MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

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Agenda Item #: 12.2
Item type: Discussion

Title: Permitting Alignment – Overview, Policy Shifts, and Changes

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Purpose:
To continue the discussion of the Permitting Alignment effort from June 10, 2021. Previously, the Board was provided an overview of the Program Alignment effort and its major policy shifts. This has been summarized again, below. The focus for the July 22, 2021 meeting will be the program changes associated with the Compliance Framework and the development of Partnership Framework, and its relationship to the Responsive Program prior to engaging with external stakeholders in Q4, 2021.

Executive Summary:

Background and Situation:
Minnehaha Creek Watershed District (MCWD or District) is focused on the protection and improvement of natural resources in ways that support thriving communities. The collective efforts of the organization work towards enacting a vision of thriving communities generated through the intersection of the natural and built environments – a balance creating value and enjoyment. This is the unifying theme of the District's 2017 Watershed Management Plan (Plan).

To materialize this vision, and because land use is the principal driver of the health of natural systems, MCWD's primary strategy is to work with those who shape the landscape. The MCWD doesn't own or control the land, therefore, the organization needs to work collaboratively with the land-use community to achieve its mission. This strategy is clearly outlined in the District's Balanced Urban Ecology (BUE) policy, which calls for aligning policies, plans and investments with partners in the land use community. The alignment serves as a means to achieve the District's natural resource objectives while also delivering broader social and economic value within communities.

Beyond integrating plans and capital investments, one of the principal points of engagement with the land use community is through the District's permitting program. The District's program has over 1,200 points of engagement with the land use community annually, including developers, architects, engineers, municipal staff and officials, and landowners.

Historical Issues & Direction Forward:
The Permitting Program implements policies to protect natural systems from changes in the built environment. However, over time, and through self-assessment, the District has acknowledged that its historic approach to creating and implementing regulation has generated conflict with the land use community. While some of this can be attributed to natural tensions inherent in any government regulatory program, the District has recognized many historical critiques as constructive and legitimate.

Despite periods of conflict, the District has experienced moments of coaction and partnership with regulated parties, the combined effort resulting in capitalizing on land-use change to produce natural resource benefits that exceed regulatory requirements. These cooperative endeavors have resulted in some of the District's most recognizable projects, including the Mader Wetland Bank, the Methodist Hospital Creek Remeander and Boardwalk, and the West End Stormwater Expansion.

These moments of collegial alignment have fueled the realization that there is more that can be accomplished cooperatively than through a rigid, reactive approach. As part of MCWD's overall effort to realign the organization around its vision of a Balanced Urban Ecology, the District's Permitting Program must continue to protect natural resources from land use change. However, to realize this cooperative vision, it must do so in ways that minimize conflict and maximize partnership with the land use community; primarily, by aligning stakeholder experience with the District's message and BUE policy. This sentiment laid the foundation for the Permitting Program's new purpose, as identified through the District's Strategic Planning effort:

"To protect natural resources against degradation associated with land-use development; and, partner with public and private parties to generate greater natural resource outcomes that those achieved through regulation alone."

In aligning the Permitting Program around this new purpose, the District is moving forward from the traditional regulatory model, toward developing meaningful relationships with the land-use community, and together building projects that provide social, economic, and environmental benefits. In service of this goal, Permitting will seek to provide a heightened level of service to its applicants and communities by creating clear rules and process, aligning its efforts with other state agencies, and creating greater efficiencies with its municipal partners.

Diagnosis of Issue Drivers:

To thoroughly understand the historical issues Permitting has experienced and identify their causes, staff undertook a comprehensive policy analysis process. Beginning in 2018, staff engaged the Citizen's Advisory Committee (CAC) through a series of guided discussions over the course of 10 months to group historical issues into categories. Once consensus had been built around the categorical issues, staff and the CAC worked to identify potential solutions. The results of that work were vetted with Operations and Policy Committee in early 2019. The categorical issues and solutions outlined through this process served as the basis of the scope of work to realign the District's Permitting Program. The collective process identified four primary drivers of the Permitting Program's historical conflict:

1. The rule language and administrative process are onerous for applicants and communities.
    i. MCWD's rules are inconsistent and misaligned with state standards, causing friction, inefficiency, and missed partnership opportunities within the triangulated relationship between MCWD, applicants, and communities.
    ii. The rules and procedures are written in dense technical and legal language, making them hard to navigate and understand, resulting in incomplete submittals and the need for multiple touch points and cycles of review between MCWD and applicants.
    iii. MCWD's regulatory scope, processes and requirements are not effectively tailored to the scope or risk of a project, requiring significant administrative overhead for the District and applicants for relatively low risk work.
2. The District's Compliance Framework, which is used to monitor sites for adherence to District rules, has limited actionable measures and consequences to discourage non-compliance. Further, staff capacity is not sufficient to provide an inspection presence at all construction sites.
    i. This has created an awareness amongst portions of the regulated public that the District has a limited basis in which to compel compliance, and perpetuates the perception of an agency willing to impose regulations, but hesitant to enforce them in the field.

ii. The District does not have any formal partnerships related to regulatory compliance, leaving MCWD to resolve non-compliance and persistent issues independently. This occurs even though many of the same rules and standards are implemented by both the city and MCWD.

iii. MCWD's inspections are not formally guided by a risk-management framework, resulting in a fluctuating compliance presence across the broad swath of projects we permit, and no defined sense of the Program's priorities. The lack of formal guidance has resulted in misaligned inspections, which do not adequately focus staff time on appropriate natural resource risk. This postures our inspections as reactive, rather than preventative.

3. MCWD is typically engaged at the end of the land use planning process, when site layouts have already been determined.

   i. This has been the result of cities operating their zoning processes independently, referring applicants to the District at varying times, with the timing often dependent on whether or not the District has a working relationship with the city's community development department. This is also due to the perception that the District's process is not a critical step in determining a site's layout.

   ii. The late involvement limits how well MCWD can act as a value-added partner that can shape, steer, or advise projects. Additionally, this perpetuates the image of the District operating solely as a regulator that is reactive, and out of touch with the modern development community.

   iii. It creates tension and generates adversarial interactions with applicants and communities when planned projects conflict with MCWD's rules – often in ways that could have been avoided with earlier coordination. The conflict often materializes as additional project costs or schedule delays, both of which impact relationships with the land-use community.

   iv. As a result, MCWD's rules provide baseline protection against natural resource degradation, but do not generate opportunities to make improvements through proactive partnership.

4. The District does not have established policy frameworks for consistently managing the process and risk associated with partnering with permit applicants.

   i. There is no process memorialized that guides an applicant or staff through the steps leading a potential land-use opportunity toward a partnership. From a developer's perspective the lack of formal process presents a significant amount of risk, and no sense of timeline. From staff's perspective, the absence of a formal process increases the likelihood for mistakes, or delays, affecting the potential for positive outcomes. Organizationally, the lack of process provides no sense of how potential opportunities are weighed, nor how the District's interests will be protected.

   ii. The District has historically navigated each partnership opportunity on a case by case basis. Without clear process or policy set by the Board. As a result, staff are often perceived to be operating with prospective partners with no apparent organizational backing, or clarity on the procedural steps for working together.

   iii. There are no established criteria that dictate how partnership opportunities may be assessed, or what constitutes a worthwhile pursuit. The lack of formalized criteria presents the appearance that each opportunity is an ad-hoc investigation, and risks inconsistent assessments.

iv. Without a formalized process or criteria, or an understanding of the potential benefits, there is little incentive for the land-use community to engage the District in any cooperative effort to pursue creative solutions or partnership opportunities.

The culmination of these issue drivers is the perception that the Permitting Program is a reactive, traditional regulator that is out of touch with the land-use community – a perception that we have continually battled against, and one that runs counter to the mission and vision of the organization. The Permitting Program, as it exists today, fulfills a necessary role of protecting the District's natural resources. However, as the issues outlined above illustrate, it does so, often at the cost of achieving the MCWD's mission and vision.

Proposed Solutions & Strategies:

To address these issues and their causes, MCWD is embarking on a series of changes to its regulatory programming in order to better serve its mission, communities, and applicants. These efforts are being undertaken to better align staff focus with natural resource risk; to make the rules simpler, more streamlined, and aligned with modern standards and guidance; and, provide a more user friendly experience. These changes are in service of the larger goal of improving natural resources. By implementing a partnership framework, facilitating early coordination, and expanding efficiency and staff capacity through the changes listed above, the Permitting Program will be able to focus on establishing cooperative relationships with the land-use community. Through these established relationships, we can collaboratively build projects that provide benefits socially, economically, and environmentally.

Therefore, to align MCWD's permitting program with its overall strategy of protecting *and improving* natural resources, staff, the CAC, and the Board agreed upon the following policy shifts to better the regulatory process and rules in the following areas:

1. Simplifying and streamlining the rule language and process, by:

    i. Simplifying the process for small-scale projects that pose low risk to determine if there are alternative means available to process lower risk applications.

    ii. Communicating rules and procedures in plain language for a more approachable, user-friendly experience.

    iii. Moving away from universally required technical submittals towards a range of acceptable materials that can be used to meet permit requirements.

    iv. Investing in technology to provide a user-friendly, simple, and efficient means for applicants to apply for permits, while allowing staff to store and utilize valuable land-use data.

2. Eliminating regulatory overlap, aligning standards, and investigating opportunities for municipal partnership, by:

    i. Aligning with state standards, particularly the Minnesota Pollution Control's (MPCA) Municipal Separate Storm Sewer System (MS4) permit, providing a consistent regulatory framework that avoids bouncing applicants between multiple agencies, and, often competing regulatory standards.

    ii. Meeting state MS4 standards, and potentially undertaking reporting, on behalf of municipal partners where the District can assist in meeting inspection or permit review requirements in exchange for joint compliance enforcement, inclusion of the District's permitting process in municipal zoning review, or other items.

3. Promoting early engagement, by:

    i. Working with our communities to formally develop frameworks on how MCWD works with or integrates into municipal zoning processes -- articulating the value the District can add, the type of projects we are primarily interested in, when in the process we are most effectively engaged, the method of engagement, what the city can expect from the District as a response, and an outline of how each party will work together if an opportunity is present.

    ii. Communicating to applicants and potential partners, the value of early coordination with the District through communications, marketing materials, and other items.

    iii. Encouraging the use of our fast, no-cost, pre-application review that has been developed for use and integrated into our online permitting system.

4. Defining how we act as a value added partner for permit applicants, by:

    i. Developing a framework and process based upon past success, to provide internal and external clarity, in coordination with the Responsive Program. This will include policies, procedures, and protocols that memorialize how potential opportunities are routed through pre-established steps that may yield partnership opportunities, while simultaneously mitigating risk for the District.

    ii. Providing time, expertise, and technical assistance to applicants, when they engage MCWD early.

    iii. Defining, via our Responsive Program, how and when we can offer funding and other support, for high-impact projects.

5. Refining the Compliance Framework, by:

    i. Refining the escalation process for crispness and clarity, for smooth, effective internal operations of enforcement proceedings.

    ii. Exploring the range of actions at the Board's discretion for issues of varying scope and scale.

    iii. Formalizing the prioritization framework into Board policy to memorialize the District's internal risk assessment of particular land-uses or construction activities, and outline appropriate levels of field presence.

    iv. Updating financial assurance amounts and protocols to reflect modern construction prices, and define more clearly how dollar amounts may be used, to deter compliance issues before they begin.

    v. Developing local and state compliance partnerships to define roles and responsibilities amongst agencies regulating similar matters, and collaborative resolution of issues.

6. Training of staff:

    i. To act as policy planners through recognizing the needs of key geographies, understanding the gaps in meeting those needs, and how to execute partnerships, projects, and support policy in order to fill them.

ii. To provide technical assistance through determining the appropriate scope and scale of resource utilization toward permits and potential opportunities.

iii. To cultivate projects and represent MCWD's brand through a deep understanding of organizational priorities, and an understanding of building potential partnership opportunities.

iv. To analyze and communicate data regarding program effectiveness, land-use trends, pollutant removal progress, while also working to inform future projects, policy, and initiatives.

July 22, 2021 Discussion:

The primary goal of the July 22, 2021, meeting is to determine the Board's comfort with the components of the compliance framework and partnership framework that have been developed in support of the policy shifts and strategies that have been identified in the summary above. The 'partnership framework' referenced above will be discussed as part of the Responsive Program Implementation Guidance (Agenda Item 12.1), as these are being developed in a collaborative effort between the Policy Planning and Permitting Programs. Partnership mechanisms specific to the Permitting Program have been included for discussion below.

To facilitate this discussion, staff will be providing an overview of the direction and rationale behind the materials that have been developed, and gathering the Board's feedback. The developed materials include:

- Attachment 1: Proposed Program Changes
  - Overview of the proposed changes and mechanisms developed in support of the policy shifts.

- Attachment 2: Smith Partners - Inspection and Compliance Tools DRAFT
  - A detailed description of the compliance steps and process at the District's disposal. The future inspection and compliance framework will describe how the District uses these in practice.

- Attachment 3: Stantec - Permitting Alignment Analysis DRAFT
  - Page 8 & 14: This section of document describes the risk management framework the District is proposing to use to determine a baseline level of field inspection presence. This will serve as the foundation for the future inspection and compliance framework.
  - Pages 8 – 10; 16: This section of the document describes the proposed modifications to the financial assurance equations, and a scan of the methods used across various agencies.

- Attachment 4: Smith Partners – Regulatory Coordination Options DRAFT
  - This document describes how the District may consider building regulatory municipal partnerships, including for what rules, and how those partnerships might be structured.

- Attachment 5: Smith Partners – Restoration Track DRAFT
  - Proposed revision to the Variance/Exception framework for projects specifically designed to benefit or restore natural resources.

Supporting documents:

1. Summary of Proposed Program Changes
2. Smith Partners - Inspection and Compliance Tools - DRAFT
3. Stantec - Permitting Alignment Analysis - DRAFT
4. Smith Partners - Regulatory Coordination Options – DRAFT
5. Smith Partners - Restoration Track - DRAFT

Attachment 1: Summary of Proposed Program Changes

Program Changes – Issues and Strategies

The program changes summarized below are in support of policy shifts the Board and staff identified in prior discussions. These policy shifts served as the foundation for the Permitting Alignment Scope of Work, adopted by the Board in September 2019.

The proposed program changes support the strategies of, (1) promoting early engagement, (2) defining how we act as a value added partner for permit applicants, and (3) refining the compliance framework. The changes described below are the result of a year-long, cross-departmental effort in conjunction with the expertise and support of MCWD legal counsel and the District Engineer. Each rule and mechanism was dissected and analyzed to understand the major issues historically experienced, the involvement of overlapping authorities, potential solutions available, and tradeoffs, amongst other items. The results of this effort are explained in additional detail below.

Promoting early engagement:

Issues

Applicants engaging the District late in the land-use process has been one of the most prominent issues the Permitting Program has faced. In part, this is due to the relative separation between local regulatory processes; cities operate their independent land-use and zoning processes, while the District implements its regulatory program. While these processes certainly share commonalities, and enjoy moments of clear coordination, they are inconsistent, and are often dependent on relationships between District and city staff. The absence of a formal framework, or a low-effort manner in which to engage the District, tends to result in cities either sporadically referring applicants to the District, or not at all.

Apart from inconsistent referrals, late engagement has been a persistent issue, due to perception of the District's process. Generally speaking, developers are motivated to engage the city early because the land-use process is a well-established, familiar, and a required step toward completing a project. Moreover, due diligence is often rewarded with a well-received project. This is in contrast to the District's process -- while also a requirement, it's viewed as a secondary consideration, and not a critical step toward a well-rounded project, resulting in the perception that there is no distinct benefit or reward to coordinating early. This perception compounds when applicants ultimately engage the District late in the process. The late involvement limits how well we can act as a value-added partner that can shape, steer, or advise projects, often perpetuating the image of the District as solely a regulator, reactive, and out of touch with the development community and the pressures it faces. Moreover, even if opportunities for partnership exist, the late nature of the engagement often rules out the possibility of the District working cooperatively with an applicant. At this late stage of engagement, the scheduling constraints and work that has already gone into shaping the plans generally outweigh the opportunity to reimagine the site and pursue additional benefits.

Interactions where planned projects conflict with MCWD's rules create significant tension and often spawn adversarial interactions with applicants and communities – often in ways that could have been avoided with earlier coordination. This often manifests as the District implementing rules that either materially impact or undo decisions made through local land-use process. Unsurprisingly, these unpleasant scenarios cost valuable time and resources, and significantly impact relationships with the development community and our member cities.

As a cumulative result of late engagement issues, MCWD's rules, while providing baseline protection against degradation, do not generate opportunities for partnership or collaboration. Without those key interactions, Permitting

is missing opportunities to identify alternative approaches that may achieve better resource results socially, economically, and environmentally.

Solutions

To address the persistent issue of misaligned engagement, there are a number of steps that the Permitting Program is proposing to take. First, MCWD will need to work with its communities to formally develop frameworks to integrate into their local zoning process. This will be most readily accomplished through formal agreements. The agreements can be broadly drafted to apply across multiple cities -- articulating the value the District can add, the type of projects it is primarily interested in, when in the process it is most effectively engaged, the method of engagement, what the city can expect from the District as a response, and an outline of how each will work together if an opportunity is present. The structure of this approach and subsequent agreements will be developed through discussions with the TAC. It is anticipated that this content would be integrated into larger, overarching agreements surrounding regulatory coordination, as suggested in Attachment 4.

An abbreviated summary of the structure of the request to member cities can be found below.

- Project types the District is interested in will likely include:
    - Planned unit developments (PUDs);
    - Medium or high density residential;
    - Subdivisions
    - Institutional
    - Mixed-use, and
    - Commercial.

- To most effectively leverage the District's expertise and potential resources, these projects should be directed toward the District's pre-application track at concept plan or sketch plat.

- In addition to directing the applicant toward the District's resources, the city can notify the District via e-mail or other avenues that a concept plan, or sketch plat application has been received and is in process. The District will screen the potential project for opportunities, and respond to the City, either:
    - Notifying city staff that there is likely no opportunity present, and providing comments on potential applicable rules for the proposed project for the Planning Commission or City Council's consideration.
    - Notifying the city there may be an opportunity present, and begin the steps outlined in the Responsive Program Implementation Guidance (Agenda Item 12.1, Attachment 1).

Second, by communicating the value of early coordination with applicants. In order for the knowledge and value of working with the District to be widespread, materials will need to be developed to inform the regulated public. This effort, in concert with the Responsive Program, has been identified as a campaign for the Outreach Program to support once it has been re-staffed, and will be a central focus of the upcoming website build. Additional materials will likely consist of single communications, marketing materials, and leave behinds that illustrate the range of benefits of working with the District early, regardless of whether or not a partnership is realized.

Finally, by encouraging use of our fast, no-cost pre-application review. To facilitate applicant's working with the District early, a pre-application review track has been built into the MCWD's new online permitting application system. The track allows applicants to seamlessly interact with the District without the hassle of attempting to schedule a meeting or phone call. The applicant can simply enter some information and attach plans, and staff are able to screen an upcoming project for threats and opportunities at any point before an official application is made. Utilizing this track to its full potential will be reliant on communicating its availability and utility to cities and other partners that may refer applicants

to the District. This 'pre-application review track' has been developed and is currently available through the District's online permitting portal.

To briefly summarize, staff is proposing to:

1. Formalize integration into local planning and zoning process through structured agreements;
2. Develop formal marketing materials, in concert with the Responsive Program, through the Outreach Program.
3. Implement a no-cost, efficient 'pre-application' review track through the online permitting application system.

Defining how we act as a value added partner for permit applicants:

Issues

MCWD has recognized that land use changes present windows of opportunity for water resource improvement that, if missed, may not come around again for decades. In identifying and pursuing partnerships through its Permitting and Responsive Programs, the MCWD can maximize its effectiveness as a water resource agency by integrating its work into land use change. This not only achieves the District's environmental goals, but also broader social and economic objectives, delivering maximum value to the taxpayer. Specific to Permitting, the District has historically navigated each partnership opportunity on a case by case basis. However, the District does not have established policy for consistently managing the process and risk associated with partnering with permit applicants. There is no process memorialized that guides the applicant or staff through the steps leading a potential land-use opportunity toward a partnership.

From a developer's perspective, the lack of a formal process creates strain and tension in negotiating how a potential partnership might work. No actionable framework, steps, or demonstrated outcomes, presents a significant amount of risk for a private party to accept to work cooperatively with a government agency. From staff's perspective, operating without a formal framework creates ambiguity in what steps should or may be required, increasing the chances for mistakes or delays, which in turn affect the potential for positive outcomes.

From an organizational perspective, the lack of a formal framework presents liability in the sense that each opportunity is evaluated on a case-by-case basis without defined criteria. The lack of formalized process increases the risk of perceived favoritism or special treatment for particular applicants or projects, and an ambiguity on how each opportunity compares to another. There is also little clarity on how, on a continuing basis, the District will protect its interests, and clearly delineate a border between pursuing a partnership, and implementing its regulatory program.

Without a formalized policy to direct the implementation of partnership opportunity identification, criteria and evaluation, and response expectations, there is little incentive for the land-use community to engage the District in any cooperative effort to pursue creative solutions or partnership opportunities.

Solutions

To address this issue, Permitting and Policy Planning staff, in coordination with legal counsel and a cross-departmental staff team, is developing the proposed Responsive Program. The proposed Responsive Program, which will be discussed with the Board of Managers on July 22, 2021 (Agenda Item 12.1), outlines the scope, criteria, and process by which projects will be identified and developed cooperatively with public and private partners. As part of the proposed Responsive Program, staff is collaboratively developing Implementation Guidance, as well as internal and external supplemental guidance. This will provide a clear and orderly process for staff, including permitting staff, and potential partners on how the District will identify public and private opportunities, evaluate which opportunities to pursue, and commit resources to selected opportunities.

The Responsive Program Implementation Guidance (refer to Agenda Item 12.1, Attachment 1), outlines the process by which opportunities may be identified, evaluated, and acted upon. This includes projects proposed by private entities

through the Permitting Program. The document describes how the MCWD will integrate into the varying stages of project development for private partners, and outlines roles for both Permitting staff and the Board of Managers through project development. Additionally, the program provides clarity for how opportunities identified through the Permitting Program may be eligible for a diverse array of services, which may include technical, regulatory, planning and policy, outreach, or financial assistance.

Staff will be seeking the input of the Technical Advisory Committee (TAC), planned for Quarter 4 of this year, to ensure that the Responsive Program will effectively serve the District's communities and that it is well understood and supported. A final Responsive Program Implementation Guidance document will then be brought back to the Board for adoption in early 2022.

To supplement the development of the Responsive Program's Implementation Guidance document, and to facilitate the implementation of potential opportunities, staff is recommending modification to the Variance and Exception Rule to include a 'Restoration Track'. The mechanism would be exclusively designed for projects proposing restorations or other benefits to natural resources. The revision would establish a mechanism to issue an exception for restoration if the Board finds (1) the restoration activity cannot be accomplished or will be diminished by adhering to the rule, (2) the exception is not contrary to the intent of the rule, and (3) there will be no material impact to neighboring private property owners. A draft of the proposed 'Restoration Track' can be found in Attachment 5.

To briefly summarize, staff is proposing to:

1. Formalize the process for managing the identification, evaluation, response, and routing of opportunities through the Responsive Program Implementation Guidance document.
2. Revise the Variance and Exception Rule to include a 'Restoration' track, to provide flexibility for projects primarily focused on restoration and beneficial enhancement of natural resources.

<u>Refining the Compliance Framework:</u>

Issue

The District's current Compliance Framework has limited actionable measures and consequences to discourage non-compliance. Compounding this, staff capacity is not sufficient to provide an inspection presence at all construction sites across the District. The combined effect has created an awareness amongst portions of the regulated public that the District has a limited basis in which to compel compliance. This creates a natural tension and conflict in the efficacy of the permitting process, and with the confidence and trust of our stakeholders. It often makes the District appear as an agency willing to impose regulations, but unwilling to enforce them in the field when conflict arises. It is an appearance that is attributed to a distinct lack of clarity of consequence for the violator.

Further, the District does not have any formal partnerships related to regulatory compliance, leaving us to resolve non-compliance and persistent issues independently. The lack of formal partnerships contributes to issues of capacity, where District staff are independently tasked with tracking down and pursuing compliance on their own, rather than in tandem with partner cities that implement many of the same requirements and standards. This also weakens the District's enforcement stature, as MCWD has limited tools at its disposal to compel compliance. However, if compliance is pursued cooperatively, joint enforcement would allow the District to rely on cities for more immediate enforcement actions as the land-use authority, and increase the efficiency and effectiveness of resolving issues.

Finally, MCWD's inspections are not formally guided by a risk-management framework, resulting in a fluctuating compliance presence across the broad swath of projects we permit. This provides no defined sense of the Program's priorities. Because there has been no formal guidance articulating the District's risk assessment, inspections and compliance have been prioritized inconsistently over the years. The lack of formal guidance has resulted in misaligned

inspections, which do not adequately focus staff time on projects posing more significant natural resource risk. This causes us to be reactive, and respond to violations rather than catch them at an early stage, or even prevent them.

The culmination of these issues is a Compliance Framework that is unclear, unfocused, and misaligned with resource risk.

Solutions

In order to address these issues, staff is proposing to refine the Compliance Framework through four primary actions. First, by refining the escalation process for crispness and clarity. In doing so, staff, in coordination with counsel, will be defining, for purposes of internal and external clarity, how enforcement proceedings operate. This will set expectations, provide context for the severity of issues, and eliminate ambiguity in how to proceed when violations occur. This will also outline the range of actions at the Board's discretion. Much of the difficulty associated with the current iteration of the compliance framework is the ambiguity surrounding what actions can be taken, particularly at the Board level. In clearly defining how persistent compliance issues may be handled at the Board level, MCWD can avoid case-by-case treatment of problematic sites. In addition, this will provide the Board with guidance on what actions may be appropriate depending on the scope and scale of the issue at hand. This has been outlined in draft format as Attachment 2.

Second, by formalizing the prioritization framework. The sporadic nature of current inspections provides a limited sense of priorities within the program. Through establishing the relative priority of particular land-uses and construction methods based on risk to natural resources, MCWD can develop a defined basis for inspection targets. The inspection targets, along with any other relevant criteria can be used to determine the appropriate field presence for staff, and provide oversight of key activities posing risk to the District's resources. The basis for staff's proposed priorities have been outlined on pages 8 and 14, of Attachment 3.

Third, through updating financial assurance amounts and protocols. One of the most effective tools in the District's compliance repertoire is the financial assurance. However, over the years, the tool has become less effective as modern construction costs, inflation, and other modern guidance outpace the rule and policy MCWD has in place. In creating additional guidance and refining dollar amounts that reflect modern understanding and prices, MCWD can ensure maximum utility of the tool. The guidance will outline the circumstances and process in which financial assurances can be drawn upon. This will serve as an effective deterrent to avoid problems before they begin, and provide the means for the District to correct issues should a developer or permittee be unwilling to do so. The proposed financial assurance amounts have been outlined on pages 8 – 10; and page 16 of Attachment 3.

Finally, through the development of state and municipal compliance partnerships. In developing joint understandings of roles and responsibilities amongst agencies that regulate similar concerns, the District can operate its compliance program more effectively. Partnerships can be structured in a way that the District is able to provide the technical expertise of inspections and coordination, and the city or other agencies, in exchange, can commit to joint enforcement with the District. This will most effectively leverage the District's expertise for the enforcement tools of the city or state. The goal of the agreements will be to outline how cities and other agencies can work collaboratively to resolve compliance issues, preserving the discretion of each agency, and providing the means for the District to compel compliance. Staff, in coordination with counsel, has drafted how partnerships and coordination options may be structured for each rule. These coordination options can be viewed as Attachment 4.

The items outlined above, including the Board's feedback, will be aggregated into one document that will form the District's revised Compliance Framework. This document, once completed, will be adopted as Board Policy to memorialize the structure, function, and priorities of the District's Compliance Program.

To briefly summarize, staff is proposing to:

1. Refine the compliance framework to outline enforcement proceedings and the range of actions at the Board's discretion.
2. Formalize the site inspection prioritization framework into Board policy to memorialize a defined basis for inspection targets.
3. Update the financial assurance protocols and amounts to compel compliance.
4. Develop municipal partnerships through formal agreements.

Next Steps

Following the Board's feedback during the July 22, 2021 meeting, staff will be making any necessary revisions to the compliance framework and partnership mechanisms discussed. Prior to distributing these items externally, education and outreach materials will be developed to provide an overview of the themes and strategy of the program changes, and how they will work. The revised materials will then be vetted through the TAC for feedback, as part of the Responsive Program and Permitting Alignment discussions in Q4 of 2021. Following TAC review, the documents, rules, and policies will undergo final revisions and be prepared for Board adoption. Agreements are planned to be established on an on-going basis, in coordination with the Responsive Program. A summary of the remaining work and timeline has been included in Table 1 below.

Description of Remaining Work	**Timeline**
Receive Board Feedback on Compliance Framework and Partnership Mechanisms	July 22, 2021
Revisions based on Board Feedback	July – August 2021
Develop education, outreach, and marketing materials	July – October 2021
Receive TAC input	Q4 2021
Finalize Compliance Framework & Adopt Inspection Prioritization Policy	Q1 2022
Enter into Partnership Agreements with Member Cities	Ongoing

Table 1: Remaining Work and Timeline

250 Marquette Avenue South
Suite 250
Minneapolis, MN 55401
(612) 344-1400 tel

www.smithpartners.com

MEMORANDUM

TO: Tom Dietrich
FROM: Chuck Holtman
RE: Regulatory Compliance Process
DATE: June 16, 2021

Pursuant to our discussion, the following is an outline of tools for regulatory compliance that may be useful in formulating District enforcement policy and procedures. The outline generally follows a principle of graduated enforcement, but in each compliance case it is a staff judgment, involving consultation with the engineer, counsel, the administrator and the board of managers, as appropriate, as to the precise enforcement path to be taken.

A. FRAMEWORK

1. Responsible parties

- Property owner
- Contractor
- Named permittee (s)

2. Coordination arrangements with cities

- Share permits
- Joint administration of financial assurances
- Mutual priority-setting for compliance monitoring
- Share compliance information/inspection reports
- Coordinate inspections/joint powers agreements for inspection (MS4 shared effort or less formal)
- Consultation/coordination of enforcement approach
- Mutual witnesses to compliance hearings

B. COMPLIANCE TOOLS

1. Authority to enter/sample

- All residential and non-residential property except within or immediately surrounding premises
- Sample public or flowing waters when little physical disturbance required
- Sample other waters, soils if suspected violation and little physical disturbance
- Policy re seeking consent, avoiding safety issue
- Administrative warrant if needed

2. Inspection & sampling

- Scheduled/unscheduled
- Permittee notified/not notified
- Coordinate with city/state agency staff
  - *Preparation*
  - *Identify/communication with responsible party*
  - *Procedures*
  - *Documentation-standard form*

3. Inspection report

4. Letter

- Staff
- Administrator
- Attorney
- Board
  - *Establish awareness of violations*
  - *State specific actions needed & timelines*
  - *Graduated enforcement*
  - *Violator subject to stop-work, restoration obligation*
  - *Violator subject to costs*

5. Notice of probable violation

  - *Identify probable violations & actions to take*
  - *Advise of board agenda appearance if actions not timely taken*
  - *No formal legal effect*

6. Staff compliance order

- Apply for after-the-fact permit
- Cease & desist
- Directive
  - *Significant harm occurring or threatened*
  - *Harm results from violation of statute, rule, permit term*
  - *Harm likely to occur before board can hold hearing & issue order*
  - *Reasonable effort to notify permittee and allow response*
  - *Coordinate with administrator*
  - *Directives only to address the occurring/threatened harm until board can act*
  - *Duration only until board compliance hearing: Notice of board hearing*
  - *Standard form*

7. Board/committee agenda item

8. Board compliance order

- Superseding staff order or without prior staff order
- Cease & desist
- Directive
- Cost reimbursement
- Vacate permit
    - *Due notice to potentially responsible parties (PRPs): permittee, contractor, property owner*
    - *Document receipt of notice*
    - *Assemble record & provide to board, PRPs in advance*
    - *Prepare draft order & provide to board, PRPs in advance*
    - *Due process: PRPs may have counsel, present evidence & testimony*
    - *Audio record*
    - *Document receipt of board order*

    <u>Purposes for board order</u>
    - *Can only be enforced by court order, but:*
    - *Failure to comply with board order is separate violation that compounds underlying violation*
    - *Order establishes formal notice of violation*
    - *Court should defer to board findings and enforce, rather than find facts, determine violations and specify remedies independently*

9. Enter & do work (after Board finding of violation)

- Retain contractor
- Draft on financial assurance
- Cost reimbursement

10. Compliance costs from financial assurance/fee

- Draw from fee/escrow balance
- Notice of intent to draft on financial assurance
- Draft & hold or use funds
    - *Attorney or administrator may sign demand*

11. Coordination/enforcement by others

- City, County (local permit, ESC/stormwater, WCA, shoreland, floodplain, septic, nuisance)
- MPCA/DNR/USACE (NPDES, wetland)

12. Board-authorized Court action

- Enforce board order
- Temporary restraining order/injunction
- Permanent injunction
- Abatement/restoration
- Attorney fees
- Cost recovery/lien/execution on asset
- Criminal misdemeanor

WENCK now part of Stantec

Memo

To:	Thomas Dietrich, Permitting Program Manager, Minnehaha Creek Watershed District	From:	Erik Megow, P.E., Stantec Chris Meehan, P.E., C.F.M., Stantec
Reference:	Program Alignment Rule Scoping DRAFT	Date:	June 7, 2021

The Minnehaha Creek Watershed District is in the process of realigning its programming around its new mission, vision, goals, and strategic priorities, in addition to the balanced urban ecology policy. As a part of the overall Program realignment process, the District is revising the scope and standards of its Rules. The revision of the District Rules aims to:

- Simplify and streamline rule language and processes.
- Eliminate regulatory overlap, align rules, and investigate opportunities for municipal partnership.
- Promote early engagement.
- Define how the District can add value for permit applicants.
- Refine the compliance framework.

To begin updating the Rules, Stantec has reviewed and provided background information and analysis for updating specific sections of the rules to better align with the overall goals of the District Rules revision process, as outlined above. This memorandum outlines the preliminary, proposed scope and standard updates for portions of the following Rules:

1. **Wetland Protection** – Buffer Width and Reduction Criteria
2. **Waterbody Crossings & Structures** – Fast-track Recommendations and Guidance
3. **Stormwater Management –** Stormwater Standards Update and MS4 Alignment
4. **Compliance** – Inspection Guidance and Financial Assurance

The following sections provide guidance and justification for the preliminary, proposed updates for the Rules listed above.

1. Wetland Protection – Buffer Width and Reduction Criteria

The goal of the Wetland Protection update is to develop buffer width requirements regardless of management class and provide criteria to justify reduction to the minimum buffer width. The objective of this approach is to simplify a currently complex process and improve program efficiency, while maintaining the same level of natural resource protection. The following Table outlines the proposed guidelines for Average and Minimum buffer widths for two categories of wetlands.

Wetland Community Type	Suggested Buffer Width Average	Suggested Buffer Width Minimum
Circular 39[1] Types 3/4/5 (Cowardin Hydrology Modifiers[2] C, F, G, H)	50 ft	25 ft
Circular 39[1] Types 1/2/6/7/8 (Cowardin Hydrology Modifiers[2] A & B)	30 ft	15 ft

1. https://bwsr.state.mn.us/sites/default/files/2018-12/WETLANDS_delin_Circular_39_MN.pdf
2. https://www.fws.gov/wetlands/documents/Wetlands-and-Deepwater-Habitats-Classification-chart.pdf

Reference: **Program Alignment Rule Scoping**

The development of these guidelines is based on wetland community type, specifically those with a hydrology modifier that may present with standing water during the growing season. The approach of using two categories, wetlands with standing water (Type 3, 4, 5) and wetland typically without standing water (Type 1,2, 6, 7, 8), shifts the focus to reducing water quality impacts, rather than based on wetland quality regardless of hydrologic regime. Wider buffer widths are required for wetlands with standing water which harbor aquatic life such as amphibians, invertebrates, and emergent plants more sensitive to degraded water quality. In lieu of an accepted functional assessment tool that is intended for determining wetland sensitivity to Total Suspended Solids (TSS) and Total Phosphorus (TP), using wetland hydrologic regime as the basis for determining appropriate buffer width is a reasonable and available approach.

Furthermore, wetland community types are a useful framework on which to base buffer widths that is not dependent on a wetland quality valuation, like MnRAM. MnRAM is no longer supported by BWSR and has not been updated in several years.. Currently, BWSR and the Wisconsin DNR are kicking off an initiative to develop a new method of wetland functional assessment, however no BWSR supported functional assessment tool is currently in place(https://www.bwsr.state.mn.us/wisconsin-minnesota-wetland-functional-assessment-initiative).

The new, proposed Average and Minimum buffer widths is based on a 2011 evaluation by MnDOT.Based on this evaluation TSS and TP removals were found to taper beginning at approximately 30-foot buffer width, with significant diminishing returns above a 50-foot buffer width. From a water quality perspective, 50 and 30 feet are appropriate benchmarks to achieve desirable removals; above 50 feet, the increase in percent reduction is very incremental with additional width (http://www.dot.state.mn.us/research/TS/2011/2011-06.pdf). See figures below extracted from this report.

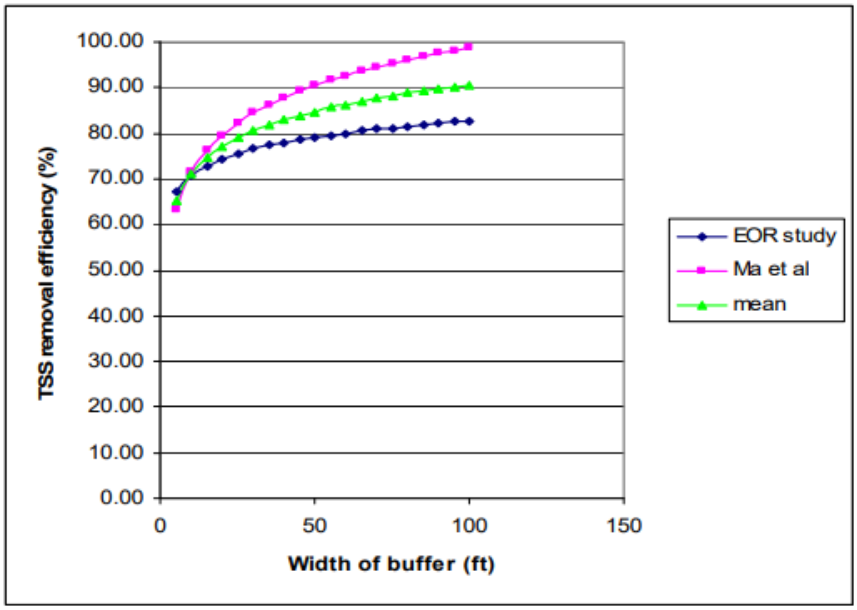

Figure 5.1 TSS removal efficiency based on buffer width. The equation used for the tool is the one for the mean described by the equation: $y = 8.50 \text{ Ln}(x) + 51.53$.

Reference: **Program Alignment Rule Scoping**

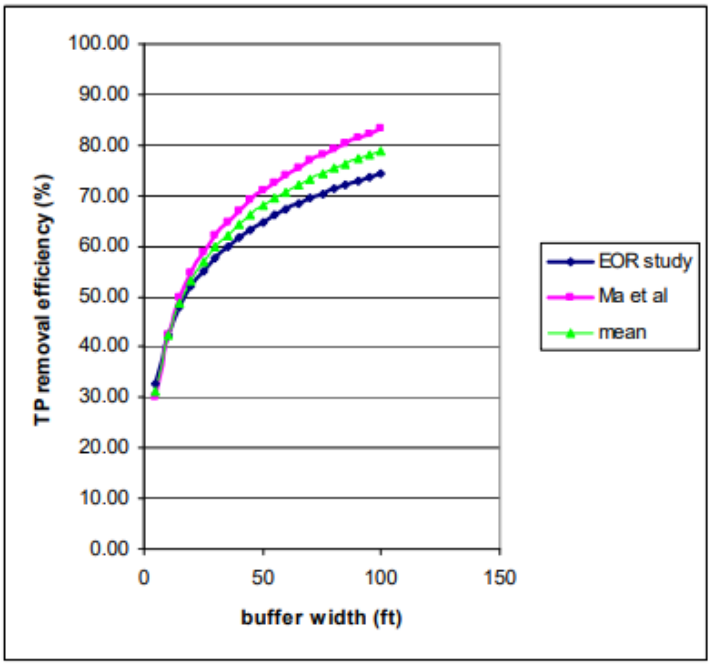

Figure 5.2 Total phosphorous (TP) removal efficiency based on buffer width. The equation for the tool is the one for the mean described by the equation: $y = 15.84 \ln(x) + 5.9$.

The 2011 MnDOT report referenced above also included an evaluation of wildlife uses in its Appendix A. Evaluated wildlife include several species of amphibians, reptiles, and bird. This life history summary table indicated that most evaluated wildlife life cycle stages may occur within buffer widths of 50 feet (15m), though some groups require a significant buffer width of up to 100m+. Overall, sources evaluated indicate that wildlife use of buffers varies greatly by species and is difficult to generalize.

As shown Figure 5.1 and 5.2, buffer width of 75 feet versus 50 feet does not result in a proportional return in wetland protection. Both figures indicate that reduction in TSS and TP begin to level off at a width of 50 feet. In addition to the limited additional benefit of a 75-foot buffer versus a 50-foot buffer, the 75-foot buffer creates a greater constraint on development potential of a site. The challenge of incorporating a 75-foot buffer is even greater on small sites. It is important to note that the 50-foot buffer width is the maximum required by the Minnesota State Buffer Law for lakes, streams, and rivers.

Buffer width as little as 15 feet are highly effective at reducing TSS and TP from entering a wetland. The equations shown in Figure 5.1 and 5.2 show a 75% reduction in TSS and a 49% reduction in TP with a 15 foot buffer. As 15 feet in utilized as the minimum width for Type 1,2, 6, 7, & 8 wetlands, it is important to consider that the average width of 30 feet will provide even greater reductions in pollutants entering the wetland.

Reduction Criteria: The District may consider providing reduction criteria in the rule, where if applicants can demonstrate that the projects meet certain criteria, the minimum buffer width can be utilized. For example, applicants can be allowed to use the minimum buffer width if they are able to meet the following criteria:

- For existing impervious surface, the applicant can use the minimum buffer width if onsite slopes adjacent to wetland are less than 3:1, and:
    - The existing, upgradient impervious surface is redirected to a different outfall, away from the wetland, or
    - The existing, upgradient impervious surface is redirected and treated (via 1.0" of abstraction).
- For new Impervious Surface, the applicant can use the minimum buffer width if all new, upgradient impervious surface is treated (via 1.0" of abstraction), before being discharged to the wetland.

Other Considerations:

Wetland Classification: The District may consider maintaining the current wetland management classification system (Management 1, 2, 3 & Preserve) which relies on the District's Functional Assessment of Wetlands instead of using the Circular 39 classifications. The proposed base (50' and 30') and minimum (25' and 15') buffer width could be used for the current classification, but the reliance on re-classification through the Minnesota Routine Assessment Method (MnRAM) should be revised as MnRAM is no longer supported by BWSR and has not been updated in several years. Using the Circular 39 classification will also streamline the wetland protection permitting for applicants as it is a standard classification system used throughout Minnesota and applicants are very familiar with it.

Enhanced Vegetative Buffer Considerations: The District may consider reduction criteria for applicants that provide buffers with greater vegetative diversity and buffer planting plans that match the existing vegetative cover of adjacent wetland and buffer communities. For example, this may include planting shrubs adjacent to wetlands with shrubby vegetative cover, or trees and shrubs adjacent to other forested corridors to provide contiguous habitat for wildlife. This will require further evaluation to be quantifiable within the rules.

Single Minimum Buffer Width: If it is desirable to apply a single, minimum buffer width for all wetland types, a buffer width of 15 feet could be considered as this width is still highly effective at reducing TSS and TP from entering a wetland. The equations shown in Figure 5.1 and 5.2 show a 75% reduction in TSS and a 49% reduction in TP for a buffer width of 15 feet. However, if a single minimum buffer width is considered, some additional reduction criteria should be added to ensure wetlands with standing water have adequate protection for aquatic wildlife.

2. Waterbody Crossings & Structures - Fast-track Recommendations and Guidance

The goal in updating the Waterbody Crossing & Structures rule is to provide applicants with clear, simplified guidelines on when a fast-track permit would be permissible. The simplified guidelines will also improve staff capacity through streamlining the permitting process for these culvert replacement projects.

A fast-track permit may be permissible if certain culvert restoration/replacement activities are proposed under the Waterbody Crossing and Structures rule. If a culvert will be restored using a liner, or it will be replaced in a manner similar ("in-like and in-kind") to existing conditions, the applicant should complete the "Culvert Change Analysis" (**Appendix A**) spreadsheet calculator provided by MCWD. The spreadsheet calculator requires the following information:

1. Describe the proposed changes of the culvert crossing (i.e. diameter, material, storm sewer or culvert)
2. Describe or name the waterbodies upstream and downstream of the culvert being altered
3. Use spreadsheet calculator to calculate the proposed changes in full flow capacity based on Manning's equation

Reference: **Program Alignment Rule Scoping**

Required inputs:

- Type of pipe (RCP, CMP, etc.) and inside diameter of pipe (in)
- Upstream and Downstream invert elevations (ft)
- Length (ft) – [Note: exclude any pipe aprons or flared end sections]

4. Evaluate change in full flow capacity and justify any changes greater than 3%
5. Describe how the proposed changes will not adversely affect water quality
6. Provide two (2) alternatives to the culvert changes and describe how the proposed change represents the "minimal impact" solution

Types of proposed changes that will require further review by District Engineer and/or further Hydraulic & Hydrologic analysis:

- Proposed conditions that result in full flow capacity changes greater than 3%
  - It should be noted that this is only applicable for culverts outside of FEMA Flood Hazard Zones, culverts within FEMA FHA Zones will still need a No Rise Analysis.
- Upstream invert elevation of pipe raised by more than 0.1-foot

3. Stormwater Management – Stormwater Standards Update and MS4 Alignment

The goal in updating the Stormwater Management Standards is to:

- Align the MCWD Stormwater Standards with the MS4 Standards to meet State Standards and create a consistent regulatory framework with partner cities.
- Simplify the criteria for applicants and improve program efficiency, and
- Provide equivalent resource protection as the existing MCWD Stormwater Standards.

The following Table provides a draft Stormwater Management Requirements Table that achieves all of three of the goals.

Project Type	Trigger	Treatment Scope	Requirements
Linear	1.0 acre (or more) of: •New impervious surface •Fully reconstructed impervious surface •A combination of both	The greater of: •1" over the new impervious surface •0.5" inches over the sum of the new and fully reconstructed impervious surface	Volume Control – abstraction of 1.0" over the impervious Rate Control – must maintain 1-, 10-, 100-yr events at all points where SW leaves the site Phosphorus – met with 1.0" of abstraction (Volume Control)
Development/Redevelopment (Site Area < 1.0 acres): Includes: •Commercial •Industrial •Institutional •Public Facility Improvements	New or fully-reconstructed impervious surface	None	Incorporate Stormwater BMP
Development/Redevelopment: (Site Area ≥ 1.0 acres): Includes: •Commercial •Industrial •Subdivisions (3+ lots) •Institutional •Med/High Density Residential •Public Facility Improvements	New or fully-reconstructed impervious surface	< 50% Disturbance of Existing Impervious = •Treatment of the additional and/or fully reconstructed impervious surface	Volume Control – abstraction of 1.0" over the impervious Rate Control – must maintain 1-, 10-, 100-yr events at all points where SW leaves the site Phosphorus – met with 1.1" of abstraction (Volume Control)
		≥ 50% Disturbance of Existing Impervious = •Treatment of the entire site's impervious surface.	Volume Control – abstraction of 1.0" over the impervious Rate Control – must maintain 1-, 10-, 100-yr events at all points where SW leaves the site Phosphorus – met with 1.0" of abstraction (Volume Control)
Single Family Homes	Exempt	Exempt	Exempt
Agriculture	Exempt	Exempt	Exempt

The proposed Stormwater Management Requirements Table aligns our current requirements with MS4, while maintaining our current level of natural resource protection by:

- Continuing to require BMPs for sites/disturbances of less than 1 acre, and
- Requiring major redeveloping sites to bring their entire site in conformance with current stormwater standards.

These two requirements are above-and-beyond MS4 Standards and have some advantages and disadvantages that require further consideration:

- 50% Disturbance of Existing Impervious Treatment Scope Criteria
    - The advantage of keeping this criteria is that most of the large Stormwater Permits are for redevelopment and for projects where they are disturbing greater than 50% of the Existing Impervious Surfaces, this may be the District's one chance in the next 10-50 years to bring the entire parcel up to current standards. The District currently has criteria to enforce that the entire site's impervious surface require treatment, however, the current criteria is triggered when a site disturbs greater than 40% of the site or increases impervious surface by greater than 50%.
    - Focusing on the disturbance of existing impervious surface will align the criteria with the new, proposed rule triggers, which focus on the amount of new or fully-reconstructed impervious surface.
    - Instances where this treatment scope criteria were triggered in the past disproportionately affected schools, where the entire site required treatment when greater than 40% of the site was disturbed. In these instances, it was very difficult to treat existing impervious surfaces, such as buildings, where existing stormwater is routed internally or directly to storm sewer. With the new focus on the amount of existing impervious surface disturbed, this will hopefully target sites capable of bringing their entire site in conformance with current stormwater standards without causing an undue burden on the applicant.
    - The disadvantage of using this criterion is the need to track Phased and Connected disturbances of impervious surface, however, this could be simplified by only going back as far as '*when the new rules go in place*' (expected 2022), instead of 2005. This will allow the District to track permits and disturbances in the new geodatabase and Permitting software.
- Incorporating BMPs for sites with Disturbance of < 1 ac
    - The advantage of keeping this requirement is that it maintains the current standard to require BMPs for sites less than 1 acre.
    - Although these projects will still be required to provide a BMP, there are some disadvantages:
        - Most projects that fall into this category simply satisfy the rule by including an insignificant BMP (i.e. – a 'sump' manhole or catch basin) that does not provide significant water quality.
        - These projects take up a lot of Staff and Engineer review time. From 2011-2020, there were 513 Stormwater Permits, and 38% of those (195) were for sites less than 1 acre.
    - If the District were to keep this rule, it would greatly benefit the efficacy of the rule by defining a treatment scope. Currently, there is no water quality or volume abstraction target for these sites, so most sites implement a sump catch basin or sump manhole that provides a very small amount of treatment. For example, a 0.25-0.50" of volume control for new and disturbed impervious surfaces, or a TP or TSS removal could be established, to require more substantial BMPs.

Reference: **Program Alignment Rule Scoping**

4. Compliance – Inspection Frequency and Financial Assurance

Compliance

The goals in updating the inspection frequency guidelines within the Permitting Department is to make sure District Staff:

- Prioritize high risk and high priority projects,
- Develop Site Prioritization Criteria to meet MS4 Requirements, and
- Develop a baseline frequency for Low-High Priority Sites to help focus District Staff resources.

To accomplish these goals, all project types were given an initial Site Priority based on the project type and the likely resources that would be affected. Then inspection frequencies and additional Site Prioritization Criteria was developed to help further define Site Priority. This is broken down further in **Appendix B.**

- Overall, the following Site Priority Projects should be inspected at the respective frequencies:
    - Very High to High Priority Projects – 50% of these projects should be Inspected at a schedule and priority outlined in the Table.
    - Medium Priority Projects – 25%
    - Low Priority Projects – 10%
    - Single Family Homes Projects – 5% (~10 per year).

These suggested frequencies should give the District a good sample size of the different projects then the frequencies can be adjusted based on compliance issue findings. Within those Project types, further priority should be given to Projects based on the following Site Prioritization Criteria:

- Steep slopes (3:1 or greater), dewatering activities, high erosion potential
- Level of activity and stage of construction
    - Grubbing and clearing
    - Grading
    - Streets, curb, storm, utilities
    - Surface stabilization
    - Building construction
    - Landscaping and final stabilization
- Proximity to natural resources, sensitive or special waterbodies, and impaired waters
- SWPPP reviewer and inspector's professional judgement
- Complaints: Complaints received from the public, reports from District staff, or referrals from other agencies (City, State, LGUs, etc.)
- Compliance: Compliance history of site, timeliness of addressing non-compliance, recordkeeping, and submittal of self-inspections

Based on these additional Site Prioritization Criteria, some project types might move from High Priority to Low Priority or from Low Priority to High Priority.

Financial Assurance

The goals for updating the Financial Assurance Equations were::

- Simplify the equations,
- Rely on modern criteria,
- And match what we are seeing on a Local and National level.

The following Table outlines the Proposed Financial Assurances for each Project Type, while a comparison other local and national criterion can be found in **Appendix C.**

Reference: **Program Alignment Rule Scoping**

Category	MCWD - Proposed	
Erosion / Grading	Errosion Control	
	<1 acre disturbed	$0
	1-5 acre	$3,000
	5-10 acre	$5,000
	10 acre	$7,500 + $200/acre over 10
Wetland Protection	Wetland Protection	
	Wetland Alteration*	$5000 + $10,000/acre max is $25,000
	*Alteration is Impact or replacement	
Dredging	Dredging	
	Dredging	equal to price of project
Shoreline / Streambank	Shoreline Stabilization	
	rip rap, sand blankets, retaining walls, boat ramps, etc.	$5000 + or total shoreline impacted times $100/ft
	annual rate	$25,000
Stormwater Management	Stormwater Management	
	Stormwater Management Facilities	$5,000/acre*
	* acre is in reference to impervious area to be treated	
Floodplain Management		
Near Public Waterbody		
	Financial assurances may be required by the Minnehaha Creek Watershed District (MCWD) to cover potential liabilities. These include the cost of installing and maintaining protective measures as described in the permit, as well as the cost of addressing damage that results from permit noncompliance.	

Reference: **Program Alignment Rule Scoping**

Following is an overview of the updated Financial Assurances and the justification:

- Erosion Control
  - The fees are now based on acres of disturbed area.
  - The current ranges were kept, but costs for each range were updated and increased to match Local and National watershed levels/pricing.
- Wetland Protection
  - Increased maximum and per-acre pricing to match pricing.
- Dredging
  - No change.
  - Current assurance level is consistent with other watersheds.
  - If the current assurance calculation is not desirable, a $/CY could be implemented. This equation would be somewhere between $100-500/CY
- Shoreline/Streambank
  - No change.
- Floodplain Alteration
  - With the current requirement of an as-built survey, a financial assurance for Floodplain alteration is not needed.
- Stormwater Management
  - Updated to reflect current technology and base it on the treatment scope for simplicity.
  - Pricing has been updated to median pricing around the Greater Twin Cities and Nationally.
  - Pricing also reflects an approximate 3% surety based on treatment volume. Stantec reviewed stormwater costs for filtration and infiltration BMPs within the Greater Metro Area and found that it costs approximately $160,000/acre of treatment (assuming 1.0" of abstraction). A 3% surety based on acre of treatment would be approximately $4,800. Therefore, $5000/acre of treatment was used.
    - At $5,000/acre of stormwater treatment, the District, enough budget should be available to re-construct stormwater facilities that are installed or constructed incorrectly.
    - A cost analysis should be performed every 3-5 years to see if the $160,000/acre for stormwater facilities increases significantly and then the financial assurance can be adjusted (increased) accordingly.

Appendix A

Culvert Change Analysis Example

Culvert Change Analysis

Step 1: Describe the proposed changes of the culvert crossing.

Step 2: Describe the waterbodies (i.e. Wetland, stream, Lake, etc) and provide waterbody name and/or Wetland Management Type (i.e. - Manage 1,2,3, or Preserve).

Upstream Waterbody:
Downstream Waterbody:

Step 3: Calculate the changes in full flow capacity.

Culvert Characteritics	Existing	Proposed	
Type (RCP, CMP, etc.)	RCP	HDPE	User Selection
Upstream Invert[1] (ft)	931.15	931.19	User Input
Downstream Invert (ft)	930.05	930.09	User Input
Length (ft)	40	40	User Input
Size: Inside Diameter[2] (in.	32	31	User Input
Manning's n	0.012	0.011	Calculated
Full Flow Capacity (cfs)	87.76	87.97	Calculated
Change in Full Flow Capacity (%)		0.24%	Should be < 3%

Step 4: Effects or changes in flood stages, water quality, and aquatic and wildlife passage.

4A. For all changes in full flow capacity, provide an explanation for how the changes will not result in upstream or downstream increases in flood stage. If changes are greater than 3%, an H&H Analysis may be needed.

4B. Describe how the changes will not adversely affect water quality.

4C. Provide two (2) alternatives to the culvert changes and describe how the proposed change represents the "minimal impact" solution.

NOTES

1. If the upstream invert increases greater than 0.1', an H&H Anlaysis may be needed. Also, take into account an changes in diameter via lining when calculating the proposed Inverts.
2. If lining an exisitng culvert, please subtract the liner thickness (x 2) from the existing diamet

Appendix B

Risk Analysis and Site Prioritization Matrix

Project Type	MCWD Regulatory Rules Likely Triggered							Recommended Inspection Frequency	Site Prioritization Criteria	Site Priority	Resources likely affected	Basis/Justification
	Erosion Control	Stormwater Management	Floodplain Alteration	Wetland Protection	Waterbody & Structures	Streambank & Shoreline Stab.	Dredging					
Large-scale (>20 ac, >10 lots) residential development or redevelopment	X	X		X	X			Dependent on Site Priority: •High Priority (50% Frequency) •Initial, monthly, final •Level of activity or stage of construction •Complaint and compliance follow ups •Medium Priority (25% Frequency) •Initial, quarterly, final •Level of activity or stage of construction •Complaint and compliance follow ups •Low Priority (10% Frequency) •Initial, Final •Level of activity or stage of construction •Complaint and compliance based	•Steep Slopes (3:1 or greater) •High erosion potential •Dewatering •Level of disturbance (tiered based on previous projects) •Level of activity or stage of construction •Proximity to natural resources, sensitive or special waterbodies, and impaired waters •SWPPP reviewer and inspector professional judgement •Complaints •Compliance: Compliance History, timeliness of addressing non-compliance, recordkeeping, self-inspections	**Very high**	Wetlands, streams, adjacent (upstream & downstream) waterbodies, forest/wooded areas, and natural grassland areas	Large residential development and redevelopment projects tend to provide the highest risk to natural resources by project type. These projectrs tend to alter the natural hydrology of the landscape most drastically with waterbody crossings and structures needed for roadways and wetland mitigation likely needed to fit density requirements and the footprints of stormwater BMPs. These larger re-/development projects greatly decrease natural habitat and many times replace more naturall-pervious areas with lawns.
New linear transportation (> 10,000 sf of new impervious surface)	X	X		X	X					**Very high**	Wetlands, streams, and adjacent (upstream & downstream) waterbodies	New linear transportation projects usually consist of wetland impacts and waterbody/structure crossings that can split natural corridors and have a great effect on overall hydrology. Additionally, these projects tend to have limited ROW available for stormwater treatment while they also create large TSS and TP loads.
Smaller-to-medium scale (< 20 ac, 3-10 lots) residential development or redevelopment	X	X		X	X					**High**	Wetlands, streams, adjacent (upstream & downstream) waterbodies, forest/wooded areas, and natural grassland areas	These projects tend to have many of the same types of impacts as large-scale redevelopment but the problems/issues risk associated with these projects have a higher probability of being mitigated, post-construction.
Waterbody crossings: sanitary sewer crossings and directional drilling for utilities	X				X					**High**	Wetlands, streams, waterbodies	These sanitary sewer and utility crossings have fairly low risk during installation, but if they are improperly installed or do not have redundancy measures can result in direct leaks or discharges to waterbodies that are very costly to remediate and can take years to mitigate or clean up.
Waterbody crossings: bridge and culvert replacement	X		X	X	X		X			**High**	Streams, waterbodies	These projects have the abilitity to create large changes in upstrema or dowsntream water levels or flooding issues if not properly constructed. Many bridge crossings also trigger and affect an analysis under FEMA and regulated floodplains.
Dredging	X		X				X			**Medium**	Waterbodies, stormwater ponds, and navigable channels.	Although these projects directly disturb natural resources, a majority of these projects are permitted to restore existing or historic, as-built conditions for stormwater ponds, navigable channels, or sedimentation deposits in streams. The longterm effects of these dredging projects are most-often negligable.
Linear transportation re-/construciton (<10,000 sf of new impervious surface)	X				X					**Medium**	Wetlands, adjacent (upstream & downstream) waterbodies	These projects have less of an impact than large-scale linear transportation projects, but can sometiems result in hgiher loads of TSS/TP and stormwater runoff rates as a large majority of these projects tend to be designed just under the 10,000 sf threshold so additional stormwater treatment is not required.
Slope Stabilization	X		X			X				**Medium**	Waterbodies and streams	The largest risk of these projects is usually loss of natural habitat along the shoreline when hard-armoring is utlized. However, this loss of natural shoreline usually benefits the waterbody/stream by reducing TSS/TP loads and property loss.
Commercial site redevelopment	X	X								**Low**	Downstream/receiving waterbodies	Commercial redevelopment projects tend to have increases in impervious surface, but most-likely require stormwater treatment and benefit natural resources. The projects tend to be in urban/developed areas, where direct disturbance to natural resources is not high.
Streambank Stabilization	X		X		X	X				**Low**	Streams	These proejcts usually require disturbance of natural habitat along the stream corridor for construction access and can reduce the natural bank environment if hard armoring is required, but these projects are usually a net benefit to the stream as they reduce soil loss and TSS loads ot the stream and maintain/restore hysdraulic capacity.
Single Family Homes	X									**Low**	Downstream/receiving waterbodies	These projects are usually permitted as part of a larger re-/devlopment project so they have already been reviewed and there is usually a redundancey of permitting requirements through Cities so the probablility and risk of these projects having a large effect on natural resources are low. Additionally, approximately 5% of these projects, or less, require wetland permitting to establish buffer or a hydraulic analysis ot address waterbody crossings.
Shoreline Stabilizaiton	X		X			X				**Very Low**	Waterbodies (Lakes)	The largest risk of these projects is usually loss of natural habitat along the shoreline when hard-armoring is utlized. However, this loss of natural shoreline usually benefits the waterbody by reducing TSS/TP loads and property loss.

Appendix C

Financial Assurance Comparison

Category	MCWD - Proposed	MCWD - Current	Coon Creek	Nine Mile
Erosion / Grading	Errosion Control <1 acre disturbed $0 1-5 acre $3,000 5-10 acre $5,000 10 acre $7,500 + $200/acre over 10	Errosion Control <1 acre $0 1-5 acre $1,500 5-10 acre $2,500 10 acre $3500 + $200/acre over 10	Performace Escrow property size $2000 + $500/acre	Errosion and Sed Control property area $2,500 / acre disturbed errosion BMP's $2.5 / linear foot of erosion control req
Wetland Protection	Wetland Protection Wetland Alteration* $5000 + $10,000/acre max is $25,000 *Alteration is Impact or replacement	Wetland Protection wetland alteration $5000 + $1000/acre max is $15,000	Wetland Escrow wetland impact $500 + $35,000 per acre	Wetland Management for wetlands $5,000 + $1000 / acre over 10 acres
Dredging	Dredging Dredging equal to price of project	Dredging Dredging equal to price of project		Sediment Removal sed removal cost of project
Shoreline / Streambank	Shoreline Stabilization rip rap, sand blankets, retaining walls, boat ramps, etc. annual rate $5000 + or total shoreline impacted times $100/ft $25,000	Shoreline Stabilization rip rap, sand blankets, retaining walls, boat ramps, etc. annual rate $5000 + or total shoreline impacted times $100/ft $25,000	Performace Escrow frontage fee on the main channel $2000 + $20/ft	Shoreline / Streambank shoreline or streambank $5,000 or total number of feet of shoreline or streambank affected times $100
Stormwater Management	Stormwater Management Stormwater Management Facilities $5,000/acre* * acre is in reference to impervious area to be treatec	Stormwater Management sites requiring ponds $20,000 per acre-ft dead volume $1,700/ acre		Stormwater Management infiltration basin $12 / sqft* rain garden $12 / sqft* underground storage $980 / acre impervious treated all other facilities 125% of construct and maintence cost chloride management $5,000 *sqft is in reference to impervious area
Floodplain Management				
Near Public Waterbody				
Additional Notes	Financial assurances may be required by the Minnehaha Creek Watershed District (MCWD) to cover potential liabilities. These include the cost of installing and maintaining protective measures as described in the permit, as well as the cost of addressing damage that results from permit noncompliance.	Financial assurances may be required by the Minnehaha Creek Watershed District (MCWD) to cover potential liabilities. These include the cost of installing and maintaining protective measures as described in the permit, as well as the cost of addressing damage that results from permit noncompliance.	When appropriate, the District may collect the following Escrows. Escrow amounts are reviewed and estabilished annually by the Board of Managers.	Financial Assurance required for a particular permit will include a 10% contingency and 30% admin cost amount in addition to the amounts calculated according to the schedule above. Minimum financial assurance amound (when requiredd) is $5000

Category	Capital Region	Rice Creek	Prior Lake - Spring Lake	Virginia
Erosion / Grading	Grading associated with developmen $2000/acre	Land Disturbance <1 acre $1,000 1 - 10 acre $1000 + $500/acre over 1 10+ acre $5,500 + $250/acre over 10	Site Development /Grading grading $1000/acre	Land Disturbing Permit Bond --> E&S control < or = 1 acre $1,000 additional disturbed acreage additional $ 500 / acre
Wetland Protection		Wetland Mitigation wetland mitigation $25,000/acre of replacement		Stormwater Permit Bond --> E&S control resotoration (grade and vege $2,500 / acre
Dredging				Stormwater Permit Bond --> Lake evacuation $15 / cubic yd
Shoreline / Streambank				Stormwater Permit Bond --> Lake lake bank stabilization / restoration
Stormwater Management	Stormwater Management SWM facilities $5,000 / acre * acre is in reference to impervious area	Stormwater Management treatment $0.5/cubic ft of treatment required $2000/acre * cubic ft is in reference to impervious area * treatment depth	Stormwater Management ponds, outlets, infilration basins, manholes, rain gardens, etc. 125% estimated construction cost	Stormwater Permit Bond --> E&S control sediment trap or basin $2,500 / runoff acre
Floodplain Management		Floodplain Mitigation mitigation $7.50/cubic yd mitigation required		
Near Public Waterbody			Construction Near Prior Lake public ditch or water crossing $2,000 or single-lane, $5,000 for 2+ lanes grading within 100 ft of Prior Lake $3000 for dist < 500ft, $5,000 for a dist >500ft	
Additional Notes	Sureties shall be paid in full prior to issuance of a district permit in the form of a check. The surety will be used to ensure the completion of work in accordance with the permit. ...the unutilized surty will be returned to the applicant	Sureties are generally required of all applicants, and are set by District staff and/or the District engineer after initial review of the project application. A surety is a monetary sum provided by the applicant to the District to ensure the project is completed as designed and in compliance with District Rules. The District returns the money to the applicant after all permit conditions are met and the project is	The District Rules also require cash security or an irrevocable renewable letter of credit to ensure completion of the permitted activity in accordance with the permit and the rules of the District (see Rule L). The Permit Security is due following Board approval of the application, prior to permit issuance.	The bonds are calculated based off a spreadsheet which gets pretty detailed. I included some of the main ticket items that go into the bond calculation for compariston to MCWD, but there calculation involves more than what is listed.

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MEMORANDUM

TO: Tom Dietrich, Permitting Program Manager
FROM: Chuck Holtman
RE: Regulatory Coordination Options
DATE: June 3, 2021

INTRODUCTION

Watershed districts are required by law to adopt and implement rules and permit programs to achieve their water resource goals. Minn. Stat. §103D.341. This occurs in a setting in which state agencies and cities also regulate for the purpose of water resource protection. District managers and staff long have recognized the benefit of avoiding regulatory duplication, both to limit the public expense of regulatory oversight, and to avoid unnecessary burden on property owners and others engaged in land use activity.

However, little progress has been made in implementing this thought. This has been due to several factors including: (a) the time and resource commitment involved to develop and maintain a regulatory collaboration with one, let alone multiple, cities; (b) a complex environment of federal and state mandates and limits on watershed district and city development regulation; and (c) historically, the District's interest to keep a regulatory oversight role.

These are some of the features of the regulatory environment:

- The watershed law mandates that the District regulate in the realms of disturbed site management (erosion and sediment control); stormwater management; floodplain protection; and wetland management. At the request of a city, the District will not regulate in that city if the District formally finds the city ordinances to be adequate. Most cities in the District prefer that the District retain its regulatory authority alongside city regulation.

- The federal Clean Water Act (NPDES MS4 program) requires that the District and its cities each regulate in the realms of disturbed site management; stormwater management; and prevention of non-stormwater discharges into stormwater and surface water systems. The District may assume responsibility for a city's obligation, or vice versa; however, this should be formally done as the assuming party also assumes federal liability if it doesn't fulfill its obligations.

- Under the Minnesota Wetland Conservation Act (WCA), at a city's election, either the city or the District serves as the implementing authority within the city boundaries. Most cities elect to have the District serve this role, but a number don't. Separately, the District and most cities find it important to impose vegetated wetland buffer requirements and other wetland standards apart from WCA, whether or not they are the WCA implementing authority.

- Cities must implement ordinances protecting floodplain under the Federal Flood Insurance Program and state law, and regulate construction adjacent to floodplain for building code compliance. The District long has found it fundamental to its mission to regulate floodplain fill for regional flood storage purposes.

- The Minnesota Department of Natural Resources (DNR) regulates alterations to shorelines and streambanks, and within adjacent public waters. Because the District also exercises permitting authority over this work, the DNR exempts regulated parties from an extensive DNR permitting process. If the District ceased to implement its rules, property owners would be subject to the more extensive DNR permit process. State law requires cities, as well, to regulate riparian disturbance, though cities are legally limited in their authority to regulate work in adjacent public waters.

Within this context, District staff have sought to conceptualize areas where District/city regulatory coordination profitably may occur. The following are the principles guiding staff's thinking:

- The District should assure itself that the realms in which it chooses to invest in collaborative programs with cities are priority realms for the District, and that the collaboration is a sound use of District resources. At the same time, an important District benefit from regulatory collaboration is the opportunity to further develop relationships with cities. The District wishes to share information earlier as to potential development activity, and so better facilitate project partnerships with cities, property owners and developers.

- If the intent is that a program of collaboration engage more than a small number of cities, the terms of the program, and the collaboration agreement, should be suited to a standard approach. Negotiating unique terms with each city is impractical. The District's goal would be to implement a particular coordination program using a template District-city agreement that requires little adjustment for individual cities.

- Where the subject is not within city core competence, efficiency notions favor the District's assumption of roles for its cities' benefit, as this allows the District to offer and maintain a specialized capacity in lieu of each city maintaining its own capacity.

- The District and its cities each have reasons to wish to retain control over their policy functions: rule/ordinance adoption, and permit and enforcement decisions. What the District or the city can most readily provide for the other is technical expertise and field presence.

- Disturbed site management and stormwater management are the most suitable areas for collaboration: both the District and its cities are required to enforce a set of MS4 standards promulgated by the Minnesota Pollution Control Agency, and so the terms of District rules and city ordinances in these realms will tend to be very similar.

- Typically it is beneficial for both the District and the city to exercise permitting jurisdiction, as this allows them to coordinate enforcement and make use of the enforcement tools of each. A tool such as a "general permit" allows one party to essentially defer the permitting role to the other party, while still retaining enforcement authority.

COLLABORATION OPTIONS

In applying the foregoing principles, the following are options that staff may find to be worthy of pursuit.

Erosion and Sediment Control:

1. The District provides ESC site monitoring and inspection services on behalf of the city, for sites an acre or larger. The city would be able to rely on the District to meet the applicable MS4 MCM elements, and would be authorized to state that in its MS4 plan.

2. The agreement includes terms to share information on both proposed and unpermitted, observed site development activity. This incidentally would assist the District in its partnership opportunity efforts.

3. The District issues the ESC permit thru its MS4-conforming rule and applies its MS4-mandated oversight procedures. The city, by ordinance, adopts a general permit that issues when a District permit is issued and contains the same terms. A violation would be a violation of both District and city permits.

4. District staff develops and maintains expertise in ESC site monitoring and inspection. District staff supplies inspection reports to the city, has authority to direct site measures, advises the city of compliance issues, and provides testimony if needed in an enforcement situation. The District and city coordinate enforcement. The city retains its discretion and judgment as to enforcement decisions.

5. The city could compensate the District for actual costs (as burdened for program overhead).

Stormwater Management:

1. The District provides site stormwater management regulation and confirmation of as-builts on behalf of the city, for sites an acre or larger. The city would be able to rely on the District to meet the applicable MS4 MCM elements. (Alternative: The District provides engineering analysis only. This presumes that the city permit rests on the same or similar engineering criteria as the District permit.)

2. The agreement includes terms to share information on early awareness of proposed developments. This incidentally would assist the District in its partnership opportunity efforts.

3. The District issues the stormwater permit thru its MS4-conforming rule and applies its MS4-mandated oversight procedures. The city, by ordinance, adopts (a) a general permit that issues when a District permit is issued and contains the same terms and, for the alternative noted in paragraph 1, (b) adopts a stormwater ordinance with sufficiently matching criteria. A violation would be a violation of both District and city permits.

3a. (Optional) The city ordinance would specify that all stormwater plans for residential subdivision would require stormwater facilities to be on outlots.

4. The District rule would stipulate that the stormwater facility maintenance declaration benefits, and is enforceable by, both the District and the city.

5. The city could compensate the District for actual costs (as burdened for program overhead).

Stormwater Management (Maintenance):

1. The District would provide post-permit inspection of stormwater BMPs. This would apply to BMPs approved and installed under permits issued by both the District and the city; also, the District and city would agree, on the basis of city information, on a list or universe of prior-installed BMPs that would be subject to District inspection. The District would supply inspection reports to the city. The District and city would coordinate on enforcement of maintenance with respect to BMPs subject to the oversight of both. The City would commit to enforcement steps for BMPs not under District oversight (presumably few).

1a. (Optional: The District and city would allocate the maintenance role to either the District or the city, and the city would implement an assessment or other framework to charge benefited properties for maintenance.)

1b. (Optional: The city ordinance would require all stormwater facilities for residential subdivision to be on outlots.)

1c. (Optional: The city programmatically would assume maintenance responsibility for certain classes of BMPs, pursuant to a city framework to charge benefited properties for maintenance.)

1d. (Optional: The city would identify city BMPs in a condition of deferred maintenance, and establish a maintenance schedule.)

2. The activity could be rendered largely revenue neutral through a city mechanism to assess or charge costs against benefited properties.

Wetland Alteration:

1. The city would apply buffer terms meeting District standards where it is the WCA LGU. The District would not apply buffer requirements, unless triggered separately by a different rule and not covered by city ordinance pursuant to the partnership.

1a. (Optional: The city ordinance would specify that all subdivisions must place wetland/buffer on outlots.)

2. The buffer maintenance declaration would be enforceable by both the city and the District.

3. The agreement would allocate responsibility for post-establishment inspection and require that the District and city coordinate enforcement.

4. The party providing inspections could be compensated for actual costs.

Floodplain Alteration:

1. The District can defer to city regulation if the city ordinance incorporates certain speccific standards important to the District (e.g., flood storage replacement for floodplain fill).

2. The agreement would specify how floodplain will be defined. It could give the District the role to determine floodplain boundary on the basis of the District model.

Shoreline Alteration:

1. The District issues the shoreline alteration permit under its own rule. The city, by ordinance, adopts a general permit that issues when a District permit is issued and contains the same terms. A violation would be a violation of both District and city permits.

2. The agreement includes terms to share information on both proposed and unpermitted, observed site activity.

3. The District provides site monitoring and inspection services on behalf of the city.

4. District staff supplies inspection reports to the city, has authority to direct site measures, advises the city of compliance issues, and provides testimony if needed in an enforcement proceeding. The District and city coordinate enforcement. The city retains its discretion and judgment as to enforcement decisions under city ordinance.

5. The city could compensate the District for actual costs (as burdened for program overhead).

(Note: cooperating in the obverse manner (the District issues a general permit and defers to the city) may jeopardize the status of the DNR general permit.)

IMPLEMENTATION

As noted above, collaboration would be implemented by means of an agreement between the District and the cooperating city. This likely would be a joint powers agreement that involves a sharing of the powers of each body.

The intent would be to have one template agreement, or a very small number of template agreements, to implement a particular option. The agreement would be able to be customized to the particular needs of a given city, but the strong intent would be to avoid lengthy negotations and unique agreements with individual cities, so as to be an inefficient use of staff resources.

Alternatively, the District could maintain a single agreement for a collaboration option, and cities could become signatories as they elect. This is likely to be more unwieldy, as it is expected that at least small changes will be made to the template to address specific city circumstances. Further, amendments or other changes to a multiparty agreement would be more administratively burdensome.

5. EXCEPTIONS

The Board of Managers may grant an exception from a provision of these rules requiring a particular treatment or management method, or setting forth a design specification of such a method, as set forth in this section.

a. An exception may be granted on ~~a~~the Board's determination that ~~the~~a proposed application, with such further conditions as the Board may impose, will achieve a greater degree of water resource protection than would strict compliance with the provision.

b. An exception may be granted for a restoration action, defined as an action with the sole or predominant purpose of improving surface water quality, or of reinstating the natural condition of a waterbody or its riparian edge. The Board must determine the following:

(i) That the feature contrary to the rules provision is a necessary component of the action, and that the failure to conform to the provision cannot practicably be eliminated or reduced without adversely affecting the degree to which the restoration goal will be achieved.

(ii) That the exception is not contrary to the terms of the policies stated in the relevant rule, taken together.

(iii) That the failure to conform to the provision will not cause material injury to a property owner or other private interest. This determination will not constitute a finding of legal rights, nor will it relieve the project proponent from the responsibility to avoid harm to any third-party legal right.