

Northern Counties Land Use Coordinating Board  
Minnesota Discovery Center, Chisholm  
February 4, 2016

Minutes

Call to Order: The meeting was called to order by Chairman Rich Sve at 9:35 a.m.

NCLUCB Members Present: Rich Sve, Neil Peterson, Wayne Skoe, Todd Miller, Steve Raukar, Brian Napstad, Tom Rukavina, Buck Nordlof, Garry Gamble,

Other Participants: Bob Lessard, MnDNR; Lori Dowling-Hanson, MnDNR; John Chell, secretary.

Administrative Actions

Additions to the Agenda: Sve added 404 meeting M-Gamble, S-Peterson  
Action on Minutes of Jan. 7: M-Raukar, S-Nordlof

Financial Report: M-Raukar, S-Miller

General Fund Balance	\$125,467.71
YTD Expenses	\$ 1,442.51

Accounts Payable

J.Chell	\$ 661.42
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Agenda Topics:

**Embedded Advocates:** Commissioner Rukavina used the term 'embedded advocates' to characterize a problem observed by several NCLUCB members. The problem stems from employees of state or federal environmental regulatory agencies who overtly or covertly use their professional positions to advocate for decisions favored by environmental organizations. Among the specific examples discussed by NCLUCB members included: MPCA employee emails of support to opponents of the Enbridge pipeline, a representative of an environmental organization becoming a regulatory program employee for the Corps of Engineers, and SWCD employee expressing hostile opinions toward a proposed project and developer. Commissioner Napstad cited a recent letter by MRCC expressing concern that biased employees may be delaying projects and ignoring objective regulatory procedures in environmental assessments and evaluations.

**Wetland Amendments Implementation:** Commissioner Napstad  
(Handout: 2015 Wetland Conservation Act Statute Changes Summary)

Napstad began his summary by cautioning that the rule making process is a long and complex process with many reviews and draft revisions. The Board of Water and Soil Resources is responsible for the amendment implementation and rule drafting. That process is guided by an advisory committee. At yesterday's advisory committee meeting several related topics were covered: special mitigation opportunities in N.E. Minnesota, stream restoration strategies and criteria, shoreland restoration, wetland buffers, and credit levels for various types of restoration and preservation. Commissioner Sve inquired about the changes to the existing wetland credit system. Napstad stated that the intent of advisory committee is to make the crediting process easier to apply and to provide more opportunities for preservation crediting. The role of county planning generally and the One Watershed/One Plan was acknowledged as an important component of implementing the WCA amendments and rulemaking.

A critical factor in the work of the advisory committee is current differences between state and federal wetland policies, particularly with regard to various buffer strategies and compensatory allocations. Commissioner Miller highlighted the federal/state policy conflict by citing the fact that there is no credit for multipurpose flood control projects such as impoundments. Miller also questioned the role of counties in designating priority mitigation sites and the weight those designations will have in the new rule making process.

Several commissioners discussed the ongoing difficulty with wetland mitigation projects in counties where additional wetlands are not an environmental priority but merely the product of low land prices. Napstad relied that once these alternative mitigation processes and rules are established, that will not be an issue. But he cautioned that it is always difficult for a county official to attempt to intervene between a private landowner as a willing seller and an agency or private purchaser.

Commissioner Gamble noted that the intent of the One Watershed/One Plan program is to identify willing private landowner participants in restoration projects. Napstad cautioned that in some cases, targeted conservation is discriminatory by setting priorities and assessing anticipated environmental values.

Brian summed up one critical strategy of the WCA revisions as changing Minnesota's approach from an acre for acre calculus to a more complex evaluation based on function and value...and that the Corps is the outlier in achieving this goal

### **Buffer Rules Development**

NCLUCB commissioners discussed recent developments with regard to the Governor's position on water courses subject to mandatory buffers. While the withdrawal of private ditches from the regulation does reduce both private concerns and local agency workloads in determining regulated waters, there is still many questions regarding local

agency roles, the designation process, enforcement responsibilities, funding allocations and at what level of government does "jurisdiction" reside. And within the concept of jurisdiction, what does jurisdiction imply? Is jurisdiction optional? Can and should local governments (Counties, SWCDs, and watershed districts) seek jurisdiction over watercourses subject to the buffer provisions?

#### **404 Meeting**

Commissioner Sve reported on a working group meeting with legislators considering the state assumption of 404 regulations under the Clean Water Act. Assumption of 404 would require delegation of regulatory responsibilities by both the Corps of Engineers and EPA. Given the unclear status of the Waters of the U.S. draft rules, the fact that 10 other states have apparently abandoned their attempts at assumption, inconsistencies within state and federal approaches to water regulations regarding issues such as de minimus provisions and wetland regulation/mitigation, and the continued regulatory presence of federal agencies irrespective of 404 assumption, the benefit of assumption at this time appears unclear.

In the interest of developing additional background on other state approaches to this issue, Commissioner Gamble moved and Commissioner Miller seconded a motion to assign the NCLUCB secretary to investigate and report to NCLUCB on the status of other state attempts to assume 404 authority. Passed.

#### **Commissioners Roundtable**

Commissioner Skoe noted the MPCA Clean Power public meetings ongoing this month. He also mentioned that Becker County is engaged in a silica sand controversy with opponents employing a former MPCA regional director in their efforts to ban silica sand mining.

Regional Director Dowling-Hanson reported on an economic development initiative entitled: "Recharge the Range" that is identifying opportunities for economic growth on the Iron Range. 140 participants from business, non-profits, education and government are participating.

Adjournment at 11:45 a.m. M-Napstad, S-Raukar.