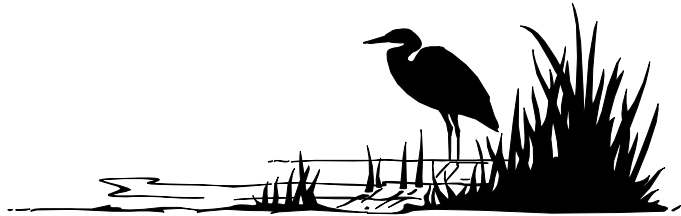


AITKIN COUNTY ENVIRONMENTAL SERVICES-PLANNING & ZONING

209 Second Street, NW
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May 12, 2009

RE: Proposed Wetland Conservation Act Rule
Changes

The Honorable Steve M. Mihalchick
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P. O. Box 654620
St. Paul, MN 55163

Honorable Judge Mihalchick,

Please consider the following comments from Aitkin County concerning the Proposed Permanent Rules Relating to Wetland Conservation.

Current Language

8420.0541, Actions Eligible for Credit, Subp4. **Exceptional natural resource value projects.** Projects that restore exceptional natural resource values of wetlands may receive either public value or new wetland replacement credit solely or in combination as determined by the local government unit with concurrence of the technical evaluation panel. The amount and type of credit allowed shall be based on a functional assessment that documents the restoration of these values.

Proposed New Language

8420.0526, Subp. 8. **Restoration and protection of exceptional natural resource value.**

A. Replacement credit may be granted for activities that restore and protect wetlands and adjacent areas that improve or directly contribute to the function and sustainability of exceptional natural resources. For purposes of this subpart, exceptional natural resources are:

- (1) habitat for state-listed endangered or threatened species;
- (2) rare native plant communities;
- (3) special fish and wildlife resources, such as fish passage and spawning areas, colonial water bird nesting colonies, migratory waterfowl concentration areas, deer wintering areas, and wildlife travel corridors;
- (4) sensitive surface waters; or
- (5) other resources determined to be exceptional by the technical evaluation panel based on the value relative to other resources in the watershed or a board-approved plan.

B. Restoration and protection of calcareous fens, white cedar swamps, floodplain or riparian wetlands and upland buffers, habitat corridors with other important resources, or wetlands adjacent to designated trout waters are examples of potential qualifying activities. The allocation of credit under this subpart is determined by the local government unit with concurrence of the technical evaluation panel based on the actions proposed and the resulting contribution to the value and sustainability of the exceptional resource. Areas receiving credit must be protected by a permanent conservation easement, in a format prescribed by the board, that is granted to and accepted by the state.

Concerns

- 1) The new language seems to boiler-plate what is an exceptional natural resource. Minnesota has a lot of diverse landscape; what is considered exceptional will vary greatly throughout the state. Aitkin County has over 95% of its pre-settlement wetlands and the Aitkin County Technical Evaluation Panel (TEP) has made a determination on what they consider to be exceptional.
- 2) Other LGU's would be free to either determine their own standards for exceptional, or to adopt BWSR guidance, such as the proposed new language.
- 3) As discussed at the April 30th meeting in Grand Rapids, many mining mitigation sites are being located in Aitkin County. Aitkin County LGU does not have any decision authority over these sites at this time. It is very likely that extensive areas can be considered by others to be exceptional, based on the proposed language above, but in a county with over 550,000 acres of wetlands, it would not meet our local criteria.
- 4) Even if the proposed plan would qualify under Aitkin County criteria, there is no guarantee that the mitigation or bank site will reach that exceptional status. The crediting is based on a proposed plan.
- 5) The new language allows credit for "adjacent areas that improve or directly contribute to the function and sustainability of exceptional natural resources." So this is allowing credit for areas next to areas that will be potentially exceptional?
- 6) The proposed changes also affect subpart 9, which allows preservation of wetlands owned by the state or local unit of government. Again, Aitkin County standards may not be met when determinations are made by other agencies.

For the above outlined reasons, Aitkin County staff must go on record to oppose any changes to the exceptional natural resource value project language. Or, language should be added into the proposed changes that require LGU's to approve any exceptional natural resource value, even if they are not the "permitting authority".

Sincerely,

Becky Sovde
Wetland Specialist/Compliance Officer
Aitkin County