



Title: Land & Water Partnership Initiative Outcomes - Rule Revisions

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Purpose:

Over the past nine months, the Minnehaha Creek Watershed District (MCWD) has been convening a Technical Advisory Committee (TAC) as part of its [Land & Water Partnership Initiative](#). At the [June 22, 2023 Policy and Planning Committee \(PPC\) meeting](#), staff provided an overview of the outcomes of the TAC process and proposed next steps. At the August 24, 2023 PPC meeting, the Board will receive a more detailed review of the TAC's feedback on the rule revisions and the substantive changes that are proposed. The PPC will be asked to provide input on the proposed rule revisions in preparation for authorizing the public comment period.

Background:

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. Because of the Program's frequent interaction with the land use community, it has significant potential to accomplish the MCWD's goal of improving integration of water and land use planning.

MCWD staff worked with the Board of Managers and Citizens Advisory Committee (CAC) to analyze opportunities for improvement in the Program, which were reviewed at the [September 23, 2021 PPC meeting](#). These improvements are intended to strengthen MCWD's relationship with the land use community and leverage these relationships to increase the potential for collaborative projects to improve water resources beyond regulatory minimums. Following that meeting, the Board of Managers authorized staff to begin the TAC engagement process at the [December 16, 2021 Board meeting](#).

Goals

As part of the broader scope of Program improvements, the goals of the rule revisions are to:

- Align MCWD's regulatory scope and standards with state agencies for consistency and compliance,
- Simplify and streamline rule language, submittals, and processes to enhance clarity and improve customer service, and
- Improve program efficiency and effectiveness by tailoring regulations and field presence to potential natural resource risk and opportunity.

By creating a more efficient, streamlined, and relationship-focused permitting program, MCWD can show its commitment to helping partners meet their goals and deepen trust in the organization as a whole.

TAC Process and Outcomes

Over a series of eight meetings, MCWD staff engaged the TAC as part of the Land & Water Partnership Initiative, including detailed review of the proposed rule revisions. Prior to each rule discussion, TAC members were provided with a copy of the existing rule, an annotated copy of the proposed rule, and a 'rule change matrix' which described all

substantive revisions and rationale. TAC members were asked to review these materials in advance and fill out an associated survey which polled them on their comfort with the changes, whether the proposed changes accomplished the Program goals, what other changes MCWD should consider, and what specific items they wanted to discuss as a group. At the meetings, staff then shared out these results, reiterated the main changes, and allowed for ample discussion time on the proposed changes, policy direction, and other improvements MCWD should consider.

Based on these TAC discussions and surveys, staff conclude that there is strong support for the policy direction of simplifying, streamlining, and aligning MCWD rules, and there is comfort with the majority of the proposed revisions. The TAC also provided valuable insight into how MCWD's permitting process interacts with low-risk maintenance work and suggested areas for further streamlining to support that work. These suggestions have been integrated into the rule drafts along with more minor recommendations for clarified language. In addition to providing valuable input on the Program and rule improvements, the engagement process helped increase trust and transparency between the TAC and permitting staff.

August 24, 2023 PPC Meeting Focus:

The PPC will be asked to review and provide input on the rule revisions to ensure that the Board is comfortable with the proposed changes before staff brings a request to initiate the public comment period. The proposed revisions are still closely aligned with what the Board reviewed in 2021, with the exception of the Dredging rule, which was updated based on TAC input. At the meeting, staff will provide an overview of all substantive changes, which are summarized in the attached table. Staff will then focus on two areas where a General Permit (GP) is proposed (Erosion Control and Dredging rules), as described below, since these are the most significant changes.

The purpose of the GP is to align staff time with natural resource risk by reducing time spent on plan review and permit processing for projects that pose relatively low risk to natural resources. Under a GP, permits meeting certain conditions would be autonomously issued through the online permitting portal rather than receiving an individual permit. This change would allow staff to increase time spent in the field inspecting sites to improve compliance.

Erosion Control General Permit

Consistent with the recommendations in 2021, staff are proposing the creation of an Erosion Control GP for projects that propose <1 acre of disturbance and trigger no other MCWD rules. These projects, primarily single-family home construction, pose relatively low risk to natural resources, and they make up more than 50 percent of the MCWD's annual permit volume. Typically, site plans for these projects are fairly standard and require little to no changes based on staff review. Currently, these sites are not prioritized for inspection unless complaints are received. Creation of a GP would reduce the time spent on the review and processing of these permits and allow for increased field presence to ensure that erosion and sediment control practices are properly installed and maintained.

During the TAC review, and at the March 23, 2023 Board meeting, staff received feedback that there was some concern over the GP potentially increasing risk to water resources due to reduced plan review. Staff have taken that input and are proposing additional refinements to ensure that risks are minimized and natural resource protection is maintained:

- **Application Process and Submittal Requirements** - Applicants will use the existing online permitting portal to apply for an Erosion Control Permit. If the application meets the GP criteria, applicants will turn in a simplified erosion and sediment control plan, agree to a set of conditions, and the permit will be autonomously issued. For added protection, if a site is flagged as having a waterbody or floodplain on site (which is done through the use of GIS layers), it will be held for a short period for staff review to confirm that no other District rules are triggered.
- **Inspection Protocol** - Sites in close proximity to a waterbody and with steep slopes will be prioritized for inspection to ensure that erosion and sediment controls are functioning as required. Additional spot check inspections will also be performed to audit site compliance across the District and evaluate the new inspection prioritization and frequency protocols.

Dredging General Permit

For the Dredging rule, MCWD staff initially proposed a fast-track option for public agencies removing non-native sediment at outfalls into public waters and wetlands. In these situations, public agencies are removing accumulated sediment to ensure that outfalls are functioning correctly, as required per their state Municipal Separate Storm Sewer System (MS4) permit. This work presents minimal risk to water resources due to the limited removal over a short time period in an area that is already impacted by stormwater discharge and sediment accumulation. The fast-track would streamline the permitting process by removing the 14-day public notice period and simplifying submittal requirements.

Through discussions with the TAC, there was broad support for MCWD shifting from a fast-track to a GP instead. The TAC expressed that the proposed process and submittal requirements seemed onerous for low-risk maintenance work, and due to MS4 requirements to maintain outfalls, greater streamlining was desired to speed up permit issuance.

Staff have evaluated this TAC recommendation and agree that it supports the goals of the rule revisions and presents minimal risk to water resources. The GP would allow public agencies proposing to remove non-native sediment at outfalls to autonomously receive a permit after agreeing to a set of conditions and turning in a simplified set of submittals that will allow MCWD to track the location, frequency, and volume of sediment removal.

Attachment Descriptions and Review Instructions:

The PPC is being provided with several documents to aid in review of the proposed rule revisions:

1. Attachment A - Proposed Rule Revisions and Rationale: Summary document describing the main rule changes and staff rationale.
2. [Accessed via Microsoft One Drive:](#)
 - a. Rule Change Matrix – Summary of all substantive changes including what is changing, the location in the current rule and new rule, and the rationale. This can be used as a reference when comparing the rule drafts.
 - b. Existing and Proposed rules - Existing and proposed rule language can be viewed side by side for comparison. The proposed rule drafts are annotated to call out substantive changes and where sections have been renamed, consolidated, or moved. Redlines have not been prepared due to the extent of text edits and reorganization that has occurred to clarify, simplify, and streamline the rules.

Attachment A - Proposed Rule Revisions and Rationale

| Rule | Change | Rationale |
|--|---|---|
| Erosion Control | <p>GP track to allow permits to be autonomously issued for projects that disturb <1 acre and trigger no other District rules.</p> <p>Inclusion by reference of the Construction Stormwater General Permit (CSW GP) standards.</p> | <p>Tailoring regulations to align staff time with natural resource risk and increase field presence.</p> <p>Aligning MCWD treatment standards with MS4 standards to meet state requirements and improve consistency across agencies.</p> |
| Stormwater Management | Updated language and treatment requirements to align with MS4 treatment standards. This includes removing out of compliance exemptions and treatment types, and updating sequencing requirements. | Aligning MCWD treatment standards with MS4 standards to meet state requirements and improve consistency across agencies. |
| Dredging | <p>GP track to allow permits to be autonomously issued for public agencies that are removing non-native sediment at outfalls into public waters and wetlands.</p> <p>Fast-track permit for repeat navigational dredging projects (i.e. projects that remove sediment in channels and docking/mooring areas that follow the same design as previously approved by MCWD).</p> | <p>Tailoring regulations to align staff time with natural resource risk and to support MS4 communities' maintenance requirements.</p> <p>Tailoring regulations to align staff time with natural resource risk to increase program efficiency and effectiveness.</p> |
| Waterbody Crossings and Structures | Fast-track permit for replacement of culverts by public agencies that do not impact hydraulic capacity. | Tailoring regulations to align staff time with natural resource risk and to support MS4 communities' maintenance requirements. |
| Wetland Protection | Changes to the buffer provision to provide greater flexibility for public projects that provide natural resource protections and benefits. | Streamlining permitting process for projects that propose water resources and community benefits. |
| Shoreline and Streambank Stabilization | Clarifying rule language to require that the applicant assess both velocity and shear stress when determining the appropriate stabilization method for a streambank. | Aligns rule language with how rule has been applied, increasing robustness of stabilization method selection without changing submittals. |
| Variances and Exceptions | Replacing the "undue hardship" variance standard with the "practical difficulty" standard. | Aligns regulations with city and county land-use statutes. |