

**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.