

**MINUTES OF THE RULES AND WATERSHED MANAGEMENT PLAN WORKSHOP
OF THE
COMFORT LAKE - FOREST LAKE
WATERSHED DISTRICT**

TUESDAY, MAY 6, 2008

1) **Call to Order**

The President called the rules and watershed management plan workshop meeting to order at 3:30 p.m. at the Forest Lake City Offices, 220 North Lake Street, Forest Lake, Minnesota

Present: President Jackie Anderson, Vice President Dick Damchik, Secretary John Lynch, Treasurer Jon Spence, Manager Wayne Moe

Staff: Randy Anhorn, Chuck Holtman (Smith Partners), Lisa Tilman (EOR)

2) **Review Compiled Comments from 60-Day Review of Watershed Management Plan (Plan)**

Administrator Anhorn provided an overview of received comments from the District's proposed Plan revision from Wyoming Township, Washington County, Met Council, MnDOT, BWSR, MPCA, and DNR (a copy is annexed and incorporated by reference). Administrator Anhorn mentioned the next steps of the Plan revision including the upcoming public hearing on May 22, 2008 for public comment (where additional comments will be heard and could also be incorporated into the Plan revision) after which the Plan will be resubmitted for a 45-day agency review.

The Board discussed the District's current legislation, options if the District's attempt to be designated a Metro watershed under Minnesota Statute Chapter 103B is unsuccessful, and the ultimate differences between Minnesota Statute Chapters 103B and 103D.

3) **Discuss CLFLWD Draft Rules and Overall Vision**

Chuck Holtman stated that a review of the compiled Technical Advisory Committee and Citizen Advisory Committee (TAC/CAC) recommendation/suggestion memo to be discussed later, suggests that a number of the TAC/CAC comments concern the District's role in regulation in relation to the local units of government (LGUs), the DNR and the MPCA (questions such as how broadly applicable the District's rules should be, whether they should overlap the regulations of other units of government or "fill gaps," and what sort of compliance oversight role the District should assume). To help facilitate the Board's ultimate decisions on the TAC/CAC comments, Mr. Holtman presented a table detailing six questions (below) that the Board should ask itself; the answers to these questions, he stated, may help the District make the fundamental decisions about the regulatory program that the TAC/CAC comments concern.

Mr. Holtman further presented three basic scenarios the Board could look at in implementing its standards.

- The District could adopt rules and standards that address areas where others are not already regulating (gap filling).

- The District could set broad rules and standards and regulate even if others are already regulating (this option could cause some duplication).
- The District could set broad rules and form cooperative agreements with LGUs or agencies to determine the role of each to uphold the integrity of the rule/standard.

Policy Considerations for Rulemaking Approach

<i>Consideration</i>	<i>Important</i>	<i>Less Important</i>
Desired “Assertiveness”		
District sets protection standards?	Broad rules	“Gap filling” including LGU ESC/stormwater if “close enough”
If LGU standards are adequate, trust LGU to implement?	Retain permitting role or audit through cooperative agreement	Set standard then step aside through cooperative agreement
Regardless of LGU assertiveness, retain oversight/enforcement capacity?	Broad rules, then refine through cooperative agreement	Set standard then step aside through cooperative agreement
Administrative Resources & “Customer Friendliness”		
District resources for broader permitting program with or without cost recovery (through fees)	“Gap filling,” greater willingness to step aside	Broader rules, retain oversight role
Concern for duplication	Defer to DNR (shoreline), MPCA (ESC/stormwater), LGU (floodplain); step aside for LGU through cooperative agreement (ESC/stormwater)	Broad rules
Simplicity	Broad rules; applicability determined through cooperative agreement with LGU	“Gap filling”

The Board discussed the rulemaking considerations that Mr. Holtman had presented and stated the importance of using the rules/standards as a method to address and manage the water quality and quantity needs and issues pointed in recent District studies (i.e impaired waterbodies). The Board further discussed the philosophical differences between implementing the rules/standards broadly (providing consistency throughout the watershed through a District implemented permitting program), or through a more narrow gap-filling view where District standards would only address areas where others were not already regulating. The Board raised concerns that gap filling approach would not be comprehensive enough to address the District’s needs, and that potential oversight would be lost. Following discussion on the importance of the resulting rules and the differences between which approach was best, the Board came to consensus that implementing the rules broadly, even if others are already regulating, would provide better consistency throughout the watershed and better address the

District's water quality and quantity issues and provide for better initial oversight ensuring that District standards are met.

The Board also felt strongly that the best and most efficient way to broadly implement the rules and standards is in cooperation with LGUs and agencies. Through cooperative agreements, the role of each entity could be defined and refined and the District could potentially step aside if the integrity of the standard is upheld.

Following the Board discussion on their vision of the District's rules and standards and resulting roles, the Board stated that they could work on the enforcement aspect of the rules as the District sits down with the member communities.

4) **Discuss Compiled Comments from the TAC/CAC meetings**

Lisa Tilman (EOR) provided the Managers with memo containing the compiled list of TAC/CAC recommendations needing Board discussion. A copy of each presented memo is annexed and incorporated by reference. Ms. Tilman walked the Board through the TAC/CAC recommendation items needing Board decision/discussion in order to provide direction to staff on areas to edit the current draft rules.

1. *Rule 2.0 Stormwater Management*

Recommendations to the Board from the TAC/CAC included:

- The TAC/CAC suggests that the District should concentrate on larger projects; subdivisions of 4 or more parcels as opposed to rule 2.2(a) requiring a District permit for subdivisions of 3 lots or more.
- The TAC/CAC members recommended that the District should just have an acreage threshold (2.2(b)) and remove the "5% impervious of site" threshold. The majority, of the TAC/CAC members, including agency representatives, thought that a 5% threshold was too low.
- The TAC/CAC recommended combining 2.2(a) and 2.2(b) requiring residential and non-residential creating impervious surfaces that in aggregate exceeds one (1) acre.
- The TAC/CAC suggested that applicability 2.2(c) is unreasonable. A disturbance threshold of 50% of site is more reasonable.
- The TAC/CAC recommended that 2.2(d) statement "and other ordinances that impact water" should be better defined. TAC/CAC members recommend specifying only variances from the allowable impervious surface percentage and structure setback from water resources.

Following Board discussion on the provided comments from the TAC/CAC, differences in impacts of projects located within the shoreland impact zone (1,000 feet) of a public waterbody, as opposed to outside the shoreland impact zone, and the need to try to address existing problems through retrofits at the time of redevelopment, the Board decided to:

- Change rule 2.2(a) to include minor subdivisions (subdivisions down to 3 lots) only within the 1,000 foot shoreland impact zone of a public water. If the proposed is outside the

1,000 foot shoreland impact zone of a public water, the stormwater rule applies to subdivisions of 4 or more lots.

- Change rule 2.2(b) to read that:
 - If the proposed non-residential or multi-residential development is within the 1,000 foot shoreland impact zone of a public water, the rule applies to all non-residential or multi-residential developments creating, disturbing, or redeveloping impervious surface that in aggregate exceeds one (1) of the site, or five (5) percent of the site (whichever is less).
 - If the proposed non-residential or multi-residential development is outside the 1,000 foot shoreland impact zone of a public water, the rule applies to all non-residential or multi-residential developments creating, disturbing, or redeveloping impervious surface that in aggregate exceeds one (1) of the site, or twenty-five (25) percent of the site (whichever is less).
 - Keep 2.2(a) and 2.2(b) separate.
 - Incorporate 2.2(c) into 2.2(b) and then eliminate 2.2(c)
 - Eliminate 2.2(d) all together

2. Rule 3.0 Erosion Control

Recommendations to the Board from the TAC/CAC included:

- The TAC/CAC members recommended that the Rule apply to sites with disturbance of 1 acre or greater to provide general oversight by the District. Municipalities can address the smaller sites.

Following Board discussion on the provided comments from the TAC/CAC and differences in impacts of projects located within a waterbodies shoreland impact zone as opposed to outside the shoreland impact zone the Board decided to:

- Change rule 3.2 to read that:
 - If the proposed non-residential or multi-residential development is within the 1,000 foot shoreland impact zone of a public water, the rule applies to the grading, filling, or other land alteration activities which involve movement of more than two hundred (200) cubic yards of earth or erodible material and surface disturbance or removal of vegetative cover on one quarter acre (1/4) or more of land.
 - If the proposed non-residential or multi-residential development is outside the 1,000 foot shoreland impact zone of a public water, the rule applies to the grading, filling, or other land alteration activities which involve movement of more than two hundred (200) cubic yards of earth or erodible material and surface disturbance or removal of vegetative cover on one acre (1) or more of land.

3. Rule 4.0 Lake, Stream, and Wetland Buffer

Recommendations to the Board from the TAC/CAC included:

- The consensus of the TAC/CAC was that other than for applicability 4.1(a) and a revised 4.1(b) on a case by case basis, much of the buffer rule applicability was unrealistic, unenforceable, and of questionable legality.

Following Board discussion on the enforceability of the buffer rule requirements under rule 4.1(c) and 4.1(d), on the value of education and incentives as the method of achieving the value of buffers as opposed to forcing buffers in places where they may not be maintained, and legal questions answered by the District Attorney, the Board decided amend the applicability section (rules 4.1(a), 4.1(b), and 4.1(c) to:

- Eliminate rule 4.1(c) and 4.1(d), and change 4.1(b) to read to read that:
 - Rule 4.0 applies to land adjacent to (within the buffer zone of) any General Development Lake, Recreational Development Lake, Natural Environment Lake, a tributary of said lakes or a wetland within the watershed; (b) and subject to a new primary use for which a necessary rezoning, special use permit or variance for impervious percentage or structure set-back from the resource has been approved on or after [the date of rule adoption].

The Board then discussed the value of education and its current BMP cost-share incentive program to obtain the value of buffers along its water resources.

4. Rule 5.0 Shoreline and Streambank Alterations

Recommendations to the Board from the TAC/CAC included:

- The TAC-CAC recommends that that the District not issue permits for Rule 5.0 since the DNR already has standards and permits below the OHWL. The District could review and comment on the DNR permits.
- In some cases (i.e. lakeshore and streambank alterations), the District should consider administrative permits which would be handled by staff and not require Board action.

The Board discussed the potential of the District's rules/standards filling in gaps of DNR shoreland regulations, as well as the possibility of having a cooperative agreement with the DNR to have the District take over the permitting of shoreland alterations below the OHW within the boundaries of the District. The Board further discussed the potential work load of enforcement and inspections for implementing the District's shoreland rule/standards along with the District's other rules, and alternatives to address the workload.

After discussion, the Board decided to:

- Initially provide comment to the DNR as part of their shoreland permitting process, but state in the rules that as the District's funding options increase and potential for hiring staff increases, the District and DNR may jointly agree to transfer shoreland and streambank alterations regulatory responsibilities within the boundaries of the watershed, to the District.
- Add a section 1.12 to the Procedural Section that states: "Permit decisions will be made by the Board of Managers except as the Board, by written resolution, may delegate to the District Administrator."

5. Rule 7.0 Floodplain and Drainage Alterations

Recommendations to the Board from the TAC/CAC included:

- The TAC-CAC recommends that the District's best position would be as a partner, assisting the communities by developing elevations for waterbodies and other areas which do not have flood elevations already set by FEMA.

After discussion on the proposed rule, the Board didn't think rule 7.0 should be changed. In fact, the Board pointed out that the rule already stated that if the municipality had a State-approved floodplain ordinance, the District's Floodplain Rule would not apply and the municipalities would.

The Board further discussed the need for consistently stating that if available, the DNR stated Ordinary High Water Line (OHWL) for a particular waterbody should be used, and if not available, the District should work with the DNR in establishing an OHWL for the waterbody.

6. Rule 8.0 Wetland Management

Recommendations to the Board from the TAC/CAC included:

- The TAC-CAC recommends that Rule 8.0 be a policy not a rule. The TAC/CAC suggests leaving the Wetland Management heading with a policy statement stating that the District is not the WCA LGU that it supports WCA, and while the District will not require a permit, they would participate in the wetland TEP process.

The Board pointed out that the wetland management section already stated that the District is not the WCA LGU and that it is already written as a policy and not an actual rule. For those reasons, the Board decided not to change the wetland management section.

7. Rule 13.0 Enforcement

Recommendations to the Board from the TAC/CAC included:

- The TAC-CAC recommends that the District and the municipalities should work on memorandums of understanding (MOU) or cooperative agreements in order to define enforcement roles.

The Board discussed the desire to set up cooperative agreements with the municipalities once the draft rules are complete. The Board further discussed the need to set up guidelines to determine what authority is given to the Administrator to handle issues that would need immediate attention and the development of an internal document detailing the options and sequence of enforcement. Chuck Holtman mentioned that Smith Partners has developed internal documents on enforcement of rules outlining the enforcement authority of the Board and its ability to delegate that authority to staff. The Board asked Mr. Holtman to forward an example draft internal enforcement policy to the Administrator.

8. Water Quality

The Board discussed various options for including load reduction goals for each lake (as determined in the District's load allocation model), in setting water quality standards for the District's rules as associated with a District stormwater management permit. Ms. Tilman presented a table showing the percentage of phosphorus load reduction needed to meet each lakes short- and long-term goals. The Board discussed the following options:

- a. Use of each individual lake's phosphorus reduction goal as the phosphorus reduction standard in that lake's watershed.
- b. Use a single goal for the entire District. This goal could be based on the average reduction required for each lake (short-term 27%, long-term 39% reduction), or on the St. Croix Basin Planning team goal (20% reduction), or on the most common load reduction percentage range needed for the lakes, minus their internal load (45-50% reduction throughout the watershed).
- c. Do not state a specific reduction, but specify the use of volume control and water quality treatment practices that are expected to provide the needed level of phosphorus load reduction. A water quality credit program could also be used with this method.
- d. Use a goal of no increase in phosphorus load and address all excess existing loads through District projects.

The Board discussed the merits of individual and a single watershed-wide goal, and the reasoning of factoring out each lake's internal load (where District in-lake alum treatments are scheduled as part of the District's CIP) from the watershed based load reduction needs to meet goals. Following discussion on the District's impaired waterbodies, the results of the District's load allocation modeling study, and the presented need to reduce watershed loading in order to meet lake water quality goals, the Board decided to set a District-wide phosphorus reduction standard of 50%, and address potential problems of meeting the standard due to undeveloped natural areas being developed (requiring a 50% reduction from the pre-developed conditions) on a case by case basis through the variance process.

9. Other

Recommendations to the Board from the TAC/CAC included:

- That the District re-evaluate the need for a professional survey under Rule 4.0 and 5.0 for all projects and the need to have the site design prepared by a professional engineer or landscape architect registered by the State.

The Board requested that staff note each area within the rule 5.0 where the need for professional survey and site designs prepared by a professional engineer or landscape architect registered by the State is referenced, and bring the list and recommendations back to the Board a for the May 22, 2008 meeting. The Board further discussed the need for design by professional engineers and landscape architects registered by the State for retaining wall, but not necessarily for shoreline buffers (bioengineering projects).

The Board discussed internal procedures for variances and the need for the development of internal policies, but to not include the procedures in the actual rule. The Board felt that rule 11.4 (procedures for variances) should state that procedures for requesting a variance to District rules can be obtained from the Administrator.

5) Next steps

The Board discussed the next steps in the development of District rules. It was determined that updated draft rules, incorporating changes would be presented to the Managers prior to the May 22, 2008 regularly scheduled meeting and discussions will be held as to the scheduling of a meeting between the Managers and local elected officials or planning commissions, and a joint Manager –TAC/CAC meeting to discuss changes to the draft rules stemming from TAC/CAC comments.

6) **Adjournment**

Motion to adjourn CLFLWD Rules Workshop was made by Manager Damchik and seconded by Manager Spence. Motion carried unanimously.

John T. Lynch, Secretary