



Is it possible to miss a wetland?

Beginning Concepts of Elimination and Reduction of Impacts; Section 4.2.1 Basis of Review

THE RULE!!!!



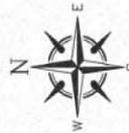
- Section 4.2.1 (Basis of Review for Environmental Resource Permit Applications) Elimination or Reduction of Impacts
- The degree of impact to wetland and other surface water functions caused by a proposed system, whether the impact to these functions can be mitigated and the practicability of design modifications for the site, as well as alignment alternatives for a proposed linear system, which could eliminate or reduce impacts to these functions, are all factors in determining whether an application will be approved by the District. Design modifications to reduce or eliminate adverse impacts must be explored as described in subsection 4.2.1.1. Any adverse impacts remaining after practicable design modifications have been implemented may be offset by mitigation as described in subsections 4.3 - 4.3.9. An applicant may propose mitigation, or the District may suggest mitigation, to offset the adverse impacts caused by regulated activities as identified in sections 4.2 - 4.2.8.2. To receive District approval, a system cannot cause a net adverse impact on wetland functions and other surface water functions which is not offset by mitigation.
- 4.2.1.1 Except as provided in subsection 4.2.1.2, if the proposed system will result in adverse impacts to wetland functions and other surface water functions such that it does not meet the requirements of sections 4.2.2 through 4.2.3.7, then the District in determining whether to grant or deny a permit shall consider whether the applicant has implemented practicable design modifications to reduce or eliminate such adverse impacts. The term "modification" shall not be construed as including the alternative of not implementing the system in some form, nor shall it be construed as requiring a project that is significantly different in type or function. A proposed modification which is not technically capable of being done, is not economically viable, or which adversely affects public safety through the endangerment of lives or property is not considered "practicable". A proposed modification need not remove all economic value of the property in order to be considered not "practicable". Conversely, a modification need not provide the highest and best use of the property to be "practicable". In determining whether a proposed modification is practicable, consideration shall also be given to the cost of the modification compared to the environmental benefit it achieves.
- 4.2.1.2 The District will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when:
 - a) the ecological value of the function provided by the area of wetland or other surface water to be adversely affected is low based on site specific analysis using the factors in subsection 4.2.2.3, and the proposed mitigation will provide greater long term ecological value than the area of wetland or other surface water to be adversely affected, or
 - (b) The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.
- 4.2.1.3 Should such mutual consideration of modification and mitigation not result in a permissible system, the District must deny the application. Nothing herein shall imply that the District may not deny an application for a permit as submitted or modified, if it fails to meet the conditions for issuance, or that mitigation must be accepted by the District.



WHAT THE RULE SAYS:

- The applicant must demonstrate that **elimination or reduction** of impacts has been done.
- The rule establishes that only **practicable modifications** are required and must be options that are **technically possible, economically viable**, or consistent with **public safety**.
- But they can include uses which are not necessarily the **“highest or best”**.
- The **costs** of practicable modification **should not exceed** the environmental **benefit**.
- There is an opportunity to **exempt** the project from modification.
- The application may be **denied** if the modifications or the mitigation do not result in a permissible system.



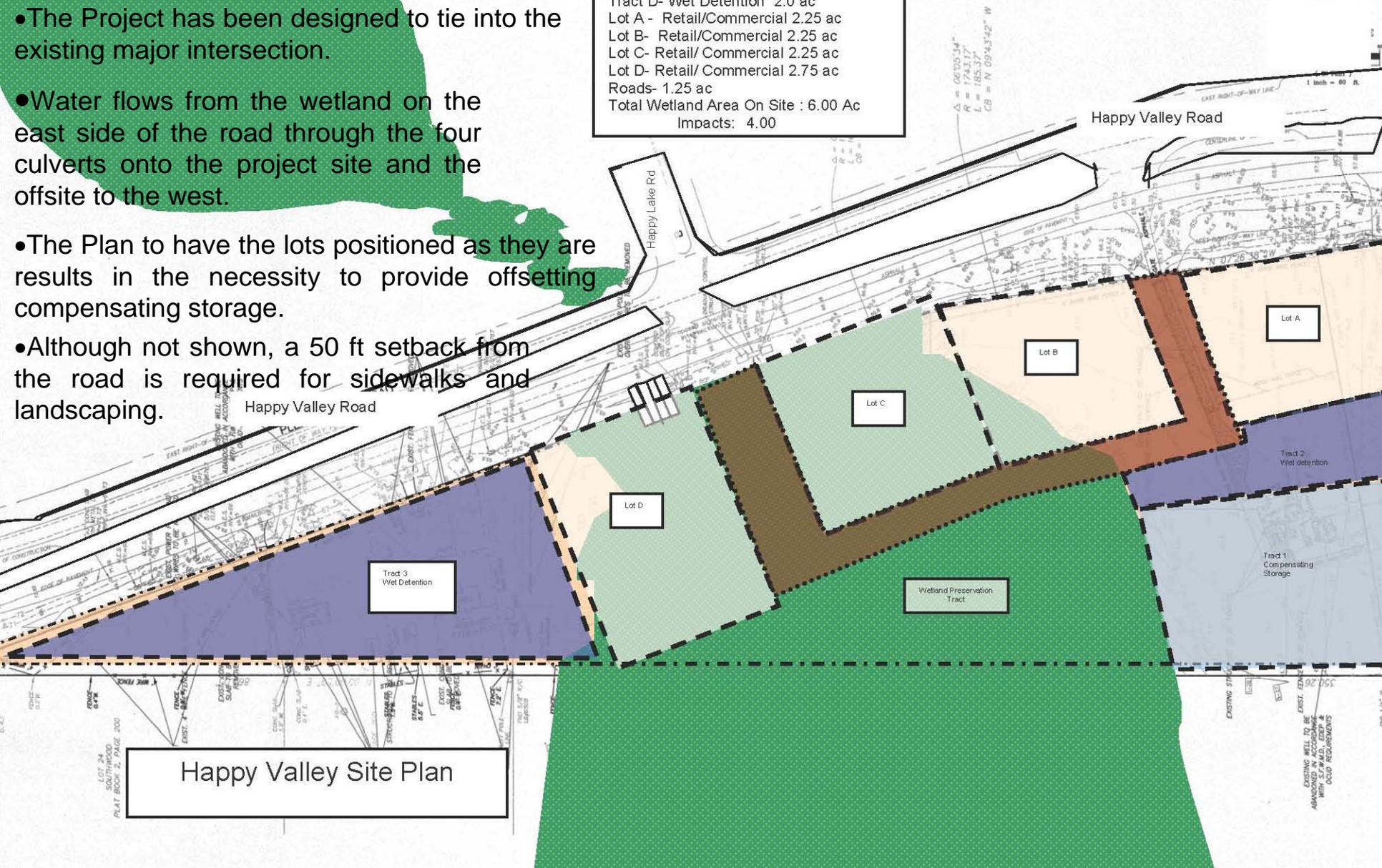


NTS

Site Data
 Total Project Area 21.00 ac
 Tract A- Compensating Storage- 1.5 ac
 Tract B- Wet Detention – 0.75 ac.
 Tract D- Wet Detention 2.0 ac
 Lot A - Retail/Commercial 2.25 ac
 Lot B - Retail/Commercial 2.25 ac
 Lot C - Retail/ Commercial 2.25 ac
 Lot D - Retail/ Commercial 2.75 ac
 Roads- 1.25 ac
 Total Wetland Area On Site : 6.00 Ac
 Impacts: 4.00

Please note the following features:

- The Project has been designed to tie into the existing major intersection.
- Water flows from the wetland on the east side of the road through the four culverts onto the project site and the offsite to the west.
- The Plan to have the lots positioned as they are results in the necessity to provide offsetting compensating storage.
- Although not shown, a 50 ft setback from the road is required for sidewalks and landscaping.



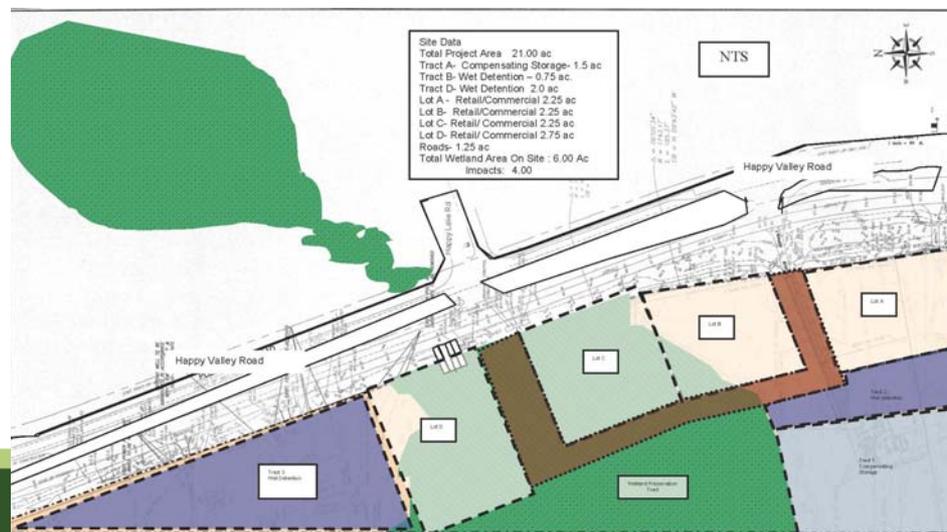
Happy Valley Site Plan

How could the various provisions of Elimination or Reduction be used in this case?

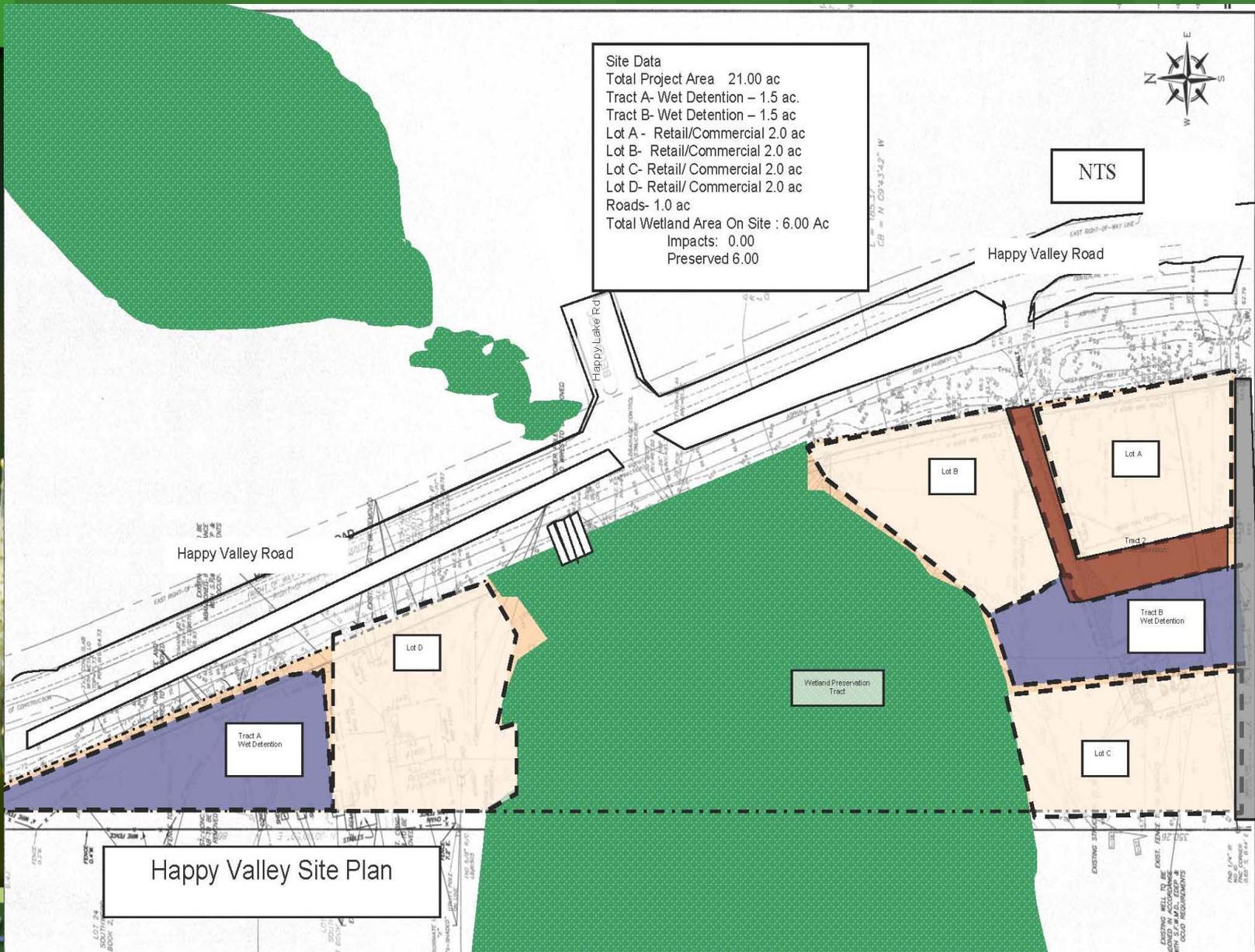
■ Reductions:

- ? Have entrance road parallel the main road along the road frontage, move Lot D to where the compensating storage pond
- ? Get rid of Lot D; provide alternative entrance to the south.

- ?
- ?
- ?



Is it Possible to Eliminate All Impacts?



So What Does the rule Say Regarding my Proposed Alternatives?



- Is this practicable?
- Is It technically Viable?
- Does it meet public safety requirements?

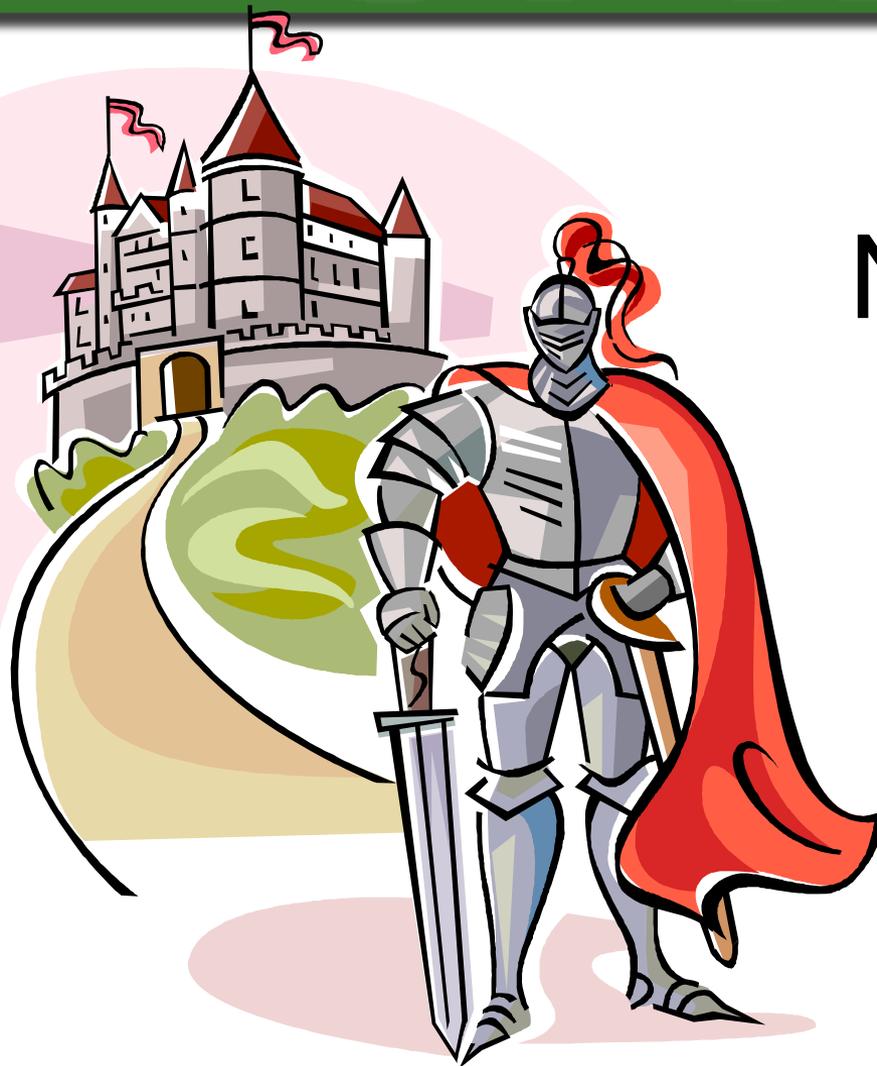


How could local building rules affect the viability of the alternatives?

- Setback requirements
- Safety requirements
- Road design and traffic limits
- Landscaping requirements
- Greenspace requirements
- Impacting high quality wetlands-prohibited.



Does this parcel -plan have to be the
"highest or best use"?



NO!!!!



What other uses would provide a lower impact on the resources?

- 
- It could be office space requiring less parking space.
 - It could be clean manufacturing/ assembly.
 - What else could it be that might be a smaller footprint and less traffic?

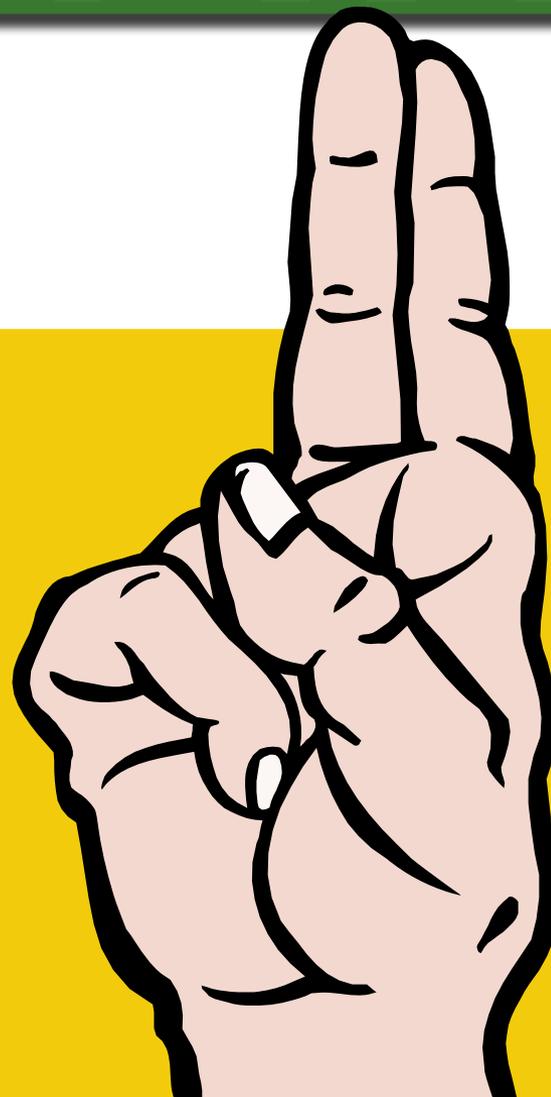


Are all of the alternatives financially feasible?

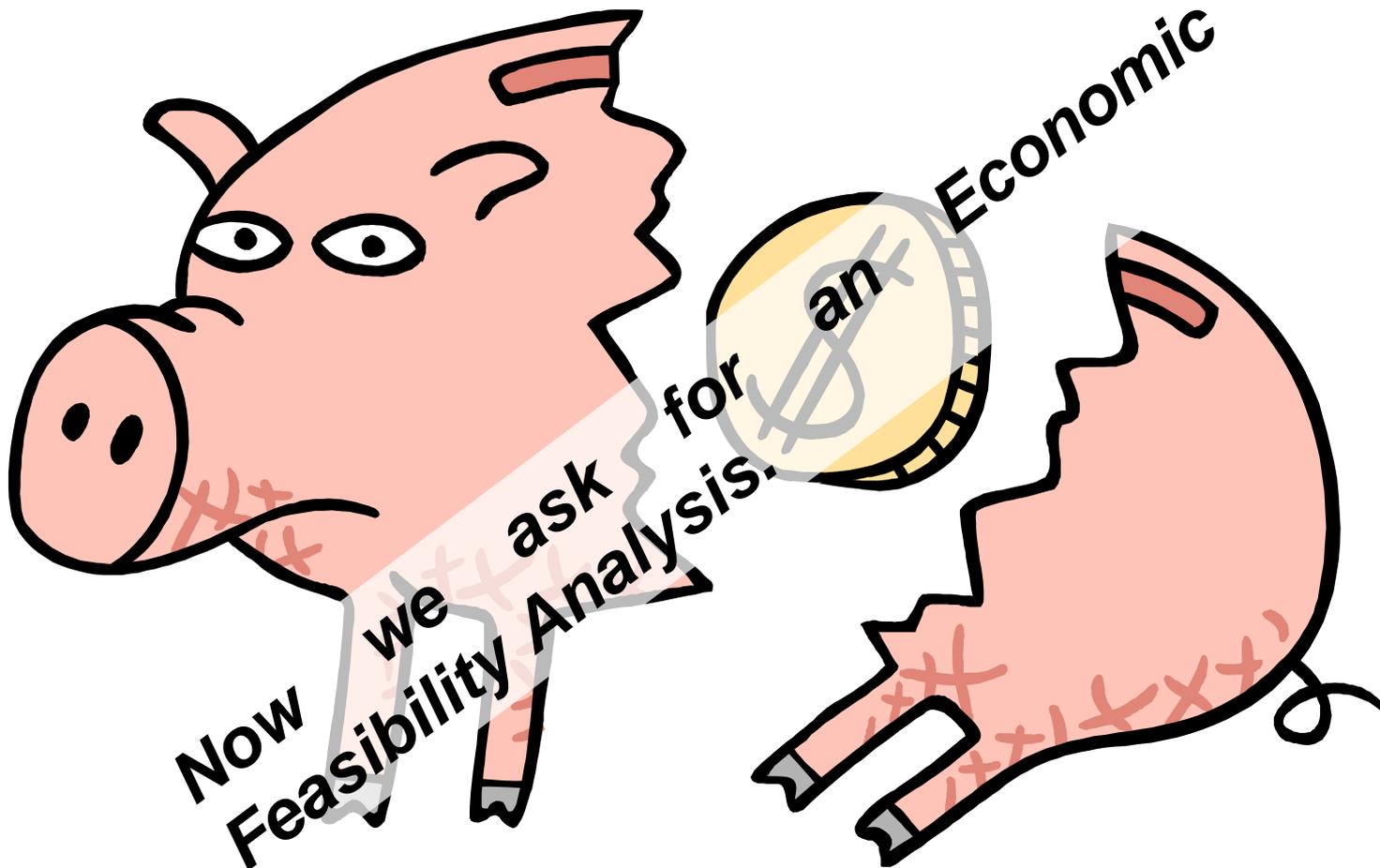


We no longer will just accept the statement that the project won't be financially feasible under any other scenario.

- **HONEST!!**



What demonstrates financial feasibility?



Here is an example of an RAI question for a commercial/residential project:

Your response appears to claim that further elimination and reduction of wetland impacts would render the project financially unfeasible. Pursuant to Section 4.2.1, please provide an economic analysis of the alternatives options. The analysis should include, as an example, the components listed below as well as any other relevant information. Please note that any supporting documentation should also be submitted.

A comparison of the following alternatives individually and/or in combination (e.g. alternative 5 and alternative 4 together):

As presently proposed,

With no impacts,

With a percentage of functional loss that can be equitably distributed to all projects throughout the basin without unacceptable cumulative impacts to the basin,

With building designs allowing for smaller footprints (vertical design) while maintaining (or slightly reducing) square footage; and.

With a revised plan that provides residential and commercial development (of the same or reduced scale) which does not rely on a boating or lakes theme.

The costs of construction and maintenance of each of the five options;

Consideration of the reduction in costs associated with each option.

The threshold of expenses which would make the project non-viable, and why;

Financing expenses such as (but not limited to) Interest expenses, loan costs, bond costs;

The assumed minimum return on investment required and the basis for that assumption

The net profit margin for each alternative.

All possible streams of revenue associated with the assets of the projects for each alternative.

A demonstration that the feasibility analysis includes market factors for each of the alternatives

Areas of the mitigation parcels may be sovereign submerged lands for which the applicant may not hold clear title.

What other options does the applicant have for meeting the rule requirements?

- **Mitigation:**
- **What are the two options that provide an out through Mitigation:**
 - A. Mitigation which is of **greater** functional value than that lost.
 - B. Mitigation which is of greater functional value than that lost and is **regionally significant**.



When do these options apply?



- A. Applies to impact areas that have a **low functional value** (for the sake of the discussion lets say the threshold value is a functional loss per acre of 0.4 umam units).
- B. Applies to **all other** impact areas.



What about Happy Valley? What would the mitigation option look like for this Project?

- A. If the wetland is low function then just provide **greater** longterm ecological function
- B. If the wetland is Greater function then just provide **greater** longterm ecological function and **regionally significant** value





So Now You know the Answer to that age old Question: Is it possible to miss a wetland:

- **YES** IT IS!!!!
- And we will be looking for you to show us how its being done on your projects!!!





Somebody say Amen!