



Title: Approval of Programmatic Maintenance Agreement with Carver County

Resolution number: 26-037

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Reviewed by: Chuck Holtman, Legal Counsel

Recommended action: Approval of Programmatic Maintenance Agreement with Carver County

Summary:

The Minnehaha Creek Watershed District (MCWD or District) requires applicants to record maintenance declarations for projects that require long-term maintenance and monitoring of permanent features or Best Management Practices (BMPs) to ensure continued compliance with MCWD rule standards. In lieu of a recorded declaration, a public permittee may fulfill this requirement by executing a maintenance agreement with the District. Where the public entity requires District permits from time to time, it is efficient for the entity and the District to enter into a programmatic maintenance agreement that establishes standard maintenance terms. The agreement then is simply referenced in and incorporated into subsequent permits, rather than executing agreements on a project-by-project basis. The District has programmatic maintenance agreements in place with several cities, counties, and road authorities.

Carver County frequently plans and constructs projects that are regulated by MCWD Rules, and that therefore require long-term maintenance aligning with MCWD standards. MCWD and Carver County previously executed a programmatic maintenance agreement; however, that agreement contains administrative errors and does not address maintenance obligations related to waterbody crossings and structures. The proposed programmatic maintenance agreement corrects those errors and expands the agreement to include Waterbody Crossings & Structures, in addition to the Stormwater Management and Wetland Protection rules. The terms of the programmatic agreement are otherwise substantially consistent with existing District programmatic maintenance agreements.

Supporting documents:

Proposed Programmatic Maintenance Agreement between MCWD and Carver County



RESOLUTION

Resolution number: 26-037

Title: Approval of Programmatic Maintenance Agreement with Carver County

WHEREAS, pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule, Wetland Protection Rule and Waterbody Crossings & Structures Rule;

WHEREAS, under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to inspect and maintain stormwater-management facilities;

WHEREAS, under the Wetland Protection Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to protect undisturbed buffer adjacent to wetland;

WHEREAS, under the Waterbody Crossings & Structures Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to protect inspect and maintain waterbody crossings and structures;

WHEREAS, in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the MCWD;

WHEREAS, Carver County from time to time is subject to stormwater management, wetland buffer, and waterbody crossings & structures maintenance requirements pursuant to the terms of an MCWD permit; and

WHEREAS, the parties concur that it is clearer and procedurally more efficient for the MCWD and Carver County to agree at this time on standard requirements for stormwater management, wetland buffer, and waterbody crossings & structures protection maintenance, so that this agreement may be incorporated into future permits as applicable.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President, on advice of counsel, to execute a programmatic maintenance agreement with Carver County.

Resolution Number 26-037 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 4/9/2026

Secretary Date: _____

**PROGRAMMATIC MAINTENANCE AGREEMENT FOR
STORMWATER MANAGEMENT FACILITIES, WETLAND BUFFERS, AND
WATERBODY CROSSINGS AND STRUCTURES**

Between the Minnehaha Creek Watershed District and Carver County

This Programmatic Maintenance Agreement for stormwater management facilities, wetland buffers, and waterbody crossings and structures, "Agreement," is made and entered into by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes Chapters 103B and 103D "MCWD", and the County of Carver, a municipal corporation and political subdivision of the State of Minnesota, "Carver County." The MCWD and Carver County sometimes are referred to individually as a "Party," and sometimes are referred to as collectively as the "Parties."

RECITALS

WHEREAS, pursuant to Minnesota Statutes § 103D.341, the MCWD adopted and implements the Stormwater Management Rule, Wetland Protection Rule, and Waterbody Crossings and Structures Rule within its district;

WHEREAS, under the Stormwater Management Rule, certain land development activity specified therein requires a landowner to sign and record on the title of the landowner's real property, a declaration or other recordable instrument establishing the landowner's perpetual obligation to inspect and maintain stormwater management facilities;

WHEREAS, under the Wetland Protection Rule, certain land development activity specified therein requires a landowner to record on the deed to the property a declaration or other recordable instrument establishing the landowner's perpetual obligation to protect an undisturbed buffer adjacent to a wetland;

WHEREAS, under the Waterbody Crossings & Structures Rule, certain land development activity specified therein requires a landowner to record in the office of the county recorder or registrar, a declaration or other recordable instrument establishing the landowner's perpetual obligation to inspect and maintain waterbody crossings and structures to ensure that the hydraulic and navigational capacity of the associated waterbody are maintained in accordance with approved plans;

WHEREAS, under each of the aforementioned rules, a public landowner, as an alternative to a recorded instrument, may meet the aforementioned requirements by documenting its permanent maintenance obligations in an executed written agreement with the MCWD;

WHEREAS, from time to time, Carver County is subject to the stormwater facility, wetland buffer area, and waterbody crossings and structure maintenance requirements of the

the Stormwater Management Rule, Wetland Protection Rule, and Waterbody Crossings and Structures Rule; and

WHEREAS, the Parties concur that it would be clearer and procedurally more efficient for the Parties to define Carver County's standard requirements for stormwater management, wetland buffer protection, and waterbody crossings in this Agreement, so that the requirements of this Agreement may be incorporated into applicable future permits issued by MCWD to Carver County.

NOW, THEREFORE, in consideration of the covenants of each of the Parties, and for other good and valuable consideration which the Parties hereby acknowledge to be sufficient, the Parties agree as follows:

1. **STORMWATER FACILITIES.** Carver County shall maintain stormwater facilities, in accordance with the following requirements:
 - a. **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) must be inspected at least once every 5 years to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design.
 - (i) A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by fifty (50) percent of its original design volume or as determined by a licensed engineer in the state of Minnesota.
 - (ii) Based on the inspection required under this section, if the stormwater basin(s) is identified for sediment cleanout, then the basin(s) must be restored to its original design contours and vegetation in disturbed areas must be restored within one year of the inspection date. If restoration cannot reasonably be completed within one year, Carver County must provide MCWD with a written schedule for completion and complete the restoration in accordance with that schedule.
 - b. **Culverts and outfall structures.** Culverts and outfall structures must be inspected at least once every 5 years and kept clear of any obstructions or sediment accumulation. Sediment accumulation must be measured by a method accurate to within one vertical foot.
 - c. **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins must be inspected once every 5 years to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris must be removed as needed and healthy plant growth must be maintained to ensure that the facilities continue to perform per design.

- d. **Iron-enhanced sand filters.** Iron-enhanced sand media must be inspected every three years to determine if the iron's binding capacity has been reached. Testing to be completed according to Minnesota Pollution Control Agency's (MPCA) most recent published guidance found at the MPCA website
- (i) The phosphorus binding capacity of the iron-sand bed will be exhausted and must be replaced to the original specifications when the total-phosphorus-to-total-iron ratio exceeds 5 milligrams of phosphorus per 1 gram of elemental iron or when the total phosphorus at the outlet of the iron-sand filter consistently exceeds 60 to 70 micrograms per liter.
- e. **Vegetated swales.** Vegetated swales may be mowed for public safety, but otherwise must remain free from vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures unless approved within the permit, or any other alteration that impedes function.
- f. **Underground storage facilities.** Underground storage facilities must be inspected at least annually to ensure continuing performance per design.
- (i) Capacity will be considered inadequate if the sediment has decreased the storage volume by fifty (50) percent of the original design volume. Accumulated debris and sediment must be removed, and inlet and outlet structures must be kept clear of any flow impediments.
- g. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes must be inspected annually. All sediment and debris must be removed as needed such that the stormwater facilities operate as designed and permitted.
- h. **Reuse systems.** Runoff-management systems relying on capture and reuse of stormwater (e.g., for irrigation) must be operated and maintained in accordance with terms of the permit approved and issued by MCWD, and in accordance with the manufacturer's specifications or the installer's specifications for any proprietary equipment.
- i. **Proprietary stormwater facilities.** Proprietary stormwater facilities must be inspected at least annually and maintained as specified or recommended by the manufacturer and/or installer. Current manufacturer's and/or installer's maintenance specification must be maintained on file at both the MCWD office and appropriate Carver County office. Proprietary stormwater facilities refers to items such as, but not limited to, SAFL Baffle, cartridge filters, and hydrodynamic separators.

- j. **Reporting.** The Carver County must submit a brief written report annually to the MCWD that describes the stormwater facility maintenance activities performed under and pursuant to this Agreement, including dates, locations of inspections and the maintenance activities performed.
2. **WETLAND BUFFER AREAS.** Carver County must maintain buffer areas in accordance with the following requirements:
 - a. Buffer vegetation must not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface may be placed within a buffer, except that construction of a trail or path of no more than 4 feet in width to provide riparian access through the buffer is acceptable. No fill, debris or other material may be excavated from or placed within a buffer.
 - b. Permanent wetland buffer monuments or markers must be maintained in the locations shown on approved site plans. Monument or marker language must indicate the purpose of the buffer, restrictions and the name and phone number of the MCWD.
3. **WATERBODY CROSSINGS AND STRUCTURES.** Carver County must maintain waterbody crossings and structures within the MCWD in accordance with the following requirements:
 - a. Crossings and structures in contact with the bed or bank of a waterbody must be inspected once per 5 years and maintained in good repair in perpetuity to ensure continuing adequate hydraulic and navigational capacity is retained in accordance with approved plans, to ensure no net increase in the flood stage beyond that achieved by the approved plans, to prevent adverse effects on water quality, changes to the existing flowline/gradient and increased scour, erosion or sedimentation, and to minimize the potential for obstruction of the waterbody.
4. An MCWD permit for a specific project may contain additional maintenance conditions in accordance with MCWD rules, as they may be amended from time to time.
5. If Carver County conveys into private ownership a fee interest in any real property that has become subject to this Agreement, then the conveyance of the real property must condition the conveyance, and Carver County must enforce a condition, that: (a)the

recipient of the property record with the Carver County Recorder's Office or Registrar, a declaration or other recordable instrument for the property incorporating the maintenance requirements of this Agreement; and (b) the recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a consent and non-disturbance executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity.

6. If Carver County conveys into public ownership a fee interest in any real property that has become subject to this Agreement, then Carver County must require as a condition of the conveyance that the recipient of the real property accept an assignment of all obligations vested under this Agreement.
7. Carver County may enter into contracts with third parties for the performance of its responsibilities under this Agreement. Carver County may assign its responsibilities to another governmental unit. If it does so, it will provide prior or concurrent written notice to MCWD. Such agreements notwithstanding, Carver County shall remain liable to MCWD for compliance with the terms and requirements of any permit that explicitly applies this Agreement.
8. This Agreement may be amended only in a writing signed by each of the Parties.
9. This Agreement shall be in force for five years from the date on which it has been fully executed and shall renew automatically for five-year terms unless terminated. Either of the Parties may terminate this Agreement by providing thirty (30) days' written notice to the other. Any obligations vested in Carver County through incorporation into an issued permit before the effective date of termination shall survive termination.
10. The Recitals above are incorporated fully into and made a part of this Agreement, as if set forth herein in their entirety.
11. The individuals below by their execution represent that they have the authority to enter into this Agreement on behalf of the respective Parties and to bind the Parties to the terms herein.
12. The Parties' total liability under this Agreement shall be governed by Minn. Stat. § 471.59, subd. 1a.

Each Party shall be responsible for the acts or omissions of its officials, agents, and employees, and the results thereof, in carrying out the terms of this Agreement, to the extent authorized by law and shall not be responsible for the acts/omissions of the other Party and the results thereof.

For purposes of determining total liability for damages, the participating governmental units are considered to be a single governmental unit, the total liability of which shall

not exceed the limits for a single governmental unit as provided in Minn. Stat. § 466.04, subd. 1.

Each Party shall defend, hold harmless, and indemnify the other Party, its officials, agents, and employees, from any liability, loss, or damages the other Party may suffer or incur as the result of demands, claims, judgments, or cost arising out of or caused by the indemnifying Party's negligence in the performance of its respective obligations under this Agreement. This provision shall not be construed nor operate as a waiver of any applicable limitation of liability, defenses, immunities, or exceptions by statute or common law.

To the full extent permitted by law, actions by the Parties under this Agreement are intended to be and shall be construed as a "cooperative activity." The Parties intend that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minn. Stat. § 471.59, subd. 1a(a); provided further that for purposes of that statute, each Party expressly declines responsibility for the acts or omissions of the other Party.

The Parties are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties.

Nothing in the foregoing text of this section 12 is to mean or imply that this agreement provides for Carver County and the MCWD to jointly or cooperatively exercise any power, or for Carver County to perform any service or function on behalf of the MCWD. The MCWD enters into this agreement solely in its capacity as a regulatory authority pursuant to Minn Stat 103D.341, subdivision 1.

13. Definitions of terms are shown on Minnehaha Creek Watershed District's website.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates below.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
President, Board of Managers

Date:

CARVER COUNTY

By: _____
Darin Mielke, Assistant County Engineer

Date:

By: _____
Tom Workman, Board Chair

Date:

By: _____
Dave Hemze, Administrator

Date: