

**MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

**REVISIONS
PURSUANT TO MINNESOTA STATUTES § 103D.341**

**Adopted April 24, 2014
Effective June 6, 2014**

WETLAND PROTECTION RULE

1. POLICY. It is the policy of the Board of Managers to:

- (a) Achieve no net loss in the quantity, quality and biological diversity of Minnesota's existing wetlands;
- (b) Increase the quantity, quality and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- (c) Avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of wetlands;
- (d) Minimize direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of wetlands;
- (e) Rectify the impact of any such activity by repairing, rehabilitating, or restoring the affected wetland environment;
- (f) Reduce or eliminate the impact of such activity over time by preservation and maintenance operation during the life of the activity;
- (g) Compensate for the impact on the wetlands by restoring a wetland;
- (h) Compensate for the impact on the wetlands by replacing or providing substitute wetland resources or environments; and
- (i) Promote competent administration of the Wetland Conservation Act (WCA) within the watershed.

2. REGULATION UNDER WCA AND WATERSHED LAW.

The District regulates activity impacting wetlands pursuant to the WCA and the Watershed Law. A permit for activities impacting wetlands or requiring wetland buffers is required as follows:

- (a) In municipalities where the District is the local government unit under the WCA, a permit is required from the District for any draining or filling of wetlands, or excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland. The WCA, as amended, and its implementing rules as set forth in Minnesota Rules chapter 8420, as amended, specifically including sequencing requirements and all exemptions, are incorporated as a part of this rule. Work affecting a wetland that qualifies as no-loss under the WCA and work affecting an

incidental wetland, as defined in the WCA, do not require a permit under this rule. Wetland replacement, where permitted, shall comply with section 3, Wetland Replacement, of this rule.

(b) A permit is required from the District pursuant to the excavation and buffer provisions in sections 4, Excavation, and 5, Buffer, of this rule, which are adopted under the District's watershed law authority and apply whether or not the District is the WCA local government unit. Pursuant to this authority and section 4, Excavation, the District requires a permit for excavation in any type of wetland, except where specifically exempted by the WCA or when the work meets no-loss criteria under the WCA. No permit under this rule is required for excavation in an incidental wetland, as defined in the WCA.

3. WETLAND REPLACEMENT.

(a) Project-specific replacement wetland must be sited in the following order of priority, which replaces the siting priority in Minnesota Rules section 8420.0522, subpart 7, as it may be amended:

- (1) On site;
- (2) Within the same subwatershed as the affected wetland (see Appendix 1);
- (3) In the Minnehaha Creek watershed;
- (4) In the same eight-digit Hydrologic Unit Code watershed.

(b) Pursuant to Minnesota Rules section 8420.0522, subp.7, as it may be amended, when reasonable, practical and environmentally beneficial replacement opportunities are not available in a siting priority area in subsection 3(a), providing replacement priority areas, the applicant may seek opportunities at the next level. When neither replacement opportunities nor privately banked credits are available in any priority area, the applicant may comply with this section through the purchase of banked credits from the District at the cost to the District to establish credits, so long as the District has determined that sufficient credits are available.

4. EXCAVATION. Excavation in wetlands is subject to the following requirements.

(a) Excavation is governed by the substantive and procedural standards, criteria and requirements set forth in the WCA, as amended, and the rules implementing the WCA as set forth in Minnesota Rules chapter 8420, as amended, including all exemptions, with the exception that replacement for excavation not subject to the WCA shall be at the ratio of 2:1. Excavation in incidental wetland is not subject to the requirements of this section. The priority siting requirements of section 3 of this rule, Wetland Replacement, apply to replacement of excavated wetland under this section.

(b) Excavation of a wetland performed for public benefit, including excavation to remove or control invasive species, shall be deemed self-replacing if the applicant demonstrates that the wetland to be excavated is degraded; the proposed activity would increase the wetland's function and value, as determined using the current version of the Minnesota Routine Assessment Method or other method approved by the District; and the enhanced wetland function and value are likely to be preserved. Excavation must not result in a change of wetland type, unless the applicant demonstrates that public benefit is not obtainable absent such impact.

5. BUFFER.

(a) Any activity for which a permit is required under this Wetland Protection Rule, the Stormwater Management Rule or the District Waterbody Crossings and Structures Rule, and New Principal Residential Structure construction that increases the imperviousness of the subject parcel must provide for buffer adjacent to each wetland and public waters wetland. To the extent the buffer requirement applies to a proposed New Principal Residential Structure, it will be applied in accordance with protections afforded a zoning nonconformity under state law so as not to unduly restrict the proposed action. Buffer must be provided on that part of the wetland edge that is downgradient from the activity or construction and around each wetland that will be disturbed.

(b) Buffer width will be determined in accordance with section 6, Buffer Width, of this rule.

(c) Buffers shall be documented by declaration or other recordable instrument approved by the District and recorded in the office of the county recorder or registrar before activity under the MCWD permit commences. A buffer on public land or right-of-way may be documented in a written agreement executed with the District in place of a recorded instrument. The agreement shall state that if the land containing the buffer is conveyed, the public body shall require the buyer to comply with this subsection.

(d) A permanent wetland buffer monument shall be installed at each lot line where it crosses a wetland buffer, and where needed to indicate the contour of the buffer, with a maximum spacing of 100 feet. Language shall indicate the purpose of the buffer, restrictions, and the name and phone number of the Minnehaha Creek Watershed District. On public land, or right-of-way, the monumentation requirement may be satisfied by the use of a marker flush to the ground or breakaway markers of durable material. At the request of the applicant, the District shall provide wetland buffer monuments at production cost.

6. BUFFER WIDTH.

(a) The Base Buffer Width shall be determined by the management class of the wetland as evaluated by the District’s Functional Assessment of Wetlands or by the current version of the Minnesota Routine Assessment Method (MnRAM). Stormwater sensitivity parameters must be analyzed and results included in the evaluation, unless all stormwater flow to wetlands is managed in compliance with the bounce, inundation and runout-elevation control criteria in subsection 8(b) of the District’s Stormwater Management Rule.

Management Class	Base Buffer Width	Minimum Applied Buffer Width
Manage 3	20 feet	16 feet
Manage 2	30 feet	24 feet
Manage 1	40 feet	34 feet
Preserve	75 feet	67 feet

(b) The Applied Buffer Width, the actual width of wetland buffer(s) required for a permitted project, shall be the Base Buffer Width as reduced by beneficial slope or soil conditions pursuant to the following formulas:

(1) For every 5 percent decrease in average buffer slope from 20 percent, the Base Buffer Width may be reduced 2 feet.

(2) For every grade of Hydrologic Soil Group above Type D for the predominant buffer soil condition, the Base Buffer Width may be reduced 2 feet.

Reductions for beneficial slope or soil conditions shall not reduce the buffer width to less than the applicable Minimum Applied Buffer Width.

(c) Buffer width may vary based on demonstrated site constraints, provided that a width of at least 50 percent of the Applied Buffer Width is maintained at all points, there is no reduction in total buffer area, and the buffer provides wetland and habitat protection at least equivalent to a buffer of uniform Applied Buffer Width. Buffer width averaging calculation will exclude any part of the buffer exceeding 200 percent of the Applied Buffer Width. The area of any path or trail allowed in the buffer will be added to the total area required by the Applied Buffer Width, except that construction of a trail or path of no more than 4 feet in width to provide riparian access through the buffer will not increase the required buffer area.

(d) The Applied Buffer Width may be further reduced by the District upon a demonstration by the applicant that the proposed buffer conditions clearly provide function and value equal to or greater than would be provided by a buffer of the applicable Applied Buffer Width, but may not be reduced to less than 50 percent of the applicable Applied Buffer Width.

(e) The Applied Buffer Width for Linear Reconstruction Projects shall be limited to the extent of available right-of-way. A buffer is not required for resurfacing of an existing road, sidewalk or trail that does not increase the area of impervious surface.

(f) The Applied Buffer Width for New Principal Residential Structures shall be limited to 25 percent of the distance between the existing structure at the point that it is nearest to the wetland and the wetland, or 25 feet, whichever is greater, provided that such a buffer shall not exceed the Base Buffer Width, and the buffer shall not render a property unbuildable.

7. WETLAND BUFFER VEGETATION.

(a) Buffer vegetation shall not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality, each as approved by District staff or when implemented pursuant to a written maintenance plan approved by the District. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface shall be placed within a buffer, except as provided in paragraph 6(c). No fill, debris or other material shall be excavated from or placed within a buffer.

(b) For public land, right-of-way or property held by a homeowner's association, the applicant may comply with paragraphs 5(d), requiring buffer monumentation, 7(a), vegetation management, and section 10, Wetland Buffer Monitoring, of this rule by demonstrating that the buffer will be maintained in accordance with a written maintenance agreement with the District meeting the buffer monumentation, vegetation management and wetland buffer monitoring requirements in this rule, listing required elements of paragraph 9(h), the Wetland Buffer

Maintenance Plan, including terms describing in detail the location of wetland buffer on the subject property and providing detailed protocols for buffer maintenance.

(c) Buffer areas, or portions thereof, that are not vegetated or will be disturbed by grading or other site activities during construction shall be replanted and maintained according to the following standards:

(1) Soils must be decompacted to a depth of 18 inches and organic matter must be incorporated into soils before revegetation. Decompaction shall be accomplished solely by incorporation of organic matter within the drip line or critical root zone of trees or within 10 feet of underground utilities.

(2) Erosion/sediment control practices, including provisions of sections 5, Erosion Control Plan, and 9, Maintenance, of the District Erosion Control Rule, as appropriate, shall be used during buffer vegetation establishment.

(3) Buffers shall be planted with a native seed mix and/or native plantings approved by the District.

(4) Buffer maintenance and monitoring shall be performed in accordance with section 10, Wetland Buffer Monitoring, of this rule.

8. **FINANCIAL ASSURANCE.** A performance bond, letter of credit or other financial assurance, consistent with the District Financial Assurance Rule, may be required for any project involving wetland replacement or replanting of wetland buffers. The financial assurance shall be maintained until the monitoring period has ended and District has approved the wetland replacement or establishment of the buffer.

9. **REQUIRED EXHIBITS.** The following exhibits shall accompany the Combined Joint Notification (CJN) form:

(a) Complete delineation report, in accordance with the guidelines provided by the Board of Water and Soil Resources, for any wetland(s) that will be impacted or require a buffer. The report must be approved by the WCA Local Government Unit (LGU). The report must include a copy of the Notice of Decision for all projects occurring in cities where the District is not the LGU.

(b) Site plan, one set - full size and one set - reduced to a maximum size of 11" x 17", showing:

(1) Property lines and corners and delineation of lands under ownership of the applicant;

(2) Existing and proposed elevation contours; including the existing runout elevation and flow capacity of the wetland outlet;

(3) Boundaries of all wetlands on the property;

(4) Boundaries of all existing or proposed buffers, along with proposed grading and other disturbance in existing or proposed buffers;

(5) Proposed locations of buffer signage; and

(6) Area of the wetland portion to be filled, drained, or excavated.

(c) Identification and area of the total watershed area presently contributing stormwater runoff to the wetland.

(d) A replacement plan, if required, meeting all the requirements of Minnesota Rules chapter 8420, as amended. Replacement plans for wetland impacts not subject to the WCA must meet these same requirements.

(e) For projects involving wetland excavation (including projects deemed self-replacing under paragraph 4(b)), the application shall identify spoils placement on upland and specify how the deposited materials will be stabilized and vegetated.

(f) Information showing whether the subject wetland is protected by either the State or municipality or both.

(g) Wetland Buffer Planting Plan, if required under section 7, Wetland Buffer Vegetation, including:

(1) Proposed seed mixes and other plant materials to be used;

(2) Seed or plant supplier and origin of materials;

(3) Seed/planting bed preparation (i.e. disking, raking, clearing, herbicide control, topsoiling, etc.);

(4) Seeding and/or planting method (i.e. broadcast, drill, etc.);

(5) Application rate in either pounds of seed per acre and/or the number of plants per unit area if using plugs or seedlings. Specify if using pure live seed (PLS). Higher application rates will be required if not using PLS;

(6) Detailed erosion control plan for establishing wetland buffer.

(h) Wetland Buffer Maintenance Plan, if required under section 7, Wetland Buffer Vegetation, including:

(1) Schedule of establishment and maintenance activities for the first five years of establishment (i.e. watering, burning, mowing, herbicide control, etc.);

(2) Identification of probable invasive species and steps that will be taken to control the spread of invasive species;

(3) Inspection methods and schedule for monitoring invasive species and documenting native species germination and establishment.

10. **WETLAND BUFFER MONITORING.** For buffer areas required to be established or replaced under subsection 7(c), setting standards for buffer establishment and maintenance:

(a) Upon final establishment, wetland buffers shall contain little or no bare soil and shall exhibit a dominance of native vegetation.

(b) The applicant shall submit to the District an annual Wetland Buffer Inspection Report on or before January 1 of each year for five years. Alternatively, applicants may request that the District perform the Wetland Buffer Inspection and produce the report for a fee equal to the District's actual costs to perform the work.

(1) The applicant may submit a written request to cease annual monitoring by year three if the wetland buffer is well established pending District approval.

(2) If the wetland buffer is poorly established at the end of the five year monitoring period, the District may require continued monitoring and maintenance.

(c) The annual Wetland Buffer Inspection Report shall include:

(1) Site plan showing:

- i. Location of permitted buffer area;
- ii. Areas of bare soil or erosion;
- iii. Areas of invasive vegetation; and
- iv. Location and type of any encroachments on the buffer (structures, unapproved mowing, trails, etc.)

(2) Color photos of the wetland buffer taken during the growing season. Vantage points for these photos shall be labeled on the site plan.

(3) Description of buffer vegetation including:

- i. List of dominant plant species and their estimated percent cover.
- ii. Comparison of the species present to the approved planting/seeding plan.

(4) A written narrative that identifies the management strategies that will be utilized during the upcoming growing season to manage invasive species, improve percent vegetative cover and species diversity, and mitigate any encroachments on the buffer.

Appendix 1:

