COON CREEK WATERSHED DISTRICT  
Request for Board Action  

<table>
<thead>
<tr>
<th>MEETING DATE:</th>
<th>May 11, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGENDA NUMBER:</td>
<td>20</td>
</tr>
<tr>
<td>ITEM:</td>
<td>DRAFT Policy &amp; Procedure for Endangered and Threatened Species</td>
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</table>

<table>
<thead>
<tr>
<th>POLICY IMPACT:</th>
<th>Discussion</th>
</tr>
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<tbody>
<tr>
<td>FISCAL IMPACT:</td>
<td>Budgeted</td>
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REQUEST
Review DRAFT Policy and Procedure and forward to Advisory committees for Review

BACKGROUND
In 2014 and 2015 the District has been involved in numerous projects and permit reviews that involve Endangered, Threatened or special concern species.

There is a need to clarify the scope and intended effect of existing District policy and the goals and objectives and policies of the Comprehensive Plan.

Attached is a DRAFT Policy and Procedure that addresses how the District’s obligations in this area might be fulfilled.

ISSUES/CONCERNS
Policy Intent: NOTE: The intent of this policy is to provide internal direction and guidance

OPTIONS
n/a

RECOMMENDATION
Forward to Advisory Committees for review.
FINDINGS
The District has found that within the watershed there are areas that contain unique natural resources and/or endangered or threatened species of animals and plants. The existing and potential development within the Coon Creek watershed if unplanned may have the impact of despoiling or eliminating these resources, which, if preserved or properly managed may provide educational, recreational, scientific, aesthetic and conservation benefits.

POLICY
1. Avoid all adverse impacts on threatened and endangered species and their habitats, except when it is possible to compensate adverse effects totally through alternatives identified in a Biological Assessment; when an exemption has been granted under the act; or when the Biological Assessment recognizes an incidental taking. Avoid adverse impacts on species proposed for listing during the pre-application period and while their status is being determined.

2. No person shall impact a state or federally listed endangered species, threatened species, special concern species or elements or communities, without first obtaining a permit from the District. (District Rule 9.8)

Standards: Applicant must:
1. Establish the presence of endangered, threatened or special concern species or communities on-site and the source of that information.

2. Assess the potential effect on wildlife and vegetation and the habitats on which they depend.

3. The District may require applicant to provide a habitat management plan when the District determines applicant cannot avoid direct or indirect impacts on the habitat in question.

SCOPE AND APPLICABILITY
This policy applies to all state and federally endangered and threatened species, rare natural communities, and species of special concern.
AUTHORITY
Minn. Statutes 84.0895 Protection of Threatened and Endangered Species
Minn. Statutes 103B.201 Metropolitan Water Management Program Purpose
Miss Statute 103E.015 Drainage Law: Consider effects on fish and wildlife before establishing a project
Minn. Statutes 103G.1022 Wetland Conservation Act
Minn. Statutes 103G.2241 Wetland Conservation Act Exemptions
Minn. Rule 6212.1800 General Restrictions for Permits To Possess Threatened and Endangered Species
Minn. Rule 8420.0515 Special Considerations

GOALS
1. To preserve and enhance wildlife
2. To prevent the loss of wildlife and vegetation and the habitats on which they depend.
3. To protect, preserve and manage unique resource areas and unique and/or endangered species of plants and animals that populate these areas from adverse impacts associated with land use change.

OBJECTIVES:
1. To provide guidance in the development of Habitat Management Plans
2. Improve and manage habitat to benefit at-risk and declining species and discourage invasive species.
3. To maintain and improve wildlife and fish habitat
4. To cooperate with other agencies, conservation organizations, concerned landowners, and individuals in all appropriate aspects of wildlife, fish, and threatened, endangered, and sensitive species habitat management
5. To manage habitats and activities within the District for threatened and endangered species so that special protection measures provided under the Endangered Species Act are no longer necessary.
6. To encourage and implement management practices to ensure that species do not become threatened or endangered because of Watershed District actions.
METHODS
The overall process for discovering and determining if a threatened, endangered or special concern species may or is involved in a proposed action is provided in the flow chart in the next page.

The process works best if it is preceded with a pre-application conference or consultation and will serve as the basic agenda for those meetings.

Pre-Application and Consultation
The consultation process may encompass:

1. Informal consultation,
2. Pre-application,

Informal Consultation: Informal consultation consists of all contacts, correspondence, or discussion between the Watershed District and the Department of Natural Resources that take place prior to initiation of any necessary formal consultation. Utilize informal consultation with DNR to achieve the following:

1. To produce a sound Biological Assessment that incorporates the best information available.
2. To identify project alternatives and discuss modifications and protective measures that would avoid adverse effects so that formal consultation is not necessary.
3. To inform MDNR of actions designed to benefit proposed species.

Pre-application: Pre-application with the Department of Natural Resources is mandatory when the Watershed District determines that an action is likely to jeopardize the continued existence of any species proposed for listing or is likely to result in the destruction or adverse modification of proposed critical habitat. Pre-application conferencing may also be used when both agencies agree it would avoid or minimize delays, assist in resolving potential conflicts, or promote efficiency.

Establishing the Presence of Species and Habitats of Concern

1. Minnesota County Biological Survey

Systematically collects, interprets, and delivers baseline data on the distribution and ecology of rare plants, rare animals, native plant communities, and functional landscapes needed to guide decision making. The program has produced printed and digital maps of native plant communities and rare species for Anoka County.

http://www.dnr.state.mn.us/mbs/index.html

2. City Natural Resource Inventories

The following cities have conducted natural resource inventories that include endangered, threatened and special concern species

<table>
<thead>
<tr>
<th>City</th>
<th>NRI</th>
<th>Year</th>
<th>CBS Based</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andover</td>
<td>Yes</td>
<td>2009</td>
<td>?</td>
</tr>
<tr>
<td>Blaine</td>
<td>Yes</td>
<td>2008</td>
<td>No</td>
</tr>
<tr>
<td>Columbus</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coon Rapids</td>
<td>Yes</td>
<td>2005</td>
<td>Yes</td>
</tr>
<tr>
<td>Fridley</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ham Lake</td>
<td>Yes</td>
<td>2008</td>
<td>Yes</td>
</tr>
<tr>
<td>Spring Lake Park</td>
<td>No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 The City of Blaine has initiated and been the focus of several general as well as detailed studies addressing rare and
3. Local Surveys
Periodically land owners or developers will hire certified botanists or specialized wildlife biologists to investigate property for occurrences of rare or protected species. In addition, agency personnel may observe and document the presence of a rare or protected species while conducting other conservation work on site. In all cases, the location and observations need to be properly documented (see contents of a biological assessment) for timely and efficient verification of the species of concern. The City of Blaine has been the focus of several detailed studies and inventories of rare and endangered species.

4. Determination of Critical Habitat
To determine ‘critical habitats’, the ‘Primary Constituent Elements’ or PCEs for the specie(s) under consideration must be identified. ‘Critical Habitats and PCEs may or may not be known. Information on listed species may be found at the following web site.

http://www.dnr.state.mn.us/ets/index.html

**Biological Assessment**
The purpose of a Biological Assessment is to evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

The Biological Assessment shall be completed before any contract for construction is entered into and before construction is begun.

Use the Biological Assessment process to identify which listed and proposed species would be affected by the proposed action, to evaluate the possible effects resulting from the proposed action, and to determine whether consultation or pre-application is required. Four interrelated factors determine the type of review and consultation procedures to follow in determining effects on listed or proposed species. They are:

1. Presence of listed or proposed species or their critical habitat.
2. Determination of effect in the Biological Assessment
3. Whether action is "construction" or "non-construction project"
4. Extent of environmental impact.

The contents of a Biological Assessment are at the discretion of the state or Federal agency and will depend on the nature of the action. The following may be considered for inclusion:

1. The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.
2. The views of recognized experts on the species at issue.
3. A review of the literature and other information on the species or community in question.
4. An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
5. An analysis of alternate actions considered by the Federal agency for the proposed action.

ASSESSING THE POTENTIAL FOR ADVERSE EFFECTS OF SPECIES AND HABITATS OF CONCERN

Presence of Critical Species or Habitat
The probable presence of an endangered, threatened or special concern species or habitat has already been established.

Effects Analysis: Determination of Adverse Effect on Listed or Proposed Species
1. Coordinate with Local and State agencies as appropriate. Use to identify which endangered, threatened, or proposed species, if any, may be present in the project area. The official list along with other determinations made in the informal consultation must be documented as part of the Biological determination even if no species are determined to be present.

2. Conduct Biological Assessments as a part of the environmental analysis process. Informal consultation with Minnesota Department of Natural Resources in the early project planning stages provides the best opportunity for the formulation of project or program alternatives that will not have an adverse effect on listed or proposed species or their habitat.

Use the Biological Assessment process to conduct and document any action that is not likely to jeopardize the continued existence of any listed or proposed species or to result in the destruction or adverse modification of critical or proposed critical habitat. Assessment of significant adverse effects should be based on the following factors:
   1. The amount of vegetation/habitat removal and/or alteration within the development site
   2. The amount of habitat of similar type and quality within the development site that remains contiguous
   3. The existing and proposed amount of lot coverage
   4. The existence of contiguous habitat of similar type and quality on adjoining land
5. Mitigation efforts that directly address the negative effects of the proposed land use on wildlife habitat.

3. Assessment of significant adverse impacts should be based on the following factors:
   1. The amount of vegetation/habitat removal and/or alteration within the development site.
   2. The amount of habitat of similar type and quality within the development site that remains contiguous.
   3. The existing and proposed amount of lot coverage.
   4. The existence of contiguous habitat of similar type and quality on adjoining land.
   5. Mitigation efforts that directly address the negative effects of the proposed land use on wildlife habitat.

4. Use the Biological Assessment process, to make full use of Biological expertise and informal consultation with the Minnesota Department of Natural Resources, Natural Heritage Program to reach supportable determinations of:
   a) No effect
   b) May effect, but not likely to adversely affect
   c) May effect, and is likely to adversely affect
Habitat Management Plan

The purpose of the habitat management plan is to create a species specific plan that includes measures that are necessary and advisable to provide for the conservation of the species in question. The plan should include the following:

1. Introduction
   a. State the purpose of the plan
b. Briefly describe the proposed action triggering the need for the plan

2. Description of the Species or Taxon/Critical Habitat Considered
   a. Taxonomy, Morphology and Where Possible, the Genetic Variation Of The Species
   b. Identify the species and critical habitat present
   c. Document how you identify the listed species
   d. Current Status (Is It Endangered And To What Degree?)
   e. Describe the current population and habitat conditions (status and trend if known) for each listed species. Present Known and Past Distribution, as Far as is Known
      i. Population And Reproductive Biology/Life History
      ii. Habitat Description And Ecology
   f. Limiting Factors (e.g. Available Suitable Habitat)

3. Identification of Relevant Stakeholders and Collaborators in Management of the Species

4. Plan
   a. Objectives
   b. Recovery Program
   c. Actual and Potential Threats
   d. Conservation Measures and Actions Required
   e. For each species or critical habitat parcel explain how each proposed best management practice will ensure the conservation of the listed species. Be sure to consider benefits and effects to all life stages
   f. Describe the anticipated response from each BMP
   g. Describe the cumulative benefits for each action to be taken
   h. Evaluation Criteria (Measurements of How To Judge Whether Objectives Have Been Met)
   i. Implementation Schedule
   j. Resources Required and Available (Including Personnel)
   k. Aftercare and Monitoring

5. Work Plan
   a. Budget and Costs

ADDITIONAL GUIDANCE
Threatened and Endangered Species
1. Review, through the Biological Assessment process, actions and programs planned or permitted or funded to determine their potential for effect on threatened and endangered species; species proposed for listing; and rare natural communities.

2. Initiate consultation or pre-application with the MDNR, COE or FWS when the Watershed District determines that proposed activities may have an effect on threatened or endangered species or rare natural communities; are likely to jeopardize the continued existence of a proposed species; or result in the destruction or adverse modification of critical or proposed critical habitat.

3. Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species or rare natural communities.

4. Protect individual organisms or populations from harm or harassment as appropriate.

5. Inform the cities of all formal consultations with the Department Natural Resources, and seek the city’s participation in the consultation process.

**Sensitive/Special Concern Species**

1. Assist Minnesota MDNR in achieving their goals for conservation of endemic species.

2. Review programs and activities through a Biological Assessment, to determine their potential effect on sensitive species.

3. Avoid or minimize impacts to species whose viability has been identified as a concern.

4. Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole.

**RESPONSIBILITY**

**Board of Managers**

The Board of Managers will

1. Establish District policy and procedures for endangered, threatened and special concern species.
2. Ensure compliance with all applicable authorities

**District Administrator**
The District Administrator will:
1. Notify the Board of Managers of complex or controversial threatened and endangered issues and decisions

2. Ensure that legal and biological requirements for the conservation of endangered, threatened, and proposed plants and animals are met within the District; ensure compliance with procedural and Biological requirements for endangered, threatened and sensitive species and rare natural communities.

3. Make recommendations to the Department of Natural Resources for critical or essential habitat designation within the Watershed District.

4. Determine distribution, status, and trend of threatened, endangered, proposed, and sensitive species and their habitats within the Watershed.

5. Coordinate District programs with other state and federal agencies and other groups and individuals concerned with the conservation of threatened, endangered, proposed, and sensitive species.

6. Ensure staff follows all appropriate laws and regulations concerning endangered and threatened species.

7. Ensure periodic PEER review

**Regulatory Coordinator**
The Regulatory Coordinator will:
1. Ensure compliance with legal and Biological requirements for the conservation of threatened, endangered, and proposed species and rare natural communities in district land management and project planning; ensure compliance with procedural and Biological requirements for sensitive species.

2. Identify, manage, and protect essential and critical habitats to meet legal requirements for listed species; identify, protect, and manage habitat necessary to meet sensitive species objectives.

3. Prohibit the taking of threatened and endangered species of plants and animals except under state or Federal permits. Prohibit the collection or taking of sensitive plants except as authorized by state or Federal policy.
4. Ensure the District obtain appropriate public and local, state and Federal agency involvement.

5. Review and approve Biological Assessments, effects analysis and habitat management plans and plan modifications.

**Operations and Maintenance Coordinator**
The Operations and Maintenance Coordinator will:

1. Determine if threatened, endangered or special concern specie may or is involved in any proposed District project by using the flow chart in the next page. This should be done early in the planning and budgeting process to ensure the project is properly scoped.

2. Notify the District Administrator of those projects requiring formal or early consultation or pre-application with the Department of the Interior, Fish and Wildlife Service or the Department of Natural Resources.

3. Ensure compliance with legal and Biological requirements for the conservation of threatened, endangered, and proposed species and rare natural communities in district land management and project planning; ensure compliance with procedural and Biological requirements for sensitive species.

4. Identify, manage, and protect essential and critical habitats to meet legal requirements for listed species; identify, protect, and manage habitat necessary to meet sensitive species objectives.

5. Prohibit the taking of threatened and endangered species of plants and animals except under state or Federal permits. Prohibit the collection or taking of sensitive plants except as authorized by state or Federal policy.

6. Ensure the District obtain appropriate public and local, state and Federal agency involvement.

7. Invite participation and coordinate district activities with local, state and federal agencies, and interested groups and individuals concerned with the conservation of threatened, endangered and sensitive species as well as proposed species and rare natural communities.

**Program Coordinators**
All Program Coordinators will:
1. Coordinate district activities with interested state and federal agencies, groups, and individuals concerned with the conservation of threatened, endangered, proposed, and sensitive species and rare natural communities.

2. Conduct necessary Biological Assessments and notify the District Administrator of those projects requiring formal or early consultation or pre-application with the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Natural Resources.

3. Prohibit the taking of threatened and endangered species of plants and animals except under state or Federal permits. Prohibit the collection or taking of sensitive plants except as authorized by state or Federal policy.

4. Ensure the District obtains appropriate public and agency involvement.

5. Invite participation by, and consultation with the appropriate state and Federal agencies involved in threatened and endangered species management.

**COOPERATION**

**Cooperation with State Agencies and Cities**

1. The Watershed District cooperates with cities and state agencies to inventory, protect, manage, and plan for threatened, endangered, proposed, and sensitive species and rare natural communities.

2. Inform the cities and state agencies of all formal consultations with the Department Natural Resources, and seek their participation in the consultation process.

3. Inform the cities of all formal consultations with the Department Natural Resources, and seek the city’s participation in the consultation process.

**ENDANGERED SPECIES WITHIN THE WATERSHED**

Nine (9) endangered species have been documented within the watershed. Eight plant species and 1 animal species.

<table>
<thead>
<tr>
<th>Taxonomic Group</th>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vascular Plant</td>
<td>Rubus stipulatus</td>
<td>Big Horseshoe Lake Dewberry</td>
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<tr>
<td>Vascular Plant</td>
<td>Polygala cruciata</td>
<td>Cross-leaved Milkwort</td>
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<tr>
<td>Vascular Plant</td>
<td>Potamogeton diversifolius</td>
<td>Diverse-leaved Pondweed</td>
</tr>
<tr>
<td>Vascular Plant</td>
<td>Juncus marginatus</td>
<td>Marginated Rush</td>
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THREATENED SPECIES WITHIN THE WATERSHED
Ten (10) threatened species have been documented within the watershed. Nine plant species and 1 animal species.

<table>
<thead>
<tr>
<th>Taxonomic Group</th>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vascular Plant</td>
<td>Gaylussacia baccata</td>
<td>Black Huckleberry</td>
</tr>
<tr>
<td>Vascular Plant</td>
<td>Rubus fulleri</td>
<td>A Bramble</td>
</tr>
<tr>
<td>Vascular Plant</td>
<td>Hudsonia tomentosa</td>
<td>Beach-heather</td>
</tr>
<tr>
<td>Vascular Plant</td>
<td>Botrychium oneidense</td>
<td>Blunt-lobed Grapefern</td>
</tr>
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<td>Vascular Plant</td>
<td>Rubus semisetosus</td>
<td>Half Bristly Bramble</td>
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<tr>
<td>Vascular Plant</td>
<td>Viola lanceolata var. lanceolata</td>
<td>Lance-leaved Violet</td>
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<td>Vascular Plant</td>
<td>Aristida tuberculosa</td>
<td>Sea-beach Needlegrass</td>
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<tr>
<td>Vascular Plant</td>
<td>Rotala ramosior</td>
<td>Tooth-cup</td>
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<td>Vertebrate Animal</td>
<td>Platanthera flava var. herbiola</td>
<td>Tubercled Rein-orchid</td>
</tr>
<tr>
<td>Vertebrate Animal</td>
<td>Emydoidea blandingii</td>
<td>Blanding's Turtle</td>
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SPECIAL CONCERN AND SENSITIVE SPECIES
Thirty-two (32) species of special concern or are sensitive have been documented within the watershed. Five invertebrates; 11 terrestrial ecological communities; 8 vascular plants; and 8 vertebrate animals.

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<tr>
<th>Taxonomic Group</th>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
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<tbody>
<tr>
<td>Invertebrate Animal</td>
<td>Hesperia leonardus leonardus</td>
<td>Leonard's Skipper</td>
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<tr>
<td>Invertebrate Animal</td>
<td>Pelegrina arizonensis</td>
<td>A Jumping Spider</td>
</tr>
<tr>
<td>Invertebrate Animal</td>
<td>Ligumia recta</td>
<td>Black Sandshell</td>
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<tr>
<td>Invertebrate Animal</td>
<td>Cicindela patrula patrula</td>
<td>Northern Barrens Tiger Beetle</td>
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<tr>
<td>Invertebrate Animal</td>
<td>Pleurobema sintoxia</td>
<td>Round Pigtoe</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Dry Barrens Oak Savanna (Southern); Oak Subtype</td>
<td>Dry Barrens Oak Savanna (Southern), Oak Subtype</td>
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<td>Terrestrial Community - Other Classification</td>
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<td>Terrestrial</td>
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<td>Common Name</td>
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<td>-----------------</td>
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</tr>
<tr>
<td>Community - Other Classification</td>
<td>(Southern) Type</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Lake bed</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Low Shrub Poor Fen Type</td>
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<td>Native Plant Community, Undetermined Class</td>
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<td>Northern Mixed Cattail Marsh Class</td>
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<td>Silver Maple - (Virginia Creeper) Floodplain Forest Type</td>
<td>Silver Maple - (Virginia Creeper) Floodplain Forest</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Southern Dry-Mesic Oak (Maple) Woodland Class</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Tamarack Swamp (Southern) Type</td>
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<td>Terrestrial Community - Other Classification</td>
<td>Wet Prairie (Southern) Type</td>
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<tr>
<td>Vascular Plant</td>
<td>Agalinis purpurea</td>
<td>Purple Gerardia</td>
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<td>Vascular Plant</td>
<td>Actaea pachypoda</td>
<td>White Baneberry</td>
</tr>
<tr>
<td>Vascular Plant</td>
<td>Fimbristylis autumnalis</td>
<td>Autumn Fimbristylis</td>
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<td>Vascular Plant</td>
<td>Nuttallanthus canadensis</td>
<td>Old Field Toadflax</td>
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<td>Vascular Plant</td>
<td>Triplasis purpurea var. purpurea</td>
<td>Purple Sand-grass</td>
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<td>Oenothera rhombipetala</td>
<td>Rhombic-petaled Evening Primrose</td>
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<td>Decodon verticillatus</td>
<td>Waterwillow</td>
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<td>Hieracium longipilum</td>
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<td>Pituophis catenifer</td>
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<td>Perognathus flavescens</td>
<td>Plains Pocket Mouse</td>
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<td>Botaurus lentiginosus</td>
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<td>Grus canadensis</td>
<td>Sandhill Crane</td>
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<td>Scientific Name</td>
<td>Common Name</td>
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<tr>
<td>-----------------------</td>
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</tr>
<tr>
<td>Vertebrate Animal</td>
<td>Bartramia longicauda</td>
<td>Upland Sandpiper</td>
</tr>
</tbody>
</table>
DEFINITIONS

1. **Adverse Effect or Impact.** An action that has an apparent direct or indirect adverse effect on the conservation and recovery of a species listed as threatened or endangered. Such actions include, but are not limited to:
   
   a. Any action that directly alters, modifies, or destroys critical or essential habitats or renders occupied habitat unsuitable for use by a listed species, or that otherwise affects its productivity, survival, or mortality.
   
   b. Any action that directly results in the taking of a listed species.

2. **Avoid.** Refers to the avoidance of impacts and involves not taking an action or part(s) of an action that would directly or indirectly impact the resource of concern.

   An applicant may suggest that avoidance is not feasible or prudent because there is no alternative. No alternative exists because:

   (1) The basic purpose of the project cannot reasonably be accomplished at
      1. an alternative site,
      2. alternative sites are not available,
      3. alternative sites are not practical/prudent;

   (2) The basic purpose of the project cannot be accomplished by further design modification which would avoid impacts; and

   (3) The applicant has made a good faith attempt in pursuing alternatives

3. **Biological Assessment.** A "Biological Assessment" or BA, is an investigation of a specific site or property, and an accompanying document, to determine the presence and extent of an endangered, threatened or special concern species or its habitat.

4. **Candidate Species.** Those plant and animal species that, in the Assessment of the FWS, may become endangered or threatened. The FWS recognizes three categories of candidate species for listing as endangered or threatened:

   1) **Category 1** are taxa for which there is substantial information to support the Biological appropriateness of proposing to list the species as endangered or threatened. Currently, data are being gathered concerning essential habitat needs, and for some taxa, the precise boundaries for
critical habitat designations. Development and publication of proposed listing of these species is anticipated.

2) **Category 2** are taxa for which information now in possession indicates that proposing to list the species as endangered or threatened is possibly appropriate, but for which conclusive data on Biological vulnerability and threat(s) are not currently available to support proposed listing.

3) **Category 3** are taxa that are no longer being considered for listing as endangered or threatened and are not regarded as candidate species. There are three subcategories:
   a) **Extinction**: Taxa for which the Department of the Interior, Fish and Wildlife Service has persuasive evidence of extinction.
   b) **Do Not Meet Criteria**: Taxa that while represented in published revisions and monographs do not meet the Endangered Species Act of 1973, as amended definition of species on the basis of current taxonomic understanding.
   c) **Are not Threatened or Endangered**: Taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject or any identifiable threat.

5. **Critical Habitat.** Those areas designated as critical by the MDNR or US Government, for the survival and recovery of listed species. Because use of the term has legal implications, the Watershed District limits its use to only those habitats officially determined as critical by the DNR of USFWS. See "Essential Habitat” in this definitions section)."

6. **Direct Effect or Impact.** Direct effects or impacts occur at or very close to the time of the action itself. They are typically associated with a tangible physical, Biological or alteration or change. Examples are effects associated with clearing, grubbing, excavating, loss of habitat, construction noise disturbance, sedimentation in water from construction, or removal or trees.

7. **Effects Analysis.** Is the systematic evaluation of the direct, indirect, interrelated and interdependent, cumulative as well as anticipated effects and ‘take’ likely to occur from the proposed project. Effects determinations must be consistent with the type of project in the project description, the biology of the species, the habitat status and the existing environment.
8. **Endangered Species.** Any species in danger of extinction throughout all or a significant portion of its range.

9. **Essential Habitat.** Those areas designated as possessing the same characteristics as critical habitat without having been declared as critical. The term includes habitats necessary to meet recovery objectives for endangered, threatened, and proposed species and those necessary to maintain viable populations of sensitive species.

10. **Fish and Wildlife.** Any non-domesticated member of the animal kingdom including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, anthropod, or other invertebrate, and including any part, product, egg, or offspring, thereof, or the dead body or parts thereof.

11. **Incidental Taking.** A taking that the Department of Natural Resources formally recognizes in a Biological Assessment as incidental to, and not for the purpose of, carrying out an otherwise lawful activity conducted by an agency or applicant.

12. **Indirect Effect or Impact:** Indirect effects are those adverse changes that are caused by the action and are later in time (including after the action is complete) but are still reasonably certain to occur. They are typically associated with chemical, hydrologic or behavioral alterations or changes. Examples are effects or changes associated with storm water routing, water quality, hydroperiod or strategies for propogation.

13. **Listed Species.** Any species of fish, wildlife, or plant officially designated as endangered or threatened by the Federal or State government. Listed species are documented by the U.S. Fish and Wildlife Service or the Minnesota Department of Natural Resources.

14. **Minimize.** Minimization refers to limiting the degree or magnitude of an action and/or its implementation.

An applicant has demonstrated that the activity will minimize impacts through:
   a) Modifying the size, scope, configuration, and density of the project,
   b) Attempted to remove or accommodate site constraints including zoning, infrastructure, access, or natural features, and
   c) Otherwise minimize impacts.
15. **Plant.** Any member of the plant kingdom, including seeds, roots, and other parts thereof.

16. **Primary Constituent Elements or PCEs.** Are those physical, hydrological and biological features for a landscape that a species needs to survive and reproduce. For example, cover or shelter, sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal and habitats that are protected from disturbance.

17. **Proposed Critical Habitat.** Habitat proposed to be designated for the benefit of any listed or proposed species. Notice of proposed critical habitat appears in the Federal Register.

18. **Proposed Species.** Any species of fish, wildlife, or plant that is proposed by the Department of the Interior, Fish and Wildlife Service or the Department of Natural Resources to be listed as threatened or endangered.

19. **Sensitive Species.** Those plant and animal species identified by the MDNR for which population viability is a concern, as evidenced by:
   a. Significant current or predicted downward trends in population numbers or density.
   b. Significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution.

20. **Species of Special Concern.** A species that while it is not endangered or threatened, is extremely uncommon in Minnesota, or has unique or highly specific habitat requirements and deserves careful monitoring of its status. Species on the periphery of their range that are not listed as threatened may be included in this category along with those species that were once threatened or endangered but now have increasing or protected, stable populations.

21. **Take.** To harass, harm, pursue, hunt, shoot, wound, trap, or collect, or to attempt to engage in any such conduct. (For plants, see the following paragraph c.)
   a. **Harass.** An intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to an extent that significantly disrupts normal behavioral patterns, including, but not limited to, breeding, feeding, or sheltering.
   b. **Harm.** An act or omission that actually injures or kills wildlife, including acts that annoy it to an extent that significantly disrupts essential behavioral patterns, including, but not limited to, breeding, feeding, or
sheltering. Harm includes significant environmental modification or degradation that results in direct death or injury.

c. Collect. Used in the Watershed District to mean the same as "remove and reduce to possession", referring to the taking of plants. "Collect" means to remove a plant from the substrate in which it grows and to hold it as a person’s own. Habitat alterations that might result in adverse effects on listed plants are covered under the requirements, governing consultation in section 7 of the Endangered Species Act of 1973.

22. **Threatened Species.** Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and that the appropriate Secretary has designated as a threatened species. (Some states also have declared certain species as threatened through their regulations or statutes.)

23. **Viable Populations.** A population that has the estimated numbers and distribution of reproductive individuals to ensure the continued existence of the species throughout its existing range (or range required to meet recovery for listed species) within the planning area.
RELATIONSHIP to FEDERAL LAW
The Federal Endangered Species Act (ESA) of 1973, as amended (16 USC 1531 - 1544) requires the U.S. Department of the Interior to identify species as endangered or threatened according to a separate set of definitions, and imposes a separate set of restrictions pertaining to those species.

MINNESOTA STATUTES
Minn. Statutes 84.0895 Protection of Threatened and Endangered Species

Subdivision 1. Prohibition.
Notwithstanding any other law, a person may not take, import, transport, or sell any portion of an endangered species of wild animal or plant, or sell or possess with intent to sell an article made with any part of the skin, hide, or parts of an endangered species of wild animal or plant, except as provided in subdivisions 2 and 7.

Subd. 2. Application.
(a) Subdivision 1 does not apply to:
   (1) plants on land classified for property tax purposes as class 2a or 2c agricultural land under section 273.13, or on ditches and roadways; and
   (2) noxious weeds designated pursuant to sections 18.76 to 18.88 or to weeds otherwise designated as troublesome by the Department of Agriculture.
(b) If control of noxious weeds is necessary, it takes priority over the protection of endangered plant species, as long as a reasonable effort is taken to preserve the endangered plant species first.
(c) The taking or killing of an endangered plant species on land adjacent to class 3 or 3b agricultural land as a result of the application of pesticides or other agricultural chemical on the class 3 or 3b land is not a violation of subdivision 1, if reasonable care is taken in the application of the pesticide or other chemical to avoid impact on adjacent lands. For the purpose of this paragraph, class 3 or 3b agricultural land does not include timber land, waste land, or other land for which the owner receives a state paid wetlands or native prairie tax credit.
(d) The accidental taking of an endangered plant, where the existence of the plant is not known at the time of the taking, is not a violation of subdivision 1.

Subd. 6. Enforcement.
A peace officer or conservation officer, pursuant to chapter 626, may execute a warrant to search for and seize goods, merchandise, plant or animal taken, sold or offered for sale in violation of this section, or items used in connection with a violation of this section. Seized property must be held pending judicial proceedings. Upon conviction, seized property is forfeited to the state and must be offered to a scientific or educational institution or destroyed.
Subd. 7. General Exceptions.
   (a) The DNR Commissioner may issue permits and prescribe conditions for an act otherwise prohibited by subdivision 1 if:
       (1) the act is for the purpose of zoological, educational, or scientific study;
       (2) the act enhances the propagation or survival of the affected species;
       (3) the act prevents injury to persons or property; or
       (4) the social and economic benefits of the act outweigh the harm caused by it.
   (b) The commissioner may issue a general permit to a governmental subdivision or to the general public to conduct one or more acts described in paragraph (a).
   (c) A member of an endangered species may not be destroyed under paragraph (a), clause (3) or (4), until all alternatives, including live trapping and transplantation, have been evaluated and rejected. The commissioner may prescribe conditions to propagate a species or subspecies.
   (d) A person may capture or destroy a member of an endangered species, without permit, to avoid an immediate and demonstrable threat to human life or property.
   (e) The Commissioner must give approval under this subdivision for forest management, including permit, sale, or lease of land for timber harvesting.

Minn. Statutes 103B.201 Metropolitan Water Management Program Purpose
The purposes of the water management programs required by sections 103B.205 to 103B.255 are to:
(7) Protect and enhance fish and wildlife habitat and water recreational facilities; and
(8) Secure the other benefits associated with the proper management of surface and ground water.

Minn. Statutes 103E.015 Considerations Before Drainage Work Is Done.
Subd 1. Environmental, land use, and multipurpose water management criteria. Before establishing a drainage project, the drainage authority must consider each of the following criteria:
(7) the effects of the proposed drainage project on fish and wildlife resources;
(9) the overall environmental impact of all the above criteria.

Minn. Statutes 103G.1022 Wetland Conservation Act
Subdivision 1. Requirements.
(a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine.
Minn. Statutes 103G.2241 Wetland Conservation Act Exemptions

Subd. 10. Wildlife habitat.

A replacement plan for wetlands is not required for:

(1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:
   i. the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;
   ii. the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and
   iii. the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

MINNESOTA RULES

Minn. Rule 6212.1800 General Restrictions For Permits To Possess Threatened And Endangered Species

Subpart 1. Permit requirements.

A person may not take, import, transport, purchase, sell, dispose, or possess a threatened or endangered species of plant or animal without a permit from the commissioner. Permits for the taking, importation, transportation, purchase, sale, disposal, or possession of threatened or endangered species of plants or animals, whether dead or alive, or their parts, nests, or eggs will be issued as provided by parts 6212.1800 to 6212.2300 and 6242.1200. Applications for permits from individuals or institutions must be made in writing and must be submitted as specified. The commissioner will determine whether the applicant meets the criteria for issuance of the permit.

Subp. 2. Issuance of permits.

Permits may be issued only upon written application made by individuals or institutions currently conducting research or educational programs in the fields of biology or natural history, and that have appropriate and adequate facilities for the care, exhibition, or storage of the specimens sought to be taken, acquired, or possessed. A permit may not be issued unless the commissioner has first determined that the permitted act will not be detrimental to the species.

6212.2100 Other Permits.

Permits for the taking, possession, importation, transportation, purchase, sale, or disposal of endangered or threatened species of animals, plants, or insects may be issued on prescribed conditions when the commissioner has determined that:
   A. The permitted act enhances the propagation or survival of the affected species;
B. The permitted act prevents injury to persons or property, including livestock, provided that a specimen causing this injury may be killed only after all other alternatives have been evaluated and rejected; or
C. The social and economic benefits of the permitted act outweigh the harm caused by it, provided that the killing of a specimen for these purposes will be permitted only after all other alternatives have been evaluated and rejected.

**Minn. Rule 8420.0515 Wetland Conservation Act: Special Considerations.**

**Subpart 1. Scope.**
The factors in this part, when identified as being applicable to an impact site or a replacement site, must be considered by the applicant before submitting a replacement plan and by the local government unit in the review of replacement plans.

**Subp. 2. Endangered and threatened species.**
A replacement plan for activities that involve taking species listed as endangered or threatened in parts 6134.0200 to 6134.0400 must be denied unless the commissioner issues a permit under part 6212.1800 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may identify if there are known locations of listed species at a particular site by contacting the Department of Natural Resources' natural heritage and nongame research program.

**Subp. 3. Rare natural communities.**
A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program must be denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.