

8420.0915 COMPENSATION TO LANDOWNERS.

Subpart 1. **Eligibility.** Replacement plan applicants who have completed the local government unit process and the board appeal process, and the replacement plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

Subp. 2. **Application requirements.**

A. An application for compensation under this part must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

B. An application must include an agreement that, in exchange for compensation, the applicant shall convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title, lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

C. The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization, if any, the county, and the town or city, as applicable, that the proposed impact and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

D. The landowner must demonstrate that the proposed impact is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the wetland replacement, construction, and monitoring requirements of this chapter and the act.

E. If the replacement plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if it is not possible to carry out for engineering reasons. The applicant must show that forgoing the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public value of the wetland.

F. The applicant must submit to the board the requirements in this part in writing, by certified mail. The applicant must indicate on the application whether the applicant wants to make oral argument to the board. The board may require that the applicant appear before the board.

Subp. 3. **Board action.** If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board must compensate the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant conveys to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the conservation easement, the applicant may impact the wetland in the manner proposed, without replacement.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

Published Electronically: *August 26, 2009*