MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

Title:	Responsive Program and Permitting Alignment
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Purpose:
To have the Citizens Advisory Committee (CAC) vet the recommendations for two key program initiatives – the development of the Responsive Program and the alignment of the Permitting Program – before the District engages external stakeholders through a Technical Advisory Committee in early 2022.

Background:
Over the past few years, the Minnehaha Creek Watershed District has been working to align the organization to support its vision of Balanced Urban Ecology, where built and natural environments exist in balance to create value and enjoyment. Realizing this aspiration requires improved connection and integration between land use and water planning. Two key initiatives the District is undertaking to support this policy direction are the development of the Responsive Program (AKA Responsive Model) and the alignment of the Permitting Program.

Responsive Program
In its 2017 Watershed Management Plan, the District identified areas of high resource need and opportunity that would be targeted for focused planning and investment (focal geographies). To complement this approach, the District is developing a Responsive Program through which the District will work with partners to address resource needs throughout the watershed. Land use changes by public and private partners present windows of opportunity for water resource improvement that, if missed, may not come around again for decades. To capitalize on these opportunities, the District is establishing a formal program to help the District identify, evaluate, and respond to partnership opportunities.

In 2019, the CAC vetted a draft, high-level framework for the Responsive Program including purpose, goals, high-level process, and evaluation criteria before it was presented to the Board. Materials from those past meetings can be found here: March 6, 2019, April 3, 2019, July 17, 2019. Since that time, staff have been operating the program in a pilot phase while continuing to develop the internal workflows, technology tools, formal policy and guidance documents, and outreach materials to support the program.

Permitting Program Alignment
MCWD's Permitting Program exists at the nexus of land use change and water resource protection, and is one of the most prominent ways in which MCWD interfaces with the land use community. Each year, hundreds of applications are made to MCWD to change the landscape. Annually, District staff engage in thousands of interactions with municipal officials, developers, engineers and architects, to ensure proposed projects meet standards that protect the natural resources within the watershed.

Given these facts, in coordination with the MCWD Board of Managers and CAC, Permitting staff have analyzed opportunities to strengthen the working relationship with the land use community, and to leverage these relationships to generate increased potential for collaboration on projects that ultimately protect and improve the watershed's natural resources. Past CAC discussions on the Permitting Alignment effort spanned August 2018 to February 2019 and materials can be found here. Since that time, staff have been working to further analyze the changes needed to the procedures, rules, and technology to support the program alignment.

Summary:
Staff are at the point of finalizing recommendations for both programs and would like to vet them with the CAC prior to engaging the external Technical Advisory Committee in early 2022. A summary of the recommendations for each initiative are attached. At the meeting, staff will provide an overview of the recommendations for each initiative and then break into small groups to discuss the following questions:

- Strategy:
    - What are potential drawbacks/risks/challenges the CAC sees with the recommendations?
    - What are the anticipated benefits/opportunities?
    - What are we missing/not considering?
- Messaging/clarity:
    - How would you describe the purpose/goal of this initiative?
    - What do you see as key messages to emphasize for our public and private partners?
    - Are the intent and recommendations clear? What is confusing?

Supporting documents:
Attachment 1 – Responsive Program recommendations
Attachment 2 – Permitting Program Alignment recommendations

Overview

This document outlines work completed to-date regarding the design of the Responsive Program's scope, structure, schedule, and process. The Responsive Program recommendation is to be focused on capital projects that provide regional water quality benefit with public or private partners who have capacity to implement. Thereby, leveraging land use partners' projects to provide stacked benefits to the taxpayer. The program is designed to provide District expertise and funding to incentivize partners to come to the District early. This early coordination and incentive for project collaboration will further close the land use and water planning gap. Unlike a grant program, this program will fund project implementation through the District's Capital Improvements Projects (CIP) ensuring organizational alignment and focus on the District's priorities and goals.

Summary

The program's purpose and goals and key program recommendations are provided below.

Purpose and Goals

The purpose of the Responsive Program is to provide support for public and private projects that are well-coordinated with the District and align with District goals and priorities. MCWD's intent under the program is to achieve the following goals:

- Improve water resources
    - o Achieve significant, measurable progress towards District goals by capitalizing on opportunities created through land use change.
- Improve integration and early coordination with land-use planning
    - o Promote and incentivize closing the gap between land-use and water resources planning by establishing clear pathways and an orderly process for early coordination.
- Provide service and value to communities
    - o Remain responsive to needs outside of the District's focal geographies by providing support for partner-led projects that address water resources needs and priorities identified by the District.
- Maintain focus and flexibility
    - o Operate the program in a way that supports the District's principles of focus and flexibility, by maintaining focus on high-impact projects and ensuring the flexibility to develop creative partnerships.

Key Program Recommendations

Below are the recommended program scope, structure, schedule, and process. These recommendations are based on District staff's experiences and lessons learned under the current pilot phase of the program, and informational discussions with relevant agencies and watersheds operating similar funding programs. For additional details on how the staff considered program development and rationale for the proposed recommendation, refer to July 22, 2021 Board Memo.

<u>Scope</u>

The Responsive Program should focus on development and implementation of capital projects that measurably improve water quality, beyond regulatory requirements, at a regional scale. This would exclude support for programmatic/operational activities such as education and street sweeping.

The program is designed to leverage public partners (e.g., cities, counties) or private developers that have the capacity to lead implementation, by incorporating significant regional water quality benefits into partner projects. Through the District's Strategic Planning process, small-scale best management practices (BMPs) were evaluated and determined to be outside of the District's strategy of delivering high-impact projects to accomplish its mission. By narrowing the program's focus, the District can improve efficiency and clarity by identifying the right scale and type of project with partners.

<u>Structure</u>

It is recommended that the Responsive Program fund project implementation costs through the District's Capital Improvement Plan (CIP), as opposed to a grant program. This approach would allow the District, after undertaking the project ordering process, to contribute funding to a project that will make progress toward the volume and load reduction goals identified in the Watershed Management Plan. This recommended structure complements the recommended program scope by targeting regional benefit projects, typically with public partners, which operate on a similar CIP process and would allow for those processes to be synchronized.

Since projects would be evaluated as part of the District's annual CIP and budgeting process, this would improve organizational alignment and capacity planning. This CIP approach is anticipated to be a more effective for promoting early coordination and collaborative planning with public partners, allowing for greater District influence over project development and implementation and potentially higher quality projects as a result compared to a grant program.

<u>Schedule and Services</u>

The program is designed to support closing the land use and water planning gap between land use partners and watershed planners. The program has developed a schedule that aligns with the District's project planning process:

- Phase I: Concept
  - Initial opportunity identification and concept development
  - Under this phase, the District may lead or provide financial and/or technical support for concept development
- Phase II: Feasibility
  - Completion of feasibility study and supplemental planning to ensure project viability and understanding of benefits and costs
  - For public projects, the District may provide financial or technical/planning support
  - For private projects, the District may lead or support feasibility work
- Phase III: Implementation

- o Design, permit approvals, and construction
- o The District may provide financial or technical/planning support but will rely on partners to lead implementation

Currently, staff is proposing two deadlines that are integrated into the project development process for partners to request service. This allows adequate time for the District to review the project and feed it into the District's CIP and budget schedule. Below are the deadlines from project concept to project implementation.

- April 1 (Year 1): Deadline to submit concept and request District participation in feasibility work
- February 1 (Year 2): Deadline to submit feasibility report and request District participation in implementation the following year

Program deadlines will be discussed with TAC to ensure program schedule aligns with partner needs and their respective CIP/budget process. Projects that originate in the District's permitting review, typically private development, will tend to come with external timing imperatives and move forward on a condensed schedule under the same process.

<u>Process (Operational)</u>

The Responsive Program is designed to set role expectations for its Board, ensure opportunities are not missed across the landscape, and provide on-going District organizational alignment.

Roles - Board and Staff:
Project identification and evaluation will primarily be led by Policy and Planning staff for public partner opportunities and by Permitting staff for private opportunities identified through the development review process.
- These lead staff will utilize a cross-departmental team for review and vetting of their evaluation and recommendations prior to Board review.
- Points of engagement with the Board of Managers will include:
  - o At least annually, staff will provide an update to the Policy and Planning Committee on program operations and opportunities in the concept phase.
  - o The Board will decide whether a project moves to Feasibility (Phase II), and consider Feasibility-phase expenditures beyond the Administrator's authority.
  - o The Board will decide whether the District will proceed to project implementation, and will be responsible for all formal actions subsequently necessary to order and implement the project.

Opportunity Identification:
The District's opportunity identification process would utilize both proactive and passive pathways for the Permitting and Policy Planning Departments (e.g., annual meetings, permitting notifications, partnership requests) to identify public and private opportunities early in the planning process.

Criteria and Evaluation:
Once an opportunity has been identified, staff evaluate potential projects by using the following four criteria categories:

- <u>Resource Need and Priority:</u> Alignment with the resource needs and priorities identified in the District's Plan or through ongoing monitoring and diagnostic efforts
- <u>Project Benefits:</u> Estimated benefits across the District's goals of water quality, water quantity, ecological integrity, and thriving communities
- <u>Cost-effectiveness:</u> Cost effectiveness compared to alternatives or other past/current project opportunities
- <u>Coordination and Partnership:</u> Strength of partner's coordination, integration of District goals, and willingness to commit resources to advance the opportunity

Staff would use these criteria to develop a ranking of Low, Medium, or High for each of the four categories and would document the reasoning for the ranking. Then each project is reviewed by a cross-departmental team for a final recommendation to be provided to the Board.

Program Funding:
Consistent with budget practices during the pilot phase, there would be a line item included within the program budgets for both the Planning and Permitting departments for "Responsive Planning" to provide project development services during project concept and feasibility phases. These amounts would be set annually by the Board and informed by past years' spending and the volume of opportunities in review. All spending would be subject to the delegated spending authorities of the Administrator.

The District would fund project implementation through its CIP, and the proposed program schedule would ensure that requests for funding are received in time for review and incorporation into the District's annual budget process. In addition, to provide flexibility for faster-moving projects that the Board decides are worth funding, there is the ability to amend the budget and draw from reserves.

Attachment 2
Permitting Program Alignment Recommendations

Overview:
This document summarizes the recommended policy, procedural, and rule changes to support the alignment of the Permitting Program with the District's Balanced Urban Ecology approach. The first section summarizes the overall program recommendations, and the second section provides additional detail on the recommended rule changes. A more detailed summary of the analysis and rationale for these changes can be found in the June 10, 2021 and July 22, 2021 Board packets.

Program Recommendations:
In coordination with the MCWD Board of Managers and Citizen Advisory Committee (CAC), Permitting staff have analyzed opportunities to strengthen the working relationship with the land use community, and to leverage these relationships to generate increased potential for collaboration on projects that ultimately protect and improve the watershed's natural resources.

Key recommendations resulting from the staff-CAC-Board analysis include:

1. The scope of MCWD's regulation should be "right-sized" to align with and reduce overlap with other local and state agencies, whose regulations have evolved over time.
    a. The most notable change is aligning MCWD stormwater and erosion control requirements with those in the Minnesota Pollution Control Agency (MPCA) municipal separate storm sewer system (MS4) construction stormwater permit, with which all cities and the District are required to comply.

2. Rule language, technical submittals, and procedural requirements should be simplified into plain language and streamlined, to enhance clarity and create a more intuitive user-friendly experience.
    a. This includes changes to the rule text as well as development of guidance documents.

3. The program should improve efficiency and align staff time with natural resource risk/opportunity. Examples include:
    a. Creating a general permit for erosion control on sites disturbing less than 1 acre, which present lower risk than larger sites.
    b. Utilizing the program's new online permitting portal to improve customer service through quick and accurate plan reviews and reduce administrative overhead.

4. Compliance with MCWD regulations can be improved through the following framework:
    a. Only adopting regulations the organization is prepared and capable of fully enforcing
    b. Refining MCWD's internal processes for escalating enforcement proceedings
    c. Clarifying inspection and enforcement priorities, to effectively focus MCWD's resources
    d. Routinely updating financial assurances to reflect modern construction pricing
    e. Exploring partnerships with other agencies to formalize roles and leverage resources

5. The District should establish formal partnerships with municipalities to improve coordination, reduce duplication of efforts, and leverage each other's capabilities. This could include:
    a. Integrating MCWD earlier into the land use planning processes to reduce potential conflict due to late coordination and to increase the likelihood of developing functional partnerships with applicants that exceed regulatory standards.

    b. Proactively identifying existing MCWD regulatory services that could supplant municipal requirements to the state would reduce burden on cities, strengthening and sustaining policy relationships within the land use community.

6. To repeatedly and successfully leverage partnerships with the land use community to deliver projects that exceed regulatory requirements, MCWD must formalize its objectives and process in policy that guides staff and applicants through planning and approval within the Responsive Program.
    a. This includes establishing clear process and guidance for opportunity identification, feasibility assessment, evaluation, approval, and partnership agreements.

Summary of Rule Changes:

Based on the above program recommendations, below is a summary of the key rule changes that are proposed:

Erosion Control

Issue: The District is a MS4 owner and operator, which requires our rules to be at least as stringent as those set forth by the MPCA Construction Stormwater (CSW) General Permit; rules currently are missing several CSW standards.

> **Recommendation:** Rule language will be revised to include missing CSW standards.

> > **Example Addition: "**During fish spawning, pemittees must complete stabilization of all exposed soil areas with 200 ft of the water's edge, and that drain to these waters, within 24 hours during the restriction periods."

> **Rationale:** The District is a regulated MS4 and required to implement these changes.

Issue: The processing of permits triggering only erosion control for sites under 1 acre creates high administrative overhead for relatively low natural resource risk applications.

> **Recommendation:** A 'General Permit' (GP) track will be created on the District's online permitting system which will autonomously issue permits for low-risk projects that are less than an acre.

> **Rationale:** Improving customer service by reducing redundancy- half of the District's member cities have equally restrictive erosion control rules. Protection will be maintained because sites

will still be required to follow CSW standards when granted a GP and project details are collected which allow for inspection spot checks. Safety nets will be included that restrict non-SFH sites and sites with wetlands from receiving a GP autonomously.

Stormwater Management

Issue: The current rule is out of compliance with MS4.

Example: MS4 requires treatment based on parcel size while current District rules require treatment based on site type (i.e. new development and redevelopment).

Recommendation: Align with MS4 standards by requiring treatment based on parcel size rather than type and by removing exemptions that are out of compliance with MS4.

Rationale: The District is a regulated MS4 and required to implement these changes.

Wetland Protection

Issue: The method for reducing buffer width to the minimum applied with is complicated and does not account for site design that could further protect wetlands.

Recommendation: Continue to explore reduction criteria to wholistically understand what options are available to the District that maintain buffer protection and reduce burdensome rule language.

Waterbody Crossings & Structures

Issue: The process for replacing low-risk, in-kind storm sewer pipes is difficult, and overly complicated.

Direction: Create a 'fast-track' option for in-kind replacement of storm sewer infrastructure.

Rationale: In-kind replacements do not pose hydraulic concerns and are necessary to maintain storm sewer systems and creating a fast-track options will streamline permitting process.

Shoreline and Streambank Stabilization

Issue: The method for demonstrating the need for a particular shoreline or streambank practice is unnecessarily complicated.

Direction: Simplify the methodology for determining erosion intensity and shear stress.

Rationale: Improve customer service and streamline permitting process while maintaining protection.

Issue: MS4 requirements require operators (cities) to clean outfalls with regular frequency. This often trips the rule, and even though it is a low-risk, standard request, the rule does not discriminate between this type of project and dredging for navigation.

> **Direction:** Develop a fast-track option.

> **Rationale:** Improves customer service by streamlining low-risk projects and provides service to member cities to more easily meet their MS4 obligations.

Next Steps:

9/23/2021: Board approval of recommended changes

Q1 2022: TAC meetings to discuss recommended rule changes

Q2 2022: Final rule revisions presented to Board

Q2 2022: Public comment

Q2 2022: Board adoption of rules

Q2 2022 and future: Implementation and refinement of compliance framework and Responsive Program