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Land & Water Partnership Initiative

Technical Advisory Committee Meeting #5 Summary

February 16, 2023 | 1:00 – 3:00 PM

Agenda and Overview of Rule Review Process

- MCWD Permitting Technician, Abigail Ernst, explained the agenda for meeting 5, which is split into two parts: review and discussion of the second batch of rule revisions and a discussion of coordination on private development review. MCWD decided to further split the permitting rule revisions across three meetings to provide more time for review and discussion. In meeting 5, TAC members will discuss the revisions to the Wetland Protection and Variance and Exception rules. At meeting 6, TAC members will discuss Stormwater Management and Floodplain Alteration. At the final meeting, MCWD will share the direction it will take for the substantive changes discussed by the TAC. As TAC members suggested, MCWD will provide a side-by-side comparison of the existing and proposed rules for the 45-day comment period.
- TAC members were also reminded of upcoming due dates for input forms and surveys: The survey for batch 3 rules (Stormwater Management and Floodplain Alteration) is due on March 3rd, and the **Extended Feedback Form is due on March 17th**. MCWD will continue entering responses on the Extended Feedback Form throughout the TAC process.

Review and Discussion of Batch 2 Rule Comments

- Ernst then stepped through the feedback received on the survey, noting that TAC members will receive the full list of comments ahead of the next meeting. The survey indicated that TAC members are generally comfortable with the proposed rule revisions but provided some suggestions for additional improvement. Ernst stepped through each rule individually:
- Wetland Protection Rule:
 - MCWD is proposing additional flexibility for buffer provisions in the following situations:
 - Large parcels where the wetlands are downgradient of added impervious, but are so far away, that the runoff is unlikely to reach the wetland, may be eligible for an exemption.
 - Public projects that have an equivalent conservation protection may be eligible for an exemption.
 - Public lands may receive additional signage flexibility.
 - Right-of-Way (ROW) projects may receive maintenance flexibility to avoid conflicting with public safety goals.
 - Public projects where the buffer conflicts with a water-dependent recreational or educational goal may be eligible for an exemption.

- TAC members asked questions through the survey about buffer requirements for linear projects. Ernst clarified that a buffer is not required if only repavement is happening, as opposed to reconstruction down to subgrade. Ernst also clarified that buffer requirements are limited to available ROW. This is consistent with current rule language and will be clarified in the proposed rule.
- There were also comments about how buffers are triggered by the Waterbody Crossings and Structures rule. Ernst clarified that the buffer requirement is only triggered by a new structure and not replacement of an existing structure. TAC members suggested that buffers should not be required for impacts that qualify for no-loss or exemption through WCA. Ernst replied that staff would confirm how the rule is currently applied in cases of no-loss or exemption and clarify this in the proposed rule.
- TAC members also suggested that MCWD provide more quantitative detail for the added flexibility applied to large parcels where the runoff will not reach the wetland and clarify whether stormwater practices like basins are allowed within the buffers.
- **Variations and Exceptions (V&E) Rule:**
 - Ernst explained that variances are to be used as a waiver when an applicant cannot meet a specific rule or standard and exceptions are for cases when the applicant cannot meet a rule or standard but can provide an alternative for greater benefit. The only substantive change proposed is replacing the “undue hardship” language with “practical difficulty” to align the rule language with state and county court decisions.
 - There were questions about whether the rule should require just a majority rather than supermajority approval and the type and frequency of variance requests that are submitted. Ernst noted that variance requests are typically for buffer flexibility, and the proposed changes to the Wetland Protection rule are intended to address some of these.
 - TAC members presented some questions and suggestions about using the V&E rule to address concerns about flood risk and compensatory storage. Ernst explained that MCWD recognizes the importance of optimizing its rules for climate resilience but that changes in this area are beyond the scope of this round of rule revisions. MCWD is developing a 2D model to support data-driven policy and will be engaging its communities in climate action planning discussions beginning late 2023/early 2024. MCWD welcomes input on how to optimize rules for climate resilience to inform this upcoming process. In the meantime, MCWD will continue to use the V&E rule to find creative solutions to regulatory challenges. TAC members encouraged MCWD to consider how this round of revisions could be used to begin addressing flood risk concerns in the near-term. Ernst noted that these comments would be considered further and brought back at a subsequent meeting.

Review and Discussion of Coordination Framework

- MCWD Policy Planning Manager, Becky Christopher, reminded the TAC of the purpose of the Land & Water Partnership Initiative - to create systems to support partnership and integration

of land-use and water planning. In previous TAC meetings, TAC members identified some potential benefits of coordination: common goals, creative solutions, sharing expertise, efficiency, funding support, collaboration, relationships, increased effectiveness, better projects, and more. Improving coordination requires a combination of establishing commitment through plans and policies, building strong relationships, and developing clear processes to make it actionable and sustainable.

- Christopher outlined a few different areas of coordination that have been discussed with the TAC to date, and the ideas for strengthening coordination. In meetings 1 and 2, the TAC discussed the potential for partnering with MCWD on public planning and projects. The proposed LWP program is intended to support these public project partnerships and promote early coordination. The draft guidance for the program will be reviewed at TAC meeting 6. The TAC has also expressed interest in the more consistent use of annual coordination meetings, which can be a good venue for reviewing plans and priorities and identifying partnership opportunities.
- In meeting 4, the TAC discussed the potential for improving coordination and formalizing partnerships in the area of water resource regulation, permit administration, and enforcement. Where there is interest, the MCWD plans to work with cities to formalize partnerships through agreements and develop SOPs for how this coordination will occur.
- In addition to formalizing partnerships for regulation, MCWD sees opportunity to strengthen coordination on private development review to identify potential challenges and opportunities early in the process and improve outcomes for the applicants, cities, and MCWD. To gather TAC input on this topic, MCWD facilitated a discussion of the following questions related to private development review:
 - What are the potential benefits of partnering on private development review? What are examples?
 - What types of projects present the most opportunity for partnership?
 - How can MCWD get engaged early/at the concept stage?
 - How can cities support early MCWD engagement?
- Regarding the benefits, TAC members noted that early coordination between the city, applicant, and MCWD can provide the applicant with an understanding of the rules and potential impacts to the project upfront and can help expedite the planning and permitting process. It can also be a way to identify partnership opportunities.
- Some TAC members responded that their default is to send all sketch plans/applications to MCWD, but it would be helpful to have a shared understanding of priority areas so city staff can be more targeted in making connections between MCWD and developers.
- Other TAC members shared that, even when there is early coordination between the city and MCWD, it is often not a priority for developers to engage with MCWD early in their process, as they are typically focused on other aspects of the project. It was noted that there may be a gap in communication with the developer's engineer who may be more likely to see the benefit of engaging early in review of water resource requirements.

- Several TAC members noted that planning staff are a key conduit for building relationships and partnerships with private developers since they are typically the first to learn about development activity. It was also suggested that MCWD present to municipal planning commissions and that this is likely more fruitful than presenting to city councils since they have many other areas of focus.
- TAC members suggested that it would be more effective to identify areas of priority/opportunity for water resource improvement and work with city planners and planning commissions to integrate them into Comprehensive Plans/area plans so they can be factored into city zoning and development requirements (like affordable housing). It was noted that this will take more foresight and planning but will be more effective than reacting to, and trying to influence, development proposals.
- The TAC also noted that coordination on area planning and identification of priority areas could support the development of regional projects and banking/credit systems (for water quality, flood storage, or wetlands) rather than having requirements met on each individual property.
- TAC members expressed that marketing to developers is still worthwhile, and MCWD could consider hosting workshops. It was also noted that there would need to be clear incentives and framing of how it benefits them (e.g., saving time/\$, help navigating regulations). It was suggested that any workshops be offered virtually and during the slower season (Dec/Jan). Coon Creek Watershed District was mentioned as an example of another watershed who is doing this.

Next Steps and Wrap-up

- Kayla Westerlund, MCWD Permitting Program Manager, shared that as requested, the permitting Compliance Framework will be shared with the TAC, but that MCWD is looking for input on how the TAC would like to engage. The Compliance Framework includes an Enforcement Policy which clarifies MCWD's escalation and enforcement process. It also includes an Inspection and Site Prioritization Policy which outlines inspection frequencies based on water resource risk. Finally, it includes an updated financial assurance schedule to reflect modern costs. Westerlund presented several options for TAC engagement with the Compliance Framework: offline survey input, voluntary workgroup, or the addition of an eighth TAC meeting. Most TAC members were interested in engaging in some form and suggested that MCWD start with a survey and then determine whether a small group or additional TAC meeting would best serve this review.
- MCWD staff reminded the TAC that meeting 6 in March will focus on the third batch of rules (Floodplain Alteration and Stormwater Management) and the draft guidance for the LWP program.

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Optimizing the Permitting Experience

TAC Meeting #5

Agenda

- Process Update
- Rule Batch #2 Overview
- Discussion
- Break (10 minutes)--*
- Coordination Framework
- Coordination Discussion
- Meeting 6 Preparation & Wrap-up



Process Reminder

Meeting 4	Meeting 5	Meeting 6
Erosion Control	Wetland Protection	Stormwater Management
Dredging	Variances and Exceptions	Floodplain Alteration
Waterbody Crossings and Structures		
Shoreline and Streambank Stabilization		

Input and Feedback Update

Rule	Feedback method
Batch 1: <ul style="list-style-type: none">• Erosion Control• Shoreline and Streambank Stabilization• Waterbody Crossings and Structures• Dredging	<ul style="list-style-type: none">• Survey: completed January 11th• In-meeting discussion: January 19th• Extended Feedback Form: March 17th
Batch 2: <ul style="list-style-type: none">• Wetland Protection• Variance and Exceptions	<ul style="list-style-type: none">• Survey: February 10th• In-meeting discussion: February 16th• Extended Feedback Form: March 17th
Batch 3: <ul style="list-style-type: none">• Stormwater Management• Floodplain Alteration	<ul style="list-style-type: none">• Survey: due March 3rd• In-meeting discussion: March 16th• Extended Feedback Form: March 17th

District Follow-up Items

Additional Rule Revisions

- Meeting 7

Rule Comparison

- Side-by-side will be provided for 45-day comment period

Rule Revisions and Homework Results

Wetland Protection Revisions

Goal: Streamline and Increase Efficiency

- Addition of buffer flexibility for the following situations:
 - Large parcels where runoff won't reach the wetland
 - Public projects where there is an equivalent conservation protection
 - Signage on public land
 - Maintenance for ROW projects
 - Public projects where the buffer conflicts with water-dependent recreational or educational goals

Wetland Protection Feedback

Do the proposed changes help accomplish the District's goals to streamline, clarify, and simplify the rules?

- 100% answered "yes"

Are you comfortable with the added flexibility?

- 100% answered "yes"

Will the added flexibility help your projects meet the rule?

- 70% answered "yes"

Wetland Protection Feedback

TAC Review Requests:

- Buffer requirements for road and trail reconstruction projects
 - Resurfacing of roads/trails doesn't require a buffer
 - Limiting buffer to available ROW will be maintained
- Buffer requirements for projects triggering WBX
 - Required for entirely new structures
 - How does the buffer provision interact with WCA?

Variations and Exceptions Rule

Variations Standard

- Use: When a project can't meet a rule or standard

Exceptions Standard

- Use: When a project can't meet a rule or standard, and provides an alternative for greater benefit

Variances and Exceptions Rule

Goal: Align

- Replacement of “undue hardship” standard with “practical difficulty” standard

Variances and Exceptions Feedback

- Do the proposed changes help accomplish the District's goals to streamline, clarify, and simplify the rules?
 - 80% answered "yes"

Variances and Exceptions Feedback

TAC Review Requests:

- Flood risk and compensatory storage

Meeting 6

Homework-

- By March 3rd MCWD fill out online survey for:
 - Stormwater Management
 - Floodplain Alteration
- Extended Feedback Form by March 17th

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Coordination Framework

Part 2 – TAC Meeting 5

Purpose of the Land & Water Partnership Initiative

Create systems to support partnership and integration of land use and water planning



TAC Work Plan



Vetting the new Land & Water Partnership Program



Optimizing the Permitting Experience



Building Sustainable Connections for Ongoing Collaboration

Benefits of Coordination/Partnership

- Common goals, mutual benefits
- Sharing expertise, funding, efficiency
- New ideas, creativity, developing solutions to complex problems
- Collaboration, relationships, more fun
- Increased effectiveness, impact and results, making projects better

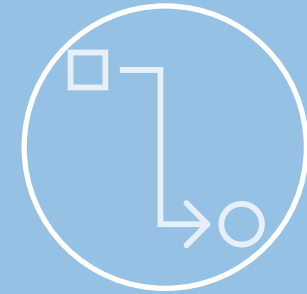
How do we improve coordination?



Plans/Policies



Relationships



Processes



Areas of Coordination

- Public Planning and Projects
- Private Development Review and Permitting
- General Coordination



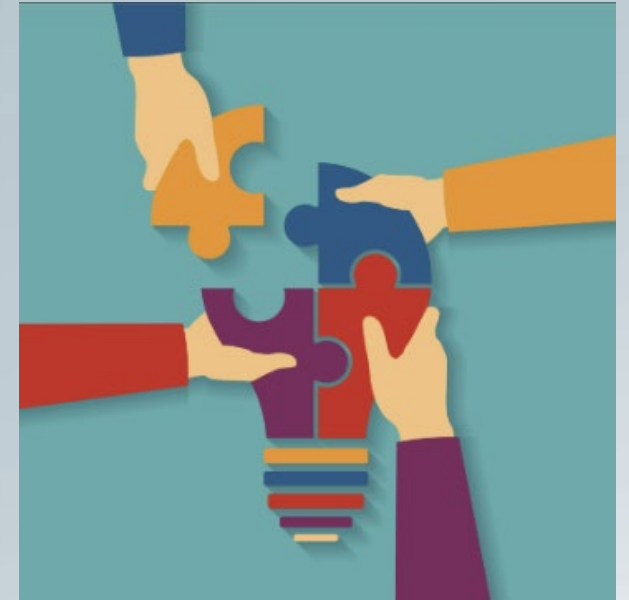
Areas of Coordination

- **Public Planning and Projects:**
 - Land use/water resource planning
 - Public project coordination
- Private Development Review and Permitting
- General Coordination



Areas of Coordination

- Public Planning and Projects
- Private Development Review and Permitting:
 - **Permitting - regulatory authority, permit administration, inspection, enforcement**
- General Coordination



Areas of Coordination

- Public Planning and Projects
- Private Development Review and Permitting
 - **Private development review**
- General Coordination



Coordination on Private Development Review

Discussion part 1:

1. What are the potential benefits? What are examples?
2. What types of projects present the most opportunity?

Discussion part 2:

3. How can MCWD get engaged early/at concept stage?
4. How can cities support early MCWD engagement?

Coordination on Private Development Review

1. What are the potential benefits?
 - Flag regulatory issues early, help navigate, and streamline process
 - Identify opportunities for greater water resource benefit and provide \$/technical support
 - Examples?

Coordination on Private Development Review

2. What types of projects present the most opportunity? What are the most important factors to consider?
 - Project type and scale?
 - Site features - drainage area/pipeshed, restorable wetlands, impaired waters?
 - Planning stage/project timeline?
 - Applicant/developer?
 - Other?

Coordination on Private Development Review

Discussion part 1:

1. What are the potential benefits? What are examples?
2. What types of projects present the most opportunity?

Coordination on Private Development Review

3. How can we coordinate early/at concept stage?
 - Market Land & Water Partnership program
 - Offer pre-application meetings/review
 - City coordination

Coordination on Private Development Review

4. How can cities support early District engagement?
 - a. What are the steps in the development review process? How does this vary by project type? By city?
 - b. How is water resource review currently integrated into these steps?
 - c. How can we strengthen City-MCWD coordination, and at which step(s)? What can MCWD do? What can cities do? Who needs to be involved?

Coordination on Private Development Review

Discussion part 2:

3. How can MCWD get engaged early/at concept stage?
4. How can cities support early MCWD engagement?

Next Steps

- Meeting 6 – March 16:
 - Batch 3 rules – Stormwater and Floodplain
 - Survey due March 3
 - LWP program guidance
- Meeting 7 – April 20:
 - Wrap-up and next steps
 - Survey on interest in different areas of coordination/partnership
- Gauge interest in compliance framework review

Compliance Framework



Enforcement Policy

- Graduated enforcement
- Coordination with municipal partners



Inspection and Site Prioritization Policy

- Prioritize based on water resource risk
- MS4 Compliance



Financial Assurance Usage Policy

- Updated financial assurance schedule to reflect modern costs

Review Options



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Thank you!

Questions?