

Notes/Minutes from the April 1, 2008 TAC/CAC meeting

Topic:

- Follow-up from the March 4 and March 18, 2008 TAC/CAC meeting
- Rule (4) Lake, Stream, and Wetland Buffers
- Rule (5) Shoreline and Streambank Alterations
- Rule (8) Wetland Management

Attendance:

Jackie Anderson- CLFLWD Manager
Randy Anhorn- CLFLWD Administrator
Doug Borglund- City of Forest Lake
Phillip Elkin- City of Wyoming
Jeff Fertig- Chisago County
Jack Frost-Met Council
Beryl Halldorson- CLFLWD CAC/Bone Lake Association
Anne Hurlburt-City of Scandia
Melissa Lewis- BWSR
Dan Seemon-ACOE
Jyneen Thatcher-WCD
Lisa Tilman-EOR

Written Comments Received:

Phil Gravel- City of Forest Lake Engineer (Bonestroo)
Fred Weck- Wyoming Township
Wade Klingsporn-DNR

Comments:

Follow-up from the March 4 and March 18, 2008 TAC/CAC meeting

Notes and minutes from the March 4 and March 18, 2008 TAC/CAC meeting were highlighted as was a memo presenting TAC/CAC comments that were brought to the CLFLWD Board of Managers on March 27, 2008 and the resulting discussion results and decisions on the presented TAC/CAC comments.

Randy Anhorn presented an altered TAC/CAC meeting schedule which included an upcoming April 15, 2008 meeting, and a yet to be scheduled Manager workshop to discuss specific comments from the TAC/CAC, a follow-up joint Manager TAC/CAC meeting, and canceled the April 29, 2008 scheduled TAC/CAC meeting.

Dan Seemon of the Army Corp of Engineers asked for the ACOE to be referenced under rule 6.0-Watercourse and Basin Crossing.

Rule (5) Shoreline and Streambank Alterations

Lisa Tilman first asked the TAC/CAC if they felt that the District needed a shoreline and streambank alteration rule. There was discussion that followed as to the need for the District to actually regulate such alterations when the DNR already permits below the OHWL and if the rule results in duplication.

Specific TAC/CAC member comments:

Jack Frost

- Jack asked why the District needed Rule 5.0 when the DNR already had standards and permitted for that referenced in the Rule (i.e. sandblankets and rip rap).
- Jack thought that the best method to achieve the benefits of shoreland and streambank alterations was through education and through a cost-share program to provide funds to move away from the “hard-engineering” (rip rap).
- Jack thought the phrase “aesthetic superiority” under 5.3 should be removed.
- Jack stated that the requirement under 5.5.9 of native plantings in the rip rap of 25% or more of the overall area of the rip rap would be difficult to calculate.
- The rules should define streambank.
- Jack asked where the District has “streams”? Is it the outflow of lakes, the Sunrise River? The rules should define stream.

Anne Hurlburt

- Why does the District want to regulate below the OHWL when the DNR already has standards and permits, and if through the DNR standards, if a permit is not needed, does the District want or expect to regulate? If the DNR already permits, why does the watershed want to permit?
- Anne asked if the District rules, specifically the retaining wall standards were to address issues wholly or partially below the OHWL.
- Anne asked about the need for a professional survey for all projects. This could be rather onerous and expensive.
- As to the 25% of rip rap area planting requirement under 5.5.9, Anne wondered how this would be measured. Anne thought it may make more sense if the District required a number of plantings per square foot.
- The rules should define bioengineering.

Doug Borglund

- The District should keep in mind the financial burden that requiring two permits (DNR and watershed) would have on homeowners. It seems as though the District is over regulating.
- Doug believes education and cost-share incentives would be the best approach.
- Doug also thought that maybe the District should simply review and comment on the DNR permits and suggested that the District sign up to receive notice of DNR permit applications.

Jyneen Thatcher

- Jyneen suggested that the District check with the DNR on where they would like some local control. Jyneen stated that the DNR had constraints and encouraged local agencies to take over some control. The District could expedite any permits if a DNR permit was already obtained. The District could think about administrative permits that would not necessarily need Board approval.
- As to Dan Seemon’s comment, Jyneen suggested that the Rules should specify one OHWL set— “highest mark as delineated by....”
- Jyneen mentioned that even if rip rap were used, it would be beneficial if a band of native vegetation were used above the rip rap.

Phillip Elkin

- Phillip asked if the District’s Rule 5.0 just addressed below the OHWL. If so, that is what the DNR already regulates.

- Phillip questioned the rip rap criteria as to only allow when bioengineering is shown to be unfeasible, (even if DNR allows?)
- Phillip asked if it was the intent of the District to issue permits for things below the OHWL. Phillip also stated that a problem with requiring an additional permit on top of a DNR permit, is that many people would simply get a DNR permit and think that is all they needed.

Dan Seemon

- Dan questioned what the District would do if different agencies have different OHWLs. The rules should spell out which OHWL they would use.
- Dan said that the ACOE's OHWL was almost always higher than the DNR.
- Dan mentioned the importance of native shoreland vegetation is that they take the normal bounce of a waterbody, and the natives planted within rip rap would do the same.

Melissa Lewis

- Melissa stated that while the DNR allowed ice ridge removal for ice ridges formed within the same year, Washington County required a grading permit for ice ridge removal.
- Melissa thought that the District should look through Rule 5.0 and only address areas where there are gaps and do not try to regulate everything. For example, the DNR's sandblanket rule already covers what the District's does and maybe the District would not need a sandblanket rule, but if the District would like to incorporate alternatives to rip rap, then maybe the District should have a rip rap rule. Look for gaps. Also, as Jyneen mentioned, these could simply be administrative permits.
- Melissa also mentioned that if the District was pushing bio-engineering, that it may want to state that they would waive permit fees for bio-engineering projects.
- Melissa again mentioned that the District should look for gaps in the DNR standards/permits and in most cases an applicant may not need to come to the District.
- Melissa thought that the requirement of having a site plan prepared only by a professional engineer and landscape architect registered by the State seemed restricting. She stated that while at WCD she prepared many designs and had neither registration

Phil Gravel

- (5.5.3) As to the District's rule of rip rap placed no more than **5 feet** waterward of shoreline: The DNR rules specify **6 feet**, is it the intent to be more restrictive than the DNR? Is a maximum length of shoreline proposed? The DNR currently does not allow more than 200 linear feet of rip rap.

Fred Weck

- Rule 5.8 and 5.9 Sandblankets: It seems onerous to require an applicant to provide the information required in Rule 5.9 when the work permitted by Rule 5.8 would not require a public waters permit. Especially that when a public waters permit is needed, the DNR's application form does not require such detailed information from the applicant as the rule does.

Wade Klingsporn

- 5.1.1 I'm not sure I understand "likely to occur" as it pertains to erosion?
- 5.5.3 Should not cover emergent vegetation.

Rule (8) Wetland Management

Lisa Tilman first asked the TAC/CAC if they felt that the District needed a wetland management rule when the District is not the WCA LGU. The consensus was that because the District is not the WCA LGU, the

section is more a policy which could still be mentioned in the rules, but should be specifically described in the District's Watershed Management Plan.

Specific TAC/CAC member comments:

Jack Frost

- Jack thought that since the District is not the WCA LGU, wetland management should be a policy not a rule. Jack suggested leaving the Wetland Management heading with a policy statement stating that the District is not the WCA LGU (state that depending on the location of the impact the WCA LGU is either the County of municipality in which the impact occurs), that it supports WCA, and reference other areas of the District's rules where wetland impacts are addressed (i.e. buffers).

Anne Hurlburt

- Anne asked about the last sentence in rule 8.4. "When applicable, a professional employee of the local municipality will be considered as a member of the TEP". It was determined that the sentence should be deleted.
- Anne also stated that the specifics of the proposed rule would be better off in the watershed plan.

Jyneen Thatcher

- Section 8.2 states that the watershed "does not require the review of wetland impact and replacement /mitigation plans", but the next sub-section explains specific involvements in that review. Since any wetland impact will need some sort of review by the District, such as buffer impact of floodplain impact, you might think more about what your role and process should be in coordinating with the WCA LGU.
- Jyneen provided comment on some specific language in the current rule which should be changed if the District Managers decides to keep the rule as is. Jyneen forwarded the comments and suggested language on to District staff.

Dan Seemon

- Dan asked for the ACOE to be referenced under rule 8.2.

Rule (4) Lake, Stream, and Wetland Buffers

Lisa Tilman first asked the TAC/CAC if they felt that the District needed a buffer rule. The group held discussion on the District's rule.

Jack Frost

- Jack said that besides new development, he thought the only other realistic way to require shoreland buffers was to have buffer address the specific requested on-site change (i.e. increase in impervious).
- Jack did not think that tying the requirement for shoreland buffers to sale of a home and/or building permits was enforceable and thought cost-share incentive funds and education was a better approach. Requiring a buffer at home sale would be problematic and was unsure of the legality.
- Jack mentioned that the averaging of buffers (under 4.8.4) should be moved up in the Rule closer to the buffer width requirements.
- Jack mentioned that at the end of the day, it is in the self interest of each individual landowner to take care of there property themselves.
- Jack also mentioned that it may be worthwhile for the District to assess its lakeshores to determine specific problem areas to target with District programs.

Anne Hurlburt

- Anne stated that she felt that the Rule's applicability, especially 4.2.1 (b), (c) and (d) were rather extreme. She could see the buffer requirement on new parcels, but questioned on existing properties change of ownership and when getting a building permit. How would the District be able to track these sales? Would a buffer be required with a new roof?
- Anne and Doug mentioned that they did not think that the applicability thresholds are viable especially considering recent legislation giving landowners more power.
- Anne thought that it is difficult to try to go back and retrofit a lot and that the District should have a good reason to require a buffer to address the exact issue the homeowner is adding. For example, if they are seeking a variance to increase impervious surface above ordinance.
- Anne thought that the two workable applicabilities were "land subdivided after the date of rule adoption", and/or on a case by case scenario, if a landowner comes in for a variance (i.e. increase in impervious), and if a retrofit could realistically remediate the proposed variance, they could be added as a condition to the variance (i.e. buffer or raingarden).
- Jackie Anderson asked Anne about problems of requiring different standards for existing and newly subdivided lots. Anne simply mentioned that that was just the way it is. Things change.
- Similar to Doug's comment on the District's buffer rule and where it should be applicable, Anne also thought it should be left with the Cities to decide where buffers are appropriate and the watershed could work with the Cities to recommend ordinance changes for buffers as the Cities update their ordinances.
- Anne worried that if the District focused on individual lots (which the Cities already do) over larger bigger picture items, the District may not get the results they are looking for.
- Anne mentioned that 4.8.3 which highlights variance for rule 4.0, should be moved to the Variance section Rule 12.0.

Doug Borglund

- After it was discussed that the District's rule was to act similar to bringing a septic system up to compliance on the sale of a home, Doug stated that septic systems are a basic need and health requirement.
- Doug wondered how the District planned on enforcing the buffer rule. How would the District track a sale of a home? How would the District make sure the buffer actually is maintained?
- Doug questioned the requirement for a shoreland buffer triggered for every building permit. If someone puts a deck on their home, they would require a permit. Doug felt that this may work against the process and end up with people not getting permits.
- Doug thought that much of the District's buffer requirement were fringing on zoning functions. Doug stated that it was the authority of cities to regulate land use and apply zoning regulation (via State Statute) and didn't think that watersheds had that authority. He stated that Rice Creek Watershed District doesn't have these kinds of standards, but that the Rice Creek Watershed District worked with the City through the Resource Management Plan process to tie zoning to the wetland resources in a big picture manner.
- Doug asked for the District to look at the requirements from a homeowner's point of view. Doug wondered the legality of actually requiring a shoreland buffer at a sale of a home or for any building permit (especially ones that have nothing to do with increasing runoff [i.e. reroofing]).
- Doug mentioned that the City already had buffer ordinances as one-half of the set-back, so if set-back was 50 feet, buffer would be 25 feet, and if set-back was 100 feet, then buffer would be 50 feet.
- Doug said that the District's buffer rule was filled with stuff the City already addressed and is worried that the watershed is trying to regulate land use, and over regulate, and require double permits when it isn't really needed.

- When asked about the District's buffer rule and where it should be applicable, Doug thought it should be left with the Cities and the watershed could work with the Cities to include provisions or triggers as they update their ordinances.

Jyneen Thatcher

- Jyneen said that she didn't think it's realistic to try to develop a buffer rules and wetland classification based on MnRAM, when a District-wide inventory hasn't been done yet. Yes, the draft rules require an applicant to prepare the assessment and classify the basin themselves, but that really leaves the process open for arguments of arbitrariness.
- Jyneen said that based on the standards for wetland classification and "mapped natural communities" several of The District's proposed CIP projects could be contrary to the Rules. The District should be aware and not set themselves up for that fight.
- Jyneen said that the District's buffer rule was similar to that of Brown's Creek and the BCWD Rules were written based on protecting the habitat of a special resource concern. CLFLWD has a lot of ditches. Please consider whether the stream set-back and buffers are realistic and defensible when applied to a ditched system (abandoned or not).
- Jyneen asked about zoning changes as a trigger, if the City changed zoning, could this be a time a time when it would trigger the buffer rule?
- Jyneen discussed the importance of making sure the buffer width is tied to the quality of the resource the buffer is trying to protect.
- Jyneen mentioned the idea of resource management plans for special areas similar to that Rice Creek Watershed District did.
- Jyneen asked about rule 4.4.3: what about a situation where an OHWL has not been determined? Does the project come to a halt? Should the District be responsible to determine the OHWL?
- Jyneen suggested removing 4.5.5 (c) and simply adding "Native trees and shrubs may be added to supplement ground cover" to 4.5.5 (a).
- Jyneen also suggested adding to 4.5.5, something that states that if public entity proposes a project for public good (i.e. water resource management project of recreational trail), that here may be some variance from this rule).
- Jyneen also mentioned that some consideration should be given to buffer mitigation for impacted buffers.
- Jyneen again questioned the District's requirements around Manage 1, Manage 2, and Manage 3 wetlands when the District does not have function and value assessments on all of its wetlands. Jyneen thought that we should not rely on developer.
- Jyneen stated that the MLCCS information on the District's wetlands in Washington County provides good vegetative plant community information which is a minor part of the MnRAM assessment, but MLCCS alone would only differentiate between the Preserve classification and Manage 3. So, similar to what Phillip had mentioned, setting buffers to the presented classifications without MnRAM information would be difficult. The District needs to make general site assessments on the importance of each wetland (i.e. if high quality wetland and provides water quality function then it would need a big buffer).
- Also, the District may want to add verbiage identifying wetlands of importance that are already included in the District's CIP or if the wetland is located within the direct drainage of lake management district of an impaired waterbody. These may require a bigger buffers.
- If Forest Lake is the most restrictive ordinance (one-half distance of set-back), maybe that is where the District should start (and work on enforcement) and look at defining special areas (resource management areas of impaired areas).

Phillip Elkin

- Phillip asked the rationale of requiring buffers on wetland function and value assessment when the District does not have function and value on all of its wetlands.

Beryl Halldorson

- Beryl mentioned that while she herself is an educator, her worry was that if the buffer requirement was simply through education and therefore a choice, people would not do it.
- Beryl mentioned that the rules are to help the District meet goals of at the very least, not allowing the lakes' water quality to degrade, and preferably have the water quality improve.

Melissa Lewis

- Melissa thought that the requirement of making a homeowner create a buffer because of a building permit or sale of a home would be tough to enforce and in the long run would not result in proper functioning and maintained buffers. She said that it is her experience that if forced to have a buffer, people will not maintain them and will eventually remove them, in which case the benefit would be lost. Melissa thinks that cost-share incentives for the buffers and alternatives (i.e. raingardens) are the best and most productive approach.
- Melissa mentioned that if the District ties a requirement to a specific variance, they may want to consider addressing the increase in runoff volume as opposed to strictly requiring a buffer. Maybe the District could provide a list of alternatives to address the increased runoff such as raingardens, rain barrels, etc...
- Melissa also mentioned that it may be just as beneficial to have a watershed flyer describing how a homeowner can help retrofit their property to improve water quality that the cities can attach to each building permit application the city gives out.

Phil Gravel

- Rule 4.2 1 (c) and (d) Applicability: Clarification if the buffer standards would apply to new ownership or every project that requires a building permit this seems really limiting and restrictive.
- Rule 4.2 3: Buffer marker (sign) shall be placed at each lot line. We have allowed flexibility in sign placement, typically every other lot line, especially if the lot widths are less than 100 feet.
- Rule 4.3: Buffer widths, is buffer width averaging allowed? This might be practical with such large buffers, how are setbacks addressed?
- Rule 4.3 5: Wetlands adjacent to a lake have a cumulative buffer. Comment: Does this mean that a Preserve wetland adjacent to a Natural Environment Lake could have a 200 foot buffer from the edge of the wetland?
- Rule 4.4 5: Use of MnRAM 3 0: MnRAM 3.1 was available in 2007, we suggest changing to 'most current version of MnRAM'
- 4.5: Buffer limitations: By not allowing impervious cover, this would limit trails. We would like to see an exception for trails as long as the trail is a minimum setback from the edge of the water resource (i.e. 20 feet).
- 4.5.5: Seed mixes: we suggest adding the use of BWSR mixes as well.
- 4.51 e(ii): Stormwater facility located in buffer, does the District have a map of groundwater dependent resources? (See previous comment regarding Rule 2 5.6 *Defines requirements for areas in the watershed of groundwater dependent resources. This standard is very strict, requiring that a 2-yr event be infiltrated. For this reason basins that are determined to be groundwater dependent should be defined by the watershed. Will they just be fens? Fens and groundwater fed lakes? Fens, groundwater fed lakes, and some wetlands*)

Fred Weck

- Rule 4.2: "Rule 4.0 applies to land adjacent to any..." How far is adjacent to?
- Rule 4.2, (c): Buffer requirements apply to land "that is subject to new ownership on or after..."
 - Is the intent of the rule to require that when a lakeshore home is sold that the new owner (or prior to the sale, the previous owner) needs to submit a plan to be reviewed (in accordance with rule 4.4) and then provide a buffer as required by rule 4.0?
- Rule 4.2, (d): Buffer requirements apply to land "that proposes onsite activities requiring a municipal building or other permit." The Minnesota State Building Code (which has been adopted by and is enforced by all of the jurisdictions within the district) requires permits for not just new buildings and additions to buildings but also the following examples:
 - The construction of sheds and accessory buildings over 120 square feet.
The construction of a Deck.
 - Re-roofing.
 - Residing.
 - Window replacement.
 - The replacement of a furnace.
 - The replacement of a water heater.
 - The finishing of a basement.
 - Aboveground and in-ground swimming pools
- a. Is the intent of the rule to require that the permit applicant needs to submit a plan to be reviewed (in accordance with rule 4.4) and then provide a buffer as required by rule 4.0?
- b. And if so, when can the permit applicant begin work on their proposed project?
- c. If the rule was not intended to address minor projects what size of a project is intended, and when can the applicant begin work on their proposed project?
- d. How soon after project completion must the buffer zone be created?
- Rule 4.5.1, (a), and 4.5.2, (a), Creating Impervious Cover prohibited: Impervious cover is not specifically defined by the rule except as being inferred in the definition for impervious surface.
 - a. Could a dock be impervious cover? Could the storage of the dock be impervious cover?
 - b. Is a water oriented accessory building included in the prohibition?
 - c. Does Rule 4.8.2, third sentence, address the two previous questions?
- Rule 4.5.1 (c), vegetation: Rule 4.5.1, (c) is missing some of the language about tree removal that is in Rule 4.5.2, (c), was this intentional?

Wade Klingsporn

- 4.2.1 Does not address individual rivers/streams, only lakes and their associated tributaries and wetlands?
- 4.2.2 How will you determine what buffers will consist of, i.e. grasses, shrubs, trees?
- 4.3.1(a) Who determines location of top of bank "measured from top of bank". May be different from some perspectives.
- 4.3.1(b) Not all lakes have a delineated OHWL.
- 4.5.5(f) Should be noxious weed-free instead of "clean".
- 4.8.2 Why 30ft access width? What "intended purpose" requires 30ft? How about 15-20?

Other

Anne Hurlburt

- Rules need to be enforceable.

Doug Borglund

- Because many cities are now going through an update of their comprehensive plans and will be updating ordinances, now is a good time for partnerships and involvement from the watershed to get help.

Jack Frost

- Jack thought that the emphasis of the rules should be for the watershed to address larger issues above that of what the cities are currently taking care of (smaller issues down to single lots). Specify in the rules, or through MOU, what the expectations are from the cities.

Wade Klingsporn

- Verbiage should be included in document that states that property owner/leasee should have all required permits for other Local/State/Federal agencies in addition to anything the District requires.

Common themes

- 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 scenario, much of the buffer rule applicability was unrealistic, unenforceable, and of questionable legality.
- Wetland management should be a policy not a rule. The TAC/CAC suggested leaving the Wetland Management heading with a policy statement stating that the District is not the WCA LGU (state that depending on the location of the impact the WCA LGU is either the County or municipality in which the impact occurs), that it supports WCA, and while the District will not require a permit, they would participate in the wetland TEP process.
- The District should work with the communities when they redo their zoning ordinances.
- How will the buffer around wetlands work when the District does not have function and value assessments for all of its wetlands?
- Why does the District have a shoreland and streambank alteration rule (Rule 5.0) when the DNR already issues permits for things below the OHWL.
 - If the DNR does permit the same activity, look for gaps and do not try to regulate everything (i.e. sandblankets)
- Rule 5.0 may be better addressed through education and a cost-share incentive program.
- Define the following in the plan:
 - Bioengineering
 - Stream
 - Streambank
- Re-evaluate the need for a professional survey for all projects and the need to have the site design prepared by a professional engineer or landscape architect registered by the State.
- Education is the best way to handle shoreland and streambank alteration.
- 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 District could expedite any permits if a DNR permit was already obtained.
- Questions as to the District's requirements around Manage 1, Manage 2, and Manage 3 wetlands when the District does not have function and value assessments on all of its wetlands. Jyneen thought that we should not rely on developer.
- Spell out which OHWL the District will use.

DRAFT