MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, April 20, 2006
Pollution Control Agency Board Room

EQB Members Present: Robert A. Schroeder, Dana Badgerow, Sheryl Corrigan, Ward Einess, Brenda Elmer, Gene Hugoson, Susan McCarville, Gene Merriam, Glenn Wilson

EQB Members Absent: Jonathon Bloomberg, Jerome Deal, Dianne Mandernach, Lt. Governor Carol Molnau and Paige Winebarger

I. Adoption of the proposed Agenda for the April 20, 2006 meeting and Minutes from the March 16, 2006 Environmental Quality Board Meeting

Commissioner Merriam made a motion that the minutes and proposed agenda be adopted and Member Elmer seconded. The motion was approved on a voice vote.

II. Executive Director's Report:

Michael Sullivan stated that there were several handouts at each Member's place. First, is a letter dated April 14, 2006 to Mr. Craig at DNR that relates to the lakeshore new mandatory category issue. In addition, there is a copy of a Court of Appeals opinion dealing with Phase I of the rulemaking. Also, to assist each member when going through the presentation on the Phase 1 rulemaking, a table that goes through that process. Following that, is a copy of the revisions to the rules as they were heard at the hearing on March 30, 2006. Next, is a letter to the Administrative Law Judge, Steve Mihalchick, discussing responses to some of the questions and issues raised at the hearing. These are questions and issues that, from the staffs' perspective, were non-controversial. That letter was faxed to the ALJ on April 19, 2006. In addition to that, there will be some other issues that the ALJ has not been advised of including possible changes regarding the AUAR portion of the rules. Next, is a letter from the Minnesota Center for Environmental Advocacy, which is a hearing follow-up letter explaining in more detail the comments they made to the ALJ at the hearing on March 30, 2006. Finally, is a letter from Winthrop and Weinstine, which is a follow-up letter regarding comments from the Twin Cities Builder's Association.

III. Legal Counsel Report:

Robert Roche stated that there are two matters to report on. The Ramsey County District Court granted the EQB's motion to dismiss the Colby lawsuit. That was a case where some citizens opposed to a feedlot had sued the EQB over Polk County's determination that the feedlot was below the threshold for a mandatory EAW. The EQB wanted to dismiss the case based on lack of jurisdiction arguing that the proper defendant was Polk County and the proper court with jurisdiction will be Polk County District Court. The Ramsey County District Court accepted that argument and dismissed the lawsuit. The plaintiff will have 60 days to appeal, so Mr. Roche will keep the file open. Mr. Roche does not anticipate an appeal in that case.

The second matter Mr. Roche reported on is a matter in which the EQB was not involved, but will impact the rulemaking. It is the Court of Appeals decision entitled Minnesota Center for Environmental Advocacy vs. City of St. Paul Park. The relevant part of the decision that the Board should be aware of the Court of Appeals in a 2-1 decision ruled that when a municipality does an AUAR, it need not look at cumulative impacts beyond the boundary area of the AUAR review. It was a 2-1 decision, with Judge Lansing disagreeing stating that the EQB statutes and rules do require that an AUAR look at cumulative impacts outside the AUAR area. This is going to have an impact on Phase 2 rulemaking. EQB guidance indicated that an RGU should look outside the boundary area, so Mr. Roche stated that will be something the staff will want to look at in terms of determining the Phase 2 rulemaking.

Chair Schroeder welcomed Ward Einess to the Environmental Quality Board.

IV. Briefing on Status of "Phase 1" Amendments to Environmental Review Program Rules

Gregg Downing, EQB staff, stated that during his presentation he will primarily refer to the landscape size table. He stated that the Board may want to have the rule amendments and the letter that was sent yesterday to Judge Mihalchick.

Mr. Downing indicated that in December of 2005, the Board authorized rulemaking on "Phase 1" amendments to the Environmental Review Program Rules. Notice of that rulemaking was published in mid-February, the 30-day comment period ended on March 15, 2006 and the staff received more than 25 requests for a public hearing, so there was a public hearing before Judge Mihalchick on March 30, 2006. The post-hearing comment period ran until April 19, 2006. Additionally, there is a rebuttal period that runs for another five days and ends April 26, 2006. The staff intends to file another response letter at the end of the rebuttal period.

Mr. Downing indicated that in the bottom right corner of the table there is a section for "Summary of Responses to Comments". When the rulemaking got started there were 39 subparts of the rule that are amended; in this tally, comments were received on only 8 subparts. Of those 8 comments, there is one case where the staff is recommending to accept the comment and have indicated that to the ALJ. In four other subparts, the staff is recommending to reject the comments and leave the rule amendment as proposed. There is another comment that is still under consideration. Staff is recommending to withdraw the amendments for two of the subparts due to the Court of Appeals decision.

Mr. Downing indicated that the table shows for each subpart of the rule the staff is proposing to amend for which comments were received, what the part is with the page and line number in parentheses, subject of the amendment, comments received and who they were from, whether the staff responded in the letter sent on April 19, 2006 or will respond in the letter that will go out on April 26, 2006, and then a summary of what the staffs' response was or is intended to be.

Item #1, rule part 4410.0200, subpart 81, which is the definition of "sewered area". The staff was intending to add the phrase "or homeowner owned" to the definition so it would read, "A sewered area means an area that is serviced by a wastewater treatment facility or a publicly

owned or homeowner owned, operated, or supervised centralized septic system servicing the entire development." The reason for this addition is from the 1982 SONAR, when the definition was adopted, the Board meant to include homeowner owned systems as a subcategory of publicly owned. The problem is that most people don't think of publicly owned as homeowner owned there has been a lot of confusion. The EQB staff was proposing to add the phrase to make the wording of the rule consistent with the Board's intent. The comment received about this was from the Builders' Association of the Twin Cities, and had suggested that the phrase "or privately owned" gets added. The staff did not respond to that comment yet; it is still under consideration. The staff is waiting to get some more information back from the PCA staff and the DNR staff about what the impact of adding "privately owned" would be. In 1982, the Board was in clear in that they did not intend to include "privately owned systems" under this definition, but with times changing, it might be time to add that in. If that comment was accepted, rather than add "privately owned", what the staff would to do amend it would be to delete all reference to who owns the properties systems.

Chair Schroeder asked if the staff is considering that privately owned would include businesses. Mr. Downing stated that if that comment was accepted, if it was a centralized system that served the entire development, then it would be qualified as a sewered area.

Next is item #3, rule part 4410.3610, subpart 5, items B and H, which are procedures for the AUAR process. The amendments that is being proposed was some minor rewording of the procedures, regarding comments on AUAR's that take into account other amendments that were being made. The comment received was from the Builders' Association of the Twin Cities and they suggested that the wording was not as clear as it could be and might have implications that were not intended. The staff responded to that in the letter sent to the ALJ on April 19, 2006 that the staff accepted that comment and are proposing some modifications of the language.

Next is item #5, rule part 4410.4300, subpart 15, which is the mandatory EAW category for air pollution sources. The staff was intending to raise the threshold from stationary air pollution sources and to delete the item regarding parking facilities. The comment received was from the Minnesota Center of Environmental Advocacy and they are opposed to raising the threshold for the air pollution sources. The staff has not responded to that comment yet. The staff has talked to the PCA staff and based on those conversations, the comment is being rejected, but the language has not been received from the PCA staff to put in the letter to the ALJ.

Next is item #6, rule part 4410.4300, subpart 18, which is the mandatory EAW category for wastewater systems. The staff was intending to raise the threshold for sewer systems. The comment received on this was from WSB & Associates and they suggested that the RGU should be changed from the PCA, for sewered systems and lift stations, to the municipality in question. The staff has not responded yet, and the staff intends to reject the comment, the staff thinks the PCA is the appropriate RGU. Again, the EQB staff waiting for the language from the PCA staff to put in the response letter to the ALJ.

Next is item #7, rule part 4410.4300, subpart19, which is a residential EAW mandatory category. The staff is intending to add the words "annexation agreement" in the text and the

purpose is to add that kind of document as an official indicator for that parcel of ground that is intended for future residential development. The reason for doing that is when land is so indicated and it's owned by someone who is developing part of the land, but not the whole thing, the rule indicated that you have to count all the units you can build on the land you own, even if you are intending to do that in stages. Currently, only comprehensive plans and zoning are named in the rule as indicators that the land will be residential in the future and there a cases where annexation agreements are developed between the township and the city, but the comprehensive plans and the zoning have not been updated yet. There are also cases where it is clear that the land is going to be residential, but the rule doesn't recognize that and therefore, those projects are treated differently than projects where the planning and zoning have been updated. The staff wanted to add annexation agreements to fill that gap, so to speak. There were two comments received on this change and the first one was from the Builders' Association of the Twin Cities who asked the EQB staff to restrict the annexation agreements covered to those that were specific to the project in question. The staff rejected that comment and indicated that to the ALJ in the letter that was sent on April, 19, 2006. The staff doesn't think it makes a difference whether the annexation agreement covers only the project in question or many other possible projects. That point is, is that if it indicates that a parcel is going to be residential in the future, that is what is wanted. The second comment was from the Minnesota Township Association and they are concerned that adopting this amendment might create a disincentive to townships and cities to enter into annexation agreements. The EQB staff doesn't believe this would be a disincentive in very many cases because there aren't many cases where the annexation agreement is the only document that indicates something is going to be residential in the future. There are enough cases where those projects aren't being treated the same as the ones where the comprehensive plan or the zoning indicates that. The EQB staff is rejecting the Township Association's comment; however, the staff has talked to the Association by telephone about this and agreed that if they could come up with some possible wording that might accomplish what the EQB staff is trying to do, but avoid their concern, the staff is willing to take a look at that.

Next is item #8, rule part 4410.5600, subpart 2, which has to do with the distribution of the EQB *Monitor* which is a bulletin that is published every two weeks that notifies anybody who is interested as to what projects are undergoing environmental review, EAW's, EIS's, various stages of review, decisions made by units of governments, and other environmental related notices. The amendment was to indicate that it is legal for the EQB to publish the *Monitor* in electronic form only as in posting it on the EQB website. This is the policy that was adopted at the beginning of the State fiscal year. The comment received was from the Minnesota Center for Environmental Advocacy who is opposed to electronic only distribution of the *Monitor*. They indicated that it was an environmental justice issue, that some people would be disenfranchised by not sending out paper copies. The EQB staff responded to that in the letter to the ALJ sent on April 19, 2006 rejecting the comment. The main reason being that since this went into effect, there have been no complaints from anyone and no one has ever requested a paper copy.

Commissioner Wilson asked on item #7, one of the concerns is that if this affects the Township Association in rural areas, the absorption rate is slow that there are changes in the development patterns. Will this be another hurdle to unwind when something like that happens; would it

seem to slow down the development. Mr. Wilson doesn't necessarily want the rule to be changed, but for the staff to consider slow growth. Mr. Downing stated that in almost all the cases regarding the annexation agreement being important in environmental review is in situations where there is considerable growth happening outside a particular city. It would be unlikely for a city with slow growth. Chair Schroeder asked Mr. Downing to talk with the Township Association and see if they believe this disincentive is because of some economic considerations and for the EQB staff to be mindful of that.

Commissioner Merriam asked about item #5, regarding the letter from the Minnesota Center for Environmental Advocacy on March 15, 2006, how the EQB staff disposed of their concerns. Commissioner Corrigan indicated that while Mr. Downing is reviewing that comment, she would provide some draft thoughts to the Board regarding how the PCA intends to respond. Ms. Corrigan stated that the MCEA's comments focused primarily on ethanol and mining. The PCA staff has looked at both of those categories and has stated in the SONAR for this particular effort, ethanol plants already have their own mandatory environmental category. There are a number of ethanol plants in the pipelines that are quite larger than that, so that will be captured by the existing thresholds. There is some discussion about that in the draft response. It is the same thing for the metallic mineral mining industry, they also have their own mandatory environmental category and, currently, there are three mining projects that are requesting construction to those projects and are already completing mandatory EIS's and the one was accepted. Ms. Corrigan stated that the PCA staff is confident that any mining expansions will be captured under the mandatory environmental category. With permitting requirements and the existing mandatory categories there is plenty of opportunity for environmental review.

Because of a mailing mix-up the March 15, 2006 letter was not received in time so the MCEA re-submitted a letter date April13, 2006 that was part of the official record.

Next, items #2 and #4, both relate to the AUAR procedures in rule 4410.3610, subpart 2 and 5a. These are two separate rule provisions, but are dealt with in a similar manner. Subpart 2 involved a procedure that the EQB proposed to add to the AUAR process that would provide a process by which a small project (less than any EAW threshold) could be dropped out of an AUAR if the AUAR was already in process. Subpart 5a was a procedure to establish a new step for scoping of AUAR's that will apply in cases where the AUAR was reviewing any single which was over a mandatory EIS threshold or that project comprised at least 50% of the geographic area of the AUAR. There was considerable discussion about these provisions at previous Board meeting where the Board authorized rulemaking. There was concern about the timeframe of these procedures and other questions. These procedures had been offered as an eminence in response to concerns of the DNR that were raised about the AUAR process and its use for reviewing specific projects. These were the two provisions that the most comments were received. There has been no response yet from the EQB staff on these comments. The comments on these procedures were causing the most difficulty and having to use the most resources in trying to respond. However, another development occurred that took precedence over the comments and that was the release of the Court of Appeals decision. That case had to do with an AUAR about the treatment of cumulative impacts in an AUAR and beyond that it created an interpretation of the law affecting the boundaries the meaning of the boundaries of

the AUAR are. This was an unexpected result. After discussing that case and the relation to the comments in proposing what to do, staff is recommending to withdraw from Phase 1, these two proposed amendments and go back and regroup for Phase 2 and try to take a more comprehensive approach to the question of cumulative impacts and AUAR's and other documents. Mr. Downing stated that before the next letter to the ALJ, for the Board to give the staff any advice on proceeding with the recommendation and pull those two out for the present time, or any other advice the Board has on what staff should do.

Commissioner Corrigan asked Mr. Roche what the downside is of leaving the changes that are proposed in Phase 1. Mr. Roche stated the downside is that the Court of Appeals decision has intensified the issue of the significance of establishing the boundary. For example, the Minnesota Center for Environmental Advocacy has taken the position with their comments that once an RGU fixes an AUAR boundary, everything within that has to undergo environmental review even if it is removed from the AUAR. MCEA with fixing up the boundaries can amount to a finding that everything within that boundary has a potential for significant environmental effects. Mr. Roche stated that the staff disagrees with that and it hasn't ever been the way the rule has been interpreted in practice where the boundary has always been seen as somewhat flexible where the RGU can change the boundary. This Court of Appeals decision appears to stand to the proposition that the boundary is in fact very fit and determined. The decision raises some significant questions regarding what the rules should say regarding the establishment of the boundary. Mr. Roche stated that it is advisable for the Board to take a hard look and decide as a Board what the rules should say regarding that boundary.

Chair Schroeder asked if a potential result is if that position would be found to be a disincentive for establishment of AUAR's. Mr. Roche stated that he would think so. He stated that if a city is told that once a boundary is established, everything within that boundary has to do a full EIS, Mr. Roche could see cities say they don't want to do that and lock themselves in. The rule proposal that came up was to give some flexibility as long as there are good reasons for moving it. This Court of Appeals decision does raise questions about the need to clarify in the rules what the significance is of establishing that boundary. That is why Mr. Roche suggested to the staff to wait until Phase 2, so that the rules could clarify any questions that are raised by the Court of Appeals decision.

Commissioner Corrigan wanted to clarify that what the staff is asking the Board to do is to set this aside for now because of the implications of the recent decision and take it up in a more mindful way as a result of the Court of Appeals decision. Mr. Sullivan stated that these items are important and need to be addressed, but they need to be done thoughtfully and in a comprehensive way, so when the Board responds to this, they aren't responding to pieces. Mr. Roche added that the Court of Appeals decision raises some questions that Mr. Roche thinks the Board should answer in the Phase 2 rulemaking and it would make sense to address all the issues in Phase 2 rather than do it in pieces.

Chair Schroeder asked if a timeline has been established for this. Mr. Sullivan stated that the staff has talked about the cumulative impacts piece and the need to start work on that now. This court case drug another piece into it and it will be their top focus in the short term.

Commissioner Corrigan asked if Mr. Downing was looking for action regarding the proposed changes. Mr. Sullivan stated that this was not marked as an action item, the presentation was to let the Board know what the staff was proposing to do and without objection, the staff will proceed as the information as been presented as far as the response to be sent out on April 26, 2006.

Commissioner Badgerow stated that she would like for the record to be affirmative rather than silent and that the staff recommendation appears to be appropriate. Chair Schroeder asked Ms. Badgerow is she would like to make a motion. Commissioner Badgerow made the motion and Commissioner Corrigan seconded the motion. The motion was approved on a voice vote.

V. Presentation of the DNR's Recommendations for New Mandatory Categories for Projects in Shorelands

Jon Larsen, EQB staff, stated that this would be a subject for Phase 2 rulemaking. This subject will be identified at Shoreland Development; originally identified as Lakeshore Development, but now will include shorelands from urban areas as well. Because of the size and complexity of that subject, a parallel track of activity was taken along with the Phase 1 rulemaking that addressed all the technical changes. The EQB has relied on the expertise of the DNR staff, Mr. Russ Schultz and Mr. Peder Otterson, and they have a detailed presentation describing both the process and the content.

Russ Schultz, DNR staff, stated that there was interest from the Environmental Quality Board to take a look at thresholds for shoreland development because of all the citizens' petitions for certain shoreland development issues. The EQB action was in January 2004 to and the DNR was requested to assist during the process.

The DNR staff was given 19 names that volunteered to be part of an advisory group. The DNR also invited others to be involved. The advisory board started meeting in October 2005 and met through January 2006. This is an outline of what the advisory group is recommending and then the next step would be the rulemaking process. Mr. Schultz indicated that there were some groups missing, including construction companies and realtors, that need to be touched base with.

Shoreland development projects are posed as a parallel effort; 1) the EQB heard citizen petitions for types of developments that are current around lakeshore and 2) the DNR is being told that their rules are out of date. There are certain areas that need to be updated because of shoreland development pressure. This is because most of the good shoreland is already developed and a lot of developments are going towards marginal lands and smaller waterbodies. The DNR has tried to merge these two things together.

In 1969, the Shoreland Management Act was passed requiring counties without shoreland ordinances to regulate the development around shoreland areas. The DNR was charged with establishing minimum standards. In 1989, the rules were updated, so the DNR has state shoreland management rules. There is a need to take a look at these rules again, so as part of their initiative there was interest to take a look at updating the shoreland standards. This is one

project of the Clean Water Initiative, but there are seven projects altogether looking at updating the State Shoreland Standards. It started in a five county area; Aitkin, Cass, Crow Wing, Hubbard and Itasca County. There were several issues going on like development pressure for one. Their population density was increasing by double the state projections. This was collaborative effort with input from about 450 stakeholders had an involvement in the process. The stakeholders started meeting about two years ago and what they wanted was better management tool for local governments; not replace the existing state shoreland or making a set rules, but providing better alternatives locally and to address water quality, and also to address lake access and planned unit development concerns. Another concern has been what is considered a public sewer and what is not.

In 2004, the taskforce conducted 15 public information meetings around the five county area to get an idea of what are the issues and what needs to be changed from the existing shoreland standards. Of all the 15 public information meetings, there were five common areas; 1) administration of local shoreland ordinances, 2) water quality in hard surfaces where the water runs off into lakes, 3) planned unit developments, 4) controlled access, access from second and third tier developments trying to get access to the lake, and 5) multiple shoreland classifications. Each lake is classified in a certain classification and general development is the larger waterbodies, recreational development is medium-sized, and natural environment is the smaller waterbodies. Each one has its own lot size and set-backs. There is concern that some larger waterbodies exhibit certain types of shoreland that are sensitive, so there was an interest to have another classification to be allowed and address those issues separately.

In 2005, there was a Shoreland Citizen Advisory Committee that met monthly and came up with an alternative set of standards. In 2006, they are kicking off an outreach and education effort to explain the documents and going back to the county boards to do that. There has been a lot of interest about these alternative standards around the state and Polk County is considering adopting them. These are alternative standards; they are not rules. The idea behind this, the replacement for the existing rules if the county wants to adopt these provisions in their ordinances, they already have the DNR's approval because they went through this process.

One of the major ideas that came out of the alternative standard process is taking a look at an alternative design. The typical subdivision process is "lock-lock" and another concept is "conservation design", where there is more open space and better treatment of the sensitive areas within the land. It's a nationwide effort that is called "Conservation Design for Subdivisions". It is similar to the cluster design, there is no density bonus, greater attention to open space and building around the sensitive areas, optimization of natural features and it has nature-friendly stormwater controls. There were three developers on the advisory committee and they are the ones that raised this concept. The developers feel there is less money going into a development because there is less infrastructure, less roads and more money coming out because that is what more people want. Two developers actually want to lead this effort.

There was considerable effort dealing with resorts and there were six resort members on the advisory committee that had concerns about resort preservation. The committee developed special language for resorts and came up with a definition. Another issue was about docks and

regulating docks through the shoreland program that included that it is not appropriate to regulate the out- state shoreland program, it is a land use program and the docks are in the water.

Instead, the committee was more concerned about nonriparian access to the lake. Riparian means that you own lakeshore, you have riparian rights, which is allowing a dock among other things. Nonriparian would be people who do not have access to the lake unless its created by easement or something else. The advisory committee is looking at not allowing controlled access lots at all. Instead it would only be for riparian owners if you have a sensitive piece of shoreland.

The EAW Shoreland Categories are broken down into four categories; 1) subdivisions, 2) planned unit developments, 3) resort, 4) shoreland alteration. Within each threshold, there are four different treatments; in a sensitive area with or without shoreland ordinance and in a non-sensitive area with or without shoreland ordinance. "Senstive shoreland" would include; 1) shorelands of natural environment classified lakes and bays, 2) shorelands of designated trout lakes and streams, 3) shorelands of designated wildlife lakes, 4) shorelands of designated migratory waterfowl feeding and resting lakes, 5) shoreland sof state or federally designated wild and scenic rivers, 6) shoreland of waterbodies on PCA Special Waters list for stormwater construction permits, and 7) shorelands of outstanding resource value waters. Mr. Schultz went over some of the numbers and categories contained within the document.

Mr. Schultz indicated that in the document M.R. means the existing rules and ALT means the alternative standards. He stated again that these alternative standards are not rules. The language will have to be figured out as to how to bring that concept into the rules, which would happen during the rulemaking process. Mr. Schultz stated that the DNR's role would be to assist the EQB staff in developing the actual language if this moves forward; the table is just for explanation purposes.

Commissioner Merriam asked about the concern raised by MACPZA that things are too complicated. Mr. Merriam thinks its rational and intuitive that this is the way it ought to be. Mr. Merriam wanted to committee to really see the concern that they raised. Mr. Schultz stated that they made every attempt to engage the Association of Minnesota Counties and the MACPZA. Before the advisory committee was meeting, DNR went to those two organizations and let them know they were heading up the advisory committee. They have had opportunities all the way along to provide information. Mr. Schultz indicated that he understands their concerns.

Mr. Larsen stated that the advisory committee that worked on this was a self-selected group; those were volunteers that chose to participate. Other voices will need to be heard in the process; those that have chosen to reserve their effort to either the formal comment period or the end of the process, including realtors and developers. The MACPZA letter is a representation of that where they have chosen to put their effort in. The determinations and the format developed is not a consensus, but the best effort that could be obtained from a wide range of opinions. Mr. Larsen indicated that this is a keystone issue for the Phase 2

rulemaking; separate timeline and effort which may include other subject areas as this Board may determine that they may be ready for that part of that rulemaking.

Mr. Sullivan stated that it would be the expectation, if the Board is comfortable with what has been presented today, to move forward and make sure that everyone has the opportunity to respond and let the staff know what they think. The other piece would be to try putting together some draft language, get the feedback on that language before bringing it back before the Board in the hope to bring back who had what to say about it and how far the staff has come. If there are no objection to the general framework that has been presented today, the staff will go ahead and start on draft language.

Commissioner Corrigan stated that the alternate shoreland categories have been developed by a group that has worked very hard and diligently. Ms. Corrigan stated that she is sensitive to complex frameworks and there is some merit in the comments from MACPZA. This is complex and as a person who has been engaged in many exercises in rulemaking, to take the table and put it into rule language is going to be very difficult. For a common person to try to figure out what that language will ultimately mean is also going to be very difficult. Ms. Corrigan stated that she hopes that through the Phase 2 rulemaking and response to comments that the staff try to simplify this framework into something that is more transparent to other people. Also, the staff could reach out to the MACPZA now and see if they have suggestions for simplification of this. Chair Schroeder stated that he agreed with Commissioner Corrigan, although he did not see any recommendations in the letter, but it may have been too complicated for them to give any recommendations at that time.

Commissioner Badgerow stated that the threshold levels are finite. For example, in one category, 32 shoreland lots constitutes the threshold. Ms. Badgerow asked if there is data that substantiates that based on real projects based on impacts that have been seen in real-life that says that 33rd unit is the one makes the sensitivity analysis tip. Because they are so finite and precise, it begs the question of why it is that number and not some other number. Ms. Badgerow noticed that the columns on the right hand side of the document are exactly double the columns on the left. Ms. Badgerow asked if that was a thoughtful process or just is common wisdom that it would be twice as impactful if it is a non-sensitive area. Mr. Schultz stated that the numbers are ballpark numbers, and are backed by some science. There was actually a research scientist participate with the advisory committee. These seem to be the numbers that trigger where some additional criteria needs to be looked at to apply it to that type of development. For the purposes of knowing how developers want to see whether they are "in" or "out", there needs to be a number. It was based on some intuitive reasoning on why that number is a ballpark number.

Commissioner Badgerow stated that the record might be improved if some of that data was available, so the Board and the public could get a sense that these are founded on experience and the kinds of impacts that have been seen from various kinds of developments. Chair Schroeder added it would be nice to see how this marries up or not with other development rules/regulations/guidelines or is it commonplace in development guidelines that they are specifically numerated or not. It may be commonplace for developers that when they would see 32, for example, they say of course it is 32 and know why it is not 35.

Mr. Schultz stated that would be the next step of the process is that they do have the science and documentation and that would be the basis for the SONAR or the reasoning behind what the DNR staff is recommending. Not knowing how the process would play out as far as what the actual numbers would be, the staff will have that documentation and support for what is being proposed.

Mr. Sullivan stated that the SONAR process requires justification for whatever it is that is being proposed. This is why the detailed, intimate involvement of the DNR staff is needed as the EQB staff goes forward with the language because that type of support document and science that they have developed will be critical to this process to make sure that as this goes forward, the staff has access to understand and use that correctly.

Chair Schroeder asked for additional discussion and seeing none, asked for a motion to adjourn. Commissioner Corrigan made the motion to adjourn and Commissioner Hugoson seconded the motion. The motion was approved on a voice vote.