June XX, 2020

Chad Konickson       Ted Johnson
U.S. Army Corps of Engineers     Costco Wholesale
Regulatory Branch Chief      2311 West 22nd Street, Suite 100
180 Fifth Street East, Suite 700     Oak Brook, Illinois  60523
St. Paul, MN  55101-1678

RE: 2019-01770 - KAL – Costco Wholesale Warehouse Project
St. Louis County, Minnesota
DRAFT Section 401 Water Quality Certification

Dear Chad Konickson and Ted Johnson:

This 401 Water Quality Certification (401 Certification or Certification) decision is made by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act, or CWA, (33 USC 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. chs. 7001.1400-1470, 7050, 7052, and 7053.

Project Description:
The applicant proposes to develop 20.92 acres to construct a warehouse, cart storage, a building for liquor sales, parking areas, fuel station, and access roads resulting in a building footprint of 161,228 square feet. The project is located on the corner of Haines and Arrowhead Roads in the City of Duluth, St. Louis County, Minnesota. The proposed construction would require the relocation and demolition of the existing structures on the New Life Lutheran Church of Duluth property.

The project will discharge dredged and fill material into 3.03 acres of wetlands in and adjacent to the site location. There is a small ditch and tributary that conveys water to Miller Creek. Miller Creek is a cold water trout stream and a Class 2A water. It supports the natural reproduction of a healthy community of cold water biota and their habitats. The site is within Miller Creek watershed and is up-gradient of the tributary to Miller Creek. The 3.03 acres include impacts to 1.45 acres of Hardwood Swamp wetland and 1.58 acres of Shrub-Carr wetland communities. The MPCA requires a minimum 1.5:1.0 replacement ratio for the 1.45 acres of Hardwood Swamp wetland for 2.175 acres of mitigation. The MPCA is also requesting 1.0:1.0 replacement ratio for the 1.58 acres of Schrub Carr wetland for 1.58 acres of mitigation for a total of 3.755 acres of mitigated wetlands. The compensatory mitigation for these permanent wetland impacts will be debited from federally approved Bank Service Area 2, Account #1505 and Account #1684. Note that 3.03 acres will come from Account #1505 and 0.725 acres will come from Account #1684.

Decision:
The MPCA certifies the referenced project and has determined that it satisfies the antidegradation standards in Minn. R. 7050.0265. The MPCA has examined the application and other information, including the antidegradation assessment information required under Minn. R. 7050.0285 and bases its decision on the evaluation of this information and the relevance to water quality considerations. The
MPCA believes that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards provided the applicant complies with the conditions listed below.

1. The applicant must complete compensatory mitigation for wetland impacts as required by the U.S. Army Corps of Engineers (USACE), and in accordance with Minn. R. 7050.0186 and 7050.0265.
   a. The USACE mitigation policy ratios can be increased on a case-by-case basis if the impacted wetland provides rare or exceptional functions. While the functioning of the wetlands to contribute source waters to a stream in of itself is not rare/exceptional, the stream in this case, Miller Creek, is a trout stream and therefore is exceptional.
   b. Due to vegetation clearing and soil stockpiling with the threat of non-native invasive species, such as Reed canary grass, greater scrutiny of the temporary impacts is required. There will be permanent wetland impacts, which is consistent with the no-net-loss policy to consider additional mitigation.
   c. The Emerald Ash Borer (EAB) is present in the Duluth area per EAB map from the Minnesota Department of Agriculture: https://mnag.maps.arcgis.com/apps/webappviewer/index.html?id=63ebb977e2924d27b9ef0787ecedf6e9. Impacted Hardwood Swamps are dominated by Black Ash. The MPCA recommends additional mitigation alternative replacement options that directly mitigate Black Ash swamps given the significant threat EAB poses to Minnesota's hardwood swamps.
   d. Due to the lack of credits available in Bank Service Area (BSA) 1, the current project location, compensatory mitigation for the 3.755 acres of permanent impacted wetland is proposed through the debit of wetland credits within BSA 2 (Account #1505 and Account #1684). Based on this and the project specific information summarized above, the MPCA requires mitigating at a replacement ratio of a minimum of 1.5:1.0 for the 1.45 acres of Hardwood Swamp impacted (2.175 acres) and 1.0:1.0 for the Shrub-Carr wetland of permanent impacted (1.58 acres) wetland for a total mitigation of 3.755 acres. Note that 3.03 acres will come from Account #1505 and 0.725 acres will come from Account #1684.
   e. The removal of mature hardwoods in these wetlands will significantly change the character and type of these wetlands for the foreseeable future and as such require mitigation under Minn. R. ch 7050.0186.

2. Before any land disturbance at the site, the applicant must ensure that all aquatic resources (wetlands, ditches, lakes, or streams) in the vicinity of the construction area that are not authorized to be impacted by the project are clearly identified. This may be done through demarcation of those resources on plan sheets or through typical methods of marking boundaries in the field, for example construction staking or the use of silt fences along boundaries.

3. If dewatering will occur, the applicant must submit dewatering plans and have them approved by MPCA prior to start of project. The MPCA will approve the dewatering plans within 15 days. If the dewatering plans are not acted on by the MPCA within 15 days, the dewatering plans are automatically approved.
4. If dewatering will occur, the applicant must ensure that dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp. 2. The applicant must use best management practices (BMPs) that minimize total suspended solids and sedimentation by removing solids in the water before discharging the water. The applicant must document BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an erosion control plan, construction plan, or other relevant construction document. The applicant must ensure that properly installed BMPs are in place before conducting the authorized activities and are maintained throughout the duration of the dewatering work.

5. The applicant must ensure that earthen material, which is used to construct or improve temporary or permanent dikes or dams, including cofferdams or any roads, is contained in a manner that will prevent its erosion into the water.

6. The MPCA has determined that the project, as certified, is not expected to exacerbate any existing impairment of a CWA 303(d) listed (impaired) waterbody. It is, however, the applicant’s responsibility to ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303(d) listed impaired waters. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: http://www.pca.state.mn.us/lupg1125 and http://www.pca.state.mn.us/mvri1126. The applicable water quality standards are located in Minn. R. ch. 7050.

7. The applicant must ensure that any fill placed in water must be clean fill that is free of solid waste, toxic or hazardous contaminants. Any deviation from this requirement, such as seeking beneficial reuse of materials, requires case-specific beneficial use determinations by MPCA for debris and soil with contaminant levels appropriate for the placement setting. The applicant must also ensure that any fill will not promote the spread of invasive species as defined in Minn. Stat. ch. 84D and Minn. R. 6216, and is free of those species identified as “Prohibited Species” in the Minnesota Noxious Weeds publication: http://www.dot.state.mn.us/roadsides/vegetation/pdf/noxiousweeds.pdf.

8. The applicant must provide: a) a copy of this Certification; b) documentation of any required BMPs under the above conditions; and c) any written demarcation of waters to any primary contractor responsible for completing the project’s authorized activities. The applicant must also ensure that there is a mechanism in place requiring each primary contractor to provide the same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to waters must be available at or near the project site for use by contractors and staff responsible for completing the project work and must be available within 72 hours when requested by MPCA staff.

9. The applicant must allow representatives from the MPCA to inspect the project site and the authorized activity to ensure that the project is constructed, and BMPs maintained, in accordance with this Certification.
10. The applicant is responsible for ensuring that all requirements of this Certification are met.

11. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.

12. The applicant must inform the MPCA of any proposed additional water quality impacts this project may have, before they occur, to determine if further review or authorization is required. This includes any additional dredging, excavation, fill, additional structures, and temporary impacts not shown in the final plans or expressly authorized by the USACE Section 404 permit or the Section 401 Certification from the MPCA.

Disclaimer:
A 401 Certification does not release the applicant from obtaining all necessary federal, state, and local permits. It does not limit any other permit where requirements that may be more restrictive. It does not eliminate, waive, or vary the applicant’s obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project. This Certification does not release the applicant from any liability, penalty, or duty imposed by Minnesota or federal statutes, regulations, rules, or local ordinances and it does not convey a property right or an exclusive privilege. This Certification does not authorize impacts to any waters beyond the project area.

This Certification does not replace or satisfy any environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA) or the National Environmental Policy Act. In accordance with MEPA, Minn. Stat. § 116D.04, subd. 2b, and related rules, projects that are required to complete an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) may not be started until:

- A petition for an EAW is dismissed.
- A negative declaration on the need for an EIS has been made.
- An EIS has been determined to be adequate, or
- A variance has been granted by the State Environmental Quality Board.

This MPCA decision is made, in part, on the applicant’s representations that environmental review under the Minnesota Environmental Quality Board’s Rules, Minn. R. ch. 4410, is not needed for the project or, alternatively, that all necessary environmental reviews and related decisions have been completed. If environmental review for this project is needed and has not been completed, the MPCA does not have the legal authority to issue a 401 Certification. In that situation, the MPCA reserves the right to make a 401 Certification decision when the environmental review process is completed.

The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0170 and 33 U.S.C. §1341. Pursuant to Minn. R. 7001.1450 and 33 U.S.C. §1341(a)(3), failure to comply with any of the conditions in this Certification may result in the MPCA invalidating or revoking this 401 Certification on a project-by-project basis. If you have any questions on this Certification, please contact Bill Wilde at 651-757-2825.
Sincerely,

Anna Hotz, Supervisor
Agency Rules Unit
Resource Management and Assistance Division

AH/BW:ds

cc:  Dave Pfeifer, EPA
     Megan Zale, EPA
     Andrew Horton, USFWS
     Peter Fasbender, USFWS
     Tom Hovey, DNR
     Steve Colvin, DNR
     Kristoffer Laman, USACE
     Kim Laing, MPCA
     Natalie White, SEH
     Tom Meyer, Landform