

8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. Purpose and eligibility.

A. As an alternative to the rules adopted under Minnesota Statutes, section 103G.2242, subdivision 1, and the public value criteria established or approved under Minnesota Statutes, section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that the requirements of this part are met. This part provides minimum standards. Local government units may require equivalent or more stringent standards and procedures for wetland conservation, but not less stringent standards and procedures.

B. The ultimate goal of a comprehensive wetland protection and management plan is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through the prioritization of existing wetlands and the strategic selection of replacement sites. The purpose of developing a plan is to provide a watershed and ecosystem-based framework to make wetland impact and replacement decisions that meet state standards and locally identified goals and support the sustainability or improvement of wetland resources in watersheds while providing local flexibility as allowed under subpart 4.

C. Any local government unit opting to pursue development of a plan and incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the plan.

Subp. 2. Relationship to other plans. To maximize effectiveness, the comprehensive wetland protection and management plan should be developed as part of, or in coordination with, other relevant local or regional plans and requirements. The plan should provide a mechanism for integrating local land use decisions with wetland ecosystem management goals at the watershed level.

Subp. 3. Plan area. To the extent practical and feasible, the comprehensive wetland protection and management plan should be based on watershed boundaries. The size of watershed addressed should not be larger than is appropriate to ensure that the wetland resources provided through replacement will effectively compensate for approved impacts. For local governments with multiple watersheds, a separate analysis should be completed for each watershed substantially within the local government's jurisdiction. Local governments should consider joint planning efforts for those watersheds that cross political boundaries.

Subp. 4. **Flexibility options under local plan.** The comprehensive wetland protection and management component of the local water plan may:

A. vary application of the sequencing standards in part 8420.0520, for projects based on the classification and criteria in the plan;

B. vary the replacement standards of part 8420.0522, subparts 3 to 9, and the actions eligible for credit under part 8420.0526, based on the classification and criteria in the plan, so long as there is no net loss of public value within the area subject to the plan and so long as:

(1) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of impacted wetland requiring replacement is met within the area subject to the plan; and

(2) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of impacted wetland requiring replacement is met within the area subject to the plan;

C. in a greater than 80 percent area, allow replacement credit, based on the classification and criteria in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres;

D. in a greater than 80 percent area, based on the classification and criteria in the plan, expand the application of the exemptions in part 8420.0420, subpart 2, item B, to also include nonagricultural land, provided there is no net loss of wetland value;

E. prescribe standards for size and location of replacement wetlands by establishing type requirements, size and ratio requirements, functional quality requirements, location requirements, and criteria for wetland mitigation fee in lieu of direct replacement. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan; and

F. allow exemptions based on ordinance or rule standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts 8420.0320 and 8420.0420 based on wetland classifications as defined in the plan.

Subp. 5. **Plan content.**

A. The comprehensive wetland protection and management plan must include the establishment of watershed goals based on an analysis of the existing ecological conditions of the plan area and the development of corresponding goals for maintaining and improving those conditions. The ecological condition of the plan area should be based on inventories of historic and existing wetland resources, including identification of degraded wetlands, existing high-quality wetlands, and immediate and long-term resource needs within the plan

area. The analysis may be completed as part of the comprehensive wetland protection and management plan or adopted from a relevant local or regional water plan, if one exists.

B. The plan may provide for the classification of wetlands in the plan area based on:

- (1) an inventory of existing wetlands in the plan area;
- (2) an assessment of the wetland functions listed in part 8420.0522, subpart 1, using a methodology chosen by the technical evaluation panel and based on one of the methodologies established or approved by the board;
- (3) landscape position, adjacent habitats or buffers, connectivity with or between important resources, projected land use, and other watershed-scale criteria; and
- (4) the resulting public value.

C. The plan must include an inventory and prioritization of replacement sites based on an analysis of the types and locations of replacement projects that will provide the desired wetland functions, benefit the watershed from a landscape perspective, and best offset losses of public value caused by approved impacts. The goal of the analysis is to provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to naturally self-sustaining replacement that best achieves watershed goals and improves the ecological condition of the watershed. The plan must include strategies for the promotion and establishment of high-priority replacement sites that best meet the goals of the plan.

D. Comprehensive wetland protection and management plans developed as part of county, watershed district, or watershed management organization plan may identify those areas that qualify as high-priority areas for wetland preservation, enhancement, restoration, and establishment according to part 8420.0835.

E. The plan must include a provision for periodic assessment of the effectiveness of the plan, and the local government unit's implementation of it, in achieving plan goals. Updates to previously approved plans must include an analysis of the effectiveness of the previous plan, including the identification of barriers to achieving identified goals and development of strategies to overcome them.

F. The plan must specify the period covered by the plan, which must extend at least five years but not more than ten years from the date the board approves the plan.

Subp. 6. Plan development and review process.

A. A notice of intent to plan must be sent, at the beginning of the planning process, to the technical evaluation panel, the Department of Natural Resources, the Department of Agriculture, the Pollution Control Agency, watershed management organizations within the plan area, local government units within and adjacent to the plan area, and the St.

Paul district office of the United States Army Corps of Engineers with an invitation to actively participate in the development of the plan. The notice should also include a general description of the planning effort, the planning area, and an anticipated timeline.

B. The technical evaluation panel must be consulted in all components of plan and ordinance development, including conducting wetland functional assessments, establishing wetland management classifications and standards, prioritizing replacement sites, and identifying local reference standard wetlands.

C. The local government unit must implement a process for notifying and involving local citizens in the development of the plan and determination of local value. Local citizen involvement may include the formation of a citizen's advisory committee or utilization of other existing citizen groups.

D. Upon completion, the local government unit must submit the draft comprehensive wetland protection and management plan and ordinance or rule for a 60-day review and comment period to those required to receive notice under item A. The local government unit must respond in writing, within 30 days of the end of the review period, to any comments received during the review period.

E. The local government unit must conduct a public hearing on the plan no sooner than 30 days after the end of the 60-day review period but before submitting the final draft plan to the board for approval.

F. After conducting the public hearing but before final adoption, the local government unit must submit the plan and ordinance or rule, all written comments received, a record of the public hearing, and a summary of responses to comments and changes incorporated as a result of the review process to the board for review under subpart 7.

G. An organization that is invited to participate in the development of the draft local plan, but declines to do so or fails to participate or to provide written comments during the local review process, waives the right during the review under item D to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board must consider the involvement of the agency in the development of the local plan.

H. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401. A plan developed as part of a local water management plan may follow the review and approval process applicable to the local water management plan instead of the review and approval process under items D to F.

Subp. 7. Board decision; mediation; judicial review.

A. The board shall make a decision to approve or disapprove a comprehensive wetland protection and management plan within 60 days of receipt of a complete and final draft of the plan and ordinance or rule as required in subpart 6, item F. The board may disapprove all or parts of the plan if the board determines the plan does not meet the requirements of this part. If the board has not made a decision within 60 days of receipt of the final plan, the plan is deemed approved. The 60-day period may be extended upon mutual agreement of the board and the local government unit.

B. In its review of a plan, the board must advise the local government unit of those elements of the plan that are more restrictive than this chapter and the act.

C. If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government unit of the plan deficiencies and suggested changes. The board must include in the response to the local government unit the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government unit has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government unit may request a hearing before the board. The board must hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board must, within 60 days, prepare a report of its decision and inform the local government unit.

D. If, after the hearing, the board and local government unit disagree on the plan, the board must, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

E. The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court must review the board's record of decision and the record of decision of the local government unit. The district court must affirm the plan if it meets the requirements of this part.

Subp. 8. Effective date and amendments.

A. The comprehensive wetland protection and management plan is effective after approval by the board as provided in subpart 7 and after adoption of the plan into the official controls of the local government unit.

B. Comprehensive wetland protection and management plans remain in effect according to subpart 5, item F, unless revised according to subpart 6 and approved by the

board. Plans that contain revision dates inconsistent with this part must comply with the plan's date if the date is not more than ten years beyond the date of board approval. An extension of the revision date of the plan may be granted by the board.

C. All amendments to the adopted plan and ordinance are effective upon completion of the same process required for the original plan, except when the proposed amendments constitute minor amendments and:

- (1) a public hearing has been held to explain the amendments;
- (2) the local government unit has sent copies of the amendments to those required to receive notice under subpart 6; and
- (3) the board has either agreed that the amendments are minor or failed to act within 60 days of receipt of the amendments.

D. For the purposes of this subpart, "minor amendments" include clarifications, updates to wetland or replacement site inventories, and other changes that do not substantially alter the standards of the approved plan and ordinance or rule, as determined by the board. Amendments required to bring the plan into conformance with revisions to this chapter are also considered minor.

Subp. 9. **Implementation.**

A. The comprehensive wetland protection and management plan must be implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; and Minnesota Statutes, chapter 366, for a town and by rules adopted under Minnesota Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.

B. After board approval and local government adoption, decisions made to implement this chapter and the act must be made according to the plan and ordinance or rule.

C. Noticing, appeals, and all other administrative processes under a local plan must follow the requirements of this chapter.

Subp. 10. **Reporting.** In addition to and as part of the reporting requirements of part 8420.0200, subpart 2, item I, a local government unit with an approved and adopted comprehensive wetland management plan must annually provide information to the board regarding activities that vary from this chapter, this part notwithstanding, and documenting compliance with the minimum plan standards developed according to subpart 4. Failure to provide this information on an annual basis may subject the local government unit to penalties under part 8420.0200, subpart 3.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

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