POND EXCAVATION IN WETLANDS

A lot of folks in Pine County are interested in excavating wetlands to construct ponds. Frequently, excavation of wetlands is regulated. Wetland excavation regulation varies depending on wetland type, depth of excavation and where the excavated soil will be placed. The 1991 Wetland Conservation Act defines wetland impact as draining, filling or excavation of a wetland. Wetland impact requires authorization and will usually necessitate wetland replacement. Wetland replacement involves creating or re-storing degraded wetlands.

Excavation is regulated in type 3, 4 and 5 wetlands. These wetland types typically have surface water. The most familiar wetland is a type 3, commonly recognized as the cattail marsh. You must receive authorization to excavate type 3, 4 or 5 wetlands. If a wetland was excavated in the past to create a pond or type 3, 4 or 5 wetland, the created pond/wetland will be regulated as if it was a natural pond or type 3, 4 or 5 wetland.

The 1991 Wetland Conservation Act does not regulate excavation in type 1, 2, 6, 7 and 8 wetlands unless the depth of excavation exceeds six and a half feet or the excavated soil is placed in a wetland. If the excavated soil is placed in a wetland, both the excavation and the area where the excavated soil (fill) is placed will be regulated and authorization is required.

Periodically a de minimis exemption can be applied which will allow wetland impact from excavation, draining or filling without wetland replacement. The amount of wetland impact allowed utilizing the de minimis exemption is variable.

Listed below are the criteria that determine the allowable wetland impact utilizing the de minimis exemption.

10,000 square feet of wetland impact in type 1, 2, 6 and 7 (excluding white cedar and tamarack) wetlands outside of the shoreland wetland protection zone. The shoreland wetland protection zone for a lake is 1,000 feet and for a stream or river 300 feet.

400 square feet of wetland impact in type 1, 2, 6 and 7 (excluding white cedar or tamarack) wetlands within the shoreland wetland protection zone but outside the building set back zone.

100 square feet of wetland impact in type 3, 4, 5, 7 (white cedar or tamarack) and 8 wetlands outside of the building set back zone

20 square feet of wetland impact in any wetland type inside the building setback zone.

The above applies if the landowner owns the entire wetland basin. If the landowner does not own the entire wetland basin, the landowner's de minimis is based on 5% of the wetland area owned.

In Other Words

If an individual owns a portion of a type 1, 2, 6, 7 (excluding tamarack and white cedar) wetland that is located on another or several properties outside of the shoreland wetland protection zone the following will apply:

The lesser amount of 10,000 square feet or 5% of the landowner's portion of the wetland. If 5% is less than 400 square feet, the landowner may impact up to 400 square feet of wetland.

Let's take a look at a few examples;

All of the wetlands are outside of the shoreland wetland protection zone.

Mrs. Angelica Hummock excavated a type 2 wetland 10 years ago to construct a pond. Mrs. Hummock would currently like to excavate the pond because it is overgrown with vegetation. Excavation of the pond would be regulated because the pond would be considered a type 3, 4 or 5 wetland. Mrs. Hummock will have to receive authorization to excavate the pond.

Mr. Pete Bog owns 20,000 square feet of a type 6 wetland that is located on his parcel and three neighboring parcels. He intends to excavate the type 6 wetland and place the excavated soil (fill) adjacent to the excavation. Pete is authorized to impact 1,000 square feet (5%) of the wetland he owns. The excavated area and the soil (fill) placed in the wetland can be no greater than 1,000 square feet.

Pete's neighbor, Ms. Aster Marsh owns 7,000 square feet of the same wetland. Ms. Marsh is also going to excavate the type 6 wetland but the excavated soil will be placed in an upland area. Because the excavated soil will not impact a wetland the excavation will not be regulated and Ms. Marsh can excavate the entire wetland area she owns.

Mr. Reed Fen owns 10 acres of a large type 1 wetland that extends onto state land. Five percent of the wetland owned by Mr. Fen is 21,780 square feet. Mr. Fen intends to excavate the wetland and leave the excavated soil in the wetland. He is authorized to impact 10,000 square feet of the wetland. The excavated area and the soil (fill) placed in the wetland can be no greater than 10,000 square feet.

Determining wetland types and interpreting the de minimis exemption that might apply to your project can be complicated. That's where we come in. The State of Minnesota has designated soil and water conservation districts to be information centers for the 1991 Wetland Conservation Act; and the Pine SWCD is the local government unit (LGU) that reviews and authorizes wetland projects. Contact our office for the necessary applications to begin your project. Even if you think your project may not be regulated, forms, such as the, "Contractor Responsibility and Landowner Statement Form" are to be filed with this office by the contractor conducting the work. The Corps of Engineers and DNR also review the applications to ascertain if they regulate the proposed wetland project. Give us a call, we will be more than happy to assist you with your project that may impact wetlands.

Pine Soil and Water Conservation District
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