

WCA Rule Advisory Committee 2-28-08 Meeting

Draft Application Requirements Section

8420.04000530 REPLACEMENT PLAN COMPONENTS APPLICATION REQUIREMENTS

Persons applying for approval of wetland boundary and type, no-loss, exemption, preliminary sequencing, or replacement plan determinations must comply with the application requirements in the following parts and subparts. Application requirements for establishment of a wetland bank can be found in 8420.0900. On an application form approved by the board in consultation with the commissioner of natural resources, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B, subitem (1); and D, do not apply; instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E

_____ A. generally, organizational information, including but not limited to the following:

This is a proposed new section that would consolidate submittal requirements for all types of decisions, other than banking, into one section. The initial submittal requirements listed below are intended to be applicable to any decision type. Subsequent subparts will have other submittal requirements specific to the decision type requested. This new section will set a standard baseline of information necessary for the LGU to make a decision on the completeness of the application. The list is a slightly modified version of 8420.0530 A.

Subpart 1. **General Application Requirements.** The following information must be submitted to the local government unit for all types of applications. Additional application requirements specific to the type of approval requested are contained in the applicable subparts of this section.

- (1)A. the post office address of the applicant;
- (2)B. for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;
- (3)C. managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;
- D. an accurate map, survey, or recent aerial photograph showing boundaries of the project area and boundaries of all wetlands relevant to the type of approval requested;
- E. if applicable, a written description of the proposed project, including its areal extent, with sufficient detail to allow the local government unit to determine the amount and types of wetland to be affected, and;
- F. Other information considered necessary by the local government unit.

The line highlighted above was moved here from later in the old 8420.0530 E.

Subpart 2. Special Considerations and Restrictions. Applications for exemptions, no-loss, and replacement plan determinations must first identify and satisfy all of the following considerations and restrictions relevant to the proposed activity. The local government unit must deny any application that does not conform to the following:

Subpart 1. Scope. The factors in this part, when identified as being applicable to an impact site or replacement site, must be considered by the local government in the review of replacement plans.

A. Water Resource Protection. Project activities conducted in a wetland must ensure that appropriate erosion control measures are taken to prevent sedimentation in the water. The project must be conducted in compliance with all other applicable federal, state, and local requirements including best management practices as listed in part 8420.0112, and water resource protection requirements established under Minnesota Statutes, Chapter 103H.

Subp. 2B. Endangered and threatened species. A replacement plan for activities Projects 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 pursuant to part 6212.1800 or Minnesota Statutes, section 84.0895, subdivision 7. Applicants may determine 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. 3C. Rare natural communities. A replacement plan for activities Projects 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.

Subp. 4D. Special fish and wildlife resources. A replacement plan for activities Projects that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource must be denied. These activities resources include, but are not limited to fish passage and spawning areas, colonial waterbird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, and/or wildlife travel corridors. Projects involving streams must not block fish passage unless approved by the Department of Natural Resources.

Subp. 5E. Archaeological, historic, or cultural resource sites. A replacement plan for activities Projects that involve the modification of known archaeological, historical, or cultural resource sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, must be denied, if the local government unit, in consultation with the State Historical Preservation Office, determines that the project will have a significant adverse impact on the archaeological or historical value of the site.

~~Subp. 6F.~~ **Groundwater sensitivity.** ~~A replacement plan for activities must be denied if the local government unit determines the activities~~ **Projects that** would have a significant adverse impact on groundwater quality **must be denied.** The publication "Criteria and Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.

~~Subp. 7G.~~ **Sensitive surface waters.** ~~A replacement plan~~ **Projects** must be denied if the local government unit determines that they will have a significant adverse impact on the water quality of outstanding resource value waters listed in part [7050.0180](#) or on trout waters designated by the commissioner.

~~Subp. 8H.~~ **Education or research use.** Wetlands known to be used for educational or research purposes must be maintained or adequately replaced **in accordance with applicable replacement requirements.**

~~Subp. 9I.~~ **Waste disposal sites.** The local government unit must evaluate the type and amount of waste material found at the site. ~~Activities-Projects~~ involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

~~Subp. 10J.~~ **Consistency with other plans.** The local government unit must consider the extent to which projects are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

The Special Considerations section (previously 8420.0548) was relocated to this new section in order to make it clear to applicants up-front that their application must be in conformance with these requirements. In addition, it was generalized to apply to all decision types (exemption, no-loss, and replacement plans) rather than just specific to replacement plans. Staff believes that this is consistent with the intent of the statute. Letter "A" was added to the list to emphasize the use of best management practices. The word "activities" was changed to "project" throughout this section to be consistent with other parts of the rule. "D" and "F" were re-worded to read better. Some wording was added to "H" for clarification of what "replacement" means.

8420. 02250410 WETLAND BOUNDARY AND TYPE DETERMINATIONSAPPLICATIONS

~~A.~~ A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary. ~~Applicants requesting to receive approval of wetland boundary and type determinations separate from another decision type must apply to the local government unit on a form provided by the Board. Applicants must submit a wetland delineation report documenting the determination of wetland boundaries in accordance with the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and subsequent updates. The report must include information in accordance with wetland delineation report submittal guidelines issued by the Board. Plant community types must be determined according to "Wetland~~

Plants and Plant Communities of Minnesota and Wisconsin” (Eggers and Reed 1997) as modified by the Board-U.S. Army Corps of Engineers’ Wetland Mitigation Memorandum of Understanding (May 2007) and subsequent modifications approved by the Board.

The above language from .0225 A was re-worded to better reflect the ever-changing technical requirements of wetland delineation reports and documentation. The current list of requirements in rule is not comprehensive and has not been updated to reflect advances in science. The proposed language avoids a static list of requirements and replaces it with reference to the 87 Manual and technical guidance documents that are periodically updated by BWSR technical services. .0225 Items B-D were relocated to other sections of the rule.

8420.02200420 NO-LOSS DETERMINATIONSAPPLICATIONS

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. Persons proposing to conduct a no-loss activity may apply to the local government unit for a ~~determination~~ no-loss determination. A landowner who does not request a determination and proceeds with the activity may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372 enforcement actions until it is determined by the local government unit whether the no-loss provisions apply. The local government unit may require applicants to apply for a no-loss determination when activities are proposed in wetlands. To apply for a no-loss determination an applicant must submit a wetland delineation report per the report requirements of 8420.0400 Subpart 2 if applicable to the no-loss determination as determined by the local government unit. The local government unit must keep on file all documentation and finding of fact concerning no-loss determinations for a period of ten years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim, including proof of the requisite property rights to do the activity. The local government unit may evaluate evidence for a no-loss claim without making a determination.

The first 2 paragraphs of 8420.0220 were moved to this section and re-worded per the strike and underline above. This subsection clarifies the submittal requirements for a no-loss determination request and gives the LGU flexibility as to whether or not a particular request warrants a formal wetland delineation report or not. The stricken part regarding application requirements are now covered in the general application requirements section. The stricken part on record retention was moved to the LGU Duties section.

8420.0430 EXEMPTION APPLICATIONS

Persons proposing to conduct an exempt activity may apply to the local government unit for a certificate of exemption to verify that a particular activity is exempt from replacement requirements. A landowner who does not request a certificate of exemption may be subject to enforcement actions until it is determined by the local government unit

that an exemption applies. The local government unit through local controls may require applicants to apply for a certificate of exemption when activities are proposed in wetlands. In addition to the standard submittal requirements in (8420.0400 A through D), landowners applying for a certificate of exemption must submit a clear statement of the exemption(s) being claimed and supporting information and a wetland delineation report per the report requirements of 8420.0400 Subpart 2 if applicable to the exemption certification as determined by the local government unit.

This subpart clarifies submittal requirements for claiming an exemption and gives the LGU flexibility as to whether or not a particular request warrants a formal wetland delineation report or not.

8420.0440 PRELIMINARY SEQUENCING APPLICATIONS

A landowner may apply to the local government unit for a preliminary sequencing determination prior to preparing a replacement plan. For projects impacting less than 10,000 square feet, the local government unit may provide an on-site sequencing determination without written documentation from the applicant. Otherwise, the landowner must provide written documentation of the projects' compliance with the sequencing standards in 8420.0840.

The above language was taken from the current 8420.0520 Subp. 2 and reworded to reflect the proposed changes to that section of the rule.

8420. 05300450 REPLACEMENT PLAN APPLICATIONSCOMPONENTS

Persons proposing to impact a wetland that requires replacement must apply to the local government unit for approval of a replacement plan. On an application form approved by the board in consultation with the commissioner of natural resources, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information in 8420.0400, ~~except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B, subitem (1); and D, do not apply; instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E.~~ Applications involving purchase of wetland bank credits in lieu of project-specific replacement must submit a wetland banking credit withdrawal form prescribed in part 8420.0900. Items A through L must be submitted to the local government unit in order for the application process to be initiated. All items need to be submitted and approved by the local government unit prior to impacting wetlands.

8420.0225 Part A. was moved to this section and subsequently re-worded per the ~~strikeout~~/underline above. The wording changes incorporate the new plant community provisions and now reference guidelines and specific technical requirements that are continually being updated with the science.

~~—B. either:~~

~~—(1) a signed statement confirming that the wetland acres and values will be replaced before or concurrent with the actual draining or filling of a wetland; or~~

~~—(2) an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland replacement;~~

~~—C. for the impacted wetland:~~

~~—(1) a recent aerial photograph or accurate map of the impacted wetland area;~~

~~—(2) the location of the wetland;~~

~~—(3) the size of the wetland;~~

~~—(4) the type of the wetland;~~

~~—(5) a list of the dominant vegetation in the impacted wetland area, if known;~~

~~—(6) a soils map of the site showing soil type and substrate, where available;~~

~~—(7) the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;~~

~~—(8) the nature of the proposed project, its areal extent, and the impact on the wetland must be described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;~~

~~—(9) evidence of ownership or property rights to the affected areas; and~~

~~—(10) a list of all other local, state, and federal permits and approvals required for the activity, if known;~~

~~—D. for the replacement wetland, item C, subitems (1) to (7), (9), and (10), and:~~

~~—(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;~~

~~—(2) scale drawings showing plan and profile views of the replacement wetland;~~

~~—(3) how the replacement wetland shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;~~

~~—(4) for created wetlands only, additional soils information sufficient to determine the capability of the site to produce and maintain wetland characteristics;~~

~~— (5) a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;~~

~~(6) a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following;~~

~~— (7) an affidavit that the replacement wetland was not previously restored or created under a prior approved replacement plan;~~

~~— (8) a statement that the replacement wetland was not drained or filled impacted under an exemption during the previous ten years;~~

~~— (9) a statement that the replacement wetland was not restored or created with financial assistance from public conservation programs, or was not restored or created for other unrelated regulatory purposes;~~

~~— (10) a statement that the replacement wetland was not restored or created using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement;~~

~~— (11) a statement by the applicant that monitoring will occur in accordance with parts 8420.0610 and 8420.0620 unless there is a written agreement between the parties that the local government unit will be conducting the monitoring of the wetland replacement area;~~

~~— (12) evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in Minnesota Statutes, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection;~~

~~— (13) evidence that any drainage or property rights potentially detrimental to the replacement wetland have been acquired, subordinated, or otherwise eliminated; and~~

~~— (14) a five-year vegetation establishment and management plan, including seeding rates, planting methods, seed and plant mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species;~~

The above language was primarily re-worded and re-organized below. See the text box below for further explanation.

A. A wetland delineation report and plant community type determination for all wetlands in the project area per the report requirements of 8420.0410.

B. A narrative and other information necessary to document compliance with project sequencing standards per 8420.0840.

C. A plan showing the boundary, size, and plant community type of each area of proposed wetland impact.

D. A soils map and/or site specific soils information for the project area.

E. A plan showing the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the impacted and replaced wetlands, and if the wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse.

F. Scale drawings showing plan and profile views of the replacement wetland areas.

G. A description of how the replacement wetland areas shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;

H. A description of the proposed soil substrate for all replacement wetland areas sufficient to determine the capability of the site to produce and maintain replacement plan goals.

I. An explanation of the size and type of wetland that will result from successful completion of the replacement plan using "Wetland Plants and Plant Communities of Minnesota and Wisconsin", (S. Eggers and D. Reed, 1997) as modified by the board- U.S. Army Corps of Engineers' Wetland Mitigation Memorandum of Understanding (May 2007). The applicant must also provide a summary of the proposed replacement credits expected to result from the replacement plan compared to the calculated replacement requirement.

J. A statement by the applicant that monitoring will occur in accordance with parts 8420.0610 and 8420.0620 unless there is a written agreement between the parties that the local government unit will be conducting the monitoring of the wetland replacement area.

K. A timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland area(s) shall be finalized;

L. A five-year vegetation establishment and management plan, including seeding rates, planting methods, seed and plant mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species.

M. An affidavit that the replacement wetland area(s) was not previously restored or created under a prior approved replacement plan;

N. A statement that the replacement wetland area(s) was not drained or filled/impacted under an exemption during the previous ten years.

O. A statement that the replacement wetland was not restored or created with financial assistance from public conservation programs, or was not restored or created for other unrelated regulatory purposes.

P. A statement that the replacement wetland was not restored or created using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.

Q. An irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland replacement.

R. Evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in Minnesota Statutes, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection.

S. Evidence that any drainage or property rights potentially detrimental to the replacement wetland have been acquired, subordinated, or otherwise eliminated.

T. Evidence of ownership or property rights to the impacted and replacement wetlands.

U. Other information considered necessary for evaluation of the project by the local government unit.

V. Information known to the applicant or readily available concerning the special considerations criteria in part 8420.0400 Subpart 1.

W. A list of all other local, state, and federal permits and approvals required for the activity, if known.

X. Evidence of recording (prior to impacting the wetland) of a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland areas, specifying the following:

——(a1) —the location of the replacement ~~wetland~~area;

—— (b2) that the ~~wetland~~-replacement area is subject to the act;

——(c3) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;

——(d4) that reasonable access to the replacement ~~wetland~~-area shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

~~—(e5)—~~that costs of title review and document recording is the responsibility of the fee title owner; and

~~—(f6)—~~that the local government unit or board can require necessary repairs or reconstruction and revegetation work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;

The above replacement plan application requirements (highlighted in grey) were not deleted, but were re-numbered and re-ordered (highlighted in yellow) primarily to differentiate application requirements that are essential to review an application (A thru L) from those that can be required later in the approval process. The complete strikethrough and underline was used to provide a cleaner and easier to read draft of the section.

Additionally, some items were re-worded to make the requirements applicable to all actions eligible for credit, not just wetland creations. Changes to the monitoring requirement language were made to clarify that the LGU must agree to participate in the monitoring, rather than the applicant delegating the responsibility. The separation between impacted and replaced wetland requirements was eliminated and the requirements were consolidated for better readability/clarity and the elimination of repetitive language. Compliance with sequencing was added to the submittal requirements list. Eggers and Reed plant community typing was added in the requirement list where applicable. Language was added stating that the deed restrictions over the replacement wetland areas must be recorded prior to impacting the wetland. Language was added to set minimum standards for applications to be considered “complete” for initial processing and review purposes.

~~—E.— other information considered necessary for evaluation of the project by the local government unit; and~~

STAT AUTH: MS s [14.06](#); [103B.101](#); [103B.3355](#); [103G.2242](#)

HIST: 18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135