

Support for Proposed Amendment to Current Wetland Rules March 24, 2026

I'm Josh Stromlund, Lake of the Woods County Land and Water Planning Director. In this role, I also serve as the Soil and Water Conservation District Manager. My responsibilities include overseeing planning and zoning, septic systems, and implementation of Wetland Conservation Act. I have worked with wetland regulations for approximately 25 years and have seen how these policies function on the ground.

Before I explain the issue I'm here to discuss today, I'd like to briefly provide some context about Lake of the Woods County.

Our county includes approximately 800,000 acres of land. Of that, about 27% or 225,000 acres is privately owned, while more than half is publicly owned by the state and federal government. Within the privately owned land, about 40,000 acres are used for agriculture, roughly one out of every five acres.

Agriculture is one of the three primary economic drivers in Lake of the Woods County, along with tourism and forestry. These industries depend on each other and on healthy natural resources. For example, we are working with partners on ditch abandonment to restore peatlands, reduce phosphorus and sediment entering our lakes and rivers, all while promoting sustainable forestry practices that support both the economy and wildlife habitat.

I share this to make one point clear: our county takes natural resource protection seriously.

During the 2024 legislative session, changes were made to the Wetland Conservation Act, specifically to Minnesota Statute 103G.2241. While these changes were well intended, they have created unintended consequences for agricultural producers.

Previously, the agricultural producers were required to provide documentation that the field was farmed at least 8 out of the last 10 years. Now, the producers are required to have a Certified Wetland Determination that has been conducted after July 3, 1996.

Under the current state law, only producers who participate in federal farm programs can receive what is referred to as a "Certified Wetland Determination" from the Natural Resources Conservation Service, or NRCS. In simple terms, this is the official determination informing a landowner whether an area is regulated as a wetland under federal law.

This creates two major problems:

First, if a producer is not enrolled in a federal farm program, they have no way to obtain a Certified Wetland Determination. That means they cannot be in compliance with current state law.

Second, even for those who are enrolled in the federal farm program, the process is significantly delayed. It can take two years or more to receive a determination due to a 2024 federal lawsuit affecting past determinations in Minnesota, increased demand, and reduced staffing of the Natural Resources Conservation Service.

In practical terms, this means a farmer could be left waiting years for an answer, or if they move forward with their project, they face the risk of being out of compliance with state law. In some cases, this could involve large areas of land - potentially over 100 acres - being considered in violation, without a clear or timely path to resolution.

This is not a hypothetical situation. It is currently happening in Lake of the Woods County.

In one case, a landowner believed he was in compliance because the property has been in agricultural production since 1941. However, he did not have a valid Certified Wetland Determination conducted after July 3, 1996, as required under current state law. However, this landowner had a Certified Wetland Determination from 1988, but this determination is not sufficient for current state law. As a result, this landowner is not in compliance with state law.

This situation would likely not have occurred if the “8 out of 10” rule had not been removed during the 2024 legislative session and replaced with the current USDA Certified Wetland Determination

For those of you unfamiliar, the “8 out of 10” rule allowed drainage on agricultural land if it had been actively farmed for at least 8 of the previous 10 years. It applied to lands that have already been significantly altered for agricultural use and typically, the wetlands that may be present have limited, if any, remaining function.

Importantly, reinstating this rule would not allow drainage of natural, undisturbed wetlands. It applies only to previously farmed, highly manipulated lands.

In some cases the “8 out of 10” rule is actually more restrictive than the current Certified Wetland Determination criteria. For example, if a portion of a field was farmed for decades but taken out of production 20 years ago, it may still qualify for an exemption under the Certified Wetland Determination criteria. However, it would not qualify under the “8 out of 10” rule because it has not been recently farmed.

Our request is straightforward: we urge the Legislature to reinstate the “8 out of 10” rule as it existed prior to the 2024 legislative changes. This would restore a practical, timely and workable path for agricultural producers to remain in compliance, while continuing to protect Minnesota’s natural resources.

Thank you.