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# ENVIRONMENT COMMITTEE

## 2024 UPDATE

Jim Foldesi, Dale Gade, Carol  
Andrews and/or Joe MacPherson

- Jim and Carol, St. Louis – D1
- Lon Aune, Marshall – D2
- Jodi Teich & Shawn West, Stearns – D3
- Jordan Roggenbuck, Big Stone – D4
- Joe MacPherson, Anoka – Metro
- Ben Hobert, Chisago – Metro
- Phil Wacholz, Freeborn – D6
- Mark Sehr, Rock – D7
- Sam Muntean, Lac Que Parle – D8
- Dale Gade – MnDOT State Aid





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# AGENDA

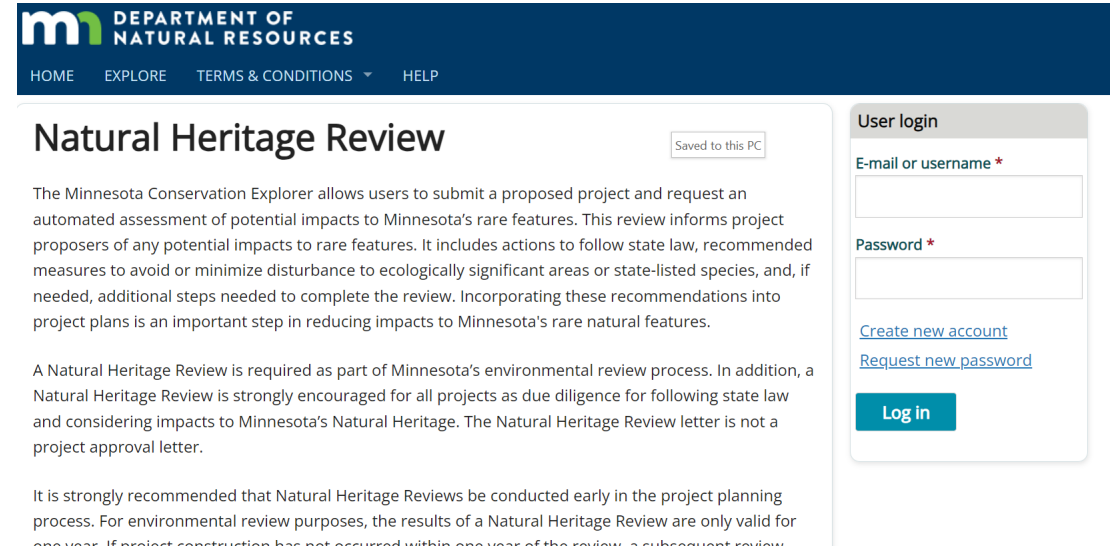
1. DNR Natural Heritage Review -exceptions extended to counties
  2. Federal Endangered Species Act, Historic Properties/Cultural resource review etc. – MnDOT role, timing...
  3. NEPA public involvement
  4. MPCA Construction Stormwater Permit 2023 renewal
  5. Monarch CCAA update
  6. Army Corps TRGP 2023 renewal – MPCA 401 WQC
  7. Stream Mitigation – Army Corps - new 2023
  8. WOTUS 2023 revisions
  9. 2024 – the fun continues
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# DNR NATURAL HERITAGE REVIEW

## Exceptions:

- Work within existing pavement/shoulders
- Noise walls, screening fence, snow fence, or signage
- Repair or construction of sidewalks, ramps, or other items as required by the Americans with Disabilities Act

Weblink to Exceptions: <https://www.dot.state.mn.us/project-development/subject-guidance/dnr/process.html>



The screenshot shows the Minnesota Department of Natural Resources website. The header includes the logo and navigation links: HOME, EXPLORE, TERMS & CONDITIONS, and HELP. The main content area is titled "Natural Heritage Review" and includes a "Saved to this PC" button. The text describes the Minnesota Conservation Explorer and the review process. A "User login" form is visible on the right, with fields for "E-mail or username" and "Password", and buttons for "Create new account", "Request new password", and "Log in".

**m** DEPARTMENT OF NATURAL RESOURCES

HOME EXPLORE TERMS & CONDITIONS HELP

## Natural Heritage Review

Saved to this PC

The Minnesota Conservation Explorer allows users to submit a proposed project and request an automated assessment of potential impacts to Minnesota's rare features. This review informs project proposers of any potential impacts to rare features. It includes actions to follow state law, recommended measures to avoid or minimize disturbance to ecologically significant areas or state-listed species, and, if needed, additional steps needed to complete the review. Incorporating these recommendations into project plans is an important step in reducing impacts to Minnesota's rare natural features.

A Natural Heritage Review is required as part of Minnesota's environmental review process. In addition, a Natural Heritage Review is strongly encouraged for all projects as due diligence for following state law and considering impacts to Minnesota's Natural Heritage. The Natural Heritage Review letter is not a project approval letter.

It is strongly recommended that Natural Heritage Reviews be conducted early in the project planning process. For environmental review purposes, the results of a Natural Heritage Review are only valid for one year. If project construction has not occurred within one year of the review, a subsequent review

**User login**

E-mail or username \*

Password \*

[Create new account](#)

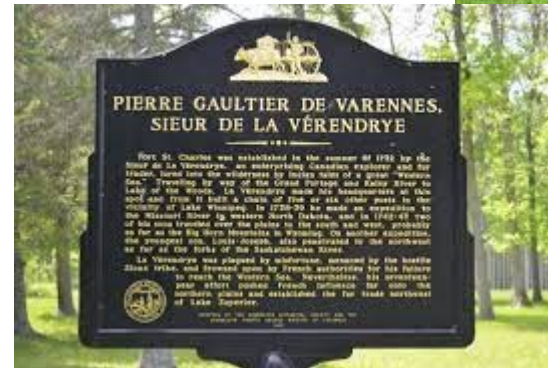
[Request new password](#)

**Log in**

# CRU/OES REVIEW TIMELINES

Cultural, Noise, and Threatened & Endangered Review Request

Two Field Seasons prior to Bid Opening (April – Nov)



Weblink to Form: <https://www.dot.state.mn.us/stateaid/environmental-forms.html>

# HISTORIC PROPERTIES/CULTURAL RESOURCE REVIEW

## Conclusion

Pursuant to 800.4(d)(1) and Stipulation 3.F of the Statewide PA, MnDOT CRU finds there will be **No Historic Properties Affected** by the federal undertaking, as currently proposed. Under the terms of the Statewide PA, consultation with MnSHPO is not required on this finding. **This letter also documents that MnDOT has no responsibilities under the Minnesota Historic Sites Act, the Minnesota Field Archaeology Act, or the Private Cemeteries Act.** The City of St. Peter is responsible for compliance with Minnesota Statute as the entity funding or permitting the project and since it controls the land on which the project will occur.

Please do not hesitate to contact me if you have any questions.

# NEPA PUBLIC INVOLVEMENT

## 40 CFR § 1506.6 - Public involvement.

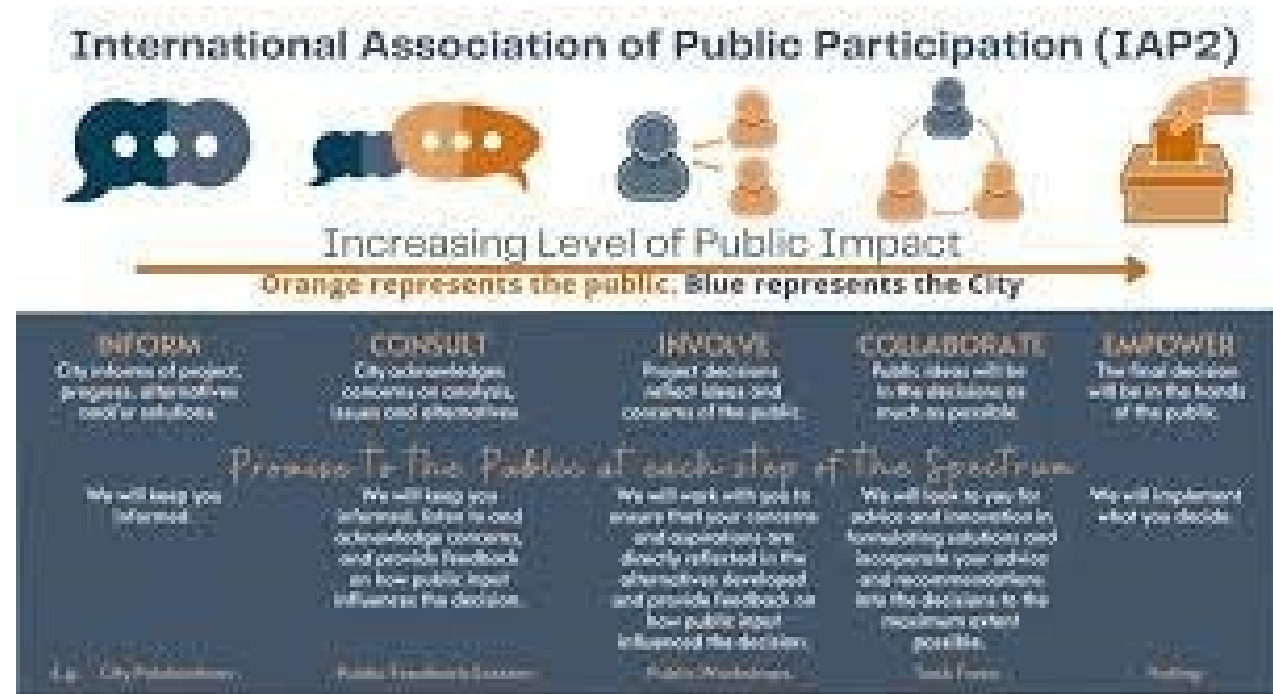
### § 1506.6 Public involvement.

Agencies shall:

**(a)** Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (§ 1507.3 of this chapter).

**(b)** Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public involvement, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions. When selecting appropriate methods for providing public notice, agencies shall consider the ability of affected persons and agencies to access electronic media.

**Weblink:** <https://www.ecfr.gov/current/title-40/section-1506.6>



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# MPCA CONSTRUCTION STORMWATER NPDES GENERAL PERMIT



AUTHORIZATION TO DISCHARGE  
STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY  
UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)/  
STATE DISPOSAL SYSTEM (SDS) PROGRAM  
MNR100001

**Permittee:** Multiple  
**Project Name:** Construction Stormwater General Permit  
**Issuance date:** August 1, 2023  
**Expiration date:** July 31, 2028



# Stockpiles and soil berms



Stockpiles must have perimeter controls installed prior to the stockpiling activities.

- Similar approach as found in the EPA permit.

Soil berms used as perimeter controls must be stabilized

- This has been the typical way to use these devices, but it wasn't stated
- MnDOT specs cover this



- MPCA sees berms used with good results
- Requirement to stabilize was assumed, and is in MnDOT Specs for this BMP, but wanted to make it clear in the permit
- Only required to have on the downstream side and you can remove perimeter controls temporarily during creation/use of stockpiles





# Dewatering

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Enhanced requirements for construction site dewatering inspections.

- Must visually check and photograph discharge at the beginning of the dewatering activity **24 hours**
- Must check and photograph once every 4 hrs
- Photos must be kept with the other inspection reports



- Inspectors report a lot of dewatering violations; people start dewatering and leave for the night or even weekend without any monitoring
- Maintain photos with other inspection and BMP maintenance project records



# Notice of termination - photographs

The proposed permit will require the submission of representative photographs as part of the permit termination.

- Similar approach as found in the EPA permit.
- At least one photo would need to be uploaded during the submission of the NOT

From the draft: Permittees are not required to take photographs of every distinct part of the site, however the conditions portrayed must be substantially similar to those areas that are not photographed. Photographs must be clear and in focus and must include the date the photo was taken.



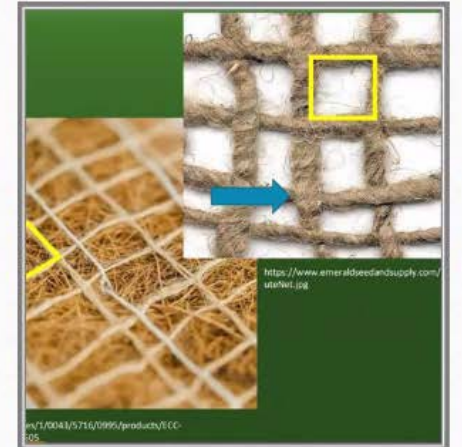
Problem = permit holders terminating permit before vegetation is established



# Wildlife friendly erosion control products

The issue:

- Entanglement & death of reptiles, amphibians, birds and even fish
- Microplastics in water



ENCOURAGED in this permit but in 5 years may be outright ban

MnDOT has already banned non-compliant products

Miscellaneous: MPCA said incidental wetlands (wet ditches) don't trigger need for double perimeter controls

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# MONARCH CCAA FOR UTILITY AND TRANSPORTATION LANDS

Candidate **C**onservation **A**greement with **A**ssurances as allowed by the federal Endangered Species Act

- Why sign up? **Risk management**
  - Provides permit to “take” if monarch is listed
- What do I have to do?
  - Complete application & implementation plan
  - Follow conservation measures on 5% of your enrolled lands
    - spot spray v. broadcast, delay mowing...
  - Pay annual fees, do annual reporting

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*See State Aid website “Environmental forms and info” page for past webinars, example applications, links...*



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# THE MONARCH CCAA DELIVERS CONSERVATION WHILE HELPING TO STREAMLINE REGULATORY REQUIREMENTS

- It's voluntary, though if you prefer to minimize risks do sign on – and soon
- There's a chance that implementation of voluntary conservation measures would result in monarch listing delay or no listing at all 😊
- MN Counties enrolled: Kandiyohi & Polk; St. Louis Co. applied Oct. 2024

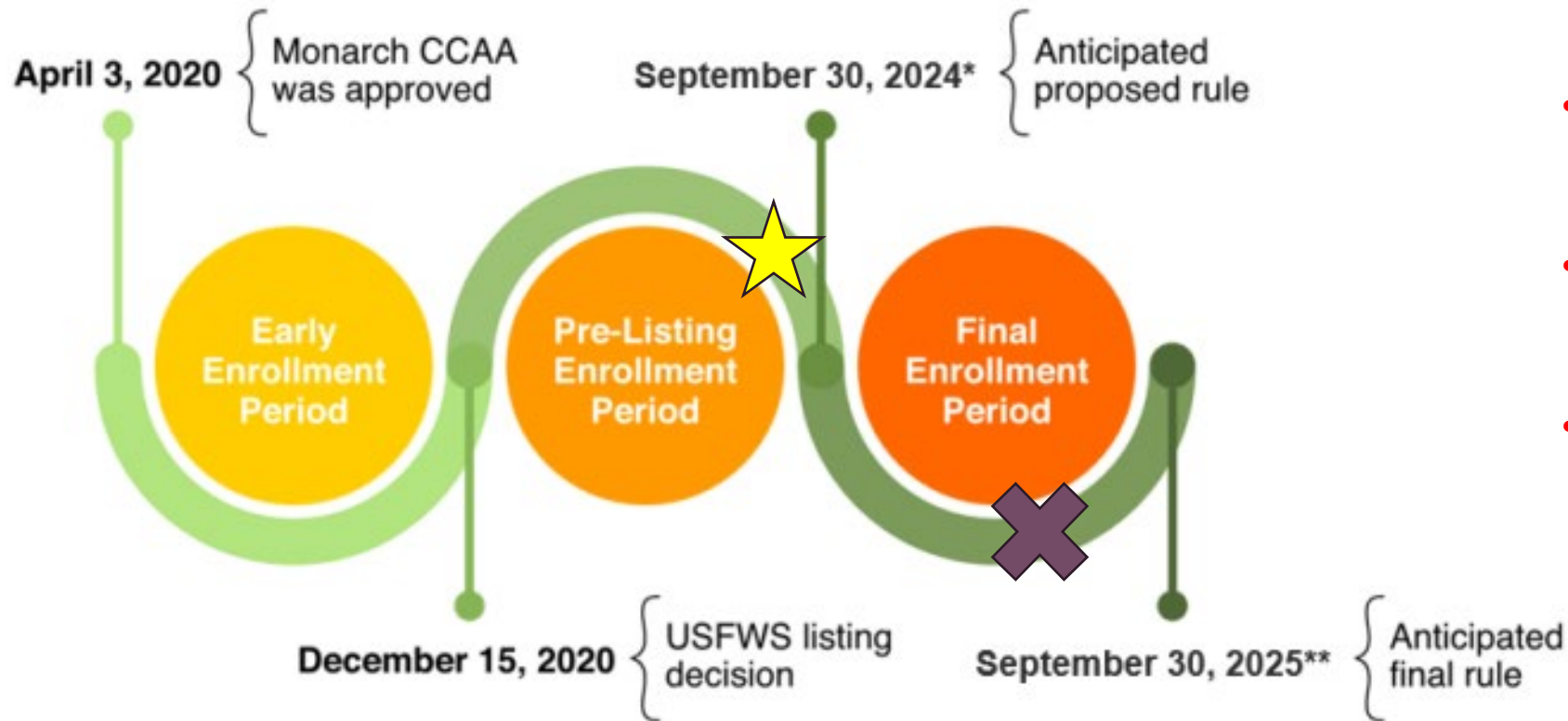
## Voluntary Conservation



## Regulatory Assurances

# MUST ENROLL BEFORE MONARCH IS LISTED

UIC HIGHLY ENCOURAGES ORGS TO SUBMIT ASAP TO AVOID GAP IN COVERAGE BETWEEN FINAL RULE AND GETTING A CERTIFICATE OF INCLUSION

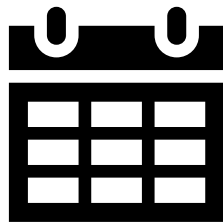


- USFWS may elect to take listing action sooner than shown
- ~6 months between application and coverage currently
- Anticipating large volume of submittals 2024 - 2025

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**MONARCH CCAA**  
**WEBINAR #4**  
**HOSTED BY**  
**MCEA & MNDOT**

*Mark your calendar!*



Monday February 5

3:00 – 4:00 PM

See State Aid website “Environmental forms and info” page for past webinars

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# MPCA 401 WATER QUALITY CERTIFICATION

For the US Army Corps Permits including  
the Transportation Regional General  
Permit (TRGP)

Intent: ensure projects meet water quality  
standards in Waters of the state/tribe

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- MN Pollution Control Agency, tribes or EPA (depending on location) = responsible for 401 Water Quality Certifications (WQ Cert) for projects covered by the TRGP
  - 401 certification letters for USACE general permits may exclude certain types of projects from the blanket 401 certification. Excluded projects require individual 401 review and certification or waiver.
  - Late 2022 **SURPRISE!** MPCA decided to add significant **exclusions including all Class 2A (cold) waters and impacts >300 LF including existing culverts**
  - Ideally: if an individual 401 WQC is needed, contact the MPCA or tribe early on in design process
  - Or, once a permit application is submitted, Corps staff may inform you and MPCA that individual 401 certification is needed
- 



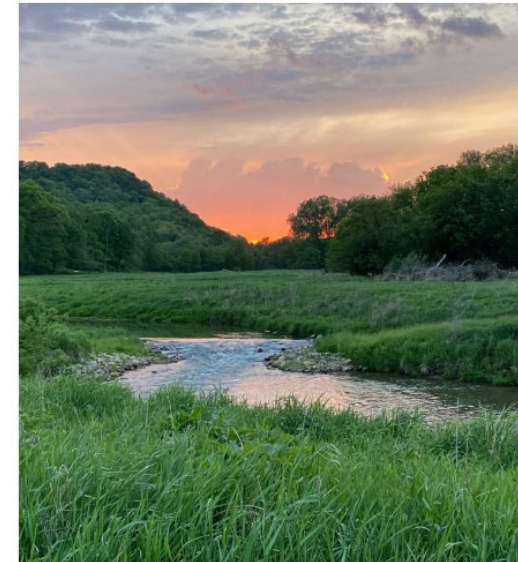
- Rolled out April 2023
- Sets criteria used to determine when a project might trigger mitigation requiring stream credits and associated debit calculator
- Covers mitigation options and development of compensation sites ( \$ stream credits \$) - "functional lift"
- Current problem = lack of stream credits



US Army Corps  
of Engineers®  
St. Paul District

## St. Paul District Stream Mitigation Procedures

VERSION 1.0



April 2023



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**Determination of need for mitigation considers**

- **Duration of impact**
- **Severity of impact**
- **Length of impact**
- **Quality of stream**

<b>Impact Severity Tier</b>	<b>Linear foot threshold</b>
Tier 1	900
Tier 2	500
Tier 3	300
Tier 4	200
Tier 5	150

Impacts total < 150 LF, no concern

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# WOTUS

## WATERS OF THE UNITED STATES

8/29/23 - EPA and U.S. Army Corps issued a final rule that amends the Revised Definition of 'Waters of the United States' to conform key aspects of the regulatory text to the U.S. Supreme Court's May 25, 2023 decision in the case of Sackett v. EPA

Rule became effective September 8, 2023

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NEW YEARS DAY LAX LAKE – LAKE CO.

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# JOE'S TAKE ON 2023 WOTUS CHANGES

- NACE and NACo did a great job tracking the WOTUS rule making/revision process
- September 2023 final rule amends “Revised Definition of ‘Waters of the United States’” to conform with Supreme Court’s decision in the case of Sackett v. EPA
  - Removed “significant nexus” test
  - Revised “adjacent” definition to mean “having a continuous surface connection”





**Environmental  
Regulations: Can't live  
with them,  
can't live without them**

- Me





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# 2024 HOT TOPICS

## MN DNR

- MN Statute 84.0895 PROTECTION OF THREATENED AND ENDANGERED SPECIES, DNR guidance pertaining to **protection of T&E plants in road ROW**
- DNR permit fees

## OTHER

- Changes impacting cultural resources reviews and impact avoidance
- MPCA 401 WQ Certification – continue to follow



# Example-new impact



Applicant proposes installation of new culverts along 422 linear feet of stream

- Factor #1: Duration = Permanent
- Factor #2: Severity = Piping is Tier 5
- Factor #3: Length = 422 linear feet
- Factor #4: Quality = Medium level

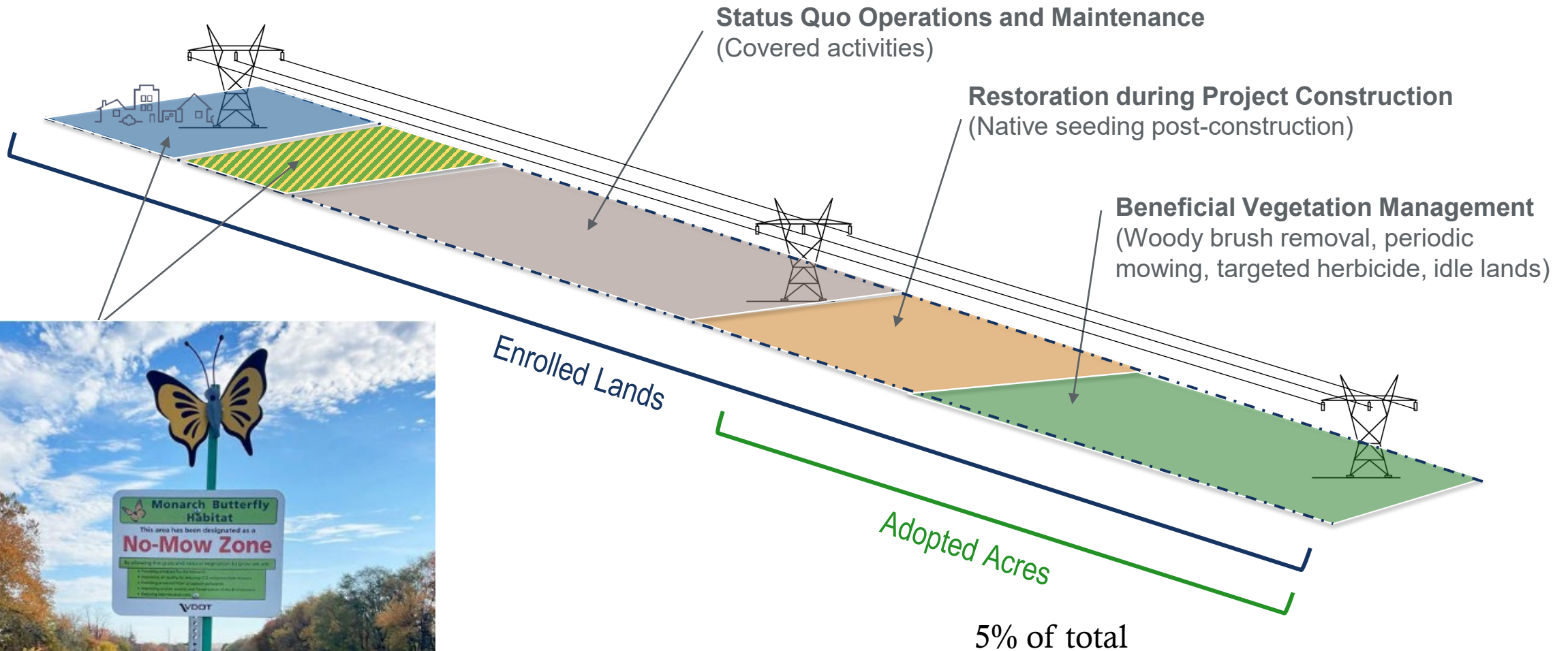
OVER the Tier 5 threshold >150 linear feet



Tier	Description (Impacts to function-based parameters)	Example Activities
0	No permanent impact on any of the key function-based parameters	Bio-engineering of streambanks, stream restoration
1	Impacts to riparian vegetation and/or lateral migration	Bank stabilization, two-stage ditch, utility crossings.
2	Impacts to riparian vegetation, lateral migration, and bed form diversity	Utility crossing, two-stage ditch, bridges, bottomless arch culverts
3	Impacts to riparian vegetation, lateral migration, bed form diversity, and floodplain connectivity	Bottomless arch culverts, minor channelization
4	Impacts to riparian vegetation, lateral migration, bed form diversity, and floodplain connectivity. Potential impacts to temperature, processing of organic matter, and macroinvertebrate and fish communities	Channelization, box culverts, short length pipe culverts, weirs/impoundments/flood, and minor relocations
5	Removal of all aquatic functions	Piping, relocation, removal or complete fill of channel



# Key terms



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MPCA changes to TRGP WQ Cert went into effect Feb 2023

### Tricky aspects

- Requires MPCA-specific application and forms in addition to joint application
- Mandatory pre-application meeting 30 days before submittal
- What about no-PCN projects or maintenance work in Class 2A waters?

### Recommendation:

- Read the MPCA's WQ Cert letter, see MPCA 401 website
  - If individual WQ required contact MPCA during preliminary design
  - Get permits as early as possible
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