



DWR-NR-G-06-COMPLETE ARAP APPLICATION REQUIREMENTS FOR HABITAT ALTERATIONS

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EFFECTIVE DATE: XXXXXX

SIGNATURES:

Jennifer Dodd, Division Director DWR

Jimmy Smith, Drafter / Preparer
Manager, Natural Resource Unit

Stephanie A. Durman, Reviewer
Senior Associate Counsel

BACKGROUND

According to the Bill of Rights for Permit Applicants, Tenn. Code Ann. § 69-3-141, the Division has 30 days to determine that an application is complete or issue a Notice of Deficiency requesting additional information and postponing the 30-day time limit for applications for General and Individual ARAPs. For individual ARAPs, the Division is required to ensure the application is complete prior to providing public notice. For an application to be determined complete, it must contain all of the required information at an appropriate level of detail to enable the Division to make informed regulatory decisions. A complete application must provide enough information for a thorough review and regulatory decision by the Division, and provide the information necessary to inform the public of a proposed activity so they can make informed comments during the public notice process (where applicable).

REGULATORY BASIS

Pursuant to the following rules, a complete application for an ARAP for habitat alterations:

- For all ARAPs, includes the appropriate application fee per Rule 0400-40-11.01.
- For all ARAPs, contains all information requested on Division forms (i.e., CN-1091). Rule 0400-40-03-.06(1)(b)(1) (“A complete application will include all of the information requested on the forms provided by the Department”).



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- For coverage under a General Permit, contains all technical information required by the General Permit.
- For Individual Permits, includes enough information to be placed on Public Notice per Rule 0400-40-07-.04(4)(c), which provides:

(c) The Public Notice will include the following information:

1. Name, address, and telephone number of the applicant;
 2. Name, address, telephone number, and electronic mail address of the Division contact person;
 3. A brief description of the proposed activity;
 4. The location of the streams or wetlands impacted by the proposed activity;
 5. The Division website and data view at which a draft permit, permit rationale, and additional information about the permit application can be found;
 6. The procedure to submit comments on the proposed activity;
 7. The procedure for requesting a public hearing; and
 8. A brief description of the procedure for the Commissioner to make a final determination to issue a permit.
- For Individual Permits, contains all necessary technical information to make a determination to take final permit action per Rule 0400-40-07-.04(5)
 - (a)... The Commissioner will review a completed application and make a determination whether to issue an Individual Permit. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination.
 - (c)... The applicant shall describe the proposed project including the use of technical terms defined in Rule 0400-40-07-.03 where relevant. The sketch or plans and specifications submitted with the application shall describe the method for implementation of the planned activity, whether for an Individual or General ARAP Permit. Where the



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proposed activity would result in an appreciable permanent loss of resource value, the applicant must propose mitigation sufficient to result in no overall net loss of state water resource values.

- For Individual Permits, contains an alternatives demonstration per Rule 0400-40-07-.04(5)(b):

The applicant shall submit an alternatives analysis evaluating a range of potentially practicable alternatives to avoid and minimize the loss of resource values consistent with the overall purpose of the proposed activity. No Individual Permit shall be granted if there is a practicable alternative to the proposed activity that would have less adverse impact on resource values, so long as the alternative does not have other significant adverse environmental consequences.

- For Individual Permits, if the proposed activity would result in an appreciable permanent loss of resource value, contains a mitigation proposal sufficient to result in no overall net loss of state water resource values from existing conditions,. Rule 0400-40-07-.04(7)(a); *but see* Rule 0400-40-07(5)(c) (providing a narrow exception allowing emergency or urgent government projects to submit mitigation plans after permit issuance).
- For Individual Permits, contains information sufficient for the Commission to evaluate the factors set out in Rule 0400-40-07-.04(6)(c).
- For individual permits, contains the applicant's basis for concluding the level of degradation. Rule 0400-40-03-.06(1)(b)(1) provides:

a complete application will include the applicant's basis for concluding that the proposed activity: (i) will not cause measurable degradation, or (ii) will only cause *de minimis* degradation, or (iii) Will cause no significant degradation (for habitat alterations); or (iv) Will cause more than *de minimis* degradation.

- For Individual Permits:
 - Available parameters for habitat/Exceptional Tennessee Waters – The applicant must either:
 - demonstrate that the proposed activity, including the proposed mitigation, will result in no more than *de minimis* degradation, or



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- submit all required antidegradation demonstrations (see below).
- Unavailable parameters for habitat – the applicant must demonstrate that the proposed activity, including mitigation, will result in no significant degradation. No additional antidegradation demonstration is required.
- Outstanding National Resource Waters (ONRW) – the applicant must demonstrate that any appreciable permanent loss of resource values will be fully offset within the same ONRW. No additional antidegradation demonstration is required.
- For Individual Permits resulting in greater than *de minimis* degradation of waters with available parameters or Exceptional Tennessee Waters:
 - (i) Analyze a range of potentially practicable alternatives to prevent or lessen the degradation associated with the proposed activity and demonstrate that there are no practicable alternatives to prevent or lessen the degradation associated with the proposed activity;
 - (ii) Demonstrate that the proposed degradation is necessary to accommodate important social or economic development in the area in which the waters are located; and
 - (iii) Demonstrate that the proposed degradation will maintain water quality sufficient to protect existing uses in the receiving waters.

Rules 0400-40-03-.06(1)(b)(2), (3)(c), and (4)(c)(3).

- For activities that cause greater than *de minimis* degradation to waters with available parameters or to Exceptional Tennessee Waters, alternatives that avoid or minimize degradation should be explored and explained by the applicant. These avoidance or minimization activities could include maintaining or enhancing buffer zones, bridging a stream rather than culverting it, altering the footprint of a project instead of relocating a stream, or using a culvert without a bottom, instead of one that is fully concreted. Rule 0400-40-03-.06(1)(b)(3)(iii).
- To demonstrate that greater than *de minimis* degradation to waters with available parameters or to Exceptional Tennessee Waters is necessary to accommodate important social or economic development in the area in which the waters are located, the applicant shall provide a written justification to include, as applicable:
 - a description of the project,



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- the number of jobs anticipated to be created (including salaries/benefits, duration, and type),
- tax revenue to be generated,
- impact of the proposed degradation to development potential in the area, other social/cultural impacts, and any other justification, and
- alternative or additional information regarding economic or social necessity as directed by the Department.

The application must demonstrate an overall benefit to the local community, not just a benefit to the applicant. Rule 0400-40-03-.06(1)(b)(4).

IMPORTANT INFORMATION CONTAINED IN A COMPLETE APPLICATION

- A narrative description of the project scope. What are you proposing to do? What equipment will be used? What are the timelines and stages or phases of the proposed project?
- USGS topographic map and latitude/longitude coordinates (in decimal degrees) indicating the exact location of the project and impacts to water resources.
- Photographs of the resource(s) proposed for alteration with location description, picture orientation, and date of photograph
 - Pictures upstream and downstream for proposed stream impacts
 - Pictures at the wetland delineation data points
 - Photos should include a reference scale or point of reference.
- Description of the existing water feature(s) and proposed water feature(s).
- For wetlands, delineation forms and site maps denoting location of data points
 - Fill out the forms completely
 - Fill out and submit a data form for each data point, not just one for each wetland.
- For linear watercourses, jurisdictional stream determination documents.
- Description of the need for the project, alternatives considered, and avoidance and minimization of impacts.
- Detailed plans, specifications, blueprints or legible sketches of present site conditions and proposed activities.



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- Discussion of the sequencing of events and construction methods. Describe the method for implementation of the planned activity.
- Description of erosion prevention and sediment control measures for proposals involving land disturbance (not required for proposals that would be covered under a General Permit, if authorized).
- Analysis of the alternatives considered that describes the level of degradation caused by each alternative, and explains why the proposed alternative is the least harmful to water resources.
- Discussion of the social and economic consequences of each alternative.
- Demonstration that the degradation associated with the preferred alternative will not violate water quality criteria for uses designated in the receiving waters and is necessary to accommodate important economic and social development in the area.
- Detailed discussion of the proposed compensatory mitigation plan.
- The use of an appropriate quantitative assessment or other defensible scientific method must be used in the evaluation resource value compensation, where appreciable permanent resource loss is proposed.
- Description of how the compensatory mitigation would result in no net loss of resource value.
- Detailed monitoring plan for the compensatory mitigation site.
- Describes the long-term protection measures for the compensatory mitigation site .

COMMON ITEMS OF DEFICIENCY IN PERMIT APPLICATIONS

- Description of the need for the proposed activity, including, but not limited to the purpose, alternatives considered and rationale for selection of least impactful alternative, and what will be done to avoid or minimize impacts to water resources. (Section 7, application form).
- A detailed narrative description and table summarizing impact sizes, types, and locations in decimal degrees (Section 6, application form).
- Detailed plans with measurements of water resource impacts and dimensions of structures (Section 8.1, application form).



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- A discussion of all reasonable alternatives considered and describe the level of degradation and permanent loss of resource value caused by each alternative. Assessments must consider options other than the “Preferred” and “No Action” alternatives. Provide associated rationale for selecting or rejecting all alternatives considered. (Section 10.1, application form).
- For projects that will result in degradation and/or resource value loss, a mitigation proposal adhering to the ARAP rules that adequately offsets loss of resource value (Section 11, application form). If utilizing a third-party provider, a credit reservation letter is needed. If permittee responsible mitigation is proposed, application materials should include evidence of resource value benefit, timelines, planting plans, detailed construction plans and other items outlined in the Permittee Responsible Mitigation guidance document (<http://www.tn.gov/environment/article/wr-wq-mitigation-pre-application>).
- Any previous permits and cumulative impacts that are part of the Common Plan of Development (Section 4, application form). Previous and cumulative impacts should be discussed in the application.
- For mitigation of streams, mitigation for impacts must be developed in a scientifically defensible manner approved by the Division (e.g., the Stream Quantification Tool) that demonstrates a sufficient increase in resource values to compensate for permitted impacts.
- For proposals that may impact a state- or federally-listed rare species, environmental reviews by the Division of Natural Heritage and the Tennessee Wildlife Resources Agency should be provided.
- As applicable, any signed Hydrologic Determination concurrence letters from the appropriate TDEC Regional Environmental Field Office (Section 6.7, application form), and any Jurisdictional determination letters from the Corps of Engineers, especially for wetland delineations.
- Correct application fee.
- Signature from an authorized person.
- Applications from companies that are either not validly formed or not in good standing with the Tennessee Secretary of State.



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Revision Number	Date	Brief Summary of Change
0	TBD	Initial issuance of the guidance

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