

# DATCP Drainage Board Training

Elaine Johnson & Martye Griffin

WDNR

September 9, 2015



# Topics to be Discussed

- Basic Water Law History Lesson
- Summary of Regulations
- The Permitting Structure
- Permit application
- Drain District Project Review

# Why do what we do?

“The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways, and forever free, as well as to the inhabitants of said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost or duty therefore.”

Northwest Ordinance of 1787  
Article IV



Wisconsin Constitution  
Article IX, Section 1

# Public Trust Doctrine

- State's constitutional responsibility
- Article IX, Section 1
- Protect navigable waters
  - Chapter 30, Stats
  - Supreme Court Case Law
- Helps define navigability and incidents of navigation



# Roles and Responsibilities

## Protection of the Public Trust in Waterways & Wetlands

- Navigation
- Fishing
- Scenic Beauty
- Water Quality and Quantity
- Boating
- Hunting
- Fish/Wildlife Habitat
- Protection of wetland functional values

# Wetlands – why does it matter

## Wetland functions

- floral diversity
- Fish/wildlife habitat
- flood storage
- stormwater storage and filtration
- shoreline protection
- groundwater recharge and discharge
- aesthetics, recreation and education



# Regulatory Authorities

- DNR
  - Chapter 30, Stats
  - Chapter 281, Stats
  - NR 345/347, WAC
  - NR 103/299, WAC
  - NR 216
- DATCP
  - Chapter 88, Stats
  - ATCP 48
- ACOE
- County Zoning



# Chapter 30 - Waterways





# Public (Navigable) Waterways

A waterway is considered public (navigable) if it:

- has a defined bed and banks; and
- has the ability to float a small watercraft on a recurring basis

*A waterway is presumed navigable if it appears on the USGS topographic map as either an intermittent or perennial stream*



# Public (Navigable) Waterways

s. 30.10, Wisconsin Statutes states a waterway is not considered navigable if it:

1. Wasn't navigable before ditching; and
2. The ditch is draining exclusively agricultural lands

regardless of whether or not there is a defined bed/bank and enough water to float a small watercraft

# Wetlands

# Is it a wetland?

-DNR-

- s. 23.32(1), Wis. Stats. - 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 Requirement

- 1987 Corps Manual
- NE/NC Supplement



US Army Corps  
of Engineers  
Waterways Experiment  
Station

Wetlands Research Program Technical Report Y-87-1 (on-line edition)

## Corps of Engineers Wetlands Delineation Manual

by Environmental Laboratory



January 1987 - Final Report  
Approved For Public Release; Distribution Is Unlimited



US Army Corps  
of Engineers®  
Engineer Research and  
Development Center

Wetlands Regulatory Assistance Program

## Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region

(Version 2.0)

U.S. Army Corps of Engineers

January 2012



Approved for public release; distribution is unlimited.

ERDC/EL TR-12-1

Environmental Laboratory



US Army Corps  
of Engineers®  
Engineer Research and  
Development Center

Wetlands Regulatory Assistance Program

## Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0)

U.S. Army Corps of Engineers

August 2010

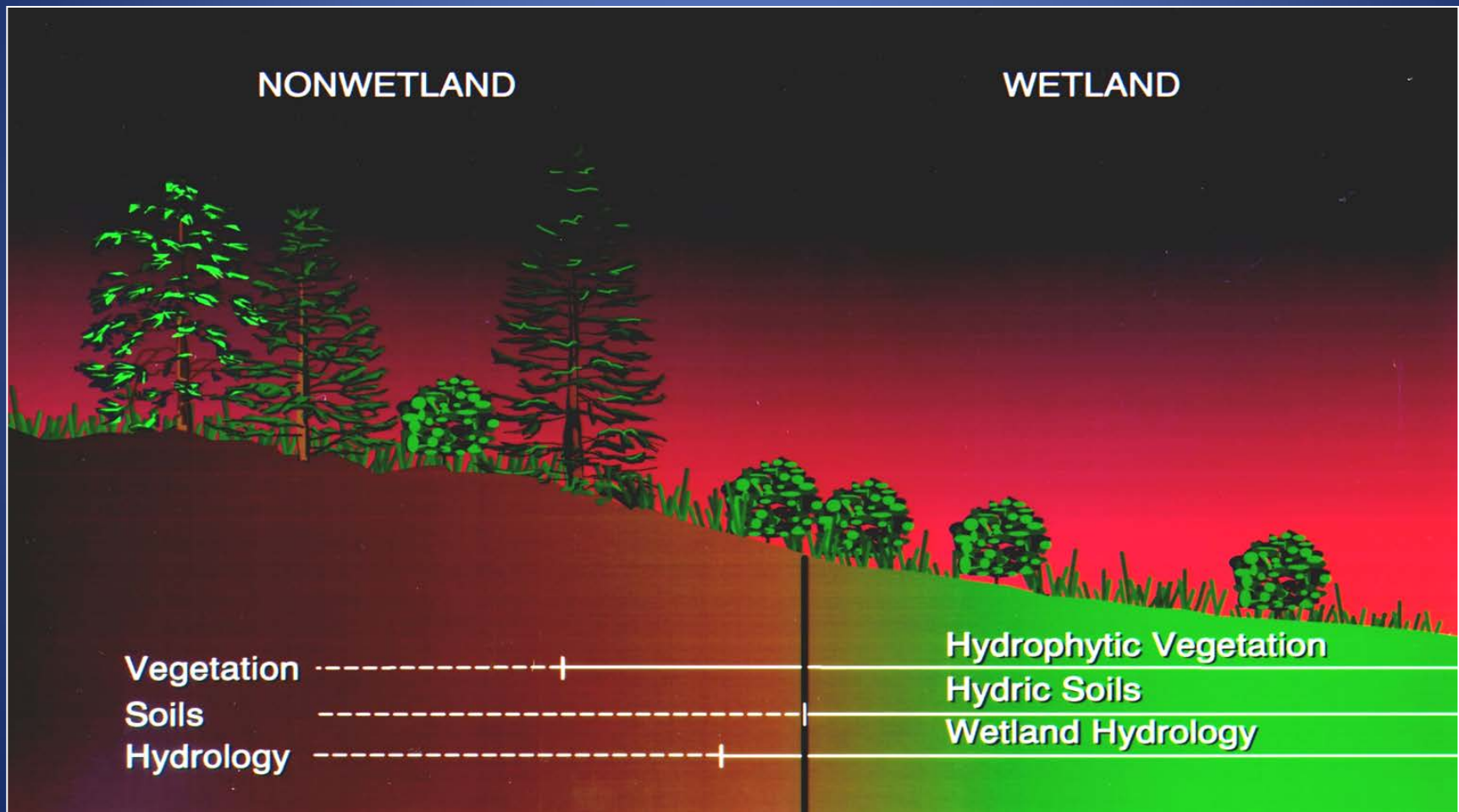


Approved for public release; distribution is unlimited.

ERDC/EL TR-10-16

Environmental Laboratory

# Is it a wetland? 3 Parameter Approach



# Do I need a wetland permit?

- The discharge of dredged or fill material into wetlands – s. 281.36(3b), Stats.
  - Fill material is defined as material placed in wetlands where the material has the effect of: (i) Replacing any portion of a wetland; or (ii) Changing the bottom elevation of any portion of a wetland.
    - Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in wetland. Fill material does not include trash or garbage.

# Do I need a permit?

- Exemptions: s. 281.36(4), Stats. The discharge of dredged or fill material into wetlands for:
  - Normal farming, silviculture or ranching activity
  - Maintenance, emergency repair or reconstruction of damaged parts of structures that are in use in a wetland
  - Construction or maintenance of farm ponds, stock ponds or irrigation ditches



# Stormwater and Wastewater Permitting

- Wastewater permits may be required for certain activities, such as return water associated with hydraulic dredging.
- NR 216 stormwater permitting if stock-piling or creating berms that disturb 1 acre or more, or spreading in a non-agricultural area 1 acre or more.

# Permit Structure

- Exemptions
- General Permits
- Individual Permits



# Exemptions

- EXEMPT activities do not require a permit nor do they require notification to the Department
- They are NOT unregulated activities
- Only on certain water bodies
- Must meet all criteria



# *Agriculture*

Chapter 30.40 Wisconsin Statutes

*fruits*

*vegetables*

*nuts*

*berries*

*grains*

*seeds*

*dairy*

*egg production*

*floriculture*

*beekeeping*

*sod farming*

*feedlots*

*grazing*

*livestock*

*poultry*



# General Permits

- 30-day review time period
- Permits for activities that meet specific standards and are located in specific areas.
- Most activities have a GP option
- Pre-application requirements must be submitted to WMS.

# Individual Permits

- 60-90 day minimum review time period
- 30-day public notice requirement
- Individual Permits are available in all areas however some activities may be prohibited by statute or rule.
- Pre-application requirements must be submitted to WMS.

# Intro - Permit Application

**Where do I start?  
Who should I call?**







Find the water management specialist that serves your county.

### County water management specialists

<a href="#">Adams</a>	<a href="#">Iowa</a>	<a href="#">Polk</a>
<a href="#">Ashland</a>	<a href="#">Iron</a>	<a href="#">Portage</a>
<a href="#">Barron</a>	<a href="#">Jackson</a>	<a href="#">Price</a>
<a href="#">Bayfield</a>	<a href="#">Jefferson</a>	<a href="#">Racine</a>
<a href="#">Brown</a>	<a href="#">Juneau</a>	<a href="#">Richland</a>
<a href="#">Buffalo</a>	<a href="#">Kenosha</a>	<a href="#">Rock</a>
<a href="#">Burnett</a>	<a href="#">Kewaunee</a>	<a href="#">Rusk</a>
<a href="#">Calumet</a>	<a href="#">LaCrosse</a>	<a href="#">Sauk</a>
<a href="#">Chippewa</a>	<a href="#">Lafayette</a>	<a href="#">Sawyer</a>
<a href="#">Clark</a>	<a href="#">Langlade</a>	<a href="#">Shawano</a>
<a href="#">Columbia</a>	<a href="#">Lincoln</a>	<a href="#">Sheboygan</a>
<a href="#">Crawford</a>	<a href="#">Manitowoc</a>	<a href="#">St. Croix</a>
<a href="#">Dane</a>	<a href="#">Marathon</a>	<a href="#">Taylor</a>
<a href="#">Dodge</a>	<a href="#">Marinette</a>	<a href="#">Trempealeau</a>
<a href="#">Door</a>	<a href="#">Marquette</a>	<a href="#">Vernon</a>
<a href="#">Douglas</a>	<a href="#">Menominee</a>	<a href="#">Vilas</a>
<a href="#">Dunn</a>	<a href="#">Milwaukee</a>	<a href="#">Walworth</a>
<a href="#">Eau Claire</a>	<a href="#">Monroe</a>	<a href="#">Washburn</a>
<a href="#">Florence</a>	<a href="#">Oconto</a>	<a href="#">Washington</a>
<a href="#">Fond du Lac</a>	<a href="#">Oneida</a>	<a href="#">Waukesha</a>
<a href="#">Forest</a>	<a href="#">Outagamie</a>	<a href="#">Waupaca</a>
<a href="#">Grant</a>	<a href="#">Ozaukee</a>	<a href="#">Waushara</a>
<a href="#">Green</a>	<a href="#">Pepin</a>	<a href="#">Winnebago</a>
<a href="#">Green Lake</a>	<a href="#">Pierce</a>	<a href="#">Wood</a>

- [Dam safety](#)
- [Floodplain management](#)
- [Shorelands](#)
- [Storm water](#)
- [Wastewater](#)
- [Wetlands](#)

### Waterway and wetland information line

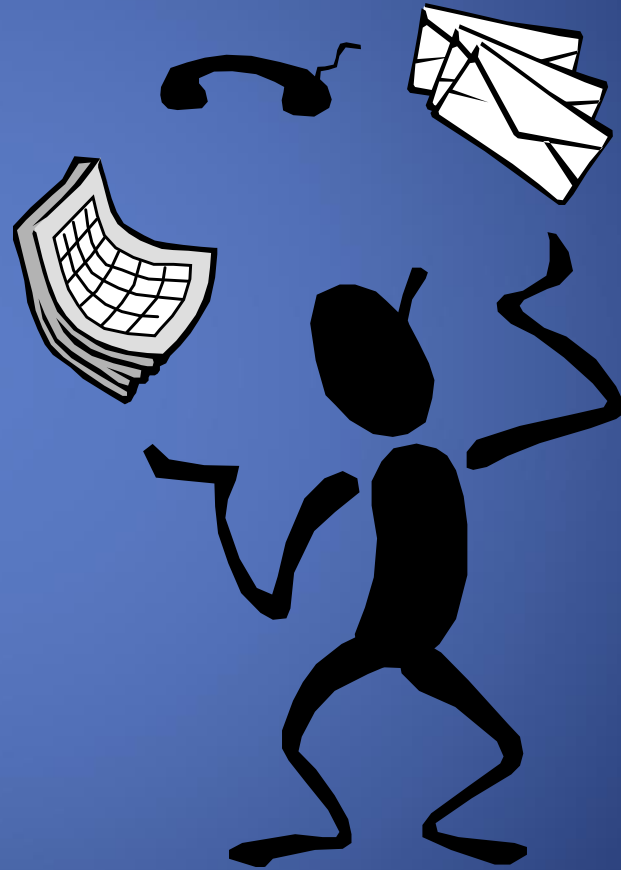
Can't find the answer to your question on our web pages? Call our information line:

920-662-5452

• Corps of Engineers

• County Zoning

# THE KEY: Planning and Communication



# PERMIT PROCESSING

## Water Permits Web Portal

[Business](#)[Licenses & Regulations](#)[Recreation](#)[Education](#)[Topics](#)[Contact](#)[Join Us](#)

### Water permit applications

For some of our permits, submit applications and other forms to the DNR online. Get a WAMS ID, complete an application, sign and pay fees in a few steps. Track permits and know exactly where they are in the permitting process. Follow us as we add more permits to our online system. Applications not yet available online are linked below as a PDF.

[Register](#)

for a WAMS ID to access our SharePoint site to complete an online application.

[Complete](#)

an application, sign, and pay fees online.\*

[View](#)

public notices of the DNR's intention to authorize activity relating to water.

[Track](#)

the status of Wisconsin water permits.



Bark Bay Slough - by Joanne Kline (Bayfield)

\* = WAMS ID and password needed to log in.

**Water supply** | **Storm water** | **Agricultural livestock operations** | **Wastewater** | **Aquatic plant management** | **Waterway and wetland**

General information about the application type	Paper process	Online process
<a href="#">Public water capacity development</a>	<a href="#">View info</a>	
<a href="#">Geothermal systems</a>	<a href="#">Download [PDF]</a>	
<a href="#">Underground injection wells</a>	<a href="#">Download [PDF]</a>	
<a href="#">Water use permits</a>	<a href="#">View info</a>	
<a href="#">Water withdrawal (&gt;100,000 GPD or &gt;70 GPM)</a>	<a href="#">View info</a>	
<a href="#">Well construction notification</a>	<a href="#">Download [PDF]</a>	

Done

Local intranet | Protected Mode: Off

100%

<http://dnr.wi.gov/permits/water/>

# WRAPP Form

Site Actions | Forms | Fetter, Frank F

Submit Save Save As Close Paste Cut Current View: Update

Commit Clipboard Views Update

Home NR353 3500-53N **Attachments**

State of Wisconsin  
Department of Natural Resources  
dnr.wi.gov

**Water Resources Application for Project Permits**  
Form 3500-053 (R 2/12) Page 1 of 2

**Notice:** Pursuant to chs. 30 and 31, 281 and s. 283.33, Wis. Stats., this form is used to apply for coverage under the state construction site storm water runoff general permit, and to apply for a state or federal permit or certification for waterway and wetland projects or dam projects. This form and any required attachments constitute the permit application. Failure to complete and submit this application form may result in a fine and/or imprisonment or forfeiture under the provisions of applicable laws including s. 283.91, Wis. Stats. Personal information collected will be used for administrative purposes and may be provided to requesters to the extent required by Wisconsin's Public Records Laws (ss. 19.31-19.39, Wis. Stats.).

Use this form for:

- Work in public waters (DNR - ch.30, Wis. Stats.)
- Storm Water NOI - New land disturbing construction activity
- Work in waters of the U.S (Corps of Engineers)
- Storm water NOI - Renewal
- Permit for Wetland Fill (DNR or Corps of Engineers)
- Dam projects (DNR or Corps of Engineers)

Read all instructions provided before completing.

**Section 1: Applicant/ Permittee Information**

Applicant Name(Indiv., Org. or Entity) 2	Authorized Representative 3	Title 4	
Mailing Address 5	City 6	State 7	Postal Code 8
Email 9	Telephone Number (include area code) 10	Fax Number (include area code) 11	

**Section 2: Landowner Information (if different than Applicant)** Copy Applicant Info

Name(Organization or Entity) 12	Contact Person 13	Title 14	
Mailing Address 15	City 16	State 17	Postal Code 18
Email 19	Telephone Number (include area code) 20	Fax Number (include area code) 21	

**Section 3: Other Contact Information (check one)**

Consultant or Plan Preparer  Contractor  Agent  Other 22 If other, specify: 23

Name (Organization or Entity) 24	Contact Person 25	Title 26
----------------------------------	-------------------	----------

Lists

Permits View

Search Applications (Submitted to DNR)

Agricultural Livestock Operation

Aquatic Plant Management

Create Permit

Stormwater

Wastewater

Create Permit


Water Supply

Waterway and Wetlands

Create Permit

DNR Permit Processing

All Site Content



# What is considered a Complete Application



- Photographs of the site without snow cover
- Completed Application
- Wetland delineation (?)
- Narrative
- Plans & specs
- Proof of ownership
- All fees



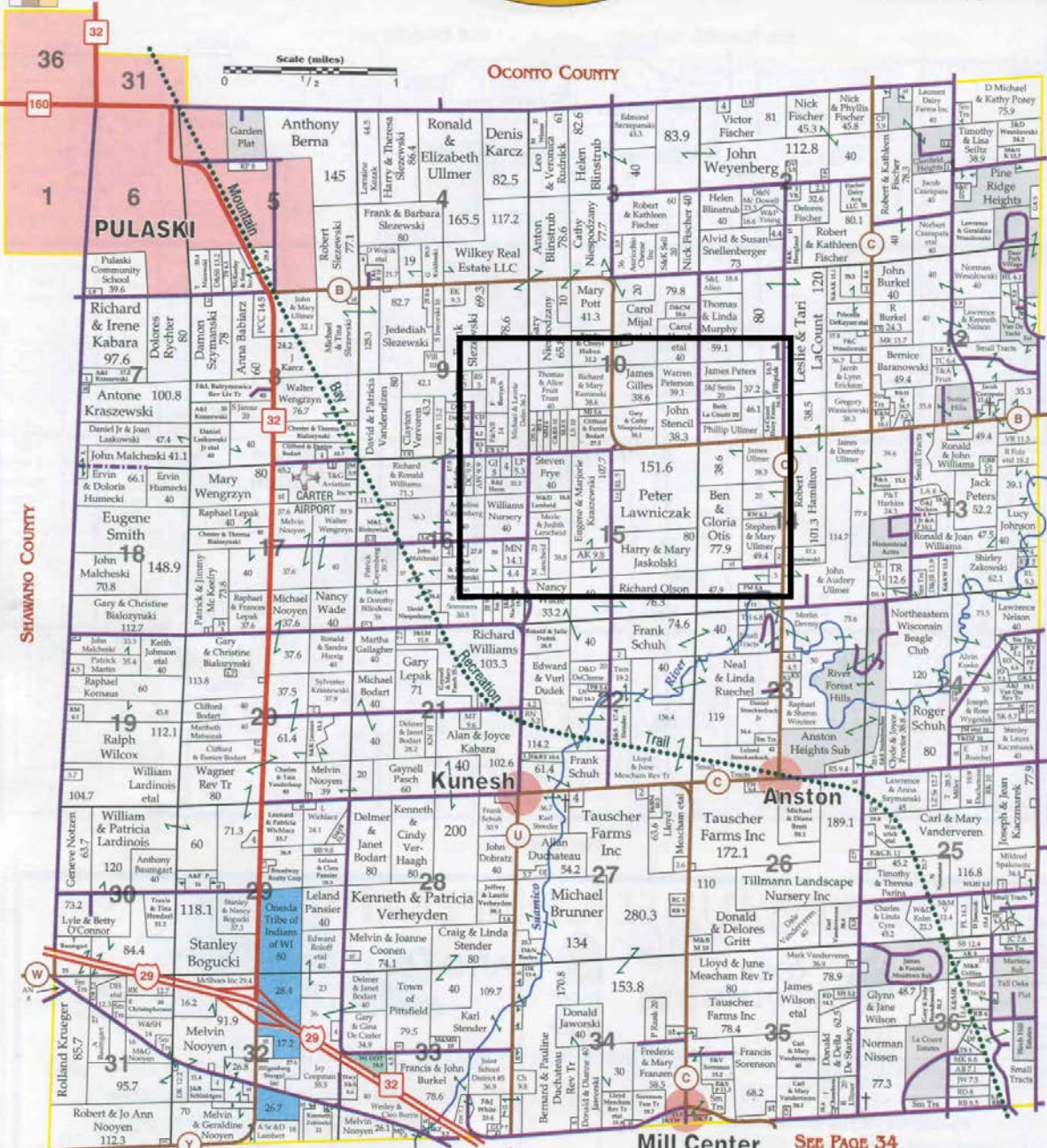
# Generic Case Study

# Farm Drainage Ditch





T. 25 N. + T. 26 N.



SHAWANO COUNTY

OCONTO COUNTY

OUTAGAMIE COUNTY

Mill Center

SEE PAGE 34

SEE PAGE 42





# Public (Navigable) Waterways

- defined bed and banks; and the ability to float a small watercraft on a recurring basis

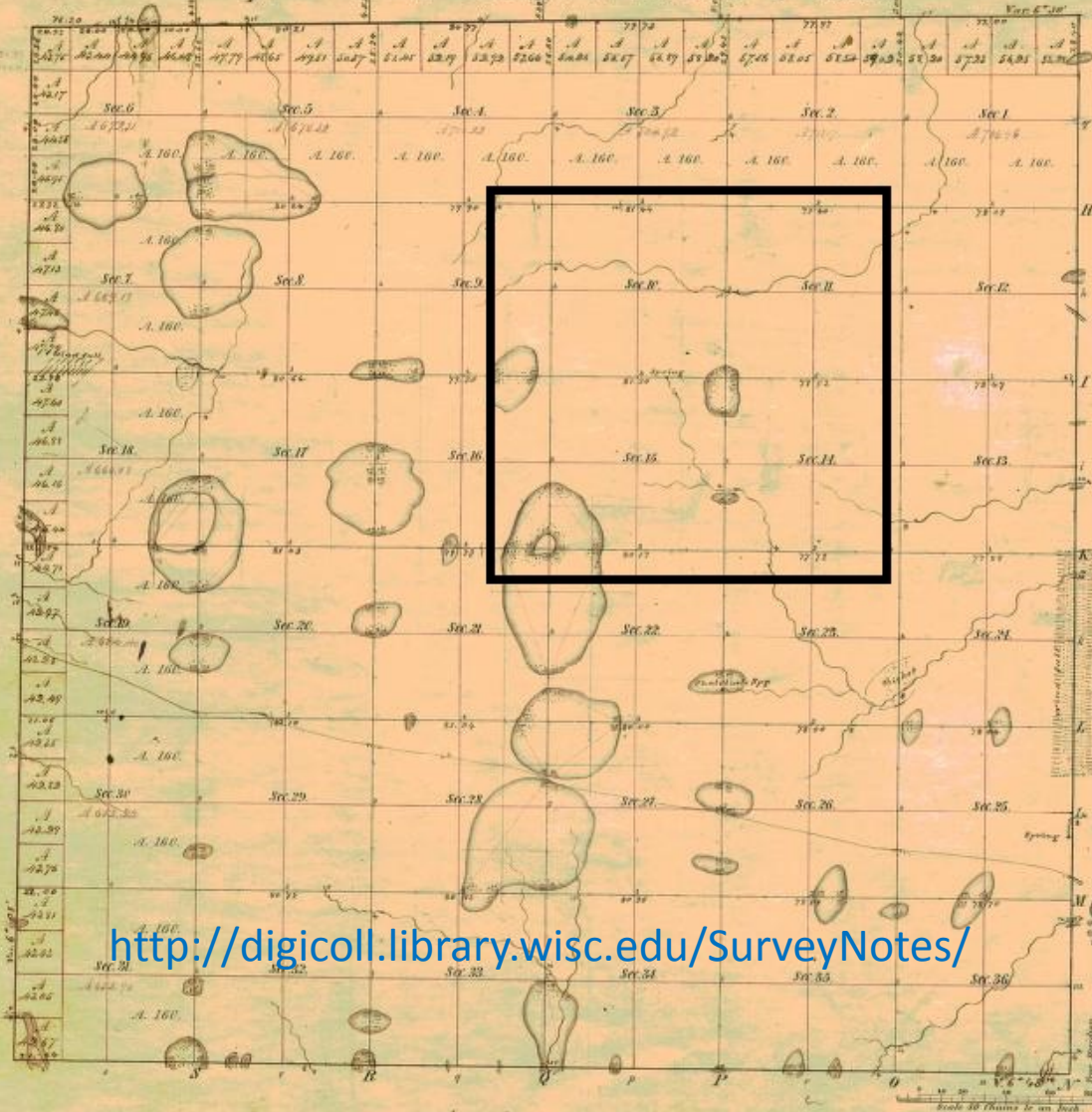


# Public (Navigable) Waterways

s. 30.10, Wisconsin Statutes:

1. Wasn't navigable before ditching; and
2. The ditch is draining exclusively agricultural lands

Township N<sup>o</sup> 25N, Range N<sup>o</sup> 18 East, 1<sup>st</sup> Mer.



Meanders of  
Public Courses 1842

<http://digicoll.library.wisc.edu/SurveyNotes/>

Total number of Acres 24,447.78

Survey Designated	By Whom Surveyed	Date of Contract	Amount of Survey	When Surveyed	When <sup>d</sup> the land was in the 1st <sup>st</sup> Con <sup>g</sup> 1842
Township lines	A. S. Ellis	May 15, 1843	24,085 1/2	3d. q <sup>r</sup> . 1843	1st. q <sup>r</sup> . 1844
Subdivisions	A. S. Ellis	Aug. 5, 1843	60. 68 - 31	4th. q <sup>r</sup> . 1843	4 <sup>th</sup> q <sup>r</sup> . 1844

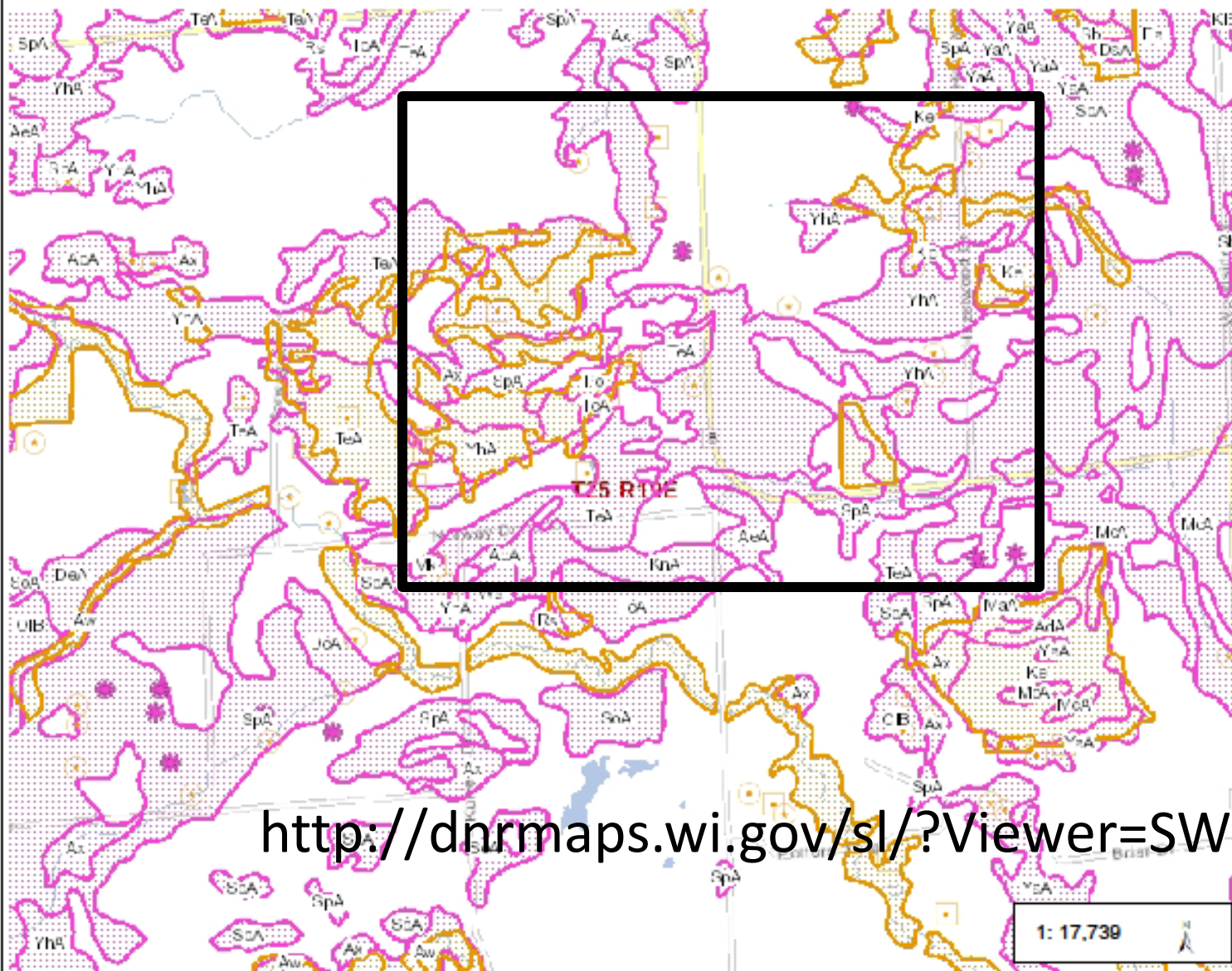
The above Map of Township N<sup>o</sup> 25 North, of Range N<sup>o</sup> 18 East, Principal Meridian, Wisconsin Territory, is strictly conformable to the file of the survey thereof on file in this Office, which have been examined and approved by the Surveyor General's Office.  
Dobson, December 25, 1844. James Wilson Surveyor General

# Do I need a wetland permit?

- The discharge of dredged or fill material into wetlands – s. 281.36(3b), Stats.
  - Construction or maintenance of farm ponds, stock ponds or irrigation ditches
  - Case by case basis. Case example: Wind Lake Canal Dredging
    - ACOE Exemption for discharge of dredged material into waters of the U.S., including sidecasting into adjacent wetlands.
    - No DNR wetland authority.
    - Check with the ACOE and WMS on wetland rules.



# Potential Wetlands



### Legend

- Wetland Class Points**
  - Dammed pond
  - Excavated pond
  - Filled excavated pond
  - Filled/draind wetland
  - Wetland too small to delineate
- Filled Points**
  -
- Wetland Class Areas**
  - Wetland
  - Upland
- Filled Areas**
  -
- NRCS Wetspots**
  -
- Wetland Indicators**
  -
- Township**
  -
- Rivers and Streams**
  -
- Open Water**
  -

<http://dnrmmaps.wi.gov/sl/?Viewer=SWDV>

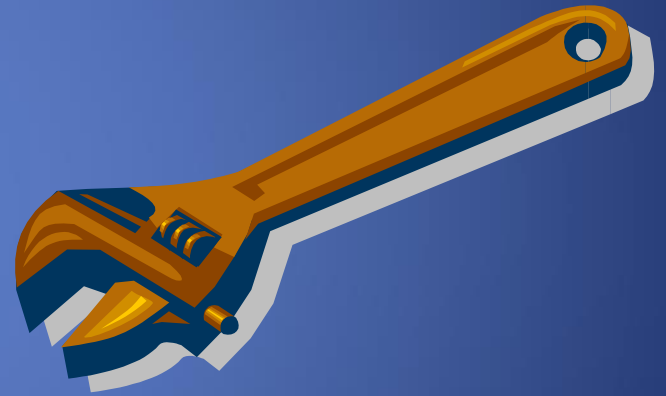
1: 17,739



0.6 0 0.28 0.6 Miles

### Notes

Maps are only tools – not  
definitive



# Case Example: Hoosier Creek, Racine & Kenosha Counties

Proposed removal of 8,000 cy of material & disposal of material along dredge corridor.

- Prior navigable waterway history; Ch. 30 permitting necessary.
- Submit required dredging pre-application information to determine if sediment testing is required under NR 347. Testing was requested. Solid Waste review?
- Disposal: Local floodplain ordinance.
  - Racine: can spread up to 12" in floodplain.
  - Kenosha: Can spread up to 6" with shoreland contract.

# Not Previously Navigable: NR 345

- NR 345.04 Dredging of a farm drainage ditch which was not a navigable stream before ditching is eligible for an exemption subject to the following limitation:
- The project is located in a navigable stream that does not have stream history.
- The applicant has notified the department of the proposed project 10 days prior to dredging.
- The dredging may not have a long-term adverse effect on cold-water fishery resource or may not destroy cold water or warm water fish spawning beds or nursery areas.
- The dredged material may not be temporarily or permanently placed in a wetland, floodway or below the ordinary high water mark of a navigable waterway.
- The person conducting the dredging is the riparian owner or has permission of the riparian owner to remove bottom material.



