

## Minnesota Wetland Conservation Act Technical Evaluation Panel Form

This form can be used to document TEP findings and recommendations related to WCA decisions, determinations, enforcement and pre-application reviews.

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| <b>Local Government Unit:</b> Vadnais Lake Area WMO  | <b>County:</b> Ramsey                                  |
| <b>Landowner/Applicant:</b> Reuter Walton (Paul Keenan)  | <b>Agent/Representative(s):</b> Travis Fristed - Braun |
| <b>Project Name:</b> Vadnais Heights Apartments (Replacement Plan) <b>Project No. (if any):</b> 7.2024 |  |
| <b>Project Location:</b> 3400 Arcade Street  |  |

**Purpose of TEP Findings/Recommendation** - check all that apply and describe

- ☒ Pre-application review    ☒ Application Review (related to WCA Decision)  
☐ Local Government Road Wetland Replacement Program Eligibility    ☐ WCA Determination Request  
☐ Other (specify):

**Describe:**

**Meeting Type** – check all that apply and specify dates as applicable

- ☒ In-Person Meeting(s), Date(s): 8/1/24, 8/12/24    ☒ Electronic Exchanges (email, skype, etc.)  
☐ Onsite Review(s), Date(s):    ☐ Other (specify):

### Findings and Recommendations

See attached comments below. Response to comments needed by end of business day 8/16/2024.

☐ Attachment(s) (specify):

### DNR Protected Waters and Shoreland Protection Zone

Will the project/activity affect DNR public waters, DNR public waters wetlands or wetlands within the shoreland protection zone?    ☐ Yes    ☒ No    If yes, DNR representative is a member of the TEP.

### Signatures

|   |   |
|---|---|
| <input checked="" type="checkbox"/> LGU TEP Member: Brian Corcoran<br>Signature: <i>Brian Corcoran</i>    | Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>Date: 8/13/2024 |
| <input checked="" type="checkbox"/> SWCD TEP Member: Alexis Lipstein<br>Signature: <i>Alexis Lipstein</i> | Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>Date: 8/13/2024 |
| <input checked="" type="checkbox"/> BWSR TEP Member: Ben Meyer<br>Signature: <i>Benjamin L Meyer</i>      | Agree with Findings & Recommendations: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>Date: 8/13/2024 |
| <input type="checkbox"/> DNR TEP Member:<br>Signature:  | Agree with Findings & Recommendations: <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Date:                      |

## **FINDINGS REGARDING THE VADNAIS HEIGHTS APARTMENTS (REPLACEMENT PLAN) PROJECT**

Project No. 7.2024

On 6/27/2024 consultant requested a pre-application meeting for a WCA Replacement Plan with the TEP.

On 7/12/2024 a virtual pre-application meeting for the WCA Replacement Plan with the TEP, consultant, applicant and City was held.

On 7/17/2024 TEP comments from pre-application meeting were sent to consultant and City via email. Comments below:

*"Just want to send a summary of the TEP comments from the 7/12/24 Vadnais Apartments pre-WCA Replacement Application mtg.*

- *recommend no-build for this site due to the protected wetland taking up most of the parcel and the amount of fill and impervious surface proposed*
- *The currently proposed design does not minimize any wetland impact at all and does not properly address the need for not only on-site stormwater treatment but the treatment and storage of stormwater from the surrounding drainage area.*
- *The current proposed stormwater pond seems undersized to be able to effectively treat the amount of water on this site given there is added runoff from the new impervious on top of the already existing runoff from the surrounding area.*
- *The current proposed design also does not take into account potential flooding issues. Routing all of the excess stormwater downstream will only cause more issues downstream.*
- *For minimization the possibility of reducing the building's overall footprint and capacity should be considered as well as eliminating some surface parking spots. If the design minimized wetland impact and left some wetland intact on-site they would also need to comply with wetland buffer rules. Per VLAWMO's website "Most small wetlands and storm ponds call for a buffer with an average of 20' vegetative width and a minimum of 16'". To comply with these rules may mean significantly reducing the buildings footprint and redesigning the surface parking lot.*
- *Not sure how they will ever get by the avoidance alternative and all of the other site constraints"*

On 7/18/2024 VLAWMO and City had meeting on pre-application comments in person.

On 7/23/2024 VLAWMO received a complete replacement plan application for Vadnais Apartments and application was noticed to the TEP and those requiring noticing.

On 8/1/2024 TEP held an in-person meeting to review application and provide comments on Vadnais Apartments replacement plan application. The comments are set out below.

On 8/9/2024 TEP received a letter from the applicant's engineer responding to the TEP's 8/1/2024 comments. The responses are inserted below.

On 8/12/2024 TEP held an in-person meeting to review applicant responses to 8/1/24 TEP comments. TEP reply comments are set out below.

- MN Rules, part 8420.0520, 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
  - 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

Avoidance:

1. MN Rules, part 8420.0520, subp. 3.C(2)(a) "it is capable of being done from an engineering point of view."
  - TEP 8/1/24 Comment: *Application states poor site conditions; a 0.69 acre wetland in the middle of the parcel which accounts for 39% of the parcel area; high groundwater levels 2-4 feet below the surface; structurally poor and unstable soils.*
  - Applicant 8/9/24 Response: *The project is achievable with industry accepted engineering controls. Supporting the building on an alternative deep foundation design (rigid inclusion), water proofing of the elevator shaft, drain tile, and providing four feet of low floor building separation from highest observed groundwater elevation are incorporated into the project design.*
  - TEP 8/12/24 Reply: *TEP has determined this an acceptable response.*
2. MN Rules, part 8420.0520, subp. 3.C(2)(c) "it is consistent with reasonable requirements of the public health, safety, and welfare."
  - TEP 8/1/24 Comment: *The application includes statements pertaining to poor soil suitability for development because of high groundwater levels observed 2-4 feet below the soil surface. Building an apartment building on a property with 39% wetland coverage including a high groundwater table making the soils "structurally poor". The*

*applicant should provide additional information pertaining to the feasibility and safety of constructing a four-level apartment building on “structurally poor” soils, has not demonstrated to be consistent with storm water management criteria, not considering drainage to site and the surrounding street and neighborhood catchments. Current analysis does not quantify all the areas currently contributing stormwater to the site and possible flooding concerns.*

- Applicant 8/9/24 Response: *The project is consistent with all State of Minnesota building codes and City of Vadnais Heights Planned Unit Development standards, which meets reasonable public health, safety, and welfare requirements. Engineering controls for structurally poor soils and high groundwater (as described in #1) are incorporated into the design.*

*TEP comments regarding stormwater is inaccurate and misleading. As provided in the application, stormwater management is designed to meet local and state requirements for permanent stormwater management (NPDES Construction Stormwater General Permit and City of Vadnais Heights) while taking into consideration site constraints (existing utility connections and conflicts, high groundwater table, structurally poor soils, flat topography, planning and zoning setbacks). These requirements include existing drainage areas (Figures 6 and 7 of the application), runoff rates (Tables 1.1 and 1.2 in Attachment C of the application), volumes (land cover), and soil types. Existing conditions and proposed conditions dictate the proposed stormwater pond design elements (size, water quality and flood control volumes, rate control). Page 7 (“Minimization”) includes a narrative summary of stormwater modeling results for existing and proposed conditions. Visual and quantitative off-site modeling (stormwater run-off) is not required by the regulatory authorities, however, existing on-site conditions include off-site influences (stormwater run-on) which are accounted for in the stormwater modeling.*

- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Where is the groundwater storage going? The current function and value of the wetland is providing groundwater and surfacewater flood storage. Please provide evidence/modeling that sufficient storage of groundwater and surface water replaces existing wetland function or a signed letter from City engineer that stormwater and groundwater has been significantly addressed.*

3. MN Rules, part 8420.0520, subp. 3.C(3)(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”

- TEP 8/1/24 Comment: *Application shows 2 alternative sites in the City, the only limiting factor of which listed was the land needing to be purchased. The applicant has not demonstrated that these alternatives cannot be reasonably obtained through further*

*negotiations with the sellers, applicant has not shown all existing QCT areas within the city of Vadnais heights. Applicant has not shown all available parcels of land within the QCT area selected or if applicant has exhausted all other offsite alternatives in surrounding area? The application states MET Council Plan sets a goal in the 7-county metro area.*

- Applicant 8/9/24 Response: *Landownership and the willingness to sell is the necessary first step in determining if an alternative site can be considered for a potential project. It is not reasonable for the TEP to assume that a property can be a viable alternative if the current owner is not willing to sell. The applicant has provided two alternative sites in the application that would meet the project purpose and need, and demonstrated why these alternative sites did not advance. The two alternative sites and QCT area are illustrated on Figure 5 of the application.*

*Additional available properties that meet site selection criteria (refer to Attachment C of the application) for undeveloped parcels that are a minimum of 1.5 acres within the QCT are provided below and on the revised Figure 5. These alternative sites are not being marketed for sale. Most are surrounded by industrial uses and have no connection to transit, grocery, and other amenities. Other sites lack access or are City owned sites in which the City is not a willing seller.*

- *0 Centerville Road (11.6 acres): No access (landlocked)*
- *3291 Labore Road (2.63 Acres): Surrounded by industrial uses, no connection to grocery, transit, other amenities.*
- *0 Labore Road (4.51): Surrounded by industrial uses, no connection to grocery, transit, other amenities.*
- *0 Highway 61 N. (1.92 acres): Land used by the State for the freeway.*
- *0 Highway 694 (71.91 acres): No Access, land locked, no connection to grocery, transit or other amenities.*
- *0 Highway 694 (3.95 acres): No Access, land locked, no connection to grocery, transit or other amenities.*
- *0 Highway 61 (100.2 acres): Expansive wetlands and one large contiguous parcel.*
- *0 Unassigned Address (2.69 acres): City owned and not interested in selling. Not buildable (existing stormwater pond).*
- *0 Liberty Way (2.71 acres): Long, thin lot between Interstate 694 and single-family homes. Land locked and no access.*
- *0 Arcade St (3.16 acres): City owned and not interested in selling.*
- *0 Unassigned Address (11.45 acres): City owned and not interested in selling. Not buildable (existing wetlands).*
- *0 Vadnais Center Dr (2.54 acres): Surrounded by industrial uses, no connection to grocery, transit, other amenities.*
- *0 Labore Rd (16.11 acres): Surrounded by industrial uses, no connection to grocery, transit, other amenities.*
- *0 Labore Rd (29.53 acres): Surrounded by industrial uses, no connection to grocery, transit, other amenities.*

- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Of the above 14 listed properties, the TEP requests additional information on the following sites and why they are not feasible:*
    - *HW61 100.2 acre states not feasible due to expansive wetland and one large contiguous parcel. Please expand the response as why there is not 1.5 acre of buildable upland on this parcel.*
    - *0 Unassigned Address 2.69 Current project property is City owned, why is City not interested in selling this site? Please expand response.*
    - *Arcade 3.61 acre, Current project property is City owned, why is City not interested in selling this site? Please expand response.*
    - *Unassigned address 11.45 acre Current project property is City owned, States not buildable due to existing wetlands, how is this different than proposed site? Please expand response.*
4. MN Rules, part 8420.0520, subp. 3.C(3)(c) “whether reasonable modification of the size, scope, configuration, or density of the project would avoid impacts to wetlands.”
- TEP 8/1/24 Comment: *Application does not address this. The application lists an alternative building footprint which completely avoids wetland impacts but rejects the alternative for reasons that do not seem justifiable. Ex. Building height restrictions (variances could be sought), stormwater management accommodation (variances and use of existing wetland as stormwater management with pretreatment could be explored), small area of developable land (does not explain why this deems the alternative unviable).*
  - Applicant 8/9/24 Response: *Modifications to the proposed project for a smaller building footprint entirely within 0.35 acres of upland (Alternative #2 in the application) is not a viable option. Alternative #2 does not provided adequate on-site parking space, upland areas for stormwater management facilities (City of Vadnais Heights and State minimum permit requirements), or meet City planning and zoning setbacks. Building height would also need to be significantly increased to provide minimum total units for the project to be financially feasible. City variance requests would not be supported for no or minimal stormwater management that does not meet city or state permit requirements, significantly less than a 1 to 1 parking stalls per unit ratio, and building heights taller than city code and excessive (4-6 units per floor, 10-15 level tower for 58 units) to surrounding existing structures. Alternative #2 is not a reasonable or justifiable option based on the unachievable items mentioned above.*
  - TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. You have not provided a second reasonable alternative that modifies the size, scope and configuration/density. Please provide this alternative.*
5. MN Rules, part 8420.0520, subp. 3.C(3)(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.”

- TEP 8/1/24 Comment: *Application does not identify why this project has to be in the QST. Applicant mentions getting tax benefit from developing in a QCT. However economic feasibility is not a valid reason to cause significant wetland impacts. Other sites with fewer constraints and more upland acreage would be more economically feasible.*
- Applicant 8/9/24 Response: The location of the property within the Qualified Census Tract (QCT), a Housing and Urban Development (HUD) identified area in high need of affordable housing, provides additional equity as a source to build the project, which is the intent of the program, to provide affordable housing within areas of highest need. The approximate total development cost of the project is \$20,500,000. By being located within a QCT, the project is able to generate approximately \$2,000,000 more in HUD project sources to pay for the development compared to if the project was outside of the QCT. The project must be in a QCT to financially be viable and to meet the project goal to provide affordable housing within an area of high need. Site constraints are one factor of financial feasibility however others include things such as land price, marketability of the site to prospective tenants, connections to public transit and area amenities, connection to utilities, etc. The applicant is a very experienced developer of affordable housing and has extensive experience in assessing all of these factors together to determine if a site is financially viable.

The applicant accommodated and removed site constraints by utilizing a Planned Unit Development approach which reduced setbacks to 10 feet from Arcade Street through rezoning, applied the minimum 24-foot width to interior roads, eliminated 21 surface parking stalls, used 9' x 19' parking stall dimensions, and steepened side slopes to 3 to 1 to reduce wetland fill.

The TEP comment of "Other sites with fewer constraints and more upland acreage would be more economically feasible" is a broad assumptive comment based on no supporting evidence. Sites with more upland acreage may have increased construction costs for earthwork corrections and export, higher land prices, and utility connection issues.

- TEP 8/12/24 Reply: *TEP has determined an acceptable response.*
6. MN Rules, part 8420.0520, subp. 3.C(3)(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"
- TEP 8/1/24 Comment: *This wetland was a mitigation site for road impacts in mid-90's and collects neighborhood runoff. The wetland receives drainage from the neighborhood and surrounding streets. Therefore there is public value in terms of flood storage and water quality improvements regardless of its status as a mitigation site.*
  - Applicant 8/9/24 Response: *Duplicative stormwater comment (refer to comment response #2). Public value of stormwater management for existing conditions (untreated*

*stormwater runoff draining into the wetland) is maintained in the proposed permanent stormwater management design.*

*The site is assumed to have been used for mitigation for wetland impacts associated with the construction of local roads based on a SEH drawing from the 1990's. There is no restriction, covenants, easement, or other documentation recorded on the property to indicate the wetland is mitigation.*

- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. This wetland has higher public value because of its location within the City and its natural condition which provides other functions and values other than stormwater ponds (habitat, floral diversity, water quality, etc.)*

### Minimization

#### 7. MN Rules, part 8420.0520, subp. 4.A “the spatial requirements of the project”

- TEP 8/1/24 Comment: *Application does not show alternative designs.*
- Applicant 8/9/24 Response: *Visual representation of the minimization efforts (Attachment C of the application) is attached as Sheet C3-1 Grading Plan.*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. As such, this design does not meet LGU satisfaction for minimization effort because none of the original wetland will remain intact. As shown on figure C4-2, only 0.08 acres of wetland will remain after project completion, however, it is not clear how wetland hydrology will be sustained over time. Please provide a suitable minimization design.*

#### 8. MN Rules, part 8420.0520, subp. 4.B “the location of existing structural or natural features that may dictate the placement or configuration of the project”

- TEP 8/1/24 Comment: *39.4% of this property is wetland. Based on the application there are 1.14 acres of upland that is developable, not considering any other site constraints besides the wetland (e.g. setbacks, utilities, etc.), the applicant states in the “Purpose and Need” section that the project site selection was based partially on finding property with enough “net acres of developable land” to make the project financially viable. A property with nearly half of the area being undevelopable due to wetlands does not appear to be a feasible site for high density residential development.*
- Applicant 8/9/24 Response: *TEP comment is subjective. Site selection was based on several factors (as outlined in Attachment C of the application). Net acres of developable land (>1.5 acres) is one parcel (or contiguous adjacent parcels) that meet the minimum site selection criteria for the project to be feasible. The location of existing structural and natural features (site constraints) are documented and explained in the application (Attachment C).*



- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. The proposed site does not have a greater than or equal to 1.5 acres of developable area. This is a 1.75 acre site with 0.69 acre of wetland. Leaving 1.06 acre of developable area. Please explain why other alternatives locations are not feasible.*

*The application has not shown how placement of the project is dictated by natural features of the site. Please explain how site design considered natural features.*

9. MN Rules, part 8420.0520, subp. 4.C “the purpose of the project and how the purpose relates to placement, configuration, or density”

- TEP 8/1/24 Comment: *No alternative site configurations were shown in the application.*
- Applicant 8/9/24 Response: *Duplicative alternative site layouts comment (refer to comment response #4).*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. You have not modified the site design which addresses the minimization efforts as defined in this rule.*

10. MN Rules, part 8420.0520, subp. 4.D “the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation”

- TEP 8/1/24 Comment: *This wetland was a mitigation site for road impacts in mid-90’s and collects neighborhood runoff, Existing vegetation and hydrology would be significantly altered and disturbed through this project. There is not enough space to provide onsite mitigation of these impacts and thus the design is not sensitive to the existing natural features.*
- Applicant 8/9/24 Response: *Duplicative comment (refer to comment responses #6). Project-specific onsite mitigation is not feasible due to a lack of available mitigation area from on-site utility conflicts (adjacent to Arcade Street, southwest and northeast portions of the site), proximity to parcel boundaries for meeting minimum and average buffer widths (MN Rules 8420.0522 Subp. 6 - Replacement Standards and VLAWMO buffer requirements), and the proximity to these features that would be needed for grading slopes and elevations to sustain hydrology connections (2-4 foot excavations and minimum replacement wetland construction standards per MN Rules 8420.0528).*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Does not address the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation with regards to minimization.*

11. MN Rules, part 8420.0520, subp. 4.E “the value, function, and spatial distribution of the wetlands on the site”

- TEP 8/1/24 Comment: *Applicant has not demonstrated site to be consistent with storm water management criteria, not considering drainage to site in stormwater analysis, flooding concerns.*
- Applicant 8/9/24 Response: *Duplicative stormwater comment (refer to comment response #2).*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Minimization effort must address the value, function, and spatial distribution of the wetlands on the site.*

12. MN Rules, part 8420.0520, subp. 4.F “individual and cumulative impacts”

- TEP 8/1/24 Comment: *Application does not provide information on how 0.08 wetland will maintain hydrology with parking lot to northwest and a 12-ft deep storm pond to the southeast. Outlets inverts of storm pond look to be at the 908ft elevation, wetland looks to be at 913ft elevation based on plan sheet L1-1.*
- Applicant 8/9/24 Response: *The proposed stormwater pond outlet elevation and normal water elevation is 906.75' MSL (5.75 feet deep) with a high water elevation of 909.10' MSL (refer to Sheets C3-1 Grading Plan and C4-2 Storm Sewer Plan in Appendix B of the application). The delineated wetland elevations range from approximately 910.89' to 913' MSL with an existing outlet elevation of 910.20' MSL (as shown on the new attached Sheet C1-1 Site Demolition Plan). Wetland A hydrology for the 0.08 acres remaining will be sustained by existing ground water (approximately 906 - 909.5' MSL) and increased volume of treated surface water runoff from land cover changes (0.346 acre-feet from existing pervious surfaces conversion to 0.459 acre-feet impervious surface post-construction for the 10-year storm event). The proposed condition results in a decrease of site runoff rates for the 1, 2, 10, and 100 year storm events (Tables 1.1 and 1.2 in Attachment C of the application).*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. This appears not feasible. The 0.08 acre remaining wetland will be impacted per provided plans. This area will not remain wetland post construction. This does not address minimization.*

13. MN Rules, part 8420.0520, subp. 4.G “an applicant's efforts to:”

- (1) “modify the size, scope, configuration, or density of the project”
  - TEP 8/1/24 Comment: *Applicant has not shown alternatives.*
  - Applicant 8/9/24 Response: *Duplicative alternative site layouts and design comment (refer to comment response #4). The location and types of site constraints are documented and explained in the application (Attachment C).*

*Proposed wetland impacts are located in the northwest and southeast fringes of Wetland A. Relocating the proposed stormwater pond further northwest (adjacent to the drive aisles) would increase proposed wetland impacts by approximately 0.013 acres due to additional stormwater pond excavation that would be within wetland (currently proposed within upland).*

- TEP 8/12/24 Reply: TEP has determined that the previous TEP comment has not been addressed. Impacts have not been confined to wetland fringe as indicated. The application identifies the entire 0.69 acre wetland impacted. This does not comply with minimization requirements as identified in MN Rules, part 8420.0520, subp. 4.G.
- (2) “remove or accommodate site constraints including zoning, infrastructure, access, or natural features”

- TEP 8/1/24 Comment: Applicant has not shown effort to accommodate site constraints, almost complete impact of wetland.
- Applicant 8/9/24 Response: Duplicative alternative site layouts and design comment (refer to comment response #4). The location and types of site constraints are documented and explained in the application (Attachment C).

*Proposed wetland impacts are located in the northwest and southeast fringes of Wetland A. Relocating the proposed stormwater pond further northwest (adjacent to the drive aisles) would increase proposed wetland impacts by approximately 0.013 acres due to additional stormwater pond excavation that would be within wetland (currently proposed within upland).*

- TEP 8/12/24 Reply: TEP has determined that the previous TEP comment has not been addressed. Impacts have not been confined to wetland fringe as indicated. The application identifies the entire 0.69 acre wetland impacted. This does not comply with minimization requirements as identified in MN Rules, part 8420.0520, subp. 4.G.
- (3) “confine impacts to the fringe or periphery of the wetland”
  - TEP 8/1/24 Comment: .61acres of .69 acres of wetland permanently impacted.
  - Applicant 8/9/24 Response: Duplicative alternative site layouts and design comment (refer to comment response #4). The location and types of site constraints are documented and explained in the application (Attachment C).

*Proposed wetland impacts are located in the northwest and southeast fringes of Wetland A. Relocating the proposed stormwater pond further northwest (adjacent to the drive aisles) would increase proposed wetland impacts by approximately 0.013 acres due to additional stormwater pond excavation that would be within wetland (currently proposed within upland).*

- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Impacts have not been confined to wetland fringe as indicated. The application identifies the entire 0.69 acre wetland impacted. This does not comply with minimization requirements as identified in MN Rules, part 8420.0520, subp. 4.G.*
- (4) “otherwise minimize impacts”
  - TEP 8/1/24 Comment: *No alternative designs provided in the application.*
  - Applicant 8/9/24 Response: *Duplicative alternative site layouts and design comment (refer to comment response #4). The location and types of site constraints are documented and explained in the application (Attachment C).*

*Proposed wetland impacts are located in the northwest and southeast fringes of Wetland A. Relocating the proposed stormwater pond further northwest (adjacent to the drive aisles) would increase proposed wetland impacts by approximately 0.013 acres due to additional stormwater pond excavation that would be within wetland (currently proposed within upland).*

- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Impacts have not been confined to wetland fringe as indicated. The application identifies the entire 0.69 acre wetland impacted. This does not comply with minimization requirements as identified in MN Rules, part 8420.0520, subp. 4.G.*

14. MN Rules, part 8420.0520, subp. 5 “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”

- TEP 8/1/24 Comment: *There are no temporary impacts from this project See comment under Subp 6.*
- Applicant 8/9/24 Response: *Comment does not appear to be related to TEP comment #6. Comment is assumed to be a duplicative No-Loss related comment to TEP comment #12 (refer to comment response #12).*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. All 0.69 acres of wetland will be impacted based on application plans.*

15. MN Rules, part 8420.0520, subp. 6. “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”

- TEP 8/1/24 Comment: *Plan Sheet C4-2 shows 0.08 acres of wetland being avoided (between the stormpond and the proposed building/parking lot). In practice, this would*

*appear to be a narrow strip of wetland between a stormpond (constructed in wetland) and the parking lot. The depth of the ponds is proposed to be 12 feet deeper than the “undisturbed” wetland elevation and the normal water level of the pond is planned to be at about 5 feet lower than the “undisturbed” wetland. How will hydrology be maintained in the undisturbed wetland where there could be a possible drainage effect from the adjacent deep pond? The applicant needs to demonstrate the project’s compliance with reduction of impacts over time.*

- Applicant 8/9/24 Response: *No-Loss related comment (refer to comment response #12). The potential for lateral effect to partially or effectively drain the 0.08 remnant wetland is significantly reduced by the proposed use of a clay liner (or alternative) within the proposed stormwater pond. The liner will restrict lateral groundwater flows from adjacent areas into the pond.*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. This appears not feasible. The 0.08 acre remaining wetland will be impacted per provided plans. This area will not remain wetland post construction. This does not address minimization.*

16. MN Rules, part 8420.0520, subp. 7 “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”

- TEP 8/1/24 Comment: *Per comments above these impacts have not been determined unavoidable.*
- Applicant 8/9/24 Response: *Application has demonstrated reasonable avoidance measures (two alternatives that avoid wetland impacts and off-site alternatives), incorporated minimization measures to reduce unavoidable wetland impacts (rezoning for shorter setbacks, steeper side slopes on proposed wetland fill areas, reduced number of surface parking stalls, minimum road widths, and minimum stormwater pond sizing), and rectification for 0.08 acres of temporary wetland impacts (No-Loss). All aspects of MN*  
  
*Rules 8420.0520 have been met and fulfilled, with no feasible and prudent alternative that would avoid impacts to wetlands.*
- TEP 8/12/24 Reply: *TEP has determined that the previous TEP comment has not been addressed. Minimization has not been met. There is 0.69 acre of wetland impact on this parcel, which is the entire wetland.*

### Next Steps

We understand the applicant has indicated it is operating under a 10-1-2024 deadline for obtaining all required approvals in order to remain eligible for financial assistance. To that end, and taking into account VLAWMO regularly meeting schedule, your application is scheduled for review and final action

by the VLAWMO Board at its 8-28-2024 meeting. The next regular meeting is not scheduled until 10-23-2024.

Based on the comments and responses received to date, TEP proposes to recommend denial of application for the reasons stated in this Finding of Fact. However, the applicant has up to the end of the business day on 8-16-2024 to provide additional responses to the TEP's comments. The TEP will consider such additional responses at its meeting on 8-20-2024 at 8:30 a.m. at the Vadnais Heights City Hall before making a final recommendation.