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Memorandum

To: Bassett Creek Watershed Management Commission
From: Barr Engineering Company
Subject: Item 6C – Update on Cultural Resource Review Process for Resource Management Plan
Date: February 11, 2010
Project: 23/27 051 2010 616

6C. Update on Cultural Resource Review Process for Resource Management Plan

Recommended/requested Commission actions:

1. Review draft protocols, and authorize staff to include the protocols in the Resource Management Plan (RMP) and submit the final RMP to the U.S. Army Corps of Engineers.

Staff has prepared draft protocols for the RMP that outline the needed data collection, other permitting that will be needed and the plan submittals that will be needed to obtain final approval of the RMP. At their January 21, 2010 meeting, the Commission directed staff to bring the draft protocols to the Commission for review before submitting the final RMP to the U.S. Army Corps of Engineers. The draft protocols are attached for Commission review.

Bassett Creek Resource Management Plan

U.S. Army Corps of Engineers Pre-application Consultation Protocols

On January 12, 2010 representatives of the Bassett Creek Watershed Management Commission (BCWMC) met with the St. Paul District of the U.S. Army Corps of Engineers (COE). The meeting was intended to provide an opportunity for BCWMC and COE to develop a mutually satisfactory approach to 1) obtaining final approval of the Resource Management Plan (RMP) from the COE, 2) developing a plan for addressing cultural resource issues that are required for compliance with Section 106 of the National Historic Preservation Act (NHPA) and 3) defining the process for final permitting approvals for each of the projects included in the RMP.

The preparation of the RMP for the BCWMC projects was recommended by the COE as approval of the plan would streamline the project permitting process with the COE. The outcome of the January meeting was that the BCWMC would develop pre-application protocols that outline data collection to be completed by BCWMC, identify permitting to be completed, and a plan submittal process needed for final permit approval. Based upon the discussions in the meeting, one of the primary focuses of the process is to define the level of survey for architectural, archeological, and cultural sites where impacts could be potentially significant. Protocols for wetland delineations and water quality certification by MPCA for project areas to meet the 404 and 401 requirements are also addressed here.

Projects in the Resource Management Plan

Projects covered in RMP and the scheduled completion dates (revised 2/3/2010)

<i>Pond Projects</i>	Target Completion	<i>Creek Projects</i>	Target Completion
NL-2	2013	Main Stem, Reach 1	2010-2011
Wirth Lake Pond (WTH-2)	2012	Main Stem, Reach 2	2011-2012
BC-3,5,7	2015	North Branch	2012-2013
BC-2,4,6,8	2014	Plymouth Creek, Reach 1 (PC-1)	2011-2012
NL-1	2016	Plymouth Creek, Reach 2 (PC-2)	2016-2017
Grimes Pond (GR-2)	2016		

Compliance with Section 106 of the National Historic Preservation Act

No activity which may affect historic properties listed, or eligible for listing in the National Register of Historic Places can be authorized by the COE, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. For activities that may affect historic properties listed or

eligible for register listing, or cultural resources, notification must be provide to the COE by the project proposer. The notification typically describes which historic property or cultural resource may be affected by proposed work and includes a map indicating the location of the historic property.

Few cultural resources have been recorded within the vicinity of Plymouth and Bassett Creeks in the Bassett Creek Watershed (Appendix C, Figure 1 of the Resource Management Plan). Those watershed sections which have been inventoried, however, include some archaeological and historical evidence. The data indicate that uplands surrounding streams and lakes likely attracted Native Americans, as well as early European-American settlers. Of particular note is the presence of archaeological evidence adjacent to smaller water bodies including Birch Pond, Sweeney Lake, Twin Lake, and the wetland on the west edge of Wirth Park (areas previously surveyed). While these sites are located within the watershed, but are not in or immediately adjacent to the water quality projects their presence suggest other resources could be present (Figure 2 in Appendix C of the Resource Management Plan).

Pre-application Consultation Protocol for Section 106 Requirements

A Phase 1A review of cultural and historical resources was completed for the Resource Management Plan and is included as Appendix C of the RMP. The pre-application protocol for historic and cultural resources will be based upon the work completed of this Phase 1A review. The process for review of project locations and submittals will include:

1. The general boundaries of each project area will be defined and mapped using GIS; the project boundaries will include a buffer area that includes area within anticipated construction limits, construction access points and temporary roads, and a 100 foot wide buffer around these project limits.
2. A reconnaissance level assessment for cultural resources will be completed of all the project sites by an archeologist to define areas of potential impact.
3. The conceptual design will be reviewed as part of development of the feasibility studies for each of the individual projects to ensure the project can be constructed; modifications and alternatives will be reviewed that would reduce the potential for impacts. Areas of potential impact will be identified in the feasibility study.
4. Following completion of the feasibility study for each project, a Phase 1 Cultural Resource Survey will be completed within the areas of potential impact for each project location. All Phase I investigations will be conducted in a manner that meets both federal and state requirements, i.e. Section 106 of the National Historic Preservation Act as well as Minnesota Statutes 138.31 -

138.42 (the “Field Archaeology Act”) and 307.08 (the “Private Cemeteries Act”). Following a supplementary records and literature search at SHPO and the Office of the State Archaeologist, a visual inspection of the project area will be completed to document any historic and man-made surface anomalies. This would then be supplemented with systematic shovel-testing as specified by SHPO guidelines.

5. The Phase 1 Cultural Resource Survey would be presented as a technical report to the COE, SHPO and the Office of the State Archaeologist for review and concurrence as to whether any cultural resources identified during the Phase I survey may require further evaluation or mitigation.

Compliance with Section 404 of the Clean Water Act

The Clean Water Act (CWA) prohibits the discharge of dredged or fill material into wetlands, streams, and other waters of the United States unless a permit issued by the COE. Under Section 404, a COE permit is required for the discharge of dredged or fill material into waters of the U.S. BCWMC concedes that all of the waterbodies and wetlands included in the RMP project areas are waters of the U.S. and thus are subject to the COE regulatory authority. The COE’s jurisdictional review of the project areas will likely confirm the presence of waters of the United States at these sites.

To meet the requirements of Section 404, an alternatives analysis will be required for the final permit applications as well. Some projects may have limited possibilities for alternatives, but the analysis will reflect all possibilities.

Pre-application Consultation Protocol for Compliance with Section 404 of the Clean Water Act

1. The general boundaries of each project area will be defined and mapped with GIS; the project boundaries will include a buffer area that includes area within anticipated construction limits, construction access points and temporary roads, and a 100 foot wide buffer around these project limits (same as prepared for cultural resources review).
2. An application will be submitted to the COE that includes a signed Joint-Federal-State form and the information listed in steps 3 – 5 listed below.
3. BCWMC will complete wetland delineations in accordance with the 1987 Corps of Engineers Wetland Delineation Manual (the '87 Manual), and the Guidelines for Submitting Wetland Delineations in Minnesota for all project areas.

4. A functional assessment will also be completed for each wetland type within the project review areas using MnRAM. The assessment will characterize the functions provided by the respective wetlands.
5. The wetland delineation mapping and functional assessment will be submitted to the COE for review and verification of jurisdictional authority, and completeness of delineation report.
6. BCWMC will provide a description and tabulation of potential wetland impacts, and a description of mitigation sequencing to minimize impacts.
7. The COE will determine if compensatory mitigation is required for any of the projects. If wetlands are adversely affected, the permit application will require either a compensatory mitigation proposal or an explanation of why mitigation is not necessary. In most cases, mitigation is typically necessary for losses of wetland area, conversion of wetland type, or losses of habitat. However, wetland restorations could convert/restore previous types that may be more desirable in the long-term even though they involve an alteration/temporary loss.
8. If BCWMC is required to provide compensatory mitigation, a plan will be developed for mandated aquatic resource restoration, establishment, enhancement, or preservation activity. Any compensatory mitigation may be provided at or adjacent the impact site (i.e., on-site mitigation) or at another location, usually within the same watershed as the permitted impact (i.e., off-site mitigation).
9. All of this information will be included in the project feasibility studies; the feasibility studies will be provided to the COE as part of the review process.

Clean Water Act Section 401 Water Quality Certification

MPCA is responsible under its Section 401 authority for review Section 404 Individual Permit (IP) applications for projects; some of the RMP projects which can proceed under a General Permit or Letter of Permission would not require MPCA's Section 401 certification. MPCA reviews the IP projects to ensure they will be in compliance with state water quality standards. In particular MPCA is concerned that no prudent and feasible alternatives to impacting wetlands are available, that the project's impact on wetlands is minimized, and that adequate compensatory mitigation will be implemented to protect the designated uses of the wetland and the water quality standards.

Previous MPCA 401 certification decisions indicate that projects that convert wetlands to storm water ponds will likely require compensatory mitigation even if the wetland already receives storm water inputs. The MDNR comment letter received during the RMP comment period, indicates that the DNR

may require compensatory mitigation for such work in State-protected waters. MPCA will require an accurate estimate of impacts before they can grant Section 401 certification.

Pre-application Consultation Protocol for Clean Water Act Section 401 Water Quality Certification

1. Identify and submit to the COE a list of those RMP projects that BCWMC believes are eligible for GP/LOP for concurrence.
2. BCWMC will submit to MPCA the completed wetland delineations and functional assessment for each wetland type within the project review areas for review and comment for projects requiring individual permits.
3. BCWMC will also provide a description and tabulation of potential wetland impacts, and a description of mitigation sequencing to minimize impacts.
4. MPCA will determine project requirements for granting a 401 water quality certification.

Programmatic Approach to Resource Management Plan Approval

Discussion with COE staff set forth a process for the programmatic approach to the RMP approval and project implementation procedures. That process has seven key steps:

1. Public notice of plan. The RMP will be put out on public notice that invites public comments within a 30-day comment period.
2. Public and agency comments and COE review. The COE will maintain an administrative record of all comments and related documentation.
3. Response to comments. COE and other comments will be incorporated into the RMP as appropriate.
4. Permit application. The COE requires submittal of an amended RMP (as necessary) and a permit application for the work described in the RMP.
5. Second public notice. The COE will issue a second public notice, addressing comments received on the RMP, inviting additional comment on the permit application, and describing the process that the COE would use to authorize the work described in the RMP (if approved) as each project is carried into final design.
6. Permit decision. The COE will make a permit decision and maintain an administrative record. Assuming a favorable permit decision, the permit will include the requirement to submit requests for COE approval to proceed with individual RMP projects prior to implementation.
7. Issuance of a conceptual approval by the COE.

Final Project Permits

Prior to construction, the following steps were defined by the COE as necessary before proceeding into the construction:

1. *Feasibility study.* For each project that does not already have one, a feasibility study will be completed. Each study will include preliminary analysis and design for each project and will provide updated construction and costs estimates. Feasibility reports will include all of the information described in the pre-application protocols.
2. *BCWMC hearing and order.* The BCWMC will hold a public hearing on each project and decide whether to order the project and the completion of construction plans and bid packages.
3. *Construction plans and bid packages.* Final construction plans and a bid package will be completed for each project by the member city responsible for project implementation.
4. *COE authorization of individual projects.* The final plans will be submitted to the COE for final review and authorization to proceed with individual RMP projects and to other permitting agencies for necessary permits. Each individual project does not need to go through the COE public notice process again because of the public notice and comment period completed during the RMP process.
5. *Additional permits.* All necessary local and state permits will be obtained before beginning work on an individual project