April 18, 2005

Mr. Gregg Downing
Minnesota Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Re: Proposed Revision of Rules Governing the Environmental Review Program

Dear Mr. Downing:

Enclosed is the Builders Association of the Twin Cities Comments regarding the Environmental Quality Boards Request for Comments issued February 1, 2005.

Rule # 2. Many existing thresholds are too low and can be viewed as arbitrarily set. Projects should be exempted when effective and approved BMPs are followed regardless the permitting program. Clearing & grading under the new NPDES permit is covered and creates no impact that cannot be mitigated. The suggestion would be to exempt sites where other permitting programs cover construction sites.

Rule # 7.

Define significant. This ought not to be defined by NIMBYS, or by 25% to 30% increases (25% of 1000 is different than 25% of 10,000), or an arbitrary, non-scientifically calculated traffic threshold.



2960 Centre Pointe Drive • Roseville, Minnesota 55113-1182 • 651-697-1954 • Fax 651-697-7599 • Parade Fax 651-697-7575

Rule # 9

Define cumulative impacts. How will the concept of "cumulative impacts" be determined? What are cummulative traffic impacts? The vagueness of these terms has caused concern. Historically, agencies and the private residential development industry have struggled with this because we have no idea of the specifics of future development projects so the cummulative impacts are impossible to ascertain. Will this provision mean that the industry will have to account for future impacts of projects that wouldn't otherwise need review or that are not envisioned?

Also, change approved to anticipate. If the work is in process with BMPs in place why do an EAW, especially in smaller areas?

Rule #10.

Insert "shorter" after other.

Rule # 18.

As a general rule of thumb, the residential development industry is very concerned about any additional processes that call for citizen petitions to stall and NIMBY projects. BATC suggests that a citizen petition should have an escrow provision of at least $5,000 to be covered by city vs. developers doing busy work.

Rules #20-25 AUAR

Individual Projects – AUAR. This entire process re-write would be onerous to the residential development industry. For example, a typical 1000 unit housing development normally would have required an EIS. However, since it was all residential and since it has been firmly established that compared to other development residential doesn't cause a lot of impacts, an AUAR was done. If these changes were adopted, the net result may be that a less valuable review would be conducted because the developer would have been driven in to an EIS, left out a lot of specifics of the project, and included other property. This would create a less thorough review.

While this may not meet the EQB's needs, a clear answer for BATC is to exempt residential. It would be interesting to hear specifics or what the problem is; maybe the fix could be more specific.

Rule # 21

BATC wants the AUAR to be recognized for its ability to analyze land outside of single site. Members strongly urge the EQB to not take away this option. Too many growth centers are missing some aspect of a long range plan per EQB rules that triggers long review of minimal impacts.

Rule # 22.

A study of an area should not be a defacto moratorium on permits.

Rule # 24.

A draft mitigation plan cannot be labeled "incomplete". If added it will create a noticeable and unacceptable time delay.

Rule # 25

This is ambiguous. Again, it does not define cumulative nor establish a thoughtful, non-biased process to reach the determination of cumulative.

Rule # 28 GEIS

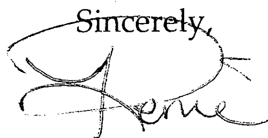
The concept of administrative nightmare can easily translate to the EAW and AUAR process, particularly where petitions can drive the process and design requirements. The subjective nature of this matter may or may not result in a better evaluation of the environment.

Rule # 35

This suggestion presumes that agricultural lands next to lakeshore have less impact than typical BMP protected new development. There ought to be a distinction between fallow lakeshore vs. agricultural developed lakeshore

Thank you for your consideration of BATC's comments. Please contact me at 651.697.7571 or remi@batc.org if you have questions.

Sincerely,



Remi Stone
Public Policy Director

# Hubert H. Humphrey Institute of Public Affairs

## FAX TRANSMISSION

301 19th Avenue South
Minneapolis, MN 55455
Phone: (612) 625-9505
Fax: (612) 625-3513

**To:** Gregg Downing **From:** Carissa Schively

**Fax:** 651-296-3698 **Date:** 4/15/05

**Phone:** **Pages:** 3

**Re:** Environmental Review Rule changes **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

**•Comments:**

see attached comments related to proposed rule changes for environmental review

Identical e-mail

UNIVERSITY OF MINNESOTA

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April 18, 2005

Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Downing:

I am writing in response to the general request for comments regarding proposed changes to Proposed Amendments to Rules Governing the Environmental Review Program. I am particularly interested in proposed changes related to the Alternative Urban Areawide Review (AUAR) provisions. As a faculty member in the Urban and Regional Planning Program at the Humphrey Institute of Public Affairs at the University of Minnesota, I have taught about the AUAR and highlighted its value as an innovative planning and environmental review tool. In addition, I have conducted research related to public participation in an AUAR process currently being conducted in the city of Lino Lakes. I will begin additional research related to the AUAR tool starting in summer 2005. With a grant from the Center for Urban and Regional Affairs (CURA) at the University of Minnesota, I will study the effectiveness of the AUAR as an environmental review tool and assess the use of AUAR mitigation plans in development review processes. Thus, I am very familiar with the AUAR tool and have substantial knowledge of many recent AUAR projects.

Based on my experience with Minnesota's AUAR tool and my knowledge of other local, state, and federal environmental review policies, I have comments related to two of the proposed rule changes:

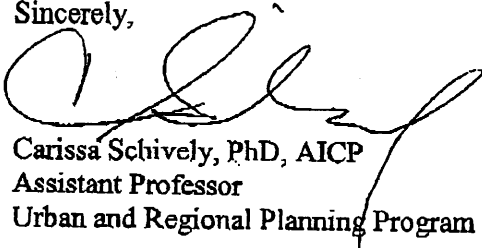
*Proposed change #21 – 4410.3610, subp. 1*
I am in favor of the proposed rule change that would prevent individual projects from being evaluated with an AUAR, as opposed to the more typical EAW/EIS. It is my understanding that the AUAR tool was created as a means of evaluating the environmental impacts of future development in large geographic areas, typically with multiple owners, and subject to multiple development proposals. Used in this manner, the AUAR functions as an effective environmental review tool while at the same time allowing a Responsible Governmental Unit (RGU) a measure of flexibility in responding to future development proposals in the AUAR area.

*Proposed change #23 – 4410.3610, subp. 3*
I am strongly opposed to a rule change that would prevent RGUs from considering development scenarios as part of the AUAR process which are not consistent with the existing comprehensive plan. An essential benefit of the AUAR tool is that it allows for the consideration of a range of

development scenarios. While it is appropriate to require that one of the scenarios be consistent with the comprehensive plan, limiting the analysis to a single scenario negates the value of the AUAR tool. The information gathered through the AUAR's analysis of the environmental impacts of multiple development scenarios, is an essential part of a community's decision to amend its comprehensive plan once development applications are submitted. Limiting the analysis to a single scenario may cause RGUs to amend their comprehensive plans prior to completing the AUAR, and deny them the valuable environmental impact information that would be available if the AUAR could have been completed in advance. Allowing for the consideration of multiple development scenarios is essential to both good planning and effective environmental protection.

Thank you in advance for the opportunity to provide comments related to the proposed rule changes. If I can provide any additional information, please do not hesitate to contact me.

Sincerely,



Carissa Schively, PhD, AICP
Assistant Professor
Urban and Regional Planning Program

cc: Jon Larsen, MN EQB

**600 Town Center Parkway**
**Phone: (651) 982-2400**
**Fax: (651) 982-2499**

# Fax

| **To:** Gregg Downing, Jon Larson | **From:** Jeff Smyser (651)982-2425 |
|---|---|
| **Company:** EQB | **Pages:** 4 |
| **Fax:** 651-296-3698 | **Date:** April 18, 2005 |
| **Phone:** | **CC:** |

see attached comments on rule changes

April 18, 2005

Gregg Downing
Jon Larson
Environmental Quality Board
658 Cedar St.
Room 300
St. Paul, MN 55155

re: Comments on Proposed Changes to Rules Governing the Environmental Review Program (MN Rules 4410)

Dear Gregg and Jon:

Thank you for the opportunity to comment on the proposed rule changes. Please consider the comments listed below.

**4410.0200, Subp. 9b:** Adding the additional phrase seems redundant. The "justified by itself" clause in Paragraph C says "neither" is justified by itself: neither the prerequisite project nor the subsequent, dependent project.

**4410.0200 Subp. 10:** The proposed amendment would allow site work to begin prior to completion of the environmental review. This is a bad idea. It is quite common that the major environmental impacts result from site grading or related activity. Allowing site preparation prior to environmental review equates to assuming a negative declaration on an EAW. This assumption never should be made.

**4410.0200, Subp. 81:** I understand the reasoning behind the amendment, but I suggest "privately owned" rather than "homeowner owned". The common system may not be owned by homeowners. There could be a separate entity such as a management firm that owns it.

**4410.1700. Subp. 2a:** It would be good to clarify the extension period for an insufficient information situation. It is common that consideration of public comment will result in information that was not anticipated in the EAW analysis. Clarification will protect both the RGU and the project proposer.

**4410.3100, Subp. 1:** Clarifying that starting a project means action that alters the environment (construction) is a good idea.

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Phone: 651-982-2400 • Fax: 651-982-2499 • TDD: 651-982-2410

**4410.3610, Subp. 1:** Clarifying which project types are covered by an AUAR would be a good idea. I suggest clarifying just what this means. The entire Subp. 1 is confusing. Perhaps a complete rewrite of the paragraph is in order. The point is that an AUAR does not exempt certain project types from environmental review (EAW or EIS). Why not just state that outright and list the subparts for those?

**4410.3610, Subp. 1:** It would be good to clarify that an AUAR is intended for review of an area without the need for specific plans. I suggest this clarification just be inserted into the text. It is always good to include a "purpose" or "intent" statement when confusion might arise.

**4410.3610, Subp. 2 and Subp. 3E:** I support the revision that would require an individual environmental review for a project removed from the AUAR area and mitigation plan.

I also recommend adding a clarification to paragraph 2 regarding the prohibition on government action. A project doesn't need an EAW, even if it falls within a mandatory category, if it is consistent with the assumption of an AUAR analysis and mitigation plan. An RGU can order a discretionary EAW. Therefore, if an RGU wants a project to be part of an AUAR analysis, it can declare a discretionary environmental review for a project even if the project is below a mandatory threshold. Then, the prohibition of decisions applies until the AUAR process is complete.

**4410.3610, Subp. 3:** Requiring that an AUAR be limited to scenarios consistent with the existing comprehensive plan would remove any purpose for an AUAR. The purposed is to analyze impacts. Analysis of only one alternative is of little use. It is vital to have alternatives to analyze for comparison.

To use an AUAR mitigation plan to guide land use planning seems like good planning, whether the impacts of a chosen future are greater or lesser than an existing comprehensive plan. If a municipality learns that development according to the adopted comprehensive plan would result in specific environmental impacts that are greater than another development scenario, why not consider amending the plan? Incorporating an environmental mitigation plan into a comprehensive plan amendment would be better environmental planning than what normally occurs. Where is the down side?

Besides, while a comprehensive plan is intended to provide a basis for planning and thus lend stability to a community, it cannot be a static document. Amending a comp plan is common, and should be an option. State law lays out a complete process for comp plan amendment, and a super majority vote is required by the elected, governing body. If the elected body determines a plan amendment is best for the community, the plan should be amended.

An AUAR can be used as a precursor to a plan amendment. An AUAR can lend important information that supports or even leads to a plan amendment. It seems environmentally wise to use such an extensive environmental study to guide planning in a community. However, an AUAR does not determine the content of a comprehensive plan. To say so is to ignore MN Stat. 462.355 and, in the Metro Area, 473.858.

**4410.3610, Subp. 4:** Adding the requirement that both the draft and final AUAR include a mitigation plan is a good idea.

**4410.3610, Subp. 4:** Isn't an AUAR, by nature, a cumulative impact analysis?

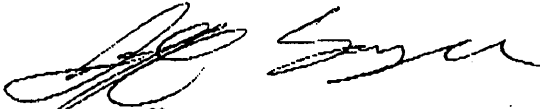
**4410.4300, Subp. 12, item B:** While I have no answers, the questions posed are good ones (the meaning of "facility" and the phrase "during its existence".) I applaud pursuing these inquiries in the interest of clarifying and thus strengthening the rules.

**4410.4300, new subparts:** I applaud inquiry into the need for additional rules governing lakeshore development. The variety of issues, and the variety of lakeshore situations may merit specific rules.

Likewise, an examination of highly important natural resources will further inform and thus strengthen the environmental review process.

Please feel free to contact me with any questions at (651)982-2425 or jeff.smyser@ci.lino-lakes.mn.us .

Sincerely,



Jeff Smyser
City Planner

Greg Downing
EQB
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Greg,

Below are my comments on the proposed rule changes for governing environmental review

Rule No 2. - Criteria – If vegetation is not removed and thus soil is not moved this might be a case where site preparation could proceed. However, it is hard to imagine what exactly would be done to the site.

Rule no 8 - I am concerned about this rule change. One purpose of the EAW is to discover the kind of mitigation needed, and thus if it is assumed in the beginning that the RGU will determine the need for mitigation and thus not call for an EAW to be done, the cart is before the horse. I am concerned it would allow for too much leeway by the RGU regarding mitigation detemination.

Rule 11 – Could the UM libraries be added to the distribution list?

Rule 27 – It would seem the information in the GEIS is time specific and thus at some time becomes out of date and needs to have a specific environmental review for a project. Some wording to the timeliness of the information is needed.

Rule 28 - In many cases the information in a GEIS is good for 5 to 10 years. Some formulae could be developed that would allow for a decision timeline to be implemented which determines that the GEIS is adequate. After a set number of years the GEIS is adequate after inspection and later after more years the GEIS is deemed inadequate.

Rule 29 – 1) I would like to see the "facility" to include the proposed mine and all nearby areas of previous mining that have not been reclaimed. 2) YES, I agree that "during its existence" does include a former unclaimed mine and thus must be included as a phased action. 3) The total area mined and not reclaimed and the proposed are to be mined are part of the cumulative impacts. In some cases adjacent land areas that are suitability for mining should also be included.

Rule 36 – HINR – old growth, native prairie, scenic vistas, unique biomes, unique soils, unique viewsheds. Size – two acres except for viewshed and that will be more variable since it does require a larger area so 20 acres might be reasonable.

Rule 42 – Require all EAWs to be electronic or posted electronically on a web.

Terry Cooper
Soil, Water, & Climate
439 Borlaug Hall
University of Minnesota
St. Paul, MN 55108

SCOTT COUNTY
COMMUNITY DEVELOPMENT DIVISION
ENVIRONMENTAL HEALTH DEPARTMENT
GOVERNMENT CENTER A102
200 FOURTH AVENUE WEST
SHAKOPEE, MN 55379-1220
(952) 496-8177 Fax: (952) 496-8489

March 29, 2005

Mr. Gregg Downing
Minnesota Environmental Quality Board
658 Cedar Street
St. Paul, MN 55155

Re: Request for Comments on Proposed Rule Amendments.

Dear Gregg:

The purpose of this letter is to provide preliminary comments on the proposed EQB Rule changes. The comments, have not been reviewed and adopted by the Scott County Board and are offered as staff comments at this time. Scott County staff have been involved with preparation and review of numerous Environmental Assessment Worksheets, Environmental Impact Statements and Alternative Urban Areawide Reviews. As a general comment, we have focused on just a few of the proposed changes and generally support the proposed changes that are not mentioned.

We offer the following comments for your consideration:

**4410.0200, subp. 10. Definition of "construction":** Staff does not support the proposed change. There are a number of concerns listed in the EAW and certainly in an EIS that would be essentially ignored if site preparation were allowed to proceed prior to completion of the environmental review. To name just a few...storm water management concerns, wildlife habitat, wetland issues, endangered species as well as the scope and design of the project. Clearing and grading of a site that is naturally vegetated prior to assessing the impact of this action essentially negates the whole reason for an environmental review for a number of concerns. Grading requires a formal permit in most jurisdictions and these should not be issued prior to completion of the environmental review.

**4410.0200, subp. 81. Definition of "sewered area"** This definition has implications in 4410.4300, subpart 19. A homeowner association owned and operated community sewage treatment system is not equivalent to a publicly owned and operated system. There are State Statutes that establish public entities such as sanitary districts and subordinate service districts for purposes of owning and operating sewage treatment systems (among other utilities and services). The distinction is significant in that homeowner's associations lack necessary authority to effectively address costly modifications, repairs or replacements to commonly held infrastructure. We are aware of instances where home owners

associations failed to properly manage various aspects including, constructing, operating and maintaining community sewage treatment systems.

**4410.1000, subp. 5. Under what conditions is a new EAW required if the project is not constructed for some time after the EAW process is completed?** We support this proposed amendment and would add that the RGU should consider the knowledge that may have been gained during a passage of time that might raise issues of concern that were not as well understood at the time the original EAW was prepared. Examples could be knowledge of the affects of chemicals involved, better understanding of ground water characteristics, changes to the surrounding area as a result of development (more residences constructed in the vicinity of a noise producing proposed development).

**4410.1400. EAW preparation; time limits** Establishing a time limit for determination of completeness is not the resolution to the majority of problems we have experienced with EAWs that have taken an extraordinary length of time to prepare. The problem lies in what is considered "complete". There are large differences in knowledge of the process among preparers of EAWs as well as among RGUs in what they deem acceptable information. The lack of standardization in addressing the EAW questions essentially becomes a learning process for those RGUs who wish to prepare quality documents. Some developers plead ignorance in their response to some questions, most frequently in the area of geologic hazards and soil conditions and simply list a response in this section as "unknown" without bothering to even investigate sources of known information. We have seen some RGUs accept this. It takes time to acquire accurate and relevant responses to the EAW questions and in my opinion, establishing what is "complete" is more important than establishing an arbitrary time limit for an RGU to respond.

**4410.1700, subp. 2a. Insufficient information; time extension for EIS need decision.** We support this change and would note that two other issues with the EIS time schedule need to be addressed including defining what information is relevant enough to delay an EIS, and delaying for failure to pay the RGU for costs associated with preparation. An RGU should be allowed to cease action on an EIS when the developer is delinquent in payment of the costs associated with EIS preparation. An RGU should also be able to "suspend the clock" when a developer is not providing information in a timely fashion or when there is a dispute (between the project proponent and RGU) over the content of a draft EIS prior to public release for comment. Under current rules the RGU is forced to be responsible for adhering to a time table even when the project proponent does not cooperate with the EIS preparation process. At a minimum an RGU should be able to suspend the EIS process schedule to seek a review from the EQB in the event that there is contention between the RGU and project proponent about the adequacy of the description of the proposed project.

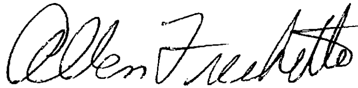
**4410.1700, subp. 3. Form & basis of the EIS need decision; contents of a "positive declaration."** We agree with this proposed change and would suggest that a reasonable time (no less than 90 days) be allowed for an RGU to prepare an RFP/RFQ for outside consultant assistance as well as develop an EIS Scoping Document before posting the notice to proceed in the EQB Monitor, which establishes the commencement of the EIS following a positive decision on an EAW.

**4410.2800, subp. 3. EIS preparation time limits.** We support the extension of the EIS schedule to reflect failure of a proposer to pay the required EIS costs or to keep their "account" current as established in any written agreement between the RGU and proposer.

**4410.3610, subp.2. AUAR process; relationship to specific development projects.** The proposed language removes the ability to exempt or remove small projects from an AUAR area once the AUAR has been commenced. This would in effect impose a moratorium on development of any kind within the AUAR area and would likely be a disincentive to the use of this valuable planning tool. I think it would be better to develop a process for a property owner to petition out of an AUAR process. Such a process could be accomplished by posting a notice in the EQB monitor and notifying all persons on the mailing list that a request for an AUAR exclusion has been received. Conceivably this could be as simple as a few paragraphs explaining the scope of the AUAR and of the petitioning project. The RGU could then receive comments on the request to be excluded and consider such a request with a better understanding of the ramifications.

Thank you for this opportunity to provide comments to your rule revision process. Please contact me at 952-496-8354 if you have any questions.

Sincerely,



Allen Frechette
Environmental Health Manager

Cc: Michael Sobota, Community Development Director

& Associates, Inc.

Infrastructure ▮ Engineering ▮ Planning ▮ Construction

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Tel: 763-541-4800
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March 11, 2005

Mr. Gregg Downing
EQB
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Re: Review of Proposed Environmental Review Program Rule Changes

Dear Mr. Downing:

We have reviewed the proposed rule changes as part of the Environmental Review Program Rule Revisions. WSB & Associates, Inc. works with many municipal RGU's in the development and implementation of EAW's, AUAR's, and EIS's. Overall, many of the changes proposed in the rules work to clarify some of the confusion that we have experienced over the years with regard to the environmental review process and we think that many of the revisions are good changes. However, we do offer the following comments with regard to AUAR's.

1. Rule #21 would change the AUAR process to not allow an AUAR to be completed for a single project. We disagree with this rule change as there have been instances when a City has needed to complete a review on a single project, but exact plans or development scenarios were not specifically known. These sites have generally been for one developer who is doing a mixed use development, but there no specifics as to the exact type of commercial or light industrial being proposed. Being able to complete an AUAR, rather than an EIS, has been an extremely helpful and more economical tool in these instances. The AUAR was able to be completed in a reasonable time frame and identified specific environmental impacts related to each development scenario that the City Council could implement. Additionally, we have found the mitigation plans developed as part of this process for single project very useful when the project moves forward to the platting stage when the mitigation measures are implemented. We would recommend that the proposed change in Rule #21 not be made.

2. Rule #23 would require that all development scenarios examined in an AUAR be consistent with the adopted comprehensive plan. Again, we disagree with this rule change. Being able to review the environmental impacts associated with a development scenario not included in the Comprehensive Plan (or a "worst case scenario") has assisted our clients in making better informed decisions related to the type of development that would be appropriate for an area. In some instances, the mitigation measures for a "worst case scenario" are too great to be implemented and this assists the City in reviewing the proposed development plans and making financial decisions related to city infrastructure.

Additionally, if cities do determine that a change to the Comprehensive Plan is warranted after the AUAR process, they are better informed about the environmental impacts and mitigation that would result from that decision. We would recommend that the proposed change in Rule #23 not be made.

We appreciate this opportunity to comment on the proposed rule changes. If you have any questions, please feel free to call me at (763)287-7196.

Sincerely,

***WSB & Associates, Inc.***

Andrea Moffatt
Environmental Scientist

am/tsh

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**Minnesota Asphalt Pavement Association**

# Fax

| | | | |
|---|---|---|---|
| **To:** | Gregg Downing, EQB | **From:** | Jill M. Thomas |
| **Fax:** | 651-296-3698 | **Pages:** | 1 |
| **Phone:** | 651-205-4660 | **Date:** | April 18, 2005 |
| **Re:** | EQB Review of EAW Criteria | **CC:** | Richard O. Wolters |

☑ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

- **Comments:**

As per your presentation and our conversation today, April 18, 2005, at the Aggregate Mining Conference held in St. Cloud, I am suggesting that the possible revisions to Environmental Review for Aggregate Mining be re-evaluated and discussions be open to include the hot mix asphalt (HMA) industry in the focus group you mentioned, which only included the Aggregate and Ready Mix Association. Specifically, the proposed amendment that would lower the acreage criteria for an EAW from 40 acres/10' depth to 20 acres/10'depth should be re-evaluated since, as you mentioned in your presentation, rarely ever do these types of EAW's require that an EIS be performed. Thus, it does not seem necessary to create more EAW documentation. Also, this would greatly impact the ability to bid and begin several HMA projects in a timely manner. Furthermore, you mentioned that today's deadline for comments was not "a hard deadline" and that you would still accept comments by the end of the month of April, therefore, we at MAPA are reserving the right to comment by April 30, 2005. Thank you.

**Itasca County Aggregate Association**
**Angie Forconi, member of ICAA (218) 245-2165**
***34882 Scenic Hwy***
***Bovey, MN 55709***

April 26, 2005

Gregg Dowing
Environmental Quality Board
300 Centennial Building, 658 Cedar St.
St. Paul, MN 55155

Mr. Dowing:

This letter is in response to the possible changes to the Environmental Review Program. As an aggregate association we feel that the possible change in the threshold requirements for an Environmental Assessment Worksheet (EAW) from 40 acres to 20 acres is highly detrimental to our industry as a whole.

There are many reasons that the Itasca County Aggregate Association believes this change should not happen:

> Aggregate resources, especially in our area, are mostly owned by private pit owners. They do not use enough of their resource to justify the expenses of an EAW. The change in the requirement from 40 acres to 20 acres will force the pit owners to close their operation. Their closing would have a major impact on not only them but also the aggregate industry as we deal with reserving a depleting resource.
>
> Most crushers and asphalt plants cannot move and set-up their production in a 20 acre area. It is not conducive to be productive in this amount of area, let alone be able to utilize the resource while being productive.
>
> Itasca County Environmental Services and our local engineering firms are currently understaffed and overloaded with work. In order to obtain an EAW it already takes 3 months to over one year for the information from engineers & etc. This affects job opportunities, the cost of aggregate, not only for private jobs, but also state and county jobs, and it greatly slows the entire process down.

Our advice is that the current system is working quite well and that it should be left alone. There are already permits on the pits that monitor very well the environmental impacts that they have. The MPCA and NPDES permits with inspections and penalties do a great job of keeping the pits environmentally sound. Please vote to keep the EAW's 40 acre threshold as the minimum.

Angie Forconi, Member
Itasca County Aggregate Association

P.O. Box 278, Grand Rapids, Minnesota 55744
(218) 326-0309 • Fax (218) 326-0755

April 27, 2005

Mr. Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

Re: Comment on EQB Review of EAW Criteria

Dear Mr. Downing,

We are disheartened that the hot mix asphalt industry was not included in the focus group. The decision affects every hot mix asphalt producer in the state. This will have a direct impact on the ability to bid and begin several hot mix asphalt projects in a timely manner.

We have received the information regarding the items that may be changed. I am a little confused on the reason for decreasing the mandatory EAW threshold from 40 acres to 20 acres. According to the comments in the information we received it states "Among the half that thought the threshold should be changed, twice as many supported lowering it (36%) as supported raising it (18%)." So what I get out this is that 64% agree that the EAW Threshold should stay the same size or be bigger.

We strongly disagree with your decision to entertain the idea of lowering the Mandatory EAW threshold. We also are requesting that the Environmental Review for Aggregate Mining be re-evaluated and discussions be open to include the hot mix asphalt industry in the focus group.

Sincerely,

Mark G. Hawkinson
President
Hawkinson Construction Co., Inc.

*Equal Opportunity Employer*

Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street,
St. Paul, MN, 55155

Dear Mr Downing!

Please add my name to the support of new recommended guidelines to reduce the ~~agreage~~ ~~for~~ acreage for excavation to 20 acres ~~for~~ necessitating an environmental assessment

Thanks,

Arthur Jauss (Art)

Arthur Jauss

*April 13, 2005*

*Greg Downing*
*Environmental Quality Board*
*300 Centennial Building*
*658 Cedar Street*
*St. Paul, MN. 55155*

*Dear Mr. Downing:*

*I want to express my support for lowering the EAW threshold from 40 acres to 20 acres (retaining the 10 foot mean depth requirement.)*

*I also want to applaud the Environmental Quality Board for bringing this often discussed (at the local level) EAW threshold up for review.*

*Thank you again for allowing citizens to express their views on this very important issue.*

*Sincerely,*

*Lois Van Reese*
*36731 South View Road*
*Nashwauk, MN. 55769*

*April 13, 2005*

*Greg Downing*
*Environmental Quality Board*
*300 Centennial Building*
*658 Cedar Street*
*St. Paul, MN. 55155*

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*Sincerely,*

Dave Van Reese

*Dave Van Reese*
*36731 South View Road*
*Nashwauk, MN. 55769*

April 14, 2005

Greg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN. 55155

Dear Sir:

I want to voice my support for lowering the mandatory EAW threshold from 40 acres to 20 acres (retaining the 10 feet minimum depth requirement).

It is a known fact that there are3 an awful lot of 39 acre pits in Minnesota that fly under the radar and most of them are unregulated.

Hopefully by lowering the threshold a lot of confusion can be eliminated!

On another issue most of the existing pits in Carlton County are "grand fathered in" and seem to run unregulated and have no monitoring or sanctions in place.

When citizens bring up legitimate concerns we are told nothing can be done. We would like to see an explanation of how these existing facilities are treated.

Thank you,

Earleen Hanson

Earleen Hanson
2271 Thell Road
Wrenshall, MN. 55797

April 14, 2005

Greg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN. 55155

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Charles Hanson
2271 Thell Road
Wrenshall, MN. 55797

April 14, 2005

Greg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN. 55155

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When citizens bring up legitimate concerns we are told nothing can be done. We would like to see an explanation of how these existing facilities are treated.

I am a senior citizen and concerned about the decisions our public officials are making regarding our non-renewable resources. My daughter wrote this letter for me as I am unable to write such a long letter and I wanted my thoughts known on this subject.

Thank you,

Astrid Cullition
800 – 3rd Street – B16
Carlton, MN. 55718

Kenneth Lundeen
1295 Gault Rd.
Carlton, Mn. 55718
4-12-05

Gregg Downing
Environmental Quality Board
300 Centenial Building
658 Cedar Street
St. Paul, Mn. 55155

Dear Sir:

I totally support lowering the threshold for aggregate mining to 20 acres from the present 40 acres.

I strongly suggest any conditional use permit pretaining to aggregate mining to also follow the same guidelines.

It seems as if in our County, which is Carlton County, that these smaller operators have their free run, with no enforcement. Our water, wetlands, and environment as a whole needs protecting. So, yes, I do, and many others support lowering the threshold to 20 acres.

Thank you
Kenneth and Marsha Lundeen

April 1, 2005

.....REQUEST FOR COMMENTS, MN ENVIRONMENTAL REVIEW PROGRAM.

Written comments should be sent by April 18, 2005 to:

Gregg Downing
Environmental Quality Board
300 Centenial Building
658 Cedar Street
St. Paul, MN 55155

One of the nearly fifty rules the EQB is considering a revision on is MN Rule 4410.4300 Subp. 12b. It indicates that any activity which will excavate 40 or more acres of land to a mean depth of 10 feet or more during its existence must have an environmental assessment worksheet prepared before action can be taken on the conditional use permit.

The NEW recommended guidelines would be the same only reducing the excavated acres to 20.

The EQB board is asking for citizen comments (both pro and con) on this change by 4/18/2005.

This proposal is supported by the MN aggregate council as well as results from previous EAW applicants and petition groups.

To Quote the MN DNR, Minerals Division. "There are an awful lot of 39 acre pits in Minnesota that fly under the radar." It is also a known fact that many of these "smaller" pits have the potential to do as much or more damage to the environment as the larger operations. Because they are under 40 acres they currently are not regulated.

A simple letter supporting lowering the threshold to 20 acres would be appreciated.

4-11-05

I agree with the new recommendations. I would also like to see the gravel pits watched closer for violations.

Mr. Jack Dahl
2276 Thell Rd.
Wrenshall, MN 55797-9022

Jack D. Dahl

To Whom It May Concern:
In re. to Mn Rule 4410.4300

As a concerned citizen of environmental and regulation issues, I am eager to share my input and v. pleased someone is accepting public information. My support to lowering the recommended guidelines to lowering the threshold excavating to 20 acres.

Thank you -

Kathryn Vigliaturo
2485 Hay Lk. Rd
Carlton, Mn. 55718

The EQB board is asking for citizen comments (both pro and con) on this change by 4/18/2005.

This proposal is supported by the MN aggregate council as well as results from previous EAW applicants and petition groups.

To Quote the MN DNR, Minerals Division. "There are an awful lot of 39 acre pits in Minnesota that fly under the radar." It is also a known fact that many of these "smaller" pits have the potential to do as much or more damage to the environment as the larger operations. Because they are under 40 acres they currently are not regulated.

A simple letter supporting lowering the threshold to 20 acres would be appreciated.

Dear Sir:

In regard to MN Rule 4410.4300 Subp. 12b, I support lowering the threshold to 20 acres.

Sincerely,

Bonita A. Korpi
34 St. Louis River Rd. E
Cloquet, MN 55720

## Gregg Downing

---

**From:** Brandon Larson [rajalaco@paulbunyan.net]
**Sent:** Friday, April 29, 2005 9:57 AM
**To:** Gregg Downing
**Subject:** Environmental Assessment Worksheet Review

ENVIRONMENTAL QUALITY BOARD

Mr. Gregg Downing-

This email is in regard to the proposed requirement change concerning gravel pits in Minnesota. It is our understanding that the state is considering changing the EAW requirement from 40 acres to 20 acres. This would be a mistake in our opinion.

First, 20 acres is not conducive to a productive crushing operation. The space needed is in excess of 20 acres.

Second, time should be another consideration discussed. Engineering firms that perform EAWs for gravel pits often take 3-6 months to complete. With the 20 acre requirement the amount of EAWs performed will double, which will slow the entire process down. In a bid situation this with greatly impact the aggregate sources available, which will result in increased costs on state and county projects.

Third, private pit owners throughout the state will not be able to afford the cost of EAWs for their pits. The average cost for an EAW is $7,500.00. As a result, rural, private pit sources will not continue to operate. Again, project costs will climb due to the longer hauls that could be required on state and county projects.

Finally, the current system is working. The MPCA requires NPDES permits on any pit over an acre, which should reassure the state that the contractor is watching out for the environment. If contractors choose not to follow the NPDES permit guidelines, inspections and penalties will surely follow. So please push to keep the 40 acre EAW requirement in place.

Thank you for your consideration.

RAJALA CONSTRUCTION CO., INC.

Brandon Larson,
Controller
(218)-328-5717 Phone
(218)-328-5317 Fax
(218)-244-8264 Cell

900 Long Lake Road, Suite 100, New Brighton, MN 55112
Phone: 651-636-4666 FAX: 651-636-4790 E-mail: info@mnapa.org www.asphaltisbest.com

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Nancy R. McCann, Office Administrator
Bridget L. Spiess, Administrative Assistant

April 27, 2005

Mr. Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Re: EQB Review of EAW Criteria (Chapter 4410)

Dear Mr. Downing:

As an association, the Minnesota Asphalt Pavement Association (MAPA), would like to provide some written comments since we were not included in the focus group's activity and our industry also has extreme interest in the subject.

MAPA questions the environmental reason and justification for changing mandatory Environmental Assessment Worksheets (EAW's) from 40 to 20 acres. The majority of our industry is involved in locating aggregate sources and performing portable hot mix asphalt production, therefore, the existing conditional use permits are timely to apply for and obtain. The revised threshold of 20 acres will hinder our industry unnecessarily because of dictated tight working schedules (ie., start dates, completion dates, working days and a relatively short construction season). What otherwise required 60 days will most likely take a minimum of 6 months to a year before operations at a site over 18-20 acres can begin.

In essence, this takes valuable gravel sources out of production for a given project. We (MAPA) also have a concern that neighbors opposed to the site will petition for an EAW attempt to stop or delay a project(s) that will most certainly have an impact on the project. This is currently happening on the sites that are in the range of 37, 38 & 39 acres.

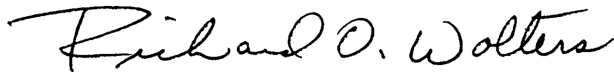
To arbitrarily change the threshold requirement "just because" (as it has been justified to us thus far) will cause significant slow downs, possible work holdups, and add significant costs with no apparent environmental benefit. There are little to no mandatory EAW's that trigger EIS's, so we (MAPA) question why the need to make it mandatory to do more?

MAPA is requesting a re-evaluation of the subject. There is simply no benefit to either the environment or our roadway infrastructure except to add expense, time and higher costs to taxpayers.

We appreciate the opportunity to present a view from the hot mix asphalt industry. MAPA desires to continue maintaining and improving our industry and continue being good stewards of the environment. We also want to work with other organizations and agencies regarding the importance of preserving the availability of aggregate reserves.

Thank you for accepting MAPA's comments prior to month end.

Sincerely,



Richard O. Wolters, P.E.
Executive Director

# CITY OF DULUTH

DEPARTMENT OF PLANNING & DEVELOPMENT
Physical Planning Division
411 West First Street, Room 402
Duluth, Minnesota 55802-1199

218-730-5580 fax 218-730-5904
bbruce@ci.duluth.mn.us

ROBERT J. BRUCE
Director of Planning


April 13, 2005

Mr. Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Downing:

In response to EQB's review of mandatory EAW thresholds, I would like to comment on subpart 31, Historical Places. I have reviewed the report that addresses proposed changes in this category but I would like to address this at a more fundamental level.

Over the years I have prepared, or supervised the preparation of several EAWs, including a golf course, dredging, stream bed alteration and housing projects. I have represented both proposers and RGUs. This gives me some familiarity with the content and form of an EAW, the reviewing agencies and process.

As for subpart 31, Historical Places, I do not understand why an historic designation should create a different standard for whether or not building demolition has potential for significant environmental impact. I believe the use of the EAW to monitor cultural resources weakens the intent, spirit and reputation of a process designed principally to screen quantifiable effects on natural resources, wildlife habitat and human health.

With the existing thresholds, if environmental issues are brought to light with demolition of buildings, I ask if these issues are a function of an historic designation. If not, I argue that the threshold should be expanded to include demolition in general. Conversely, if over the years since the establishment of the current thresholds, there has been no demonstrated link between historic designation and environmental findings, it would seem that subpart 31 is not serving environmental concerns, is tangential to the role of the EQB and should be eliminated.

Very truly yours,

Robert J. Bruce
Director of Planning

c: Commissioner Badgerow

***Anoka Conservation District***
16015 Central Ave NE Suite 103
Ham Lake, Minnesota 55304
Ph: 763-434-2030 Fx: 763-434-2094
www.AnokaNaturalResources.com

April 14, 2005

Greg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar St.
St. Paul, MN 55155

Re: Proposed amendments to Rules Governing the Environmental Review Program, *Minnesota Rules*, chapter 4410.

Dear Mr. Downing,

As a project reviewing agency the Anoka Conservation District has seen many projects, particularly large lot housing developments, go through the decision making process with little or no environmental review. A disturbing trend we see here in Anoka County is the development of large lot housing developments within or adjacent to our region's finest open spaces. The developments themselves often completely and irreversibly destroy the habitat on the site, but they also fragment the habitat of the larger landscape. The development around wildlife management areas, scientific and natural areas, parks and other areas has created a patchwork of ecological sinks with limited or no connection. This bordering development does affect the resources on the remaining open spaces by limiting the movement of flora and fauna into and out of protected open spaces. These developments and the noise, runoff, traffic, invasive species, dogs, cats, ATVs and other impacts they bring continue to limit the use of the open spaces, especially hunting and bird watching.

It is our recommendation that proposals located within 1 mile of existing public open spaces require a mandatory EAW. Increased review of these projects and the comments to local governments has the potential to improve the way our communities develop and grow. These comments also serve a cumulative benefit by repeating common themes to RGUs including the need to allow for natural resource protection during the development process and ways to limit the impacts on the site. By mandating EAWs near existing open spaces, project proposers would be required to consider the impact their development has on the nearby resources. This should, in-time improve how development occurs in our state.

Sincerely,

Richard L. Biske
Natural Resources Planner
Anoka Conservation District

Minnesota Asphalt Pavement Association
900 Long Lake Road, Suite 100, New Brighton, MN 55112
Phone: 651-636-4666 FAX: 651-636-4790 E-mail: info@mnapa.org

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April 27, 2005

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300 Centennial Building
658 Cedar Street
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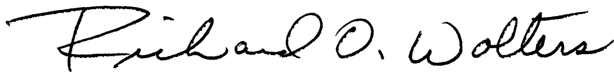


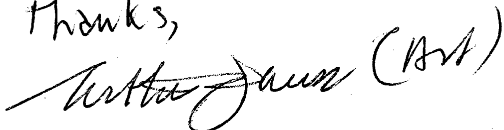
Richard O. Wolters, P.E.
Executive Director

Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street,
St. Paul, MN, 55155

Dear Mr Downing!

Please add my name to the support of new recommended guidelines to reduce the acreage ~~for~~ excavator to 20 acres ~~for~~ necessitating an environmental assessment

Thanks,



Arthur Jauss

## Gregg Downing

**From:** Brandon Larson [rajalaco@paulbunyan.net]
**Sent:** Friday, April 29, 2005 9:57 AM
**To:** Gregg Downing
**Subject:** Environmental Assessment Worksheet Review

ENVIRONMENTAL QUALITY BOARD

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First, 20 acres is not conducive to a productive crushing operation. The space needed is in excess of 20 acres.

Second, time should be another consideration discussed. Engineering firms that perform EAWs for gravel pits often take 3-6 months to complete. With the 20 acre requirement the amount of EAWs performed will double, which will slow the entire process down. In a bid situation this with greatly impact the aggregate sources available, which will result in increased costs on state and county projects.

Third, private pit owners throughout the state will not be able to afford the cost of EAWs for their pits. The average cost for an EAW is $7,500.00. As a result, rural, private pit sources will not continue to operate. Again, project costs will climb due to the longer hauls that could be required on state and county projects.

Finally, the current system is working. The MPCA requires NPDES permits on any pit over an acre, which should reassure the state that the contractor is watching out for the environment. If contractors choose not to follow the NPDES permit guidelines, inspections and penalties will surely follow. So please push to keep the 40 acre EAW requirement in place.

Thank you for your consideration.

RAJALA CONSTRUCTION CO., INC.

Brandon Larson,
Controller
(218)-328-5717 Phone
(218)-328-5317 Fax
(218)-244-8264 Cell

April 27, 2005

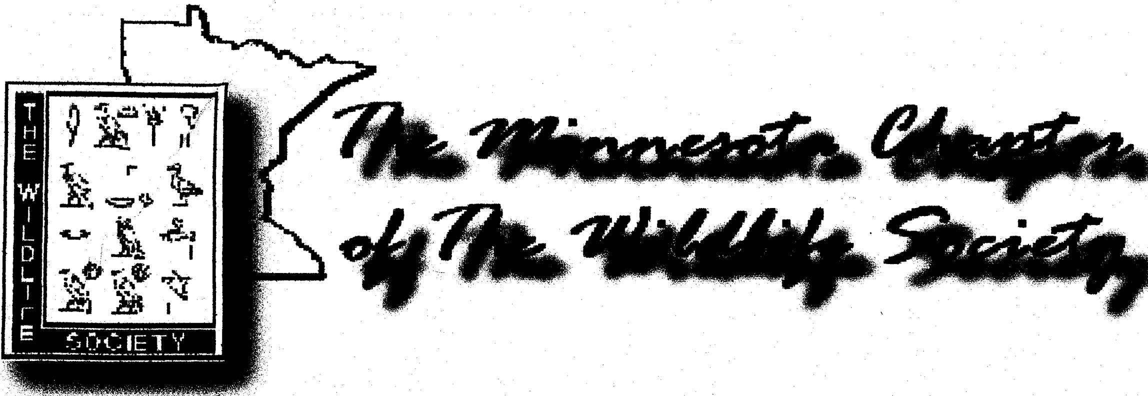
Mr. Gregg Downing
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Downing,

As a gravel pit owner and operator, I was extremely disappointed to see that someone is considering lowering the acreage threshold for mandatory EAW from 40 acres to 20 acres. Unfortunately, we are a small redi-mix company and will not survive in the market if different government entities continue making it impossible for small businesses to compete. Environmental Review for Aggregate Mining needs to be re-evaluated and apparently we need more representation from pit owners and construction operators.

Sincerely,

Paul Hawkinson
Manager
Summit Materials dba. Brink Sand, Gravel, and Redi-mix




2 May 2005

Gregg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar Street
St. Paul, MN 55155

RE: comments on EAW/EIS thresholds for lakeshore development

Mr. Downing,

The Minnesota Chapter of the Wildlife Society offers the following recommendations regarding EAW/EIS thresholds for the newly proposed lakeshore development category.

The following thresholds are recommended for mandatory EAW's:

A) For any project that converts 800 or more linear feet of undeveloped lakeshore to developed lakeshore, including creating a subdivision or plat of 4 or more lakeshore lots averaging 200 feet in width.

   Justification. Undeveloped lakeshores are necessary for sustaining the aquatic ecosystem of lakes in a healthful state, as well as for maintaining a diverse and natural population of birds, mammals, reptiles, and amphibians. Undeveloped lakeshores are being converted to developed lakeshores at a much higher rate than developed lakeshores are being restored by "lakescaping," and the magnitude of development (i.e., the footprint of development on the parcel) is also much greater than the magnitude of restoration by lakescaping. Shoreline development results in the removal of snags and fallen logs in the lake (i.e., coarse woody debris and future coarse woody debris). The removal of coarse woody debris is an impact to the littoral community that can persist for of centuries (Christensen et al. 1996, Guyette and Cole 1999). Coarse woody debris 1) allows for fish to occur at higher densities by reducing the size of the territories they defend; 2) provides loafing and basking sites for turtles and waterfowl, esp. waterfowl broods; 3) provides a substrate for the reproduction of aquatic invertebrates that are an integral part of the aquatic food web; and 4) attenuates wave action, thus reducing erosion. Shoreline development also results in the removal of emergent, floating-leaved, and submergent vegetation. A recent survey by Payton and Fulton (2004) found that 44% of lakeshore

property owners reported removing emergent vegetation annually, a number far in excess of the number of required permits issued by the DNR when extrapolated statewide; a further subset of respondents also used illegal methods of vegetation removal. Many people who remove submergent vegetation also exceed maximum allowable areas. Thus we find that peoples behaviors and values are driving habitat destruction despite rules to the contrary. In a study in northcentral Minnesota, Radomski and Goeman (2001) found that significantly more study plots on undeveloped lakeshore had emergent or floating-leaf vegetation present than plots of developed shorelines; that the frequency of occurrence of common emergent and floating-leafed species were negatively correlated to number of residences per mile of shoreline; that the estimated total loss of emergent and floating-leafed vegetation from human development was 20-28% at that time, but would increase to 45% by 2010; and that the average amount of vegetation reduction offshore from developed shorelines was 66%. A study by Reed (undated) in 1999-2000 showed that largemouth bass and black crappie spawning areas are highly negatively correlated with the amount of development on an area of lakeshore. A study by Jennings et al. (1999, pers. commun.) showed that development affects fish assemblages and emergent vegetation in two ways. First, extensive riprap reduces fish species diversity and favors tolerant species at the expense of intolerant species. Second, the amount of vegetation even on undeveloped shorelines decreased as the amount of overall development on lakes increased (providing a distinct example of cumulative affects at work). A study in Wisconsin (Meyer et al. 1997) identified the following species as shoreline dependent species, meaning that they require shoreline habitats for some aspect of their life cycle history: common loon, grebes, waterfowl, bald eagle, osprey, shorebirds, gulls, terns, belted kingfishers, river otters, mink, beaver, turtles, and frogs. Wildlife Society members have identified several shoreline dependent species whose breeding populations in Minnesota are nationally significant: common loon, bald eagle, osprey, common tern, sandhill crane, trumpeter swan, and canvasback (see also North 2000). Another study in the Chippewa National Forest showed that the greatest diversity and abundance of bird species among habitats with the National Forest occurred in deciduous forests adjacent to lakes and wetlands (Probst et al. 1983). Development of natural shorelines results in a shift in the breeding bird population from one supporting rarer specialist species to one dominated by more common generalist species (Robertson and Flood 1980, Meyer et al. 1997). Thus the conversion of large stretches of lakeshore are likely to adversely affect 1) the population, distribution and composition of birds and other shoreline dependent vertebrates; 2) fish abundance and species composition; and 3) the physical structure of the littoral zone, including emergent and floating-leaved plant abundance, and coarse woody-debris abundance.

B) For any project that is likely to disrupt 10,000 square feet of emergent and floating-leaved vegetation in a contiguous area, or any project that will result in 5 or more channels or cuts through the emergent vegetation for docks, marinas, boat access to open water, beach sand blankets, and other purposes.

Justification. Emergent and floating-leaved vegetation are critical for providing spawning and hiding and foraging cover for many favorites game species of fish. A study by Reed (undated publication) in 1999-2000 showed that black crappie and largemouth bass spawning areas are highly negatively correlated with the amount development on an area of lakeshore. Radomski and Goeman (2001) found that 1) northern pike biomass is positively correlated with the amount of yellow and white water lilies, arrowhead, and broad-leaf cattail; 2) bluegill biomass is positively correlated with the amount of yellow

and white water lilies, and broad-leaf cattail; 3) pumpkinseed biomass is positively correlated with the amount of yellow water lilies and broad-leaf cattail; 4) bluegill mean size is positively correlated with the amount of hardstem bulrush; and 5) pumpkinseed mean size is positively correlated with the amount of yellow and white water lilies, arrowhead, bulrush, and broad-leaf cattail. A recent survey by Payton and Fulton (2004) showed that 44% of lakeshore property owners reported removing emergent vegetation annually, a number far in excess of the number of required permits issued by the DNR; a further subset of respondents also used illegal methods of vegetation removal. Recent studies have also found that fragmentation of emergent vegetation leads to accelerated loss of whole stands, by creating edges where wind and wave and ice action affect the remaining vegetation (Gabriel and Bodensteiner 2002). Therefore, we believe that five new cuts through emergent vegetation has the potential to result in the loss of a large area of emergent vegetation through the mechanisms listed above. Although studies are lacking in fisheries ecology, studies in amphibian, mammalian and avian ecology show that fragmentation of habitat (or loss of intervening wetland habitat in the case of amphibians) can greatly restrict movements and recolonization between remaining fragments (e.g., Bayne and Hobson 1998, DeMaynadier and Hunter 1999, Lehtinen et al. 1999). In forest birds, chickadees, nuthatches and woodpeckers have been shown to being averse to crossing forest openings as little as 200 m wide (St. Clair et al. 1998). Thus a 10,000 square foot clearing (e.g. a100-ft by 100-ft clearing or a 200-ft by 50-ft) clearing in emergent vegetation beds may affect the dispersion of aquatic organisms around a lake, especially when such openings are combined with other pre-existing openings, and thus cumulative affects could be significant. Also, perennial plants in general are poor colonizers, so aquatic plants may be particularly constrained in recolonizing areas by such openings, and thus subject to greater risk of local extirpations than animals would be. The alteration of the composition of the aquatic vegetation community would have a cascading affect on the fish and invertebrate populations of an area. Loss of emergent vegetation could be a long-term impact, from which recovery may not occur.

C) For any project that is the first development impacting the shore impact zone on a Natural Environment Lake.

Justification. Undeveloped lakes in Minnesota are becoming an extreme rarity. Undeveloped lakes represent the historical essence of Minnesota, and can serve as natural laboratories for ecological research, as repositories for rare species and natural plant and animal communities. The first development on such a lake represents an irreversible loss of a rare, diminishing, and non-renewable resource. Many EAW's on lakeshore development projects result from petitions from lake associations. Most natural environment lakes, and certainly those with no development on them, do not have any lakes associations to advocate for their health and preservation. We are reasonably certain, based on definition and the classification process alone, that there are no Recreational Development or General Development lakes in existence that have no development on them, therefore this proposed category is limited to Natural Environment lakes. There is also a general concern about the declining population of waterfowl in Minnesota. Although much of the focus has been on the loss of prairie pothole wetlands, small Natural Environment forested lakes have been a significant source of waterfowl production in the past, especially for mallards, wood ducks and ring-necked ducks (e.g., Rave 2004). Increased shoreline development is likely to be detrimental to waterfowl

reproduction, which is already too low to maintain a stable mallard population (Rave 2004).

D) For any project that extends the cumulative percent of developed shoreline on a lake beyond 60%. However, if conservation easements of sufficient length and at least 75 feet in depth are employed in the overall project to preserve shoreline and prevent this threshold from being crossed, an EAW may be avoided.

Justification. There is a general concern that lakes can sustain a certain amount of development before a critical threshold is crossed in which significant changes occur to the ecology of the lake. This is best exemplified by Lake Christina, which demonstrates the principle of Alternative Stable States. Lake Christina fluctuates back and forth between a clear-water status in which it supports a majority of the world's canvasback duck population during migration, and a turbid-water status in which it supports few ducks during migration. This flipping between states happens very quickly, not gradually, much like a titration or precipitate fall-out happens in a chemistry class test tube immediately after a threshold is crossed. Unfortunately, in most lakes the point where such a threshold might be crossed is unknown, and varies depending on lake morphology and a specific impact of concern. For example, the loss of nearshore vegetation may not be as significant in a lake in which greater than 50% of its area is "littoral," as opposed to a lake in which less than 20% of its area is "littoral." Also, changes in fishery composition might be more the result of overfishing by visitors to a public access than lakeshore residents. However, over harvest can combine with loss of spawning substrate to have a cumulative effect in which a lake's fish population may not be able to recover naturally under harvest regulations. Loss of spawning substrate is most likely to result from conversion of undeveloped lakeshore properties to developed lakeshore. The significance of an impact, and the likelihood of a significant impact are both likely to increase as a greater cumulative amount of shoreline is developed.

In addition to the above, we recommend that EQB develop mandatory EAW thresholds for redevelopment projects, and for projects that increase surface use because of second and third tier development even though shoreline development thresholds are not met. However, we do not offer any specific thresholds for these categories at this moment.

The following thresholds are recommended for mandatory EIS's:

A) For projects that may shift the lake from one trophic status to another.

Justification. This threshold is likely to be triggered only after preparing, or researching for the preparation of, an EAW. MPCA has been collecting water quality data on many lakes through its Citizen Lake Monitoring Program. The current Carlson Trophic Status Index can be calculated from measurements of total phosphorous, total suspended solids, and chlorophyll-a. A lake's TSI is not static, but fluctuates. Many lakes TSI's are in a delicate balance between one trophic status or another. The reasonable likelihood that the TSI could be altered due to resuspension of sediment, increased runoff from additional impervious surfaces, and increased phosphorous inputs from septic systems and lawn fertilizers can be deduced from mathematical calculations. Alterations of fish communities can also change the trophic status of lakes. Changes in trophic status index can result in altered fish communities and altered property values. Most changes in trophic status index would be towards greater eutrophication, which would lead to

shifting the fish population from intolerant species (generally equated with preferred fish species) to tolerant species (often rough fish). Based on studies by Bemidji State University, property values would also be expected to be depressed as eutrophication increases.

B) For any project that converts 2640 or more linear feet (0.5 miles) of undeveloped lakeshore to developed lakeshore.

Justification. The justification for this threshold includes the justifications given for an EAW impacting 800 linear feet of shoreline. However, the significance of an impact, and the likelihood of a significant impact are both likely to increase as a greater cumulative amount of shoreline is developed. Also, there are far fewer half-mile or longer stretches of undeveloped shoreline than there are shorter segments, and, empirically, the magnitude of these losses will be greater on the overall landscape. Therefore, this magnitude of impact merits an EIS.

C) For any project that extends the cumulative percent of developed shoreline on a lake beyond 80%. However, if conservation easements of sufficient length and at least 75 feet in depth are employed in the overall project to preserve shoreline and prevent this threshold from being crossed, an EIS may be avoided.

Justification. The justification for this threshold includes the justifications given for an EAW for projects occurring above a 60% cumulative threshold of lakeshore development. However, development that exceeds 80% of a lake's shoreline is much more likely to eliminate critical ecological aspects and functions within lakes that cannot be replaced or conserved by limiting later development, which is not as likely to occur at the 60% development level. Therefore, this magnitude of impact merits an EIS.

This category would not affect redevelopment of individual lots, or existing commercial areas unless considerable undeveloped lakeshore will be converted.

The following exemptions are recommended for lakeshore development projects:

A) For any projects involving development on minimum of 2.5-acre lots where each lot lakeshore frontage is 330 feet or longer, and cumulative lakeshore frontage of the project is 2640 feet or less, and a permanent conservation easement is put on at least a 200-foot long by 75-foot deep shoreland buffer zone on each lot. The conservation buffer zone may be split into two discrete areas.

Justification. Most new lakeshore development projects are located in rural areas where outside of the shoreland area the minimum lot sizes are 2.5 acres or more. Conversations that our members have had with various planning and zoning and land use officials indicate a widespread belief that it defies common sense to allow greater development densities near the State's most valuable and ecologically sensitive resource (i.e., lakes, shoreland areas) than in other less sensitive areas (rural residential areas). This exemption would encourage development at the same density as the rural residential land use matrix in which the lake is located, which is ultimately the best outcome that could hope to be obtained through the environmental review process. The standard 2.5-acre lot is 330 feet by 330 feet. On lakeshore property, the value is in the lake frontage, not lot depth. The 330 foot frontage must be maintained in order to prevent narrow but deep lots

from being created to circumvent the intent of this exemption. The ideal buffer would be to combine two 200-foot buffers together on adjoining properties to create a 400-foot buffer in total; however, sometimes this would preclude lake access at the most ecologically beneficial location. Therefore, the buffer should be allowed to be split into no more than two distinct areas in order to allow lake access at the most ecological beneficial location and/or to best protect sensitive resources (e.g., a seep, a riparian wetland above the OHW, beds of emergent vegetation, steep slopes, native vegetation, existing trees). The 75-foot buffer depth is based on the shore impact zone for Natural Environment lakes, which we believe is reasonable to extend to Recreational Development lakes which have a 50-foot shore impact zone in unsewered situations. General Development lakes and sewered Recreational Development lakes have smaller shore impact zones, but we do not believe it is likely that this exemption would be requested on General Development lakes or where sewer and water infrastructure has been installed.

We also recommend that the EQB develop an exemption category for PUD's and redevelopment projects that preserve or restore a significant portion of the natural lakeshore and place it in public or community ownership.

In addition, we recommend that EAW preparation guidelines direct LGU's and consultants to incorporate the following specific information pertinent to lakes into their EAW's:

1. Lake survey data including fish species composition, percent littoral area, total littoral area, aquatic plant species and abundance, and water clarity data from the DNR Lake Finder link online at www.dnr.state.mn.us/lakefind/index.html, or from the DNR Area Fisheries Office.

2. MPCA water quality and water clarity data online also at www.dnr.state.mn.us/lakefind/index.html.

3. Loon, eagle, and osprey nesting information from the DNR Regional Nongame Wildlife Specialist.

4. Waterfowl migration information from the DNR Area Wildlife Supervisor.

5. A calculation of the Carlson Trophic Status Index.

6. Data on offshore water depth and aquatic plant abundance and composition, and likelihood for water quality and vegetation impacts from motorboat use.

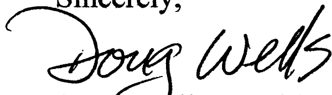
7. Identify any steep slopes and bluffs.

8. For tiered developments and PUD's, identify public water accesses and evaluate the potential for exotic species introductions (either to or from this lake) from trailered boats.

Lastly, we recommend that the EQB establish an appeals board analogous to that of BWSR or PCA. As it stands now, disaffected citizens have no recourse over LGU decisions but to take the LGU to District Court. An appeals board could hear appeals about the adequacy of the content of an EAW, the decision whether or not to require an EIS on a project, or whether a petition for an EAW is warranted. Appealing matters to District Court is expensive and inherently precludes

most citizens from fully exercising their rights. The establishment of such an appeals board would give citizens greater access to government, and hopefully foster better EAWs as well as better decisions from local governments. Such an appeals board could also take a role in determining the adequacy of GEIS recommendations (see your request for comments, Item 28, relative to 4410.3800, Subp. 8).

Sincerely,



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