

7050.0186 WETLAND STANDARDS AND MITIGATION.

Subpart 1. **Policy and wetland beneficial uses.** It is the policy of the state to protect wetlands and prevent significant adverse impacts on wetland beneficial uses caused by chemical, physical, biological, or radiological changes. The quality of wetlands shall be maintained to permit the propagation and maintenance of a healthy community of aquatic and terrestrial species indigenous to wetlands, preserve wildlife habitat, and support biological diversity of the landscape. In addition, these waters shall be suitable for boating and other forms of aquatic recreation as specified in part 7050.0222, subpart 6; general industrial use as specified in part 7050.0223, subpart 5; irrigation, use by wildlife and livestock, erosion control, groundwater recharge, low flow augmentation, storm water retention, and stream sedimentation as specified in part 7050.0224, subpart 4; and aesthetic enjoyment as specified in part 7050.0225, subpart 2.

Subp. 1a. **Definitions.**

A. "Physical alteration" means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.

B. "Wetlands" are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

- (1) a predominance of hydric soils;
- (2) inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
- (3) under normal circumstances, support a prevalence of such vegetation.

Subp. 1b. **Wetland pollution prohibited.** Wetland conditions shall be protected from chemical, physical, biological, or radiological changes to prevent significant adverse impacts to the designated beneficial uses listed in subpart 1. The nondegradation provisions in this chapter are applicable to wetlands.

Subp. 2. **Wetland mitigation principles.** The wetland mitigative sequence incorporates the principles in items A to C in descending order of priority. Wetland mitigation maintains nondegradation of wetland designated uses:

- A. avoid the impact altogether by not taking a certain action or parts of an action;

B. minimize the impact by limiting the degree or magnitude of the action and its implementation, and by taking affirmative actions to rectify the impact and reduce or eliminate the impact over time; and

C. mitigate the unavoidable impact to the designated uses of a wetland by compensation. Compensatory mitigation shall be accomplished in the following descending order of priority of replacement:

- (1) restoration of a previously diminished wetland; and
- (2) creation of a wetland.

Subp. 3. **Determination of wetland dependency.** A project is wetland dependent if wetland designated uses are essential to fulfill the basic purpose of the project. A wetland dependent project is exempt from subpart 4, but will follow the remainder of the mitigation sequence. Where the proposed project is not wetland dependent, the wetland mitigation sequence in subpart 2 must be followed.

Subp. 4. **Impact avoidance.** No person may cause or allow a physical alteration which has the potential for a significant adverse impact on one or more designated uses of a wetland, unless there is not a prudent and feasible alternative that would avoid impacts to the designated uses of the wetland.

A. Prudent and feasible alternatives that do not involve wetlands are presumed to be available unless clearly demonstrated otherwise by the permit or certification applicant.

B. If no prudent and feasible alternative is available for avoidance, potential significant adverse impacts to the designated uses of the wetland shall be minimized in compliance with subpart 5.

Subp. 5. **Impact minimization.**

A. The permit or certification applicant shall implement actions to minimize potential significant adverse impacts of the physical alteration.

B. In evaluating the applicant's actions to minimize impacts, the agency shall consider:

- (1) the spatial requirements of the project;
- (2) the location of existing structural or natural features that may dictate the placement or configuration of the project;
- (3) the purpose of the project and how the purpose relates to placement, configuration, or density;
- (4) the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;

- (5) the designated uses and spatial distribution of the wetlands on the site;
- (6) individual and cumulative impacts; and
- (7) the applicable minimization activities identified in Code of Federal Regulations, title 40, part 230, subpart H, as amended.

C. If the potential for significant adverse impacts on designated uses remains after all actions to minimize the impacts have been incorporated into the proposed project, unavoidable impacts shall be compensated for in compliance with subpart 6.

Subp. 6. **Impact compensation.** The permit or certification applicant shall provide compensatory mitigation for unavoidable impacts on the designated uses of the wetland in accordance with this subpart.

A. Compensatory mitigation must be sufficient to ensure replacement of the diminished or lost designated uses of the wetland that was physically altered.

B. Compensatory mitigation shall be accomplished in the following descending order of priority of replacement:

- (1) restoration of a previously diminished wetland; and
- (2) creation of a wetland.

C. If compensatory mitigation is accomplished by restoration or creation, the replacement wetland shall be of the same type and in the same watershed as the impacted wetland, to the extent prudent and feasible.

D. Compensatory mitigation shall be completed before or concurrent with the actual physical alteration of the wetland affected by the proposed project to the extent prudent and feasible.

Statutory Authority: *MS s 115.03; 115.44*

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