

**DRAFT MINUTES OF THE WORKSHOP  
OF THE  
COMFORT LAKE–FOREST LAKE  
WATERSHED DISTRICT  
Thursday, January 12, 2017**

**1. Call to Order**

Vice President Spence called the January 12, Board workshop to order at 4:04 p.m. at the office of the Comfort Lake-Forest Lake Watershed District, 44 Lake Street South, Suite A, Forest Lake.

Present: Vice President Jon Spence, Secretary Wayne Moe, Treasurer Steve Schmaltz

Absent: President Jackie Anderson, Assistant Treasurer Jackie McNamara

Others: Mike Kinney, Jessica Lindemyer (CLFLWD staff); Greg Graske, Carl Almer (EOR); Chuck Holtman (Smith Partners) (portion of meeting by teleconference); Sam Husnik (City of Forest Lake)

Manager Spence asked if anyone would like to make changes to the agenda. Administrator Kinney explained that there will be no changes to the agenda. Earlier in the week, he had anticipated one change, but the issue has been resolved and the agenda modification is no longer necessary.

Manager Moe moved to approve the agenda as amended. Seconded by Manager Schmaltz. Upon a vote, the motion carried 3-0.

**2. Forest Lake Wetland Resolution Revision**

Administrator Kinney explained that this item is no longer necessary, as the issue with construction commencement has been resolved and the resolution may remain unrevised.

Upon receiving a question from the audience, Mr. Kinney provided more detail on the purpose of the previously-proposed resolution revision. The Forest Lake Wetland Treatment Basin project (a.k.a. 3<sup>rd</sup> Lake Pond or Log Lane project) requires the acquisition of several easements with landowners near the project site. As of today, one of the easements has not yet been signed by both landowners; only one of the two landowners has signed so far. The board-adopted resolution originally required that project construction not commence until all easements were obtained. The original plan was to revise the resolution so that construction could commence on parts of the project, without having all of the easements finalized. However, Mr. Kinney was recently told that a single signature on the easement document would allow the District to enter that easement area. Therefore, it was determined that the resolution would not need to be revised.

### **3. Rule Revisions**

Administrator Kinney provided an overview of the agenda item. He explained that the District has been looking into incorporating Minimal Impact Design Standards (MIDS) into its rules for some time now. MIDS are stormwater management standards that are based on the latest research and can be applied uniformly by organizations across the state. The purpose of the rule revisions will be to evaluate the incorporation of these standards, as well as a chance to improve upon other District rules based on past experiences implementing them.

Engineer Graske noted that the District held a Technical Advisory Committee (TAC) meeting on December 5, 2016 to discuss the rule revisions. The meeting was attended by roughly 12 representatives from local agencies and municipalities. Mr. Graske explained that the purpose of today's workshop is not to get into the minor details of the rules, but to discuss high-level topics and obtain feedback from the Board.

Mr. Graske then led the discussion based on items listed in EOR memo dated January 5, 2017. The first discussion topic was permit triggers for Rule 2.0, Stormwater Management. Mr. Graske explained that the District may want to reconsider the threshold that modifies rule applicability when a project is within 1,000 feet of a waterbody. This may not always be relevant, as a project site may be within 1,000 feet of a waterbody, but not drain to that waterbody. On the other hand, a project may be greater than 1,000 feet away from a waterbody, but drain directly to that waterbody via storm sewer without any treatment in between. Mr. Graske suggested considering a new threshold that is based on square footage of new impervious surface. There was discussion about project sizing and distance from a waterbody and how those factors affect the impact on that waterbody. Carl Almer noted that the trigger could be changed to have a lower threshold to sites that are within the direct drainage area of a waterbody.

Administrator Kinney indicated that Legal Counsel Holtman has called in to the meeting and will be able to listen in to the discussion and provide input via phone.

Discussion regarding stormwater permit applicability continued. Mr. Graske noted that the permit trigger currently under discussion applies to commercial or multi-residential developments, not single residential developments. As the rule currently reads, individual residential projects do not trigger the stormwater rule under any circumstances. There was discussion about impervious surface limitations by municipalities that would regulate single family home developments. Mr. Almer noted that, if desired, the District could change the language in its stormwater rule to regulate individual residential lots that have a high level of impervious surface. There was agreement that changes to the permit trigger will change what types of sites will be subject to permitting; some sites will fall under the threshold and not be required to provide treatment, and some sites that would not have been previously permitted will then trigger the new rule. The goal of the District will be to decide how to change the language so that the rule applies to the sites that have a potential impact on waterbodies.

Legal Counsel Holtman asked if MIDS only provides a standard for regulation, and not a suggested permit trigger. Mr. Almer responded that MIDS brings everything back to one acre, which is the standard for Municipal Separate Storm Sewer Systems (MS4) permit. Mr. Holtman then asked about differentiating between riparian lots that are very close to the waterbody versus lots that are further away, but drain directly to the waterbody via storm sewer. He noted that these sort of distinctions make a rule more complicated, and asked if this is a relevant distinction, since lots that are not within the specified distance still can drain directly to a waterbody. Engineer Graske responded that there isn't much of a difference between those two lots; both would have relatively the same impact on the waterbody. There was further discussion regarding this distinction and how it relates to the stormwater rule trigger.

Manager Moe noted that when the Board previously discussed the rule revisions with respect to MIDS, they agreed that the District's standards were generally stricter than the MIDS standards and should be kept the same to the extent deemed appropriate for the District's circumstances. Engineer Graske agreed that the Board expressed a desire to keep the stricter District standards, but that some components of MIDS could be incorporated as well; especially with respect to the District's erosion control rule.

There was agreement that a stormwater permit trigger of "the creation of 5,000 square feet or more of additional impervious surface appurtenant to existing non-residential development" would be an appropriate component of the replacement to the existing trigger (2.2b). There was also discussion about removing or changing the existing trigger of "activities within 1,000 feet of a waterbody" to only apply to sites that drain to the waterbody that is within 1,000 feet. It was generally agreed that a more simple rule trigger is preferable so that it saves administrative time and isn't very open to interpretation by permittees. If a project site is adding less than 5,000 square feet of new impervious surface, its impacts on nearby waterbody(ies) is likely not enough to warrant District involvement. There was general agreement with the rule triggers that were discussed. Engineers and legal counsel will use this information to draft revised rules and discuss those with the Board at a future meeting.

Engineer Graske turned discussion to the residential portion of the stormwater rule (2.2a). The current trigger applies to residential subdivision or development of three or more lots within 1,000 feet of a public water, or four or more lots elsewhere. Manager Spence suggested removing the stipulation of "within 1,000 feet of a public water" and making the trigger "...development of three or more lots" regardless of proximity to waterbodies. Mr. Almer noted that the stormwater rules for some watershed districts do not apply to the development of 3 lots, if those lots are already serviced by an existing road. If a new road or extension of an existing road must be built to service the newly developed lots, then the stormwater rule would apply. This is based in part on the notion that if common right of way is being established, there is likely a more cost-effective opportunity to provide for common stormwater management. There was general consensus to keep the trigger as simple as possible, while ensuring the current standards are still being met.

The next topic of discussion was the stormwater rule trigger for redevelopment (2.2c). Engineer Graske indicated that this part of the rules has been the subject of multiple variance

requests. The rule is currently written to require treatment of the entire site, including pre-existing impervious surface, if the stormwater rule is triggered under either 2.2a or 2.2b. An example of this would be if a project is disturbing 5% of the site (triggering the stormwater rule), stormwater from the remaining 95% of the site would also need to be treated. Mr. Graske noted that it is more common to see rules that only require treatment of the new impervious surface, or only require treatment of the entire site when greater than 50% of the site is being disturbed. He added that there was general preference by TAC members at the December 5<sup>th</sup> TAC meeting to only require treatment of the entire site if greater than 50% of the site is being disturbed. This revision would be very similar to Carnelian-Marine-St. Croix Watershed District's (Carnelian-Marine) current redevelopment standard.

Manager Schmaltz explained that the reasoning behind the CLFLWD's current redevelopment trigger is to require treatment for sites that were originally developed without any stormwater rule standards. When such sites undergo any amount of redevelopment, they would be required to address the stormwater standards that were not previously met when the site was first developed. Manager Spence added that the idea was to make sites meet pre-development conditions, which can be impractical in some cases. Both agreed that if the redevelopment rule was changed, the District would miss opportunities to require developed sites to meet pre-development standards.

Engineer Graske suggested a compromise between the existing rule and proposed rule that would require sites to treat a certain percentage of the site based on how much is being redeveloped. Legal Counsel Holtman explained that there is a legal requirement for the District to ensure any burden being required of one property owner as distinct from others bears an adequate relation to the actions of that property owner. Requiring treatment of the whole site in the event that a property owner disturbs 50% of the site is a more reasonable rationale than requiring treatment of the whole site in the event that the property owner only disturbs 5% of the site.

There was general consensus to begin the draft process by modeling the redevelopment trigger after that of Carnelian-Marine. There was discussion about a site in Forest Lake that recently received a variance from the CLFLWD. If the newly proposed redevelopment rule would have applied to that site, they would have only been required to treat the area that was being disturbed, since it was less than 50% of the site being disturbed. Administrator Kinney explained that the cost per improvement to water quality should be considered and compared to the District's cost-benefit analysis of its own best management practices. If it is overly costly for a permit applicant to treat a small amount of the site, it may not be worth imposing a requirement.

It was also noted that the rules should prohibit permittees from applying for consecutive permits year-after-year to stay below certain stormwater treatment thresholds, where the aggregate development would be subject to permitting. There was discussion about creating rules that further the District's water quality goals without over-burdening permittees and resulting in an excessive amount of variance requests. Mr. Almer added that the 50% trigger to treat all hard surface could be based on disturbance of 50% of the existing impervious surface, or disturbance of 50% of the whole site, or either.

The next discussion item was stormwater rule applicability for linear projects such as roadways and trails (2.2c). Both the City of Forest Lake and City of Wyoming have submitted comments on this particular rule. The general message of the comments was that municipalities desire more stormwater rule flexibility with respect to roadway reconstruction projects. The current District rule has an exemption for mill and overlay projects; the rule is triggered by “reconstruction” projects that are defined by exposing the underlying soils. Currently, reconstruction projects, as defined by the rules, are required to address the full stormwater management rule standards. This is stricter than neighboring watershed districts.

Engineer Graske suggested three options for revising the current rule. The first would be to require treatment of only the net increase in impervious surface. This would only apply to impervious areas that were previously pervious, for example, the addition of new lanes on a roadway. The second option would be to require treatment of the net increase, in addition to requiring treatment for projects that convert rural (drained via swales or ditches) roadways to urban (curb and gutter) roadways. The third option would be to better define “reconstruct” in the rules and include the exemption that the municipalities are desiring. Alternatively, the District could require a separate standard for linear projects, incorporate a compliance cost cap, or allow a banking option.

Engineer Graske added that municipalities have indicated that they are performing fewer roadway reconstruction projects because of how strict the current rules are. They are either limiting the projects to mill and overlay, or avoiding the projects altogether. Some road reconstruction projects have occurred in recent years, and were compliant with District standards. However, more projects would likely be occurring if the District’s rules were less strict. There was discussion about other watershed districts’ standards for linear projects. There was general consensus to create a compromise between the District’s desires for strict water quality standards, and municipalities’ burden to meet those standards while implementing their projects in a cost-effective manner.

The next discussion topic was the stormwater rule alternate compliance standard (2.4). Engineer Graske explained that it may be difficult for property owners working on smaller-scale projects to complete all of the modeling to demonstrate compliance with existing stormwater management standards. The change to the stormwater permit applicability threshold may make it so smaller projects aren’t required to comply with the stormwater rule at all, therefore solving this issue. Mr. Almer explained that there are simple worksheets that applicants could complete in order to approximately determine stormwater treatment, without needing to perform any computer modeling or engineering. Mr. Holtman suggested that the rules could simply allow District staff the discretion to decide which exhibits are required on a per-permit basis as necessary to demonstrate compliance, and internal guidance could be prepared to provide for consistent implementation. There was general agreement with this suggestion.

Discussion moved on to Rule 3.0 Erosion and Sediment Control. The permit trigger applicability was particularly discussed. Mr. Graske explained that the current triggers for the erosion control rule are 200 cubic yards or 1 acre of disturbance anywhere, or ¼ acre of

disturbance within 1,000 feet of a waterbody. He noted that the TAC suggested lowering the 200 cubic yard threshold to 50 cubic yards to better align with municipal ordinances. Mr. Holtman added that several other watershed districts have an area threshold of 5,000 square feet. Engineer Graske noted that a reduction in the permit threshold will likely result in a greater number of permits issued. He suggested establishing an individual lot fee in place of the \$1,000 fee inspection deposit for smaller projects. He also suggested an internal review process by District staff for smaller projects, so that EOR does not need to review as well.

Mr. Almer explained some alternatives to increased permitting of smaller projects. The District could require an advance notice of disturbance for all projects that are under the erosion control rule threshold. However, it is anticipated that only about 50% of landowners performing such projects would follow through with notifying the District in advance of disturbance. Another alternative would be to include language in the rules that provide the District with the ability to regulate disturbances that are below the threshold, but are in some way egregious to the District's standards. Mr. Holtman noted that this would establish no standard for when a permit is or is not needed, and would be of questionable legality as liability would result from the District's application of a purely subjective standard. Administrator Kinney explained that an example of a disturbance that might be under the current threshold, but clearly negatively impacting a nearby waterbody is grading in riparian zones. Mr. Holtman suggested that the District may enforce a separate rule that applies specifically to riparian properties. He further offered the alternative of a "general permit" established by rule: a property owner would not need to obtain a permit in advance, but would be required to conform to best practices as described in the rule. This would give the District authority over poorly managed sites even if they are not subject to a District Rule 3.0 permit. Mr. Graske summarized the conclusions for moving forward: lowering the permit triggers and incorporating language that allows the District to take action in the event that a significant disturbance occurs that is still below those thresholds.

The next discussion topic was Rule 5.0 Shoreline and Streambank Alterations. Mr. Graske explained that the District currently has a shoreline and streambank alterations rule, but the rule is written in such a way that the District does not enforce it. Mr. Holtman further explained that the Board originally chose to write the rule this way so as not to duplicate permitting efforts already being performed by the MN Department of Natural Resources (DNR). However, the DNR may write a general permit for an area which allows permit applicants to bypass the DNR permit for shoreline alteration as long as they have obtained a permit from the appropriate watershed district. The District's rule is written such that it would apply in the event that the DNR writes a general permit such as this. The purpose of this situation would be to make the permitting process easier for landowners since they would only need to coordinate at the local level. Currently, the DNR has not written such a permit and continues to enforce shoreline and streambank alterations through individual permits.

Mr. Almer added that the DNR area hydrologist in attendance at the December 5<sup>th</sup> TAC meeting suggested that it might be a good idea for the DNR to delegate permitting responsibility to the District. That has been done in other counties with apparently positive results. Administrator Kinney noted that the Board has largely been concerned with vegetation clearing, in addition to soil disturbance in shoreland areas.

There was discussion about municipal ordinance applicability and enforcement with regard to shoreland alterations. Mr. Holtman explained that if the District wishes to regulate vegetation alterations, it would need to revise its lake, stream and wetland buffers rule. He added that there is not a buffer standard under the municipalities' shoreland ordinances; there is more of a qualitative prohibition on substantial vegetation clearing. Manager Moe expressed that educating citizens and working with local municipalities is the most effective way of preventing harmful shoreland alteration activities.

Mr. Graska explained that city ordinances do not prevent landowners from making unnatural shoreline alterations such as installation of rip rap. If the District has a goal of keeping natural and native shorelines along lakes, that goal will not be furthered solely through the implementation of city ordinances. Mr. Holtman added that the District's shoreline and streambank alteration rule currently includes language requiring phasing of bioengineering practices before rip rap may be installed. He suggested that the District approach the DNR about issuing a general permit, so that the District would apply its own rule instead. There was general agreement with this suggestion.

Mr. Graska explained that the District authorized Task 1 in EOR's work plan for the rule revisions, and this meeting will be the final activity outlined within that task. He asked if the Board would like EOR to proceed with the remainder of the work plan which includes drafting revised rules. It was clarified that the Board approved Task 1 at the July 28, 2016 regular board meeting. There was discussion about the inception of the rule revisions, MIDS, collaboration with local municipalities, and the District's enforcement authority. It was confirmed that the District has sufficient funds budgeted for 2017 for Task 2 of EOR's rule revisions work plan. EOR will coordinate with Administrator Kinney, who will task legal counsel at the appropriate time.

Manager Moe moved to approve Task 2 of the rule revisions work plan by EOR. Seconded by Manager Schmaltz. Upon a vote, the motion carried 3-0.

(Mr. Holtman's telephone participation was terminated at this time.)

#### **4. Watershed Management Plan Amendment Update**

Administrator Kinney explained that the District held a TAC meeting on January 10<sup>th</sup> to discuss the plan amendment. It was attended by largely the same audience as the rule revisions TAC meeting. At the meeting, staff presented a summary of the proposed plan amendment and a timeline for the process. He noted that staff will largely be tasked with editing the plan, and request technical input from EOR as needed. The 2017 budget contains \$10,000 for engineering and legal expenses associated with the plan amendment. He went on to explain that the District solicited, received and has drafted responses to comments from several local organizations. An open house will be scheduled sometime in February to encourage members of the public to learn more about the District and comment on the plan amendment. Additionally, a short ceremony recognizing all of the District volunteers will be

held during that time. The current timeline estimates that final Board review of the plan amendment will occur in May 2017.

Manager Schmaltz asked if grant funding would be difficult to obtain if the visibility of aquatic invasive species (AIS) management activities was reduced due to the movement of those activities from Projects to Programs in the plan. Administrator Kinney responded that it should not be an issue. He then went on to explain that capital improvement projects are required to be in the plan, but programs are optional. By including programs in the plan, the District is communicating its intended activities to the public.

Mr. Husnik asked how the District regulates agricultural activity that is detrimental to water resources. Administrator Kinney responded that the recently passed buffer law in Minnesota is one way that people are trying to address this issue.

Manager Moe asked if the watershed management plan amendment included the Bone Lake agricultural best management practices (BMPs) project currently being planned by the District. Administrator Kinney responded that the plan currently contains a cost-share program for agricultural BMPs, so a new line item isn't necessary to incorporate that project. Mr. Kinney noted that a lot of agricultural BMP activity is planned for the Bone Lake subwatershed in 2017. There was discussion about the current plan amendment and potential for future plan amendments if necessary.

## **5. Adjourn**

### **a) Next regular board meeting – January 26, 2017**

Manager Moe moved to adjourn the meeting at 6:15 p.m. Seconded by Manager Schmaltz. Upon vote, the motion carried 3-0.

Wayne S. Moe, Secretary \_\_\_\_\_