**Section 1090.50 Wetland Review Process**

Actions that require coordination under this Part shall not be commenced until completion of the wetland review process and a wetland compensation plan has been approved for any unavoidable adverse wetlands impacts. Coordination with the Department shall be accomplished through the wetland review process as defined in this Section or as provided in Agency Action Plans or Memorandums of Agreement (MOA) approved in accordance with Section 1090.40 of this Part. The wetland review process shall consist of the following:

a) Wetland Impact Determination

1) When an action covered by this Part is proposed, the agency initiating or supporting the action shall cause to have completed and submitted a Wetland Action Report to the Department. This Report shall be submitted as early in the planning process as practicable. The purpose of this report is to identify the specific location of a proposed project in order to determine if a wetland is likely to be adversely impacted by the proposed action. The Wetland Action Report shall include but not be limited to the following:

A) Name and address of the agency proposing the action;

B) Sufficient detail (field reports, surveys, site inventories, maps and/or photographs) to determine the presence or absence of a State jurisdictional wetland;

C) The precise location of the proposed action sufficient to show the relationship of the State jurisdictional wetland to the proposed action;

D) An accurate description of the proposed action in sufficient detail to allow a thorough review of the potential impact to a State jurisdictional wetland. This may include a site plan, soil erosion control plan, an assessment of the benefits to the wetland, or similar information. Sufficient detail is not intended to include final design level drawings or calculations;

E) Anticipated starting and ending dates of the proposed action (e.g., land clearing, project construction, etc.); and

F) Discussion of alternative actions considered and supporting justification of the selected alternative if that alternative will or is likely to have an adverse wetland impact.

2) Unless otherwise stated in the AAP or MOA, the Department shall, within 30 days after the receipt of a wetland action report inform the applicant in writing of any deficiencies in the report or of further information the Department needs in order to evaluate the report. In the event no such request is made by the Department, the report shall be deemed filed on the expiration of the thirtieth day. The Department shall notify the agency in writing of the date the report is deemed filed. Unless otherwise stated in the AAP or MOA, from the date the report is deemed filed, the Department shall have 60 days to complete its review. The 60 day review period may be extended by written agreement between the applicant and Department. Unless otherwise stated in the AAP or MOA, the Department shall provide one of 3 responses to the agency or applicant proposing the action within 60 days after receipt of a wetland action report which is deemed filed:

A) If no adverse impacts to a State jurisdictional wetland will or are likely to occur, a letter shall be sent indicating that further coordination with the Department is not necessary and that the proposed action may be carried out as planned.

B) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action do not exist, a letter shall be sent approving the proposed action with restrictions or limitations as the Department concludes are necessary in order to meet the purpose of the Act.

C) If an adverse impact to a State jurisdictional wetland is likely to or will occur, and practical alternatives to the proposed action exist, a letter shall be sent indicating that the proposed action shall not be carried out as planned.

D) The agency or applicant may request a reevaluation of the Department's response to a Wetland Action Report. The Department shall have 30 days to complete a reevaluation. The 30 day period can be extended by a written agreement between the agency or applicant and Department.

3) A wetland impact determination is valid for a period of 3 years following the issuance of a written notice to the agency or applicant submitting the request. The Department shall grant an extension upon demonstration by the agency or applicant that the project is being pursued in good faith and that conditions of the site have remained substantially unchanged.

b) Emergencies

Two types of emergency conditions that require special treatment:

1) Where emergency circumstances pose an immediate threat to human life, or severe loss of property is imminent from situations involving natural or man-made disasters, casualties, or national defense or security emergencies, and the action must be taken immediately, the agency can proceed without notifying the Department prior to taking action. A wetland action report shall be filed and a wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 days. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.

2) Where emergency circumstances pose a threat to human life or severe loss of property and the action must commence within 30 days, the agency shall contact the Department prior to commencing the action and explain the nature of the problem. The wetland impact determination shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 days. If necessary, this shall be followed by the development, approval, and implementation of a wetland compensation plan.

c) Wetland Compensation Plans

1) If the wetland impact determination establishes that the proposed action is likely to have an adverse impact on a State jurisdictional wetland, the agency or applicant is responsible for the development and implementation of a wetland compensation plan. A wetland compensation plan shall be submitted either:

A) Along with the request for a wetland impact determination; or

B) After the Department submits its formal written response to the wetland impact determination.

2) If the wetland compensation plan is submitted as part of the wetland impact determination it shall be used in the evaluation of that material. However, formal review and response to the wetland compensation plan shall not occur until after the Department and agency or applicant have resolved all issues related to the wetland impact determination.

3) The wetland compensation plan shall include but not be limited to the following:

A) Name and address of the agency or applicant responsible for the development and implementation of the wetland compensation plan;

B) Description of the proposed replacement project including a clear statement of goals;

C) Identification of the wetland type which will be adversely impacted and the wetland type that is to be established;

D) A description of the wetland that will be adversely impacted and an evaluation of the current land use, biological, hydrological, and soil characteristics of the site where the replacement wetland is to be established;

E) The precise location of the wetland that is to be established including a map, legal description, and distance from the wetland that will be adversely impacted;

F) Site plan that includes the plant materials and methods to establish those plant materials, proposed contours of the wetland and surrounding buffer to be established, source(s) of water, anticipated hydro-period(s) of the proposed wetland and any water control structures, the watershed draining into the proposed wetland, and relationship of the site to surrounding land uses;

G) Operation, management and maintenance plan for the site including procedures to restrict further adverse impacts to the site, such as the use of buffer areas, restricting future construction within the wetland compensation area, etc.;

H) The monitoring plan to evaluate the success and/or failure of the wetland establishment effort, including the use of measures to correct identified deficiencies or problems; and

I) Anticipated starting and ending dates of the wetland compensation plan.

If the applicant is unable to develop a wetland compensation plan, a request for consideration of other compensation alternatives may be made. The request for consideration of other compensation alternatives must be a written proposal detailing why a form of wetland compensation other than the establishment of a replacement wetland is being requested and specific details describing the proposed action.

4) The Department shall review the wetland compensation plan and determine if the plan is likely to result in the successful establishment of a replacement wetland and meets the overall goals of the Act. Unless otherwise stated in the AAP, the Department will provide one of 2 responses to the agency or applicant proposing the action within 45 days after receipt of the wetland compensation plan:

A) That the plan meets the overall goal of the Act, is likely to result in the successful establishment of a replacement wetland and provides the proper wetland compensation in accordance with this Part. A letter will be sent indicating that the agency or applicant may proceed with implementation of the plan.

B) That the plan does not meet the overall goal of the Act and/or will not likely result in the successful establishment of a replacement wetland. The Department shall notify the applicant in writing that the plan fails to meet the intent of the Act. The Department may include recommendations that, if implemented, will bring the plan into compliance with the Act. It shall be the agency's or applicant's responsibility to revise the plan and submit a plan that complies with the Act and this Part. The Department shall not unreasonably withhold approval of an applicant's wetland compensation plan.

5) Department approval of a wetland compensation plan is valid for a period of 3 years following the issuance of written Department approval to proceed. The Department shall grant an extension without modification to the plan upon demonstration by the agency or applicant that conditions at the site have remained substantially unchanged. A wetland compensation plan is not complete until after all elements of the plan have been successfully implemented by the agency or applicant and approved by the Department.

6) The agency or applicant shall submit status reports to the Department to demonstrate progress towards implementation of the wetland compensation plan. These reports shall include:

A) Post construction site evaluation report. This report shall be submitted within 90 days after the initial construction, planting and all associated work on the site plan have been completed;

B) Status reports. Up to 4 annual reports on the status of the replacement wetlands and associated buffer as provided for in the wetland compensation plan shall be provided to the Department;

C) Final report. A final report on the status of the replacement wetland and associated buffer. The final report is due 5 years after implementation of the wetland compensation plan; and

D) Transfer report. If the replacement wetland is to be transferred to another entity, a transfer report shall be submitted to the Department for approval. This report shall provide all details associated with the transfer.

7) Unless the Department otherwise allows, compensation shall occur either prior to or concurrently with the activity for which a wetland impact determination is sought. Compensation for adverse impacts to a wetland, its functions, or associated buffer area shall be accomplished using best technology currently available, performance standards and effective monitoring. The Department shall establish guidance for locating and developing wetland compensation plans and standards to ensure that a wetland compensation project is completed as planned to measure the success of compensation projects and correct compensation projects that fail. Use of uplands for wetland compensation sites are generally less suitable than lower lying lands and their use is discouraged. Every effort should be made to avoid the use of upland sites classified as "Prime farmland" by the USDA Natural Resources Conservation Service.

8) The compensation rate for adverse wetland impacts has been developed based upon wetland quality, function, type, degree of adverse impact, and location of the compensation site. Compensation ratios have been made progressively higher to encourage avoidance and minimization of adverse impacts to wetlands. The following table of wetland compensation ratios shall be used to determine the final value of compensation required for an action that causes an adverse wetland impact.

|  |  |  |  |
| --- | --- | --- | --- |
| Location of the Replacement Wetland | | | |
|  | | | |
|  | On-Site | Off-Site | Out-of-Basin |
| Degree of Adverse Impact |  |  |  |
| Min.\* Alt. | 1.0:0\*\*\*\* | 1.5:1 | 2.0:1 |
|  |  |  |  |
| Sig.\*\* Alt. | 1.5:1\*\*\*\*\* | 2.0:1 | 3.0:1 |
|  |  |  |  |
| Dest.\*\*\* | 2.5:1 | 4.0:1 | 5.5:1 |
| The following explanations are provided for the abbreviations used in the above table: | | | |
| \* Min. Alt. equals minimal alterations; | | | |
| \*\* Sig.Alt. equals significant alterations; and | | | |
| \*\*\* Dest. Equals destruction. | | | |
| \*\*\*\* The 1.0:1 ratio applies to all other types of wetland vegetation, substrate, or wetland type except those wetlands that have woody vegetation. | | | |
| \*\*\*\*\* This ratio applies if the vegetation of the adversely impacted wetland is woody. | | | |

The ratios in the above table apply, unless the adversely impacted wetland has one or more of the following situations present: This includes:

A) The presence of a State or federally listed endangered and threatened species. (Listed plants or mussels shall be deemed "present" if individuals or populations occur within the area that is to be adversely impacted by a proposed action. For mobile species, "presence" shall be based on the existence of confirmed nesting or breeding sites in the area to be adversely impacted by the proposed action.)

B) The presence of essential habitat of a State or federally listed endangered and threatened species.

C) The presence of an Illinois Natural Area Inventory Site (INAI). The INAI is maintained and updated by the Department following the criteria and methodology described by Jack White, 1978, in the Illinois Natural Area Inventory – Technical Report, University of Illinois Department of Landscape Architecture, p 426.

D) A wetland that is comprised of a plant community that receives a floristic quality native index score of 20 or more and/or a native mean coefficient of conservatism of 4.0 or greater using the procedure described in Plants of the Chicago Region (Swink and Wilhelm 94).

E) If any of the situations described in subsection (c)(8)(A) through (D) of this Section occur, the compensation ratio used to determine the amount of wetland compensation required is always 5.5:1.

F) Compensation ratios refer to replacement area, quantified wetland functions, or dollar value when compared to the wetland area that is adversely impacted. The procedure for computing wetland compensation requirements shall be to multiply the appropriate wetland compensation ratio by the unit of compensation (replacement area, function and/or monetary contribution). Replacement area refers to the amount of wetland compensation required and is computed by multiplying the wetland area that is adversely impacted by the appropriate compensation ratio. Wetland function refers to one or more of the physical processes identified in 20 ILCS 830/1-2. Use of this alternative is dependent upon adoption of a scientifically valid procedure as provided in Section 1090.80 of this Part. Functional units shall be computed separately for each adversely impacted wetland type. These units shall be multiplied by the appropriate wetland compensation ratio. Compensation requirements for each wetland type shall then be aggregated to determine the total amount of wetland compensation required. If this procedure is used, in no instance shall the replacement amount of a wetland be less than the amount of compensation computed using replacement area. Determination of dollar value shall be based upon the fair market value of the adversely impacted wetland, normal and customary cost for the establishment of a replacement wetland (including all planning, engineering, construction, planting and monitoring cost), and operation and maintenance cost of the area for a minimum of 10 years. Dollar value shall be established for an acre of replacement wetland. This dollar value shall be multiplied by the number of wetland acres adversely impacted and the appropriate compensation ratio to determine the total monetary compensation required.

G) The agency or applicant shall request the approval of the Department in the method of compensation to be used. The Department shall not unreasonably withhold its approval. The first priority method of wetland compensation shall be to use replacement area. The second priority methods of wetland compensation shall be to use wetland function and dollar value. Use of the wetland function method is dependant upon the development and adoption of scientifically valid procedures for the identification and quantification of wetland functions.

H) An agency or applicant may request approval to use existing public lands for wetland compensation projects. The Department shall have the final approval on the use of existing public lands for this purpose.

9) If an agency or applicant is not able to develop a sound wetland compensation plan that meets the objectives of the Act or if unique opportunities exist to further the goals of the Act through another means, an agency or applicant may make a formal request to the Department to not require the establishment of the same type of wetland or a replacement wetland as a component of a wetland compensation plan. The Department shall consider such request and may approve:

A) The acquisition of high quality wetlands and associated buffer;

B) The funding of needed relevant research; or

C) Development of a wetland compensation plan that includes replacement of the same and different wetland types as the wetland that was adversely impacted. If either the alternative in subsection (9)(A) or (B) is approved, the Department shall determine the dollar value that must be provided to meet the compensation requirement.

d) The Department may revoke its approval of a wetland determination or a wetland compensation plan for cause, including violation of conditions of approval, obtaining approval by misrepresentation or failing to disclose a relevant or material fact. The Department shall notify the agency or applicant in writing and provide an opportunity for response.

e) An agency may request development of a category of actions called Programmatic Actions for inclusion in an Agency Action Plan. Actions must meet the following criteria in order to be placed in the category of Programmatic Actions:

1) They must be repetitive actions for the repair, maintenance, or improvement of existing structures or rights-of-way; and

2) Have no practicable alternatives that would avoid an adverse wetland impact. Actions included in this category may involve the acquisition of additional land to accommodate the work, provided that it is contiguous to the property on which an existing structure is located and it meets the criteria prescribed in subsections (e)(1) and (2) of this Section. Adverse wetland impacts resulting from projects carried out under this subsection shall require compensation according the wetland compensation matrix defined in subsection (c)(8) of this Section.