

**Side-by-Side Comparison of Proposed and Current MCWD Rules  
Rule 6. Waterbody Crossings and Structures**

This side-by-side comparison has been prepared to aid in review of the proposed rule changes. The existing and proposed rules can be found on the MCWD website, along with the Guidance on Proposed Revised Rules which provides a detailed explanation of all substantive changes: <https://minnehahacreek.org/permits/permitting-rule-revisions/>

<b>Key:</b>
<b>Blue &amp; bold font</b> - Key language that represents a substantive change from current language
Grey shading - Revised rule language is a relocation, consolidation, clarification, and/or simplification of the current language (i.e. housekeeping)
<i>Italics</i> - removed text

Revised Section	Revised Language	Current Section	Current Language
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.	1	POLICY. It is the policy of the Board of Managers to: (a) Discourage the use of beds and banks of waterbodies for the placement of roads, highways, and utilities (b) Preserve the ecological integrity of the riparian and aquatic environment, including wildlife and fisheries habitat, and recreational water resources; and (c) Encourage improvement of wildlife passage and habitat, especially for larger projects involving culverts and public right of way in or near natural corridors.
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.	2	REGULATION. No person shall conduct horizontal drilling under or place a road, highway, utility, bridge, boardwalk or associated structure in contact with the bed or bank of any waterbody, including alteration of a waterbody to enclose it within a pipe or culvert, within the District without first securing a permit from the District.
3a	CRITERIA. Use of the bed or bank must: Serve a public purpose, for projects in public waters, and meet a demonstrated specific need for all other projects.	3a	CRITERIA. Use of the bed or bank: Shall meet a demonstrated public benefit for projects involving crossings or structures in public waters, and meet a demonstrated specific need for all other projects;
3b	Retain adequate hydraulic capacity. A project in a watercourse may not increase upstream or downstream flood stage.	3b	Shall retain adequate hydraulic capacity. For watercourses, changes in hydraulic capacity may not result in upstream or downstream increases in flood stage
3c	Preserve navigational capacity.	3c	Shall retain adequate navigational capacity
3d	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.	3d	Shall preserve aquatic and upland wildlife passage along each bank and within the waterbody as follows: (1) Where there is sufficient depth and width, waterbody crossings shall provide upland bank passage to the greatest extent feasible, graded to connect to the streambank on both the upstream and downstream ends; (2) Where the depth or the width of is not sufficient to provide adequate upland bank passage, waterbody crossings shall provide multiple offset culverts; (3) Where the multiple offset culverts are not feasible, waterbody crossings shall provide a wildlife shelf insert above bankful height, unless such a structure will impact hydraulic capacity; (4) <i>Rural section low traffic roads that meet vertical and horizontal site distances for a vehicle speed of 40 mph or less in Table 1, are exempt from the requirements of 3(d)(3).</i>
3e	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.	3e	Shall not adversely affect water quality;
3f	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	3f	Shall represent the “minimal impact” solution to a specific need with respect to all other reasonable alternatives, including, but not limited to vegetation or bioengineering for bank stabilization, structural bank

	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.		stabilization (riprap, retaining walls), acquisition of additional easements, or installation of upstream controls to manage stream flow. 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; and
3g	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. <b>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.</b>	3g	Shall provide for minimum clearance of 3 feet below the bed of a waterbody, and a minimum setback of 100 feet from any stream bank for pilot, entrance, and exit holes, for projects involving horizontal directional drilling.
3h	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.	3h	Shall provide a design for avoiding sanitary discharge to a surface water in the event of a sanitary sewer breakage through use of valves, diversions, redundant pipes or other means.
4a	EXCEPTIONS. 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.	4	The requirements of this rule may be waived upon a determination by the Board of Managers that a waterbody has been significantly altered from a natural state and degraded and that the proposed application would provide ecological restoration and a greater degree of resource protection than would strict compliance with the rule.
4b	<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.</b>	N/A	N/A
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.	5	REQUIRED EXHIBITS. The following exhibits shall accompany the permit application. One set - full size; one set - reduced to maximum size of 11”x17”. (a) Construction plans and specifications. (b) Analysis prepared by a professional engineer or qualified hydrologist showing the effect of the project on hydraulic capacity and water quality. (c) A temporary and permanent erosion control plan. (d) Information necessary to evaluate impacts under paragraph 3(f), including at least two alternative designs that minimize or avoid the proposed impact(s), and such other information
6	<b>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.</b>	N/A	N/A
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.	6	MAINTENANCE. A declaration or other recordable instrument stating terms for maintenance of hydraulic and navigational capacity and approved by the District shall be recorded in the office of the county recorder or registrar before activity under the MCWD permit commences. 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 public body shall require the transferee to comply with this subsection.