The attached guidance, “Wetland Compensatory Mitigation Guidance for Utility Project Impacts to Wetlands”, was developed for use by Department staff when making decisions related to compensatory mitigation requirements of the wetland permitting statute, ss. 281.36(3n)(d), Wis. Stats.

The decision on when to require compensatory mitigation for a utility project is driven by two main factors, in addition to our goal to be consistent with the US Army Corps of Engineers requirements. The two main factors in the mitigation decision for utility projects are: 1) the reason the project will be reviewed as an IP, and 2) the nature and extent of the impacts to wetlands.

This guidance was developed by a team office of energy and water program staff from DNR over about the last 6 months. The Department is now soliciting comments from external stakeholders as well. Once the 21 day notice period is complete, all comments will be considered, revisions will be made to the guidance as needed, and final guidance will be made available to the appropriate internal and external stakeholders.

Comments related to this draft guidance document should be sent to:
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DATE: DRAFT
TO: OE Water Management Specialists
Pam Schense- WT/4

FROM: Dave Siebert – ETEA/7

SUBJECT: Wetland Compensatory Mitigation Guidance for Utility Project Impacts to Wetlands

This memorandum clarifies requirements for wetland compensatory mitigation for utility projects. While ss. 281.36(3n)(d), Wis. Stats., states that compensatory mitigation is required for wetland loss associated with projects authorized by a wetland individual permit (IP), the plain fact that DNR reviews a utility project as an IP is not what governs the decision for wetland compensatory mitigation.

The decision on when to require compensatory mitigation for a utility project is driven by two main factors, in addition to our goal to be consistent with the US Army Corps of Engineers requirements. The two main factors in the mitigation decision for utility projects are: 1) the reason the project will be reviewed as an IP, and 2) the nature and extent of the impacts to wetlands.

1. The reason the project will be reviewed as an IP

Since the utility GP (GP3) combines the authorities for issuing general permits under both Chapter 30 waterway law and Section 281.36 wetland law, there may instances where the "kick-out" to an IP is driven by Chapter 30 conditions and not due to potential wetland impacts. There may also be cases where DNR authorizes a utility project through an IP that combines wetlands, waterways and special conditions under Chapter 30.025, Wis. Stats. Only projects that cannot meet the wetland aspects of the GP require consultation with the Wetland Mitigation Program.

2. The nature and extent of the impacts to wetlands

a. If wetland fill exceeds 10,000 square feet, compensatory mitigation is required. For these projects, staff should consult with the WDNR Wetland Mitigation Program and the Corps regarding compensatory mitigation details.
b. If the project results in 10,000 square feet of permanent or long term conversion from wooded wetland to herbaceous vegetation, compensatory mitigation is required. For these projects, staff should consult with the WDNR Wetland Mitigation Program and the Corps regarding compensatory mitigation details.
c. Temporary wetland impacts such as construction zone clearing or mowing of non-forested vegetation prior to construction and the placement of construction mats for equipment access do not require compensatory mitigation as long as pre-existing wetland conditions, functions and services are restored at the conclusion of the activity. Clearing or trenching may be considered temporary especially if a degraded wetland plant community, such as a reed canary grass monotype, is being impacted and is expected to revegetate after construction.
d. Wetland IP activities that result in significant degradation of difficult to replace (DTR) wetland type[i] will, in most cases, be considered permanent wetland impact. For these projects, staff should consult with the WDNR Wetland Mitigation Program and the Corps regarding compensatory mitigation requirements. Placement of clean mats for construction access through a DTR wetland is considered a protective measure, and, in most cases, such matting will not result in degradation of that wetland.

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[i] Difficult to replace wetland types include sedge meadow, bog, wet prairie, fen, certain shrub carrs, and other high quality plant communities dominated by native species.