

ENVIRONMENTAL ASSESSMENT

Wisconsin Statewide Wetland General Permit for the City of Superior Special Area Management Plan.

Prepared by Wisconsin Department of Natural Resources, Bureau of Watershed Management
October 2013

NOTE TO REVIEWERS: This document is a Department of Natural Resources Environmental Analysis that evaluates probable environmental effects and decides on the need for an Environmental Impact Statement. The attached analysis includes a description of the action and the affected environment. The Department has reviewed the attachments and accepts responsibility for their scope and content to fulfill requirements in s. NR 150.22, Wisconsin Administrative Code.

Your comments should address completeness, accuracy or the EIS decision.

For your comments to be considered, they must be received by the contact person before 4: 30 p.m., **DATE**.

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DESCRIPTION

Statewide Wetland General Permit Process

General Permit Issuance:

The Department was given authority, as laid out in s.281.36(3g)(b) Wisconsin State Statutes, to issue statewide wetland general permits that are consistent with, and correspond to, any general permits issued by the US Army Corps of Engineers (ACOE) under 33 USC 1344(e). The ACOE has issued general permits 96-06788-GP-SDE, 96-06789/06790-GP-SDE, 96-06791-GP-SDE, 96-06792-GP-SDE, for the City of Superior's Special Area Management Plan (SAMP). The ACOE general permits and the Department's statewide wetland general permits are valid for a period of 5 years. The Department has the authority to reevaluate the general permits effectiveness and will give public notice of its intention to issue, renew, modify or revoke a statewide wetland general permit as well as provide a period for generating public comments.

General Permit Coverage:

Coverage, under a statewide general permit, allows an individual to perform work in accordance with the terms and conditions of the general permit and is typically valid for a period of 5 years from the date of issuance. The Department has the authority to establish requirements, conditions and exceptions for statewide general permits to ensure that the authorized discharges will cause only minimal adverse environmental effects. The Department may make a decision whether to waive the application requirements for coverage under a general permit, determine that an individual must apply for and obtain general permit coverage or require an individual to apply for an individual permit process. The Department determination will depend on whether or not the discharge complies with the eligibility requirements and standard conditions outlined in the general permit. See Addendum 1 for more details regarding the Department's process to authorize the discharge of fill under this general permit.

The review process, as outlined in s.281.36 Wisconsin State Statutes, requires the Department to determine whether a practicable alternative exists. This is achieved by requiring applicants to explore various project alternatives that would avoid and minimize wetland impacts. The Department review process will rely upon application of this process to assure that avoidance and a full search for practicable alternatives is completed so as to have only minimal impacts on wetland functions and values.

Wetland General Permit for City of Superior Special Area Management Plan

Authorized Activities:

WDNR-GP8-2013 authorizes discharges less than or equal to 10 acres in size, of dredged or fill material into wetlands if the discharge is part of a development for commercial or industrial, residential, institutional or public purposes. Projects must meet all eligibility standards, terms and conditions of the general permit to be eligible for coverage.

Excluded Activities:

Projects that do not meet all the terms and conditions of WDNR-GP8-2013 are not eligible and excluded from coverage. These projects may be reviewed under the individual permit review process which allows the Department a more in-depth review to assure that no significant adverse impacts to wetland functional values will occur. The Department can revoke coverage of any projects found not to be in compliance with the terms and conditions of this permit or if at any time the Department determines the project will be detrimental to Wetland Water Quality Standards. Furthermore, the Department has the authority to reevaluate the effectiveness of WDNR-GP8-2013 and may modify or revoke a statewide wetland general permit if determined necessary. The Department has the authority to require an individual permit in lieu of a general permit if it determines that conditions specific to the site require additional restrictions to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. Proposed tribal activities located on Federal Indian Trust lands are excluded from requiring WDNR-GP8-2013 authorization.

PURPOSE AND NEED

Approximately 7,420 acres of wetland exist within the 45-square mile area of the City of Superior's municipal boundaries. While 1,841 acres of wetland lie within the City of Superior Municipal Forest and are not subject to development, the remaining 5,579 acres of wetland represent 86% of the undeveloped land within the City limits. Prior to the SAMP, permit reviews repeatedly raised the same questions regarding avoidance, minimization and compensation. Delays in permit decisions were lengthy in some cases. Development of the first SAMP began in 1990 with a Technical and Advisory Committee (TAC) composed of the City, the Department, the ACOE, US Environmental Protection Agency and US Fish and Wildlife Service and others. The purpose of the SAMP was to: (1) facilitate natural resource management in cooperation with reasonable economic growth; and (2) assist the ACOE and DNR in providing fair and timely responses to wetland impact permit requests. Since 1996, the ACOE has issued federal general permits for the SAMP and the Department has issued Water Quality Certifications to the City. The City has administered the SAMP program and the requirements of the federal SAMP general permits and the State's Water Quality Certification through its building permit process. The Department and the ACOE have continued to review every project to ensure that the impacts to wetlands were avoided and minimized to the extent practicable and have had oversight over the compensatory wetland mitigation process administered by the City and its wetland mitigation banks.

Consistent with the purpose of issuing general permits for the original SAMP back in 1996, the purpose of this statewide wetland general permit is to establish a stable, relatively simple wetland permit program that is specifically designed to effectively and efficiently regulate the public and private needs for discharges of dredged or fill material into wetlands within the City of Superior as well as provide consistency with the federal general permits.

ALTERNATIVES

No person may proceed with a project to discharge dredge or fill material into a wetland as part of a development for industrial or commercial, residential, institutional or public purposes, unless the discharge is authorized for coverage under wetland general permit WDNR-GP8-2013 or an individual permit is issued by the Department. Section 281.36(3g)(b) requires the Department to issue wetland general permits that are consistent with and correspond to any federal general permits issued by the ACOE under 33 USC 1344(e) and section 281.36(3g)(h)4. allows the department to waive the requirement that a person apply to the department for coverage under WDNR-GP8-2013. Yet the Department retains authority under ss. 281.36 (3g) (i), to require a wetland individual permit in lieu of a wetland general permit.

Coverage under WDNR-GP8-2013 may be granted for projects meeting all applicable purpose, design, construction and location terms and conditions. An individual will submit an application package to the City of Superior. Then the City of Superior will send a copy of the application and a Pre-Discharge Notification (PDN) to the ACOE and the Department. The Department then has 20 days to review the application package for a proposed discharge of less than or equal to 5 acres or 30 days for a proposed discharge of greater than 5 acres but less than 10 acres. The Department will notify the City of any additional information or missing application items required to complete the PDN. Then the Department will make a determination whether the project meets the terms and conditions of the general permit and waive the requirement for the applicant to apply for a general permit within the time frames specified above. When review of the proposed project indicates that terms and conditions of the general permit are not sufficient to ensure only minimal adverse environmental effects to wetlands, the Department may require an individual permit to allow a more detailed review. Also if a project will impact wetlands that were deemed ineligible by the SAMP TAC, exceed the 10 acre limit for a single and complete project or cannot be modified to avoid and minimize impacts to state listed threatened/endangered or special concern species, then the project is not eligible for a general permit and must obtain an individual permit.

Individual permit procedures require a pre-application meeting to discuss the purpose and scope of the proposed project. A more detailed review by the Department is required, which requires a permit application with a more comprehensive practicable alternatives analysis and a compensatory wetland mitigation plan. Through the individual permit process Department staff may advise applicants on project modifications to reduce wetland impacts and ensure

that the project will not result in any significant adverse environmental consequences. Additionally, individual permits require a public notice, public comment period and an opportunity for an informational hearing. Individual permit decisions are subject to appeal for review by an administrative law judge within 30-days of the decision.

Although the Department has the authority to require an individual permit in lieu of a general permit, the alternative of strictly permitting all discharge activities in the City of Superior as individual permits is deemed unnecessary. The Department has the authority to establish requirements, conditions and exceptions for statewide wetland general permits and WDNR-GP8-2013 has been designed to produce and achieve the same regulatory results as an individual permit review for projects within the City of Superior. Furthermore, individual permit reviews for all projects is beyond the ability of the Department with its presently available or reasonably foreseeable regulatory resources. Individual permit review will be required of proposed projects not meeting the terms and conditions of WDNR-GP8-2013 or on a case-by-case determination of specific site conditions that necessitate additional restrictions in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

Both general and individual wetland permits may be revoked if the Department determines that the applicant fails to comply with the terms and conditions of the permit or if the information provided by the applicant proves to be false, incomplete or inaccurate. Either permit may also be revoked if new information surfaces regarding the project that will cause significant environmental impacts. The commitment of these nonrenewable resources is based on the premise that the benefits of development would outweigh the commitment of these resources. The establishment of this wetland general permit as a streamlined permit process will have the advantage of allocating more Department resources to the review of individual permits of greater complexity and greater potential for significant adverse wetland impact.

AUTHORITIES AND APPROVALS

Wetland general permit authorizations are provisional and require that the applicant obtain any other federal, state, local or tribal permits or approvals that required for the project or activity be obtained before any work is authorized. For example, the ACOE may require permits for dams, dikes and other structures in federal navigable waters and for the discharge of dredged or fill material into waters and wetlands as required in section 404 of the Clean Water Act. This federal permit is in addition to a state wetland permit. The type of permit needed and the length of the ACOE review of a proposal will depend on the extent of wetland alteration proposed. More information about federal requirements can be found at: www.mvp.usace.army.mil/regulatory.

Furthermore, while the state wetland permit program governs the determination of whether a discharge is in compliance with state Water Quality Standards, it does not affect the authority of the Department to otherwise regulate the discharge of dredged or fill material into a wetland. For example, several types of activities related to collecting, storing, transporting, treating and disposing of solid waste or the discharge of industrial or municipal waste waters require permits or licenses from the Department. The Department of Natural Resources also requires permits for the placement of structures, dredging and similar activities in or adjacent to navigable waters as regulated under Chapter 30 of Wisconsin Statutes. Local zoning officials administer permit programs for buildings, land disturbance and other activities in shoreland and floodplain areas.

ENVIRONMENTAL IMPACTS

This analysis briefly describes potential effects that would be attributable to activities authorized by WDNR-GP8-2013 for discharges of dredge or fill material, less than or equal to 10 acres, into wetlands as part of a development for commercial or industrial, residential, institutional or public purposes. This analysis further addresses any expected difference in environmental effects and impacts between the issuance of a statewide general wetland permit versus the alternative of issuing an individual permit.

Affected Environment:

Wisconsin has a large variety of wetlands with vegetation differing from northern to southern portions of the state due to differences in climate and soils. Wisconsin's history of glaciations favored the formation of wetlands and wetland complexes throughout most of the state. In *Wetland Plants and Plant Communities of Minnesota and Wisconsin*, by Eggers and Reed, Wisconsin wetlands are classified into 15 different communities defined by a unique combination of plants, soil types and water levels. The City of Superior's pursuit for a SAMP is predicated, in part, by the unique geophysical characteristics of the land within its municipal boundaries. The City is located on an old glacial lakebed that consists of 200 feet of impermeable red clay covered with a thin layer of organic material. The soils combined with the lack of any relief in elevation, meaning generally flat topography, create perched wetlands. In the City of Superior 12 different wetland communities may be found: seasonally flooded basins, floodplain forest, sedge meadows, wet meadows, shallow marshes, deep marshes, shrub-carrs, alder thickets, hardwood swamps, coniferous swamps, open bogs, and coniferous bogs. Several of these wetland communities occur together to form a mosaic or wetland complex.

Wetlands, whether part of a complex or isolated, are valuable in the economic and aesthetic benefits they provide. Wisconsin wetlands serve many important functions. They provide habitat for a diversity of wildlife, help alleviate flooding, reduce soil erosion, cleanse dirty and polluted waters and contribute to regular water flow in streams and rivers throughout the year. They also provide opportunities for recreation, research and education. These societal benefits and ecological functions are discussed in further detail in *Wetland Functional Values*, a Wisconsin Department of Natural Resources publication available online at www.dnr.wi.gov/topic/wetlands. Wetland connections to lakes, streams, groundwater, each other and terrestrial habitat are not always immediately obvious yet impacts to one wetland may influence the functioning of other wetlands as well as other natural systems due to hydrological and biological connections. Only relatively recently have we begun to understand the many ecological functions associated with wetlands and their significance to society.

Functional Assessment of Wetlands

In SAMP I, the City estimated where development would occur by designating 17 SAMP sites that included 143 acres of wetlands. Projecting development locations out 10 years proved difficult as SAMP sites were not necessarily the sites chosen by developers. Consequently, the wetland functional assessments completed for SAMP I projects were minimal and did not holistically compare or consider the quality of the wetlands at a project site to other wetlands within the City of Superior's municipal boundaries.

However, in 1998 the City of Superior employed a wetlands ecologist to conduct a more detailed functional assessment of all wetlands known within the City, as well as additional wetlands not previously mapped by the Wisconsin Wetland Inventory or SAMP I. The functional assessments determined the functional level of each wetland based on its plant community integrity, water quality protection, wildlife habitat integrity, flood and stormwater attenuation, hydrologic integrity, and public values (recreation, aesthetics, cultural, scientific, etc.). The functional assessments also identified if the wetlands were shoreland-wetlands, within a designated floodplain, contained known occurrences of state- or federally-listed threatened, endangered or special concern species or other environmentally sensitive areas.

Using these functional assessments the SAMP TAC determined that any wetlands with high-rated plant integrity and/or high-rated wildlife habitat integrity and many wetlands with medium ratings for these functions would not be eligible under the SAMP II federal general permits for discharge of dredge or fill material. Additionally, wetlands within the shoreland zone, floodplain, an environmentally sensitive area, or in an important wildlife corridor would also not be eligible for discharge of fill material under the SAMP II federal general permits. These criteria resulted in 80% of the wetlands within the City being ineligible for discharge of dredge or fill material under the SAMP II and would require any projects located within these wetlands obtain individual permits from the ACOE and Department. The remaining 1,097 acres that were deemed eligible for the federal general permit had low to medium functional ratings for plant community integrity and wildlife habitat integrity and no special features. See Addendum 2, Figures 1 through 5 depicting eligible wetlands under the SAMP II general permits

Endangered, Threatened and Special Concern Species

Fieldwork conducted for SAMP I also discovered that the red clay plain within the City of Superior has a concentration of state-listed T/E/SC wetland plants. As a result, measures to avoid, minimize and compensate for impacts to these rare species have been incorporated into the SAMP process. A detailed standard operating procedure for the mitigation of state-listed T/E/SC plants – developed in cooperation between the SAMP TAC and the Department's Bureau of Natural

Heritage Conservation is included in the SAMP II – TIA document. All SAMP II – GP applications would be reviewed by the Department’s Bureau of Natural Heritage Conservation. Mitigation efforts may include avoiding impacts, minimizing impacts, or transplanting of all or a portion of the population to a safe refuge. If a particular project is modified to avoid or adequately minimize adverse impacts to state-listed T/E/SC species, a SAMP II general permit can authorize the project. If this is not the case, the project would not be eligible for a SAMP II general permit. The applicant can apply for an individual Section 404 permit. Coordination with the U.S. Fish and Wildlife Service for the renewal of the federal SAMP II federal general permits and coordination with the Department’s Bureau of Natural Heritage Conservation. Douglas County is within the known or historic range of the following State and Federally-listed special concern (SC), threatened (T), or endangered (E) species:

**Table 1: Potential Federal & State listed
Endangered, Threatened and Special Concern Species in the City of Superior**

Common Name	Latin Name	Federal Status	State Status
Canada lynx	<i>Lynx canadensis</i>	T	
Kirkland’s warbler	<i>Dendroica kirtlandii</i>	E	SC
Piping plover	<i>Charadrius melodus</i>	R	R
Fassett’s locoweed	<i>Oxytropis campestris</i> var. <i>chartacea</i>	T	E
Dune thistle	<i>Cirsium pitcheri</i>	T	T
Arrowhead sweet coltsfoot	<i>Petasites sagittatus</i>		T
Small yellow water crowfoot	<i>Ranunculus gmelinii</i>		E
Seaside crowfoot	<i>Ranunculus cymbalaria</i>		T
Smooth black sedge	<i>Carex nigra</i>		SC
Neat spikerush	<i>Eleocharis nitida</i>		E
Clustered bur-reed	<i>Sparganium glomeratum</i>		T
Vasey’s rush	<i>Juncus vaseyi</i>		SC
Floating marsh marigold	<i>Caltha natans</i>		E
Dune Thistle	<i>Cirsium pitcheri</i>	T	T

General Impacts Due to Wetland Fill Activities:

Wetland fill activities cause wetland degradation and wetland loss. When wetlands are destroyed or degraded, the flood control, water filtering and recreational services they provide are diminished or removed altogether. Surrounding lakes, rivers and streams may suffer as well as groundwater that maintains stream flows and provides drinking water supplies to many of Wisconsin citizens. Water clarity may decrease and plant and animal species may dwindle or disappear entirely. Beneficial wetland services decrease as total wetland cover decreases (Reversing the Loss, 2008). Development of wetlands by allowing discharge and fill impacts results in an irreversible loss of wetland acreage since it is unlikely that the wetlands would ever be converted back.

Impacts Due to Permit Process:

Avoidance and Minimization

Avoidance and minimization of adverse impacts to wetlands are critical components of the SAMP. Complete avoidance of impacts to wetlands is not practicable given that more than 86 percent of the undeveloped land within the City is composed of wetlands. Originally, the City’s preferred alternative was 320.5 acres of wetland fill over a 10-year period. However, an analysis that identified the availability of vacant, buildable upland parcels reduced the proposed wetland impacts to 198.4 acres. Additional changes in the configuration of SAMP sites and other measures further reduced the amount of proposed wetland impacts authorized by the in SAMP I federal and state permits that existed from 1997-2006, and would have allowed up to 143 acres of wetland impacts at 17 pre-designated sites. However, not all of those wetlands were filled under the SAMP I federal and state permits, the actual fill over the 10 year period of SAMP I totaled 93.93 acres of wetlands (66 percent of the total acreage allowed) that were impacted by 32 approved SAMP development projects (Table 2). Projects issued under the SAMP I state and federal permits included eight single family residences, six duplexes, one assisted living complex, one school, one church, one hotel, several recreational facilities, three retail stores, six industrial projects, and five road improvements and parking areas.

TABLE 2: 1997-2006 SAMP I General Permit Summary

	Residential	Commercial	Industrial	Public	Institutional	Total
1997	0.12	0.00	0.00	8.30	2.67	11.09
1998	0.30	17.03	11.90	0.15	0.00	29.38
1999	1.25	0.32	0.22	0.00	0.71	2.50
2000	16.32	0.00	3.40	0.00	0.00	19.72
2001	1.82	0.00	0.00	0.32	0.06	2.20
2002	0.02	0.00	7.00	0.00	0.00	7.02
2003	0.00	0.00	0.00	0.00	0.00	0.00
2004	3.49	9.10	0.00	0.00	0.00	12.59
2005	0.00	0.81	0.00	0.00	0.00	0.81
2006	0.85	0.00	7.40	0.37	0.00	8.62
Total acres filled	24.17	27.26	29.92	9.14	3.44	93.93
Acreage allowed	42.00	41.00	30.00	23.00	7.00	143.00
Acreage remaining	17.83	13.74	0.08	13.86	3.56	49.07

While this general permit and the current federal general permits, issued by the ACOE for SAMP II, would allow up to 10 acres of wetland to be impacted by a single and completed project, wetlands with certain high functional ratings and/or special features were eliminated from eligibility for SAMP II general permit authorization. This includes about 80 percent of the wetland acreage within the City, outside of the Municipal Forest. Adverse wetland impacts are minimized by restricting SAMP II general permits to lower functioning wetlands, which consist of 20 percent of the City's wetland base (excluding the Municipal Forest). Through two 5 year SAMP II general permits the ACOE places additional restrictions on the SAMP II general permits by limiting the total amount of fill to 140 acres over the entire 10 year period. The SAMP state and federal general permits also place specific limits on the amount of fill allowed for each category of activity and the pre-discharge notification process allows the ACOE and WDNR to review each proposal and evaluate site- and project-specific measures to further minimize adverse impacts to wetlands. See Table 3 below.

Table 3: Proposed Maximum fill by Category for SAMP II General Permits	
Project Classification	Total Acres (10 year period)
Residential	Up to 40 acres
Public	Up to 15 acres
Institutional	Up to 10 acres
Commercial/Industrial	Up to 75 acres

Comparing the amount of wetlands impacted for SAMP I, between 1997 and 2006, the first five years of the SAMP II general permits has not resulted in as significant of an amount of wetlands impact. The Department and the ACOE have authorized 16 SAMP development projects totaling 8.86 acres of wetland impact for residential, commercial or industrial, public, or institutional purposes, and 75% of those projects involved less than ½ acre of wetland fill. See Table 4 for more details on the authorizations for SAMP II federal general permits. The Department has authorized its equivalent to these projects under its former water quality certification process. Please see Addendum 4 for more information about the Water Quality Certification process.

Table 4: SAMP II Federal General Permit Authorizations 2009-2013								
SAMP Federal GP Number	Project Type	Shrub-Carr	Wet Meadow	Forest (Wet)	Deep Marsh	Shallow Marsh	Upland Buffer	Total Acres
SAMP Permit No. 2009-01	Residential	0.600						0.600
SAMP Permit No. 2009-02	Commercial	0.390						0.390
SAMP Permit No. 2009-03	Industrial	0.110	0.110					0.220
SAMP Permit No. 2009-05	Residential		0.150					0.150
SAMP Permit No. 2009-07	Public	0.127						0.127
SAMP Permit No. 2009-08	Industrial	1.628	1.430					3.058
SAMP Permit No. 2010-03	Residential						0.038	0.038
SAMP Permit No. 2010-04	Residential					0.128		0.128
SAMP Permit No. 2010-05	Commercial	0.395		0.770	0.015		0.310	1.490
SAMP Permit No. 2010-03	Residential	0.150						0.150
SAMP Permit No. 2011-02	Residential				0.300			0.300
SAMP Permit No. 2012-01	Residential		0.340					0.340
SAMP Permit No. 2012-02	Industrial	0.050	0.210					0.260
SAMP Permit No. 2012-03	Residential	0.350						0.350
SAMP Permit No. 2012-04	Residential		0.210					0.210
SAMP Permit No. 2013-01	Commercial	1.047						1.047
TOTAL								8.86

Even though the conversion of wetlands cause an irretrievable loss of the natural functional values by authorizing unavoidable adverse impacts, the Department is not expecting the issuance of WDNR-GP8-2013 to result in a net increase of fill activity, beyond what has historically been authorized under the Water Quality Certification permitting program for the SAMP, which has been in place since 1998, or what could have been approved under a wetland individual permit. Both wetland general permits and wetland individual permits provide terms and conditions that address direct, secondary and cumulative impacts to wetland functions and values. Permit requirements to decrease wetland impacts include maintaining wetland hydrology in remaining wetland complex, construction measures to minimize erosion and siltation into surface waters and wetlands, use of suitable fill material, avoidance of the spread of invasive species and prevention of potential pollutants from entering a wetland or water body. Both permitting processes prevent adverse impacts to historical and cultural resources, state and federal designated threatened or endangered species, fishery spawning habitat, fish passages, bird breeding areas and movement of migratory species. Neither the general permit nor individual permit authorizations are to be contrary to wetland water quality standards or result in adverse impacts to adjacent landowners. Both general and individual permitted projects are required to be maintained in good condition to ensure no additional impacts to remaining wetlands.

However, wetland individual permit reviews require a more intensive analysis of practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and will provide that the project will not result in any other significant adverse environmental consequences. The Department considers direct impacts, cumulative impacts and potential secondary impacts of the proposed projects in determining that the project represents the least environmentally damaging practicable alternative and that the project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences. WDNR-GP8-2013 does require a full analysis of practicable alternatives, but includes standards and conditions to ensure that these projects will only impact wetlands determined to be eligible for fill under the SAMP II. The proposed project applicant is required to justify why the wetlands cannot be avoided and how impacts will be minimized to the greatest extent practicable so that the proposed project will have minimal adverse environmental effects. In either case, proposed wetland losses will be closely evaluated and alternatives vigorously pursued.

Mitigation

WDNR GP8-2013 does not specifically require wetland mitigation, but requires projects to comply with the federal general permits, 96-06788-GP-SDE, 96-06789/06790-GP-SDE, 96-06791-GP-SDE, 96-06792-GP-SDE, issued by the ACOE. The federal general permits require compensatory mitigation for every project within the SAMP. Mitigation means the restoration, enhancement, creation or preservation of wetlands to compensate for adverse impacts to other wetlands. The purpose of wetland mitigation is to reduce the overall significance of the impacts associated with the discharge of fill material into wetlands and to permanently protect the wetlands associated with the mitigation from future development. Mitigation sites are protected in perpetuity by adoption of legal restrictions on the property such as covenants or easements and are monitored to meet specific performance goals. Wetland restoration and mitigation does replace the wetland acreage, but it may not replace the type of wetland impacted nor completely replace the functional values of the original wetlands.

The ACOE requires that the compensatory mitigation shall be accomplished through the City of Superior Wetland Mitigation Bank at a ratio of at least 1:1 is required for restoration and creation, 3:1 for enhancement, 8:1 for preservation, 4:1 for unmowed upland buffers with native vegetation and 10:1 for mowed upland buffer or upland buffer with invasive vegetation. Typical bank sites have the advantage of establishing a large, contiguous tract of wetland compensation (as opposed to small, scattered, project-specific compensation sites).

Approximately 92.11 credits of compensatory mitigation for SAMP I were accomplished by the City (Table 4). Three wetland restoration/creation sites were established in the City of Superior Municipal Forest. Additionally, wetland enhancement (purple loosestrife biocontrol) was implemented in the Pokegama River Natural Area in 2001. Covenants to preserve upland buffers in the Pokegama River Natural Area were registered in 2007. Wetland compensation by the City for SAMP I (92.11 credits) nearly matched wetland impacts (93.93 debits). However, the City also debited 50.90 credits for non-SAMP wetland impacts resulting in a deficit of 52.72 credits (144.83 – 92.11). The 50.62 credits at the Moccasin Mike Wetland Preserve resolved all but 2.1 credits of the deficit for SAMP I. Covenants to preserve the City- and county-owned lands within the site were signed. The remaining 2.1 deficit was debited from the City's Lyman Lake Road – Bear Creek Bank Site.

Table 4: Compensatory Mitigation for SAMP I

Mitigation Site	Date Established	Compensation Type	Ratio	Acreage of Site	Total Credits
M8	1998	Restore/Create	1:1	34.4	33.0
M4	1999	Restore/Create	1:1	5.2	5.2
M3	1999	Restore/Create	1:1	11.7	11.4
Pokegama Buffer	2007	Upland Buffer	4:1	75.4	18.9
Pokegama Loosestrife	Implemented 2001	Enhancement	3:1	70.7	23.6
Moccasin Mike	In Process	Wetland Preservation & Upland Buffer	8:1 10:1	456.4	50.6
TOTALS				653.8	142.7

Unlike SAMP I, compensatory mitigation under the SAMP II federal general permits, are required by the ACOE to be established in advance, to minimize the uncertainty of success and temporal loss of wetland functions. The ACOE general permits require that a zero or negative balance of bank credits temporarily suspends the federal SAMP II – GPs until a positive balance of credits was restored; providing an incentive for the City to prioritize use of bank credits to offset impacts due to SAMP II – GPs. The federal general permits also allow a permittee to buy mitigation credits from another mitigation bank within the Lake Superior watershed or in Douglas County if approved by the ACOE.

The approximately 118-acre Lyman Lake Road – Bear Creek Bank Site (See the site plan in Addendum 3) is expected to provide about 80 credits. Credits have been released for the as-built and Year 2 milestones. Credit release for the Year 3 milestones is pending IRT approval. Under SAMP I, it took 9 years for wetland impacts to reach 80 debits. Assuming this trend continues the anticipated 80 credits at the Lyman Lake Road – Bear Creek Wetland Bank Site would, conservatively, be sufficient for 5 years. This gives the City time to search for, purchase, design and construct other bank site(s) as needed.

Secondary and cumulative effects.

There are number of ways in which SAMP II minimizes adverse impacts to wetlands. In the process of approving the SAMP II, a more comprehensive functional assessment was accomplished to better differentiate high functioning from lower functioning wetlands. Wetlands with a high rating for plant community integrity and/or wildlife habitat integrity, as well as many with medium ratings for these functions, along with any wetlands that had special zoning restrictions were excluded from eligibility for SAMP II. Approximately 80 percent of wetlands within the City, besides the areas protected within the Municipal Forest, were deemed ineligible for the SAMP II general permits.

While the SAMP I state and federal permits resulted in a temporal loss of wetland functions during periods when compensation did not keep pace with impacts, SAMP II federal general permits addresses those concerns by limiting the general permits to a maximum of 140 acres of wetlands that may be filled over the 10-year life of the federal general permits and by requiring that wetland mitigation and compensation, through the City of Superior Wetland Mitigation Ban, be accomplished for prior to the wetland losses. A zero or negative balance of bank credits would result in temporary suspension of the federal SAMP II general permits and consequently, this general permit until a positive balance of credits was restored.

The limitation on the federal general permits to 140 acres over the course of 10 years represents less than 2% of the wetlands within the municipal boundaries of the City of Superior and less than 13% of the wetlands the Technical and Advisory Committee determined were eligible for discharge of fill. The Department and the ACOE have authorized 16 SAMP II permits, totaling 8.86 acres of wetland impact, for residential, commercial or industrial, public, or institutional purposes, and 75% of those projects involved less than ½ acre of wetland fill. Consequently, it is unlikely that neither this general permit nor the SAMP II federal general permits, will increase the amount of wetland filled than what would typically be allowed through the individual permit process.

Wetland losses in the City have been occurring due to development projects authorized by individual federal and state wetland permits. If a project cannot meet the conditions of this general permit or the federal general permit, then an individual permit is required. Individual federal and state wetland permits have been issued for a number of projects in the City of Superior. Many of the individual permits were for smaller wetland fills that occurred in wetlands deemed ineligible under the SAMP process or because the projects exceeded the acreage limit, in the federal general permit, of 10 acres. An example of some of the projects that have required individual permits, because the project impacted an

ineligible wetland or exceeded acreage limits, were for Enbridge Energy, Murphy Oil, the construction of a Target Store and Wal-Mart stores, the Superior Airport, and the City's middle and elementary schools. Compensatory mitigation was required for these projects.

The cumulative permitted wetland impacts that have occurred to wetlands in the City of Superior over the past 17 years, taking into account the permits issued under the permits for SAMP I, the SAMP II, and then the individual state and federal permits, is approximately 198.6 acres of wetland. While, this would appear to be a large amount of wetland loss, it represents less than 3% of the approximately 7,420 acres of wetlands within the municipal boundaries of the City of Superior. Additional compensatory mitigation has been required for all projects and has been monitored and approved by the Department and ACOE through the Interagency Review Team. There are also non-jurisdictional activities (e.g., logging, ditching with upland disposal) that may adversely impact additional wetlands within the City, but it is difficult for the ACOE or the Department to assess those potential impacts.

Risk - Reliance on Applicants Data:

Department staff review all applications, submitted to the City of Superior for coverage under the SAMP general permit, to ensure the project will meet all of the terms and conditions and determine whether the project is eligible for coverage. A determination is made by the Department that authorization will assure minimal adverse impact in reliance on the information provided by the applicant and any other information required by the Department. The Department has inspection authority in which site access is allowed to investigate the project construction, operation, maintenance or permit compliance. The Department may deny coverage or reevaluate its decision on any authorization under this GP at any time circumstances warrant. Circumstances include, but are not limited to, failure to comply with terms and conditions of GP, information provided by the applicant proves to have been false, incomplete, or inaccurate, or significant new information surfaces which was not considered in reaching the original determination. Any act of noncompliance constitutes a permit violation and is grounds for enforcement action.

Risk - Presumptive Approval:

Under WDNR-GP8-2013, if the Department fails to make a determination regarding coverage under the general permit within 20 days for wetland impacts less than or equal to 5 acres and 30 days for wetland impacts greater than 5 but less than 10 acres, the project is considered to be authorized and the applicant may proceed. According to recent wetland permitting data, the average general permit decision issued by the Department has been within this 30 day timeframe. However, given fluctuations in Department resources, the Department is not able to ensure that the risk of presumptive approval is or is not relevant. Potential risk is reduced because any presumptively approved project must still adhere to the terms and conditions of this general permit, the general permits issued by the ACOE, and the City of Superior's SAMP ordinance. Any act of noncompliance constituting a permit violation is grounds for enforcement action.

DEGREE OF CONTROVERSY

The authority and requirement of the Department to issue statewide wetland general permits was legislatively established. The process involves public notice of the Department's intent to issue, modify or revoke a statewide general permit and allows for public input to address potential concerns. The first federal general permits and state water quality certification, issued for the City of Superior Special Area Management Plan, were issued in December of 1996 and have continued until the present day. The current state water quality certification expires November 4, 2013. Although this general permit would allow up to 10 acres of wetland fill for a single and complete project the issuance of this general permit is not expected to be controversial. Development of the SAMP began back in 1990 to address the lengthy delays and controversy in permit decisions for wetland fill. The SAMP program was developed to assist the ACOE and the Department in making timely permit decisions and providing the City with a planning tool for community growth. The authorization of coverage for WDNR-GP8-2013 permit activities provides no public comment opportunity, nor does it require notification to adjacent landowners of any proposed fill activity. However, this is no change from prior general Water Quality Certification procedures and is not expected to be controversial.

DEGREE OF PRECEDENCE

This is the first statewide wetland general permit that the Department has developed for a regionally specific project. However, the Department has issued Water Quality Certifications for both federal and nonfederal wetlands in the City of Superior that were impacted under the SAMP I, the first five years of SAMP II and through individual permits. The wetland general permit program continues the Departments practice of providing conditions and standards for projects in SAMP II eligible wetlands.

PRELIMINARY DECISION

In accordance with s. 1.11, Wis. Stats., and Ch. NR 150, Wis. Adm. Code, the Department is authorized and required to determine whether it has complied with s. 1.11, Wis. Stats., and ch. NR 150, Wis. Adm. Code.

The Department has made a preliminary determination that the Environmental Impact Statement process will not be required for this action/project. This recommendation does not represent approval from other DNR sections which may also require a review of the action/project.

Signature of Evaluator <i>Heidi Kennedy</i>	Date Signed <i>12-17-2013</i>
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FINAL DECISION

The public review process has been completed. The Department received and fully considered responses to the news release or other notice.

Pursuant to s. NR 150.22(2)a., Wis. Adm. Code, the attached analysis of the expected impacts of this proposal is of sufficient scope and detail to conclude that this is not a major action, and therefore the environmental impact statement process is not required prior to final action by the Department.

The Department has determined that it has complied with s. 1.11, Wis. Stats., and ch. NR 150, Wis. Adm. Code. This decision does not represent approval from other DNR sections which may also require a review of the action/project.

Signature of Environmental Analysis Program Staff <i>Janet Paul</i>	Date Signed <i>12/18/2013</i>
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NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

ADDENDUM 1: GENERAL WETLAND PERMITTING PROCESS SEQUENCE

- Anyone wishing to proceed with a discharge that may be authorized under this statewide wetland general permit is required to submit a pre-discharge notification at least 20 days or 30 days, depending upon the amount of proposed wetland impacts, before beginning the discharge activity.
- The applicant needs to provide sufficient information describing the proposed discharge activity in order for the Department to make a determination whether the discharge meets the terms and conditions of the wetland general permit and waive the application requirements for the general permit.
- The applicant will allow the Department consent to enter and inspect the site if needed.
- The application needs to identify all activities that will affect wetlands since the cumulative total of all filled areas of the “single and complete project” proposed will be the basis for deciding the projects total wetland impact.
- The applicant will include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable.
- The pre-discharge notification will be reviewed by the Department to ensure that the proposed project complies with all general permit requirements.
- Pre-discharge notifications providing all required project information and found to comply with all general permit requirements will be issued a “Letter of Coverage” authorizing the discharge activity and waiving the requirement for the applicant to apply for an individual permit.
- If sufficient information is not received with the proposed project application, the Department will request additional information deemed necessary for the Department to verify compliance with the terms and conditions of the general permit by contacting the City and the applicant.
- If the Department fails to make a determination regarding coverage under the general permit within 20 days for projects impacting less than or equal to 5 acres or 30 days for projects impacting more than 5 but less than 10 acres of wetland, the project is considered to be authorized and the applicant may proceed as long as the project is carried out in compliance with all conditions of the general permit.
- If adverse weather conditions prevent the Department from conducting an accurate on-site inspection, the Department will notify the applicant of this delay in complying with the 30-day deadline and will complete the inspection as soon as weather conditions permit.
- The Department may determine that the proposed project is not eligible for coverage under the general permit and require that the project be reviewed through the individual permit process as outlined in CH 281.36(3m), Wisconsin Statutes.
- Authorization of coverage under a wetland general permit is valid for 5 years after the date of issuance or until the discharge is completed, whichever occurs first.

ADDENDUM 2: ELIGIBLE WETLANDS UNDER SAMP II GENERAL PERMITS

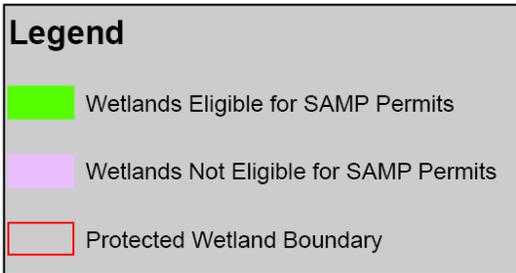
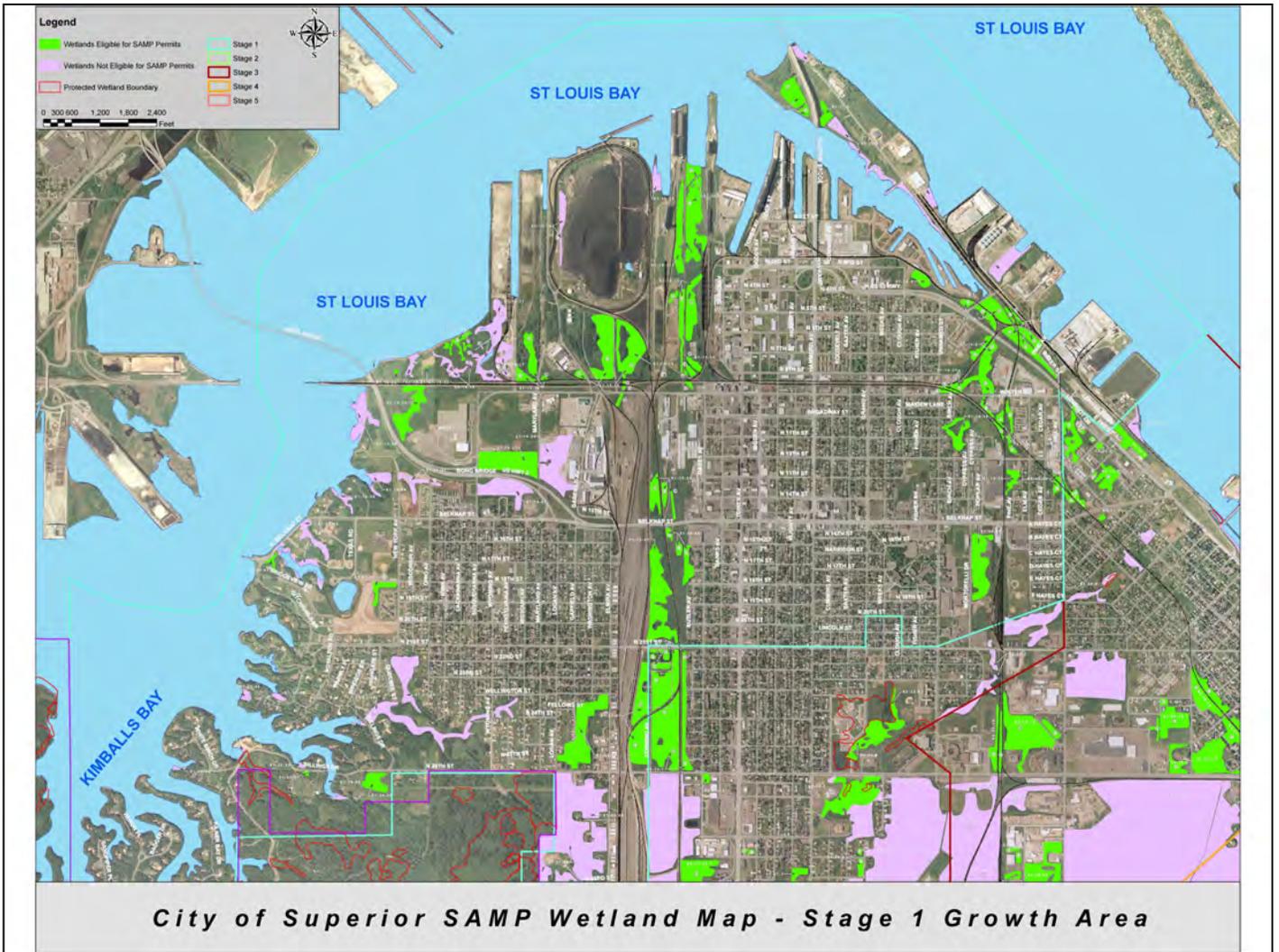


Figure 1
Stage Growth Area 1

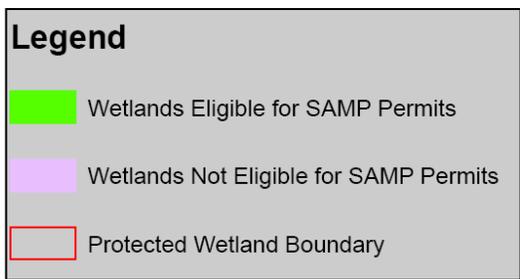
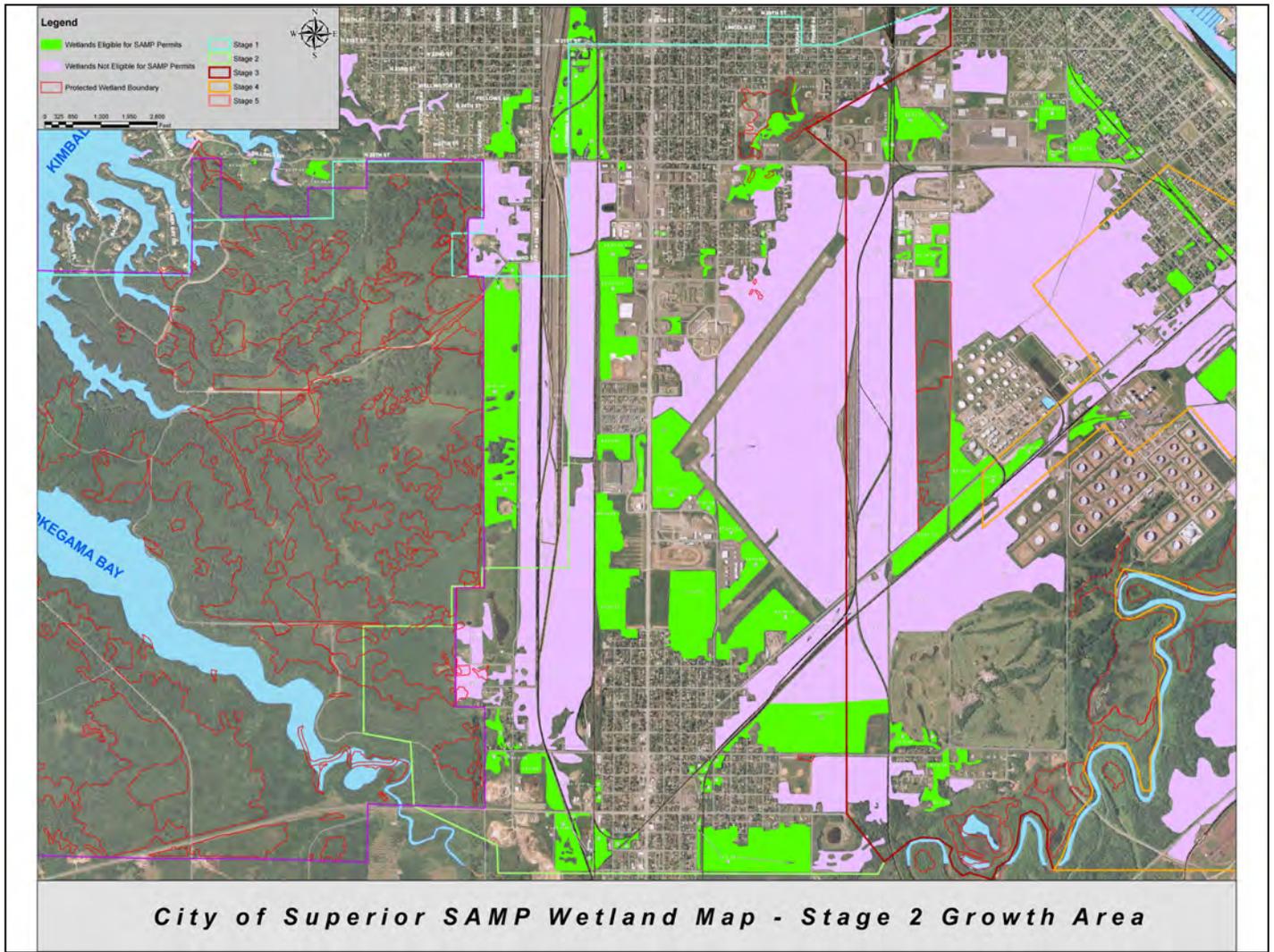


Figure 2
Stage Growth Area 2

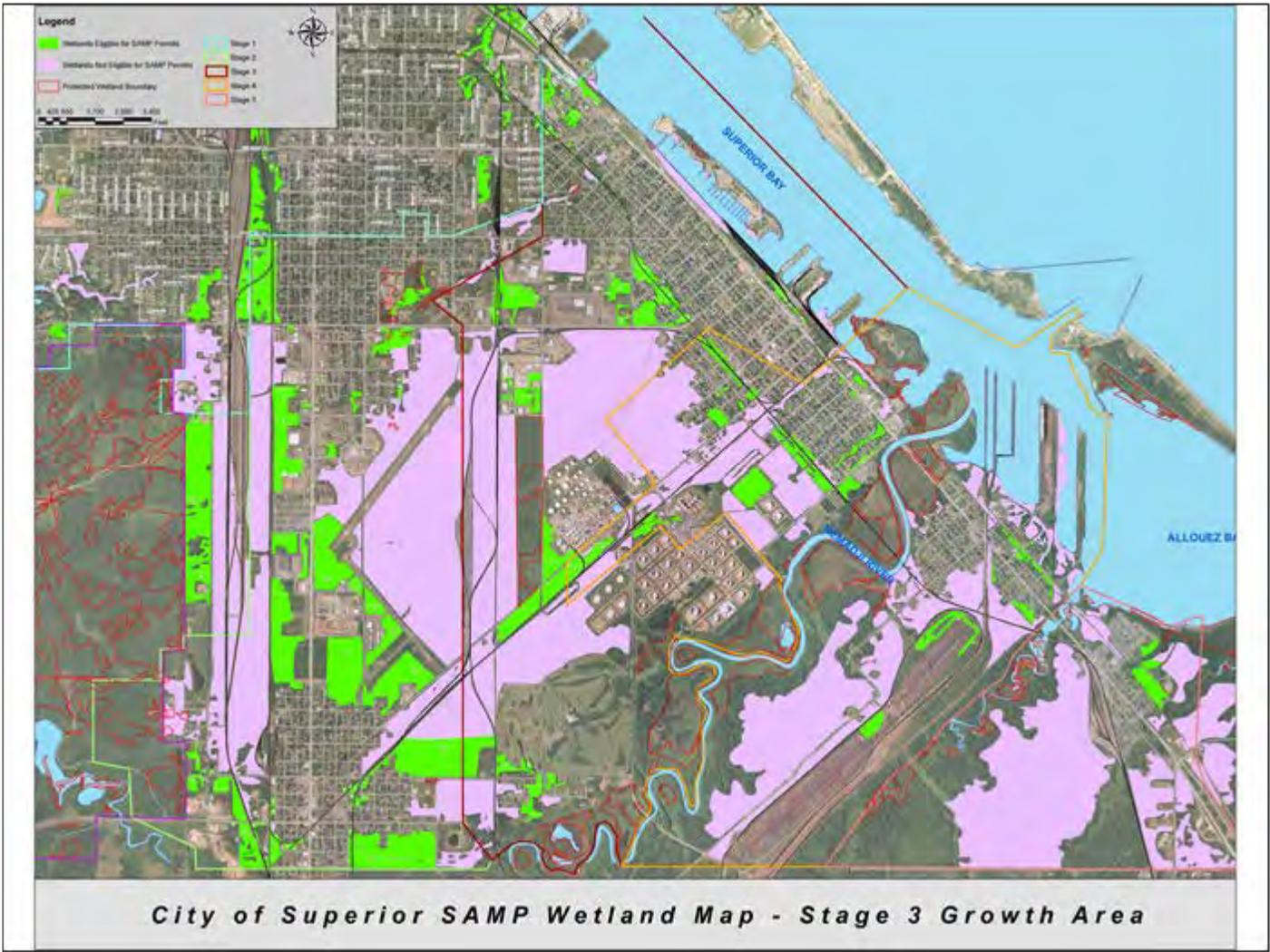


Figure 3
Stage Growth Area 3

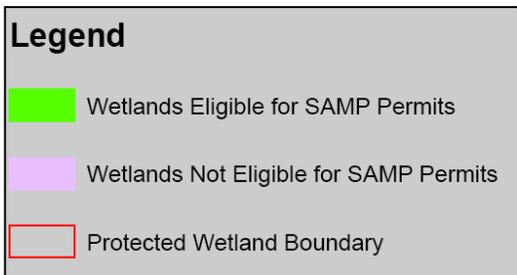
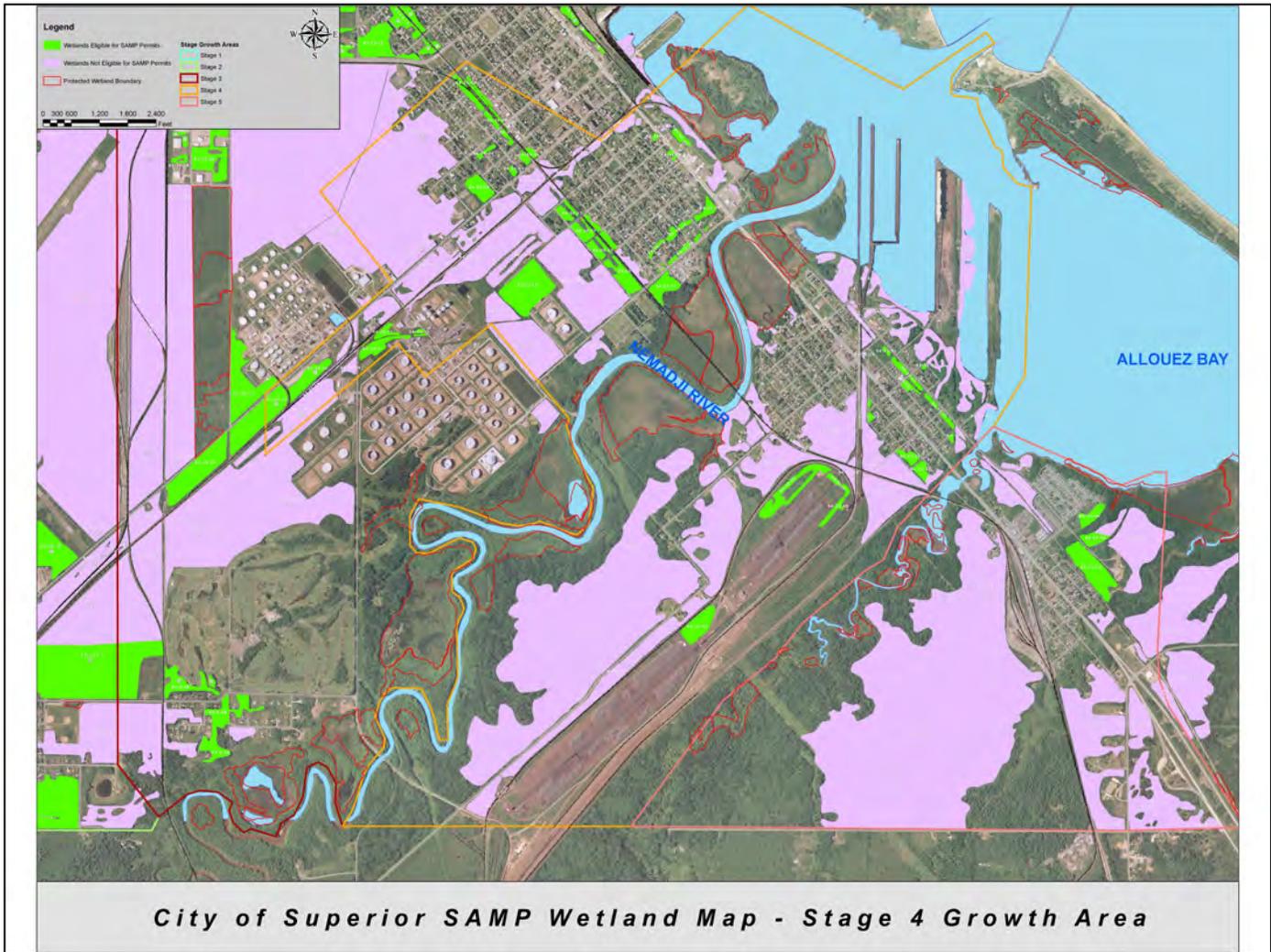


Figure 4
Stage Growth Area 4

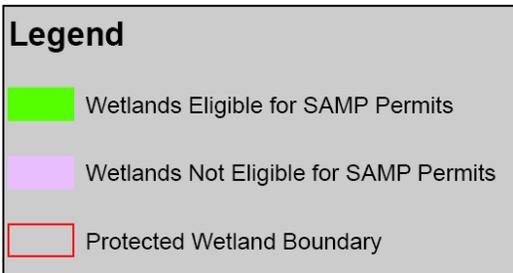
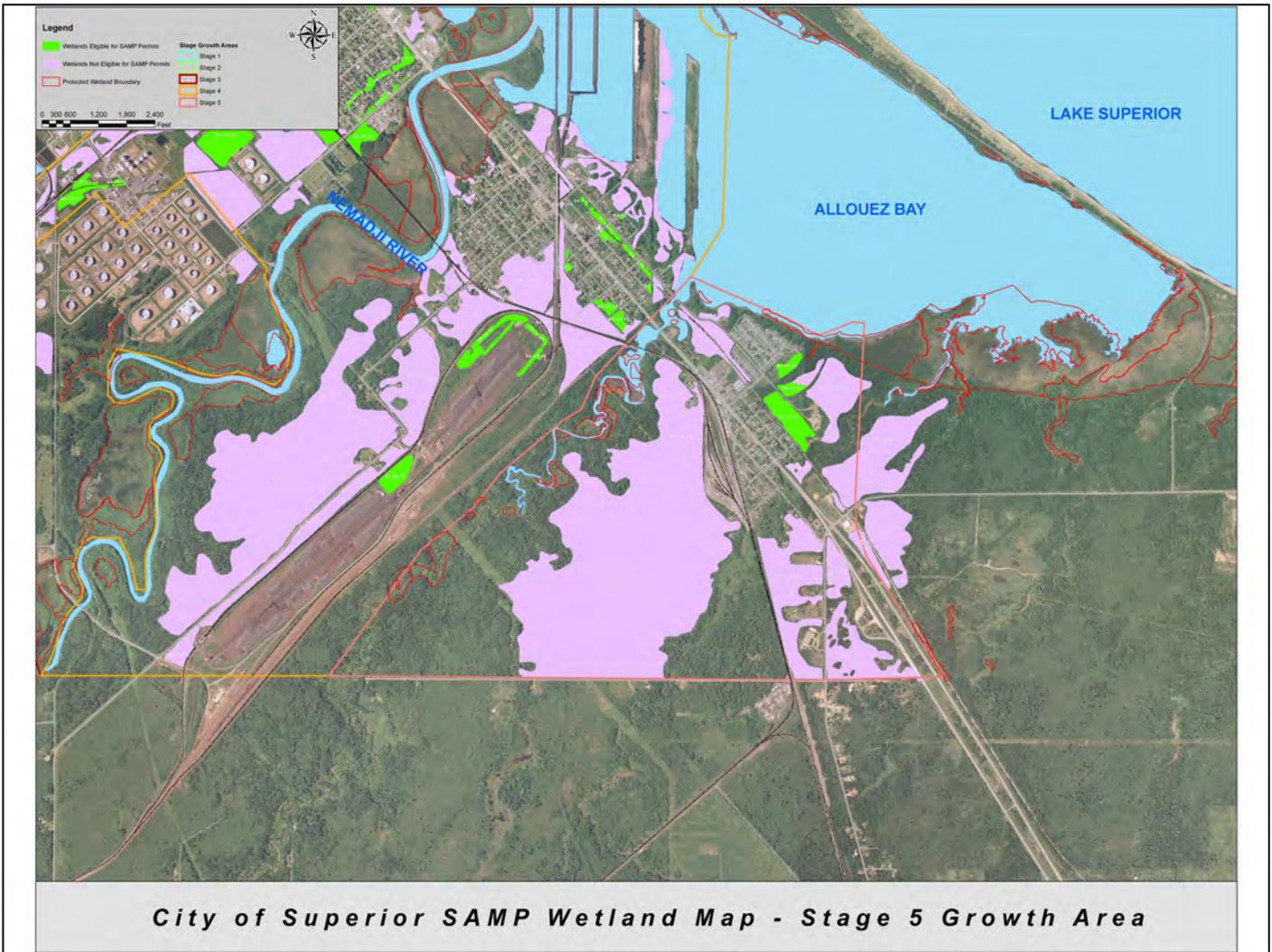
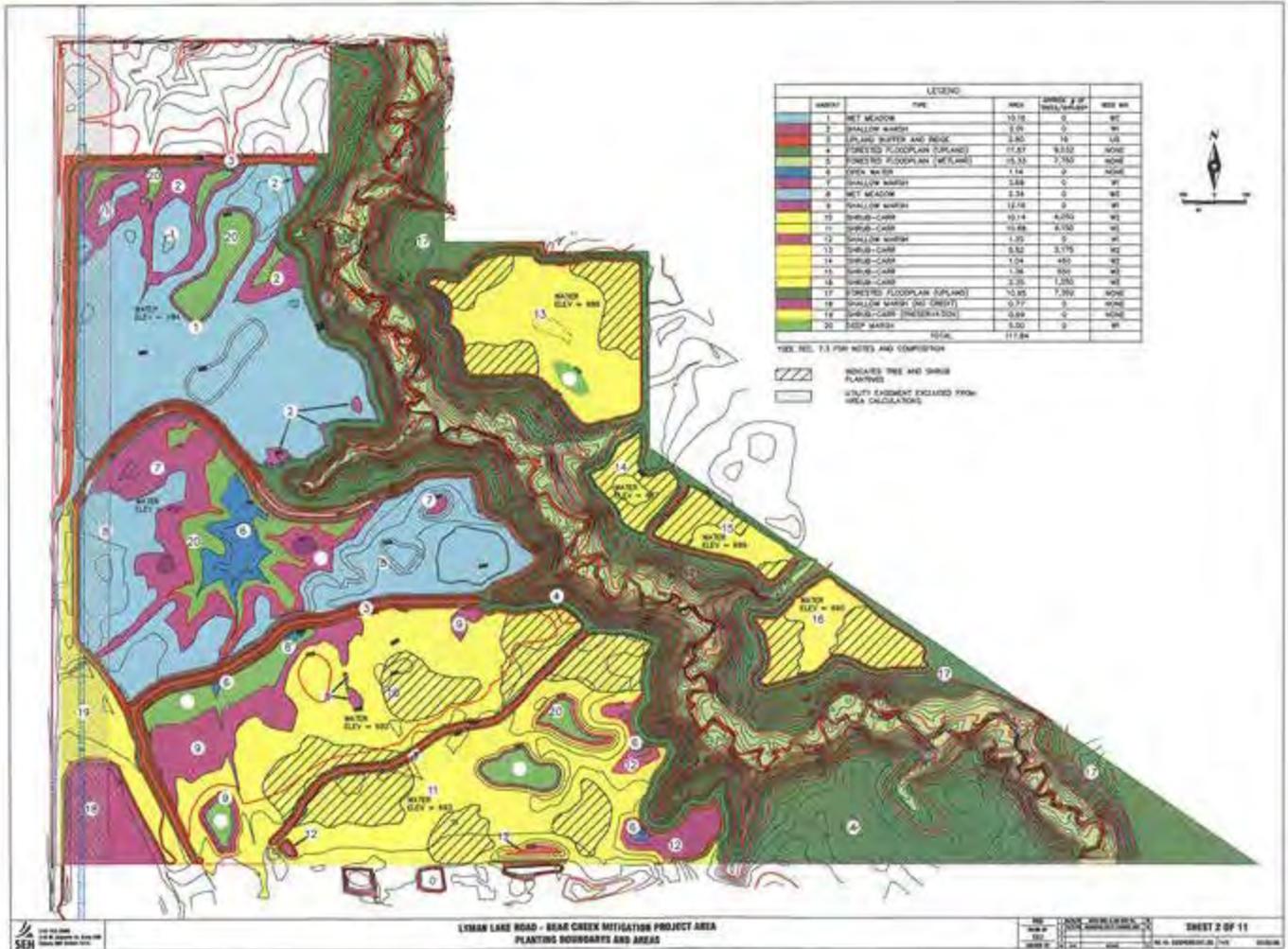


Figure 5
Stage Growth Area 5

ADDENDUM 3: Lyman Lake Road/Bear Creek Bank Site



ADDENDUM 4: PRIOR PERMITTING PROCESS

Water Quality Certification:

Discharges of material into wetlands have required a Water Quality Certification approval from the Department of Natural Resources. The Department was given authority, under Ch 281, Wisconsin Administrative Code, to regulate discharges into non-federal wetlands by requiring an applicant to obtain a water quality certificate from the Department that the discharge will not violate state water quality standards. The Department regulated federal wetlands under the authority in Ch 281, Wisconsin Statute, by requiring an applicant to obtain a certification from the state before, in addition to, obtaining a federal permit

Under these authorities, the Department has issued Water Quality Certification confirmation letters for types of discharges determined to be similar in nature or if the discharges would cause only minimal adverse environmental effects if performed separately and the cumulative adverse effect on the environment by the discharges would be minimal. The Department reviewed these projects to ensure they comply with the permit standards and conditions as well as the requirements of NR 299 and NR 103, Wisconsin Administrative Codes.

NR 299, Wisconsin Administrative Code, outlines procedures for the processing of, and administrative review of, Water Quality Certification. These procedures have required the applicant to submit an application for certification which the Department denied, granted, conditionally granted or waived. The Department's determination depended on whether or not the discharge complied with Water Quality Standards under Wisconsin Statutes NR 103 and NR 281 as well as public interest standards under Ch 30, 31 and 281, Wisconsin State Statutes.

The Department developed NR 103, Water Quality Standards for Wetlands, to be applicable to "all Department... determinations affecting wetlands", including permits for Water Quality Certification. The rule was modeled after federal guidelines and contains standards to protect the "functional values" of wetlands by requiring a sequential decision making process. This process required the Department to determine whether a project was "wetland dependent" and whether "practicable alternatives" existed by requiring applicants to explore various project alternatives that would "avoid and minimize" wetland impacts. The Department review process relied upon a vigorous application of this sequencing process to assure that avoidance and a full search for practicable alternatives was completed so as to not have "significant adverse impacts" on wetland functions and values.

ADDENDUM 5: DOCUMENTS USED IN ANALYSIS:

Eggers, S.D, and Reed, D.M. 1997. Wetland Plants and Communities of Minnesota and Wisconsin. U.S. Army Corps of Engineers, St. Paul District. www.npwrc.usgs.gov/resource/plants/mnplant/index.htm (Version 03SEP1998).

Kent, P.G and Dudiak, T.A. 2001. Wisconsin Water Law: A guide to Water Rights and Regulations. Second Edition. University of Wisconsin Extension. www.learningstore.uwex.edu/assets/pdfs/g3622.pdf.

City of Superior. August 8, 2008. Special Area Management Plan Technical, Implementation, and Administration Document (SAMP II-TIA). Version 1.6.

Thompson, A.L. and Luthin, C.S. 2004. Wetland Restoration Handbook for Wisconsin Landowners. Second Edition. Bureau of Integrated Science Services, Wisconsin Department of Natural Resources. Publication #SS-989 2004).

Trochlell, P. and Bernthal, T. May 1998. Small Wetlands and the Cumulative Impacts of Small Wetland Losses. www.dnr.wi.gov/wetlands/documents/SmallWetlandLosses.

U.S. Army Corps of Engineers Website. 2012. Wetland Regulatory Program. www.usace.army.mil/inet/functions/cw/cecwo/reg.

U.S. Army Corps of Engineers. 2013. Draft 2013 Supplement to the Department of Army Permit Evaluation and Decision Document.

U.S. Army Corps of Engineers. 2013. Proposed Reauthorization of the General Permits for the City of Superior Special Area Management Plan. <http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/WI-Special/Superior-WI-SpecialAreaManagementPlan-PN.pdf>

U.S. Environmental Protection Agency Website. 2012. Section 404 of the Clean Water Act. www.epa.gov/owow/wetlands/laws.

U.S. Environmental Protection Agency Website. 2012. Wetlands and People. <http://water.epa.gov/type/wetlands/people.cfm>

Environmental Protection Agency Wetland Website. 2012. www.epa.gov/owow/wetlands/regs.

U.S. Environmental Protection Agency. April 2012. The Economic Benefits of Protecting Healthy Watersheds. Fact sheet EPA 841-N-12-004. www.epa.gov/healthywatersheds.

Wisconsin Department of Natural Resources Website. 2012. Wetland Functional Values. PUBL-WZ-026 93. www.dnr.wi.gov/waterways/shoreline_habitat/wetland_IP/wz026.pdf.

Wisconsin Department of Natural Resources Website. 2012. Wetlands Benefit People and Nature. www.dnr.wi.gov/topic/wetlands.

Wisconsin Wetland Team. June 2008. Reversing the Loss: A Strategy to Protect, Restore and Explore Wisconsin Wetlands. Wisconsin Department of Natural Resources. www.dnr.wi.gov/topic/wetlands/documents/ReversingLoss08_gs.

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Account Number: 2526629 | Order Number: 2133195 | Total Order Price: \$50.49

Pursuant to §§ 281.36(3g)(g), Wis. Stats., the Department of Natural Resources is noticing its intention to issue a statewide wetland general permit for the discharge of dredged or fill material within wetlands in the City of Superior Special Area Management Plan. The proposed statewide general permit would streamline the permitting process, allowing applicants to get their decision more quickly if they are unable to further avoid or minimize wetland impacts, are proposing to impact wetlands deemed eligible by the SAMP Technical Advisory Committee, and meet the standards and conditions set forth in the general permit. The proposed general permit is the fifth of its kind and once in place would be valid for 5 years.

An environmental assessment has been prepared and is available for public review and comment. The Department does not anticipate the statewide general permit to cause significant adverse environmental effects. The Department has made a preliminary determination that an environmental impact statement for the action to issue this statewide general permit is not necessary.

To view a copy of the proposed statewide general permit and environmental assessment go to <http://dnr.wi.gov/topic/wetlands/programs.html>.

For more information, to request a public informational hearing, or to submit written comments on the proposed statewide general permit or environmental assessment via U. S. mail, contact: Heidi Kennedy, DNR-WT/3, P.O. Box 7921, Madison, WI 53707-7921; via e-mail: Heidi.Kennedy@wi.gov. Written comments must be received within 30 days from the date of publication of this notice.

Dated this 16th day of November, 2013

Heidi Kennedy
Waterways and Wetland
Policy Coordinator

Department of Natural Resources

PUB. WSJ: November 16, 2013

#2133195 WNAXLP

Title: Wisconsin State Journal | **Class:** 12 State of WI General Nt

Start Date: 11/16/2013 | **Stop Date:** 11/16/2013 | **Insertions:** 1

Legals Specialist: Sharon Scallon | **Email:** legals@madison.com



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December 17, 2013

Heidi Kennedy
Wisconsin Department of Natural Resources
PO Box 7921
Madison WI, 53707-7921

Re: Comments on Proposed General Permit for Superior Special Area Management Plan (SAMP)

We appreciate the opportunity to comment on the above referenced draft General Permit. Wisconsin Wetlands Association (WWA) is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.

Historically, we have supported the SAMP because it employs science-based, community-wide wetland planning to inform where economic development with wetland impacts occurs. Overall, it has been effectively implemented to simultaneously minimize wetland impacts and enable growth.

While we still strongly support the *intent* of the SAMP, we are concerned that the lack of a clear regulatory framework for a SAMP agreement under new state law creates legal vulnerabilities and implementation challenges. These may hamper DNR's ability, or even legal standing, to maintain a high level of involvement in the review of SAMP projects from application through mitigation.

The purpose of this letter is to document these concerns in the hope that the Department will adopt permit conditions, project review guidelines, or other agreements with the City and the Corps to ensure DNR maintains full jurisdiction over SAMP project reviews.

Current state laws allows two options for the review and approval of wetland fill – Individual and General Permits. Of these, the GP framework appears to be the only legal option DNR has to renew the Superior SAMP. Use of the GP framework, however, raises numerous questions for SAMP renewal. For example:

1. State law now requires restoration surcharge fees for GP covered industrial, commercial, or residential projects of < 10,000 square feet. It also requires mitigation for all fill approved under Individual Permits (IP). How do these requirements affect DNR's standing to influence mitigation for SAMP approved projects?
2. If SAMP projects are covered under a state-approved GP, presumptive approval provisions require that DNR render a decision within 30 days or the application is automatically approved, whether the application is for <10,000 square feet or for anything up to 10 acres. Are projects with wetland impacts larger than 10,000 square feet subject to

presumptive approval requirements? What, if any, discretion does the DNR retain to require an IP based solely on the need for additional time to review an application?

3. If DNR waives the GP application requirement for SAMP eligible projects, as proposed, do they also waive their right to impose conditions on the project or to participate in decision-making on permit-specific mitigation requirements?

4. Is requiring an IP the only option available to impose permit conditions, avoid presumptive approval, or have legal standing on the review of mitigation for SAMP-related fill? If so, does the Department envision requiring IPs more frequently? Can permit conditions be added to the GP to clarify when this will occur? Will an increase in the use of IPs fuel local regulatory tensions or substantially reduce the administrative efficiency of the program?

We raise these questions not because we object to the SAMP, but as examples of the types of things that need to be addressed through SAMP permit conditions, program guidance, and interagency agreements.

Our primary concern is always the protection of the resource. We fear that enacting the SAMP under a GP framework developed for the rapid review of routine projects with small impacts (i.e., <10,000 square feet) has the potential to result in less oversight of wetland fill approvals, undermining the spirit of the SAMP.

We also believe that an important part of maintaining public support for existing protections is for the Department to be clear and consistent in how it implements its program(s). In the case of the SAMP, it is important for the City of Superior and local applicants to fully understand the extent and limits of DNR's revised authority and how and why it will be applied in the review of SAMP projects. In turn, it is important that DNR staff fully understand the extent and limits of their authority and do not over-assert their jurisdiction in the review of SAMP projects.

The concerns we raise here are nuanced, but potentially significant, so we thank you in advance for your consideration of these issues. If you have any questions about these comments, please contact me at 608-250-9971 or kyle.magyera@wisconsinwetlands.org.

Sincerely,



Kyle Magyera
Wetland Policy Specialist