

**BREAKING NEWS - May 2009****Wetland Permits Submitted After August 5, 2009, Subject to Tighter Rules**

The biggest change in the Minnesota Wetland Conservation Act (WCA) since 1996 is scheduled for adoption this August. The comment period for the new rules, which affect wetland replacement requirements, expires on **May 12, 2009**. The proposed rule amendments may impact the cost, design, or timeline of land development projects submitted for permitting after **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 will expire on August 5 of this year when the permanent rules are adopted.

The Minnesota Board of Water and Soil Resources (BWSR) worked with stakeholders to develop the new rules and will accept input on the proposed changes through May 12. The current version of the permanent rules contains the following changes that are likely to affect land development projects.



- Only 10-25% of upland buffer areas would 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 would mandate it for all LGUs.
- The “dual credit” system (i.e., New Wetland Credit and Public Value Credit) would be eliminated, which may impact the way that wetland banking credits are counted.
- All replacement wetlands would require upland buffers at least 25 feet wide.
- There would be an incentive to use wetland banking instead of on-site wetland replacement; the credit for wetland area created on-site, for example, would be capped at 75%.
- The wetland replacement ratio could be as high as 2.5:1 under certain circumstances.

The proposed rules would 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 concerned about the impact of these changes on their projects may submit wetland permit applications prior to August 5 to avoid the new, more strenuous requirements. In addition, anyone can submit oral or written data, statements, or arguments at a public hearing on the proposed rule changes to be held on **May 5, 2009**, at the BWSR Board Room (520 Lafayette Road, St. Paul). A copy of the proposed rules can be found [here](#).



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