

## **TRANSMITTAL LETTER FOR BOARD MEETING OF MAY 2, 2024**

### COMMITTEE ON STORMWATER MANAGEMENT

Mr. Brian A. Perkovich, Executive Director

..Title

Authority to amend the Watershed Management Ordinance - Wetlands Jurisdictional Determination

..Body

Dear Sir:

The Board of Commissioners adopted the Watershed Management Ordinance (WMO) on October 3, 2013, and amended the WMO on April 17, 2014. The WMO became effective on May 1, 2014, and was further amended on July 10, 2014, February 15, 2018, April 4, 2019, May 16, 2019, May 7, 2020, and April 7, 2022. This proposed amendment will remove language referring to Jurisdictional Determinations issued by the United States Army Corps of Engineers (Corps).

Currently, the WMO requires applicants to request a Jurisdictional Determination (JD) from the Corps when wetlands are present on or within 100 feet of a development site. The JD establishes whether a wetland falls under the Corps' jurisdiction. If it does, the development is subject to the Corps' permitting and regulations. If it does not, the development is regulated as an isolated wetland under the WMO.

Last month, the Chicago District of the Corps refined its workload priorities away from completing JDs. As such, the Corps no longer offers applicants an estimated time by which a JD will be issued. Because the Corps' policy change will lead to significant delays in WMO permitting, the Engineering Department recommends amending the WMO to eliminate the requirement for JDs.

This narrow amendment is recommended at this time because of the Corps' recent announcement. (The proposed language is attached.) This amendment also furthers Strategic Goal #2 "Stormwater Management" of the District's Strategic Plan by allowing the Engineering Department to ensure development near wetlands complies with the WMO's requirements.

The amended language still requires a Corps' permit when there are impacts to jurisdictional wetlands. But the amended language provides that all wetlands on a development will be subject to the WMO's regulations for isolated wetlands unless the applicant provides either a Corps' permit or other official document from the Corps that the wetland is jurisdictional.

This change is more protective of wetlands because it will require buffers for jurisdictional wetlands when the Corps does not issue a permit, such as when no impacts to wetlands are proposed.

The Engineering Department is currently finalizing a separate draft WMO amendment that will address several other topics. The Engineering Department will request authority to seek public comments on that draft amendment later this year and will also review any comments on this amendment to determine if additional modifications are needed. If any further changes to the

WMO wetland regulation are deemed necessary, they will be incorporated into the forthcoming draft amendment.

It is therefore recommended that the Board of Commissioners adopt the Ordinance, as amended. The Ordinance, as amended, will take effect on May 2, 2024.

Requested, Catherine A. O'Connor, Director of Engineering, KMF:MD

Recommended, Brian A. Perkovich, Executive Director

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for May 2, 2024

Attachments