



Title: Approval of Programmatic Maintenance Agreement with Hennepin County

Resolution number: 26-038

Prepared by: Veronica Sannes
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Reviewed by: Chuck Holtman, Legal Counsel

Recommended action: Approval of Programmatic Maintenance Agreement with Hennepin County

Summary:

Minnehaha Creek Watershed District (MCWD or District) permitting rules require a permittee to record on the property title a maintenance declaration providing for perpetual maintenance of wetland buffers, stormwater management facilities and certain other water conveyance infrastructure. 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. Under the terms of the agreement, on a permit-specific basis the District retains the authority to alter or impose additional maintenance terms. The District has programmatic maintenance agreements in place with several cities, counties, and road authorities.

Hennepin 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 Hennepin County previously executed a programmatic maintenance agreement in 2008; however, that agreement does not address maintenance obligations related to waterbody crossings and structures. The proposed programmatic maintenance agreement expands the agreement to include maintenance under the Waterbody Crossings & Structures rule, 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 and align with the County's maintenance obligations under the Minnesota Pollution Control Agency's MS4 General Permit.

Supporting documents:

Proposed Programmatic Maintenance Agreement between MCWD and Hennepin County



RESOLUTION

Resolution number: 26-038

Title: Approval of Programmatic Maintenance Agreement with Hennepin 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, Hennepin 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 Hennepin 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 Hennepin County.

Resolution Number 26-038 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ eyes, ___ nays, ___ abstentions. Date: 4/9/2026

Secretary Date: _____

PROGRAMMATIC MAINTENANCE AGREEMENT
Stormwater Management Facilities, Waterbody Crossings and Structures, and Wetland Buffers
Between the Minnehaha Creek Watershed District
and Hennepin County

This Programmatic Maintenance Agreement (Agreement) is made 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 Hennepin County, a Minnesota municipal corporation and political subdivision of the State of Minnesota (County) (collectively, Parties).

Recitals and Statement of Purpose

WHEREAS, pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule, Wetland Protection Rule and the 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 Waterbody Crossings & Structures Rule, certain land development activity requires the landowner to record a declaration 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 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, 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, the County from time to time is subject to this requirement pursuant to the terms of an MCWD permit; and

WHEREAS, the parties concur that the County has the resources and organizational structure necessary to carry out maintenance needs, as they become apparent; and

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

NOW, THEREFORE, the County and MCWD agree as follows:

1. **STORMWATER FACILITIES.** The County, at its cost, will maintain its stormwater facilities required by MCWD permits in accordance with the following:

- A. **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) must be inspected at least once every five (5) years to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design. Culverts and outfall structures must be inspected at least once every five (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. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be restored to its original design contours and vegetation in disturbed areas restored within one year of the inspection date.
- B. **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected annually to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
- C. **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. The phosphorus binding capacity of the iron-sand bed is 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.
- D. **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.
- E. **Pervious pavement and permeable pavers.** Pervious pavement or pavers will be inspected at least once per year after a major storm event and otherwise annually to ensure continuing performance per design. Surface openings will be vacuumed at least annually at the end of winter in dry weather to remove dry, encrusted sediment as necessary. Broken units that impair the structural integrity of the surface will be replaced. If water stands for an extended period of time, the base materials will be removed and replaced.
- F. **Underground storage facilities.** Underground storage facilities will be inspected at least once every five (5) years to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be kept clear of any flow impediments.
- G. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected twice a year in the spring following snow melt and the fall after

leaf fall. All sediment and debris will 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 permit approval and the manufacturer's or installer's specifications for any proprietary equipment.
- I. **Proprietary stormwater facilities.** Proprietary stormwater facilities will be inspected and maintained as specified or recommended by the manufacturer and/or installer.
- J. **Reporting.** A brief written report, on a form provided by the MCWD, will be prepared and submitted to MCWD upon request, but no more than once a year, that describes the maintenance activities performed under this agreement, including dates, locations of inspections and maintenance activities performed.

2. **WATERBODY CROSSINGS AND STRUCTURES.** The County, at its cost, will maintain its waterbody crossing and structures under the jurisdiction of MCWD in accordance with the following:

- A. Crossings and structures in contact with the bed or bank of a waterbody will be inspected at least once every five (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.

3. **WETLAND BUFFER AREAS.** The County, at its cost, will maintain its buffer areas under the jurisdiction of MCWD in accordance with the following:

- A. Buffer vegetation will 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, or other actions to maintain or improve buffer quality. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface will 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 will be excavated from or placed within a buffer.
- B. Permanent wetland buffer markers will be maintained in the locations shown on the approved site plan. Language shall indicate the purpose of the buffer, restrictions, and the name and phone number of the Minnehaha Creek Watershed District.

4. MCWD permits for specific projects may contain additional conditions regarding stormwater facility maintenance or other project elements as determined by the MCWD to be appropriate pursuant MCWD Rules.

5. Responsibilities of the County may be assigned to another governmental unit, with prior or concurrent written notice to MCWD. Such assignment notwithstanding, County will remain responsible for compliance with the terms and requirements of this Agreement.

6. This Agreement is in force for seven (7) years from the date on which it has been fully executed and will renew automatically for seven-year terms unless terminated under Paragraph 9. Any obligations assumed by the County through incorporation into an issued permit before the effective date of termination will survive expiration. The inspection frequencies established in this Programmatic Agreement supersede any inspection frequencies specified in project-specific agreements executed prior to the Programmatic Agreement's Execution Date.

7. If County conveys into private ownership a fee interest in the property that is the subject of this Agreement, it shall require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this Agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity. If County conveys into public ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this Agreement.

8. Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts, omissions of others, and the results thereof. Minnesota Statutes Chapter 466 and other applicable law govern liability of the Parties.

9. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) day written notice. In the event of a termination or cancellation, the County will remain responsible as provided in this Agreement for obligations under permits incorporating this Agreement prior to termination.

10. Electronic Signatures. The electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and electronic copies hereof shall be deemed to constitute duplicate originals.

11. This Agreement may be amended only in a writing signed by the Parties.

12. The recitals are incorporated as a part of this Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Administrator

Date: _____

COUNTY OF HENNEPIN

ATTEST:

By: _____
Deputy/Clerk of the County Board

By: _____
Chair of its County Board

Date: _____

Date: _____

REVIEWED BY
THE COUNTY ATTORNEY'S OFFICE:

And: _____
County Administrator

Date: _____

By: _____
Assistant County Attorney

Date:

And: _____
Assistant County Administrator,
Public Works

Date: _____

REVIEWED

By: _____
County Administrative Clerk

Date: _____

RECOMMENDED FOR APPROVAL

By: _____
County Highway Engineer

Date: _____

RECOMMENDED FOR APPROVAL

By: _____
Department Director, Transportation
Operations (Acting)

Date: _____