

**8420.0520 SEQUENCING.**

Subpart 1. **Requirement.** The local government unit must not approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland complies with all of the following principles in descending order or priority:

A. avoids direct or indirect impacts that may destroy or diminish the wetland under the criteria in subpart 3;

B. minimizes impacts by limiting the degree or magnitude of the wetland activity and its implementation under the criteria in subpart 4;

C. rectifies impacts by repairing, rehabilitating, or restoring the affected wetland under the criteria in subpart 5;

D. reduces or eliminates impacts over time by operating the project in a manner that preserves and maintains the remaining wetland under the criteria in subpart 6; and

E. replaces unavoidable impacts by restoring or, if wetland restoration opportunities are not reasonably available, creating replacement wetland areas having equal or greater public value as provided for in parts 8420.0500 and 8420.0522 to 8420.0528.

Wetlands located in cultivated fields that are subject to subpart 8 are an exception to this part.

Subp. 2. [Repealed, 34 SR 145]

Subp. 3. **Impact avoidance.**

A. Avoidance is required when indicated by part 8420.0515.

B. Wetland dependence determination:

(1) Based on information provided by the applicant, the local government unit must determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features or functions are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.

(2) A project that has been determined by the local government unit to be wetland dependent is exempt from the analysis of avoidance alternatives in item C.

C. Alternatives analysis:

(1) In addition to documentation for the proposed project, the applicant must provide the local government unit with documentation describing at least two alternatives that avoid wetland impacts, one of which may be the no-build alternative. For projects that repair or rehabilitate existing infrastructure, only one alternative is

required. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the local government unit as good faith efforts, or the local government unit may require the applicant to redraft them for reconsideration.

(2) The local government unit must determine whether any proposed feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative is considered feasible and prudent if it meets all of the following requirements:

- (a) it is capable of being done from an engineering point of view;
- (b) it is in accordance with accepted engineering standards and practices;
- (c) it is consistent with reasonable requirements of the public health, safety, and welfare;
- (d) it is an environmentally preferable alternative based on a review of social, economic, and environmental impacts; and
- (e) it would create no truly unusual problems.

(3) The local government unit must consider the following in evaluating avoidance alternatives as applicable:

- (a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site must not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;
- (b) the general suitability of the project site and alternate sites considered by the applicant to achieve the purpose of the project;
- (c) whether reasonable modification of the size, scope, configuration, or density of the project would avoid impacts to wetlands;
- (d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for conditional use permits, variances, or planned unit developments;
- (e) the physical, economic, and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent; and
- (f) the amount, distribution, condition, and public value of wetlands and associated resources to be affected by the project and the potential for direct and indirect effects over time.

(4) If the local government unit determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it must deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the local government unit must evaluate the replacement plan for compliance with subparts 4 to 8.

Subp. 4. **Impact minimization.** The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's proposal to minimize wetland impacts, the local government unit must consider all of the following:

- A. the spatial requirements of the project;
- B. the location of existing structural or natural features that may dictate the placement or configuration of the project;
- C. the purpose of the project and how the purpose relates to placement, configuration, or density;
- D. the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;
- E. the value, function, and spatial distribution of the wetlands on the site;
- F. individual and cumulative impacts; and
- G. an applicant's efforts to:
  - (1) modify the size, scope, configuration, or density of the project;
  - (2) remove or accommodate site constraints including zoning, infrastructure, access, or natural features;
  - (3) confine impacts to the fringe or periphery of the wetland; and
  - (4) otherwise minimize impacts.

Subp. 5. **Impact rectification.** Temporary impacts must be rectified by repairing, rehabilitating, or restoring the affected wetland according to the no-loss provisions of part 8420.0415, item H.

Subp. 6. **Reduction or elimination of impacts over time.** After an activity is completed, further impacts must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions. The local government unit must require applicants to implement best management practices to protect wetland functions.

Subp. 7. **Unavoidable impacts.** Unavoidable impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be replaced according to parts 8420.0522 to 8420.0528.

Subp. 7a. **Sequencing flexibility.**

A. Flexibility in application of the sequencing steps may be requested by the applicant and allowed at the discretion of the local government unit, subject to the conditions in item B, as determined by the local government unit, if:

(1) the wetland to be impacted has been degraded to the point where replacement of it would result in a certain gain in function and public value;

(2) avoidance of a wetland would result in severe degradation of the wetland's ability to function and provide public value, for example, because of surrounding land uses, and the wetland's ability to function and provide public value cannot reasonably be maintained through implementation of best management practices, land use controls, or other mechanisms;

(3) the only feasible and prudent upland site available for the project or replacement has greater ecosystem function and public value than the wetland. This may be appropriate only if the applicant:

(a) demonstrates impact minimization to the wetland;

(b) agrees to perpetually preserve the designated upland site; and

(c) completely replaces the impacted wetland's functions and public value; or

(4) the wetland is a site where human health and safety is a factor.

B. Flexibility in the order and application of sequencing standards must not be implemented unless alternatives have been considered and the proposed replacement wetland is certain to provide equal or greater public value as determined based on a functional assessment reviewed by the technical evaluation panel using a methodology approved by the board. The applicant must provide the necessary information and the local government unit must document the application of sequencing flexibility in the replacement plan approval.

Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated field and will be replaced through restoration, then the priority order for sequencing in subpart 1 is not required. A wetland impacted under this subpart must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for the county in which the property is located and, as a condition of approval, provide documentation of the recording to the local government unit.

Subp. 9. [Repealed, 34 SR 145]

**Statutory Authority:** *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

**History:** *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 32 SR 281; 34 SR 145*

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