

MINNEHAHA CREEK WATERSHED DISTRICT
JOINT MEETING OF THE RULEMAKING TASK FORCE
AND TECHNICAL ADVISORY COMMITTEE

Summary of October 29th, 2009 Meeting

Task Force Members Present: Tom Casey, Tom Aasen, Jim Johnston, James Vagle, Ethel Smith, Ginny Black, Bill Bushnell, Tony Goldenstein, Steve Mohn, Jill Crafton.

MCWD Managers Present: Jim Calkins, Jeff Casale.

MCWD Staff Present: James Wisker, Steve Christopher

Review of Preliminary Draft Rule N: Stormwater Management

Mr. Wisker provided background on the process to date for Rule N. He reminded the Rulemaking Task Force that the TAC had met on nine occasions earlier in 2009 to discuss issues pertaining to Rule N, which included, linear projects, new development, redevelopment and regional solutions.

Discussion was subsequently opened up to allow the Rulemaking Task Force to comment on the proposed draft. Questions were posed regarding the tree preservation language within Rule N and if the intent was to provide a regulatory incentive to tree preservation or if the District was considering providing credit for re-forestation post development. Mr. Wisker informed the group that the Board had considered both options, but that given mortality rates and long generation times, the Board did not favor providing regulatory credit for re-forestation and that the language would serve to provide an incentive for low impact designs. Other Task Force Members commented that it was commendable for the District to consider options that provide flexibility and indicated that cities would appreciate assistance in the arena of tree preservation, but expressed concern regarding tree mortality from disease or acts of God that may destroy trees that were permitted as best management practices.

The Task Force requested clarification of several terms. Specifically, Rule N regulates parcels 1 acre and above where 20% impervious surface is created. The Task Force asked what 20% was measured against, site acreage, buildable upland etc.

The Task Force also asked why the rule referenced 50 cubic yards and/or 5,000 square feet of disturbance as a trigger. They pointed out that the rule appeared to function without this language.

Clarification was sought for the term naturally vegetated condition within 3 (a). Mr. Wisker informed the Task Force that the intent was to use historic vegetative cover, existing soils and topography to model existing conditions for agricultural lands proposed for development. Mr. Wisker indicated that the TAC had recommended that the District simply choose a benchmark land cover that all developing agricultural properties would use for existing conditions modeling. This approach is currently being used by the City of Victoria.

The Task Force also had general questions regarding the abstraction bank referenced in Rule N. Mr. Wisker informed the group that the District would accept banked credits from developments that exceed regulatory standards and simply act as a broker for applicant's who would like to draw upon those credits. The Task Force asked if the wetland bank would be restricted based on geography. Mr. Wisker indicated that in some instances, applicants would likely not be allowed to draw from credits located on the opposite side of the watershed and that a sequenced approach would be used, moving out in concentric sub-watersheds away from the site. Some Task Force members expressed concern that since the bank would be essentially private, that owners of credits could charge exorbitant amounts to use those credits if a monopoly existed. Other Task Force members disagreed and expressed their faith in market based systems.

The Task Force asked that the District better defined adequate soil presence, referencing soil strata and indicating that soils vary vertically through a profile as much as they do horizontally across areas. Requests were also made to have soil borings/geotechnical evaluations include site specific permeability rates.

Members asked for clarification on the application of regional solutions, which Mr. Wisker provided. Task Force members requested that projects proposing to take credit out of a regional solution be allowed to move forward provided that the regional solution was to be built concurrently or already in place.

The Task Force also asked that the Rule specifically reference wetland buffers and exceeding wetland buffer requirements as a way to meet water quality and quantity requirements within the rule.

Language within Section 4 (a) was reviewed. Members questioned why BMP's are required where practical. Mr. Wisker clarified that the TAC recommended this language based on the idea that small sites that reduce impervious surface should generally be exempt due to spatial constraints and the fact that a reduction in impervious surface was an improvement. However, the TAC recognized that all applicants should at least be required to consider BMP implementation at some level.

The group questioned the definition of "disturbance" referenced in the redevelopment section of the rule. Members wondered at what level a parking lot reconstruction project would trigger the threshold for disturbance. Mr. Wisker clarified that historically, mill and overlay/resurfacing projects that do not involve storm sewer or expansion are

generally not regulated as they are not expanding use and opportunity to install management practices are limited.

The Task Force continued its review on road projects. Comments were made that small road projects should not necessarily be exempt. The example of a rural gravel road being paved along with curb and gutter should not be exempt since in these instances, ditches and swales that provide treatment are often removed/disconnected.

Other Task Force members generally agreed and commented that perhaps the District could provide alternative regulatory incentives that would promote narrowing of roads. Mr. Wisker commented that cities have begun narrowing streets on their own to meet the variety of state and local regulations being imposed and that since road projects not increasing impervious surface are exempt, expansion projects are primarily safety based projects.

Task Force members commented on maintenance requirements for wetland banking stating that, owners of wetland banks should be obligated to maintenance rather than the individual who purchases credits.

Comments on required exhibits included expansion of tree surveying to include other site vegetation that provides stormwater benefits.

The Task Force also requested that timelines for completion be provided by cities who are proposing to implement regional solutions. Mr. Wisker informed the group that a list of specific requirements for regional solutions could be incorporated into the rule.

The Task Force questioned where the sequencing based on limitations of site specific soils was within the rule. Mr. Wisker referenced Section 3 (c) and commented that perhaps this section could be expanded to provide more clarification.

Manager Casale asked the Task Force how much sequencing/flexibility should be provided within the rule given that the presence of suitable soils or absence thereof would be included in and valuation of a property proposed for development.

The Task Force responded that while this was true, the Board of Managers should provide staff with adequate flexibility in the District's implementation of the rule to avoid creating the need for variances.

At this point Mr. Wisker provided background on the additional analysis being undertaken by the District to assess the potential for lowering the regulatory threshold down below 1 acre.

The Task Force had diverse opinions on this topic. Some members expressed support for the District's involvement in the tear down/re-build phenomenon that has been exhibited around Lake Minnetonka and often results in much larger single family footprints. Other members commented that such a lowering of the threshold could result in a

monitoring/maintenance issue for the District which has limited staff resources. Some of the Task Force favored an incentive approach or an approach that focused on redevelopments that would likely create drainage problems.

The Task Force asked what role the District's CIP played in addressing the cumulative effects of these many small redevelopments. Mr. Wisker expressed that the goal for regulation as outlined within the Plan is to allow no degradation, which would place capital projects in the position to provide improvements. Mr. Wisker finished by saying that whatever piece of the problem was not captured through regulation would be offset by capital projects which would shift the balance from providing improvements to offsetting development/redevelopment impacts.

The meeting concluded at 8:30PM