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Les Lemm
Wetland Conservation Act Coordinator
Minnesota Board of Water & Soil Resources
500 Lafayette Road North
St. Paul, MN 55155

RE: Comments related to WCA rulemaking

Crow Wing County hereby offers the following comments for consideration during the rule-making process for amending the Minnesota Wetland Conservation Act (WCA). Comments are in order by specific sections of WCA, as found in Minnesota Rules Chapter 8420.

8420.0111 Definitions.

It is recommended to define the terms "incidental" and "non-jurisdictional" so it can be clearly determined what WCA has jurisdiction over and avoid confusion with past language in WCA that mentioned such terms.

8420.0415 No-loss criteria.

It is recommended that BWSR grant LGUs flexibility in allowing a "no-loss" for buildings that have been built over wetlands to be replaced without being subject to sequencing and replacement. In recent years, Crow Wing County has experienced severe ice damage along many larger lakes. This has resulted in significant damage to shorelines, including historic boathouses. Landowners seeking to replace these pre-ordinance structures under Statute 394 have often wanted to move the new structure back slightly. In addition to causing issues with Statute 394, this often causes problems with WCA because some of these areas are wetland, even though converted to a lawn many years ago (pre-WCA). One consideration would be to require performance standards such as a shoreline buffer, which would be adopted locally along with the granting of a no-loss.

Our Vision: Being Minnesota's favorite place.

Our Mission: Serve well. Deliver value. Drive results.

Our Values: Be responsible. Treat people right. Build a better future.

8420.0420 Exemption Standards.

8420.0420 Subp. 2. Agricultural Activities. (E: Aquaculture)

It is recommended that this exemption be removed from the rule. It is our understanding that the federal permit no longer exists for this activity. If BWSR does keep it in the rule, it is requested that DNR standards be incorporated (directly or by reference) to assist LGUs.

8420.0420 Subp. 8. De Minimis.

It is recommended that BWSR implement a more gradual or incremental scale on de minimis exemption amounts. There is a drastic change in the De Minimis exemption amount (especially in a >80% county like Crow Wing) from 400 square feet to 10,000 square feet once outside Shoreland or from 100 square feet to 10,000 square feet from a cattail-infested type 3 to a more natural looking type 2. It is very difficult to explain this to landowners. Advances in GIS availability have allowed LGU's and landowners the ability to have a better understanding of wetland locations relative to lakes and streams.

It is also recommended that BWSR better define what a project is for this exemption. If the exemption is only supposed to apply once for any type of current and future development on a project such as "land construction/development," that would be considered the project as some BWSR wetland specialists have indicated in years past. Defining the duration limits and scope of a project is very challenging especially when two or more exemptions could be granted concurrently for related, but truly separate projects.

Also, there is apparently internal BWSR guidance related to applying the appropriate wetland type for use with this exemption, especially as it relates to the 300 foot rule and larger wetland complexes. It is recommended that this be clarified in the rule to better guide LGUs.

8420.0420 Subp. 9. Wildlife Habitat.

It is recommended that BWSR provide more flexibility to LGUs under the wildlife habitat exemption. The question is whether there is still a need to require the SWCD to certify these exemptions by using the lengthy and dated guidance document referenced in the rule. In many cases, SWCD staff do not have any more knowledge related to wildlife habitat than LGU staff. Flexibility is important to consider particularly if more current or site-relevant guidance from a different plan or Department (i.e. DNR) is available.

8420.0520 Sequencing.

8420.0520 Subp. 3. C

It is recommended that BWSR clarify WCA's avoidance and alternatives analysis especially as it relates to the degree of off-site consideration that should be used as part of the avoidance discussion. Does this vary depending on residential, commercial or transportation projects? Is the size or economic scope of the project relevant? For example, is an individual landowner to be held to one standard while a large commercial development or road project be held to a different one? This also begs the question of how far LGUs need to get into the economics of projects. What sort of economic analysis should be required for these projects? Is it right to ask for that type of information?

It is also recommended that BWSR clarify what situations always meets avoidance according to MN Rules Chapter 8420, such as elevated boardwalks compared to a fill path to the lake.

8420.0705 Establishing a Wetland Bank Site.

It is recommended that each wetland bank complete a MnRAM that would be available to LGUs and consultants for assistance in determining the applicability of sequencing flexibility (8420.0520 subp. 7a.).

8420.0745 Withdrawals and Transfers.

It is recommended that BWSR develop a simpler way to transfer credits once a project is approved. One option would be to implement an electronic system which would replace the current paper form (which is cumbersome, time consuming, limiting (especially for projects with several different ratios) and not clear on who should be signing at each step). BWSR does not have a consistent process when it comes to reporting the amount of credits being transferred as some parts of this process require rounding to 2 decimals for the acreage amount, while some parts have 4 decimals and other utilize square feet.

It is recommended that BWSR modify the rule to have a consistent standard unit of measure across the entire rule and related forms.

8420.0830 Local Comprehensive Wetland Protection and Management Plan.

It is recommended that BWSR develop guidance to help LGU's develop a plan that would be approved by the Army Corp of Engineers. Many LGUs are hesitant to adopt a Local Comprehensive Wetland Protection and Management Plan because of the struggle to get the Army Corps of Engineers to approve the plan. It is recommended that BWSR provide examples of counties with approved Local Comprehensive Wetland Protection and Management Plan to other LGU's.

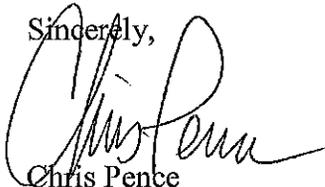
8420.0900 Enforcement Procedures.

Subp. 3. B. Restoration and Replacement Orders

It is recommended that LGU's be given the authority to write Restoration and Replacement Orders. Currently SWCD's are the only LGU that can write a Restoration and Replacement Orders. One option to consider would be that the TEP or SWCD review and comment on the order, but to have rule/statute require a certain person/entity complete the order seems like an unnecessary hurdle and adds delay to efficient administration of WCA, especially when many counties have staff that are equally capable of writing these orders.

Thank you for providing the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Pence", written over the word "Sincerely,".

Chris Pence
Land Services Supervisor

- cc. County Board of Commissioners
- Mark Liedl, Land Services Director
- Mitch Brinks, Water Protection Specialist
- Cade Steffenson, BWSR Wetland Specialist