MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

Meeting: PPC Meeting
Meeting date: 9/23/2021
Agenda Item #: 4.2
Item type: Discussion

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

Prepared by: Name: Abigail Ernst
Phone: 952-641-4504
aernst@minnehahacreek.org

Purpose:
To provide a final overview of the permitting program alignment and policy shifts and answer remaining questions of policy direction related to the Wetland Protection and Shoreline and Streambank Stabilization rules.

Background:
Over the past several years the Minnehaha Creek Watershed District (MCWD) has been working to align the organization to support its vision of a Balanced Urban Ecology, where built and natural environments exist in balance to create value and enjoyment. Realizing this aspiration requires improved connection and integration between land use and water planning.

MCWD's Permitting Program exists at the nexus of land use change and water resource protection and is one of the most prominent ways in which MCWD interfaces with the land use community. Each year, hundreds of applications are made to MCWD to change the landscape. Annually, District staff engage in thousands of interactions with municipal officials, developers, engineers, and architects, to ensure proposed projects meet standards that protect the natural resources within the watershed.

Given these facts, in coordination with the MCWD Board of Managers and Citizen Advisory Committee (CAC), staff have analyzed opportunities to change policy within the Permitting program to strengthen the working relationship with the land use community, and to leverage these relationships to increase the potential for collaboration on projects that improve the ecology of the watershed beyond regulatory minimums.

An area of emphasis within these discussions has been how MCWD can simplify and streamline its regulations. CAC and Board discussions to date have driven consensus around a set of key policy directions for permitting (Attachment A), and a corresponding set of recommended revisions to District rules (Attachment B).

1. Erosion Control rule
2. Stormwater Management rule
3. Waterbody Crossings & Structures rule
4. Dredging rule
5. Variance rule

September 23, 2021 Meeting Focus:
At the July 22, 2021 meeting, following discussion by the Board of Managers, staff committed to undertake additional analysis around the following rule provisions:

1. Wetland Protection Rule – possible simplification of buffer width calculations

2. Shoreline and Streambank Stabilization – possible simplification of shear stress and erosion calculations

Wetland Protection Rule:

At the July 22, 2021 Board meeting, staff introduced a preliminary concept to modify how wetland buffer widths are determined.

That change would derive base wetland buffer widths from a wetland's Hydrogeomorphic Type, where a wetland sits in a landscape, and its basic hydrology. Whereas MCWD's current wetland protection rule derives buffer widths based on a wetland's management classification as established by the MN Routine Assessment Method (MnRAM). MnRAM classifies wetlands based on the functions and values they provide within an ecosystem (flood control, stormwater management, habitat, etc.). Wetlands classified within MNnRAM are categorized for management purposes, in order of most to least protected, as Preserve, Manage 1, Manage 2, Manage 3. Within MCWD's existing rule, each management classification requires a different base buffer width.

Through discussion with the Board of Manages it was determined that additional analysis was needed to ensure there would be no net loss of wetland protection through this potential shift in policy, and to ensure that the changes would align with the organization's goals of streamlining and simplifying the application of the rule to the regulated public.

Since July, staff and the District engineer have evaluated this potential shift in more detail and concluded the following:

1. The preliminary concept for shifting wetland buffer establishment from MnRAM classification to Hydrogeomorphic Type originated in Stantec's interpretation of a proposed gradual shift in policy by the Board of Water and Soil Resources (BWSR). On its website, BWSR has recently telegraphed movement away from MnRAM over time, stating, "updates and support for MnRAM have waned over the last 8 to 9 years as new approaches to wetland functional assessments have been developed nationally, specifically those based on the hydrogeomorphic wetland classification system."
    a. While BWSR is no longer providing immediate technical support for the MnRAM database, MCWD maintains its own functional assessment of wetlands (FAW) data set. Moreover, while BWSR may be making shifts long-term in approach, no replacement approach has yet to be developed by BWSR or adopted by any other water resource management agencies at a local level. The explicit goal of the proposed rule revisions is to simplify, streamline, and to reduce overlap, without reducing natural resource protections. The District is not seeking to develop new leading-edge approaches to wetland buffer regulations at this time.

2. The potential shift towards a Hydrogeomorphic approach, does not inherently simplify or streamline the application of buffer widths or the process for averaging wetland buffers in instances of site constraints.
    a. The explicit goal of the proposed rule revisions is to simplify, streamline, and to reduce overlap, without reducing natural resource protections. The proposed shift to a hydrogeomorphic approach does not inherently streamline of simplify wetland buffer application.

3. In certain instances, shifting to a simplified Hydrogeomorphic approach would result in a lesser buffer width being applied than under existing rules, while requiring significant change management by MCWD to pivot the regulated public to a new approach not yet widely adopted across the region at a local level.
    a. The explicit goal of the proposed rule revisions is to simplify, streamline, and to reduce overlap, without reducing natural resource protections. The proposed shift would potentially compromise the District's existing standards.

4. The portion of MCWD's wetland protection rule that may benefit most from being streamlined is the mechanism for buffer averaging which allows applicants to reduce the applied wetland buffer width using calculations of slope and hydrologic soil group.

At this time, staff are not recommending any directional shift in policy within the wetland protection rule. Staff will evaluate the opportunity to simplify the District's buffer averaging, based on a review of past permitting data and return to the Board with any recommendations prior to initiation of any externally facing stakeholder engagement process.

Shoreline and Streambank Stabilization:

At the June 10, 2021 Board meeting, among other directional shifts, staff recommended simplifying the application of required calculations of erosive force within the District's Shoreline and Streambank, pending additional analysis. Two areas of simplified calculations include those for shear stress and erosion intensity. Both sets of calculations are used to ensure the proposed stabilization solution is appropriate for the level of erosion on a streambank or lake shore, respectively.

Shear stress calculation:

The current streambank stabilization rule requires applicants to evaluate erosion intensity based on (1) stream velocity and (2) shear stress on the streambank. The rule states that the proposed stream bank stabilization practice shall be consistent with the calculated shear stress, but does not take velocity into account, despite requiring a calculation to be performed.

Therefore, staff is recommending requiring applicants to consider both velocity and sheer stress when selecting streambank stabilization practices. Adding velocity as a design consideration would utilize calculations that are currently required for the permit and add value by increasing the robustness of streambank stabilization design technique selection. This will align the stabilization design techniques outlined in the rule with standard engineering design practices and permit review processes that District staff and the District engineer currently perform.

In order to streamline the rule and reduce complexity, staff is also recommending the addition of reference tables for applicant use to determine appropriate streambank stabilization practices. The tables would make broad assumptions about typical stream characteristics, which would be checked for site-specific applicability by permitting staff and/or the District engineer. For example, to determine shear stress, applicants would determine slope and bankful depth which would then identify shear stress from low – high. The same would be done for velocity. The variable (shear stress or velocity) that indicates the need for more robust stabilization practice should be utilized as the as the design constraint (i.e., shear stress table indicates low erosion intensity, but velocity table indicates medium erosion intensity, then applicants should design for medium erosion intensity).

Erosion intensity calculation

The current shoreline stabilization rule requires applicants to complete an Erosion Intensity Scoresheet (Scoresheet). The Scoresheet requires the applicant to assess eleven shoreline variables, including factors such as influence of adjacent structures, boat wakes, etc. Many of these factors are cannot be quantitatively assessed, limiting their application within the context of District regulation. We are recommending revising the Scoresheet to only include objective, quantifiable variables such as fetch and depth.

Conclusion:

Staff have thoroughly analyzed and gained Board consensus for the proposed changes to the Erosion Control, Stormwater Management, Dredging, Waterbody Crossings & Structures, and Variance rule.

Since discussions with the Board of Managers in June and July 2021, regarding the Wetland Protection and Shoreline and Streambank Stabilization rules, staff have conducted additional analysis to focus opportunities on streamlining and clarifying these rules.

In regard to the Wetland Protection rule, this additional analysis does not support a movement towards a hydrogeomorphic approach to calculating wetland buffers. Staff will instead focus the remaining work on evaluating the potential to streamline buffer averaging and return to the Board with any recommendations before engaging the Technical Advisory Committee.

Recommended revisions to the Shoreline and Streambank Stabilization rule serve to simplify while maintaining protection. The Streambank Stabilization section is proposed to be modified to include velocity when considering appropriate stabilization practices and will provide reference tables so applicants can easily determine shear stress and

velocity. The Shoreline Stabilization section is proposed to be modified to only use quantifiable criterion for erosion intensity determination.

Attachment A – Key Permitting Policy Directives

Consensus has been developed between staff, CAC and the Board that the following key policy directives exist as a strategic foundation to guide revisions to the District rules.

1. The scope of MCWD's regulation should be "right-sized" to align with and reduce overlap with other local and state agencies
    - The most notable change is aligning MCWD stormwater and erosion control requirements with those in the Minnesota Pollution Control Agency (MPCA) municipal separate storm sewer system (MS4) construction stormwater permit, with which all cities and the District are required to comply.

2. Rule language, technical submittals, and procedural requirements should be simplified into plain language and streamlined, to enhance clarity and create a more intuitive user-friendly experience.
    - This includes changes to the rule text as well as development of guidance documents.

3. The program should improve efficiency and align staff time with natural resource risk/opportunity. Examples include:
    - Creating a general permit for erosion control on sites disturbing less than 1 acre, which present lower risk than larger sites.
    - Utilizing the program's new online permitting portal to improve customer service through quick and accurate plan reviews and reduce administrative overhead.

4. The Compliance Framework should be formalized
    - Refining MCWD's internal processes for escalating enforcement proceedings
    - Clarifying inspection and enforcement priorities, to effectively focus MCWD's resources
    - Routinely updating financial assurances to reflect modern construction pricing

5. The District should establish formal partnerships with municipalities to improve coordination, reduce duplication of efforts, and leverage each other's capabilities.
    - Integrating MCWD earlier into the land use planning processes to reduce potential conflict due to late coordination and to increase the likelihood of developing functional partnerships with applicants that exceed regulatory standards.

    - Proactively identifying existing MCWD regulatory services that could supplant municipal requirements to the state would reduce burden on cities, strengthening and sustaining policy relationships within the land use community.

6. The District must formalize its objectives and process in policy to guide staff and applicants through planning and approval within the Responsive Program to leverage partnerships repeatedly and successfully with the land use community and deliver projects that exceed regulatory requirements.
    - This includes establishing clear process and guidance for opportunity identification, feasibility assessment, evaluation, approval, and partnership agreements.

Attachment B – Recommended MCWD Rule Revisions 9/23/2021

Consensus has been developed between staff, CAC and the Board that the following recommended revisions to MCWD rules, align and support the key policy directives outlined in Attachment A. Rules presently considered for revision include:

1. Erosion Control
2. Stormwater Management
3. Waterbody Crossings & Structures
4. Dredging
5. Variance

1. <u>Erosion Control:</u>

a. *Change***:** Rule language must be revised to include or reference missing Minnesota Pollution Control Agency (MPCA) Municipal Separate Storm Sewer System (MS4) Construction Stormwater General Permit standards (CSW GP).

1. Example**:** "During fish spawning, permittees must complete stabilization of all exposed soil areas with 200 ft of the water's edge, and that drain to these waters, within 24 hours during the restriction periods."

ii. *Original:* MCWD's existing Erosion Control rule does not include required CSW standards.

iii. *Rationale:* The District is required to implement these changes to comply with the updated MS4 permit.

b. *Change*: A 'General Permit' track is recommended to be created on the District's online permitting system which will autonomously issue erosion control permits for low risk (i.e., single-family homes with no wetlands on site) projects that disturb <1 acre.

i. *Original:* Over a 5-year average, 57% of the District's annual permit load, which equates to 385 out of 675 permits annually, are single-family home projects proposing <1 acre of disturbance.

ii. *Rationale*: Focusing or "right-sizing" the scope of MCWD regulations to align with and reduce overlap with other local and state agencies, without sacrificing natural resource. Protection will be maintained because when the GP is issued, sites will still be required to follow CSW standards and project details will be collected which allow for inspection spot checks.

2. <u>Stormwater Management:</u>

a. *Change*: The trigger for the rule must now be site disturbance of greater than >1 acre

i. *Original*: Existing rule triggers are based on site type- new development, redevelopment, and sidewalks/trails

ii. *Rationale*: The District is required to implement these changes to comply with the updated MS4 permit.

b. *Change*: Remove stormwater treatment exemptions in MCWD rule for:

i. *Original:* Existing rule exempts these situations from volume and pollutant load treatment.

1. Single-family home (re)construction >1 acre
2. New development with <20% site impervious surface
3. Redevelopments that reduce impervious surface
4. Linear work creating less than 10,000 sf of new impervious, but disturbing >1 acre
5. Sidewalks and trails up to 12 feet wide, with downgradient pervious buffers at least half the width

ii. *Rationale*: The District is required to implement these changes to comply with the updated MS4 permit.

3. **Waterbody Crossings & Structures:**
    a. *Change*: Addition of fast-track permit option for the replacement of existing outfalls and culverts with equivalent dimensions and comparable materials (in-kind replacement)
        i. *Original*: MCWD's current Waterbody Crossing rule requires a 14-day public comment period for in-kind replacement of outfalls and culverts.
        ii. *Rationale*: In-kind replacements do change hydraulics and are necessary and routine action taken by MS4s to maintain storm sewer systems. Creating a fast-track options will streamline the permitting process, without compromising natural resource protection.

4. **Dredging:**
    a. *Change*: Addition of fast-track permit option for routine maintenance of sediment removal at outfalls.
        i. *Original*: MCWD's current Waterbody Crossing rule requires a 14-day public comment period for sediment removal accumulated at outfalls.
        ii. *Rationale*: Sediment removal from outfalls is a necessary and routine action taken by MS4s to maintain storm sewer systems. The MS4 permit requires municipalities to clean outfalls with regular frequency. MS4 requirements require operators (cities) to clean outfalls with regular frequency, in order to protect downstream water resources. Creating a fast-track options will streamline the permitting process, and supports partner MS4 compliance, without compromising natural resource protection.

5. **Variance:**
    a. *Change*: Addition of "Restoration Track" for projects proposing natural resource restoration projects.
        i. *Original*: Existing rule has no track for reviewing restoration projects, so they are often considered variances or exceptions that are challenged to conform to requirements targeting development or infrastructure projects.
        ii. *Rationale*: Existing rules create unnecessary hurdles for projects that improve watershed ecology and discourage restoration projects due to time to issuance and inflexibility.