

WCA PERMANENT RULE ADVISORY COMMITTEE

MnDOT Training and Conference Center
Shoreview, Minnesota

March 27, 2008

Meeting Notes

Committee Members:

Agriculture

Mn Corn Growers Association-

Doug Albin.

Warren Formo.

Mn Farm Bureau-

Chris Radatz.

Staci Bohlen.

Mn Farmers Union-

X Jim Tunheim.

Thom Peterson.

Mn Soybean Growers Association-

X Lawrence Sukalski.

Mn Wheat Growers Association-

Bruce Kleven.

Business

Builders Association of Mn-

Lisa Frenette.

X Stephanie Berklund.

Builders Assoc. of the Twin Cities-

X Rick Packer.

James Vagle.

Mn Association of Realtors-

Susan Dioury.

Mn Chamber of Commerce-

Keith Hanson.

Tony Kwilas.

Mn Forest Industries-

Wayne Brandt.

Utilities –

Blake Francis.

Aggregate Ready-Mix Assoc. of Mn

Mike Caron.

Fred Corrigan.

Environment/Conservation

Audubon Mn –

Susan Solterman.

Izaak Walton League - Mn Division –

X Bill Barton.

X Dell Erickson.

Mn Center for Env. Advocacy-

X Janette Brimmer.

Henry Van Offelen.

Mn Conservation Federation-

Gary Botzek.

Sierra Club - North Star Chapter-

X Mollie Dean.

Local Government

Association of Mn Counties-

Duanne Bakke.

X Harlan Madsen.

Metropolitan Inter-County Assoc.-

Keith Carlson.

Mn Assoc. of SWCD –

Sheila Vanney.

Mn Association of Townships –

Dave Fricke.

Dan Greensweig.

Mn Assoc. of Watershed Districts-

X Roger Lake.

Mn County Engineers Association –

X Doug Fischer.

X Tom Tri.

Mn Rural Counties Caucus-

X Todd Beckel.

Wade Pavleck.

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Others

Mn Viewers Association-

Jim Weideman.

Wetland Professionals Association-

X Allyz Kramer.

Andi Moffat.

Minnesotans for Wetlands-

X Mary Mueller.

Mn Assoc of Professional Soil Scientists

Peter Miller.

X Kelly Bopray.

Federal Government

U. S. Army Corps of Engineers-

X Marita Valencia.

U.S. Fish and Wildlife Service-

X Tony Sullins.

USDA Natural Res. Cons. Service –

X Sid Cornelius.

State Government

Department of Agriculture-

Joe Martin.

Department of Natural Resources-

X Doug Norris.

X Julie Ekman.

Department of Transportation –

Frank Pafko.

X Sarma Straumanis.

Pollution Control Agency-

X Dave Richfield.

Note: X = in attendance

Guests: Rick Dahlman, DNR-Forestry; Linda Runbeck, American Property Coalition; Sam Ziegler, Mn Soybean Growers Association; Jennifer Read-McNicoll, Audubon-Minnesota; Greg Russell, DNR-Forestry; and Kent Rodelius, Mn Land Improvement Contractors Associations-Agricultural Drainage Management Coalition.

Staff: Dale Krystosek, Les Lemm, Jeremy Maul, Ken Powell, and Dave Weirens.

Dave Weirens called the meeting to order at 9:10 a.m.

All in attendance introduced themselves.

Review February 28, 2008 Meeting Notes.

Dave Weirens reviewed the February 28, 2008 meeting notes. His review focused on the action items. Jim Tunheim asked the notes be modified to show that he was in attendance.

Les Lemm followed by saying that the action items from these meetings and other comments received during the rulemaking process will be addressed in the second round of the rule review. Linda Runbeck asked when there would be an opportunity for public comment. Dave Weirens responded that there was an opportunity last August and September, and will be again during the formal rule adoption process.

Draft Rule Review – Sequencing.

Jeremy Maul led the review of the draft sequencing section of the WCA rule.

ACTION. Dell Erickson commented that “to the wetland” can be eliminated in D on page 1.

Rick Dahlman and Tom Tri asked how preservation is defined in D on page 1, and commented on the need for consistency in the use of this term. Doug Norris responded that this term originates in federal language.

Rick Dahlman said the rule should avoid confusion over the term preservation. Janette Brimmer said that the presumption is that the use of the same word has the same meaning.

Todd Beckel expressed concern over adding function wherever value appears. Janette Brimmer commented that value and function are different. Todd Beckel followed by stating that values are not the same statewide, Doug Norris responded that according to the rule, values are dependent on function. Todd Beckel asked if they are interchangeable.

ACTION. Les Lemm responded that function and value are not the same, and we should be mindful of when to use them together and when not to.

Doug Norris stated that value is based on quality wetland function. Janette Brimmer followed that function is science based, value is more judgment based, but tied to science. Jim Tunheim said the use of value has been a problem since the law was passed.

Todd Beckel stated that out interpretation of wetland functions and values is restrictive, not creating choices. Dale Krystosek stated that WCA is a predictive rule. Sarma Straumanis stated that function is not defined, only values. Tom Tri followed by saying the functions and values are assumed to be replaced, if they cannot, then additional compensation is required.

ACTION. Ken Powell stated that the rule should state that value is based on function, as provided for in the existing definition.

ACTION. Dave Richfield said that indirect impact is used, but not defined.

Janette Brimmer suggested that the no build alternative is meaningless, and that the rule should provide for a no impact alternative. Ken Powell responded that the no build forces the applicant to justify why the project is there.

Rick Packer agreed with Janette Brimmer, in that there should be two alternatives: (1) minimize and (2) avoid.

ACTION. The alternatives analysis on page 2 of the sequencing section of the draft rule should require two alternatives; (1) minimize and (2) avoid.

Tom Tri asked about the change to the alternatives section that will require at least one alternative. Doug Fischer added that this is open ended for projects on existing alignments that have limited options. Janette Brimmer commented that this makes sense, but the future is unknown.

ACTION. Modify the alternatives language for infrastructure projects to require at least one alternative but no more than two.

ACTION. Rick Packer suggested that the alternatives analysis could be moved to the application section.

Janette Brimmer asked about “on the site” and hydrologic connections to contiguous parcels. Doug Fischer asked what “over time” means (in relation to (f) on page 3). Rick Packer is concerned this paragraph opens the door to evaluating everything. Janette Brimmer followed by stating this language is consistent with other state and federal programs.

Greg Russell suggested deleting “and other resources” from this provision. Doug Norris followed by stating that this analysis is already conducted due to other language in the alternatives analysis. Dave Richfield said the rule language needs to be clear, including indirect impact. Mary Mueller suggested using the language “associated resource”.

ACTION. Rick Packer said a definition of indirect impact is needed for review at the next meeting.

ACTION. Amend (f) to state “wetlands and associated or related resources”.

Doug Norris discussed the language in yellow on page three and its history that refers to public waters wetlands.

ACTION. Delete the yellow section on page 3.

Rick Packer said the issue of indirect impact needs to be discussed in the context of over time and with and without the project. Allyz Kramer said that the Mn Environmental Policy Act and National Environmental Policy Act need to be considered when looking at direct and cumulative impacts.

ACTION. Tom Tri suggested that it would be desirable to keep “wetland” in Supb. 7 on page 5.

Jeremy Maul and Les Lemm discussed sequencing flexibility. Doug Norris followed by reviewing the discussion that occurred at the Technical Advisory Committee.

Janette Brimmer expressed a concern that allowing sequencing flexibility on degraded wetlands may make them fair game for impacts.

ACTION. Guidance should be developed regarding the application of sequencing flexibility.

ACTION. Amend the note section under calcareous fens to refer to the DNR rule.

Draft Rule Review – Replacement.

Jeremy Maul led the discussion of the replacement section of the draft rule.

ACTION. Allyz Kramer suggested the rule be consistent in its use of “public values” and “values”.

ACTION. The first gray section on page 1 should be kept, or moved, but not to the application section.

Mary Mueller suggested that the rule language regarding replacement for public transportation projects should include a prohibition on selling credits if BWSR does not have credits available. Dave Weirens responded that BWSR has had credits available when they have been sold, that this type of provision is better left as Board policy and not in rule.

Doug Fischer said that if BWSR did not have credits when needed to replace a road project impact, then after the fact replacement would apply. Janette Brimmer followed by saying rule should not say what BWSR should not do. Todd Beckel asked if BWSR is paying at a higher ratio if not enough credits. Dave Weirens responded that the rule requirements as they relate to timing of replacement apply to BWSR.

Les Lemm said that it is a good idea to sell credits for road projects. Doug Fischer agreed, due to the public benefit of roads. Dave Richfield said this issue needs further analysis, there is a need to provide localized wetland functions.

Mary Mueller asked if the rule should include a prohibition on BWSR selling credits. Or the option of selling credits?

Mollie Dean asked if the sale of wetland credits is truly only for the expansion of roads. Dave Weirens and Doug Fischer responded that that is a requirement of the law.

Dell Erickson asked about how the cost is established. Dave Weirens responded with a description of how BWSR establishes the cost to develop credits. Allyz Kramer followed by stating that in addition to going to BWSR, road authorities can also buy credits from private banks.

Tom Tri asked if any road authorities hold an annual meeting. Jeremy Maul and Ken Powell said that they do in their areas.

Sarma Straumanis said she has some ideas for restructuring the transportation section and that she would get that to Les Lemm.

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ACTION. Doug Norris suggested deleting “wetland” in several areas at the top of page 3 and changing “draining and filling” to “impacts” in this same area.

Jeremy Maul discussed the debate by the BWSR Staff Rule Team and the Technical Advisory Committee regarding using Circular 39 or Eggers and Reed for wetland typing.

Les Lemm referred the Committee to the supplemental information regarding wetland typing and in-kind replacement.

Tom Tri asked if the conversion chart is in statute. Allyz Kramer said that all three typing methods have to be included in the crosswalk. Janette Brimmer suggested the rule should translate between the types. Tom Tri said that there are problems with Eggers and Reed with certain wooded wetlands.

ACTION. BWSR should ask the Attorney General if the rule can not include Cowardin.

Mary Mueller said that how wetlands are typed has an impact on banking. Option #1 does not require retyping, while option #2 does for existing credits. Dale Krystosek responded that option #2 is more consistent with the MOU and current rule, the science is better and matches seed mixes as well.

Janette Brimmer commented that alternative #2 fits function and value well this may be better long term. Dale Krystosek responded that this option does make in kind replacement more complicated.

Doug Norris followed by stating that if WCA is really going to make the move to Eggers and Reed, then #2 is the way to go. Mary Mueller said that transition language would be needed with #2 for wetland banks.

Janette Brimmer asked what’s not working now about the in-kind wetland replacement requirement? Doug Norris followed by saying that the intent is not to penalize, if an honest effort is made to achieve the same wetland type as the impact. Tom Tri says he is very frustrated by #1. Allyz Kramer said that if it is difficult to replace the impact type, then go with what is landscape appropriate.

Bill Barton asked how much leeway does BWSR have from the MOU. Dave Weirens stated that the MOU is a statement of intent and to make a good faith effort, and that WCA rule changes different from the MOU will be discussed with the Corps.

Mary Mueller said that in-kind does not address associated upland. Tom Tri said that there are problems with doing replacement based on function, long monitoring periods, 5 years is long enough with a good faith effort.

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Doug Norris said the table is very simple, maybe use this as a default method to determine replacement ratios and requirements. The table can be good for expediency, while Alternative #2 allows an out for not in kind that is environmentally preferable.

Janette Brimmer said that she prefers Alternative #1, she is concerned over LGU subjectivity under Alternative #2 and the need to scientifically prove everything. Allyz Kramer said that Alternative #2 is not consistent with the Corps. Tom Tri followed by stating that it is important to be consistent with the Corps.

Sarma Straumanis offered that Alternative #1 is quicker and easier if there are many small impacts such as occur on a linear project. Rick Dahlman said there is a disconnect over doing out of kind replacement and getting credit as in-kind.

Janette Brimmer expressed concern over the wide open subjectivity of Alternative #2, and that it will devolve to what is best on the landscape. Dell Erickson asked about being able to exchange lower value wetlands for fewer large wetlands, Alternative #2 focuses on function which is very important. Doug Norris followed by stating using in-kind/in-advance/in-place are reasonable surrogates of wetland function.

Mary Mueller and Janette Brimmer said that applying in-kind needs clear parameters and how to deal with associated upland as in-kind.

Tom Tri asked about new wetland credit determinations in the MOIU, said that he expects to see better matching of type, and that addressing PVC needs to be simple. Sarma Straumanis agreed that the option should be simple and expedient. Allyz Kramer said she feels like WCA is being forced to go along with the Corps.

Janette Brimmer said that the Corps needs to provide their input into this issue.

Ken Powell said the replacement ratio table from the MOU and exempt rule does not work well in complex situations. Tom Tri suggested that the table could be the default way to establish replacement ratios, with Alternative #1 on a case by case basis.

Doug Norris said that we need to know what the criteria for Alternative #2 would look like. Les Lemm responded that the key to Alternative #2 is promoting quality mitigation. Doug Norris followed by saying the issue is about performance standards, not about type.

The meeting adjourned at 3:20 p.m.