MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

Meeting: Board of Managers
Meeting date: 10/27/2023
Agenda Item #: 11.1
Request for Board Action

Title:	Authorization to Release Proposed Rule Revisions for Public Comment Period
Resolution number:	23-065
Prepared by:	Name: Abigail Ernst, Permitting Technician Phone: 952-641-4504 aernst@minnehahacreek.org
Reviewed by:	Name/Title: Becky Christopher, Policy Planning Director
Recommended action:	Authorization to release Minnehaha Creek Watershed District's proposed rule revisions for 45-day public comment period
Schedule:	November 2023: Initiate 45-day public comment period February 2024: Adoption of MCWD's revised rules
Budget considerations:	N/A
Past Board action:	Res # 19-081 Authorization to Contract with Smith Partners, PLLP and Wenck Associates, Inc. for Program Alignment and Rule Revisions Support
	Res # 21-090 Authorization to Initiate Stakeholder Engagement Process for Permitting Alignment and Responsive Program

Summary:
Rule Revision Purpose
Over the past several years, the Minnehaha Creek Watershed District (MCWD or District) 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. 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 built environment and 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. Due to the Program's frequent interaction with the land use community, it has significant potential to accomplish the MCWD's goal of improving the integration of water and land use planning.

In 2018, staff worked with the Citizens Advisory Committee (CAC) to analyze potential opportunities for improvement to the Program, including rule revisions. Staff presented the results of this process to the Board of Managers at the March 14, 2019 Operations and Policy Committee- (OPC) meeting. The categorical issues and solutions outlined served as the basis of a Program Alignment scope of work. This scope of work was authorized by the Board in September 12, 2019 and included the following goals to guide the rule revision process:

- 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.

Rule Revision Process

To work towards these rule revision goals and support Program Alignment efforts, MCWD initiated a thorough review of its rules. MCWD staff worked with the District Engineer and Legal Counsel to develop a set of specific policy recommendations to update the existing rule language and standards between 2019 - 2021. Staff reviewed the proposed changes to create a more efficient, streamlined, and relationship-focused Program at the September 23, 2021 Policy and Planning Committee (PPC) meeting. At the December 16, 2021 Board meeting, the Board authorized staff to begin a stakeholder engagement process, including the formation of a technical advisory committee (TAC), to review the proposed rule revisions as part of the broader Land & Water Partnership Initiative.

From October 2022 to June 2023, the TAC participated in eight meetings, in addition to online surveys and individual meetings. Through these efforts, the District sought to incorporate the perspective and technical expertise of its public partners in their roles as parallel regulatory entities, regulated parties, and project partners. At the June 22, 2023 PPC meeting, staff provided a report on the outcomes of the TAC process. Based on the TAC discussions and surveys, there is strong support for MCWD's efforts to streamline, simplify, and align the District's rules. The TAC also provided recommendations to further improve clarity and streamline process for low-risk projects.

MCWD staff integrated these TAC recommendations into the draft rules and presented the proposed rule revisions at the August 23, 3023 PPC meeting. The Managers expressed comfort with staff seeking Board authorization to begin the public comment period.

Public Comment Process

The proposed rules are required to go through a public comment period, pursuant to Minnesota Statutes §103D.341. This process entails publishing the comment period in a major printed publication, submitting the rules to public transportation authorities (MnDOT, counties, cities, townships) and the Board of Soil and Water Resources, holding a public hearing, and accepting comments over a period of 45 days.

In addition to these requirements, staff will distribute the rules to a broader contact list, including TAC members, major contractors and engineering firms, frequent applicants, the Builders Association of the Twin Cities (BATC), and state agencies. Staff has also created a dedicated webpage that will explain the purpose and scope of the rule revisions and provide user-friendly access to the rules and supporting materials. To aid stakeholder review, two supplemental documents have been prepared:

- Guidance to Proposed Revised Rules (see attached) – A summary of the purpose and scope of revisions, the rule-making process, and rationale for all substantive revisions. This document relates the basis for the District's initial judgment that the revisions are both beneficial and reasonable.
- Side-by-sides - A comparison between the existing and proposed rules to make it easier to see what language has changed and track how the rules have been reorganized.

Over the next few weeks, staff will continue to prepare these communications materials and will distribute the rules in mid-late November. Staff requests that the public hearing be scheduled for the January 11, 2024 Board meeting. Once the comment period has closed, staff will review all comments received and present them to the Board along with proposed responses and any associated revisions to the rules. Pending review of these comments, staff anticipates requesting Board adoption of the final rules in February 2024.

Requested Action

At the October 26, 2023 Board Meeting, staff is requesting that the Board of Mangers:

- Authorize the initiation of the 45-day public comment period
- Schedule and issue notice of a public hearing as part of the January 11, 2024 meeting of the Board of Managers

Supporting documents:

Attachment 1: Guidance to Proposed Revised Rules
Attachment 2: Proposed rules
Website link: Existing rules

MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

RESOLUTION

Resolution number: 23-065

Title: Authorization to Release Proposed Rule Revisions for Public Comment Period

WHEREAS, the Minnehaha Creek Watershed District (MCWD), a governmental subdivision with powers set forth in Minnesota Statutes chapters 103B and 103D, is authorized to act to achieve the purposes set forth in those chapters for the protection, conservation and beneficial use of the waters and resources of the Minnehaha Creek watershed;

WHEREAS, Minnesota Statutes section 103D.341 requires the watershed district managers to adopt rules to accomplish the purposes of chapter 103D and implement the powers specified in Minnesota Statutes section 103D.335, and the MCWD has duly established such rules;

WHEREAS, on January 11, 2018, the MCWD adopted its Watershed Management Plan (WMP) and has since been working to align the organization around its vision of a Balanced Urban Ecology and improve integration between land use and water planning;

WHEREAS, to support this vision, the MCWD has developed a scope of improvements to the Permitting Program, including revising its rules to improve clarity, efficiency, and alignment with state and local requirements;

WHEREAS, the MCWD rules have not been updated since 2014 and MCWD has gained considerable experience implementing the rules and has identified technical adjustments and clarifications to improve the function of the rules;

WHEREAS, in addition, MCWD holds a Municipal Separate Storm Sewer System (MS4) permit, issued by the Minnesota Pollution Control Agency (MPCA), which requires that MCWD's rules be revised to ensure they are at least as stringent as those of the MPCA;

WHEREAS, on September 12, 2019, the MCWD Board of Mangers reviewed a proposed scope of improvements to the Permitting Program and rules and authorized contracts to support this work;

WHEREAS, on December 16, 2021, the Board of Managers authorized staff to initiate a stakeholder engagement process, including formation of a Technical Advisory Committee (TAC) to review the proposed rule revisions as part of the broader Land & Water Partnership Initiative;

WHEREAS, the TAC showed strong support for MCWD's efforts to streamline, simplify, and align the District's rules and provided recommendations to further improve clarity and streamline process, and the rules have been revised based on TAC input; and

WHEREAS, the MCWD Board of Managers have reviewed the proposed rule revisions and find that they meet the goals of the Permitting Program alignment;

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers authorizes the District Administrator to release the proposed rule revisions for public comment in accordance with Minnesota Statutes section 103D.341, and schedule and issue notice of a public hearing on the revisions as part of the January 11, 2024 meeting of the Board of Managers.

Resolution Number 23-065 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___abstentions. Date: 10/26/2023

_____ Date: _____

Secretary

MINNEHAHA CREEK WATERSHED DISTRICT
GUIDANCE to PROPOSED REVISED RULES

_____, 2023

BACKGROUND

Under Minnesota Statutes §103D.341, the Minnehaha Creek Watershed District ("District") has prepared proposed revisions to its permitting rules. On October 26, 2023, the District Board of Managers ("Board") directed that the proposed revisions be distributed for public comment.

The legal authority for the District Rules derives from Minnesota Statutes chapters 103B and 103D. Under Minnesota Statutes §103D.341, subdivision 1, watershed districts must adopt rules "to accomplish the purposes of [the watershed act] and to implement the powers of the managers." Further authority to adopt rules to protect and manage water resources is found in Minnesota Statutes §§ 103B.211 and 103D.335.

The revisions encompass the entirety of the District rules, consisting of the following:

1.0	Definitions
2.0	Procedures
3.0	Erosion and Sediment Control
4.0	Floodplain Alteration
5.0	Stormwater Management
6.0	Waterbody Crossings and Structures
7.0	Wetland Protection
8.0	Shoreline and Streambank Stabilization
9.0	Dredging
10.0	Illicit Discharge
11.0	Appropriations
12.0	Financial Assurances
13.0	Fees
14.0	Variances and Exceptions
15.0	Enforcement

Before this rulemaking, the District had not performed a thorough review and revision of its rules in over ten years. A principal purpose of the revision is to improve the District's development review and permitting process by bringing more clarity to its rules and review procedures. To that end, the existing rules have been reworded and reorganized with the goal to make them as clear and understandable as possible. In addition, the proposed rules:

(a) pare unneeded application submittals and allow District staff to conform submittal requirements to the particular application; and

(b) introduce "fast-track" and general permits to reduce application burden and speed permitting time for certain activities that pose limited risk to water resources.

A second central purpose of this rulemaking is to bring the District's erosion & sediment control (ESC) and stormwater management rules into conformance with state and federal law. Under the federal Clean Water Act (CWA), implemented at the state level by the Minnesota Pollution Control Agency (MPCA), the District is designated as an owner or operator of a "municipal separate storm sewer system" (MS4), and is required to hold and comply with an MS4 General Permit (GP) issued by the MPCA. The MPCA reissues this GP, designated as GP MNR040000, every five years. The MS4 GP requires that each MS4 owner or operator use its permitting authority to regulate land-disturbing activity in accordance with specific standards and directives set forth in the MS4 GP.

Each of the 29 municipalities within the District's boundaries also is an MS4 owner or operator, subject to the same legal mandates under the MS4 GP. By conforming its standards to the MS4 GP, the District is fulfilling its legal obligation, but also is aligning those standards with the development regulations of its cities. The District believes this alignment will be of great benefit to its cities, which are subject to District permitting for roadwork and other land development, and also to private property owners and developers who must comply with the permitting standards of both the District and the city.

Finally, the revisions propose a number of substantive changes to the District rules based on the District's permitting experience and the input of its Technical Advisory Committee (TAC), composed principally of municipal and other public agency staff and formed under Minnesota Statutes §103D.337. The District's goal for its rules is to locate the balance point where water resource impacts from land development and disturbance, and from work in waters, are minimized but regulated parties are not subject to unnecessary cost or burden. The revisions also seek to clarify existing rule language that has been a point of confusion to regulated parties, and to incorporate into the rules interpretations of rule language that the District has formed, and applied consistently, over time. These proposed changes are intended to bring the District's rules closer to the balance point in specific ways.

The proposed revised rules, as well as the District's existing rules, may be viewed or obtained at the District offices and accessed through the District website, minnehahacreek.org. Because most of the rules have been substantially reorganized, redlined versions showing proposed changes to existing rules would be confusing and of limited aid. Instead, the District has produced a side-by-side comparison of each rule to aid in review of changes.

The District is soliciting input from all parties so that the rule revision is reasonable and best-suited to accomplish its water resource management goals without undue regulatory or administrative burden. Comments are most helpful when they are specific and factually detailed as to concerns or potential impacts, and when they include specific suggestions for alternative language or an alternative approach.

Pursuant to Minnesota Statutes §103D.341, the proposed revisions are being issued for public comment for a period of 45 days. The District solicits and welcomes all comments from state and regional resource protection agencies, local governments, regulated parties and all other members of the public. **Please submit written comments by mail or electronic mail to the attention of Abigail Ernst, Permitting Technician. Comments must be received by _____. In addition, the District Board will hold a public hearing on the proposed rules at its regular meeting called to order at 7:00 p.m., on January 11, 2024, at the District offices, 15320**

Minnetonka Boulevard, Minnetonka MN. At that time, any interested member of the public will have the opportunity to address the Board on the proposed changes. The District carefully will consider all comments and make appropriate changes to the proposal before adoption.

This Guidance to Proposed Revised Rules relates the basis for the District's initial judgment that the revisions are both beneficial and reasonable. This document does not cover all details of the proposed revised rules.

RULEMAKING PROCESS

The present rulemaking process originated in a comprehensive review of the permitting program in 2018 to identify issues as they have arisen over the course of implementing the program. District staff engaged the District's Citizens Advisory Committee (CAC), a 14-member advisory body appointed by the District Board pursuant to Minnesota Statutes §103D.331. Over the course of 10 months, staff worked with the CAC to review and categorize issues, and to develop consensus over a proposed approach to addressing these issues.

In early 2019, District staff presented the results of this process to the Board's Operations and Policy Committee. The categorical issues and solutions outlined through this process served as the basis of a Permitting Alignment Scope of Work, which was authorized by the Board in September 2019. In doing so, the Board endorsed the following goals for the rulemaking:

- 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
- Improve program efficiency and effectiveness by tailoring regulations and field presence to potential natural resource risk and opportunity

Between 2019 and 2021, staff worked with the District engineer and legal counsel to develop a set of specific policy recommendations to update the existing rule language and standards. In Fall 2021, District staff brought these recommendations to the CAC and the Board for consensus. From Fall 2021 through Fall 2022, staff worked with the engineer and counsel to draft proposed rule text.

Pursuant to Board authorization, staff then engaged the TAC in a structured review of the proposed revisions. From October 2022 to June 2023, the TAC participated in eight in-person meetings, in addition to online surveys and individual meetings. Through these efforts, the District sought to incorporate the perspective and technical expertise of its public partners in their roles as parallel regulatory entities, regulated parties and project partners. The TAC process concluded with written documentation of the matters reviewed, TAC input, and conclusions of District staff as to how the proposed rule would address each matter.

Staff presented the final proposed rules, with supporting material, to the Board's Policy and Planning Committee, and then to the Board itself, where the Board directed that the proposed

rules be published and distributed for formal public comment in accordance with Minnesota Statutes §103D.341, subdivision 2.

RULE 1.0: DEFINITIONS

The Definitions rule has been revised so that it will continue to support the substantive rules that follow.

Eight terms are proposed to be deleted, because they no longer would appear in the rules, or not in a way that requires a definition:

- Access corridor
- Linear reconstruction project
- Natural state
- Parcel
- PID
- Redevelopment
- Shoreline
- Wetland buffer zone

The term "Preserve wetland" is to be removed as well, as it will be referenced under the new definition of "Management class."

The following eight terms are newly used in the proposed rules, and would be added to the definitions:

- Common plan of development
- General permit
- Fill
- No-Rise standard
- No-Rise certificate
- Reconstructed
- Residential appurtenance
- Stabilize

A number of terms would be revised to express their meanings more clearly, without a change in meaning. Several other proposed revisions merit brief note:

- "BMP" (best management practice) is revised to refer what those proficient in the field consider to be a best present means or method.

- "Design storm" now references specific rainfall depths for one-, two-, 10- and 100-year design storms. This would be revised to refer generally to the present NOAA precipitation frequency estimates.

- "Fast Track permit" is given a general definition. Specific Fast Track permits for which the rules provide would be stated now within the specific rules that authorize them.

- "Fill" would be edited to correct what the District considers imprecision in the existing definition.

- "New Principal Residential Structure" is revised to clarify that the definition refers to a single-family residence, and not to a building containing multiple residential units.

- "100-year high water elevation" is revised to set forth the order of preference for the source of the elevation data, namely first municipal modeling and, if that is not available, District, then Federal Emergency Management Agency (FEMA), then applicant modeling.

- "Site" would newly include a definition pertaining to Linear Transportation Projects, delineating the site by longitudinal right-of-way (ROW) and project limits, but also including area outside of ROW that the applicant has designated for project purposes.

RULE 2.0: PROCEDURES

The Procedures rule is edited extensively for clarity, with three additions:

- In section 1, District staff would be given the authority to allow an applicant to omit submittals that staff finds to be unnecessary for the particular application.

- Section 1 also clarifies that while the landowner of record must sign the application as an applicant, there may be co-applicants as well. In the application, the co-applicant would state their interest.

- Compliance with a permit, until the work is completed, the site restored and the permit formally closed, must remain the responsibility of the property owner, as the property owner has control of site conditions. The District has observed that with great frequency, property under an open permit is transferred without rigor in transferring the permit. Paragraph 9(a) of the proposed rule would state explicitly that the permittee is responsible to initiate a permit transfer in conjunction with a transfer of property ownership. The text affirms that the named permittee remains responsible for the site condition and permit compliance (along with the transferee) until the permit is transferred, so that it is in the permittee's interest to diligently attend to the transfer.

No other substantive changes are proposed to the rule.

RULE 3.0: EROSION and SEDIMENT CONTROL

The District's present Erosion and Sediment Control rule requires a person engaging in land disturbance to prepare and implement an erosion and sediment control (ESC) plan. Subject to certain exemptions, the rule applies to a land disturbance exceeding 5,000 square feet and to the filling, excavating or storing on site of 50 cubic yards or more of soil or other earth materials.

The chief reason for the District to revise this rule is its obligation under its MS4 GP, as described above. In parallel to the MS4 GP, the MPCA implements a separate federal stormwater mandate to limit pollution of surface waters from active construction sites. The MPCA implements this mandate through a second GP, referred to as the Construction Stormwater GP (CSGP) and designated as MNR100001. The CSGP, like the District's rule, requires a property owner to prepare and implement an ESC plan. In addition, however, in the MS4 GP, the MPCA requires that the MS4 permittee regulate land disturbance for ESC by means of standards at least as protective as those in the CSGP. This results in duplication, as a property owner must comply with the CSGP, and also comply with the ESC regulations of local MS4s, including municipalities and watershed districts.

In this rulemaking, then, the District proposes to align its ESC standards with the terms of the CSGP. It is doing this both to meet its legal obligation under the MS4 GP, and to ensure that its regulation of land disturbance aligns with that of the MPCA and the municipality, so that the burden of duplicative regulation on the regulated community, and the potential confusion of duplication, are minimized.

By aligning with the CSGP, and adopting certain of its terms by reference, the District also is able to simplify and shorten its rule.

Applicability of the Rule

The basic applicability terms of the rule would not change: a land disturbance of 5,000 square feet or more, or the excavating, filling or stockpiling of 50 cubic yards or more of soil or earth material, would be subject to a permit. The revised rule would specify that only "exposed" stockpiling triggers the rule, so that a stockpile protected from precipitation and runoff by structural means would not do so.

Under the existing rule, most applications proceed by Fast Track permitting that does not require public notice. Under the proposed rule, land disturbance meeting the threshold for the CSGP (one acre or more of land disturbance) no longer would be subject to Fast Track permitting. However, for land disturbance below that threshold, and for excavating, filling or stockpiling that exceeds 50 cubic yards, the rule, at section 5, would provide for a general permit. Under this section, an applicant need only submit a notice of disturbance and a simplified ESC plan. The District reserves the right to direct the application to ordinary permitting if District geographic layers indicate a regulated waterbody or floodplain on the property. Otherwise, the general permit is deemed granted and the applicant may proceed, subject to basic requirement to inspect and maintain practices, and stabilize the site when work is completed.

The District proposes this expedited permitting on the basis of experience finding that small sites don't require the level of application development and review, and of site monitoring, that has been devoted to them under the standard application process. This change will reduce the burden on regulated parties undertaking land disturbance of smaller scope, and allow District staff to align permit oversight resources more closely with level of water resource threat. District staff will continue to inspect sites operating under the general permit, and will retain the authority to require compliance steps where a site is not being properly managed.

The proposed rule would remove the existing rule exception for emergency activity (see existing rule, par. 3(c)).

ESC Plan Requirements

The proposed rule, at section 3, lists the contents of the ESC plan that an applicant must submit for land disturbance that doesn't qualify for the general permit. This replaces content requirements at subsection 5(a) of the present rule, as well as several such requirements within subsection 5(b). The District proposes to delete the present requirement that the ESC plan specify six inches of topsoil to be spread and incorporated where topsoil has been removed. District staff and the engineer don't find that this has been an effective requirement.

The existing rule, at section 6, requires submittal of a soils engineering and/or geology report under certain circumstances. The District retains the authority to request additional application submittals that a situation may call for (see proposed rule, par. 3(d)), and so finds that it may dispense with a distinct section referencing these reports.

Site Inspection and Maintenance

For land disturbance of an acre or more, the District must apply standards at least as protective as the CSGP. The CSGP standards are extensive, set forth in a number of sections of that document as follows:

Section 7	BMP Selection and Stormwater Management
Section 8	Erosion Prevention Practices
Section 9	Sediment Control Practices
Section 10	Dewatering and Basin Draining
Section 11	Inspection and Maintenance
Section 12	Pollution Prevention Management Measures
Section 13	Permit Termination Conditions
Section 14	Temporary Sediment Basins
Paragraph 16.4	(protection of infiltration systems)
Paragraph 17.3	(protection of filtration systems)
Paragraphs 23.7 thru 23.11	Additional Requirements for Discharges to Special and Impaired Waters

The District finds that these standards within the CSGP incorporate all of the inspection and maintenance terms in the present District rule, with several exceptions as to details that need not be in the rule. The District could revise and augment its existing inspection and maintenance terms (see existing rule, paragraph 5(b), section 9, paragraph 10(a)) to cover, or be equally protective as, the above CSGP requirements, but believes this would result in a complex rule, and risk confusion and burden for those that must conform to both the CSGP and the District permit (and likely a municipal permit as well). The District finds it appropriate simply to incorporate the above CSGP sections and paragraphs, in order to provide a compliance path for regulated parties that is most efficient and clear. The District understands and expects that most or all of its municipalities have done or will do the same, so that regulated parties will need to comply with a single set of requirements.

Notifying the District

Section 6 of the proposed rule indicates five stages throughout the conduct of work subject to permit when the permittee must notify the District so that the District, if it chooses, may inspect the site. These apply to all permittees except those operating under the general permit. This section is carried over from the existing rule without change.

RULE 4.0: FLOODPLAIN ALTERATION

The District's floodplain rule requires a permit for any land alteration within a floodplain, defined as the land reached by the water elevation of the associated waterbody during the 100-year storm event. The rule requires that there be no net loss of water storage, as a result of fill or other activity, between the ordinary high water and 100-year high water elevations.

The proposed rule would make two limited changes.

First, the present rule provides for a Fast-Track permitting procedure for "six inches or less of organic material to be incorporated into existing soil in preparation for sodding or seeding." As noted above, the Fast Track procedure foregoes public notice and may reduce submittal requirements. Under the proposed rule, "ordinary landscaping purposes of soil for cultivation; or for soil amendment, or topsoil or sod addition" is excepted completely from the permit requirement. The District has not encountered an instance in which the working of soil for landscaping purposes has presented a measurable impact on floodplain flood storage, and further expects that many ordinary landscaping activities, commercial and residential, nominally subject to a permit under the existing rule proceed without a District permit or any awareness that a permit is required. The District finds that a permit requirement for such ordinary, insignificant activities is neither effective nor useful for flood management.

Second, in several places in the existing rule, an applicant must demonstrate that proposed fill will not "aggravate high water conditions" (par. 3(a)), "cause an increase in the 100-year flood elevation" (par. 3(b), or "cause high water or aggravate flooding on other properties" or "unduly restrict flood flows" (par. 3(c)). The District proposes to revise each of these to require simply that the No-Rise Standard is met. The No-Rise Standard is an engineering determination, pursuant to MnDNR procedures and methodology, that the activity will not result in an increase in the 100-year high water elevation. The intent is to use a consistent standard in the rule, and to align with standards that the MnDNR applies in its public waters programs and that are used in federal floodplain management.

RULE 5.0: STORMWATER MANAGEMENT

In this rulemaking, the District's Stormwater Management rule is proposed to be substantially revised. The chief driver of the revisions is the District's obligations under its MS4 GP, as described in the introduction above. The GP mandates that each permittee enforce permitting regulations for permanent management of stormwater runoff associated with land development involving the creation of new hard surface and/or the reconstruction of existing hard surface that, together, amount to an acre or more. The GP prescribes minimum standards and, in order to meet these standards, the District must significantly revise its own rules.

This state law mandate coincides well with the underlying rulemaking goal of making the District rules less complex and more understandable, where there are opportunities to do that. The District's present rule imposes standards to capture and treat stormwater, and to prevent increases in the rate of runoff leaving the site during storm events. The standards applicable to a given development plan are determined on the basis of parameters including whether the project is new development or redevelopment, the size of the site, the proportion of the site that is disturbed, and the resulting increase or decrease of hard surface. The mandate of the MS4 GP is more simple and, as a result, the proposed revised rule is more simple as well.

Other sections of the proposed rule are more concise as well, with the result that the proposed rule would be measurably shorter than the present rule. The District also introduces a number of clarifications and revisions of more focused import, to address issues that have arisen over the time that the present rule has been in effect.

Rule Applicability

As a preliminary note, the existing rule distinguishes between "Development" and "Redevelopment," where the latter consists of land-disturbing activity on a tract that already contains a building or hard surface. The District considered the distinction worthwhile to account for the constraints that existing development on a site might pose, and to allow for the rule to address the question of when a redevelopment should retrofit treatment for existing hard surface. The MS4 GP standards don't differentiate between development and redevelopment, and so the proposed rule collapses these two categories into the single term "Development." The rule continues to regulate creation or reconstruction of hard surface of less than an acre, but the District has concluded there isn't a substantial benefit to differentiating in this category so as to justify the added complexity.

The proposed rule also modifies the existing "common or related ownership" clause in section 2 of the present rule. Here, stormwater management requirements are determined with respect to the aggregate of development on adjacent sites under common or related ownership occurring since 2005. To conform to the MS4 GP, the proposed rule would substitute the "Common Plan of Development" clause used in that document, which decides requirements by looking to development that constitutes "one proposed plan for a contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times, on different schedules, but under one proposed plan." The rule also would retain an element based solely on capturing cumulative development over time, but instead of dating this back to 2005, would specify that it applies to development on the site over the prior 10 years. The intent remains to ensure that sequential instances of more limited development over time don't result in cumulative hard surface runoff that is not being managed.

Also, to conform to MS4 GP standards, certain exceptions at section 2 of the present rule must be modified (see the proposed rule at par. 2(b)):

- The existing exemption for construction of a single-family residence on a lot of record will apply only to the extent the construction does not exceed an acre of hard surface. Except for the occasional residence with a very long driveway, the District expects this narrowing of the exemption to be of little consequence.

- The present rule also exempts redevelopment that reduces site hard surface by 10 percent or more. Again, the exemption will not apply if the redevelopment nevertheless involves an acre or more of new or reconstructed hard surface.

- The existing rule exempts from the rule Linear Transportation Projects, new or involving reconstruction, that don't increase hard surface by at least 10,000 square feet. Under the revised rule, such projects that don't increase hard surface by that amount, but that involve substantial reconstruction so that new and reconstructed hard surface together exceed an acre, will be subject to the rule. If the MS4 GP standard of an acre of new and reconstructed hard surface is not reached, the proposed rule would continue to exempt those Linear Transportation Projects where hard surface will not increase by 10,000 square feet or more.

Finally, the proposed rule includes two clarifications with respect to the rule's applicability:

- The permit trigger of grading or changing land contours does not apply to agricultural activity (par. 2(a)(iii)).

- Where the rule is triggered by grading or changing of land contours, or by subdivision without development (existing rule, par. 2; proposed rule, pars. 2(a)(2) and (3)), the proposed activity is not subject to water quality volume control requirements, and the required stormwater management plan need only be conceptual (par. 2(c)).

Water Quality Volume Standard

The water quality (WQ) volume standard is the principal means by which surface waters are protected from increased pollution due to runoff from hard surface development. The standard requires that runoff be captured, that it be abstracted from the landscape where possible, by infiltration into soil or other means, and where that is not possible, that it be treated to remove phosphorus and sediments. The MS4 GP focuses its mandate on the WQ volume standard, and so the most substantial changes proposed to this rule concern this standard. This subsection concerns the volume standard itself; the subsection that follows concerns the sequencing requirements before an applicant may forego an abstraction method in favor of a non-abstraction method of treating WQ volume, and the criteria for when infiltration is prohibited.

The proposed rule would condense and adjust Tables 2 through 5 of the present rule, and re-present them in the proposed rule as Tables 1 and 2. Table 1 applies to development other than Linear Transportation Projects; Table 2 applies to Linear Transportation Projects. The tables implement the following MS4 GP standards (again, applicable when new plus reconstructed hard surface sum to an acre or more):

- For Development, treat one inch of runoff from all new and reconstructed hard surface.

- For Linear Transportation Projects, treat one inch of runoff from all new hard surface, or one-half inch of runoff from all new and reconstructed hard surface, whichever is greater.

For the following actions that do result in an acre or more of new or reconstructed hard surface, and therefore are required to meet MS4 GP standards, this will result in a new WQ volume treatment obligation which, again, the District is legally required to impose:

- New development that results in hard surface on less than 20 percent of a site, which is exempt from WQ treatment under the present rule.

- Redevelopment that results in a net decrease in site hard surface, which presently is exempt from the rule (if the net reduction exceeds 10 percent) or requires only an on-site best management practice (BMP) (if the net reduction is less than 10 percent).

- A Linear Transportation Project that increases hard surface by less than 10,000 square feet, which is exempt under the present rule.

For certain actions that don't result in an acre of new or reconstructed hard surface, and for which the District therefore has discretion as to the standard it applies, there also would be a new WQ treatment obligation:

- New development on a site smaller than an acre presently is exempt. Under the new rule, an on-site BMP will be required, except for construction of a single-family residence on a lot of record, which will remain exempt.

- New development, on a site an acre or larger, that creates hard surface on 20 percent of the site or less presently is exempt. Under the new rule, treatment of WQ volume for new hard surface would be required.

As to these five categories, it should be noted that for those that presently are exempt, this exemption applies to the requirements of the Stormwater Management rule as a whole. The exemption removal means that these categories would be required not just to meet specified WQ volume requirements, they also would be subject to other rule standards such as rate control, BMP incorporation, avoiding water level impacts on downstream lakes and wetlands, and providing for adequate vertical separation of structures from stormwater feature elevations.

The District has reviewed the burden this would create for these categories on the basis of considerations such as site constraints, and has concluded that this set of increased responsibilities is not unreasonable. The District also finds there is benefit, in the form of simplicity, in applying a more uniform set of standards and avoiding multiple distinctions among project characteristics. In a particular instance of new development on a small site, meeting rate control requirements could present a challenge. In those unusual cases, the District would consider a variance request. Interested parties, on the basis of their own experience, are invited to raise any concerns as to the proposed framework.

Finally, the District notes that while the WQ volume treatment standard is the means to address water quality in runoff, the existing rule, at paragraphs 3(a)(1), 3(a)(2) and 3(c)(2), imposes certain phosphorus control requirements directly. The proposed rule, at paragraph 3(c), would consolidate these by simply stating that any WQ volume treatment method other than

abstraction must achieve the level of phosphorus removal required by application of the abstraction standard.

Infiltration Sequencing

The sequencing of the method of WQ volume treatment in the MS4 GP is prescriptive. Treatment must be provided by infiltration or another abstraction method, to the extent feasible and/or cost-effective. An applicant asserting that the full standard cannot feasibly or cost-effectively be met by abstraction must submit an analysis to support this. If the District accepts the analysis, that part of the WQ volume standard not met by abstraction may be met by filtration, a sedimentation basin, or another method of removing phosphorus and sediments from the runoff.

The exception to this sequencing requirement is where infiltration is prohibited. The MS4 GP lists nine circumstances in which this is the case, involving inadequate soils or geology; insufficient separation from groundwater level; drinking water sensitivity; and actual or potential contamination in, or of, soil or groundwater.

The proposed rule adopts these sequencing standards and infiltration criteria, essentially verbatim. One notable difference between the District's sequencing in the present rule, and the MS4 GP sequencing in the proposed rule, concerns the designation of filtration as a treatment method. Under the present rule, the District has denominated filtration as an abstraction method, which an applicant may use without demonstrating that infiltration is infeasible or inappropriate. Under the new rule, filtration would not be considered abstraction, and could be used to meet WQ volume treatment requirements only pursuant to the indicated abstraction analysis demonstrating that opportunities for abstraction had been exhausted.

Finally, the District proposes to delete several methods from its table of abstraction practices (Appendix A to the Stormwater Management rule). These methods – tree preservation, planting of new trees, and pervious area enhancement – are not recognized as abstraction methods under the MS4 GP. The District finds this will have little impact, as applicants have proposed these methods very rarely.

Rate Control Standard

The present rule requires that aggregate peak runoff from the site not increase, due to the development activity, for the one-, 10- and 100-year precipitation events. It further provides that where there is more than one point of discharge from the site, there may be an increase in runoff at a particular discharge point, provided there is no increase in aggregate, and provided also that the increase at the particular discharge point does not cause a local impact.
The proposed rule adds one clarification to this standard: where any portion of the site's hard surface runoff is being treated in an off-site facility, that discharge is not considered in measuring whether the aggregate standard is met. It is expected that the rate of this discharge may be elevated as it has not yet been treated. However, the discharge still must be managed so that any rate exceedance doesn't create a local impact.

The only change proposed to the rate control standard is that in examining whether peak runoff rate will increase for the three events, the one-year event is to be replaced by the one- or two-

year event. The majority of the District's municipalities and flood management partners use the two-year event. The purpose of the adjustment is to provide flexibility to applicants so that they need not perform multiple calculations to meet the requirements of the District and the municipality.

As noted above, new development that results in hard surface on less than 20 percent of the site area would be subject to the rate control standard, where presently it is not. The District doesn't foresee a technical challenge or related compliance burden for this category of land disturbance to meet the standard. The standard also newly would apply to certain redevelopment that produces a net reduction in hard surface. Because the amount of hard surface is being reduced, it is almost certain that peak runoff rate from the site would decrease as well.

Vertical Separation of Structure Openings from Elevations of Surface Waters

The present rule requires that two feet of vertical separation be maintained between the 100-year high water elevation of a waterbody or stormwater management facility and the low opening of any structure. The proposed rule retains this standard. The rule would add the following: "unless the structure opening is hydraulically disconnected from the waterbody or practice." This clause is to recognize that an intervening earth form, natural or constructed, may exceed the elevation of the structure opening and therefore cause the simple comparison of opening and water surface elevations to misrepresent flood risk. This clause would not authorize the use of artificial barriers as a means to avoid proper structure elevation.

Impact on Downstream Waterbodies

This section of the rule prohibits impact on the elevation of a downgradient lake or wetland from site development, and its alteration of runoff patterns, in excess of stated allowable increases. The only change proposed here is, the same as for the rate control examination noted above, to examine conformance to the standard not for the one-year precipitation event, but for either the one- or the two-year event. Again, this is for the purpose of applicant flexibility.

Using Off-Site Stormwater Management Practice

Existing section 7 describes how an applicant may make use of an off-site stormwater management facility to meet the WQ volume and phosphorus treatment standard, the rate control standard, or both. The proposed rule, at section 8, maintains the substantive terms of this section, but clarifies it in three respects.

First, the present section title is "Regional Stormwater Management," and the section references off-site treatment through the vehicle of a "regional or subwatershed plan." The section provides for such a plan, typically prepared by a municipality or other road authority to provide for a series of future projects. But it isn't limited to such cases, and may apply to the desire of a private developer to direct the runoff from a single development site to an off-site public or private facility. Accordingly, the section would be retitled to "Location of Volume and Rate Control Practices" to capture its more general intent.

Second, paragraph 8(a) would specify that an off-site facility used for compliance must be located downgradient of the land disturbance, but upgradient of any public water. This is so that the facility receives the runoff being generated by the new or reconstructed hard surface, and so that the runoff is in fact treated before it may cause an impact on a public water. The term "public water" is defined at Minnesota Statutes §103G.005, and does not include all surface waters. Therefore, this standard would allow unmanaged runoff to flow through some such waters before it is treated. There is an element of practicality involved in defining this constraint, and the rule further requires the applicant to demonstrate that there will be no local impact upgradient of treatment. The District is comfortable that this will allow for care to be taken in appropriate cases.

Third, at paragraph 8(c), the proposed rule would expand on what the applicant must show to use an off-site facility:

- The facility has the capacity to treat the runoff in question;
- If the applicant doesn't own the facility, it has permission to use the necessary capacity;
- The facility is subject to a maintenance obligation that the District has the power to enforce; and
- The facility's maintenance status conforms to its maintenance obligation.

Stormwater Facility Maintenance

A private applicant must establish its legal obligation to maintain a stormwater management facility in perpetuity by executing a maintenance declaration and filing it with the county land office for recording on the property title. A public applicant may simply execute a maintenance agreement with the District. With some frequency, a municipality arranges with a private applicant to assume maintenance responsibility of the stormwater facilities receiving runoff from the privately owned site. In practice, the District structures this in one of two ways:

- The municipality may be a signatory to the declaration.

- The municipality may enter into a maintenance agreement with the District, while by separate legal means acceptable to the District, such as a dedicated or conveyed easement, establishing its right to enter the property to perform the maintenance.

The District's practice has been to allow the municipality and applicant to select one of these approaches. The proposed rule, at paragraph 10(c), would incorporate this arrangement, for guidance and clarity.

RULE 6.0: WATERBODY CROSSINGS and STRUCTURES

This rule requires a permit to place a roadway, boardwalk or utility crossing, or other similar or associated structure, across or beneath a waterbody, or in any way that disturbs the waterbody below the top of the waterbody's bank.

The proposed rule would introduce procedural elements to reduce permitting time and burden for public authorities to replace elements of water conveyance systems, and for the directional drilling of utility crossings beneath waterbodies.

First, the proposed rule adds a Fast-Track permitting mechanism for a public entity replacing "a culvert or other hydraulic control with a structure of substantially equal hydraulic and, as applicable, navigational capacity." Public works departments within the District, in the ordinary course of permitting and in TAC meetings associated with the rulemaking, have expressed the view that the District's permit requirement creates delays in the process of replacing stormwater infrastructure, including in cases where there is a certain urgency in order to avoid flood risk or for other reasons.

The District has evaluated the option, requested by some public partners, to allow such work by general permit or other method that doesn't require review and affirmative approval by District staff. The District has concluded that a measure of review is appropriate. For one, structures available for delivery, or otherwise for use, often will not be able to replicate the existing structure in dimension or material, and the proposal will involve some increase in the hydraulic capacity of the structure that the District will want to evaluate. For another, a variation in alignment or elevation may have a non-trivial effect on localized water elevation in the receiving waterbody, on forces directed at the bank and bed, or on other elements of waterbody integrity. Protecting the function and integrity of these regional resources is at the core of the District's responsibility. In addition, the District maintains hydraulic and hydrologic models that are increasingly important to flood management within the broader watershed. It is important that the District have reliable access to up-to-date data as to sizing and other features of stormwater infrastructure in order to maintain model currency.

Therefore, the District proposes to incorporate, not a general permit, but a Fast-Track process for infrastructure replacements, set forth at section 6 of the proposed rule. The applicant will need to submit the information required by the rule so that the District can confirm that the replacement will not alter capacity in a significant way. The rule would exempt such applications from the "minimal impact" element of the application, which requires examining alternatives to the proposed action.. Also, public notice will not be required. The District expects that omitting these two application requirements will decrease the amount of time required to obtain a permit under this rule.

Second, the existing rule requires pilot, entrance and exit holes for directional drilling beneath a waterbody to observe a setback from the waterbody of at least 100 feet. The purpose of this provision is to protect the stability and vegetative cover of the waterbody edge by keeping the boring and associated work limits at a distance. Over time, the District has considered and issued a number of variances for utility companies that could not meet that setback due to existing structures, existing utility alignments, local requirements to maintain utilities within right-of-way, and similar reasons. In general, these variance proceedings imposed an unnecessary cost on applicant and District resources, as in each case delineation of construction limits and a sound ESC plan, diligently implemented, were sufficient to address any concern from a reduced setback. The District believes that District staff are able to ensure such measures without the need for the Board to hear the matter as a variance request. The proposed rule, at paragraph 3(g), would allow District staff to accept a reduced setback on finding that the

applicant's plan includes adequate ESC and other measures to protect against risk of damage to the bank or sediment release into the waterbody.

In conjunction with this change, the rule also recognizes that the requirement to drill at least three feet below the bed of the waterbody may be indeterminate in cases such as wetlands for which the bed elevation may not be clearly ascertainable. The rule would give District staff the authority, in such cases, to specify the necessary maximum elevation of the bored utility.

Otherwise, the proposed rule reflects the District's intent to write its rules more concisely and in more direct and clear language. Several specific clarifications in the rule are as follows:

At paragraph 3(d), the requirement to preserve wildlife passage along the waterbody is condensed. The need for measures to preserve such passage has arisen infrequently, and where it has, the District and the applicant have worked readily together for a sound design. The District believes that the shorter language of the proposed rule is adequate to ensure that, where designed passage is necessary, the applicant fulfills its responsibility to provide it.

Paragraph 3(e) provides an important clarification as to the scope of the District's analysis for installation or replacement of a stormwater conveyance outlet structure. The rule states that such a structure must be designed so that it "does not promote erosion or scour, or otherwise affect bed or bank stability, or water quality, within the waterbody." The question has arisen on multiple occasions whether under this analysis, the District examines the pollutant loads that are delivered through the outlet structure into the receiving waterbody. The proposed rule clarifies that this is not a part of the analysis.

The purpose of this rule is to protect the physical integrity and existing capacity of the receiving waterbody. The intent of the rule is to ensure that the placing of a physical structure within or beneath the waterbody profile will not risk or impair the existing ability of the waterbody to convey water or afford navigation. Where the rule requires design that does not affect water quality, the reference is to improper direction of flow, alteration of existing channel flows, inadequate energy dissipation or other features that would introduce instability to the waterbody bank or bed. Similarly, the District does not evaluate flow rate or volume from the outlet, except as it may pose a risk to the waterbody bed or banks.

In short, what flows out of the outlet is a matter of upstream conditions of land use and infrastructure design. Pursuant to its statutory purposes and powers, the District has a keen interest, and a role in engaging with its public partners, in these matters, but it is an interest and a role best pursued through planning, project partnering and coordination, and not on the occasion where an outlet structure requires replacement.

Paragraph 3(f) requires an applicant to present an analysis to demonstrate that the proposed intrusion on the waterbody is the "minimal impact" alternative to achieve the specific need. The term "minimal impact" refers to all impacts on the water resource encompassed by the descriptions of beneficial public use contained in the watershed law. The existing rule lists certain potential alternatives that an applicant is expected to consider. The proposed rule removes obtaining additional easement rights from this list, but emphasizes an attention to design by adding rerouting to avoid a crossing, minimizing the number of crossings and avoiding encroachment on the waterbody for non-water dependent purposes.

Paragraph 4(b) provides that riprap included in a design for energy dissipation is not subject to the rule if it conforms to specified MnDOT standard plates and incorporates controls against erosion and sedimentation. This exception means that when riprap conforming to the MnDOT plates is a part of a design submitted for a permit under this rule, the criteria under the rule (preserving hydraulic and navigational capacity, preserving wildlife passage, "minimal impact" analysis) will not be applied to the riprap element of the design. If riprap is added to an existing outlet for energy dissipation purposes, and conforms to the MnDOT plates, a permit is not required.

RULE 7.0: WETLAND PROTECTION

The District's wetland protection rule concerns three aspects of wetland management:

- The District's implementation of the Minnesota Wetland Conservation Act (WCA). Under WCA, either the District or the municipality is designated as the local government unit (LGU) responsible to implement the statute and state wetland rules (Minn. Rules 8420). Presently the District acts as the WCA LGU in the majority of its municipalities. WCA regulates draining of wetlands, filling within wetlands, and excavation within certain wetland types.

- The District's regulation of excavation within wetlands that is not regulated by WCA. WCA allows local units of government to regulate wetlands disturbance more extensively than WCA. Minn. Rules 8420.0233. As a long-standing policy matter, the District has chosen to use this authority to regulate excavation within all wetland types.

- The requirement to establish and maintain undisturbed vegetation adjacent to wetland, to buffer the wetland against impacts from construction activity, replacement of vegetation with hard surface, and stormwater runoff; to preserve the habitat function of the wetland and its upland edge; and to protect the structural integrity of the wetland edge.

The proposed revision to this rule would adjust the rules in a number of ways to reflect the District's experience in implementing the rule, and to improve the rule's clarity by explicitly incorporating a number of interpretive practices that the District has applied consistently across time with respect to certain terms of the rule that are not fully unambiguous. None of these is a fundamental change to the rule or how the District applies it, but each may be of interest, and is noted here. One of these adjustments concerns wetland impact replacement. The great majority concern the vegetated buffer requirements: their applicability, determining buffer width, monumenting the buffer edge, and how they are to be maintained. Finally, the requirement to prepare and submit a wetland delineation in support of an application would be modified to reduce applicant burden.

Wetland Replacement Location Sequencing

When activity within a wetland requires replacement of wetland function under WCA, the replacement wetland must have a certain hydrologic proximity to the impact. It must be replaced within the same "minor watershed" (Minnesota comprises about 5,600 minor

watersheds). If that is not feasible, it may be replaced within the "watershed" (of which there are 81 in Minnesota). If banked wetland credits are to be used, the banked credits must originate within the same "Bank Service Area," defined on a hydrologic basis.

For some time, the District has exercised its authority under Minnesota Rules 8420.0233 to impose stricter replacement requirements in order to protect the integrity of the hydrologic systems within the watershed. The District rule has required replacement on site, if possible. If that is not possible, the applicant must replace within the same District subwatershed. (As described in the District's watershed management plan, the District watershed is divided into 11 subwatersheds.) If replacement is not available within the subwatershed, the applicant must explore replacement within the District. Only if there is no opportunity for this may the applicant then replace within the "watershed" as defined in the preceding paragraph.

The District proposes to revise replacement location sequencing requirements in one respect. While the rule would retain the existing District-specific location sequencing, the initial priority for on-site replacement would be eliminated.

When the District adopted the existing location sequencing requirements, a priority was placed on on-site replacement, according to the notion that the best approach was to seek no net impact to the affected wetland. Since, thinking has decisively shifted in favor of fulfilling replacement by contributing to larger-scale wetland restoration and preservation, as restoration is more reliable and the restored or preserved wetland is better protected against impact and more sustainable.

As a minor matter, the proposed rule also would eliminate the language of existing paragraph 3(b) referencing an applicant's option to meet replacement requirements by means of banked credits purchased from the District. As noted, the District does not own any such credits, and has no present plan to enter into the business of wetland credit banking.

Applicability of Wetland Buffer Requirements

The proposed rule would create an exemption from the wetland buffer requirement for actions on public land that otherwise would trigger the buffer. The exemption would apply when the area to which the buffer would apply "is subject to an equivalent conservation restriction," or where the buffer would conflict with "a water-dependent recreational or educational public purpose served by the affected area." The former would apply, for instance, on land dedicated to the public in development and subject to a conservation easement or conservation declaration that protects the buffer to an extent equivalent to that provided by the buffer maintenance declaration that the District requires under the rule. The latter would apply when the purpose of the public landholding and management is water dependent, and requires public facilities to be located adjacent to the water where buffer otherwise would be located under the rule. An example would be a boardwalk or viewing platform, or a canoe launch.

The District finds this exception necessary to properly balance competing public interests in wetland preservation and access to wetlands for recreation or education. The risk to the wetland is limited in this case by the fact that the public land owner or manager ordinarily will share the District's commitment to protecting the resource and, in cooperation with the District, will design the encroaching facilities with care to that end. The rule would specify that the

District would have the authority to impose reasonable conditions to ensure that the wetland resource is not compromised by the absence of a vegetated buffer.

The proposed rule would, in addition, make two small adjustments to the existing language.

- The existing rule requires a buffer for "[a]ny activity for which a permit is required" under the wetland rule. This is ambiguous, as the wetland "permit" may refer to any of a number of decisions that the WCA LGU makes that don't concern an action causing wetland impact (for example, a wetland boundary determination or an exemption determination). The proposed rule, at paragraph 4(a)(i), would revise this so that the vegetated buffer is required in conjunction with an approval "for a wetland impact that requires replacement."

- The District proposes to delete existing rule text, at paragraph 5(a), that the District will apply the buffer requirement to the reconstruction of an existing residential structure in accordance with the protections afforded a zoning nonconformity under law. Under the proposed rule, reconstruction of a residence would trigger the buffer requirement only if it increases impervious surface (see paragraph 4(a)(iii)). In this case, it would be outside the realm of nonconformity law, which protects reconstruction without expansion. Therefore, the text regarding nonconformity law no longer applies.

Buffer Area and Width

The proposed rule would adjust or clarify the terms concerning buffer width in the following ways:

- In determining buffer width, the present rule, at paragraph 6(a), requires in some cases that an analysis be performed to assess the sensitivity of the wetland to a change in stormwater flow into the wetland. The District has never operationalized this requirement by adopting a methodology for this analysis. Further, if the buffer requirement is triggered by land alteration upgradient of the wetland, the applicant will be subject to the District's stormwater management rule (Rule 5.0), so that a change to the pattern of runoff into the wetland will be managed. Therefore, the District finds no basis to retain the requirement of a sensitivity analysis.

- At paragraph 6(d), the proposed rule addresses the circumstance of existing hard surface or an existing structure within the buffer area. The rule would state that a structure or surface need not be removed if it is in "sound and functional condition"; under this standard, the District would retain the judgment to require removal, if the structure or surface were a remnant, or otherwise served no functional purpose and retained no economic value. Where a structure or surface is retained, the rule would require that the buffer width displaced by the structure or surface be established upgradient.

- The existing rule, at paragraph 6(c), allows the landowner to maintain within a buffer a path or trail no more than four feet in width, for access to the wetland. The proposed rule, at paragraph 6(d), would add that the path or trail minimize the loss of buffer area, and be designed to not "concentrate or accelerate" runoff to the wetland. Where there

is a measurable slope to the wetland, this requires may require, for instance, avoiding a straight path directly down the slope gradient.

- The proposed rule, at paragraph 5(b), would clarify that an applicant is not required to acquire property in order to provide for the full required buffer width, but need only establish the buffer to the existing property line.

Finally, the rule, at paragraph 5(d), would introduce a clause allowing for a shortfall in total buffer area, if the District finds that buffer design and an enhanced management plan will provide for buffer function at least equivalent to that which the full buffer area would have provided. Presently, such a proposal would require the District Board to approve a variance. The proposed rule would allow this determination to be made by District staff. The buffer still would need to meet minimum width requirements. The applicant would need to demonstrate equivalency with respect to all functions served by the buffer, including but not limited to water quality, flow mitigation, wetland edge protection and habitat.

Buffer Monumentation

The present rule, at paragraph 5(d), requires the upland-buffer boundary to be demarcated. The proposed rule would adjust the terms governing buffer monuments in several minor ways:

- The requirement for a monument at least every 100 feet would be changed to 200 feet. This accords with the practice of other public regulatory bodies and appears adequate.

- The buffer declaration will be required to state that if land containing a buffer is subdivided, additional monuments must be installed to ensure that the minimum rule standard of a monument at each lot line is retained (see paragraph 4(c)).

- Under the present rule, at the applicant's request, the District will supply buffer monuments. The District will continue to supply monuments at cost, but the text is proposed to be removed from the rule as it is not related to applicable standards, but is rather a service offered by the District.

- The present rule, at paragraph 7(b), allows a public property owner or a homeowner's association (HOA) to enter into a maintenance agreement with the District, in lieu of physical boundary monuments. The District has not found an HOA to be a reliable means to protect the buffer edge from encroachment by homeowners, and so, at paragraph 4(c) of the proposed rule, is withdrawing this option for HOAs.

Buffer Maintenance

The buffer is established, by filing the buffer declaration with the county (or, for a public entity, executing the maintenance agreement) before the permit is issued or land disturbance begins. The existing rule, at paragraph 7(c), states requirements for restoring buffer soils and establishing buffer vegetation after the area has been disturbed during construction.

The proposed rule incorporates a preference to not disturb the buffer area in the first place. Paragraph 6(e) requires that buffer area be fenced against encroachment by construction

activity, “unless the applicant demonstrates that it is necessary to work within the buffer.” The District believes that most buffer encroachment during construction activity is avoidable, and that a physical demarcation will avoid unnecessary impact to buffer soils and vegetation without impeding construction.

The proposed rule, at paragraph 6(c)(iii), also would increase flexibility for road right-of-way maintenance. After consultation with road authority representatives, this paragraph allows mowing and brush-cutting within a buffer located in right-of-way for public safety and to allow for drainageways to be inspected, and allows application of fertilizer and soil conditioning in consideration of the stress that the location places on vegetation. Much of this authority already resides in what will be paragraph 6(c)(ii), but is being clarified for the benefit of road authorities.

Requirement to Prepare and Submit Wetland Delineation

The existing rule requires that a “[c]omplete delineation report” be submitted with an application under the rule. A delineation is prepared by a qualified professional and may involve time and a measurable expense.

An application under WCA will be subject to submittal requirements set forth in WCA rules, Minn. Rules 8420. District staff is not authorized to depart from these requirements. The proposed rule, however, at paragraph 7(b), would provide that for applications not subject to WCA, or where WCA does not require a full delineation, District staff may exempt the applicant, entirely or partially, from the delineation requirement, where the full delineation is not needed for the District to review and decide the application.

For an example as to the first case, the buffer requirement is triggered by land disturbance subject to the District’s stormwater management rule (Rule 5.0), but only as to that part of the wetland that is downgradient from the disturbance. To determine the buffer width and boundary, it is necessary to locate the wetland edge, but only as to that part of the wetland to which the buffer will be applied. As to the second case, WCA does not mandate a delineation as a part of an exemption or a no-loss determination. In many cases, the wetland boundary will be irrelevant to deciding the application. In these cases, the applicant will not need to incur the cost or time to obtain a full delineation.

RULE 8.0: SHORELINE and STREAMBANK IMPROVEMENTS

The Shoreline and Streambank Improvement rule requires a permit to construct or install materials on the bank of a lake or stream, either to stabilize the bank or for an amenity or other beneficial purpose. The rule does not apply to docking structures or boathouses, which typically are regulated by the municipality or lake association.

The proposed rule is a substantial revision, but principally for the purpose of making the rule more clear. The rule is reorganized, shortened and rendered in more straightforward language. In the interest of simplicity and flexibility, certain detailed specifications of the existing rule are proposed to be removed, in favor of reliance on best practices and the judgment of District staff.

Rule Applicability

With respect to the rule's applicability, proposed paragraph 2(b)(iii) would exempt riprap placed at a culvert or outfall for energy dissipation from the permit requirement, and specific standards, of the rule, if it conforms to the indicated MnDOT standard plates and incorporates ESC measures. The MnDOT standard plates reflect best practice for the purpose and therefore are acceptable alternative specifications. Exempting riprap placement for this purpose allows road and public works authorities to maintain existing riprap installations and address scour issues promptly.

Paragraph 4(e) advises that conforming riprap is not considered fill subject to the Floodplain Rule (Rule 4.0). It advises, further, that any improvement under the rule that meets the technical specifications of paragraph 4 is excluded from the definition of floodplain fill so as to be exempt from the Floodplain Rule.

In addition, the proposed rule improves clarity as to the rule's application, in two respects:

- At paragraph 2(a), the rule explains that a disturbance of "the bank" of a waterbasin or watercourse, which triggers the permit requirement, means a disturbance below the ordinary high water level.

- At paragraph 2(b), the rule retains the existing exemption for maintenance of an existing improvement without addition of new material, but adds that the bed or bank may not be disturbed.

Erosion Intensity Calculation

The primary focus of the rule is to limit the use of hard armoring or other structural stabilization to what is necessary in light of the wave and hydraulic forces to which the bank is subject. This is achieved through an erosion intensity analysis (EIA) that determines whether bank stabilization may be achieved through structural means, whether a bioengineering practice should be used instead, or whether forces are small enough that a biological practice (vegetative stabilization) alone is sufficient.

Under the existing rule, the applicant must perform an EIA for any application, apart from an application to maintain an existing improvement (paragraph 2(b)). Because the EIA requires obtaining and using numerical figures characterizing the shoreline or streambank environment, and because it involves mathematical calculations, it has with some regularity complicated the permit submittal and review process. The District therefore has considered further when it is or is not necessary and, at paragraph 3(a) of the proposed rule, has expanded the cases where it is not required to include: (a) where a biological practice is proposed; and (b) where the permit is sought to maintain or reinstate, without extension, a bioengineering or structural practice that has not degraded to a natural condition.

For streambank stabilization, the EIA must include calculations of both shear stress on the bank, and bankful stream velocity (see the existing rule at paragraph 4(a)). Whichever of these calculations yields the higher erosion intensity will determine what stabilization method may be

used. However, the rule fails to set forth its standards for the erosion intensity that corresponds to the velocity calculated. The proposed rule, at paragraph 5(a), includes these standards.

Design Specifications

The proposed rule clarifies or adjusts a number of specific design terms:

- The present rule prohibits a streambank encroachment that reduces channel cross-section or increases upstream flood stage, unless the applicant can demonstrate that the encroachment "doesn't exacerbate high water conditions." (See par. 6.a(5).) The standard to demonstrate this exception is not fixed, and with increasing concern to prevent small but cumulative flood risk impacts, the District finds the exception to be unnecessary and unwarranted, and proposes to remove it.

- The proposed rule would delete obsolete standards for plantings in biological or bioengineering practices (see existing rule, par. 6(b)) and, at paragraph 4(b), replace them with a general standard to install and establish native plantings according to best practices.

- The proposed rule would delete reference to MnDOT specifications for granular and geotextile filters beneath riprap (see existing rule, par. 6(c)(4)) in favor of allowing the applicant to propose a sufficient design.

- The existing rule, at paragraph 8(a), requires sand or gravel installed as a sand blanket to be "clean" before it is spread. The rule defines "clean" as containing no toxins or heavy metals, and no weed or animal life infestations. The proposed rule, at paragraph 7(b)(i), redefines this criterion in a more concise and general way, for clarity.

- The volume of material that may be placed below the ordinary high-water level for a boat ramp would increase from 50 to 80 cubic yards (see proposed rule, par. 8(b)) to align with Minnesota Department of Natural Resources best practices.

Application Submittal: Photographs

The present rule, at paragraph 7(b), simply requires "Photographs of the project site, showing existing conditions." The requirement to submit photographs allows the District in many cases to process an application without the delay of an on-site inspection, and helps to document the pre-existing condition and dimensions of the shoreline or streambank. Often the photographs that are submitted are inadequate for these purposes. The proposed rule, at paragraph 5(b), specifies at greater length the required orientations of the photographs, and what they are to depict.

RULE 9.0: DREDGING

The most substantive element of the proposed revision to the dredging rule is the introduction of procedures to expedite permitting for two forms of dredging: (a) dredging by a public agency to remove accumulated sediment at a stormwater conveyance outfall, presently afforded a

"Fast-Track" procedure, would be subject to a general permit; and (b) navigational dredging of an existing channel, with proper documentation, would be subject to Fast-Track permitting.

The Fast-Track procedure presently is used in the District rules for certain simple activities that present small risk of water resource impact. Principally, a Fast Track procedure omits public notice, and therefore reduces permit review time by about two weeks. Often, as well, application submittal requirements are reduced.

As noted above under the Erosion & Sediment Control (Rule 3.0) discussion, the general permit procedure simply requires the applicant to submit a notice and certain basic information to the District, and to receive confirmation of receipt. At that time, the proposed activity is deemed authorized by District permit, subject to a set of standard conditions stated in the rule or associated guidance.

Section 7 describes the general permit for removing accumulated sediments. The general permit is limited to public applicants responsible to maintain public stormwater conveyances that outlet into public waters. The applicant must submit the location of dredging, and state how it will determine the dredging depth so that native bed material is not removed. When the District has confirmed receipt, the permit is deemed to be in place. The work is subject to four conditions: only non-native sediment may be removed; the bed of the waterbody may not be materially altered; silt curtain must be used; and any disturbance to the surrounding land or vegetation must be repaired.

This abbreviated procedure recognizes that public agencies are under public mandate to maintain stormwater conveyance systems, and is based on the District's judgment that public agencies are reliable partners and have a cost incentive not to remove more material than necessary. Further, by practice, dredging depth often is determined by the machine operator's discerning the sediment/bed interface so that, in the District's present judgment, the burden to determine and map bed elevation as an element of the application isn't warranted. The limited submittals are to allow the District to track where and when sediment dredging is occurring, and how public entities are determining dredging depth and amount. Also, this information will help the District identify conveyances that are transporting large sediment loads from upgradient areas.

Section 8 describes the new Fast Track procedure for maintenance dredging of a navigational channel or access. Dredging rights are somewhat complicated from a legal point of view but, in general, an existing public or private navigational channel or access may be maintained to previously approved dimensions. Where the applicant can submit dredging plans previously approved by the District, then this, accompanied by an erosion control and site restoration plan, may enable the applicant to receive a permit without additional submittals or the delay associated with a public notice period. Importantly, because prior plans may be ambiguous and because the extent of the dredging right depends on considerations that can shift over time, District staff, in its judgment, may defer an application to the normal permitting process and may require additional information or an opportunity for public notice.

Other than introducing these two procedures, the proposed revisions reorganize and shorten the text for understandability and add several clarifications, as follows:

- Paragraph 2(a) notes explicitly that a Dredging permit is not required for utility work that already is reviewed and permitted under the Waterbody Crossings and Structures Rule (Rule 6.0).

- Paragraph 2(b) adds a specific note alerting applicants of DNR General Permit No. 2001-6009. This general permit, reviewed and renewed every five years by the Minnesota Department of Natural Resources (MnDNR), enables a person to avoid a lengthy, separate MnDNR permitting process for dredging that has received a District permit. A person operating under the MnDNR GP must do so in conformance with a number of conditions stated in that document.

- Paragraph 3(a) concerns text that allows dredging to maintain an existing navigational channel to "the original or originally permitted extent of dredging." The proposed rule would revise this to an extent "the District previously has approved." The existing wording is overbroad and can be read to entitle channel dredging to dimensions established before such activity was subject to public review. Such a proposal is not in itself a legal entitlement, and is subject to review under present conditions. The District has intended and applied this clause to concern maintenance of a channel where it previously has reviewed and endorsed the dimensions of dredging.

- Under the existing and proposed rules, navigational dredging in Lake Minnetonka is subject to standards set by the MnDNR, the Lake Minnetonka Conservation District, and the District in a 1993 joint policy statement (see existing rule at paragraph 3(c), proposed rule at paragraph 2(c). At paragraph 4(c)(i), for the convenience of applicants, the proposed rule incorporates numerical standards from the joint statement directly into the rule. At paragraph 4(c)(ii), the proposed rule incorporates the dredging depth standard that the District applies to dredging in other waterbodies, which is the standard applied by the MnDNR (see Minn. Rules6115.0201, subp. 4.A).

RULE 10.0: ILLICIT DISCHARGE

The District's MS4 GP requires that the District adopt and enforce a rule that prohibits non-stormwater discharges into the District's MS4s. The District's existing Illicit Discharge rule was adopted in 2013 to fulfill this obligation.

The proposed rule would substantially simplify and shorten the existing rule. The District believes that the existing rule was developed from a model rule prepared by the U.S. Environmental Protection Agency (EPA) with a scope in excess of the focus of the illicit discharge mandate under the MS4 GP. The rule prohibits discharges of pollutants not just to the District's MS4s, but broadly to waterbodies within the District, imposes a general requirement on all commercial and industrial properties to take steps to protect against accidental discharges of pollutants, and puts into place an extensive set of District facility inspection and enforcement authorities. The District has encountered very little illicit discharge activity and has not found the present, broad rule to be useful in focusing on the risks that the MS4 GP intends to address. The District finds, as well, that the District's general framework of enforcement tools, as referenced in the Enforcement rule (Rule 15.0) and its supporting policies, applies properly to illicit discharges and that there isn't a need for an independent set of enforcement tools and procedures in the Illicit Discharge rule itself.

Accordingly, the District proposes to condense the rule measurably. The proposed rule carefully categorizes direct and indirect connections to its MS4s, as well as interior and exterior connections, and sets forth a simple set of prohibitions and procedures for District approval of connections:

- A direct, interior connection to an MS4 is prohibited unless it is constructed so that it conducts only stormwater or a non-stormwater discharge that is on a limited list of permitted non-stormwater discharges identified by the U.S. EPA and the MPCA. The property owner or operator must review each existing and future connection for conformance to this requirement.

- A direct, exterior connection may be maintained with District approval, and in accordance with any District-imposed conditions to prevent non-stormwater from entering the connection.

- An indirect connection may be maintained, but the District, after hearing, may require the property owner or operator to modify the structure or institute practices to prevent the discharge of non-stormwater into the MS4.

The rule also imposes response and notification obligations on the owner or operator, in the event of an illicit discharge.

In addition, the District proposes to narrow the geographic scope of the rule. The MS4 GP, strictly speaking, applies only within those areas of the District that drains to the District's MS4s. The District's MS4s consist of eight public drainage systems for which the District is the drainage authority pursuant to Minnesota Statutes chapter 103E. These systems include parts of Six Mile Creek and Painter Creek in the western part of the watershed, and six constructed systems somewhat distributed throughout the watershed. These systems and their drainage areas are shown in Addendum A to the Illicit Discharge rule.

For the Erosion & Sediment Control and Stormwater Management rules (Rules 3.0 and 5.0, above) mandated under the MS4 GP, the District is not limiting MS4 GP-required standards to the MS4 drainage areas, as the standards are appropriate and it would be very confusing to apply different sets of standards across the watershed. However, the District finds that it is sound to apply the Illicit Discharge rule only within its actual MS4 drainage areas. Unlike for the other two rules, there is not a strong impetus for the District to regulate for illicit discharges outside of the MS4 GP mandate. Further, the most recent reissuance of the MS4 GP has imposed a substantial set of obligations on MS4 GP permittees to proactively inventory and inspect potential sources of illicit discharges on an annual basis. This requires entry into and inspection of commercial and industrial processes for which watershed districts typically do not have expertise or training and, in a highly developed setting such as much of the District encompasses, would draw substantial resources away from the District's core programs and core mission. The District considers its municipalities to be more well-equipped to perform these activities and does not find it necessary to seek to duplicate their programs within the same territory.

RULE 11.0: APPROPRIATIONS

As mandated by statute, the District requires a permit for certain appropriations from waterbodies that are of a quantity below that which is regulated by the MnDNR.

The existing rule excuses a person from obtaining an individual permit if certain information is submitted to the District and the appropriation conforms to certain conditions stated in the rule. This is, in concept, a general permit provision, however it isn't so identified.

The proposed rule would clarify that an applicant that meets these requirements is operating under a general permit. In doing so, the rule establishes the District's authority to oversee appropriations subject to the rule and, as the rule provides, to restrict an appropriation if conditions require.

Otherwise, the proposed rule is limited to revising existing rule text for clarity.

RULE 12.0: FINANCIAL ASSURANCES

Edits are proposed to the Financial Assurances rule to improve clarity. One substantive modification is proposed. On the applicant's notice to the District of project completion, the District has 45 days to inspect and confirm completion under the permit, or else the financial assurance will be deemed released. The proposed rule, at paragraph 4(a), adds a sentence stating that the District, in writing to the applicant, may extend the inspection period until seasonal conditions allow for the inspection. There are no other proposed changes.

RULE 13.0: FEES

The Fees rule is edited for clarity. No substantive changes are proposed.

RULE 14.0: VARIANCES and EXCEPTIONS

The District proposes to change the variance standard in its rule from the "undue hardship" standard to the "practical difficulty" standard. The former is the traditional standard, and requires the applicant to demonstrate that requiring compliance with a provision of the applicable rule or ordinance would cause an "undue hardship." In recent years, by action of the Minnesota legislature, the variance standard for land use authorities (municipalities and counties) has been changed to the "practical difficulty" standard that, as it suggests, requires the applicant to show only a "practical difficulty." Unlike for land use authorities, state statutes do not prescribe the standard that a watershed district must apply in deciding a variance. However, the District finds it appropriate to adjust its standard for consistency with its municipalities.

In each case, the District Board would review certain enumerated criteria and exercise a fair measure of judgment. The principal difference between the two standards is that under the undue hardship standard, a variance may not be based on "economic hardship" or merely "serve as a convenience" to the applicant. Under the practical difficulty standard, an applicant need simply show that as the result of an unusual feature of the applicant's property, the

applicable provision would burden the applicant, and that it would not be unreasonable to excuse the applicant from full compliance.

The proposed rule also seeks to reword one of the criteria to be more directly understandable. The present criterion is whether the variance "[would] not impair or be contrary to the intent of [the District] rules." The proposed rule, more concretely, looks to:

- The extent to which the applicant seeks to diverge from the rule;
- The extent to which the divergence would cause impact to water resources; and
- Whether the variance would shift a burden to a neighboring property or to the broader public.

The proposed rule also would clarify an element of the exception standard. Separately from the variance, the existing rule allows the Board to grant an "exception" from a specific rule provision if the applicant proposes an alternative approach that the Board finds would achieve a greater degree of water resource protection. Under this standard, applicants regularly have proposed alternative actions that aim to achieve additional water resource protections, but that are distinct from the particular resource, or impact of concern, that the rule provision in question aims to address. The rule would state that the alternative approach must achieve an outcome "of the type that the Board intends the standard, specification or method [from which the applicant seeks exemption] to achieve." This is to ensure that the District does not trade the well-being of one resource off against another.

Finally, the rule would be clarified in three ways:

- Section 1 would emphasize that a variance or exception applicant must complete the District application form for that purpose.

- Section 4 would note that the Board may place conditions on a variance or exception. It may be these conditions that allow the Board to find that the criteria for the variance or exception have been met.

- Section 5 would clarify that when the District renews, transfers or terminates a permit, this has the same effect on any associated variance or exception.

RULE 15.0: ENFORCEMENT

The Enforcement rule is edited for clarity. In section 3, it is proposed that a compliance order issued by the District Administrator will be effective for up to 20 days. The intent is that within the 20-day period, if the permittee has not addressed the non-compliance, the District Board will convene a compliance hearing and issue an order superseding the Administrator's order. No other changes are proposed.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

REVISIONS
PURSUANT TO MINNESOTA STATUTES §103D.341

1. DEFINITIONS AND ACRONYMS RULE

Adopted XXXX
Effective XXXX

- **Abstraction** means permanent retention of runoff on a site through structures and practices such as infiltration, evapotranspiration and capture and reuse. *See also* the Abstraction Credit Schedule in Appendix A of the Stormwater Management Rule.
- **Agricultural activity** means the use of land to produce agronomic, horticultural or silvicultural crops, including nursery stock, sod, fruits, vegetables, flowers, forages, cover crops, grains, and Christmas trees, or for grazing.
- **Alteration** or **alter** means to change or diminish the course, current, or cross-section of a public water or wetland.
- **BMP** (best management practice) is an action, or a structural or non-structural method, to prevent or limit adverse impact to water resources that is recognized by those proficient in the field as reflecting best present means and methods.
- **Bed of a waterbody** means that part of a waterbody located below the ordinary high-water level.
- **Bioengineering Practice** means the strategic installation of natural, vegetative, biologically active materials in conjunction with toe stabilization, riprap or other hard-armoring materials to stabilize a shoreline or streambank area and associated slopes and prevent erosion.
- **Biological Practice** means the strategic placement of natural, vegetation, biologically active materials – such as but not limited to brush mattresses, live stakes/plantings, brush layering, fiber rolls, root wads and willow wattles – to stabilize a shoreline or streambank area and prevent erosion.
- **Common plan of development** means one proposed plan for a contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
- **Design Storm** means a storm magnitude with a return period (T) that has the probability (1/T) of being equaled or exceeded in a given year. For example, a "100-year" event at a given location has a chance of 1/100 or 0.01 or 1% of being equaled or exceeded in *any* given year. For MCWD regulatory purposes, the rainfall depths to be used are as

specified in the current NOAA guidance, "NOAA Atlas 14 Precipitation Frequency Estimates." All rainfall depths are to use the NRCS Type II rainfall distribution.

- **Development** means a land-disturbing activity, other than a Linear Transportation Project, that creates or reconstructs impervious surface.
- **Dredge** means to remove sediment or other material from the bed, bank or shore of a waterbody by means of hydraulic suction, mechanical excavation or any other means.
- **Excavation** means to displace or remove sediment or other material.
- **Fast Track Permit** means a permit for activity that typically presents low risk to water resources and is issued by staff without public notice and on the basis of more limited application submittals.
- **Fill** means a solid material, other than stockpiled temporarily for active use, that alters the cross-section of a waterbody bed or bank, floodplain, or buffer area. For the purpose of the Wetland Protection Rule, "fill" also includes a material as defined at Minnesota Rules 8420.0111, subpart 26.
- **Floodplain** means the area adjoining a watercourse or water basin that is covered by the Regional Flood.
- **General Permit** means a permit that is deemed issued to an applicant on the applicant's notice to the District and submittal of an abbreviated set of application materials.
- **Impervious** means compacted or covered with a layer of material such that it is highly resistant to infiltration of runoff, including but not limited to gravel, rock, asphalt, and non-pervious concrete or paver systems.
- **Land-disturbing activity** or **land disturbance** means a disturbance of the ground surface that exposes soil and, through the action of wind or water, may result in soil erosion or the movement of sediment into waters, wetlands or storm sewers or onto adjacent property. Land-disturbing activity includes but is not limited to the demolition of a structure that exposes the surface, soil stripping, clearing, grubbing, grading, excavating, filling, but does not include agricultural activity.
- **Linear Transportation Project** means construction of a new road, trail, or sidewalk or reconstruction of an existing road, trail, or sidewalk.
- **Management Class** means a wetland designation set forth in the MCWD's Functional Assessment of Wetlands based on the ecological function and vulnerability of the wetland. In order of highest function and vulnerability, management classes are Preserve, Manage 1, Manage 2 and Manage 3.
- **Meadow Condition** is a modeled event that uses concentration of 0.04 mg/L of Total Phosphorus in runoff in accordance with the Minnesota Pollution Control Agency's *Minnesota Stormwater Manual* and the MCWD Hydrologic, Hydraulic, and Pollutant Loading Study (HHPLS). For runoff rates, meadow condition uses curve numbers corresponding to soil and cover types "meadow," "brush," or "woods," as appropriate, provided in Table 2-2c of the Natural Resources Conservation Service's (NRCS) Technical Release 55 (TR-55).
- **Native Vegetation** means plant species that are indigenous to Minnesota or that expand the range into Minnesota without being intentionally or unintentionally introduced by human activity, and that are classified as native in the Minnesota Plant Encyclopedia, Minnesota Department of Natural Resources, St. Paul, 2002.

- **New Principal Residential Structure** means a single-family residence constructed on undeveloped property zoned for residential use, or on a property zoned for residential use from which the principal building has been removed to construct a new single-family residence.
- **No-Rise Standard** means no increase in the 100-year high water elevation that exceeds modeling error.
- **No-Rise Certificate** means the "No Rise" certification provided by the Minnesota Department of Natural Resources
- **NPDES** means the "National Pollutant Discharge Elimination System" program under the federal Clean Water Act.
- **NURP** means Nationwide Urban Runoff Program, as developed by the U.S. Environmental Protection Agency (EPA) to study stormwater runoff from urban development.
- **100-year high water elevation** means the water elevation reached by the Regional Flood, as determined by, in the order of preference, the most recent municipal, District or FEMA modeling, or by the applicant, in each case subject to the District's concurrence as to modeling adequacy.
- **Ordinary high water level (OHW)** is the elevation of a waterbody that is the highest water level that has existed for a sufficient time to leave evidence on the landscape. It is commonly the elevation where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For a watercourse, the OHW is the elevation of the channel top of bank. For a reservoir or flowage, the OHW is the operating elevation of the normal summer pool.
- **Person** means a natural person, partnership, unincorporated association, corporation, municipal corporation or political subdivision of the State of Minnesota.
- **Pervious** means readily penetrated or permeated by rainfall or runoff resulting in infiltration and reduced runoff.
- **Public water** means a water as defined under Minn. Stat.103G.005, subd. 15.
- **Public waters wetland** means a wetland defined under Minn. Stat. 103G.005, subd. 18.
- **Reconstructed** means that impervious surface has been removed to underlying soil. Activities such as structure renovation, mill and overlay, and other pavement rehabilitation that do not expose underlying soil beneath the structure, pavement, or activity are not considered as reconstructed. Limited impervious surface replacement associated with maintenance activity such as catch basin repair/replacement, utility repair/replacement, pipe repair/replacement, lighting installation, or pedestrian ramp improvement is not considered to be reconstructed surface.
- **Regional flood** means the precipitation event, associated with the location, expected to occur with an average frequency of once each 100 years, and the volume and intensity of precipitation associated with that event, as set forth in the regional precipitation data set adopted and maintained by the District.
- **Residential appurtenance** means (a) a driveway, or (b) a structure or surface that throughout the watershed customarily is associated with residential use of a property, and that does not exceed 5,000 square feet of impervious surface.

- **Site** means a parcel or contiguous parcels of record on which activity subject to a District rule is proposed to occur, as well as any tract contiguous thereto under common ownership. For a Linear Transportation Project within right-of-way that is not of record, the Site is bounded by the longitudinal termini of the proposed activity but includes area outside of the right-of-way designated by the applicant for project purposes.
- **Stabilization Zone** means an area of land parallel to a shoreline or streambank and extending 20 feet inland from the ordinary high-water level.
- **Stabilize** means to establish a surface condition that, without maintenance, will not be subject to soil erosion or sediment movement.
- **Structural Practice** is the use of an engineered system – such as riprap, retaining wall, headwall, groin, revetment or gabion – to stabilize a shoreline or streambank area and associated slope.
- **Subwatershed** means one of the fifteen major subwatershed planning units within the District, as identified in the District's watershed management plan.
- **Top of bank** means the ordinary high water level for a water basin or wetland, and the break in slope for a watercourse.
- **Waterbasin** means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with water.
- **Waterbody** means a waterbasin, watercourse or wetland as defined in these rules.
- **Watercourse** means a channel with definable beds and banks capable of conducting generally confined runoff from adjacent lands, or any channel included in the District's inventory of first order streams. A watercourse may be perennial or intermittent. The term does not include a roadside ditch created by excavation or other human construction activity.
- **Wetland** means a feature identified as a wetland under Minn. Stat. 103G.005, subd 19. The term does not include "public waters wetlands" as defined under Minn. Stat. 103G.005, subd. 15a.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

2. PROCEDURES RULE
PURSUANT TO MINNESOTA STATUTES § 103D.341

Adopted XXXX
Effective XXXX

1. **APPLICATION REQUIRED**. A person undertaking an activity for which a permit is required by these rules must first submit a permit application to the District. The application must include all submittals required by applicable District rules except as District staff, in its judgment, finds unnecessary for a specific application. A permit application must bear the original signature of the landowner, or an electronic signature in accordance with District protocol. Another interested party may sign as a co-applicant, with its interest stated in the application.

    a. Applicants are encouraged to submit preliminary plans early in the project development process. District staff will provide nonbinding, informal review for conformity with District rules.

    b. An interested person may intervene in a permit proceeding by filing a written request to intervene with the District before the final decision on the application. The request must state the nature of the person's interest and a copy must be hand-delivered to the applicant or received at the applicant's address stated in the application before the time of the final decision. An intervener has the rights of a party in the proceeding before the District.

    c. A permit applicant consents to entry and inspection of the subject property by the District and its authorized agent at reasonable times as necessary to evaluate the permit application or determine compliance with the requirements of a District permit or rule.

2. **FORMS**. An application for a permit, and for a variance or exception from any District rule, must be submitted on the District form. District forms are available at the Permits section of the District website (www.minnehahacreek.org).

3. **FEES**. District permit fees are set forth in the District Permit Fees Rule. A permit application is incomplete and will not be processed by the District until the applicable fee is paid. Failure to timely pay fees is grounds for permit revocation.

4. **ACTION ON PERMIT APPLICATION.**

    a. The Board will make permit decision, except as it has delegated this authority to staff by written resolution. The Board will review a staff permit decision on the applicant's request. The Board will review and decide all requests for variance or an exception. The District may approve or deny an application, and may impose reasonable conditions on approval. As otherwise consistent with the rules, a permit may require financial

assurance, and may require a maintenance agreement or declaration to be properly executed or recorded before permit issuance.

b. The District may reconsider and revoke a permit if it finds that a material error or misrepresentation was made in the application and that the correct information was available at the time of the application. The District may suspend or revoke a permit if preliminary or final subdivision approval received from the land use authority is not consistent with permit conditions.

c. If approved plans or specifications are proposed to be changed after permit approval, a permittee must submit information necessary for the District to reevaluate compliance with District rules and determine whether the permit must be amended.

5. **CONFORMITY WITH MUNICIPAL PLAN.** The District will review applications for permits involving land development only after the applicant demonstrates that the plan has received preliminary approval from the land use authority. The requirement of preliminary approval means: (a) preliminary plat approval if required for the development; or (b) if plat approval is not required, approval by the municipal planning commission or a written statement from the responsible municipal official that the development meets municipal approval requirements.

6. **NOTICE**. Except where the applicable rule does not require public notice, an applicant for a District permit must supply a certified list of property owners and mailing labels for each property within 600 feet of any parcel on which the proposed project is to occur. A certified list may be obtained from county property information services. At the request of the applicant and at the applicant's expense, the District will supply the mailing list and labels. District staff will send notice of the proposed project to the individuals on the mailing list for the applicant at the applicant's expense. A copy of the list will be retained with the application at the District office. The application is not complete and will not be processed until the list has been submitted to the District or the applicant has asked the District to supply the applicable list and labels.

7. **ALTERNATIVE NOTICE.** On written request, the District may approve alternative notice for any of the following projects:

a. A linear project, including but not limited to a road, sidewalk or trail, one-half a mile or more in length.

b. A project on a parcel or contiguous parcels with an area of 100 acres or more, where no more than five percent of the area will be disturbed, provided the disturbed area does not include a wetland.

c. A project where the applicant proposes to combine notice under this rule with notice required under the approval procedures of another governmental body. The District must find that the alternative means will provide adequate notice to residents near the proposed activity.

8. **TIME FOR SUBMITTAL.** For applications to be decided by the Board, the District must receive a complete permit application, including all required submittals, at least 21 days before a scheduled Board meeting date.

9. **PERMIT TERM, RENEWALS AND TRANSFERS.** A permit that has not been suspended or revoked is valid for one year from the date the District has advised the applicant in writing of permit approval. However, a general permit under the Appropriations Rule does not expire and a property owner continues to qualify for coverage as long as the general permit criteria are met. The permit term is not extended while the applicant complies with conditions precedent to permit issuance.

    a. To renew a permit, the permittee must submit a renewal request on the District format, prior to the permit expiration date. If there has been a material change in circumstances, the District may impose different or additional conditions on a renewal, or deny the renewal. On the first renewal, a permit will not be subject to additional or different requirements solely because of a change in District rules. New or revised rule requirements will not be imposed on permit renewal if the permittee has made substantial progress toward completion of the permitted work.

    b. When property subject to an active permit is conveyed, the permittee and the new owner must request a permit transfer on the District format. Until a transfer is issued, the permittee and transferee will remain responsible for site conditions and permit compliance. The District will approve a transfer unless it finds that the proposed transferee has not demonstrated the ability to perform the authorized work in accordance with the conditions of the permit, in which case the District may impose conditions on or deny the transfer. Permit transfer does not extend the permit term.

10. **BASIS FOR DECISIONS.** All interpretations of these rules and permit decisions under these rules will incorporate and be consistent with the District purposes set forth in Minnesota Statues sections 103B.201 and 103D. 201.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

3. EROSION & SEDIMENT CONTROL RULE

Adopted XXXX
Effective XXXX

1. **POLICY.** The District will implement this rule to limit erosion of soils from disturbed sites due to wind and water; reduce volume and velocity of stormwater moving off site; limit sedimentation into water bodies; and protect soil stability during and after disturbance.

    a. The District will apply this rule so that disturbed sites are managed according to the following principles:
        1. Limit area and duration of exposed or unstable soils.
        2. Limit disturbance of soil cover and vegetation, and work near waterbodies.
        3. Limit disturbance on steep slopes and high cuts and fills.
        4. Keep sediments on site, and out of roadways, stormsewers and waterbodies.
        5. Avoid damage to trunks and root systems of trees and vegetation being preserved.
        6. Avoid, limit and repair soil compaction.

    b. As an owner or operator of a municipal separate storm sewer system (MS4), the District is subject to the terms of the Small Municipal Separate Storm Sewer Systems General Permit (MNR040000) issued by the Minnesota Pollution Control Agency (MPCA) on November 16, 2020. Specifically, the District's standards for erosion and sediment controls must be "at least as stringent" as those set forth in the MPCA Construction Stormwater General Permit (MNR100001, issued August 1, 2023) (MCSGP). For simplicity and consistency, this rule, at paragraph 4 below, adopts the applicable standards of the Construction Stormwater General Permit by reference.

2. **PERMIT REQUIRED.**

    a. Land-disturbing activity requires a permit under this rule, except for:

        1. A land disturbance of less than 5,000 square feet in area.

        2. Agricultural activity.

    b. A land disturbance less than one acre that is not part of a larger common plan of development or sale one acre or more, and that does not require a permit under any other District rule, may proceed under a General Permit in accordance with section 5, below. The activity is subject to section 5, but not otherwise subject to this rule.

c. Excavation, filling or stockpiling 50 cubic yards or more of soil or earth material, if the disturbance or stockpile is not isolated from precipitation and stormwater runoff by a structural enclosure, is subject to a General Permit in accordance with section 5, below.

3. APPLICATION.

a. The applicant must complete the District's Erosion and Sediment Control application through the Online Permitting Portal and submit an application fee or fee deposit, also through the portal, in accordance with the applicable fee schedule.

b. The application must include an erosion and sediment control plan ("ESC Plan"). On District approval, the ESC Plan is a part of the permit and must be implemented according to its terms. The ESC Plan must be drawn to appropriate scale and benchmark, and must include the following. Required information is limited to the area within site boundaries, except where indicated.

1. Site parcel boundaries and off-site surrounding roads.

2. Water features and facilities, including lakes, streams and wetlands; established legal vegetated buffer on any such feature; natural and artificial water diversions and detention areas; surface and subsurface drainage facilities and stormwater conveyances; and storm sewer catch basins.

3. Identification of off-site receiving waterbodies and stormwater conveyance systems to which the site discharges.

4. Notation as to impaired or special management waters status of a receiving waterbody. If the site discharges within one mile of, and to, a water designated by the Minnesota Pollution Control Agency as impaired, the applicant must identify any Total Maximum Daily Load (TMDL) that has been approved and is still in effect.

5. Identification of areas adjacent to, and that drain to, public waters for which the Minnesota Department of Natural Resources has promulgated "work in water restrictions" during specified fish spawning times.

6. Existing and final site grades, steep slopes, and the direction of flow under pre- and post-disturbance conditions.

7. Existing and proposed buildings, impervious surface and other significant structures.

8. Existing and planned underground utilities.

9. Trees and vegetation, indicating what is intended to be retained.

10. Delineation of proposed area of disturbance and areas of soil or earth material storage; description of proposed grading, grubbing, clearing, tree removal, excavation, fill and other disturbance.

11. A statement of the following quantities: area of disturbance, volume of excavation, volume of imported fill materials, volumes of soil or earth materials temporarily placed on site.

12. Phasing plan to minimize the duration of exposed soil areas.

13. Location and identification of proposed runoff control, erosion prevention, sediment control and temporary and permanent soil stabilization measures.

14. Location of protective fencing around vegetation to be retained, to exclude all fill and equipment from the drip line or critical root zone, whichever greater.

15. Areas where soil compaction is to be prevented, or minimized and repaired, including but not limited to filtration and infiltration stormwater facilities and areas to be retained as greenspace.

16. Location and identification of existing and proposed permanent stormwater management facilities.

c. If an applicant has determined that compliance with the temporary sediment basin or temporary buffer requirement of this rule is infeasible, the application must include the applicant's justification.

d. The District may require other information that it reasonably finds necessary to evaluate and approve an application under this rule.

4. SITE MAINTENANCE AND INSPECTION. In engaging in the approved activity, the permittee and those performing the work on the permittee's behalf must implement the ESC Plan in accordance with MCSGP sections 7, 8, 9, 10, 11, 12, 13 and 14; and with MCSGP paragraphs 16.4, 17.3, and 23.7 through 23.11, as they may be amended from time to time. These provisions are incorporated into this rule and attached as an addendum.

5. GENERAL PERMIT.

a. Before land disturbance or stockpiling occurs, the applicant must submit a notice of disturbance and a simplified ESC Plan through the Online Permitting Portal. The simplified ESC Plan will include the content at subsection 3.b, paragraphs (1), (2), (6), (7)

and (13), above. If the Online Permitting Portal notes the presence of regulated waterbody or floodplain on a parcel on which the activity is to occur, the applicant is notified and the general permit is not effective until District staff have determined that the activity does not require a permit under another District rule.

b. A permittee operating under a District general permit must conduct all activity in accordance with the following terms:

    1. Erosion and sediment control measures must be consistent with best management practices, and sufficient to retain sediment onsite as demonstrated in the Minnesota Stormwater Manual.

    2. Erosion and sediment controls must be in place prior to construction start and assessed periodically to ensure functionality.

    3. If dewatering, Section 10 of the MCSGP.

    4. When land disturbing or stockpiling is complete, the site must be stabilized, and then erosion and sediment controls must be removed.

    5. By engaging in activity under a District permit, a property owner recognizes that District representatives may enter to inspect, and may direct site measures or institute compliance procedures if they find non-conformance with subsection 5.b, or that the site condition presents a risk to water resources.

6. **NOTIFICATION.** The permittee or its authorized agent must notify the District through the Online Permitting Portal at the following times. A public applicant may request an alternative notification plan.

    a. When perimeter erosion and sedimentation controls have been installed.
    b. Before any site dewatering.
    c. When land-disturbing activity, stockpiling and soil stabilization and revegetation measures have been completed.
    d. When the site has achieved permanent stabilization.
    e. When all temporary erosion and sedimentation controls have been removed.

7. **FINANCIAL ASSURANCE.**

    A bond, letter of credit or cash escrow in accordance with the District's Financial Assurances rule is a condition of permit issuance.

Minnesota Construction Stormwater General Permit Addendum

PLEASE NOTE-

MCSGP paragraph 11.3, that part of MCSGP paragraph 11.8 concerning permanent sedimentation basins, and that part of 23.11 concerning permanent buffer do not apply.

Where the text refers to: (1) the MPCA, the reference is to the District; (2) the stormwater pollution prevention plan, the reference is to the ESC Plan; (3) submittal of the notice of termination, the reference is to District approval of permit closure.

7.1	**BMP Selection and Stormwater Management**. [Minn. R. 7090]
7.2	Permittees must select, install, and maintain the BMPs identified in the SWPPP and in this permit in an appropriate and functional manner and in accordance with relevant manufacturer specifications and accepted engineering practices to minimize the discharge of pollutants in stormwater from construction activities. Examples of stormwater management practices for this section include but are not limited to wet sedimentation basins, temporary depressions to hold stormwater, stormwater routing, dikes, berms, pumping, and stormwater treatment BMPs. Permittees must phase and incorporate stormwater management principles as the construction progresses. Unless infeasible, temporary or permanent wet sedimentation basins (when required, see section
7.3	Permittees must not disturb more land (i.e., phasing) than can be effectively inspected and maintained in accordance with Section 11. [Minn. R. 7090]
7.4	If permittees will be using some type of erosion control netting on the site as part of the soil stabilization techniques, permittees are encouraged to use products that have been shown to minimize impacts on wildlife. The U.S. Fish & Wildlife Service recommends using types of netting practices that are considered "wildlife friendly," including those that use natural fiber or 100 percent biodegradable materials and that use a loose weave with a non-welded, movable jointed netting. Products that are not wildlife friendly include square plastic netting that are degradable (e.g., photodegradable, UVdegradable, oxo-degradable), netting made from polypropylene, nylon, polyethylene, or polyester. Other recommendations include removing the netting product when it is no longer needed. More information may be found at: https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products. There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products. See Minnesota Department of Transportation requirements at: https://www.mndot.org/environment/erosion/rolled-erosion-prevention-products.html. [Minn. R. 7050]
8.1	Erosion Prevention Practices. [Minn. R. 7090]
8.2	Before work begins, permittees must delineate the location of areas not to be disturbed. [Minn. R. 7090]
8.3	Permittees must minimize the need for disturbance of portions of the project with steep slopes. When steep slopes must be disturbed, permittees must use techniques such as phasing and stabilization practices designed for steep slopes (e.g., slope draining and terracing). [Minn. R. 7090]
8.4	Permittees must stabilize all exposed soil areas, including stockpiles. Stabilization must be initiated immediately to limit soil erosion when construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days (7 days for sites discharging to special or impaired waters, see section 24). Stabilization must be completed no later than 14 calendar days after the construction activity has ceased. Stabilization is not required on constructed base components of roads, parking lots and similar surfaces. Stabilization is not required on temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) but permittees must provide sediment controls at the base of the stockpile. [Minn. R. 7090]
8.5	For Public Waters that the Minnesota DNR has promulgated "work in water restrictions" during specified fish spawning time frames, permittees must complete stabilization of all exposed soil areas

	within 200 feet of the water's edge, and that drain to these waters, within 24 hours during the restriction period. [Minn. R. 7090]
8.6	Permittees must stabilize the normal wetted perimeter of the last 200 linear feet of temporary or permanent drainage ditches or swales that drain water from the site within 24 hours after connecting to a surface water or property edge. Permittees must complete stabilization of remaining portions of temporary or permanent ditches or swales within 14 calendar days (7 days for sites discharging to special or impaired waters, see section 24) after connecting to a surface water or property edge and construction in that portion of the ditch temporarily or permanently ceases. [Minn. R. 7090]
8.7	Temporary or permanent ditches or swales being used as a sediment containment system during construction (with properly designed rock-ditch checks, bio rolls, silt dikes, etc.) do not need to be stabilized. Permittees must stabilize these areas within 24 hours after their use as a sediment containment system ceases. [Minn. R. 7090]
8.8	Permittees must not use mulch, hydromulch, tackifier, polyacrylamide or similar erosion prevention practices within any portion of the normal wetted perimeter of a temporary or permanent drainage ditch or swale section with a continuous slope of greater than 2 percent. Examples of acceptable erosion prevention practices include blankets, poly, riprap, etc. [Minn. R. 7090]
8.9	Permittees must provide temporary or permanent energy dissipation at all pipe outlets within 24 hours after connection to a surface water or permanent stormwater treatment system. [Minn. R. 7090]
9.1	**Sediment Control Practices. [Minn. R. 7090]**
9.2	Permittees must establish sediment control BMPs on all downgradient perimeters of the site and downgradient areas of the site that drain to any surface water, including curb and gutter systems. Permittees must locate sediment control practices upgradient of any buffer zones. Permittees must install sediment control practices before any upgradient land-disturbing activities begin and must keep the sediment control practices in place until they establish permanent cover. [Minn. R. 7090]
9.4	Temporary or permanent drainage ditches and sediment basins designed as part of a sediment containment system (e.g., ditches with rock-check dams) require sediment control practices only as appropriate for site conditions. [Minn. R. 7090]
9.5	A floating silt curtain placed in the water is not a sediment control BMP to satisfy item 9.2 except when working on a shoreline or below the waterline. Immediately after the construction activity (e.g., installation of rip rap along the shoreline) in that area is complete, permittees must install an upland perimeter control practice if exposed soils still drain to a surface water. [Minn. R. 7090]
9.6	Permittees must re-install all sediment control practices adjusted or removed to accommodate short-term activities such as clearing or grubbing, or passage of vehicles, immediately after the short-term activity is completed. Permittees must reinstall sediment control practices before the next precipitation event even if the short-term activity is not complete. [Minn. R. 7090]
9.7	Permittees must protect all storm drain inlets using appropriate BMPs during construction until they establish permanent cover on all areas with potential for discharging to the inlet. [Minn. R. 7090]
9.8	Permittees may remove inlet protection for a particular inlet if a specific safety concern (e.g. street flooding/freezing) is identified by the permittees or the jurisdictional authority (e.g., city/county/township/Minnesota Department of Transportation engineer). Permittees must document the need for removal in the SWPPP. [Minn. R. 7090]
9.9	Permittees must provide silt fence or other effective sediment controls at the base of stockpiles on the downgradient perimeter prior to the initiation of stockpiling. Sediment controls must be managed in accordance with section 9.6. [Minn. R. 7090]
9.10	Permittees must locate stockpiles outside of natural buffers or surface waters, including stormwater conveyances such as curb and gutter systems unless there is a bypass in place for the stormwater. [Minn. R. 7090]
9.11	Permittees must install a vehicle tracking BMP to minimize the track out of sediment from the construction site or onto paved roads within the site. [Minn. R. 7090]
9.12	Permittees must use street sweeping in addition to vehicle tracking BMPs if vehicle tracking BMPs alone are not adequate to prevent sediment tracking onto the street. [Minn. R. 7090]
9.13	Permittees must install temporary sediment basins as required in Section 14. [Minn. R. 7090]

9.14	In any areas of the site where final vegetative stabilization will occur, permittees must restrict vehicle and equipment use to minimize soil compaction. [Minn. R. 7090]
9.15	Permittees must preserve topsoil on the site, unless infeasible. [Minn. R. 7090]
9.16	Permittees must direct discharges from BMPs to vegetated areas unless infeasible. [Minn. R. 7090]
9.17	Permittees must preserve a 50-foot natural buffer or, if a buffer is infeasible on the site, provide redundant (double) perimeter sediment controls when a surface water is located within 50 feet of the project's earth disturbances and stormwater flows to the surface water. Permittees must install perimeter sediment controls at least 5 feet apart unless limited by lack of available space. Natural buffers are not required adjacent to road ditches, judicial ditches, county ditches, stormwater conveyance channels, storm drain inlets, and sediment basins. If preserving the buffer is infeasible, permittees must document the reasons in the SWPPP. Sheet piling and other impermeable barriers installed in a manner that retains all stormwater are considered redundant perimeter control. [Minn. R. 7090]
9.18	Any sediment control made of soil must be temporarily or permanently stabilized within 24 hours. [Minn. R. 7090]
9.19	Permittees must use polymers, flocculants, or other sedimentation treatment chemicals in accordance with accepted engineering practices, dosing specifications and sediment removal design specifications provided by the manufacturer or supplier. The permittees must use conventional erosion and sediment controls prior to chemical addition and must direct treated stormwater to a sediment control system for filtration or settlement of the floc prior to discharge. [Minn. R. 7090]
10.1	**Dewatering and Basin Draining. [Minn. R. 7090]**
10.2	Permittees must not cause nuisance conditions (see Minn. R. 7050.0210, subp. 2) in surface waters from dewatering and basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) discharges. Permittees must discharge turbid or sediment-laden waters related to dewatering or basin draining to a sediment control (e.g. sediment trap or basin, filter bag) designed to prevent discharges with visual turbidity. To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge. Permittees are prohibited from using receiving waters as part of the treatment area. Permittees must visually check and photograph the discharge at the beginning and at least once every 24 hours of operation to ensure adequate treatment has been obtained and nuisance conditions will not result from the discharge. [Minn. R. 7050.0210]
10.3	If nuisance conditions result from the discharge, Permittees must cease dewatering immediately and corrective actions must occur before dewatering is resumed. Nuisance conditions includes, but is not limited to, a sediment plume in the discharge or the discharge appears cloudy, or opaque, or has a visible contrast, or has a visible oil film, or has aquatic habitat degradation that can be identified by an observer. [Minn. R. 7050.0210]
10.4	If permittees must discharge water containing oil or grease, they must use an oil-water separator or suitable filtration device (e.g., cartridge filters, absorbents pads) prior to discharge. [Minn. R. 7090]
10.5	Permittees must discharge all water from dewatering or basin-draining activities in a manner that does not cause erosion or scour in the immediate vicinity of discharge points or inundation of wetlands in the immediate vicinity of discharge points that causes significant adverse impact to the wetland. [Minn. R. 7090]
10.6	If permittees use filters with backwash water, they must haul the backwash water away for disposal, return the backwash water to the beginning of the treatment process, or incorporate the backwash water into the site in a manner that does not cause erosion. [Minn. R. 7090]
11.1	**Inspections and Maintenance. [Minn. R. 7090]**
11.2	Permittees must ensure a trained person, as identified in item 21.2.b, will inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 1/2 inch in 24 hours. [Minn. R. 7090]
11.3	Permittees must inspect and maintain all permanent stormwater treatment BMPs. [Minn. R. 7090]
11.4	Permittees must inspect all erosion prevention and sediment control BMPs and Pollution Prevention Management Measures to ensure integrity and effectiveness. Permittees must repair, replace or supplement all nonfunctional BMPs with functional BMPs by the end of the next business day after

	discovery unless another time frame is specified in item 11.5 or 11.6. Permittees may take additional time if field conditions prevent access to the area. [Minn. R. 7090]
11.5	During each inspection, permittees must inspect areas adjacent to the project, surface waters, including drainage ditches and conveyance systems but not curb and gutter systems, for evidence of erosion and sediment deposition. Permittees must remove all deltas and sediment deposited in areas adjacent to the project, surface waters, including drainage ways, catch basins, and other drainage systems and restabilize the areas where sediment removal results in exposed soil. Permittees must complete removal and stabilization within seven (7) calendar days of discovery unless precluded by legal, regulatory, or physical access constraints. Permittees must use all reasonable efforts to obtain access. If precluded, removal and stabilization must take place within seven (7) days of obtaining access. Permittees are responsible for contacting all local, regional, state and federal authorities and receiving any applicable permits, prior to conducting any work in surface waters. [Minn. R. 7090]
11.6	Permittees must inspect construction site vehicle exit locations, streets and curb and gutter systems within and adjacent to the project for sedimentation from erosion or tracked sediment from vehicles. Permittees must remove sediment from all paved surfaces within one (1) calendar day of discovery or, if applicable, within a shorter time to avoid a safety hazard to users of public streets. [Minn. R. 7090]
11.7	Permittees must repair, replace or supplement all perimeter control devices when they become nonfunctional or the sediment reaches 1/2 of the height of the device. [Minn. R. 7090]
11.8	Permittees must drain temporary and permanent sedimentation basins and remove the sediment when the depth of sediment collected in the basin reaches 1/2 the storage volume within 72 hours of discovery. [Minn. R. 7090]
11.9	Permittee's must inspect and photograph dewatering discharges at the beginning and at least once every 24 hours during operation. Dewatering discharges that only last for minutes, as opposed to hours, and do not reach a surface water, do not require photographs or documentation. [Minn. R. 7090]
11.10	Permittees must ensure that at least one individual present on the site (or available to the project site in three (3) calendar days) is trained in the job duties described in item 21.2.b. [Minn. R. 7090]
11.11	Permittees may adjust the inspection schedule described in item 11.2 as follows: a. inspections of areas with permanent cover can be reduced to once per month, even if construction activity continues on other portions of the site; or b. where sites have permanent cover on all exposed soil and no construction activity is occurring anywhere on the site, inspections can be reduced to once per month and, after 12 months, may be suspended completely until construction activity resumes. The MPCA may require inspections to resume if conditions warrant; or c. where construction activity has been suspended due to frozen ground conditions, inspections may be suspended. Inspections must resume within 24 hours of runoff occurring, or upon resuming construction, whichever comes first. d. for projects where a pollinator habitat or native prairie type vegetated cover is being established, inspections may be reduced to once per month if the site has temporary vegetation with a density of 70% temporary uniform cover. If after 24 months no significant erosion problems are observed, inspections may be suspended completely until the termination requirements in section 13 have been met. [Minn. R. 7090]
11.12	Permittees must record all inspections and maintenance activities within 24 hours of being conducted and these records must be retained with the SWPPP. These records must include: a. date and time of inspections; and b. name of persons conducting inspections; and c. accurate findings of inspections, including the specific location where corrective actions are needed; and d. corrective actions taken (including dates, times, and party completing maintenance activities); and e. date of all rainfall events greater than 1/2 inches in 24 hours, and the amount of rainfall for each event. Permittees must obtain rainfall amounts by either a properly maintained rain gauge installed on-

	site, a weather station that is within one (1) mile of your location, or a weather reporting system that provides site specific rainfall data from radar summaries; and f. if permittees observe a discharge during the inspection, they must record and should photograph and describe the location of the discharge (i.e., color, odor, settled or suspended solids, oil sheen, and other obvious indicators of pollutants); and g. any amendments to the SWPPP proposed as a result of the inspection must be documented as required in Section 6 within seven (7) calendar days; and h. all photographs of dewatering activities and documentation of nuisance conditions resulting from dewatering activities as described in section 10. [Minn. R. 7090]
12.1	**Pollution Prevention Management Measures. [Minn. R. 7090]**
12.2	Permittees must place construction materials and landscape materials under cover (e.g., plastic sheeting or temporary roofs) or protect them by similarly effective means designed to minimize contact with stormwater. Permittees are not required to cover or protect products which are either not a source of contamination to stormwater or are designed to be exposed to stormwater. [Minn. R. 7090]
12.3	Permittees must place pesticides, fertilizers and treatment chemicals under cover (e.g., plastic sheeting or temporary roofs) or protect them by similarly effective means designed to minimize contact with stormwater. [Minn. R. 7090]
12.4	Permittees must store hazardous materials and toxic waste, (including oil, diesel fuel, gasoline, hydraulic fluids, paint solvents, petroleum-based products, wood preservatives, additives, curing compounds, and acids) in sealed containers to prevent spills, leaks or other discharge. Storage and disposal of hazardous waste materials must be in compliance with Minn. R. ch. 7045 including secondary containment as applicable. [Minn. R. 7090]
12.5	Permittees must properly store, collect and dispose solid waste in compliance with Minn. R. ch. 7035. [Minn. R. 7035]
12.6	Permittees must position portable toilets so they are secure and will not tip or be knocked over. Permittees must properly dispose sanitary waste in accordance with Minn. R. ch. 7041. [Minn. R. 7041]
12.7	Permittees must take reasonable steps to prevent the discharge of spilled or leaked chemicals, including fuel, from any area where chemicals or fuel will be loaded or unloaded including the use of drip pans or absorbents unless infeasible. Permittees must ensure adequate supplies are available at all times to clean up discharged materials and that an appropriate disposal method is available for recovered spilled materials. Permittees must report and clean up spills immediately as required by Minn. Stat. 115.061, using dry clean up measures where possible. [Minn. Stat. 115.061]
12.8	Permittees must limit vehicle exterior washing and equipment to a defined area of the site. Permittees must contain runoff from the washing area in a sediment basin or other similarly effective controls and must dispose waste from the washing activity properly. Permittees must properly use and store soaps, detergents, or solvents. [Minn. R. 7090]
12.9	Permittees must provide effective containment for all liquid and solid wastes generated by washout operations (e.g., concrete, stucco, paint, form release oils, curing compounds and other construction materials) related to the construction activity. Permittees must prevent liquid and solid washout wastes from contacting the ground and must design the containment so it does not result in runoff from the washout operations or areas. Permittees must properly dispose liquid and solid wastes in compliance with MPCA rules. Permittees must install a sign indicating the location of the washout facility. [Minn. R. 7035, Minn. R. 7090]
13.1	**Permit Termination Conditions. [Minn. R. 7090]**
13.2	Permittees must complete all construction activity and must install permanent cover over all areas prior to submitting the NOT. Vegetative cover must consist of a uniform perennial vegetation with a density of 70 percent of its expected final growth. Vegetation is not required where the function of a specific area dictates no vegetation, such as impervious surfaces or the base of a sand filter. [Minn. R. 7090]
13.3	Permittees must clean the permanent stormwater treatment system of any accumulated sediment and must ensure the system meets all applicable requirements in Section 15 through 19 and is operating as designed. [Minn. R. 7090]

13.4	Permittees must remove all sediment from conveyance systems prior to submitting the NOT. [Minn. R. 7090]
13.5	Permittees must remove all temporary synthetic erosion prevention and sediment control BMPs prior to submitting the NOT. Permittees may leave BMPs designed to decompose on-site in place. [Minn. R. 7090]
13.6	For residential construction only, permit coverage terminates on individual lots if the lot is sold to the homeowner, structures are finished, and permanent cover has been established. For lots that are sold to the homeowner where permanent cover has not been established, coverage terminates if temporary erosion prevention and downgradient perimeter control is properly installed and the permittee distributes the MPCA's "Homeowner Fact Sheet" to the homeowner. [Minn. R. 7090]
13.17	For construction projects on agricultural land (e.g., pipelines across cropland), permittees must return the disturbed land to its preconstruction agricultural use prior to submitting the NOT. [Minn. R. 7090]
13.8	When submitting the NOT, Permittees must include either ground or aerial photographs showing the requirements of 13.2 have been met. Permittees are not required to take photographs of every distinct part of the site, however the conditions portrayed must be substantially similar to those areas that are not photographed. Photographs must be clear and in focus and must include the date the photo was taken. [Minn. R. 7090]
14.1	**Temporary Sediment Basins. [Minn. R. 7090]**
14.2	Where ten (10) or more acres of disturbed soil (5 acres for sites discharging to special or impaired waters, see section 24) drain to a common location, permittees must provide a temporary sediment basin to provide treatment of the runoff before it leaves the construction site or enters surface waters. Permittees may convert a temporary sediment basin to a permanent basin after construction is complete. The temporary basin is no longer required when permanent cover has reduced the acreage of disturbed soil to less than ten (10) acres draining to a common location. [Minn. R. 7090]
14.3	The temporary basin must provide live storage for a calculated volume of runoff from a two (2)-year, 24-hour storm from each acre drained to the basin or 1,800 cubic feet of live storage per acre drained, whichever is greater. [Minn. R. 7090]
14.4	Where permittees have not calculated the two (2)-year, 24-hour storm runoff amount, the temporary basin must provide 3,600 cubic feet of live storage per acre of the basins' drainage area. [Minn. R. 7090]
14.5	Permittees must design basin outlets to prevent short-circuiting and the discharge of floating debris. [Minn. R. 7090]
14.6	Permittees must design the outlet structure to withdraw water from the surface to minimize the discharge of pollutants. Permittees may temporarily suspend the use of a surface withdrawal mechanism during frozen conditions. The basin must include a stabilized emergency overflow to prevent failure of pond integrity. [Minn. R. 7090]
14.7	Permittees must provide energy dissipation for the basin outlet within 24 hours after connection to a surface water. [Minn. R. 7090]
14.8	Permittees must locate temporary basins outside of surface waters and any buffer zone required in item 23.11. [Minn. R. 7090]
14.9	Permittees must construct the temporary basins prior to disturbing 10 or more acres of soil draining to a common location. [Minn. R. 7090]
14.10	Where a temporary sediment basin meeting the requirements of item 14.3 through 14.9 is infeasible, permittees must install effective sediment controls such as smaller sediment basins and/or sediment traps, silt fences, vegetative buffer strips or any appropriate combination of measures as dictated by individual site conditions. In determining whether installing a sediment basin is infeasible, permittees must consider public safety and may consider factors such as site soils, slope, and available area on-site. Permittees must document this determination of infeasibility in the SWPPP. [Minn. R. 7090]
16.4	Permittees must not excavate infiltration systems to final grade, or within three (3) feet of final grade, until the contributing drainage area has been constructed and fully stabilized unless they provide rigorous erosion prevention and sediment controls (e.g., diversion berms) to keep sediment and runoff completely away from the infiltration area. [Minn. R. 7090]

17.3	Permittees must not install filter media until they construct and fully stabilize the contributing drainage area unless they provide rigorous erosion prevention and sediment controls (e.g., diversion berms) to keep sediment and runoff completely away from the filtration area. [Minn. R. 7090]
23.7	Discharges to impaired waters or a water with an USEPA approved TMDL for any of the impairments listed in this item must incorporate the BMPs outlined in items 23.9 and 23.10. Impaired waters are waters identified as impaired under section 303 (d) of the federal Clean Water Act for phosphorus (nutrient eutrophication biological indicators, nutrients), turbidity, TSS, dissolved oxygen or aquatic biota (fish bioassessment, aquatic plant bioassessment and aquatic macroinvertebrate bioassessment, benthic macroinvertebrate bioassessment). Terms used for the pollutants or stressors in this item are subject to change. [Minn. R. 7090]
23.8	Where the additional BMPs in this Section conflict with requirements elsewhere in this permit, items 23.9 through 23.14 take precedence. [Minn. R. 7090]
23.9	Permittees must immediately initiate stabilization of exposed soil areas, as described in item 8.5 & 8.8, and complete the stabilization within seven (7) calendar days after the construction activity in that portion of the site temporarily or permanently ceases. [Minn. R. 7090]
23.10	Permittees must provide a temporary sediment basin as described in Section 14 for common drainage locations that serve an area with five (5) or more acres disturbed at one time. [Minn. R. 7090]
23.11	Permittees must include an undisturbed buffer zone of not less than 100 linear feet from a special water (not including tributaries) and must maintain this buffer zone at all times, both during construction and as a permanent feature post construction, except where a water crossing or other encroachment is necessary to complete the project. Permittees must fully document the circumstance and reasons the buffer encroachment is necessary in the SWPPP and include restoration activities. This permit allows replacement of existing impervious surface within the buffer. Permittees must minimize all potential water quality, scenic and other environmental impacts of these exceptions by the use of additional or redundant (double) BMPs and must document this in the SWPPP for the project. [Minn. R. 7090]

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

4. FLOODPLAIN ALTERATION RULE
Adopted XXXX
Effective XXXX

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

    a. Preserve flood storage capacity between the ordinary and 100-year high water elevations of waterbodies to limit flood frequency and severity;

    b. Limit flood risk for structures built in or adjacent to floodplain;

    c. Protect streambanks for stability, water quality and ecological values.

2. **APPLICABILITY.**

    a. A permit is required to fill, excavate or grade within the floodplain of a waterbody.

    b. For all work requiring a permit under paragraph 2(a), a structure intended for residential, commercial, industrial or institutional occupancy must be constructed so that door and window openings are at least two feet above the 100-year high water elevation of the waterbody.

3. **EXCEPTIONS.**

    a. A permit is not required for soil cultivation, soil amendment, or topsoil or sod addition for ordinary landscaping purposes.

    b. If the floodplain of a waterbasin lies entirely within a municipality, the waterbasin does not outlet during the 100-year event, and the municipality regulates floodplain encroachment, a District permit under this rule is not required.

4. **CRITERIA.** Fill, excavation or grading must conform to the following standards:

    a. Any floodplain fill must be offset so there is no loss in flood storage between the ordinary high water and 100-year high water elevations. There may not be net positive fill at any time during the work, unless applicant has demonstrated it is impractical and has obtained District approval of a sequencing plan for which applicant's registered professional engineer has demonstrated that the No-Rise Standard is met.

b. Offset for fill in a waterbody other than a watercourse is not required if the applicant demonstrates that fill on all riparian properties to the extent proposed by the applicant would meet the No-Rise Standard and not restrict flood flows.

c. Fill in a watercourse must meet the following criteria:

    1. No impervious surface may be placed within the 10-year floodplain or within 25 feet of the watercourse centerline, whichever greater, unless the surface is: (1) no more than 10% of the site 10-year floodplain area; or (2) a linear component of a public roadway or trail.

    2. Applicant must meet the No-Rise Standard.

d. Ice ridge grading within a waterbasin must conform to the pre-existing basin cross-section. Soil material may be neither imported into nor removed from the floodplain.

5. SUBMITTALS. The following submittals must accompany the permit application:

a. Site plan showing property lines, delineation of the work area, existing elevation contours of the work area, and ordinary high water (OHW) and 100-year high water elevations. All elevations must be reduced to NGVD (1929 datum).

b. Grading plan with proposed elevation changes.

c. Preliminary plat, if applicable.

d. Professional engineer registered in the State of Minnesota's determination of the 100-year high water elevation before and after the project and, if paragraph 4(c) applies, of the edge of the 10-year watercourse floodplain. A DNR No-Rise Certificate may be submitted to document conformance with the No-Rise Standard, where applicable.

e. Computation by a professional engineer, architect, land surveyor or landscape architect of volumes of floodplain fill and excavation and, if paragraph 4.c applies, of impervious surface area adjacent to a watercourse.

f. If not otherwise subject to the District erosion control rule, an erosion control plan conforming to sections 5, Erosion Control Plan, and 9, Maintenance, of that rule.

g. If more than 50 cubic yards of fill have been placed, on project completion applicant must submit an as-built survey prepared by a professional engineer, architect, land surveyor or landscape architect documenting locations of floodplain disturbance and the volumes of fill and created flood storage.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

5. STORMWATER MANAGEMENT RULE
PURSUANT TO MINNESOTA STATUTES §103D.341

Adopted XXXX
Effective XXXX

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

a. Protect and improve the physical, chemical and ecological health of surface waters and groundwater within the District;

b. Protect against local and regional flooding from land use change;

c. Promote abstraction of rainfall and stormwater runoff to improve water quality, maintain groundwater recharge, reduce flooding and promote the health of native and designed plant communities;

d. For land disturbance subject to regulation under the National Pollutant Discharge Elimination Program, align local and state stormwater management requirements for clarity and efficiency.

2. APPLICABILITY.

a. A permit under this rule is required for the following actions:

1. Development or a Linear Transportation Project that meets criteria for site size, extent of site disturbance and impervious surface change set forth in Table 1 and Table 2 of this rule. In applying Table 1, the District will aggregate all activity that it finds to constitute a Common Plan of Development and all impervious surface constructed within ten years of the date of application. If the earlier work was pursuant to a District permit, the ten-year period is determined from the date of permit issuance or reissuance.

2. Subdivision of a tract at least one acre in size into three or more buildable lots.

3. Grading or otherwise changing land contours, except for agricultural activity, so as to affect the direction, peak rate, volume or water quality of runoff.

b. The following actions, even if subject to paragraph 2.a, do not require a permit if the amount of new and reconstructed impervious surface is less than one acre:

1. Single-family residential Development on an existing lot of record.

2. Construction of a sidewalk or trail not more than 12 feet in width, and bordered downgradient by pervious vegetated buffer averaging at least half the width of the sidewalk or trail.

3. Linear Transportation Projects where the net increase of impervious surface is <10,000 square feet.

4. Sites that reduce impervious by 10%.

c. An action requiring a permit under paragraph a.2 or a.3 is not subject to section 3 of this rule. However, for an action under paragraph a.2, the applicant must provide a conceptual stormwater management plan and the permit will require subsequent land disturbance within the subdivided tract to demonstrate compliance with section 3.

3. VOLUME CONTROL.

a. For purposes of both volume and phosphorus control, an applicant subject to this rule under paragraph 2.a.1 must provide abstraction volume equal to the following. Abstraction volume is to be calculated in accordance with Appendix A to this rule.

1. For Development, one inch times the area of impervious surface stated in Table 1.

2. For a Linear Transportation Project, either one inch times the area of new impervious surface, or one-half inch times the area of new and reconstructed impervious surface, whichever greater, except that if the total of new and reconstructed impervious surface is less than one acre, the volume is to be calculated only for the net increase in impervious surface as stated in Table 2.

b. Abstraction must be used to meet the subsection 3.a standard, to the extent feasible. An infiltration practice is prohibited in the following circumstances:

1. The area receives discharge from a vehicle fueling and maintenance area.

2. Contamination in soil or groundwater may be mobilized by the infiltrating stormwater.

3. Soils infiltration rate exceeds 8.3 inches per hour.

4. The separation between the bottom of the infiltration system and the elevation of seasonally saturated soils or top of bedrock is less than three feet.

5. Soils are predominantly Hydrologic Soil Group D (clay) or otherwise unreliable for infiltration.

6. The area is within an Emergency Response Area (ERA) in a Drinking Water Supply Management Area (DWSMA), as defined in Minnesota Rules 4720.5100, subpart 13, classified as high or very high vulnerability.

7. The area is within an ERA in a DWSMA classified as moderate vulnerability, or outside of an ERA in a DWSMA classified as high or very high vulnerability. This prohibition does not apply if an engineering evaluation, meeting standards in the Minnesota Stormwater Manual, demonstrates that the system will function and not have adverse impact on groundwater.

8. The area is within 1,000 feet upgradient, or 100 feet downgradient, of an active karst feature.

9. The area receives stormwater runoff from one of the following entities regulated under NPDES for industrial stormwater: automobile salvage yard; scrap recycling and waste recycling facility; hazardous waste treatment, storage, or disposal facility; air transportation facility that conducts deicing.

To support a finding of infeasibility, the applicant must document the constraint and examine means to remove or avoid it including modifying the size, scope, configuration or density of the proposed action. To document contamination under paragraph 3.b.2, the permittee must complete the Minnesota Pollution Control Agency site screening assessment checklist, available in the Minnesota Stormwater Manual, or submit an independent assessment.

c. If the required abstraction volume cannot feasibly be provided by abstraction practices listed in Appendix A, the applicant must incorporate filtration or other non-abstraction practices to achieve phosphorous control in an amount equivalent to that which would be achieved through abstraction of the required volume. Equivalent phosphorus control may be demonstrated by modeling or, for filtration practices, by treating twice the required abstraction volume, as calculated in accordance with Appendix A to this rule.

d. For a Linear Transportation Project, if the required abstraction volume cannot be provided within existing right-of-way, the permittee must make a reasonable attempt to obtain additional right-of-way, easement or other permission to site the required volume. Abstraction volume is not required to the extent it cannot be provided cost-effectively.

e. Runoff volume draining to a landlocked area may not increase during back-to-back 100-year storm events.

4. **RATE CONTROL**.

    a. An action may not increase the peak runoff rate from the site, in aggregate, for the one- or two-, 10- or 100-year design storm event. An applicant proposing to increase peak runoff at a specific point of site discharge must demonstrate no adverse local impact on water resource values or infrastructure. Aggregate compliance for all site boundary discharge will be determined with respect to runoff not managed in a regional facility.

    b. For a tract being converted from row crop agriculture, the criterion of no increase applies as compared with an assumed existing meadow condition.

5. **BEST MANAGEMENT PRACTICE (BMP).** When a BMP is specified in Table 1 or 2, an applicant must incorporate an on-site structural or non-structural practice to achieve one or more of the following: limit impervious surface increase, abstract stormwater, reduce pollutant discharge, or control peak flow from the site. The permittee will select the BMP to address the impacts posed by the proposed action. The BMP must be designed and installed in accordance with the Minnesota Stormwater Manual and accepted engineering practice.

6. **FLOOD SEPARATION**. There must be two feet of vertical separation between the 100-year high water elevation of a waterbody or stormwater practice and the low opening of any structure, unless the structure opening is hydraulically disconnected from the waterbody or practice.

7. **IMPACT ON DOWNGRADIENT WATERBODIES**.

    a. A new point source must treat for sediment and phosphorus removal before discharge to a waterbody. This paragraph does not apply to changes in flow from an existing point source.

    b. An action otherwise subject to this rule must meet the following criteria:

Wetland Management Class/ Waterbody	Permitted Bounce for 1- or 2-, 10-, and 100-Year Event	Inundation Period for 1- or 2-Year Event	Inundation Period for 10- and 100-Year Event	Runout Control Elevation
Preserve	Existing	Existing	Existing	No change
Manage 1	Existing plus 0.5 feet	Existing plus 1 day	Existing plus 2 days	No change
Manage 2	Existing plus 1.0 feet	Existing plus 2 days	Existing plus 14 days	0 to 1.0 ft above existing runout

Manage 3	No limit	Existing plus 7 days	Existing plus 21 days	0 to 4.0 ft above existing runout
Lakes	Existing	N/A	N/A	No change

8. LOCATION OF VOLUME AND RATE CONTROL PRACTICES.

a. A volume or rate control practice may be located on site, or downgradient of the regulated impervious surface but before runoff from the surface enters any public water.

b. For use of an off-site facility, the applicant must incorporate an on-site BMP in accordance with section 5, above, and must demonstrate that there will be no adverse water resource impact upgradient of the facility.

c. For use of an off-site regional facility, the applicant must demonstrate that the facility was designed and constructed to manage the stormwater runoff from the site, the applicant has permission to use the necessary part of facility capacity, the facility is subject to satisfactory maintenance obligations enforceable by the District, and its current maintenance conforms with those obligations.

d. A public or private entity may construct a regional volume or rate control facility in advance of its use for compliance purposes. The facility's terms of use will be stated in a regional facility plan approved by the District.

9. SUBMITTALS.

a. The applicant must submit a plan, certified by a professional engineer registered in the State of Minnesota, to the District. The plan must contain the following:

1. Property lines of the tract or contiguous tracts under applicant's ownership.

2. Delineation of subwatersheds that contribute runoff to the site, and of existing and proposed subwatersheds on the site.

3. Delineation of top of bank of existing on-site waterbodies and of floodplain, and notations of ordinary high-water level and 100-year high water elevation of on-site waterbodies.

4. Delineation of any flowage or drainage easements, or of other property interests dedicated to water management or conveyance.

5. Existing and proposed site elevations at two-foot intervals, related to National Geodetic Vertical Datum (NGVD), 1929 datum.

6. Locations, alignments, and elevations of existing and proposed stormwater management facilities, as well as construction plans and specifications for all proposed facilities.

7. All hydrologic, hydraulic and water quality computations on which the design of proposed stormwater management facilities is based, including (i) runoff volume abstractions; and (ii) stormwater runoff volume and rate analyses for the one- or two-, 10- and 100-year design storms, for existing and proposed conditions, at each point of site discharge.

b. If proposing to meet this rule by infiltration through site soils, the applicant must characterize soils by use of soil pits or hand augers, and must submit a soils report that describes, measures permeability of, and delineates site soils and includes the soil sampling methodology used. Borings for an infiltration facility must extend at least five feet below than the proposed bottom elevation of the facility.

c. If proposing that infiltration is infeasible, the applicant must provide supporting documentation in accordance with subsection 3.b.

d. If proposing soil amendment, the applicant must submit a soil amendment plan for District approval.

e. If proposing capture and reuse, the applicant must submit a system operating plan and calculations that quantify the benefits of the reuse system.

f. The applicant must document application for a National Pollutant Discharge Elimination System (NPDES) permit, if applicable.

10. STORMWATER FACILITY MAINTENANCE.

a. A stormwater management facility must be designed for maintenance access and maintained in perpetuity to function as designed.

b. As a condition of permit issuance, a permittee must sign and record on the title a declaration or other instrument, in a form supplied by the District or otherwise acceptable to it, that provides for perpetual facility maintenance. A public permittee, in place of a recorded instrument, may enter into a signed agreement with the District by which the permittee assumes permanent maintenance responsibility.

c. A public entity may assume responsibility to maintain a stormwater facility on private property either by: (1) being a signatory to the private-party declaration; or (2) entering into a signed agreement with the District and separately establishing, by means acceptable to the District, its perpetual right to enter the property.

11. FINANCIAL ASSURANCE.

A bond, letter of credit or cash escrow in accordance with the District's Financial Assurances rule is a condition of permit issuance.

Table 1: Requirements for Development				
Site Size	**New and fully reconstructed impervious area**	**Site Disturbance**	**Impervious Surface Change***	**Requirement**
< 1 acre	> 0 sq ft	-	0-9% decrease or any increase	BMP
≥ 1 acre	< 1 acre	< 40%	0 - 9% decrease	BMP
			> 0 - < 50% increase	Volume from net added impervious surface, Rate
			≥ 50% increase	Volume from entire site impervious surface, Rate
	≥ 1 acre	< 40%	< 50% increase	Volume from new and fully reconstructed impervious surface, Rate
			≥ 50% increase	Volume from entire site impervious surface, Rate
	N/A	≥ 40%	N/A	Volume from entire site impervious surface, Rate
*For sites with no existing impervious on-site, impervious surface change = proposed site impervious surface (percent)				

Table 2: Requirements for Linear Transportation Projects		
New and reconstructed impervious area	**Net increase in impervious area**	**Requirement**
< 1 acre	10,000 sf - 1 acre	Volume from net added impervious surface, Rate
≥ 1 acre	< 10,000 sf	Volume equal to the larger of: one inch of volume from new impervious surface OR 0.5 inches of volume from new impervious and reconstructed impervious surface
	≥ 10,000 sf	Volume equal to the larger of: one inch of volume from new impervious surface OR 0.5 inches of volume from new impervious and reconstructed impervious surface, Rate

APPENDIX A:
Abstraction Practice Credit Schedule

Practice	Design Guidance	Volume Control (VC) Credit	Calculation Methods
Surface Infiltration Basin	Minnesota Stormwater Manual	Volume provided	VC= Volume below overflow elevation [(1)]
Underground Infiltration Trench	Minnesota Stormwater Manual	Void volume provided	VC = Volume below overflow elevation [(1)]
Capture and Reuse of Stormwater	Submit pump design plans and hydrologic calculations	Volume capacity to capture and reuse runoff from a 1- inch rainfall event	Submit operating plan and calculations for reuse system to document annual volume reuse during dry, wet, and average years
Soil Amendment(s)[(2)]	Minnesota Stormwater Manual	0.5-inch credit over the area of soil amendment area [(3)]	VC = 0.5/12 * area of soil amendment

Non-Abstraction Practice Credit Schedule[(4)]

Practice	Design Guidance	Phosphorus Control (PC) Credit	Calculation Methods
Filtration	Minnesota Stormwater Manual	Volume provided (must be twice the required abstraction volume) [(5)]	PC = Volume below overflow elevation (filtered volume is not considered)

(1) Volume infiltrated during a rainfall event shall not be credited towards the abstraction volume requirement. This is a simple approach for designers and for reviewers to verify conformance to the standard; a stormwater model is not needed for calculations. This is a conservative assumption because infiltration of stormwater in Minnesota is an evolving practice. MCWD will continue to research current trends, collect and analyze monitoring data, and utilize modeling and engineering methods to assess the effectiveness of the standards to achieve the water quality goals of the District.

(2) This method is considered as an abstraction practice only for an application that proposes less than an acre of new or fully reconstructed impervious area.

(3) For SCS TR-55 cover type "open space (lawns)," compacted soil (HSG C, curve number 74) begins to generate runoff with a 0.9-inch rainfall. A HSG B soil (curve number 61) begins to generate runoff with a 1.5-inch rainfall. Therefore, preserving the infiltration capacity of HSG B soil through the use of soil amendments yields an approximate 0.5-inch volume reduction credit.

(4) Other non-abstractive practices not listed in this table may be used but may require additional submittals to confirm phosphorus control credit.

(5) The Minnesota Stormwater Manual reports that nutrient removal (total phosphorus) is approximately half as effective for filtration as infiltration.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

6. WATERBODY CROSSINGS & STRUCTURES RULE
PURSUANT TO MINNESOTA STATUTES § 103D.341

Adopted XXXXX
Effective XXXX

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

    a. Limit the encroachment of roadways and other infrastructure on the beds and banks of waterbodies;

    b. Preserve the ecological and recreational integrity of the riparian and aquatic environment; and

    c. Preserve wildlife passage and habitat.

2. **REGULATION**. One may not place a roadway, bridge, boardwalk, utility, conveyance, or associated structure below the top of bank of a waterbody; place any such structure beneath a waterbody; or enclose any part of a waterbody within a pipe or culvert; without first securing a permit from the District.

3. **CRITERIA**. Use of the bed or bank must:

    a. Serve a public purpose, for projects in public waters, and meet a demonstrated specific need for all other projects.

    b. Retain adequate hydraulic capacity. A project in a watercourse may not increase upstream or downstream flood stage.

    c. Preserve navigational capacity.

    d. Preserve aquatic and upland wildlife passage along each bank and within the waterbody. Where preservation is incompatible with function, passage must be replicated by incorporation of a culvert, shelf or other means properly designed for the ecological setting.

    e. Be designed so that the structure does not promote erosion or scour, or otherwise affect bed or bank stability, or water quality, within the waterbody. Where the work is

installation or replacement of a stormwater outlet structure, this criterion does not examine pollutant load associated with the stormwater discharge.

f. Be the "minimal impact" solution to the specific need. The applicant must consider, as applicable, rerouting to avoid a crossing, designing a crossing to avoid disturbance below top of bank, limiting multiple crossings of a meandering waterbody, installing upstream controls to manage stream flow, vegetation or bioengineering for bank stabilization, structural bank stabilization (riprap, retaining walls), and avoiding encroachment for non-water-dependent uses. The term "minimal impact" shall refer to all resources protected under the purposes of the District set forth at sections 103B.201 and 103D.201 of the Minnesota Statutes.

g. For a subsurface crossing, provide for minimum clearance of three feet below the bed of a waterbody, and a minimum setback of 100 feet from any stream bank for pilot, entrance, and exit holes associated with horizontal directional drilling. Where the bed elevation is indeterminate, including but not limited to a subsurface wetland crossing, the District will specify a minimum clearance as necessary to protect the water quality and ecology of the waterbody. The setback may be reduced if the applicant demonstrates that it is infeasible to meet a wider setback, and on the basis of an erosion control plan and other appropriate measures that will preserve streambank integrity and prevent sediment movement.

h. For a sanitary sewer crossing, incorporate automatic valves, diversions, redundant pipes, double encasement, or other features to avoid sanitary discharge to a surface water in the event of a line failure.

4. EXCEPTIONS.

a. The Board of Managers may waive the requirements of this rule on a finding that a waterbody is significantly altered from a natural state, that it is degraded, and that the proposed application would provide ecological restoration and a greater degree of resource protection than would conformance to this rule.

b. Riprap placed below a culvert or outfall for energy dissipation purposes if the riprap complies with MnDOT Standard Plates 3133, 3134, and 3139 and appropriate erosion and sediment controls are utilized.

5. REQUIRED EXHIBITS. The following exhibits must accompany the permit application.

a. Construction plans and specifications.

b. Analysis, by a professional engineer or qualified hydrologist, of the effect of the project on hydraulic capacity and water quality.

c. An erosion control plan that includes measures for site restoration and permanent stabilization.

d. Information necessary to evaluate conformance to paragraph 3(f), including at least two alternative designs that minimize or avoid the proposed impact, and such other information as District staff reasonably may request.

6. **FAST-TRACK PERMIT**. A public applicant may obtain a fast-track permit to replace a structure within a waterbody with a structure of substantially equal hydraulic and, as applicable, navigational capacity. The public notice under section 6 of the Procedural Requirements Rule and the requirements of paragraphs 3(f) do not apply if the applicant is fast-track eligible.

7. **MAINTENANCE**. A declaration or other recordable instrument in a form acceptable to the District, providing for maintenance of hydraulic and navigational capacity in perpetuity, must be recorded in the office of the county recorder or registrar before a permit will issue. In lieu of recordation, a public permittee, or a permittee without a property interest sufficient for recordation, may assume the maintenance obligation by means of a written agreement with the District. The agreement shall state that if the ownership of the structure is transferred, the permittee will require the transferee to comply with this subsection.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

7. WETLAND PROTECTION RULE

Pursuant to Minnesota Statutes §103D.341
Adopted April 24, 2014
Adopted XXXX
Effective XXXX

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

a. Protect and enhance the quantity, quality and biological diversity of Minnesota's wetlands by limiting direct and indirect impacts, requiring effective mitigation of impacts, and fostering the restoration of diminished or drained wetlands;

b. Monitor mitigation and restoration actions of regulated parties so that high quality and diverse wetland resources are established and sustained; and

c. Coordinate with local, state and federal governments, so that regulatory oversight of wetland resources is effective and efficient under the Minnesota Wetland Conservation Act (MnWCA), related state and federal laws, municipal ordinances, and these rules.

2. APPLICABILITY.

a. The MnWCA is administered by a local government unit (LGU), as that term is defined at Minnesota Statutes §103G.005, subdivision 10i. Within a given municipality, either the District or the municipality is the LGU. Where the District is the LGU, it will administer the MnWCA in accordance with Minnesota Statutes chapter 103G and Minnesota Rules chapter 8420, as amended, except as provided in subsection 2.c, below.

b. Pursuant to Minnesota Rules 8420.0233 and its own authority, the District regulates certain excavation within wetland under section 3 of this rule, and imposes requirements for vegetated buffer adjacent to wetland and public waters wetlands under sections 4 through 6 of this rule. The District applies these sections of the rule throughout the watershed, and not only where the District is the MnWCA LGU.

c. Notwithstanding replacement location provisions of the MnWCA, project-specific replacement for any wetland impact subject to District permitting under this rule must be sited in the following order of priority: (1) within the same District subwatershed as the affected wetland; (2) within the Minnehaha Creek watershed; (3) within the same eight-digit Hydrologic Unit Code watershed.

3. EXCAVATION.

a. As stated at Minnesota Rules 8420.0105, subpart 1, the MnWCA applies to excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetland, and in any wetland type if the excavation results in filling, draining, or conversion to nonwetland. Under this section 3, the District regulates all other excavation in wetland, except for incidental wetland as that term is defined at Minnesota Rules 8420.0105, subpart 2.D.

b. District regulation under subsection 3.a will be administered in accordance with Minnesota Rules chapter 8420, as amended, including no-loss and exemption standards. For the purpose of Minnesota Rules 8420.0522, subpart 4, the replacement ratio under subsection 3.a is two acres of replacement credit for each acre of wetland impacted.

c. Excavation subject to section 3 does not require replacement if the excavation is performed for public benefit and the applicant demonstrates that: (i) the wetland to be excavated is degraded; (ii) the activity would improve the wetland function and value; and (iii) the enhanced function and value are likely to be sustained. The demonstration is to be made using the Minnesota Routine Assessment Method (current version) or other method approved by the District. The excavation may not change wetland type, unless the applicant demonstrates that the public benefit otherwise cannot be achieved.

4. VEGETATED BUFFER. A property owner must obtain a permit establishing a permanent vegetated buffer adjacent to wetland or public waters wetland in accordance with this section.

a. A buffer is required as follows:

1. if an approval is issued under this rule for a wetland impact that requires replacement or if a permit is issued under the Waterbody Crossings and Structures rule for a new structure in a wetland or public water wetland, a buffer is required around the wetland;

2. If an activity requires a permit under the Stormwater Management rule, a buffer is required on that part of the wetland that is downgradient of the new or reconstructed impervious surface.

3. If a New Principal Residential Structure that increases site impervious surface is constructed, a buffer is required on that part of the wetland that is downgradient of the new or reconstructed impervious surface.

b. Notwithstanding subsection 4.a, the District may approve a permit without a buffer requirement for an activity on public land: (i) that is subject to an equivalent conservation restriction; or (ii) where the buffer would conflict with a water-dependent recreational or educational public purpose served by the affected area. In either case, the District may impose reasonable conditions to secure equivalent wetland protection.

c. Permanent wetland buffer monuments must be installed and maintained at the buffer edge. A monument must be placed at each lot line, with additional monuments placed at an interval of no more than 200 feet and as necessary to define a meandering boundary. If the land subject to monumentation is subdivided, additional monuments must be installed and maintained to meet this standard. Monument text will conform to District standard specifications and text, or receive written District approval. On public land or right-of-way, the monumentation requirement may be satisfied by the use of markers flush to the ground, breakaway markers of durable material, or a vegetation maintenance plan approved by the District in writing.

d. As a condition of permit issuance, a property owner must file on the deed a declaration or other recordable instrument, in a form approved by the District, establishing the perpetual buffer. On public land or right-of-way, in place of a recorded declaration, the public owner may execute a written maintenance agreement with the District. The agreement will state that if land containing the buffer area is to be conveyed to a private party, the public owner must file on the deed a declaration conforming to this paragraph. The declaration or agreement will contain the Planting Plan required by section 6, below, as applicable.

5. BUFFER WIDTH.

a. Buffer width is based on the management class of the wetland, as established by the District's Functional Assessment of Wetlands, as updated. Alternatively, an applicant may determine management class by applying the Minnesota Routine Assessment Method (current version). A Base Width is established and may be reduced on the basis of favorable slope or soil condition, but not below the Base Width Minimum, each as follows:

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

The permitted width reductions are as follows:

1. For each five percent by which the average buffer slope is below 20 percent, the Base Width may be reduced by two feet.

2. For each Hydrologic Soil Group grade above Type D by which the buffer soil is predominantly classified, the Base Width may be reduced by two feet.

b. An applicant is not obligated to acquire property to meet the applicable buffer width under this rule.

c. Buffer width at any point may be reduced to no less than 50 percent of Base Width, provided total buffer area is maintained and the applicant demonstrates that the buffer will provide wetland and habitat protection at least equivalent to a buffer of uniform Base Width. In calculating total buffer area, buffer wider than 200 percent of Base Width is not considered.

d. The District may accept a shortfall in total buffer area if the applicant demonstrates that proposed buffer conditions will provide function and value equal to or greater than that which a buffer of required area would provide. The demonstration is to be made using the Minnesota Routine Assessment Method (current version) or other method approved by the District.

e. The buffer width for New Principal Residential Structures is 25 percent of the distance between the proposed structure at the point that it is nearest to the wetland and the wetland, or 25 feet, whichever is greater. Notwithstanding the foregoing, the required buffer will not exceed the Base Width or render a property unbuildable.

6. PROTECTING BUFFER SOIL AND VEGETATION.

a. For buffer area not presently established with vegetation, the applicant will supply a Planting Plan in accordance with Section 7, below.

b. Buffer vegetation may not be fertilized, mowed, cultivated, cropped, pastured or otherwise disturbed. No mulch, yard waste, fill, debris or other material may be placed within a buffer, temporarily or permanently. No excavation may occur in a buffer.

c. Notwithstanding paragraph 6.b:

1. pesticides and herbicides may be applied within a buffer in conformance with Minnesota Department of Agriculture rules and guidelines;

2. periodic cutting or burning to promote buffer health, action to address disease or invasive species, mowing for public safety, temporary disturbance to place or repair a utility, or other action to maintain or improve buffer quality is permitted if approved in writing by the District;

3. a road authority maintenance agreement may provide for mowing and brush cutting as required for public safety and inspection of drainageways, and may allow fertilizer and soil conditioning to address vegetation stress.

d. An applicant will not be required to remove an existing permanent structure or impervious surface from the buffer area, if the structure or surface is in sound and functional condition. If feasible, buffer will be established upgradient of existing impervious surface that is retained, to provide for the required width of vegetated land. No new structure or impervious surface may be placed within a buffer, except that for access to the wetland, a path or trail of pervious or impervious surface, no more than four feet in width, may be located within a buffer and will be considered part of the buffer. The path or trail will reasonably minimize the loss of buffer area and will be designed to not concentrate or accelerate runoff to the wetland.

e. Before site disturbance, buffer area will be fenced to exclude construction operations and to prevent sediment movement into the buffer, unless the applicant demonstrates that it is necessary to work within the buffer and obtains District approval of a Planting Plan providing for establishment of native vegetation and conforming to section 7, below. The Planting Plan also must contain terms to control erosion and sediment and protect tree root zone during construction; minimize soil compaction; and provide for post-disturbance soil decompaction to a depth of 18 inches and incorporation of organic matter. The plan will specify that within tree drip line or critical root zone, or within 10 feet of a subsurface utility, the applicant will decompact solely by incorporating organic material. Fencing and other protection measures must be removed when site vehicle and equipment operation is complete.

7. SUBMITTALS. The following are the elements of an application under this rule.

a. If seeking a MnWCA approval, a completed Combined Joint Notification form. If not, a completed District standard application.

b. A valid delineation report, conforming to MnWCA guidelines, for each wetland proposed to be disturbed, or that will be subject to a buffer under this rule. If the District is not the MnWCA LGU, the application must include the LGU decisions associated with the report. Where MnWCA does not require a delineation report, District staff may allow the report to be omitted, or limited to a part of the wetland boundary as needed for the permit decision.

c. Site plan that shows and, by notation, describes:

1. Lines and corners of contiguous tracts owned by applicant;
2. Delineation of site wetland; of areas of wetland to be disturbed, and of existing and proposed buffer;

3. Existing and proposed site elevation contours;

4. Proposed grading and other disturbance in wetland or buffer;

5. For wetland excavation, proposed location of spoils placement and specifications to stabilize and vegetate spoils;

6. Proposed buffer monument locations.

d. For impacts requiring replacement under this rule, a replacement plan conforming to Minnesota Rules chapter 8420.

e. If required by section 6, above, a Planting Plan containing the following:

1. Description and specification of seed and plant materials, including supplier and origin;

2. Bed preparation (for example, clearing, disking, raking, herbicide control, soil amendment or addition);

3. Seeding or planting method and application rate in pounds of seed per acre or plants per unit area; application rate must reflect if pure live seed (PLS) is to be used;

4. Measures for site protection and erosion prevention during establishment;

5. An inspection and maintenance schedule describing activities (watering, mowing, invasive species control, herbicide application, burning, etc.) for five years of establishment;

6. The criteria for buffer vegetation establishment.

8. REPORTING. For five years after buffer is seeded or planted, before January 1 of each year, a property owner subject to a Planting Plan will submit an annual report to the District. An owner may request that the District perform the wetland buffer inspection and produce the report for a fee equal to the District's cost.

a. The annual report will:

1. Describe dominant plant species within the buffer, estimate their percent cover, and compare to the approved planting/seeding plan;

2. Include a site plan that delineates the buffer and shows areas of bare soil, erosion, invasive vegetation, disturbed vegetation or encroachment;

3. Describe management strategies to be used in the next growing season to make progress toward the establishment goal;

4. Include color photographs taken during growing season, with vantage points indicated on the site plan.

b. If, after the third annual report, the District finds that the buffer meets establishment standards and that further active monitoring and management are not necessary, it may in writing excuse the property owner from further inspection, maintenance and reporting.

c. If, after the fifth annual report, the District finds that the buffer has not met establishment standards, it may extend inspection, maintenance and reporting obligations, and may require amendment of the declaration or agreement for that purpose.

9. FINANCIAL ASSURANCE.

A bond, letter of credit or cash escrow in accordance with the District's Financial Assurances Rule is a condition of permit issuance.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

8. SHORELINE & STREAMBANK STABILIZATION RULE

PURSUANT TO MINNESOTA STATUTES §103D.341
Adopted XXXX
Effective XXXX

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

a. Limit disturbance to the natural shoreline or streambank;

b. Where stabilization is needed, promote use of bioengineering and similar naturalized methods;

c. Require that stabilization methods follow sound engineering principles and limit impact on water quality and the ecological integrity of the riparian environment.

2. APPLICABILITY.

a. A permit is required to disturb the bank of a waterbasin or watercourse, below the ordinary high water level, for the purpose of stabilization, or to serve an amenity or other beneficial purpose. Improvements subject to this requirement include, but are not limited to, bioengineering practices, riprap, retaining walls, boat ramps and sandblankets.

b. Notwithstanding subsection 2.a, a permit is not required to:

1. Maintain a functioning improvement, if no material is added and the bed or bank is not disturbed; or

2. Plant vegetation not intended to provide deep soil structure stability.

3. Place riprap below a culvert or outfall for energy dissipation purposes if the riprap complies with MnDOT Standard Plates 3133, 3134, and 3139 and appropriate erosion and sedimental controls are utilized.

c. A Fast Track permit may be issued for shoreline stabilization projects that conform to the following requirements:

1. An application for shoreline stabilization that conforms to subsection 3.a and section 4;

2. An application for a sandblanket that conforms to section 7.

3. EROSION INTENSITY STANDARD.

a. An applicant must perform an erosion intensity calculation to support an application for a stabilization practice other than a biological practice: (i) where a bioengineering or structural practice does not exist, has degraded to a natural condition, or is proposed to be extended to additional shoreline or streambank; or (ii) where an existing practice is proposed to be upgraded to a bioengineering or structural practice. A shoreline or streambank stabilization design must conform to erosion intensity as follows:

1. Low erosion intensity: must use a biological stabilization practice;

2. Medium erosion intensity: may use a biological or bioengineering stabilization practice;

3. High erosion intensity: may use a biological, bioengineering or structural stabilization practice.

Erosion intensity is determined in accordance with subsection 5.a, below.

b. An applicant may deviate from the requirement of subsection 3.a on demonstrating that the intensity calculation does not accurately capture the erosion potential of the shoreline or streambank because of site-specific conditions. In this case, the applicant must use a design adequate for the erosion potential that best fulfills the policies of section 1, above.

4. STANDARDS FOR STABILIZATION DESIGNS.

a. All stabilization designs other than retaining walls must conform to the following:

1. The site condition must show that a stabilization practice is needed to prevent erosion or restore shoreline or streambank.

2. The slope must not exceed 3:1 (horizontal: vertical), unless impractical due to site-specific conditions.

a. Encroachment of a shoreline design lakeward must be minimized, should not exceed five feet, and may not exceed 10 feet.

b. Encroachment of a streambank design into the channel must be minimized, may not reduce channel cross-section, and must meet the No-Rise standard.

3. The design must reflect the engineering properties of the underlying soils and any soil corrections or reinforcements. For a shoreline, the design must conform to engineering principles for dispersion of wave energy and resistance to deformation from ice pressures and movement. For a streambank, design must conform to engineering principles for the hydraulic behavior of open channel flow;"

4. The design of a new installation must follow the natural shape of the shoreline or streambank and justify native vegetation disturbance within the stabilization zone.

5. Work below top of bank must use a flotation sediment curtain installed and maintained in accordance with best practices. The curtain must be removed on the completion of such work after sediment has settled.

b. In addition to the standards of subsection 4.a, biological and bioengineering designs also must conform to the following:

1. Incorporated live plantings must be aquatic or upland species native to Minnesota.

2. Planting must follow sound practice to limit soil disturbance and provide for successful establishment.

3. Wave barriers, if used, may not be placed beyond a water depth of three feet, may not obstruct navigation, and must be removed within two years.

4. Structural elements within an approved bioengineering designs must conform to subsection 4.c, paragraphs 1 and 2, below.

c. In addition to the standards of subsection 4.a, structural designs also must conform to the following:

1. Riprap may not exceed the top of bank, or two feet above the 100-year high water elevation, whichever lower.

2. Riprap must be durable stone that meets size and gradation standards of MnDOT Class III or IV riprap. Toe boulders may be up to 30 inches in diameter but must be at least 50 percent buried.

3. A transitional granular filter must be placed between the native shoreline and riprap to prevent erosion of fine-grained soils. A nonwoven geotextile filter fabric must be placed beneath the granular filter.

4. A practice should include plantings between boulders and native upland plantings where feasible, to slow runoff and limit erosion. Deviation from paragraph 4.c.3 is acceptable as indicated for proper plant establishment.

d. A structural design with a slope of 2:1 (horizontal: vertical) or steeper is considered a retaining wall and must conform to the following:

1. A new retaining wall, or a retaining wall repair/reconstruction that increases floodplain encroachment beyond what is needed for structural soundness, is permitted only under the Variances and Exceptions Rule. The applicant must demonstrate that there is no adequate alternative.

2. The design must be supported by a structural analysis, prepared by a professional engineer licensed in the State of Minnesota to practice civil engineering, that shows the wall will withstand expected ice and wave action and earth pressures, and otherwise must conform to sound engineering principles.

3. The permit will require that an as-built survey, prepared by a registered land surveyor, be filed with the District.

e. Neither riprap conforming to paragraph 2.b.3, above, nor a stabilization design conforming to section 4, constitutes floodplain fill for the purpose of the Floodplain Alteration rule.

5. SUBMITTALS FOR STABILIZATION DESIGNS. The following items must be submitted with an application for shoreline or streambank stabilization.

a. If required by subsection 3.a, an erosion intensity calculation prepared on a form maintained by the District Board of Managers. The calculations are as follows:

1. For shoreline designs, the applicant must calculate erosion intensity as outlined on the District form which is available on the District's website.

2. For streambank designs, the applicant must calculate bank-full stream velocity and shear stress by the following equations and the higher of the two intensity scores will be used:

i. Bankful stream velocity

Manning's equation: $$v = \frac{Q}{A} = \left(\frac{1.49}{n}\right) R^{2/3} S^{1/2}$$

v = Average velocity of flow (feet/sec)
Q = Bankful flow (cubic feet/sec)

A = Area of flow (square feet)
n = Manning's number
R = Hydraulic radius (feet)
S = Slope of channel bottom (rise/run)

Velocity corresponds to erosion intensity as follows:

Below 2 fps	Low erosion intensity
2-6 fps	Medium erosion intensity
Above 6 fps	High erosion intensity

ii. Shear stress on the streambank

$\tau = d \times \mu \times S$

τ = Shear stress (pounds / square feet)
d = Bankful flow depth (feet)
μ = Unit weight of water (62.4 pounds / cubic feet)
S = Slope of channel bottom (rise/run)

Shear stress corresponds to erosion intensity as follows:

Below 2.5 lb/sq ft	Low erosion intensity
2.5 to 5 lb/sq ft	Medium erosion intensity
Above 5 lb/sq ft	High erosion intensity

b. Photographs documenting existing site condition and need for stabilization. Images must be during growing season and must depict, in profile, bank vegetation and slope condition of the subject and adjacent properties, and the existence of emergent or floating vegetation adjacent to the subject property.

c. Site plan including:

1. Surveyed locations of ordinary high water level, 100-year high water elevation, and property lines in plan view.

2. Landward edge of the stabilization zone and elevation contours within the zone, of no more than two-foot resolution, referenced to NGVD 29 datum.

3. Location of the proposed installation and proposed lineal dimensions in plan view.

4. Proposed method of access.

5. Upland baseline parallel to the shoreline/streambank showing distances to the OHW line at 20-foot stations. The baseline endpoints must be referenced to three fixed features, with measurements shown and described. The baseline must be staked, and stakes maintained to project completion.

d. Cross-section with horizontal and vertical scales, depicting or describing:

1. The bank to be stabilized, with OHW level and 100-year high water elevation of the associated waterbody.

2. Description of underlying soils.

3. The proposed stabilization technique, finished slope and distance lakeward from OHW line.

4. Specification of all structural, bioengineered, plant and seed material to be installed.

e. Erosion and sedimentation control and site stabilization plans incorporating best practices.

6. ADDITIONAL SUBMITTALS. In addition to the items in section 5, the following items must be submitted with the application for shoreline or streambank stabilization, as applicable.

a. In addition to the items in section 5, a streambank stabilization design submittal also must include:

1. Cross-sectional, longitudinal and plan views of channel in existing and proposed conditions.

2. Identification of bank-full indicators and in-stream features such as woody debris, riffles and pools.

3. Description of existing slope, bank, channel and adjacent wetland soils and vegetation.

b. A biological or bioengineering design also must include a vegetation establishment plan that includes:

1. A plant list with common and scientific names, seed mix specifications, quantities and origin of all material.
2. Methods, schedule and parties responsible to establish and maintain vegetation for three years after installation, including invasive species control and vegetation replacement.

c. A bioengineering design also must detail the location of all armoring or inert material and describe how the use of such material has been minimized to the extent practical.

d. A design involving aquatic planting or plant removal must include a copy of the Minnesota Department of Natural Resources plant management permit application, if applicable.

7. STANDARDS FOR SANDBLANKETS.

a. An application for a sandblanket must include the following:

1. Site plan showing ordinary high water line, 100-year high water line (if available), property lines, and elevation contours of upland adjacent to application area, referenced to NGVD (1929 datum).

2. Existing and proposed cross-sections and topographic contours, at intervals no greater than 1.0 foot, within application area.

b. The application must conform to the following standards:

1. Sand or gravel, before being spread, must be clean excavated or properly washed material, free of any hazardous or petroleum substance, and of any noxious or regulated invasive species of plant or animal, and any seed or larva thereof.

2. The sand or gravel may not exceed a depth of six inches; may not exceed 50 feet parallel to the shoreline or one-half of lot width, whichever less; and may not extend more than 10 feet waterward of the ordinary high water mark.

3. A site may not receive two District permits within four years. The District will permit only two sandblanket applications at a given site.

4. Beaches operated by units of government for public use are exempt from paragraphs 7.b.2 and 3, but must be maintained to limit environmental impact to the extent reasonable.

8. STANDARDS FOR OTHER INSTALLATIONS.

a. A boat ramp or other boating access structure is permitted on the applicant's demonstration that there is no feasible alternative for access, and that impacts on aquatic habitat and water quality are minimized.

b. The width of disturbance for a boat ramp or other boating access structure is limited to 15 feet, and the volume of material limited to 80 cubic yards below the ordinary high water level, except for a commercial marina or public launch facility when it is demonstrated that a larger dimension is necessary. Any material above the ordinary high water level is considered floodplain fill.

c. If pouring a boat ramp in place, the permittee must conform to containment, dewatering, and other measures as the District requires to protect water quality.

d. The material to construct an installation must be clean, inert and create no risk of adverse environmental impact. The design must be sound and pose no safety or navigational hazard.

9. FINANCIAL ASSURANCE.

A bond, letter of credit or cash escrow in accordance with the District's Financial Assurances rule is a condition of permit issuance.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

9. DREDING RULE

Adopted XXXX
Effective XXX

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

a. Protect surface waters, backwater areas and wetlands next to or hydrologically connected to lakes to maintain stable shoreline; support vegetative diversity and integrity; and protect riparian and aquatic habitat;

b. Minimize impacts from dredging in biologically productive and ecologically sensitive littoral zones to protect water quality and prevent invasive species proliferation;

c. Recognize riparian rights of property owners while protecting public water resources.

d. Preserve the natural appearance of shoreline areas.

2. APPLICABILITY.

a. A District permit is required to dredge within the bed, or below the top of bank, of a public water or public waters wetland, except that a permit is not required to install, maintain or remove a utility structure when that work is subject to a permit under the Waterbody Crossings & Structures Rule.

b. A permit applicant is responsible to obtain all required approvals from other public agencies including the Minnesota Department of Natural Resources (DNR) and, for dredging in Lake Minnetonka, the Lake Minnetonka Conservation District (LCMD). An applicant who has obtained a District permit under this rule may qualify to operate under DNR General Permit No. 2001-6009, in place of an individual DNR permit.

c. Navigational dredging in Lake Minnetonka must meet the standards of the DNR, MCWD and LMCD Dredging Joint Policy Statement (April 1993), which is an attachment to this rule and incorporated by reference. Certain terms of the Joint Policy Statement are incorporated directly into this rule, below.

d. Maintenance dredging by a public agency may qualify for an expedited general permit pursuant to section 7 of this rule.

3. PERMITTED DREDGING.

a. Dredging is permitted only for one of the following purposes:

    1. To maintain an existing public or private channel to dimensions the District previously has approved;

    2. To implement or maintain a legal right of navigational access;

    3. To remove sediment that is a source of nutrients or other pollutants;

    4. To improve the wildlife or fisheries resources of surface waters; or

    5. By a public entity, for a public purpose.

b. In evaluating an application under paragraph 3.a.1, the District will review evidence of historic dredging, including how recently the original dredging or subsequent maintenance occurred and the extent of recent navigational use.

c. In evaluating an application under paragraph 3.a.2., the District will apply principles of riparian rights to determine whether the navigation sought is reasonable. This includes considering:

    1. The ecological sensitivity of the affected waterbody or wetland;

    2. The size, draft, speed, motorized status and other characteristics of watercraft historically used or proposed to be used in the area to be dredged;

    3. The size and restrictiveness of existing channels and bridge openings that may affect navigation; and

    4. The availability of other means to gain access, such as extending docks; purchasing, renting or leasing shore moorings; or anchoring watercraft away from shore moorings.

d. The applicant may not dredge:

    1. To offset floodplain fill, or otherwise above the ordinary high-water level or into the upland next to the waterbody;

    2. Where the dredging would create a channel to connect backwater areas for navigation, or extend riparian rights to non-riparian land;

    3. Where the dredging would alter the natural shoreline or streambank;

    4. Where the dredging may affect the hydrology of an adjacent resource; or

    5. Where the dredged area contains a slope steeper than 3:1 (H:V) in a marina or channel, or 10:1 (H:V) near residential lakeshore.

4. STANDARDS.

a. The application must consider other ways to achieve the purpose of dredging such as dock extension, aquatic nuisance plant removal without dredging, less extensive dredging in another area of the public water, or agreement with a neighboring property. The applicant must show that the proposed dredging is the means to resolve their need that has least impact. Impact to a Preserve wetland or other ecologically sensitive area must be minimal. For the purpose of this paragraph, "impact" means effect on water quality, ecology, groundwater protection, flood management and all other beneficial uses of water resources as described at Minnesota Statutes §103B.201.

b. If dredging is to remove sediment that was transported into the waterbody, the plan must remedy the cause of sediment transport for the future, to the extent the applicant reasonably can do so.

c. Dredging is limited to the minimum dimensions necessary to achieve the purpose. Maximum dredging width for navigation is 15 feet, unless a wider channel better protects water resources. Maximum dredging depth for navigation is as follows, except that the District may consider deeper dredging in accordance with paragraph 3.b, above:

    1. Within Lake Minnetonka: 924.6' for individual channels and mooring spaces, 923.6' for multiple user channels and mooring/maneuvering areas, and 921.6' for public channels maintained by Hennepin County.

    2. Within other waterbodies: Four feet below the ordinary high water elevation.

d. Side slopes within dredged areas are to be 3:1 (horizontal to vertical), unless the District finds that substrate conditions warrant a steeper or gentler slope.

e. Dredging may not occur between April 1st and June 30th, except that the District may allow dredging in a public water wetland during this period if the applicant is able to show that fish spawning does not occur in the wetland.

f. The application must identify a spoil disposal site. The site must not be below the OHW of a public water or wetland, or in a floodplain absent flood storage replacement. The applicant must place and stabilize all spoils so that they will not be transported by reasonably expected high water or runoff.

5. HYDRAULIC DREDGING.

In addition to the standards of section 4, above, hydraulic dredging is subject to the following standards:

a. Dikes must be of compacted earth and not exceed 5.5 feet in height at any point, with a minimum four-foot- wide top and side slopes not steeper than 2:1 (H:V). An alternative design is permitted but must be certified by a professional engineer registered in Minnesota. If the spoil containment has no outlet, it must have four times the calculated volume of solid material to be removed, and a minimum freeboard of one foot above the projected water surface elevation.

b. The applicant must provide a copy of: (i) the Minnesota Pollution Control Agency (MPCA) spoils disposal permit or notification, and (ii) any sediment analysis performed.

c. The applicant must submit a restoration plan that shows how they will retain sediments on site during operations, and how they will restore and revegetate the site. The plan must show final grades.

d. Discharge from a spoil containment must meet MPCA turbidity and total suspended solids standards applicable to the receiving water. The applicant must monitor at least weekly and promptly forward results to the District.

6. SUBMITTALS.

The following must accompany the permit application. On written approval from District staff, the applicant may omit or modify specific items.

a. Site plan showing property lines, delineation of the work area, existing elevation contours of the adjacent upland area, ordinary high water elevation, and 100-year high water elevation (if available). All elevation must be reduced to NGVD (1929 datum).

b. Profile, cross sections and topographic contours showing existing and proposed elevation and side slopes in the work area. Topographic contours must be at intervals of no more than 1.0 foot.

c. For hydraulic dredging:

1. Cross section of the proposed dike.
2. Stage/storage volume relationship for the proposed spoil containment.
3. Detail of any proposed outlet structure, with size, description and invert elevation.
4. Stage/discharge relationship for any proposed outlet structure from the spoil containment.
5. Site plan with the locations of any proposed outlet structure and emergency overflow from the spoil containment.

d. Site plan with the proposed location of floating silt curtains.

e. Support data:

1. Description and volume computation of material to be removed.

2. Description of equipment to be used.
3. Construction schedule.
4. Location map of spoil containment.
5. Erosion control plan for containment.
6. Restoration plan for any proposed permanent on-site spoil containment with final grades, removal of control structure, and a description of site restoration and revegetation.

f. Where dredging is to remove sediment that is a source of nutrients or other pollutants, or where it may cause increased seepage or result in subsurface drainage, the applicant must submit at least two soil boring logs extending at least two feet below the proposed work elevation.

7. GENERAL PERMIT.

a. A public applicant may obtain a general permit to remove non-native sediments at a stormwater conveyance outfall into a public water or public water wetland. In place of the submittals listed in section 6, above, the applicant must submit the following:

1. Location of dredging and estimated volume of dredged material.

2. Basis to determine dredging depth, in the form of approved plans or post-dredge elevation data from prior dredging, core samples establishing the native bed elevation, or a narrative describing other method to determine dredging depth.

b. An application under this section is not subject to section 6 or 8 of the District's procedural Requirements Rule. When the District has confirmed in writing receipt of the applicant's submittal, the general permit is deemed granted and dredging may occur as described.

c. A permittee operating under a general permit must conduct activity in accordance with the following terms:

1. The permittee may remove only sediment identified as non-native material accumulated due to stormwater runoff or erosion.

2. Dredging may not materially change the elevation or contour of the bed of the affected waterbody.

3. Silt curtain must be used to contain sediment.

4. Disturbed bank or upland, including vegetation, must be restored to its prior condition.

8. FAST-TRACK PERMIT.

a. An applicant dredging to maintain an existing navigational channel or access may obtain an expedited permit. In place of the submittals listed in section 6, above, the applicant must submit prior District-approved plans establishing channel dimensions, along with an erosion control and restoration plan. The application is not subject to section 6 or 8 of the District's Procedural Requirements Rule.

b. The District may withhold fast-track approval if an application raises considerations that, in the judgment of District staff, should be addressed through ordinary permit review.

9. FINANCIAL ASSURANCE.

A bond, letter of credit or cash escrow in accordance with the District's Financial Assurances Rule is a condition of permit issuance.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

10. ILLICIT DISCHARGE RULE
Adopted XXXX
Effective XXXX

1. POLICY.

a. The District manages several pipe or channel stormwater conveyance systems within its boundaries. These systems are termed municipal separate storm sewer systems (MS4s) under the federal Clean Water Act. As an MS4 operator, the District regulates connections to, and discharges of pollutants to, its MS4 systems.

b. The District's MS4s are identified in Addendum A to this rule. This rule applies only within those areas of the watershed that drain to the District's MS4s, as delineated on Addendum A. The boundaries shown on Addendum A will be determined more precisely, as necessary, on the basis of local conveyance connections and flow conditions.

2. DEFINITIONS. As used in this rule, these terms have the following meanings:

a. "Direct Connection" is: (i) a physical connection to an enclosed MS4 conveyance; or (ii) a conduit or similar point-source structure that outlets into or adjacent to an open MS4 conveyance, by which the discharge is introduced into the MS4.

b. "Illicit Discharge" is a discharge, other than Stormwater or a Non-Regulated Discharge, into an MS4.

c. "Indirect Connection" is a discharge outside of a closed structure, onto the ground or a surface, whereby through action of gravity, or of runoff under forseeable conditions of rainfall or snowmelt, the discharge reasonably may be expected to enter an MS4 directly, or by means of a public stormwater conveyance.

d. "Non-Regulated Discharge" is one of the following:

1. Flushing of a water line or another potable water source; landscape irrigation; diverted stream flow; rising ground water; ground water infiltration into a storm drain; uncontaminated groundwater; foundation or footing drains (not including active groundwater dewatering systems); crawl space pump discharge; air conditioning condensation; springs; non-commercial vehicle washing; natural riparian habitat or wetland flows; dechlorinated swimming pool discharge; and street wash water;

2. Discharge pursuant to an NPDES permit;

3. Discharge resulting from firefighting activity, or that the District, in writing, specifically has exempted as necessary to protect public health and safety;

4. Dye testing, with prior written notice to the District;

5. A discharge associated only with a residential property use.

e. "Stormwater" is stormwater runoff, snow melt runoff, and surface runoff and drainage.

3. REGULATION.

a. Illicit Discharges are prohibited.

b. A Direct Connection that inlets directly to an MS4 inside a closed structure is prohibited, unless it is constructed so that the discharge consists entirely of a Non-Regulated Discharge. The property owner or operator is responsible to determine whether any drain, fixture or other point of discharge within a structure is prohibited under this paragraph, and if so to discontinue the connection or outlet. The owner or operator must keep a record of this determination, which the District may inspect on request.

c. An Indirect Connection that inlets directly to an MS4 outside of a closed structure is permitted pursuant to owner or operator notice and District written approval. As a condition of approval, the District may require that the owner or operator maintain structural and non-structural practices to limit the risk of Illicit Discharge. A Direct Connection constructed so that the discharge consists entirely of a Non-Regulated Discharge is not subject to this paragraph.

d. An owner or operator may maintain an Indirect Connection without notice to the District or District approval. However, on a determination by the District Board of Managers, after an opportunity to be heard, that an existing or proposed use of the property presents a risk of Illicit Discharge, it may require that the owner or operator maintain structural and non-structural practices to limit that risk.

e. The prohibitions and restrictions of this section apply to new and existing Direct and Indirect Connections, including those made before this rule was adopted, and regardless of whether a connection was permitted under applicable law at the time of its construction.

4. RESPONSE.

An owner or operator of a property where an Illicit Discharge has occurred promptly will take all feasible actions to minimize the discharge into the downgradient MS4, and notify the District in writing. The owner or operator will be responsible for costs incurred by the District to limit the impact of an Illicit Discharge on the MS4, on any downgradient waterbody, and on any beneficial public use thereof.

5. SUBMITTALS.

The following exhibits must accompany a notice under paragraph 3.c, above:

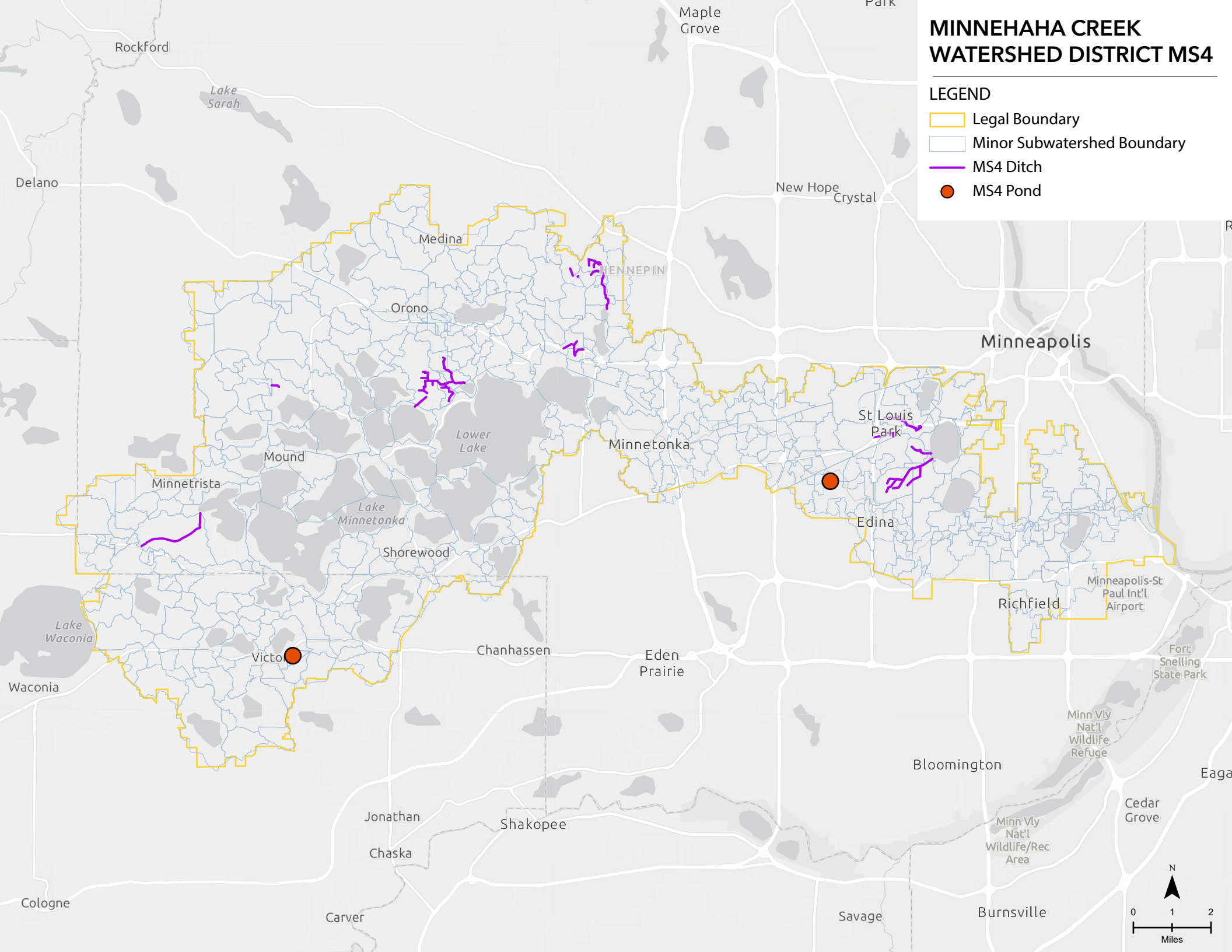
a. Property lines and delineation of lands identifying ownership and easements.

b. Proposed and existing stormwater facilities' location, alignment and elevation.

c. Identification of existing and proposed site contour elevations with at least a 2-foot contour interval.

d. Construction plans and specifications of the proposed connection, including design details, connection method, and timing of connection.

e. Stormwater runoff volume and rate analysis for the one or two-, 10-, and 100-year critical events, existing and proposed conditions.


MINNEHAHA CREEK WATERSHED DISTRICT MS4
LEGEND
Legal Boundary
Minor Subwatershed Boundary
MS4 Ditch
MS4 Pond
Maple Grove
Rockford
Lake Sarah
Delano
New Hope
Crystal
Medina
HENNEPIN
Orono
Minneapolis
St Louis Park
Lower Lake
Mound
Minnetonka
Minnetrista
Lake Minnetonka
Edina
Shorewood
Minneapolis-St Paul Int'l Airport
Richfield
Lake Waconia
Victoria
Chanhassen
Eden Prairie
Waconia
Fort Snelling State Park
Minn Vly Nat'l Wildlife Refuge
Bloomington
Cedar Grove
Jonathan
Shakopee
Chaska
Minn Vly Nat'l Wildlife/Rec Area
Cologne
Carver
Savage
Burnsville
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Miles

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

11. APPROPRIATIONS RULE

Adopted XXXX
Effective XXXX

1. **POLICY.** To fulfill the mandate of Minnesota Statutes section 103B.211, subdivision 4, the Board of Managers regulates appropriations from certain public waters within Hennepin County.

2. **REGULATION.**

    a. This rule applies to surface water appropriations from the following:

        1. A public waters basin or public waters wetland less than 500 aces in area that is wholly within Hennepin County, excluding any basin or wetland with a navigable connection to Lake Minnetonka;

        2. A public waters watercourse with a drainage area of less than 50 square miles.

    b. A permit is required to appropriate up to 10,000 gallons per day and 1,000,000 gallons per year for a non-essential use, as defined as Minnesota Statutes section 103G.291.

    c. An applicant is deemed to possess a general permit authorizing the appropriation on District receipt of a completed notice of appropriation in the form maintained by the District.

3. **CONDITIONS.**

    The District may remove a permit or limit an appropriation if it finds any of the following:

    a. The appropriation may adversely affect the water resource, or deprive the public and riparian property owners of reasonable use of and access to the waterbody;

    b. The purpose of the appropriation may be achieved by another reasonable and practical method, including water storage and reuse of another conservation practice.

    The District may restrict the appropriation at any time, with due notice, to meet in-stream flow needs or protect basin water level.

MINNEHAHA CREEK WATERSHED DISTRICT

BOARD OF MANAGERS

12. FINANCIAL ASSURANCE RULE
PURSUANT TO MINNESOTA STATUTES §103D.341

Adopted XXX
Effective XXX

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

    a. conserve the water resources of the District by assuring compliance with the District's rules in the performance of activities within the watershed; and

    b. use financial assurances supplied by permittees to limit the District's use of general taxpayer funds to monitor land disturbing activity and provide for compliance with District rules and permits.

2. **FINANCIAL ASSURANCE REQUIREMENT.**

    a. The District may require a financial assurance instrument (performance bond, letter of credit or cash escrow deposit) as a condition of issuance of a permit under the District rules.

    b. A financial assurance is required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

3. **FINANCIAL ASSURANCE CRITERIA.** The required financial assurance amount will be set by the Board of Managers from time to time, by resolution. (The current financial assurance schedule may be obtained from the District office or website: www.minnehahacreek.org.)

    a. The financial assurance amount will be set to ensure against potential liabilities to the District, including but not limited to:

        1. Application review, field inspection, monitoring, consultant services and related costs authorized under Minnesota Statutes §103D.345;

        2. The cost to implement and maintain protective measures required by the permit, and otherwise to fulfill permit terms; and

        3. The cost to remedy damage from permit noncompliance or for which the permittee otherwise is responsible.

    b. The financial assurance instrument must be in a form acceptable to the District. A commercial assurance must be issued by a surety licensed to issue such assurances in Minnesota. (Templates may be obtained from the District office or website, www.minnehahacreek.org.)

c. The financial assurance must be issued in favor of the District and conditioned on the permittee's performance of the activities authorized in compliance with the terms and conditions of the permit and all applicable laws, including the District rules, and payment when due of applicable fees or other charges. If the District makes a claim against a financial assurance, the District may require that the permittee restore the full amount within 45 days.

d. The financial assurance instrument will state that it will not be canceled without at least thirty (30) days prior written notice to the District by the surety.

e. Financial assurance submittal is the responsibility of the permittee; however, the surety principal may be the permittee or the entity undertaking the authorized activity on the permittee's behalf.

f. When the permittee provides a cash escrow to fulfill the financial assurance requirement, it will be accompanied by an executed escrow agreement in a form acceptable to the District. (A template agreement may be obtained from the District office or website, www.minnehahacreek.org.)

4. FINANCIAL ASSURANCE RELEASE.

a. On permittee's written notification of project completion, the District may inspect the project. If the authorized activity has been completed in accordance with the terms of the permit and District rules and there is no outstanding balance owed to the District for unpaid permit fees or costs incurred, the District will release the financial assurance. Completion of the authorized activity includes, but is not limited to, site stabilization to prevent erosion and sedimentation and, as applicable, stormwater management features constructed or installed and functioning as designed. If the District does not inspect and determine compliance within 45 days of District receipt of notification, the financial assurance will be deemed released, except that the District, by written notice to the permittee, may postpone the inspection period until seasonal conditions are suitable for inspection.

b. Notwithstanding paragraph 4(a), the District will retain a multi-project financial assurance until all activities being performed under that assurance have been completed or the permittee has provided a substitute assurance.

c. The District may reduce an outstanding financial assurance amount if, in its judgment, the entire amount is no longer required in accordance with paragraph 3(a), above.

MINNEHAHA CREEK WATERSHED DISTRICT

BOARD OF MANAGERS

13. FEES RULE
PURSUANT TO MINNESOTA STATUTES §103D.341

Adopted XXX
Effective XXX

1. **FINDINGS.** The Board of Managers finds that:

   a. Public awareness of and compliance with the permitting process will be served by a policy of charging a minimal permit application fee. Encouraging applicants to seek permits for potential projects reduces public inspection and enforcement costs.

   b. Large-scale development projects and activities in sensitive locations should be inspected by District staff to provide the Board sufficient information to evaluate compliance with District rules and applicable law.

   c. From time to time persons perform work requiring a District permit, but for which the District has not issued a permit, and persons perform work in violation of an issued District permit. The Board finds that District engineering, inspection and analysis costs in such cases exceed those where the applicant has complied with District requirements. The Board further concludes that watershed property owners subject to the District's annual tax levy should not pay costs incurred because of a failure to meet District requirements. Therefore, the Board adopts a rule charging fees to the responsible persons in such cases.

2. **FEES.**

   a. The District will charge an applicant an initial permit processing fee in accordance with a fee schedule set, and revised from time to time, by resolution of the Board of Managers to account for the expected processing and initial inspection cost based on the type and extent of the proposed activity and applicable rule requirements. A permit application is not complete and will not be acted on by the District until the permit processing fee is paid. A current fee schedule is found at the District website at www.minnehahacreek.org.

   b. Beyond the initial permit processing fee, a permit applicant is responsible for the District's actual cost to administer and enforce a permit; the actual cost of field inspections or investigations of the area affected by the proposed activity; analysis of the proposed activity; engineering and other technical analysis; legal fees and costs and administrative expenses; and monitoring of permitted activity.

   c. An applicant or permittee will be invoiced for costs incurred by the District beyond the permit processing fee, as enumerated in this section.

   d. In accordance with section 5 of the Enforcement Rule, permittees are liable for enforcement costs incurred by the District, including but not limited to the cost to inspect

and monitor compliance; fees for engineering and other technical analysis; legal fees and costs; and administrative expenses.

e. An invoice issued in accordance with the provisions of this rule must be paid within thirty (30) days of receipt. Failure to pay a District permitting-fees invoice will constitute a failure to comply with District permit-application requirements or a violation of the terms of an issued permit. The Board of Managers may deny a permit application or revoke a permit based on nonpayment of fees.

3. RECOVERY OF FEE. The fees provided for in this rule may be recovered by the District by any legal action authorized by law.

4. GOVERNMENTAL AGENCIES EXEMPT. No permit fee will be charged to an agency of the United States or any governmental unit in the State of Minnesota.

MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

14. VARIANCES AND EXCEPTIONS RULE

Adopted XXXX
Effective XXXX

1. **VARIANCES and EXCEPTIONS AUTHORIZED.** An applicant may request to be excused from strict compliance with a provision of the District rules. The request must be submitted on a variance or an exception application form maintained by the District. A variance or exception requires a favorable vote of two-thirds of the Board of Managers present and voting.

2. **VARIANCE STANDARD**. An applicant for a variance must demonstrate that strict compliance with an identified provision of the District rules is practically difficult, as a result of an unusual feature of the property or its setting. The Board of Managers, in its judgment, will decide whether a practical difficulty has been shown, and whether a variance to relieve this practical difficulty may be granted. The Board's decision whether to grant a variance will rest on the following:

    a. the cause of the difficulty, and whether the applicant played a role in creating it;

    b. whether the proposal reasonably may be modified to avoid the need for a variance, or there otherwise is a practical way to avoid the difficulty;

    c. the extent to which the applicant seeks to diverge from the rule, and the extent to which the divergence would cause impact to water resources; and

    d. whether the variance would shift a burden to a neighboring property or to the broader public.

3. **EXCEPTION STANDARD**. The Board of Managers may grant an exception from a particular water resource standard, specification or management method in the District rules, if it determines that an alternative approach proposed by the applicant would achieve water resource outcomes of the type that the Board intends the standard, specification or method to achieve, and would do so to at least the same degree.

4. **CONDITIONS.** The Board of Managers may place conditions on the granting of a variance or exception as it finds necessary to determine that the standard for the variance or exception has been met.

5. **TERM.** A variance or exception has the same term as the underlying permit. Unless it specifically states otherwise, a District action renewing, terminating or transferring a permit has the same effect on an associated variance or exception.

MINNEHAHA CREEK WATERSHED DISTRICT

BOARD OF MANAGERS

15. ENFORCEMENT RULE
PURSUANT TO MINNESOTA STATUTES §103D.341

Adopted XXX
Effective XXX

1. **INVESTIGATING NONCOMPLIANCE.** District staff may enter and inspect a property in the watershed to determine whether a violation of a District rule, permit or order exists.

2. **ADMINISTRATIVE COMPLIANCE ORDER.** On finding a probable violation, the District Administrator may issue a compliance order. A compliance order may require a property owner to apply for an after-the-fact permit and/or effect corrective or restorative actions. A compliance order may require that land-disturbing activities on the property cease.

3. **BOARD HEARING**. A compliance order issued by the District Administrator is limited in duration to 20 days. After notice and opportunity to be heard, the Board of Managers may determine that the noncompliance or violation has been corrected and rescind the compliance order. If the Board of Managers determines that the noncompliance or violation has not been corrected, it may extend the compliance order or issue a new order finding a party in violation of the compliance order, or of a District rule, permit or other order, and directing the party to take action to correct or mitigate the effects of the violation or restore the site.

4. **DISTRICT COURT ACTION.** The Board of Managers may seek judicial enforcement of an order or any other remedy available to it under law, including recovery of associated legal costs and fees, through a civil or criminal action pursuant to Minnesota Statutes sections 103D.545 and 103D.551 and any other provisions of law.

5. **LIABILITY FOR ENFORCEMENT COSTS.** To the extent provided by law, a property owner or other party that is the subject of District enforcement will be liable for enforcement costs incurred by the District, including but not limited to the costs of inspection and monitoring of compliance, engineering and other technical analysis, legal fees and costs, and administrative expenses.