

**Minnehaha Creek Watershed District  
Land & Water Partnership Initiative  
Technical Advisory Committee**

Meeting #3  
December 8, 2022  
1:00 – 3:00 PM

MCWD Office – 15320 Minnetonka Blvd, Minnetonka  
Board Room - Lower Level

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**Agenda**

- 1:00-1:05     **Welcome and Recap of Meeting 1**
- 1:05-1:30     **Optimizing the MCWD Permitting Experience**  
Overview of Background and Proposed Program Improvements  
Mentimeter Exercise
- 1:30-1:45     **Proposed Rule Revisions and Input Approach**  
High-level Overview of Main Revisions  
Approach to TAC Review and Input
- 1:45-2:00     **Break**
- 2:00-2:45     **Discussion of Proposed Rule Revisions**
- 2:45-3:00     **Preview of Meeting 4 and Wrap-up**  
Meeting 4 Topics and Homework
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**Attachments:**

- Meeting 3 Pre-Read Memo



**Title:** TAC Meeting 3 Pre-Read: Permitting Alignment Overview

**Prepared by:** Abigail Ernst, MCWD Permitting Technician

**Meeting Purpose:**

Minnehaha Creek Watershed District (MCWD or District) will provide the Technical Advisory Committee (TAC) with an overview of proposed improvements to its Permitting Program, including proposed rule revisions. The TAC will review these items and provide input on the program direction and proposed rule revisions. The feedback from this discussion will be used by MCWD staff to determine how comfortable TAC members are with the proposed changes, where more detailed discussions may be needed, and any additional improvements that should be considered.

**Overview:**

Over the past several years, the MCWD has been working to align the organization to support its vision of a [Balanced Urban Ecology](#), where built and natural environments exist in balance to create value and enjoyment. This aspiration requires improved connection and integration between land use and water planning.

MCWD's Permitting program (Program) exists at the nexus of land use change and water resource protection and is one of the most prominent ways in which MCWD connects with the land use community. The Program acts as a "front door" to individuals, municipalities, and agencies who want to alter the land in a way that may impact water resources and allows the District to identify opportunities for improvement. Because of the Program's frequent interaction with the land use community, it provides significant potential to accomplish the MCWD's goal of improving integration of water and land use planning. MCWD staff have worked with the Board of Managers and Citizens Advisory Committee (CAC) to analyze opportunities for improvement in the Permitting program to strengthen MCWD's relationship with the land use community and leverage these relationships to increase the potential for collaborative projects that improve water resources beyond regulatory minimums.

**Background and Purpose:**

The Permitting program implements policies to protect water resources from land use impacts. As with any regulatory program, serving in the role of regulator can lead to tension between the District and its permittees. While providing this critical regulatory role, the District strives to also serve as a partner and resource to its applicants to understand their goals and help them accomplish those goals in a way that protects, or even improves, water resources. The District has had several successful partnership projects that grew out of permitting conversations. Cooperative endeavors like the Mader Wetland Bank and Methodist Hospital Creek Remeander and Boardwalk are examples that accomplished the applicants' goals and provided water resource benefits that exceeded regulatory requirements.

The Balanced Urban Ecology policy and successful partnership projects laid the foundation for the Permitting Program's new purpose, as identified in the District's 2017 Watershed Management Plan:

*"To protect natural resources against degradation associated with land-use development; and, partner with public and private parties to generate greater natural resource outcomes than those achieved through regulation alone."*

In aligning the Permitting program around this new purpose, the District is moving forward from the traditional regulatory model, toward developing meaningful relationships with the land use community, and together building projects that provide social, economic, and environmental benefits. In service of this goal, Permitting will seek to provide a heightened level of service to its applicants and communities by creating clear rules and process, aligning its

regulations with other agencies, and developing greater efficiency and effectiveness through partnership with municipalities.

These improvements are a key part of the Land and Water Partnership Initiative and will help strengthen partnerships that support the District's emphasis on impactful, collaborative projects that benefit the watershed and its communities. The District believes that by creating a more efficient, streamlined, and relationship-focused Permitting program, it can show its commitment to helping partners meet their goals and deepen the trust in the organization as a whole.

### **Scope of Permitting Improvements:**

In order to accomplish the Permitting program's new purpose, it is important to understand both historical challenges and successes of the program to inform which parts of the program need to be improved and which parts should be leveraged more often. As such, staff have worked with the Citizens Advisory Committee (CAC) and Board to assess the historical challenges and identify areas for improvement.

1. The District is adjusting its regulatory scope and standards to align with other local and state agencies.
  - a. *Historical challenge:* Two District rules do not comply with the state Municipal Separate Storm Sewer System (MS4) permit.
  - b. *Approach:* The District is revising its rules to comply with MS4 requirements and make it easier for MCWD and cities to partner to carry out MS4 responsibilities. MCWD will be sharing the rules with TAC members to gauge if changes accomplish the improvement goal.
2. The District is simplifying and streamlining its rule language, technical submittals, and procedural requirements to enhance clarity with plain language and create a more user-friendly experience.
  - a. *Historical challenge:* Rules are written in dense technical and legal language, making them hard to navigate.
  - b. *Approach:* The District is rewriting its rules in plain language. MCWD will be sharing the rules with TAC members to gauge if changes accomplish the improvement goal. Additionally, staff are continuing to use and improve the District's Online Permitting Portal which allows for quick and comprehensive plan review and communication.
3. The District is improving the Program to be more efficient by tailoring regulations to natural resource risk and project opportunity.
  - a. *Historical challenge:* District regulations are not tailored to the risk or opportunity a project presents to water resources. This leads to unnecessary delays for simple, low-risk projects and for projects that propose greater benefit to the watershed's ecology.
  - b. *Approach:* The District is proposing to add fast-track options and reduce submittals for low-risk projects. This will reduce burden on applicants and allow more District staff time to be dedicated to higher risk projects and exploration of partnership opportunities. MCWD will be sharing the rules with TAC members and gauging if the changes are accomplishing the improvement goal.
4. The District is formalizing its compliance framework.
  - a. *Historical challenge:* The District's compliance framework is not formalized which leads to inefficiencies.
  - b. *Approach:* The District is currently developing an internal policy that includes its enforcement process and an inspection prioritization framework.
5. The District is exploring formal partnerships with municipalities to improve coordination, reduce duplication of efforts, and leverage each other's capabilities.
  - a. *Historical challenge:* The District and its member cities are duplicating efforts on permit review, inspections, and enforcement. Additionally, applicants typically engage MCWD at the end of the land-use planning process which limits how well MCWD can be a value-added partner.

- b. *Approach:* The District is developing partnership frameworks which will be shared at TAC Meeting 4 to gauge interest in their implementation. Agreements could include efforts such as sharing inspection responsibilities or involving the District in zoning discussions to identify opportunities early.
6. The District is creating clear processes for how it will identify and explore partnership opportunities with applicants.
- a. *Historical challenge:* Applicants typically engage MCWD late in the land-use planning process. The benefits of early coordination and the process for exploring partnership opportunities with the District are not clear to applicants.
  - b. *Approach:* The District is formalizing its objectives and processes for exploring partnership opportunities under the Land and Water Partnership program to provide clarity to applicants and promote the benefits of early engagement. This includes training Permitting staff to act as planners and relationship builders so they can identify opportunities at early stages and provide the assistance to get projects to the finish line.

**Proposed Rule Revisions:**

As part of the broader scope of Program improvements, the MCWD is proposing revisions to its rules that are intended to streamline and simplify rule language and submittal requirements to improve customer service and increase program efficiency while maintaining water resource protection. The District is not seeking to increase regulatory standards, except where required to align with MS4 permit standards. Each rule is undergoing updates to language to make them easier to read and understand. The more substantive changes for each rule are outlined below along with an indication of which changes are planned for future TAC discussion vs. review and comment outside of meetings:

1. Erosion Control

- a. *Change:* The District is proposing the addition of a “General Permit” track to allow erosion control permits to be autonomously issued for low-risk projects (i.e., single-family home projects that only trigger erosion control in which <1 acre of land is disturbed).
  - i. *Rationale:* Tailoring the scope of District regulations to align applicant and staff time with project risk. Sites will still be required to follow rule standards, and project information will be collected which will allow for inspection and enforcement as needed.
  - ii. *Review method:* TAC discussion and offline review
- b. *Change:* The District is proposing to revise rule language to reference the Construction Stormwater General Permit (CSW GP) standards.
  - i. *Rationale:* The MPCA is requiring the District to implement this change to comply with the updated MS4 permit.
  - ii. *Review method:* Offline review

2. Stormwater Management

- a. *Change:* The District is revising the Stormwater Management rule to align with the MS4 permit in the following ways:
  - i. *Specific Changes:*
    1. The District is revising volume abstraction requirements for development and linear projects.
    2. The District is removing several out of compliance exemptions that allowed some scenarios to avoid stormwater treatment, even if they created >1-acre of new or fully reconstructed impervious.
    3. The District is including MS4 treatment sequencing requirements in the updated rule. This includes outlining that infiltration must be attempted prior to utilizing filtration or other abstraction methods. This also includes outlining situations where infiltration is infeasible.

4. The District is removing out of compliance practices for runoff abstraction in its treatment credit schedule.
          - ii. *Rationale:* The MPCA is requiring the District to implement these changes to comply with the updated MS4 permit.
          - iii. *Review method:* TAC discussion and offline review
      - b. *Change:* The District is proposing to update its rate control requirements to require modeling the peak runoff rates for the 2-year storm event, rather than the 1-year storm event.
        - i. *Rationale:* By making this change, the District is seeking to improve customer service and align District requirements with those of member cities who most often use the 2-year.
        - ii. *Review method:* Offline review
3. Waterbody Crossings and Structures
  - a. *Change:* The District is proposing a fast-track option for routine replacement of culverts and outfalls with equivalent dimensions and comparable materials.
    - i. *Rationale:* A fast-track option will streamline the permitting process for low-risk projects and create a more user-friendly experience for those with MS4 responsibilities.
    - ii. *Review method:* Offline review
4. Dredging
  - a. *Change:* The District is proposing a fast-track option and revising of the submittal requirements for routine dredging of sediment at outfalls and for repeat dredging to maintain navigational access.
    - i. *Rationale:* A fast-track option will streamline the permitting process for low-risk projects and create a more user-friendly experience for MS4s.
    - ii. *Review method:* Offline review
5. Floodplain Alteration
  - a. *Potential Change:* The District is considering a change to its use of low-openings for freeboard, because most cities use low-floor instead.
    - i. *Review method:* TAC discussion and offline review
6. Wetland Protection
  - a. *Change:* The District is proposing a buffer exemption if an existing structure prevents a project from providing the required buffer area. The exemption will require the applicant to provide buffer to the greatest extent feasible.
    - i. *Rationale:* This exemption creates efficiency. If a project area physically does not have room to provide the full buffer due to an existing structure, such as a road, it is overly burdensome to force the applicant to seek a variance for land configuration outside of their control.
    - ii. *Review method:* Offline review
  - b. *Change:* The District is proposing an exemption for the buffer requirement if the project is for an activity on public land with an equivalent conservation restriction or in situations where the buffer would restrict the project's water-dependent recreational or educational value.
    - i. *Rationale:* The District wants to support projects that propose greater water resource and community benefits. It is often burdensome for these projects to comply with the buffer provisions because it conflicts with the intended use and conservation goals.
    - ii. *Review method:* TAC discussion and offline review
  - c. *Change:* The District is proposing an exemption to help right-of-way projects more easily comply with buffer maintenance requirements.

- i. *Rationale*: Right-of-way project requirements should be streamlined because they have different maintenance requirements for public safety needs.
        - ii. *Review method*: Offline review
  - d. *Potential Change*: The District is considering adding a requirement for buffers associated with new subdivisions to be located on outlots, and would like to get TAC feedback on that potential addition.
    - i. *Review method*: TAC discussion

#### 7. Shoreline and Streambank Stabilization

- a. *Change*: Currently, applicants proposing to add a stabilization method on a streambank are required to provide shear stress and velocity calculations in their application submittal. However, when determining the erosion intensity score, velocity is not included in the calculation, only shear stress is. The District is proposing that the applicant consider both velocity and shear stress calculations when determining stabilization method for the streambank.
  - i. *Rationale*: This would increase the robustness of stabilization method selection without requiring additional submittals.
  - ii. *Review method*: Offline review

#### 8. Variance/Exception

- a. *Change*: The District is proposing to replace the “undue hardship” variance standards with the “practical difficulty” standard.
  - i. *Rationale*: This revision aligns regulations with city and county land-use statutes.
  - ii. *Review method*: Offline review

The District is not seeking TAC input on the following rules because the proposed changes only include plain language updates: Definitions, Procedural, Illicit Discharge, Appropriations, and Financial Assurance rules.

#### **TAC Discussion Questions**

Please come prepared to speak to the following discussion questions:

- How could your permitting experience be improved?
- Which of the proposed program improvements are most valuable to you? Why?
- Are there other program improvements we should consider? What are they?
- What is your level of comfort with the proposed rule revisions? Where would you like to focus future discussions?
- Are there additional rule changes you would like to see included that support the current scope? What are they?
- Are there ideas for rule changes outside of the current scope that you would like MCWD to consider? What are they?