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<b>Title:</b>	Adoption of Revised Rules and Authorization of Comment Responses	
<b>Resolution number:</b>	24-023	
<b>Prepared by:</b>	Name: Becky Christopher, Policy Planning Director Phone: 952-641-4512 bchristopher@minnehahacreek.org	
<b>Recommended action:</b>	Adoption of revised rules and authorization to release comment responses	
<b>Schedule:</b>	April 11, 2024: Rule adoption April 29, 2024: Effective date of MCWD's revised rules	
<b>Budget considerations:</b>	N/A	
<b>Past Board action:</b>	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
	Res # 23-065	Authorization to Release Proposed Rule Revisions for Public Comment Period

**Summary:**

Rule Revision Purpose

Over the past several years, the Minnehaha Creek Watershed District (MCWD) has been working to align the organization to support its vision of a Balanced Urban Ecology, where built and natural environments exist in balance to create value and enjoyment. 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, staff engaged the TAC 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 rules. The TAC also provided recommendations to further improve clarity and streamline process for low-risk projects, and these recommendations were integrated into the draft rules.

On [October 26, 2023](#), the Board authorized the release of the proposed rule revisions for a 45-day public comment period which was noticed in the Star Tribune and sent to all public transportation authorities (MnDOT, counties, cities, townships), the Board of Soil and Water Resources, TAC members, frequent applicants, and state agencies. On January 11, 2024, the MCWD held a duly noticed public hearing on the proposed amendments, at which time no comments were received. The comment period closed on February 1, 2024, and nine comment letters were received. The Board reviewed these comments at its [February 15, 2024](#) Planning and Policy Committee meeting. In addition, informal comments were received after the close of the comment period from the Met Council Interceptor Engineering staff, and these have been incorporated into the attached comment list.

MCWD staff, in coordination with the District Engineer and legal counsel, have drafted the attached responses to comments and made additional revisions to the rules based on these comments.

### Requested Action

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

- Adopt the revised rules with an effective date of April 29, 2024
- Authorize the release of comment responses

Once the rules are adopted, staff will publish notice of the adoption of the amended rules, mail a copy of the amended rules to the governing body of each city affected by the amended rules and public transportation authorities with jurisdiction in the watershed, and file a copy of the amended rules with the Hennepin County Recorder and the Carver County Property Records Department. Staff will also prepare updates to the website and send notice to frequent applicants. Finally, staff has been working with Novotx to prepare the necessary revisions to MCWD's online permitting portal and will have it ready to go live on the effective date of April 29, 2024.

### **Supporting documents:**

Attachment 1: Public comments and responses

Attachment 2: Final proposed rules



## RESOLUTION

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**Resolution number:** 24-023

**Title:** Adoption of Revised Rules and Authorization of Comment Responses

- 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, from October 2022 to June 2023, the District engaged a Technical Advisory Committee (TAC) to review and advise on the proposed rule revisions as part of its Land & Water Partnership Initiative;
- WHEREAS, the TAC showed strong support for MCWD's efforts to streamline, simplify, and align the rules and provided recommendations to further improve clarity and streamline process, and the rules were further revised based on TAC input;
- WHEREAS, on December 18, 2024, the MCWD released the proposed amendments for a 45-day public comment period and notified all public transportation authorities (MnDOT, counties, cities, townships), the Board of Soil and Water Resources, TAC members, frequent applicants, and state agencies;
- WHEREAS, on January 11, 2024, the MCWD held a duly noticed public hearing on the proposed amendments, at which time no comments were received;
- WHEREAS, the Board reviewed the comments received during the comment period at its February 15, 2024 Planning and Policy Committee meeting and has given due consideration to all comments;

WHEREAS, the MCWD has drafted written responses to all comments and made additional revisions to the rules based on these comments; and

WHEREAS, the Board finds the amended rules to be justified, sound, reasonable and fair; to serve to protect, conserve, and manage the beneficial use of the waters and resources of the watershed; and generally to promote the public welfare;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby adopts the attached amended rules, effective on April 29, 2024, and authorizes the Administrator to issue the attached responses to comments; and

BE IT FURTHER RESOLVED that the Board directs the Administrator to publish notice of the adoption of the amended rules, mail a copy of the amended rules to the governing body of each city affected by the amended rules and public transportation authorities with jurisdiction in the watershed, and file a copy of the amended rules with the Hennepin County Recorder and the Carver County Property Records Department.

Resolution Number 24-023 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 4/11/2024

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_

**Public Comments and Responses on MCWD's Proposed Revised Rules**

#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
1	4 - Floodplain	2.a.	Please clarify if a floodplain permit is required for projects that have temporary impacts to the floodplain but will not alter the final floodplain grade. Will permit exemptions be considered for non-permanent temporary-only impacts resulting in no alteration in post-construction final grade?	CenterPoint Energy	The District reviews all projects involving floodplain disturbance to ensure that there will be no loss of storage and appropriate erosion and sediment control practices will be utilized.	N
2	5 - Stormwater	2.a.3.	Please clarify if this is only referring to permanent grade changes or if this includes temporary disturbance as well when the area will be returned to pre-construction grade and contours. Will permit exemptions be considered for non-permanent temporary-only impacts resulting in no alteration in post-construction final grade?	CenterPoint Energy	Yes, this section only refers to permanent changes. The District has revised the text to indicate that the permit requirement applies to mass grading and other significant changes to land contours.	Y
3	3 - Erosion	Addendum	MN Construction Stormwater General Permit (CSGP) Addendum – For consistency across regulatory bodies the City supports aligning the erosion and sediment control requirements with that of the CSGP. These requirements should be incorporated by reference rather than as an addendum. This way there is less need to update the District’s rules upon updates to the CSGP.	City of Minneapolis	Section 4 of the rule incorporates the applicable Construction GP terms by reference. The addendum is informational and included for the convenience of the applicant. If the MPCA amends a Construction GP term, the District may substitute an updated addendum without a rulemaking. The District has deleted reference to the addendum in Section 4 so that the initial version of the addendum is not considered as an element of the rule itself.	Y
4	3 - Erosion	3.b.4.	Consider change to “one-mile aerial radius” so that there is a clear measurement metric for applicants.	City of Minneapolis	This change has been made for improved clarity.	Y
5	5 - Stormwater		There are cases where it is not enough that a project removes pollutants to the current Stormwater Management rule standard and be in compliance at the project boundary. If the project leads to a negative impact at the receiving water, then there needs to be a higher standard imposed. The purpose of stormwater regulations is to protect our natural water bodies so the rule should reflect improvements at the receiving water and not just looking at the project in a vacuum. Please add a requirement that there be no negative impact to the receiving water quality. Future rulemaking may be required to fully address this request.	City of Minneapolis	MCWD's proposed rule regulates stormwater in a way that is consistent with the MPCA and establishes volume and rate control requirements based on change in impervious cover. As discussed with the TAC, changing the District's rule to regulate impacts at a receiving waterbody would be a significant change in standards that is beyond the scope and intent of these rule revisions. The District also believes that some of these concerns may be better addressed as a planning rather than regulatory matter. The District understands the commenter's concerns, and will consider these recommendations further as part of the District's upcoming climate planning and engagement process with its communities.	N
6	7 - Wetland	5.b.	Please amend the language to state that public entities are not obligated to acquire additional right of way or easements to meet the applicable buffer width requirements.	City of Minneapolis	Subsection 5.a states: “An applicant is not obligated to acquire property to meet the applicable buffer width under this rule.” This term applies to both private and public applicants. To offer added clarity, the District has added a reference to right-of-way.	Y
7	9 - Dredging	2.a.	Per the proposed language, the rule is applicable for dredging within public water wetlands. Please clarify if this rule also be applicable to wetlands that are not a part of the public water inventory.	City of Minneapolis	Excavation in a non-public water wetland is regulated under the Wetland Conservation Act and the Wetland Protection rule, not under the Dredging rule.	N
8	2 - Procedures	4.a.	The City would request that a timeline be established for reviewing permit applications. A 60-calendar day review period is suggested.	City of Plymouth	District review of permit applications is subject to the 60-day timeline of Minnesota Statutes 15.99, and related terms there. A reference has been added to the rule.	Y
9	3 - Erosion	6.c-e	Items c, d and e appear to be redundant. We would suggest combining these three items into one.	City of Plymouth	These three items may not occur at the same time in all cases. In cases where all three are met at the same time, the applicant need only notify the District once.	N
10	3 - Erosion	Addendum	Consider striking the addendum and including the MPCA permit by reference. If the Minnesota Pollution Control Agency (MPCA) permit text is copied, the MCWD rules would need to be updated if/when there are changes to the MPCA rules.	City of Plymouth	Section 4 of the rule incorporates the applicable Construction GP terms by reference. The addendum is informational and included for the convenience of the applicant. If the MPCA amends a Construction GP term, the District may substitute an updated addendum without a rulemaking. The District has deleted reference to the addendum in Section 4 so that the initial version of the addendum is not considered as an element of the rule itself.	Y
11	4 - Floodplain	2.b.	Low-floor elevations also need to be 2+ feet above the 100-year high water elevation of a waterbody per FEMA rules.	City of Plymouth	The question of whether or not to align the District's freeboard requirement with FEMA and DNR was discussed by the TAC. The DNR has different requirements for principal structures vs. critical facilities, as well as for structures in floodway or flood zones. It was determined that trying to align would make the rule more complicated and would increase standards in some cases while decreasing in others, as compared to the current rule. For these reasons, the general consensus of the TAC was to keep the District's freeboard requirement as it is.	N

**Public Comments and Responses on MCWD's Proposed Revised Rules**

#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
12	5 - Stormwater	2.a.3.	<p>["Grading or otherwise changing land contours, except for agricultural activity, so as to affect the direction, peak rate, volume or water quality of runoff."]</p> <ul style="list-style-type: none"> <li>This language captures any construction work of any size. Is the intent to require a permit and a stormwater BMP with any size project?</li> <li>We suggest establishing a baseline disturbance area that would trigger a review by MCWD.</li> </ul>	City of Plymouth	The District has revised the text to indicate that the permit requirement applies to mass grading and other significant changes to land contours. The District does not wish to specify a threshold acreage as the risk of an action to surface water resources will depend on circumstances. The District's intent by its edit is to make clear that homeowner or other smaller-scale disturbances will not require a permit. Those intending more substantial land changes will be developers or public agencies that can be expected to consult with the District before undertaking the proposed work.	Y
13	5 - Stormwater	2.b.1-4	Suggest that if the District is deviating from the MPCA rules, have a good reason for doing so.	City of Plymouth	The purpose of this section is to carry forward existing exemptions from the District's current rule where allowed under the MS4 permit.	N
14	5 - Stormwater	3.b.	MPCA permit requires volume reduction, not abstraction. Volume reduction and abstraction are not the same thing and do not align fully with one another. We would suggest MCWD consult with MPCA on this language to confirm compliance with MS4 Permit.	City of Plymouth	The District has replaced the term "abstraction" with "volume reduction" and adjusted similar terms within the stormwater management rule.	Y
15	5 - Stormwater	4.a.	<p>Suggest changing the wording as follows:</p> <ul style="list-style-type: none"> <li>An action may not increase the peak runoff rate from the site, in aggregate, for the one, <del>or</del> two, 10 <del>or</del> and 100-year design storm event.</li> </ul>	City of Plymouth	The intent of this language is to allow applicants to submit modeling for either the 1 or 2-year event, not both. This is meant to provide additional flexibility for applicants based on the District's understanding that some cities within the watershed require the 1-year event while others require the 2-year. The rule has been revised to improve clarity under section 9.a.7.	Y
16	5 - Stormwater	6	[... vertical separation between the 100-year high water elevation of a waterbody or stormwater practice and the low opening <u>and low floor</u> of any structure,...]	City of Plymouth	The question of whether or not to align the District's freeboard requirement with FEMA and DNR was discussed by the TAC. The DNR has different requirements for principal structures vs. critical facilities, as well as for structures in floodway or flood zones. It was determined that trying to align would make the rule more complicated and would increase standards in some cases while decreasing in others, as compared to the current rule. For these reasons, the general consensus of the TAC was to keep the District's freeboard requirement as it is.	N
17	5 - Stormwater	7.b.	Allowing an increase in duration of inundation of up to 21 days on a downgrading waterbody appears to contradict the rate control requirement. Please provide explanation.	City of Plymouth	<p>In the event the waterbody was on-site, rate control to the waterbody would not necessarily be reviewed, since rate control is evaluated at site boundaries. This provision allows for consideration of impacts to natural resources themselves, as opposed to at site boundaries.</p> <p>Also, there could be a scenario where peak rates are managed and rate control is satisfied, but discharge volume is released over a long duration, such that the inundation period of a receiving waterbody may be prolonged longer than in the existing condition.</p>	N
18	5 - Stormwater	9.b.	Clarify that a double ring infiltration test or approved equal would be an acceptable method of soil testing for submittal.	City of Plymouth	This section has been revised to allow for other methods of demonstrating infiltration feasibility, as identified in the MN Stormwater Manual.	Y
19	5 - Stormwater	10.b.	Confirm existing agreement between Plymouth and MCWD complies with this section.	City of Plymouth	Yes, the City's existing Programmatic Maintenance Agreement with MCWD satisfies this requirement (now at section 10.c).	N
20	5 - Stormwater	Table 1	Row 1, columns 1 and 2: There should be a minimum size that doesn't require this permit or a BMP listed here.	City of Plymouth	The BMP requirement for sites <1 acre is consistent with the current rule. The District's approach with the Stormwater rule revision was to increase standards where required to comply with the MS4 permit, but to otherwise keep existing standards. There are some exemptions to this requirement under 2.b, such as for single-family homes. Also, the BMP requirement has no specific treatment scope or standard, so the applicant has the flexibility to select a structural or non-structural practice that works for the site.	N
21	5 - Stormwater	Table 1	Row 1, column 3: Shouldn't there be a number here? Is this saying that no site disturbance still requires a BMP?	City of Plymouth	No, it is saying that disturbance area is not relevant in determining treatment requirements for this category of development.	N
22	5 - Stormwater	Table 1	Row 3, column 4: 9%?	City of Plymouth	The row in question is for sites with a 0-50% <u>increase</u> in impervious surface. The row above this is for sites with a 0-9% <u>decrease</u> in impervious surface.	N

**Public Comments and Responses on MCWD's Proposed Revised Rules**

#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
23	5 - Stormwater	Table 1	Row 4, columns 2 and 4: What does the N/A mean here?	City of Plymouth	Impervious surface area and impervious surface change are not relevant in determining treatment requirements for this category of development. These have been changed from "N/A" to "-" for consistency with row 1 of this table.	Y
24	5 - Stormwater	Table 2	Rows 1-3, column 3: Treatment to extent reasonable and feasible	City of Plymouth	Section 3.d has been revised to require equivalent phosphorus control "to the extent feasible" for linear projects.	Y
25	7 - Wetland	2.a.	Provide clarification on the applicability of this rule where a municipality is an LGU. Suggest the following language: <ul style="list-style-type: none"> <li>Where a municipality is the LGU, that municipality will administer MnWCA in accordance with Minnesota Statutes and Minnesota Rules, and permitting under the District's Wetland Protection Rule for WCA purposes is not required.</li> </ul>	City of Plymouth	Where a municipality is the WCA LGU, the municipality will administer WCA. However, a District permit may still be required for wetland buffers and mitigation of any non-WCA regulated excavation, as described in Section 2.b.	N
26	7 - Wetland	3.b.	Clarify that this is more stringent than current WCA rules. If so, explain reasoning.	City of Plymouth	It is unclear which requirement this comment is referencing. Section 3.b pertains to two areas of regulation that are not addressed by WCA: (1) excavation in wetland types that are not regulated by WCA, and (2) buffers for wetlands that are impacted or subject to increased runoff from impervious surface. Both requirements are intended to support the Board's policy under 1.a. to "protect and enhance the quantity, quality, and biological diversity of MN wetlands ..."	N
27	7 - Wetland	4.a.2.	Suggest adding "if feasible for linear projects" <ul style="list-style-type: none"> <li>Acquiring land to install wetland buffers on linear projects typically isn't a cost effective practice.</li> </ul>	City of Plymouth	Subsection 5.a states: "An applicant is not obligated to acquire property to meet the applicable buffer width under this rule." This term applies to both private and public applicants. To offer added clarity, the District has added a reference to right-of-way.	Y
28	7 - Wetland	4.a.3.	Clarify the intent of this rule. As written, this will make many existing lots unbuildable and unable to build new homes. <ul style="list-style-type: none"> <li>Recommend that this rule exempt any projects that disturb less than one (1) acre.</li> </ul>	City of Plymouth	The intent of the buffer requirement is to protect wetlands from encroachment and degradation from stormwater runoff produced by new impervious surface. Under subsection 5.e, buffers for New Principal Residential Structures are reduced in width as compared to other land uses to account for this concern. In addition, the rule states that the required buffer will not render the property unbuildable.	N
29	7 - Wetland	4.d.	Encumbering existing right of way is duplicative and not needed.	City of Plymouth	The declaration includes vegetation maintenance requirements that are specific to buffer areas and may differ from typical vegetation maintenance within right-of-way. Public entities have the option to execute a programmatic maintenance agreement with the District in place of project-specific declarations, as Plymouth has done.	N
30	7 - Wetland	5.e.	[... and the wetland, or 25 feet, whichever is greater...] <ul style="list-style-type: none"> <li>25' is a large amount of some properties abutting wetlands in the City. Further restricting this buildable area will remove back/side yards and could make some properties unbuildable. Consider an exemption for projects under 1 acre in size to avoid all such circumstances having to go through the variance process.</li> </ul>	City of Plymouth	This subsection specifically states that the required buffer will not render the property unbuildable. In addition to the reduced width allowed for New Principal Residential Structures, the rule allows for buffer averaging down to 50 percent of the base width. The requirements of this section are consistent with the current rule, and in the District's experience, applicants have been able to meet the requirement without the need for a variance.	N
31	7 - Wetland	6.d.	[...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....] <ul style="list-style-type: none"> <li>Recommend adding an exception for public roads, trails and sidewalks. Public sidewalks are a minimum of 5' and trails are often 8'-12'. There are situations where a public road or trail project would not be able to meet the buffer requirements.</li> </ul>	City of Plymouth	The purpose of this language is to allow for an access path to the wetland, and it is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b. If the purpose of the path or trail is not for wetland access, then an applicant would be expected to meet the minimum buffer width requirements.	N
32	8 - Shoreline	2.a.	Suggest adding an exception for docks	City of Plymouth	Installation of a dock typically does not create a significant disturbance to the bank and is therefore not regulated under this rule. If there were bank grading or stabilization work associated with a dock installation, a permit would be required.	N

**Public Comments and Responses on MCWD's Proposed Revised Rules**

#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
33	8 - Shoreline	2.b.3.	Suggest adding the underlined language: <ul style="list-style-type: none"> <li>[...if the riprap complies with MnDOT Standard Plates 3133, 3134, and 3139, or <u>guidelines of the applicable local agency and appropriate...</u>]</li> </ul>	City of Plymouth	The proposed language would create a broad exemption. The District prefers to reference specific standards where possible.	N
34	9 - Dredging	Title	Fix the spelling error in the title of rule to Dredging Rule	City of Plymouth	This typo has been corrected.	Y
35	9 - Dredging	4.c.2.	Consider adding the following: [... within other waterbodies: four feet below the ordinary high water elevation, <u>except when work is completed by a public agency for a public purpose and the project has been approved by the District and other agencies (as required).</u> ]	City of Plymouth	This section is specific to navigation, and four feet is a depth that the District considers to be reasonable for that purpose. In addition, the District may consider deeper dredging in accordance with paragraph 3.b.	N
36	9 - Dredging	7.c.1-2	Consider adding the following text to the rule: " <u>except when work is completed by a public agency for a public purpose and the project has been approved by the District and other agencies (as required).</u> "	City of Plymouth	This General Permit is specific to public agencies. The District, in consultation with the TAC, has established minimum requirements that it believes are reasonable to qualify for General Permit coverage.	N
37	10 - Illicit Discharge	2.d.5.	[A discharge associated only with a residential property use] <ul style="list-style-type: none"> <li>• This language is very vague, please verify the intent.</li> </ul>	City of Plymouth	The MS4 General Permit, at sections 3.2 and 18.4, excepts "non-regulated" discharges from coverage under the illicit discharge rule, where the permittee finds them to be a non-significant contributor of pollutants. The District reads the list of these discharges to encompass nearly all of the types of discharges to stormwater that a residential owner would produce. The District also finds that monitoring of residential discharges to its MS4s is not likely to be a sound use of its resources, and that there is a benefit in expressing clearly that the rule does not apply to residences.	N
38	10 - Illicit Discharge	3.b-c	This record keeping and request for authorization seem to be an undue burden on all property owners. Suggested edit would be: "all illicit discharges are unauthorized."	City of Plymouth	The District has considered regulatory burden in developing the rule, and does not find that the documentation requirement of subsection 3.b or the notice requirement of subsection 3.c is likely to be an undue burden. First, the rule applies only to that part of the District that drains to its limited set of MS4s. Subsection 3.b simply says that if a (non-residential) property owner has an interior direct connection to a District MS4 conveyance, the owner has a responsibility to determine that the connection is not putting a prohibited discharge into the District's conveyance. The requirement is simply to have a piece of paper that documents that the owner made the determination. The requirement of notice and District approval under 3.c applies to both existing and new Direct Connections, but those that are external to buildings and other enclosed structures. Because existing connections may have been constructed at a time less attentive to waste discharge into surface waters, the District should have a vehicle by which these old connections can be noted and, if appropriate, discontinued. As to new Direct Connections, a property owner can avoid the notice and approval requirement by foregoing a new connection and managing stormwater on the property.	N
39	10 - Illicit Discharge	3.d.	Contradictory language in paragraph 3c, 3d and Section 5.	City of Plymouth	There was a typo in the first sentence of 3.c. where it should have said "Direct" connection rather than "Indirect". This has been corrected.	Y
40	10 - Illicit Discharge	5.e.	[Stormwater runoff volume and rate analysis for the one and two-, 10-, and 100-year critical events, existing and proposed conditions, <u>or as required by the District.</u> ] <ul style="list-style-type: none"> <li>• this section may not apply in all illicit discharge situations so adding the underlined sentence gives staff the ability to not require when not necessary.</li> </ul>	City of Plymouth	The critical events under this section have been changed back to the two-, 10-, and 100-year, as in the current rule, to reduce confusion. Under Section 1 of the Procedures rule, District staff has the ability to waive requirements that it finds unnecessary for a specific application.	Y
41	10 - Illicit Discharge	Addendum	Recommend showing and labeling County, State and major city roads on map. The subwatershed boundaries do not help much for special location throughout the watershed for most users of the rules.	City of Plymouth	Major roads have been added to the map as requested.	Y



**Public Comments and Responses on MCWD's Proposed Revised Rules**

#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
42	10 - Illicit Discharge	Addendum	Add the "MS4 Ditch" layer to the online geospatial map the District maintains.	City of Plymouth	The District will create an online map of the District's MS4 and contributing drainage area and link to it from the District's website. The District will also share a shapefile of its MS4 boundary through its OpenData portal, making it easily accessible for downloading ( <a href="https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search">https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search</a> ).	Y
43	10 - Illicit Discharge	Addendum	Confirm there are no MCWD MS4 ponds in Plymouth. <ul style="list-style-type: none"> <li>▪ Plymouth staff recalls the 3 ponds on the north side of Gleason lake are maintained by MCWD.</li> </ul>	City of Plymouth	The District's determination of whether or not a pond is part of its MS4 is based on whether or not the District owns or operates the conveyances connected to it. Maintenance obligations are documented through project-specific agreements with each city, regardless of whether or not it is part of the District's MS4.	N
44	10 - Illicit Discharge	Addendum	Confirm that there are MS4 Ditches in Plymouth. <ul style="list-style-type: none"> <li>▪ Plymouth staff believe that some of the MS4 Ditches are actually storm sewer pipe based on the map.</li> </ul>	City of Plymouth	The District is the drainage authority for County Ditches 10, 14, 15, 17, 27, 29, and 32 and Judicial Ditch 2, as described in Section 2.2.4 of the District's Watershed Management Plan. County Ditches 15 and 32 lie entirely within the City of Plymouth. The first is a series of ponds connected by pipe, and the second lies within Gleason Creek. These two systems, a combination of open channel and subsurface pipe, no longer serve agricultural drainage purposes but provide drainage for residential development and associated roads. The drainage code allows for a drainage system to be transferred to a municipality or other body when the system is better managed as stormwater conveyance infrastructure rather than under the drainage code. The District, in cooperation with the relevant local government units, may consider whether one or more of its urban systems is appropriately subject to a shift in management pursuant to these drainage code provisions.	N
45	15 - Enforcement	1	What legal authority does MCWD have to enter private property without permission to investigate possible violations?	City of Plymouth	Minnesota Statutes §103D.335, subdivision 14, provides : "The managers may enter lands inside or outside the watershed district to make surveys and investigations to accomplish the purposes of the watershed district. The watershed district is liable for actual damages resulting from entry.	N
46	5 - Stormwater		The MS4 permit uses "Water Quality Volume", while the proposed stormwater management rule uses "Abstraction Volume". Since the requirement appears to be the same, we recommend adopting the same language as the state permit.	City of Richfield	The District has replaced the term "abstraction" with "volume reduction" and adjusted similar terms within the stormwater management rule.	Y
47	5 - Stormwater	3.c.	The proposed rule states that "Equivalent phosphorus control may be demonstrated by modeling or, for filtration practices, by treating twice the required abstraction volume". The requirement to treat twice the water quality volume with filtration practices is not in the MS4 permit or CSW general permit. Recommend that the rule align with state requirements. Also – please clarify whether modeling demonstrating equivalent phosphorus removal can substitute for the requirement to treat twice the abstraction volume.	City of Richfield	The 2x requirement is carried forward from the current rule and is based on the MN Stormwater Manual guidance that says sand filters remove approximately 50% of influent total phosphorus (TP), as compared to infiltration systems which remove 100% of influent TP. Section 3.c allows for other methods of demonstrating equivalent phosphorus control besides the 2x calculation.  Recognizing that linear projects are often more space-constrained, section 3.d has been revised to require equivalent phosphorus control "to the extent feasible", similar to item 20.7 of the MS4 permit.	Y
48	5 - Stormwater	7.a.	"Point Source" is not defined in the proposed rule or definitions. Please clarify.	City of Richfield	A definition has been added to the Definitions rule: "A discrete point of discharge to water, such as a pipe or ditch".	Y
49	5 - Stormwater	8.b.	If an applicant fully meets stormwater requirements using an off-site facility, it is unclear why an onsite BMP is still required. Also – does this apply to linear project sites and/or those using regional stormwater facilities? Please clarify.	City of Richfield	The BMP requirement for sites utilizing a regional facility is carried forward from the current rule and is intended to help mitigate localized impacts. The District's approach with the Stormwater rule revision was to increase standards where required to comply with the MS4 permit, but to otherwise keep existing standards. The BMP requirement has no specific treatment scope or standard, so the applicant has the flexibility to select a structural or non-structural practice that works for the site. This requirement applies to any project utilizing off-site facility.	N

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
50	6 - Waterbody Crossing	7	Requiring a maintenance agreement for every pipe, culvert and outfall maintained under this rule could quickly become cumbersome. Perhaps explore creating general or template agreements with cities and agencies within the MCWD to simplify this process.	City of Richfield	Public permittees have the option of entering into a programmatic maintenance agreement (PMA) with the District rather than individual project agreements. These PMAs are in place with many cities within the watershed and can be used to satisfy maintenance requirements under this rule as well as the Stormwater Management and Wetland Protection rules.	N
51	7 - Wetland	5.a and d	Paragraph a states that "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", while paragraph d states that "Buffer width at any point may be reduced to no less than 50 percent of Base Width", which is less than the Base Width Minimum. Please clarify.	City of Richfield	An applicant first determines their base width, which may be reduced on the basis of favorable slope or soil conditions down to the minimum width listed under 5.a (e.g. 16 ft for a Manage 3 wetland). Then, the applicant can apply averaging to reduce down to 50 percent of that base width (8 ft) provided that the buffer is widened in other areas to provide the same total buffer area as would be provided by a buffer of uniform width (16 ft).	N
52	7 - Wetland	6.d.	"...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". Four feet is relatively narrow for a trail. Recommend allowing slightly wider trails, perhaps 6 feet.	City of Richfield	This language is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b.	N
53	9 - Dredging	Title	Typo – "Dreding" instead of "Dredging"	City of Richfield	This typo has been corrected.	Y
54	9 - Dredging	3.d.	"The applicant may not dredge... Where the dredging would alter the natural shoreline or streambank". Many waterbodies, including public waters, have been extensively modified in the past. On what basis is the natural shoreline determined? If determination of the 'natural shoreline' is based on present-day conditions, would reshaping/restoration of a historically filled or modified public water then require a variance?	City of Richfield	In the case of a restoration project, the District would use best available information regarding the historic shoreline, and likely review the project in coordination with the DNR, who may require an individual permit. It is difficult to assess whether a variance would be needed in this case.	N
55	9 - Dredging	4.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". In urbanized watersheds, fully remedying the root causes of sediment transport may be extremely challenging or infeasible. Depending on how stringently it is interpreted, this requirement could pose a significant burden to permittees.	City of Richfield	The text change was intended to simplify, and not to change meaning. The text has been edited to be less of a change from the existing language, and hopefully to not create the uncertainty that the commentor has conveyed.	Y
56	9 - Dredging	7.c.	The rule states that "...Dredging may not materially change the elevation or contour of the bed of the affected waterbody". Please clarify – is accumulated sediment not considered part of the bed of the waterbody?	City of Richfield	That is correct. This refers to the native bed elevation as referenced under 7.a.2.	N
57	10 - Illicit Discharge	3.c-d	The language used here is unclear. Paragraph c states that "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". On the other hand. Paragraph d states that an owner or operator "may maintain an Indirect Connection without notice to the District or District approval". Please clarify.	City of Richfield	There was a typo in the first sentence of 3.c. where it should have said "Direct" connection rather than "Indirect". This has been corrected.	Y
58	1 - Definitions		Design Storm – Hennepin County, MnDOT and virtually every hydraulic report received through design review and plat review is using an MSE 3 rainfall distribution. I rarely see NRCS Type II anymore and the MN Stormwater Manual recommends moving away from it (MN Stormwater Manual; please see the 'Rainfall Distribution' section). I foresee issues if the watershed requires projects to submit using NRCS Type II when it was originally designed with MSE 3. I suggest considering changing to MSE 3 or at a minimum allow it as an option.	Hennepin County	The District agrees that MSE-3 is currently best practice, and the definition has been updated accordingly.	Y
59	1 - Definitions		Impervious – "non-pervious concrete" is confusing. Is non-pervious concrete regular concrete and if so, should we say concrete? Suggest including asphalt or porous asphalt depending on the intent of this definition. The MPCA indicated pervious asphalt / concrete was viewed as a pervious surface for rate / quality calculations.	Hennepin County	This definition has been revised to improve clarity. Due to risks the District sees with the design and maintenance of permeable pavements (asphalt, concrete, pavers), these will be treated as impervious but may be eligible to count as a volume reduction practice with appropriate design and maintenance agreements. This explanation has been added at 2.e of the Stormwater Management rule.	Y

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
60	1 - Definitions		No-Rise Standard – does “modeling error” need to be defined?	Hennepin County	This definition has been revised for clarity to mean an increase in 100-year high water level of no more than 0.00 ft from existing to proposed condition.	Y
61	1 - Definitions		100-year high water elevation – “in each case subject to the District’s concurrence as to modeling adequacy” Does this add unnecessary responsibility on to the watershed? Does this imply that the watershed is indirectly certifying other models?	Hennepin County	This language is primarily intended for applicant-developed, site-specific modeling.	N
62	5 - Stormwater	2.a.	The proposed language for linear projects and a common plan of development over a 10-year period is interesting. If this isn’t being required by the MPCA it seems unnecessary. The staff time to track and evaluate this vs. the frequency this happens, and the corresponding minimal water quality benefit doesn’t seem in alignment.	Hennepin County	The MPCA has issued guidance for the application of the Common Plan of Development concept. The District has determined that with this guidance, the concept is well-developed enough that the District need not seek to further define it in the rule. Accordingly, the District has removed the “ten year” criterion.	Y
63	5 - Stormwater	3	The MPCA doesn’t use the term abstraction. They refer to it as volume reduction practices. Consider changing the proposed language to align with the MPCA.	Hennepin County	The District has replaced the term “abstraction” with “volume reduction” and adjusted similar terms within the stormwater management rule.	Y
64	5 - Stormwater	Appendix A	Note 2 – Amending the soil in the boulevard area and taking credit for abstraction is a valuable tool towards hitting volume goals on a linear project. Not allowing this on projects over 1 acre of new / fully reconstructed could make it more difficult to meet requirements in areas of the watershed with poor soils.	Hennepin County	This change is required to comply with MS4 permit. The MPCA does not consider soil amendments to be a volume reduction practice.	N
65	5 - Stormwater	Appendix A	Note 5 – Twice the volume on a linear project for filtration is very challenging and will likely force more projects down the maximum extent practicable path. The MCM 5 flow chart does not impose a 2WQv for filtration. The MCM 5 flow chart allows for wet ponds when infiltration is not possible. What if a manufactured treatment device is being used, do you still require twice the volume?	Hennepin County	The 2x requirement is carried forward from the current rule and is based on the MN Stormwater Manual guidance that says sand filters remove approximately 50% of influent total phosphorus (TP), as compared to infiltration systems which remove 100% of influent TP. The proposed rule allows for the use of other BMP types, including wet ponds (see footnote 4 in Appendix A), and section 3.c allows for other methods of demonstrating equivalent phosphorus control besides the 2x calculation.  Recognizing that linear projects are often more space-constrained, section 3.d has been revised to require equivalent phosphorus control "to the extent feasible", similar to item 20.7 of the MS4 permit.	Y
66	7 - Wetland	4.d.	On many linear projects the existing ROW isn’t going to change and requiring a buffer with signage or monuments is not needed. The time spent by city, county, state, and watershed staff to document and implement these is out of alignment with any additional benefits it may provide.	Hennepin County	Under 4.d, public entities have the option to execute a programmatic maintenance agreement with the District in place of project-specific declarations. Under 4.c, public entities are allowed to provide a vegetation maintenance plan instead of installing monumentation.	N
67	7 - Wetland	6.d.	Should consider an exception for public roads, trails, and sidewalks.	Hennepin County	The purpose of this language is to allow for an access path to the wetland, and it is primarily intended for private landowners, for whom a four foot path is generally adequate. If a public entity wishes to create an access path or trail to a wetland for a water-dependent recreational or educational public purpose, this is allowed under section 4.b. If the purpose of the path or trail is not for wetland access, then an applicant would be expected to meet the minimum buffer width requirements.	N
68	8 - Shoreline	2.b.	Should consider an exception for riprap maintenance work on bridges. An example being the Plymouth Road bridge we are coordinating on.	Hennepin County	Based on discussions with the County, it was determined that this is a fairly infrequent issue, and maintenance of a previously approved design could be processed efficiently, therefore an exception has not been added.	N
69	9 - Dredging		Typo in the rule title “Dredging”	Hennepin County	This typo has been corrected.	Y
70	10 - Illicit Discharge		Suggest linking to an online map vs a static one.	Hennepin County	The District will create an online map of the District's MS4 and contributing drainage area and link to it from the District's website. The District will also share a shapefile of its MS4 boundary through its OpenData portal, making it easily accessible for downloading ( <a href="https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search">https://minnehaha-creek-watershed-district-open-data-mcwd.hub.arcgis.com/search</a> ).	Y

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
71	5 - Stormwater	3.b.	We propose the additional infiltration prohibitions: - Within 50 feet of any drinking water well (including private wells). - Within 100 feet of any sensitive public water supply well.	MN Dept. of Health	These additional prohibitions have been added as requested.	Y
72	9 - Dredging	4.f.	We propose that a spoil disposal site must not be within 50 feet of any drinking water well (4f)	MN Dept. of Health	This revision has been made as requested.	Y
73	4 - Floodplain		Rule 4, Floodplain Alteration, is simplified and clarified to accept a No-Rise standard for demonstrating compliance. We value this alignment with standards that the DNR applies in its public waters programs and that are used in federal floodplain management.	MN DNR	Thank you for your comment.	N
74	6 - Waterbody Crossing		Rule 6, Waterbody Crossings and Structures, the proposed rule adds a Fast-Track permitting mechanism for a public entity replacing a culvert or other hydraulic control. The rule would exempt such applications from the "minimal impact" element of the application, which requires examining alternatives to the proposed action. We agree with the MCWD's perspective to allow such work by general permit, or another method that does not require review and affirmative approval by District staff, is not appropriate. While the Fast-Track approach is a suitable option, we caution the MCWD about situations where a structure may serve as an outlet or water level control to a public water. In those instances, a DNR Individual Permit is required and unwaivable regardless of any particulars. <b>Therefore, we highly recommend the proposed rule specifically state that where a structure is known or found to serve as an outlet or water level control to a public water, such applications are not eligible for Fast-Track review.</b>	MN DNR	As a fast-track permit, these projects will still receive the same level of District review. The fast-track designation simply eliminates the public notice step and the minimal impact analysis since, generally, in-kind replacement will be the minimal impact solution. The DNR can require an individual permit whether or not the District allows for a fast-track permit. The District generally does not wish to make its approvals contingent on another agency's review, therefore we would prefer not to add this exception. The District will develop internal review guidance for staff to help ensure that applicants are directed to the DNR for an individual permit in these instances.	N
75	8 - Shoreline		Rule 8, Shoreline and Streambank Stabilization, proposes that neither riprap conforming to paragraph 2.b.3, nor a stabilization design conforming to section 4, constitutes floodplain fill for the purpose of the Floodplain Alteration rule. This seemingly obviates the need to meet the No-Rise Standard now proposed in the floodplain rule. Yet Rule 8 (paragraph 4.a.2.b) maintains encroachment of a streambank design into the channel must be minimized, may not reduce channel cross-section, and must meet the No-Rise standard. <b>We recommend reconciling this language to avoid any potential confusion. We suggest streambank stabilization projects that intersect with a FEMA-designated floodway (not to be confused with the broader floodplain) conduct a No-Rise analysis.</b>	MN DNR	The District does not view these requirements as being in conflict. Riprap conforming with either section 2.b.3 or 4 of this rule is not considered floodplain fill and therefore does not require compensatory storage. If the riprap is in a watercourse, it must meet the No-Rise standard. This would include any streambank projects that intersect the FEMA-designated floodway, as requested.	N
76	9 - Dredging		Rule 9, Dredging, features enhancements to streamline authorization for public agencies removing non-native sediments at a stormwater conveyance outfall into a public water or public water wetland. The rule describes the new Fast Track procedure for maintenance dredging of a navigational channel or access. The rule also adds several clarifications, some specifically related to the DNR's General Permit and public water rules. We believe all these revisions will add value to the MCWD's regulatory process.	MN DNR	Thank you for your comment.	N
77	5 - Stormwater		20.8 Volume reduction practices (e.g., infiltration or other) to retain the water quality volume on-site must be considered first when designing the permanent stormwater treatment system. The General Permit does not consider wet sedimentation basins and filtration systems to be volume reduction practices. If the General Permit prohibits infiltration as described in item 20.9, other volume reduction practices, a wet sedimentation basin, or filtration basin may be considered. [Minn. R. 7090] <b>Where does the rule require on-site treatment to be considered first?</b>	MPCA	The District has edited subsection 8.a to provide that water quality volume must be treated on site unless the applicant demonstrates that it is not cost-effective. The rule requires that an applicant provide the required water quality volume through either on-site or downgradient treatment. In the latter case, the District has edited subsection 8.a to state that off-site treatment must be located upgradient of the first receiving water.	Y

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
78	5 - Stormwater		20.10 For non-linear projects, where the water quality volume cannot cost effectively be treated on the site of the original construction activity, the permittee must identify, or may require owners of the construction activity to identify, locations where off-site treatment projects can be completed. <b>If the entire water quality volume is not addressed on the site of the original construction activity, the remaining water quality volume must be addressed through off-site treatment</b> and, at a minimum, ensure the requirements of items 20.11 through 20.14 are met. [Minn. R. 7090] <b>Please help clarify how the proposed rule achieves the highlighted piece of 20.10. The rule appears to allow off-site treatment easily, without pushing for on-site treatment as the option to be considered first?</b>	MPCA	The District has edited subsection 8.a to provide that water quality volume must be treated on site unless the applicant demonstrates that it is not cost-effective. The rule requires that an applicant provide the required water quality volume through either on-site or downgradient treatment. In the latter case, the District has edited subsection 8.a to state that off-site treatment must be located upgradient of the first receiving water.	Y
79	5 - Stormwater		<b>We could not find in the proposed rule where the following three requirements are addressed.</b> 20.12 Off-site treatment projects must involve the creation of new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP. Routine maintenance of structural stormwater BMPs already required by the General Permit cannot be used to meet this requirement. [Minn. R. 7090]	MPCA	The District does not find it necessary to state in the rule that maintenance of a BMP required by the General Permit (and therefore already subject to an enforceable maintenance obligation) cannot be used to meet the requirement for post-construction treatment of impervious surface. It isn't logically or reasonably argued that already-obligatory maintenance should meet the requirement. A principal goal of the District rulemaking is to simplify rule text for better applicant understanding. The District therefore values avoiding inclusion of unneeded text.	Y
80	5 - Stormwater		20.13 Off-site treatment projects must be completed no later than 24 months after the start of the original construction activity. If the permittee determines more time is needed to complete the treatment project, the permittee must provide the reason(s) and schedule(s) for completing the project in the annual report. [Minn. R. 7090]	MPCA	The District has added a subsection 10.a to state that an off-site BMP must be completed and functional within 24 months of the start of construction.	Y
81	5 - Stormwater		20.14 If the permittee receives payment from the owner of a construction activity for off-site treatment, the permittee must apply any such payment received to a public stormwater project, and all projects must comply with the requirements in items 20.11 through 20.13. [Minn. R. 7090]	MPCA	The District rule does not provide for the District to receive payment from a permittee in exchange for providing off-site treatment. Therefore, item 20.14 of the General Permit is inapplicable.	N
82	5 - Stormwater		20.15 The permittee's regulatory mechanism(s) must include the establishment of legal mechanism(s) between the permittee and owners of structural stormwater BMPs not owned or operated by the permittee, that have been constructed to meet the requirements in Section 20. The legal mechanism(s) must include provisions that, at a minimum: a. allow the permittee to conduct inspections of structural stormwater BMPs not owned or operated by the permittee, perform necessary maintenance, and assess costs for those structural stormwater BMPs when the permittee determines the owner of that structural stormwater BMP has not ensured proper function; b. are designed to preserve the permittee's right to ensure maintenance responsibility, for structural stormwater BMPs not owned or operated by the permittee, when those responsibilities are legally transferred to another party; and c. are designed to protect/preserve structural stormwater BMPs. If structural stormwater BMPs change, causing decreased effectiveness, new, repaired, or improved structural stormwater BMPs must be implemented to provide equivalent treatment to the original BMP. [Minn. R. 7090] <b>The MPCA can clearly see the proposed rule requires a project owner to sign a legal agreement, but the details of a., b., and c., are not in the rule. We are hoping you can help us understand how the District implements these concepts in a legal agreement.</b>	MPCA	The rule requires a permittee to execute and record a declaration that requires the property owner to maintain BMPs required by the permit in perpetuity. Public permittees are permitted to execute a non-recorded maintenance agreement, in that such permittees have advised of legal complications in encumbering public property and such property is much less likely to be conveyed. The maintenance agreement also creates a perpetual maintenance obligation and the public permittee is required to assign that obligation to any successor owner that is a public agency, and to provide for a recorded declaration as to any successor private party. The District maintains template documents for use. The declaration/agreement allows the District to enter and perform maintenance, and to be reimbursed for the cost. Watershed districts don't have the legal authority simply to assess for costs. The maintenance obligation prohibits an owner from altering a BMP without replacing its water quality treatment function.	N

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
83	2 - Procedures	1	Regarding section 1 giving staff authority to omit submittals that staff find to be unnecessary for the application. <b>Comment:</b> Should the procedure define which staff members have this authority? Does the authority extend to all staff members? It may be prudent to define staff roles to whom this ability applies in order to prevent confusion and misunderstanding.	MPRB	The District intends that in completing an application submittal, an applicant be able to rely on the guidance of permitting staff handling the application. Specifying particular authorized job titles in the rule is counterproductive, as titles may change. The rule has been edited to provide that staff waiver of a submittal will be in writing, to improve the basis for applicants' reliance.	Y
84	3 - Erosion		Regarding alignment of the ESC standards with the CSGP. <b>Comment:</b> For clarity and efficiency, MPRB supports this alignment in areas where there is not a specific goal/initiative or need for MCWD to be more restrictive than rules described in the MS4 and CSGP permits.	MPRB	Thank you for your comment.	
85	3 - Erosion	1.b.	Listing the date of the MS4 permit may create the situation that when a new permit is issued, that rules must be revised. Additionally, not all MS4's are regulated under the Small MS4 General Permit.	MPRB	Section 4 states that the specified sections of the Construction General Permit apply "as amended," so that the District rule will not need to be revised on issuance of the new Construction GP unless it is changed substantially. Subsection 1.b has been edited for clarity. The reference to the addendum in section 4 has been deleted, however the District will retain the addendum for informational purposes and update it when there are relevant changes to the Construction Stormwater General Permit. The meaning of your comment that not all MS4s are subject to the MS4 GP (e.g., Minneapolis) is not clear. The District is subject to the MS4 GP, and therefore is incorporating terms from the Construction GP as the MS4 GP requires.	Y
86	3 - Erosion	2.c.	Regarding exposed stockpiling. <b>Comment:</b> Please define the term "structural", as it is unclear what level of protection would comply with this term (Tarp? Tent?)	MPRB	This language is intended to apply to more permanent structures such as a building or shed. A tarp or similar protection would be considered an erosion control practice and not something that would be exempted under this section.	N
87	3 - Erosion	3.b.4.	Consider change to "one-mile aerial radius" so that applicants do not base measurements on a meandering path of a stream, storm sewer routing, or other meandering flow path.	MPRB	This change has been made for improved clarity.	Y
88	5 - Stormwater		In this section regulation of volume, water quality, and impervious surface changes are interrelated but may not cover all situations where a project creates impacts downstream or creates impacts that could degrade a waterbody. If projects contain other elements that change water volume or pollutant load leaving the site, such as through pumping, these aspects, and their impacts downstream to infrastructure and receiving waters should be considered and impacts minimized. It could be considered that no net increase to volume or no net increase in TP is allowed following construction, regardless of change in impervious area. Additional future rulemaking may be needed to fully address these types of situations.	MPRB	MCWD's proposed rule regulates stormwater in a way that is consistent with the MPCA and establishes volume and rate control requirements based on change in impervious cover. As discussed with the TAC, changing the District's rule to regulate impacts at a receiving waterbody would be a significant change in standards that is beyond the scope and intent of these rule revisions. The District also believes that some of these concerns may be better addressed as a planning rather than regulatory matter. The District understands the commenter's concerns, and will consider these recommendations further as part of the District's upcoming climate planning and engagement process with its communities.	N
89	8 - Shoreline	2.b.2.	In part 2b, part 2 there is a double negative and the phrase meaning is unclear. Clarification is needed so that the rule does not unintentionally discourage native vegetation and should ideally encourage native vegetation where the plant community chosen has root structure sufficient to stabilize the shore.	MPRB	This section has been revised to ensure that it does not discourage the planting of deep-rooted native vegetation. Under the revised paragraph, a permit is not required to plant vegetation (deep-rooted or not) when not accompanied by bank disturbance other than for ordinary planting purposes.	Y
90	8 - Shoreline	3.a.	Should a method or standard equation be mentioned here? - An exception for historic preservation may be needed where shoreland armoring may now be considered historic and regulated by the Minnesota State Historic Preservation Office. - In publicly accessible areas with heavy use, wave-generated erosion is often not the most significant erosive source. Consideration must be made for areas where intensive stabilization is needed due to the need to provide access that receives heavy public use.	MPRB	This section references section 5.a. for the calculation method. Section 3.b. states that an applicant may deviate from the requirement of 3.a on demonstrating that the intensity calculation does not accurately capture the erosion potential because of site-specific conditions (such as those listed in the comment).	N
91	8 - Shoreline	4.a.	Should there be specific criteria mentioned for showing a need for a stabilization practice? Additionally, a projected significant increase in public use may necessitate a more intensive stabilization practice.	MPRB	These types of site-specific considerations are addressed under 3.b.	N

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#	Rule	Section	Comment	Commenter	MCWD Response	Revision Made
92	9 - Dredging	4.c.	Should depth be specified at 4-feet or to original contours with no removal of native material?	MPRB	This section is specific to navigation and establishes a maximum depth that the District considers to be reasonable for that purpose. In determining the allowable depth up to that maximum, the District will consider any available information on the depth to native bed material.	N
93	6 - Waterbody Crossing	2	The statement "No person shall conduct horizontal drilling under ... any waterbody" is specific to one construction technique. There is a loss of clarity on whether proposed utilities crossing waterbodies require a permit or not. If the intent of the MCWD is to require a permit for all utilities crossing a waterbody, I would suggest replacing the words with "No person shall construct a utility crossing under ... any waterbody".	Met Council (informal)	It appears that this comment is based on the current rule language and is already addressed in the proposed rule which states that "One may not... place any such structure beneath a waterbody".	N
94	6 - Waterbody Crossing	3.g.	In reference to our recent conversation about whether a culvert would be considered a "jurisdictional" waterbody, my recent reading has concluded that it may depend on circumstance. Paragraphs and subparagraphs in this article focus on the protections and conditions of construction near or within the bank or bed of a waterbody. These conditions do not practically hold for a utility crossing of a culvert. I would suggest adding the clarifying sentence "Culvert crossings are exempt from the criteria of this paragraph." This may seem redundant as the current criteria apply only to the stream bed and banks but it would be helpful to applicants and reviewers.	Met Council (informal)	This section has been revised so that the 3 ft clearance requirement does not apply for culvert or pipe crossings, and the 100 ft setback is measured from the nearest non-piped part of the watercourse.	Y
95	6 - Waterbody Crossing	3.h.	Sanitary sewer force mains and siphons inherently carry more risk than gravity sewer pipes. The introduction of mechanical control or diversion piping on a gravity sanitary sewer would be prone to mechanical failure and debris obstruction. I would suggest rewording to "(h) Shall provide a design for avoiding sanitary force main or siphon discharge to ... ". I am not aware of how many fuel lines are located within the MCWD jurisdiction but there may be a reason to consider other utilities in this scope.	Met Council (informal)	This section has been revised to apply only to force mains and siphons, as requested.	Y



**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**1. DEFINITIONS AND ACRONYMS RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**Adopted XXXX  
Effective XXXX**

- **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, vegetative, 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 MSE-3 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 so as to be highly resistant to infiltration of runoff, including but not limited to gravel, rock, asphalt, pavers, and concrete. Surface materials (asphalt, concrete, pavers) designed to infiltrate stormwater, artificial turf, and playground surfacing are considered to be impervious.
- **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 an undeveloped lot of record zoned for residential use, or on a lot of record zoned for residential use from which the principal building has been removed to construct a new single-family residence. The term does not apply to a lot of record created by subdivision subject to the vegetated buffer requirement of the Wetland Protection Rule.
- **No-Rise Standard** means demonstration that the increase in 100-year high water level is no more than 0.00 ft from existing to proposed condition.
- **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.
- **Point source** means a discrete point of discharge to water, such as a pipe or ditch.
- **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.

- **Volume reduction** means permanent retention of runoff on a site through structures and practices such as infiltration, evapotranspiration and capture and reuse. See also the Volume Reduction Credit Schedule in Appendix A of the Stormwater Management Rule.
- **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. 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.

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**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, communicates to the applicant in writing is 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](http://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. District permit review is governed by applicable timelines in Minnesota Statutes 15.99. The Board will make permit decisions, 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, except as the District, in its discretion, may specify a longer duration in the permit. 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 Statutes sections 103B.201 and 103D.201.

## Minnesota Construction Stormwater General Permit (MCSGP) Addendum

This addendum, for the convenience of the applicant, presents applicable terms of the August 1, 2023 Construction Stormwater General Permit. 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.

<b>7.1</b>	<b>BMP Selection and Stormwater Management.</b> [Minn. R. 7090]
<b>7.2</b>	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 14 and 15) should be constructed as a first step in the process and stormwater routed to these. [Minn. R. 7090]
<b>7.3</b>	Permittees must not disturb more land (i.e., phasing) than can be effectively inspected and maintained in accordance with Section 11. [Minn. R. 7090]
<b>7.4</b>	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: <a href="https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products">https://www.fws.gov/initiative/protecting-wildlife/make-change-wildlife-friendly-erosion-control-products</a> . There also may be State, Tribal, or local requirements about using wildlife friendly erosion control products. See Minnesota Department of Transportation requirements at: <a href="https://www.mndot.org/environment/erosion/rolled-erosion-prevention-products.html">https://www.mndot.org/environment/erosion/rolled-erosion-prevention-products.html</a> . [Minn. R. 7050]
<b>8.1</b>	<b>Erosion Prevention Practices.</b> [Minn. R. 7090]
<b>8.2</b>	Before work begins, permittees must delineate the location of areas not to be disturbed. [Minn. R. 7090]
<b>8.3</b>	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]
<b>8.4</b>	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]
<b>8.5</b>	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	<b>Sediment Control Practices. [Minn. R. 7090]</b>
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]



<b>9.14</b>	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]
<b>9.15</b>	Permittees must preserve topsoil on the site, unless infeasible. [Minn. R. 7090]
<b>9.16</b>	Permittees must direct discharges from BMPs to vegetated areas unless infeasible. [Minn. R. 7090]
<b>9.17</b>	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]
<b>9.18</b>	Any sediment control made of soil must be temporarily or permanently stabilized within 24 hours. [Minn. R. 7090]
<b>9.19</b>	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]
<b>10.1</b>	<b>Dewatering and Basin Draining. [Minn. R. 7090]</b>
<b>10.2</b>	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]
<b>10.3</b>	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]
<b>10.4</b>	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]
<b>10.5</b>	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]
<b>10.6</b>	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]
<b>11.1</b>	<b>Inspections and Maintenance. [Minn. R. 7090]</b>
<b>11.2</b>	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]
<b>11.4</b>	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]
<b>11.5</b>	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]
<b>11.6</b>	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]
<b>11.7</b>	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]
<b>11.8</b>	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]
<b>11.9</b>	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]
<b>11.10</b>	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]
<b>11.11</b>	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]
<b>11.12</b>	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-

	<p>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</p> <p>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</p> <p>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]</p>
<b>12.1</b>	<b>Pollution Prevention Management Measures. [Minn. R. 7090]</b>
<b>12.2</b>	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]
<b>12.3</b>	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]
<b>12.4</b>	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]
<b>12.5</b>	Permittees must properly store, collect and dispose solid waste in compliance with Minn. R. ch. 7035. [Minn. R. 7035]
<b>12.6</b>	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]
<b>12.7</b>	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]
<b>12.8</b>	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]
<b>12.9</b>	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]
<b>13.1</b>	<b>Permit Termination Conditions. [Minn. R. 7090]</b>
<b>13.2</b>	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]
<b>13.3</b>	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	<b>Temporary Sediment Basins. [Minn. R. 7090]</b>
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]

<b>17.3</b>	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]
<b>23.7</b>	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]
<b>23.8</b>	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]
<b>23.9</b>	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]
<b>23.10</b>	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]
<b>23.11</b>	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**

**3. EROSION & SEDIMENT CONTROL RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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). 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) (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 (aerial radius measurement) 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.

**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.

**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**4. FLOODPLAIN ALTERATION RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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 reduction of rainfall and stormwater runoff volume 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 Tables 1 and 2, the District will aggregate all activity that it finds to constitute a Common Plan of Development.
  2. Subdivision of a tract at least one acre in size into three or more buildable lots.
  3. Mass grading or otherwise changing land contours, except for agricultural activity, at a scale that may materially 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 surface by 10%.
- c. An action requiring a permit under paragraph a.2 that does not propose mass grading or the construction or reconstruction of impervious surface need not demonstrate that it meets the specific stormwater management criteria of this rule. The applicant must provide a conceptual stormwater management plan and the permit will require that subsequent land disturbance within the subdivided tract demonstrate compliance with specific rule criteria.
  - d. An action requiring a permit under paragraph a.3 is not subject to section 3 of this rule.
  - e. Surface material such as permeable pavement (asphalt, concrete, pavers), artificial turf, and playground surfacing that is designed to infiltrate stormwater when maintained is considered impervious surface for the purpose of section 2, but may be used as a volume-reduction practice in accordance with Appendix A.

### **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 volume reduction equal to the following. Volume reduction 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. Volume reduction practices 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 50 feet of a drinking water well or within 100 feet of a sensitive public water supply well.
9. The area is within 1,000 feet upgradient, or 100 feet downgradient, of an active karst feature.
10. 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 volume reduction cannot feasibly be provided by volume reduction practices listed in Appendix A, the applicant must incorporate filtration or other non-volume-reduction practices to achieve phosphorous control in an amount equivalent to that which would be achieved through the required volume reduction. Equivalent phosphorus control may be demonstrated by any technically accepted method,

including use of a removal rate stated in the Minnesota Stormwater manual. For a filtration practice, in place of specific demonstration, an applicant may treat twice the required volume reduction, as calculated in accordance with Appendix A to this rule.

- d. For a Linear Transportation Project, if the required volume reduction 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. Volume reduction is not required to the extent it cannot be provided cost-effectively. If the volume reduction of paragraph 3.a.2 is not fully met, equivalent phosphorus control must be provided to the extent feasible.
- 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 design storm events. 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, reduce stormwater volume, 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 DOWNGRAIDENT 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 Design Storm Events	Inundation Period for 1- or 2-Year Design Storm Event	Inundation Period for 10- and 100-Year Design Storm Events	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 control practice is to be located on site, unless the applicant demonstrates that this is not cost-effective. An off-site practice must capture runoff from the regulated site impervious surface before it enters a receiving water, if practical, and otherwise before it enters a public water. A rate control practice may be located on- or offsite, but before runoff enters a 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 design storm events, for existing and proposed conditions, at each point of site discharge. For the purpose of this rule, "design storm events" means either the one- or two-year, 24-hour event, as the applicant selects, as well as the 10- and 100-year, 24-hour events.
- b. If proposing to meet this rule by infiltration through site soils, the applicant must characterize soils by use of a method identified in the Minnesota Stormwater Manual, and must document the characterization and the methodology used.
- 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 CONSTRUCTION AND MAINTENANCE.**

- a. Stormwater management facilities must be constructed and functional within 24 months of the start of construction of regulated impervious surface.
- b. A stormwater management facility must be designed for maintenance access and maintained in perpetuity to function as designed.
- c. 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.
- d. 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. Conditions for release of the financial assurance include, but are not limited to, the applicant's submittal of certified as-built drawings for structural stormwater management practices.

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
-	≥ 40%	-	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:  
Volume Reduction 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 <sup>(1)</sup>
Underground Infiltration Trench	Minnesota Stormwater Manual	Void volume provided	VC = Volume below overflow elevation <sup>(1)</sup>
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
Permeable Surface	Minnesota Stormwater Manual	1-inch credit over the surface area	VC = 1/12 x area of permeable surface
Soil Amendment(s) <sup>(2)</sup>	Minnesota Stormwater Manual	0.5-inch credit over the area of soil amendment area <sup>(3)</sup>	VC = 0.5/12 x area of soil amendment

**Non-Volume-Reduction Practice Credit Schedule<sup>(4)</sup>**

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

*(1) Volume infiltrated during a rainfall event shall not be credited towards the volume reduction 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 a volume reduction 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-volume-reduction practices not listed in this table may be used. Equivalent phosphorus control must be demonstrated in accordance with subsection 3(c) of this rule.*

*(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:
  - 1. Provide for minimum clearance of three feet below the bed of a waterbody. 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. This clearance requirement does not apply when the waterbody is fully enclosed within a pipe or other structure at the crossing.
  - 2. Maintain a setback of at least 100 feet from the waterbody bank for pilot, entrance and exit holes associated with horizontal direction drilling. 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. If the waterbody is fully enclosed within a pipe or other structure at the crossing, the setback will be measured from the open channel.
- h. For a sanitary sewer force main or siphon crossing, incorporate automatic valves, diversions, redundant pipes, double encasement, or other features to avoid 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 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. The MnWCA applies to excavation in wetland as stated at Minnesota Rules 8420.0105, subpart 1. Under this section 3, the District regulates all excavation in wetland not subject to the MnWCA, 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 District regulation under subsection 3.a 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 or right-of-way 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 for a permit that requires project-specific replacement or implementation of a Planting Plan.

**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, biological and 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, when not accompanied by bank disturbance other than for ordinary planting purposes.
    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 sediment 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

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

$\tau$  = Shear stress (pounds / square feet)  
d = Bankful flow depth (feet)  
 $\mu$  = 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. DREDGING RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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, and if the sediment source is readily identifiable and within the applicant's control, the plan must remedy the cause of sediment transport.
- 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 30<sup>th</sup>, 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, in a floodplain absent flood storage replacement, or within 50 feet of any drinking water well. 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.

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**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**10. ILLICIT DISCHARGE RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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. This rule applies only within those areas of the watershed that drain to the District's MS4s. The District's MS4s are shown on Addendum A. The areas that drain to the MS4s are delineated on a map maintained by the District in electronic format that may be accessed through the District [website](#). The District may delineate these areas 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 foreseeable 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.

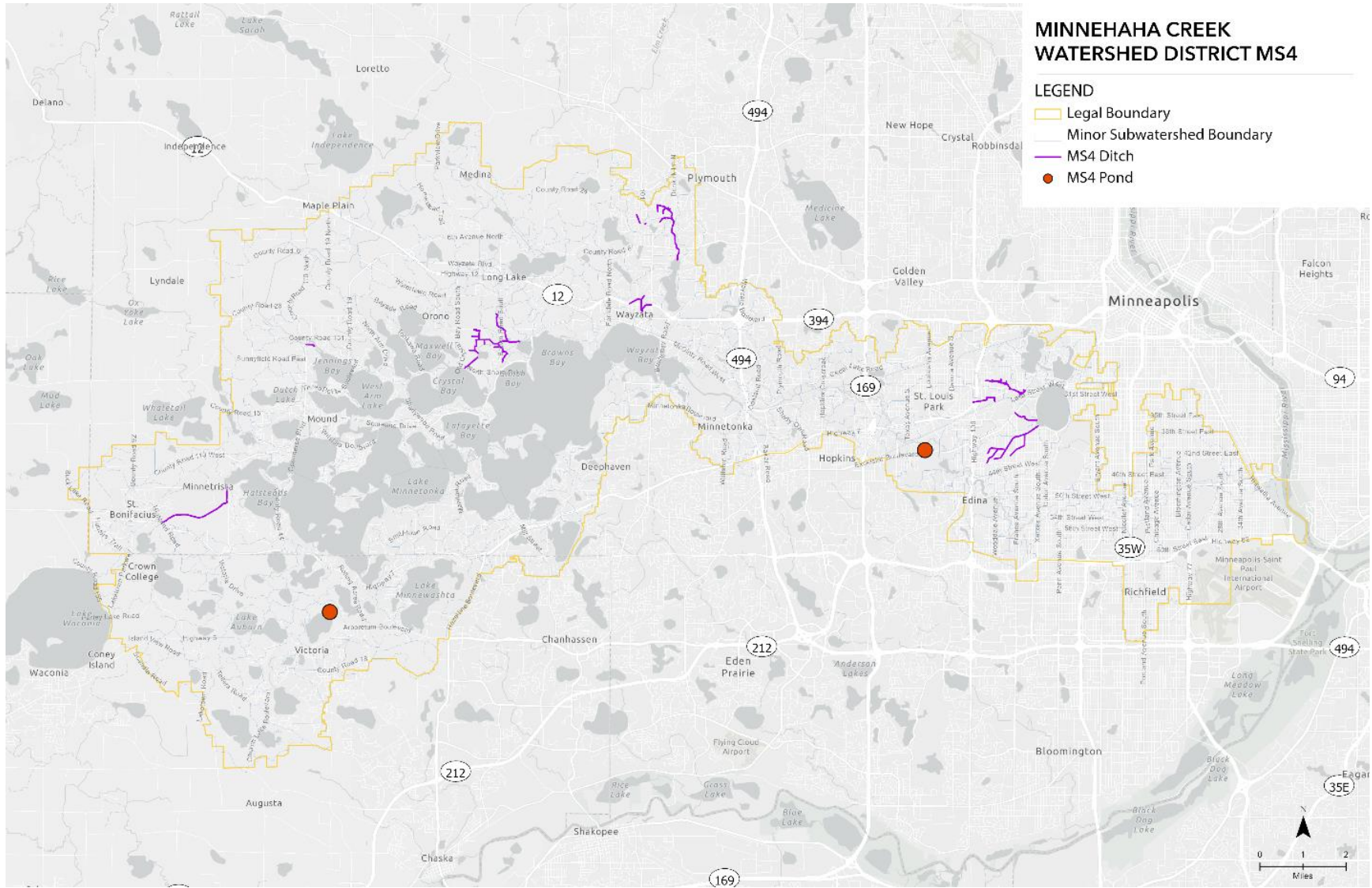
### **3. REGULATION.**

- 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. A Direct 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. Parcel delineation identifying ownership and easements.
- b. Proposed and existing stormwater facilities with flow alignment and elevations.
- c. Existing and proposed site elevations with no more than a 2-foot contour interval.
- d. Proposed connection design details, connection method, and schedule.
- e. Stormwater runoff volume and rate analysis for the two-, 10-, and 100-year critical events, existing and proposed conditions.

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# Addendum A





**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**11. APPROPRIATIONS RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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 acres 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 XXXX  
Effective XXXX**

- 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 not 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](http://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](http://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](http://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 XXXX  
Effective XXXX**

**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](http://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.

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**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**14. VARIANCES AND EXCEPTIONS RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**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.

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**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

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

**Adopted XXXX  
Effective XXXX**

- 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.