

# New Maps Issued for Pre-1976 U.S. FWS Easements

**O**n December 23, 2019, the Department of Interior issued new policy guidance that prioritizes mapping of all pre-1976 U.S. Fish and Wildlife Service (FWS) waterfowl production area (WPA) easements in a new format overlaid on a high-quality aerial image. New maps list the acreage subject to the easement's restrictions against draining, filling, and burning wetland areas.

**The guidance also creates the right to appeal maps if a landowner**

**disagrees with the location and boundaries of the protected wetland areas. Maps not appealed are likely to be considered final. To appeal, landowners must follow these steps:**

1. **Within 40 days of receiving their letter, contact their local Refuge Manager with objections.**
2. If the landowner and Refuge Manager cannot agree on a revised map within 30 days, the landowner may appeal to the FWS Regional Director, who will review and make a decision within 45 days. If the Regional Director grants the appeal, the map will be revised.
3. If the Regional Director does not grant an appeal, the landowner may appeal to the Director within 30 days. The Director will review and make a decision within 45 days. If the Director grants the appeal, the FWS map will be revised.
4. If Director does not grant an appeal, a copy of the final map will be issued. The Director's decision will be considered final agency action

and the landowner may seek judicial review in federal district court.

Initial contact should be submitted in writing. Success in the appeal is likely to turn on the landowner's presentation of technical evidence demonstrating the likely location and boundaries of wetland areas on the date the easement was granted. Generally, this is a three-step process:

1. Verify whether there is a drainage facility map with the easement showing areas exempt from the easement's restrictions. This can be confirmed by reviewing the recorded easement or submitting a Freedom of Information Act (FOIA) request for all records related to the easement.
2. Aerials and light detection and ranging (LiDAR) data should be reviewed by a wetland specialist for evidence of inundation and surface water. Aerials prior to and closest in time to when the easement was conveyed are the most persuasive.

Aerials can be obtained online from the U.S. Geological Survey and State Water Commission, and from the USDA.

3. Verify the acres mapped in part two do not exceed the acres FWS purchased in the easement summary record. The summary is not a part of the easement; it is simply a log created by FWS. Courts have held, however, that the number of "wet acres" FWS purchased in its summary record is the maximum acres protected by the easement. Summary records can also be obtained by a FOIA request for all records created when the easement was negotiated.

If you have questions about FWS easements or a letter and map you have received, do not hesitate to contact the attorneys of Rinke Noonan Law Firm at 320-251-6700 or find us online at [www.RinkeNoonan.com](http://www.RinkeNoonan.com).

—Story by Kale R. Van Bruggen  
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