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## Wetland Permits Are Now Subject to Tighter Rules

The biggest change in the Minnesota Wetland Conservation Act (WCA) since 1996 was adopted this past August. The new rule amendments may impact the cost, design, or timeline of land development projects that were not submitted for permitting as of August 5, 2009.

Changes to the WCA rules were prompted by Governor Pawlenty in 2007. The governor asked for closer alignment with the principles of “no net loss” of wetlands. A state committee wrote “emergency rules” that took effect on August 5, 2007. The emergency rules expired on August 5 of this year and the permanent rules were adopted on August 10, 2009.

The Minnesota Board of Water and Soil Resources (BWSR) worked with stakeholders to develop the new rules, which contain the following changes that are likely to affect land development projects.



- The “dual credit” system (i.e., New Wetland Credit and Public Value Credit) has been eliminated, which will impact the way that wetland banking credits are counted.
- Only 10-25% of upland buffer areas will be counted toward wetland replacement credit (down from 100%).
- Although some Local Governmental Units (LGUs) already require financial surety for project-specific wetland replacement, the new rules mandate it for all LGUs.
- All replacement wetlands will require upland buffers at least 25 feet wide.
- There will be an incentive to use wetland banking instead of on-site wetland replacement; the credit for wetland area created on-site in upland areas, for example, is capped at 75%.
- The wetland replacement ratio could be as high as 2.5:1 under certain circumstances.

The adopted rules will impact new projects in different ways. In the worst-case scenario, a project subject to the 2.5:1 ratio could actually need more than 2.5 times the replacement area to mitigate for wetland impacts. This is because, with only 75% credit allowed for wetlands created on-site, each acre of wetland fill could require as much as 3.33 acres of credit.

Land developers who anticipate wetland impacts will want to get project designs reviewed as soon as possible to ensure alignment with the new permitting requirements.



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