

## CHAPTER FOUR

# Local Government Roads Wetland Replacement Program

The Local Government Roads Wetland Replacement Program was a key outcome of amendments to WCA in 1996 and 2000 as it transferred responsibility for replacing wetlands lost due to local government road improvements from the local road authority to BWSR. This eliminates the need for local government transportation officials to undertake and finance environmental reclamation projects and consolidates the necessary technical, financial, and other implementation work. That results in higher quality, more cost-effective wetland replacement.

Only city, county, and township road improvement projects that are done to meet state or federal design or safety standards qualify for the program. *New road projects or roads expanded solely for additional traffic capacity lanes do not qualify.* The purpose behind this restriction is to pass on new development costs to local governments since these types of projects relate to long range planning and local governments have the ability to avoid wetland impacts by proper land use planning. Minnesota Rules, part 8420.0544, item D., defines the process that local governments must follow in order to qualify for the program. For projects that do not qualify for this program, public transportation authorities are eligible to *purchase* wetland banking credits from BWSR at cost. See “Policy on Sale of Wetland Credits to Public Transportation Authorities” in the appendix to this chapter.

The Local Government Roads Wetland Replacement Program provides the following benefits:

- Regulatory simplification and efficient and improved wetland mitigation are achieved by eliminating the need for each local road authority to maintain its own staff expertise and budget to mitigate impacts to wetlands from road projects.
- Fragmented impacts from road projects are consolidated in targeted areas to provide habitat, water quality, and other wetland functions away from traffic and highway runoff areas at a lower public cost.
- Water management goals such as improving water quality, flood control, greenway preservation, and wildlife corridor enhancement can be better addressed collectively.
- Site selection, ranking of project proposals, and setting program strategies consistent with overall state and federal wetland goals are achieved through an interagency process.

### The reporting process

The following is a chronological summary of the steps a local road authority must take in order to have a qualifying road improvement impact replaced by BWSR under this program:

1. The road authority develops project construction plans that avoid and minimize wetland impacts. If important site-specific wetland functions can't be replaced off site, the plans must replace those functions on site. Plans must include delineations of the wetland boundaries that the project will encroach upon.
2. At least 30 days prior to construction of a qualifying road repair, rehabilitation, reconstruction, or replacement, the public road authority must complete and submit a **“Public Transportation and Linear Utility Projects” notice/application form**. Copies of the application and supporting data are sent to the Technical Evaluation Panel (TEP), BWSR, Minnesota Department of Natural Resources, the LGU, the Corps of Engineers, and members of the public who requested a copy. See form for mailing instructions.

3. The TEP must review the proposed impact and provide recommendations regarding on-site replacement if so asked by the LGU, a contiguous landowner, or a member of the TEP. If the TEP finds that the project does not qualify for replacement under the BWSR road replacement program, it must report that finding to the LGU, the road authority, and the BWSR wetland bank administrator.
4. The BWSR wetland bank administrator reviews the application and, if no problems with eligibility are apparent, the impacts are duly recorded and provision is made to replace the proper amount and type of wetland.
5. If plans are changed, the road authority must notify BWSR of the changes so that correct impacts are recorded in the BWSR database.
6. Projects scheduled for BWSR replacement are posted on the BWSR web site. If a project is not posted, either BWSR has rejected the project as non-qualifying or no application was ever received. Generally, if a project has been determined not to qualify for the program, the road authority will be notified in writing of such determination and advised to seek other replacement options.

**Note:** An LGU cannot require a separate wetland replacement plan for a project that qualifies under this program. If a project is determined to not qualify for this program, the LGU must process the application through the regular WCA replacement plan process. The Corps of Engineers can require an individual permit for certain projects and require special mitigation requirements. Ordinarily, both the Corps of Engineers and the Minnesota Department of Natural Resources will accept replacement under this program for qualifying projects.

## Common questions and answers

### **The law does not allow BWSR to replace impacts from “new roads or roads expanded solely for additional traffic capacity lanes.” How does BWSR interpret this portion of the law?**

All wetland impacts caused by new roads will have to be replaced by the road authority through an approved replacement plan. Likewise, when a road improvement is solely for increased capacity, the road authority will also be responsible to replace any wetland impacts. BWSR will not replace wetland impacts if the road improvement involves additional lanes, such as the conversion of a two-lane road to a four-lane road, unless the additional lanes are necessary to safely accommodate existing traffic counts in accordance with accepted road design standards (e.g., AASHTO standards, MnDOT Road Design Manual). However, adding a third lane for turning on a two-lane road and a fifth lane for turning on a four-lane road for safety will generally always qualify for the BWSR replacement program. For projects that do not qualify for this program, public transportation authorities are eligible to *purchase* wetland banking credits from BWSR at cost. See “Policy on Sale of Wetland Credits to Public Transportation Authorities” in the appendix to this chapter.

### **What happens if the road authority doesn’t provide notice as provided by the law and proceeds to build? Will BWSR replace the impact after-the-fact?**

BWSR will not replace the wetland impact. The road authority will have to replace the wetland. If that occurs, then the intended streamlined process has been compromised and there is little opportunity for the TEP and other regulatory agencies to provide input on issues relating to sequencing. To allow late reporting defeats the purpose of the law and would promote late reporting or reporting only when noticed by a regulatory authority. It is possible that the matter would be viewed as a violation of the Wetland Conservation Act. *The only exception would be in the case where the impact involved minor or emergency work impacting less than 10,000 square feet of wetland in which case after-the-fact reporting within 30 days is allowed.*

### **Will the BWSR program mitigate for improvements to trails and sidewalks?**

BWSR will only mitigate for trail and sidewalk project impacts if there is an existing trail or sidewalk that needs to be relocated as a result of a qualifying project done to meet state or federal safety standards. Impacts from new trails and sidewalks or trails and sidewalks that are relocated as a result of construction for traffic capacity increases will have to be replaced by the road authority.

### **What are some typical projects that would qualify for the BWSR road replacement program?**

Following are some typical projects that qualify:

- Expanded lane width, improved shoulders, curb installation, and addition of turning lanes are covered. Generally, the road authority should limit the safety slopes to 3 feet horizontal to 1 foot vertical to minimize wetland impacts and use guardrails where practical.
- If a qualifying project requires installation of a storm water pond to meet current state or federal design requirements and the pond has to impact a wetland, BWSR will replace the impacts caused by the installation of the storm water pond.
- Wetland impacts that result from realignments done primarily to increase radius of existing curves for safety reasons.

### **What are some typical projects that the BWSR road replacement program would not cover?**

Following are projects that local authorities have requested BWSR to provide replacement for but have been rejected. As the program matures, there will no doubt be other unique circumstances:

- new roads and improvements to existing roads primarily for increased capacity;
- wetlands mined to secure road-building material;
- projects relating to the expansion of airport facilities and runways; and
- projects related to the improvement of local road authority facilities such as garages and salt storage sites.

If a local road authority is uncertain about whether the program will replace wetland impacts, the matter should be brought to the attention of a TEP member even before the Public Road Combined Project Application Form is submitted.

### **What authority does the TEP or others who receive notice have?**

Members of the TEP and persons and agencies who are required to receive notice of a project may appeal minimization, delineation, and on-site mitigation decisions of the road authority (see Minnesota Rules, part 8420.0540, subpart 5, item F.). Therefore, it is important that local road authorities attempt to minimize impacts and consider on-site mitigation before applying to BWSR for replacement.

### **Will BWSR be required to replace wetland impacts caused by qualifying projects if the Legislature doesn't fund the program?**

No, implementation of this program is subject to the Legislature providing the funding. If no more funding is provided, BWSR will assign all wetland credits established or under development to projects that have been reported on a first-come, first-serve basis. BWSR is working with county, city, and township associations to secure stable funding for the program.

**Will BWSR pay for on-site mitigation if required by the LGU or another regulatory agency such as the Minnesota Department of Natural Resources or Corps of Engineers?**

No.

**Do created wetlands and wetlands in road ditches count as WCA-regulated wetlands?**

Yes. BWSR does not apply the de minimis or any other exemption to road project impacts. Road authorities must report total permanent impacts without deducting any amount for any reason.

If you have any questions, contact your board conservationist . 