal.

The Department has determined that the local Wetland and Waterway staff has the flexibility to require a wetland delineation for the following types of projects.

- Habitat projects that require Chapter 30, Wis. Stats., approval and are cost-shared by county, state or federal agencies.
- Projects being completed as part of a wetland conservation activity.
- Wetland or waterway general permit approvals.

The following screening process assists applicants in determining when a wetland may or may not be present at or near a project area. If it is determined that wetlands may be present on or near the project area the guidance then discusses the process for getting a wetland delineation concurrence. It is important to note that a wetland delineation will not be required if a project area is completely covered by impervious surfaces, such as buildings, parking lots, roads etc.

G. Initial Screening Process

The following process is to be used for determining when a wetland review is required, and should be completed prior to applying for Department approval. Documentation of the screening results should be provided with all applicable permit applications and plan and specification submittals to reduce the potential for delays. The screening results allow the Department to determine if there is the potential for wetlands to be impacted by a proposed project. If it is determined that a wetland will be impacted by a proposed project, additional wetland permit approvals may be required. Consequently, if an initial screening for wetlands is not conducted by the applicant or their representatives prior to an application submittal, the application package will be considered incomplete. This is true for CAFO plan and specification submittals as well.

Storm water post-construction site performance standards under NR 151, Wis. Adm. Code, may require a protective area between wetlands and impervious surfaces that drain directly to that wetland. Consequently, review staff in the storm water program may need to consider the proximity of offsite wetlands. To learn more about the applicability and standards for protective areas for wetlands under Ch. NR 151, Wis. Adm. Code please see the Department's guidance that is available at http://dnr.wi.gov/topic/stormWater/documents/wetlands.pdf. The screening process goes on to cover the wetland information submittal.

The first step in the screening process is to complete a review within (referred to as "onsite") and adjacent to (referred to as "offsite") a proposed project area. Offsite reviews will be limited to areas within 75 feet of a proposed project area.

Step One

Review the *Wisconsin Wetland Inventory* and *Wetland Indicators* layers. These layers show the Wisconsin Wetland Inventory (WWI) mapped wetlands and areas of potential wetland soils. To view and print these map layers please go to the Department's website for wetland map review at http://dnr.wi.gov/topic/Wetlands/mapping.html and click on "Surface Water Data Viewer". Once the Surface Water Data Viewer opens, zoom in or search for your project area. You may wish to turn on an aerial photo to find your project area, please click on "Show Layers" and click on an aerial photo. The Wisconsin Wetland Inventory and the Wetland Indicators will automatically turn on once you zoom in sufficiently to find your project area. See Figure 1. in Appendix A for an example of what these layers will look like in the Surface Water Data Viewer. The Wisconsin Wetland Inventory is also often available on county GIS sites. This link provides information about interactive county GIS websites: http://coastal.lic.wisc.edu/wisconsin-ims/wisconsin-ims.htm

- Onsite: If the information presented by either of these two layers is present within a project area, a wetland review of the project area should be conducted.
- Offsite: If the information presented by either of these two layers is located within 75 feet of a project area, an offsite wetland review should be completed if you are applying for construction site storm water permit coverage and the protective area standard in NR 151, Wisconsin Administrative Code, applies. If you are unsure whether the NR 151 protective area standards apply, contact your local DNR Storm Water Specialist. For potential wetlands located offsite see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step Two

If neither the *Wisconsin Wetland Inventory* layer nor the *Wetland Indicators* layer is present in a project area, review the topographic maps. Topographic maps can be found on the Department's Surface Water Data Viewer if you click "Show Layers" then click on "Digital Topographic Maps." See Figure 2. in Appendix A for an example of what this layer will look like in the Surface Water Data Viewer and symbols or topographic features that may indicate the presence of a wetland. Topographic maps are also often available on many of the county GIS sites. This link provides information about interactive county GIS websites: http://coastal.lic.wisc.edu/wisconsin-ims/wisconsin-ims.htm

- Onsite: Are wetlands, waterways, or drainage ways, or depressions located within a project area? If so, there is a high likelihood that wetlands are present. A wetland review of the project area should be conducted.

- Offsite: If wetlands, waterways, drainage ways, or depressions are located within 75 feet of a project area, an offsite wetland review should be completed. For potential wetlands located offsite see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step Three
Look at a series of air photos. Air photos can be found on the Department's Surface Water Data Viewer if you click "Show Layers" air photos are available for 2008 and 2010. See Figure 3. in Appendix A for an example of what this layer will look like in the Surface Water Data Viewer and signs of wet areas that may indicate the presence of a wetland. Air photos are also often available on many of the county GIS sites. This link provides information about interactive county GIS websites: http://coastal.lic.wisc.edu/wisconsin-ims/wisconsin-ims.htm.

- Onsite: Look for signs of wet areas such as standing water or areas that were too wet to crop. If these features appear in the same general location on multiple air photos a wetland review of the project area should conducted.
- Offsite: If the signs of wet areas described above are located within 75 feet of the project area, an Offsite wetland review should be conducted. For potential wetlands located offsite please see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step Four
If no potential wetlands are identified in Steps 1-3 above:
- For permit applications, document your results on Section 5 of the Water Resources Application for Project Permits (WRAPP) and include the documentation with your permit application.
- For a plans and specification submittal, include the documentation within the narrative of the report.

Note: Existing impervious areas such as parking lots, paved roads, parking or road median/islands (this could include raised concrete profiles with vegetation or pervious pavers), gravel pads, buildings, walkways, structures elevated above the surrounding land surface, etc. are not considered wetlands. If wetland screening indicators are identified but you believe the wetland indicators no longer represent the current conditions at the project site please document your results on Section 5 of the Water Resources Application for Project Permits (WRAPP) and include the appropriate supporting documentation with your permit application. Examples of supporting documentation include photos of the impervious surfaces in relation to the project area, soil boring data, previous wetland fill permit, etc.

H. Onsite Wetland Reviews

When the initial screening for wetlands, as described in Section G., results in a potential for wetlands to be located on a proposed site, a wetland review is necessary. A ***wetland review*** involves onsite wetland determination or wetland delineation conducted by trained agency personnel or private consultants. One of the following can be used:

1) Department's Wetland Identification Service (WIS)
    a. The WIS does not provide survey grade wetland boundaries, but does provide information about the approximate location of wetlands found on a site. It is best

utilized for providing a definitive answer regarding the presence or absence of wetlands at a site, but not for locating wetland boundaries that can be used for design or setback purposes. More information regarding this service is available at: http://dnr.wi.gov/topic/Wetlands/identification.html

2) Private Wetland Delineator
   a. A list of private wetland delineators is maintained by the USACE and may be found at: http://dnr.wi.gov/topic/Wetlands/pro.html
3) US Army Corps of Engineers (USACE)-St. Paul staff
   a. May do field visits to determine the presence or absence of wetlands on a project area and in some circumstances may locate the boundaries of the wetland. If you need immediate assistance, contact the Saint Paul District at (800) 290-5847 ext. 5525 or 651-290-5525. Additional information regarding the USACE regulatory program may be found at: http://www.mvp.usace.army.mil/Missions/Regulatory.aspx

Investigations within the project site are known as a ***wetland determination*** or ***a wetland delineation.*** The wetland determination simply determines if wetlands are present within a project area. If wetlands are not present within a project area supporting documentation needs to be provided, including a summary of site conditions, data sheets, and appropriate mapping. If completed by a private consultant, the information should be submitted to the WIS for Department approval. If wetlands are present, a wetland delineation is necessary. A wetland delineation is a more comprehensive site review that focuses on the accurate identification of wetland boundaries. Wetland delineations and associated reporting must follow the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, Regional Supplements and the joint Department/U.S. Army Corps of Engineers Guidance for Submittal of Delineation Reports. Detailed information can be found at http://dnr.wi.gov/topic/wetlands/delineation.html. Note that in section 3.3.2. and 3.3.3 on page 13 of the "Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources" a wetland determinations or delineations should not be conducted outside of the growing season. Determinations or delineation conducted outside of the growing season will require field-verification during the growing season prior to final concurrence. To review the guidance please see http://dnr.wi.gov/topic/wetlands/documents/FinalWisconsinDelineationGuidance.pdf.

I. Off-Site Wetland Reviews

Under the Department's storm water program, a post-construction site performance standard under NR 151, Wis. Adm. Code, requires a protective area between wetlands and impervious surfaces that drain directly to that wetland. Consequently, if you are seeking coverage under the Department's storm water permit, review staff must consider the proximity of offsite wetlands to the project area. When the initial screening results in a 'potential for wetlands' that is outside of the project limits or property boundaries, a wetland review may be difficult, particularly if the potential wetlands are located on a property that is not owned or controlled by the applicant. In view of these difficulties, the following guidance is suggested for offsite wetland determinations when storm water permit coverage is being sought.

1. Use the Surface Water Data Viewer or other online mapping tools to determine if any of the proposed grading, filling or proposed building construction will be within 75 feet of the potential wetland boundaries.
2. Use measuring tools on the available websites to approximate the location of the potential wetlands in relation to the proposed grading and filling.
3. Use these estimated distances to determine if NR 151 protective area standards are being met for proposed impervious surfaces draining directly to the wetlands. This may require consultation with a local wetland expert who is knowledgeable about the region and storm water specialist/engineer to determine which protective area should be applied.
4. Onsite techniques described above can be used to supplement the Offsite determinations (e.g. information on plant community composition, wetland boundary delineations, etc.).

It is important to note that not all projects require wetland protective areas. For example, non-agricultural and transportation areas of post-construction sites are exempt from the protective area standards if runoff is treated to meet total suspended solids and peak discharge performance standards (ss. NR 151.122 to 151.123 and ss. NR 151.242 to 151.243, Wis. Adm. Code) prior to entering the wetland pursuant to ss. NR 151.125(4)(e) and 151.245(4)(d), Wis. Adm. Code. Best Management Practices such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area (ss. NR 151.125(3)(c) and 151.245(3)(c). Consequently, if the runoff from the project area will be treated to meet the exemption under ss. NR 151.125(4)(e) and 151.245(4)(d), Wis. Adm. Code, an offsite wetland review is not necessary. To review the guidance please see http://dnr.wi.gov/topic/stormwater/documents/wetlands.pdf. If you are unsure whether the storm water protective area standards are required to be met, contact your local DNR Storm Water Specialist.

J. Wetland Delineation and Application Submittals

Wetland delineations may be completed by a governmental agency or private consultant. However, all delineations conducted in the State of Wisconsin must follow the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, the proper U.S. Army Corps of Engineers Regional Supplement, and the joint guidance for the submittal of wetland delineations that was developed between the Department and the U.S. Army Corps of Engineers. For more information please see http://dnr.wi.gov/topic/wetlands/delineation.html

The following identifies the Department's procedures for verifying the accuracy of wetland delineations:

1) A concurrence/confirmation letter from USACE or WDNR. For consultants that have not achieved Assured Delineator status, delineations need to be reviewed before the state approves/validates the accuracy of their work. This approval can be in the form of either:
   I. DNR Confirmation letter issued through the Wetland Confirmation Service
   II. Concurrence letter issued by the USACE

2) Assured Delineator. Concurrence/confirmation from DNR is not needed if an Assured Delineator completes a wetland delineation. (USACE still reviews the work for their regulatory purposes) To identify if the wetland delineation was submitted by an assured delineator please see http://dnr.wi.gov/topic/Wetlands/assurance.html

3) Governmental Agency Submittals. Concurrence/confirmation from the DNR is not needed if the delineation was completed by the USACE. If the delineation was completed by any other governmental agency, review of the delineation is needed to validate the accuracy of the work.

4) DNR Transportation Liaison/Office of Energy WMS Wetland Review Correspondence. Applicants seeking a construction storm water permit for a transportation or energy project must provide correspondence with an Office of Energy WMS or DNR Transportation Liaison regarding their project and wetland impacts. This correspondence must be included in the storm water permit application whether there are wetland impacts or not.

K. Conclusion

To ensure consistent screening for potential wetland impacts and to reduce permit delays it is necessary that permit applications submitted to the Department's wetland, storm water, or CAFO programs include an approved wetland determination/delineation or include the maps and air photos, identified in the screening process described on pages 5 and 6, that indicate no wetlands are present in or adjacent to the project area. This documentation is necessary to consider the application complete or the Department will notify the applicant that an approved wetland review will be required before the permit application or plan and specification submittal can be approved. When the applicant supplies an approved wetland determination/delineation, the Department will start its review.

Appendix A

Figure 1. Wisconsin Wetland Inventory shown in Gold. Wetland Indicators Layer shown in Pink.

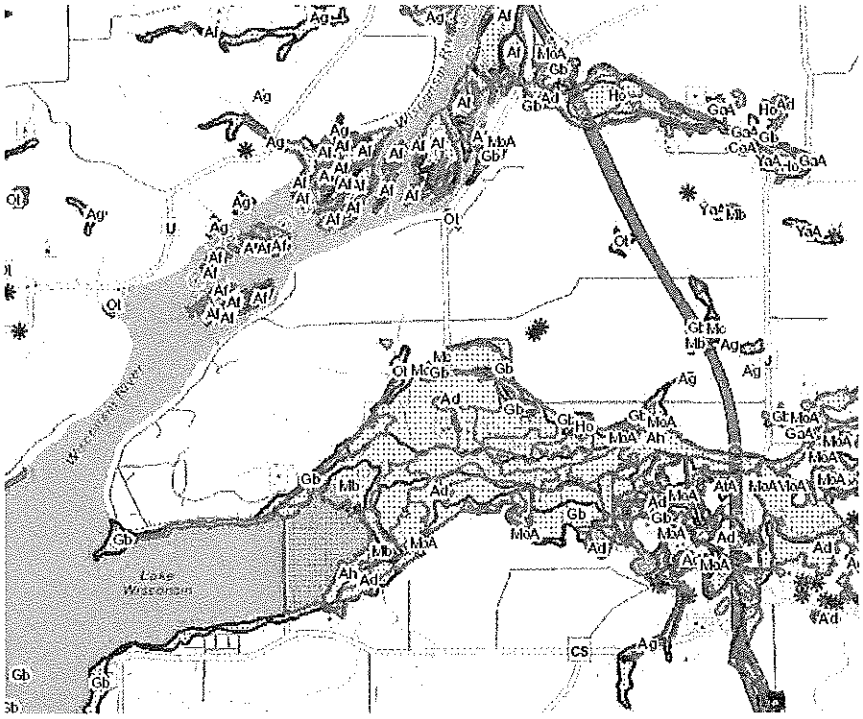
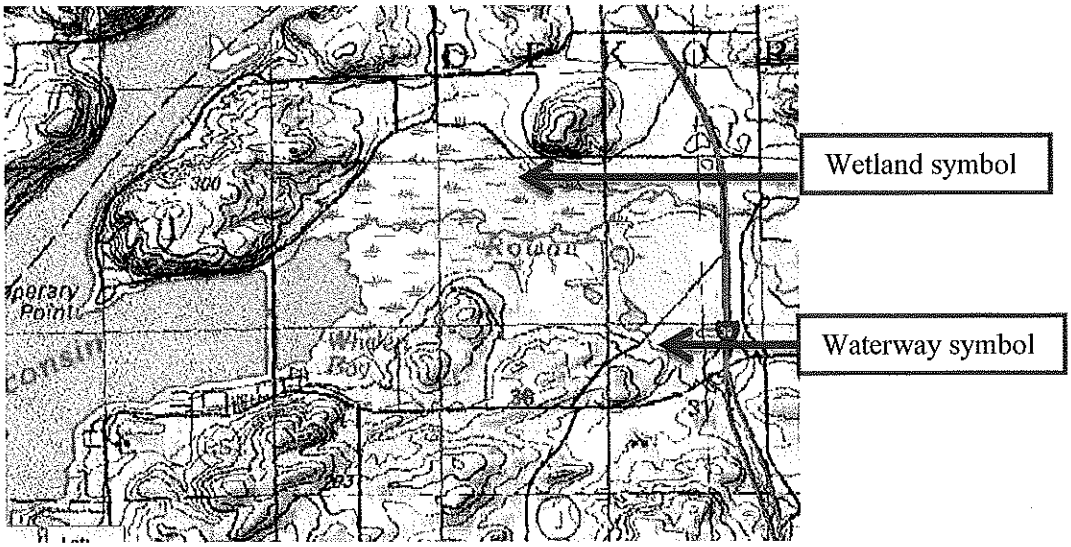
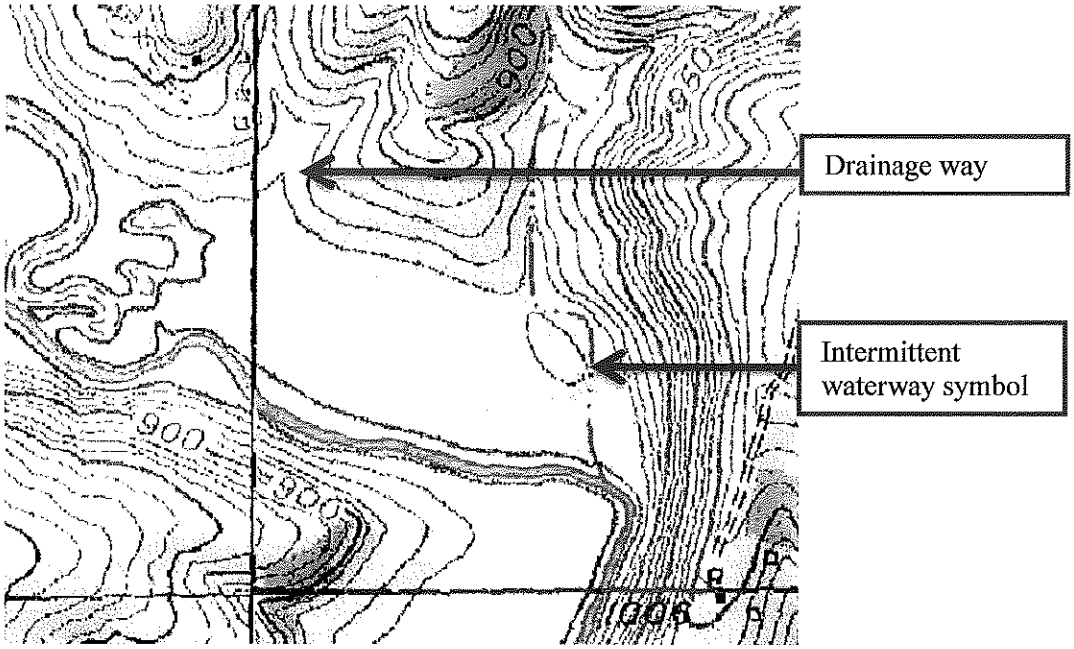


Figure 2. Topographic Maps




Drainage way
Intermittent waterway symbol
900
900
900
1000

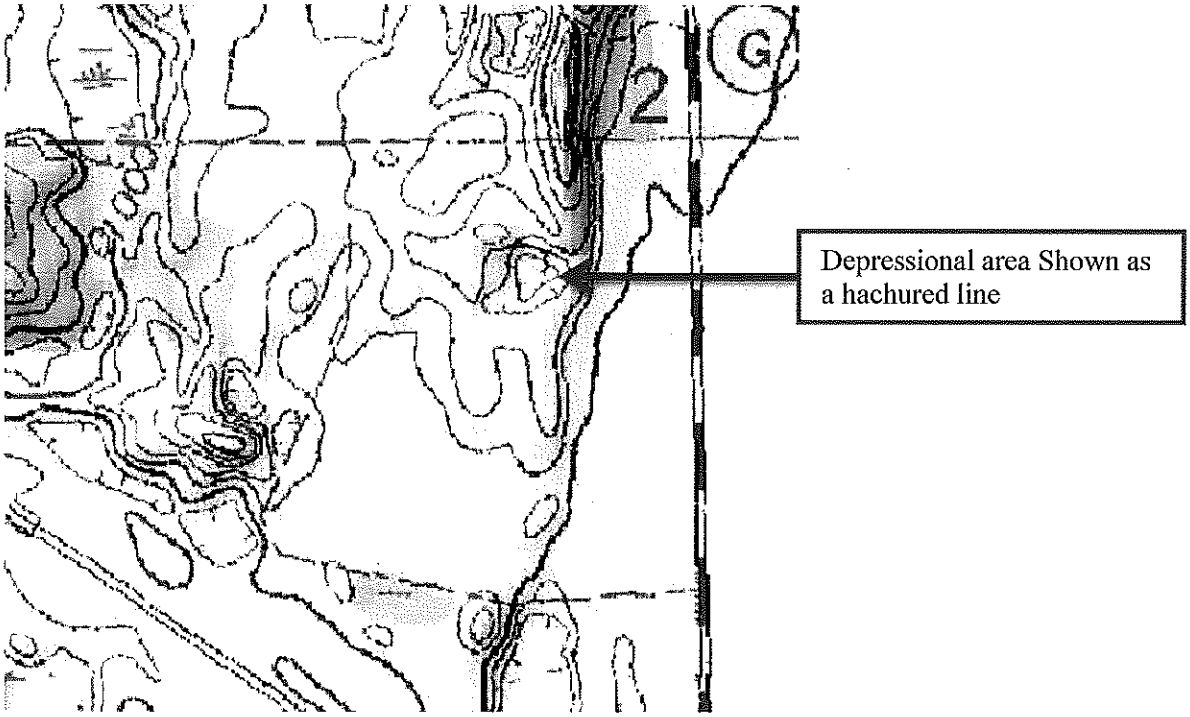

G
2
Depressional area Shown as a hachured line

Figure 3. Aerial Photos

Wet area

Wet areas