

## WCA Rule Advisory Committee - 6/26/08 Meeting Draft Appeals Section

### 8420.0250 APPEALS.

#### Subpart 1. Appeal of local government unit decisions.

The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, public road project notice, exemption, no-loss, or wetland boundary or type request becomes final if not appealed to the board within 30 days after the date on which the decision is ~~mailed sent~~ to those required to receive notice of the decision. Appeals of decisions made by local government staff must be made to the local government unit as provided for in part [8420.0200](#), subpart 2, item B. This subpart applies to those determinations which are made under comprehensive wetland protection and management plans.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon ~~mailing of sending~~ the petition and payment of a nonrefundable filing fee of \$200, or an amount otherwise determined by the board not to exceed \$1,000, to the board with evidence that a copy of the petition has been ~~mailed sent~~ to the local government unit. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. Subsequent to receipt of a petition, the local government unit must send a copy of the petition to all those whom it was required to send a copy of the decision.

#### Subp. 2. Appeals of replacement and restoration orders.

~~[Repealed, 22-SR-1877]~~

A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review and paying a nonrefundable filing fee to the board. The filing fee is \$200, or an amount otherwise determined by the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director ~~must~~ review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

#### Subp. 3. Board appeal procedures.

Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director ~~shall~~ must decide whether to grant the petition and hear the appeal. After considering the size of the proposed impacts and the quality of the affected wetland, any patterns of similar acts by the local government unit in administration of this chapter and the act, and the consequences of the delay resulting from the appeal, the board or its dispute resolution committee or executive director ~~shall~~ will grant the petition unless the appeal is deemed meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not ~~posted a letter of credit, cashier's check, or cash if required by the local government unit~~ submitted the required filing fee.

The board or its dispute resolution committee or executive director may stay the local government unit decision until the appeal is resolved.

The board or its dispute resolution committee or executive director may remand the appealed decision back to the local government unit if the petitioner has not exhausted all local administrative remedies such as a local government unit evidentiary public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, a new application is not required and additional information may be submitted before a decision is made by the local government unit. If an appeal is remanded, the local government unit must make a decision within 60 days unless the remand order, or a subsequent order, specifies a longer period.

After granting the petition, the appeal ~~must shall~~ be heard by the dispute resolution committee and decided by the board within 60 days after the filing of the local government unit's written record, submittal of the written briefs for the appeal, and the hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and those required to receive notice of the local government unit decision.

The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

~~Upon~~ Within 30 days of the granting of an appeal, unless an extension of time is approved by the board, the local government unit ~~must shall~~ forward to the board seven copies of the written record on which it based its decision and forward one copy of the record to each of the parties to the appeal. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing ~~shall will~~ be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will ~~base its review on consider~~ the record in its review. ~~Otherwise it The board~~ may take additional evidence, or remand the matter.

***The current rule requires the LGU to produce copies of the written record for appeals. The BWSR staff rule team discussed the option of requiring the LGU only to produce the original record, from which BWSR would make the required number of copies. This, however, could result in BWSR raising the appeal filing fee to cover the additional cost. While it could be beneficial to local governments, it also could be an increased cost to the appellant. This could be viewed as positive or negative, depending on your perspective. The issue would likely require a decision by the BWSR board, but it is presented here for discussion and recommendations.***

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

#### **Subp. 4. County or watershed reclassification.**

A. A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board ~~must shall~~ change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board ~~must shall~~ publish a notice of the change in the Environmental Quality Board Monitor.

B. One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens ~~must shall~~ provide satisfactory documentation

to the local government unit. The local government unit ~~must~~ shall consider the petition and forward the request to the board or provide a reason why the petition is denied.

**Subp. 5.** ~~[Repealed, 27 SR 135]~~

***Subpart 4 will be relocated to subpart 2 of the existing 8420.0545 (Presettlement Wetland Acres and Areas).***