



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting
Wednesday November 20, 2019

Agenda Item

Item 4. D. - Receive and File informal comments letter from the city of Eden Prairie

Prepared By

Linda Loomis, Administrator

Summary

The LMRWD received a letter from the City of Eden Prairie commenting on the draft rules. A copy of the letter is attached. A response has been prepared and sent to the city of Eden Prairie along with the final draft of the rules that have been submitted to BWSR for review and approval.

Attachments

Letter from City of Eden Prairie
LMRWD response to comments

Recommended Action

Motion to receive and file

September 17, 2019

Lower Minnesota River Watershed District
Board of Managers
c/o Ms. Linda Loomis
6677 Olson Memorial Highway
Golden Valley, MN 55427

Subject: Proposed Rule-Making

Dear Linda:

Thank you for the opportunity to comment on the Rules proposed by the Lower Minnesota River Watershed District. The municipalities within LMRWD have discussed the proposed rules internally and have determined that there are a number concerns, questions and uncertainties that need further discussion and clarification. We look forward to working with LMRWD to resolve these issues.

The City has reviewed the proposed rules and formulated comments based on our broader review of the proposed LMRWD rules. The comments are as follows:

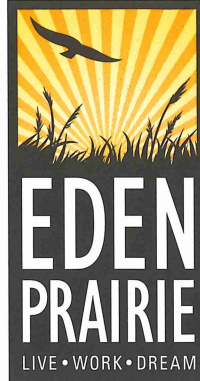
1. Rule Development

It is unclear why LMRWD is proposing Rules for the Cities in addition to the Watershed Management Plan (WMP) requirements. LMRWD adopted their latest WMP on October 24, 2018 when they do not intend to hire staff to run a permit program as other watershed districts have done. Following this, the city is required to go through a process to develop and submit a Local Water Management Plan (LWMP) to meet the requirements established in the WMP. This process is similar to the other Watershed Districts that we work with and it allows each City to develop criteria and standards that may be unique to their City.

Throughout the WMP development and review process, LMRWD staff stressed willingness to work with the Cities to address these types of community specific issues. During the TAC process, LMRWD indicated the reason for developing Rules would be to allow the District to have the ability to implement the Plan in unincorporated and MNDOT regulated areas.

2. Implementation of WMP Standards

Up until now, LGU responsibilities with respect to LMRWD was to ensure that an Applicant addressed the District's WMP standards when providing their permit application to the City. However, during the May 14, 2019 TAC meeting, the District Attorney (Mr. Kolb) stated that there were additional reasons that the LMRWD was undertaking the step of developing rules. This included giving the District more authority to obtain municipal compliance with their WMP, providing a mechanism to verify that local ordinances comply with the standards of the plan, and providing a mechanism for the District to conduct compliance audits.



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Eden Prairie, MN
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However, based on our understanding of the process used to develop a LWMP the District already has the authority to ensure that the City requires implementation of the standards as stated in the WMP to permit applicants. The need for an additional layer of regulation through the General Permit process is still not clearly understood.

3. Voluntary Adoption of Permit Authority

The City asks that adoption of all or part of the permit program be voluntary. The ability to keep permitting responsibility with the District or to adopt only those portions of the Rules that fit in the roles Cities traditionally provide for our development or permit review process should be included. Many of us do not have the capabilities, software or number of staff required to implement all of the rule requirements for modeling, inspections, etc.

It is our opinion that due to the number of LGUs and the complexity of issues within the LMRWD that the rules should implemented by the District to ensure consistency in reviewing permit applications. This is similar to what the other Watershed Districts in our City do.

4. Adoption of WMP through City Code

Currently the City provides language in our Land Alteration, Tree Preservation and Stormwater Management Regulations that requires Applicants to follow the standards established in the District's WMP. Our intent will be to update this language once the revised LWMP and NPDES MS4 Permit are completed. Many other cities also use this tool to ensure that Applicants for a permit have reviewed and agree to comply with District standards.

5. Review & Documentation Requirements

The new review and documentation requirements appear to be beyond what is traditionally required for Cities under existing WD rules. There are new and extensive mandates that will require a significant increase in paperwork, inspections, and monitoring. The regulations are so extensive that the expectation that the Cities implement the Rules as written, in our opinion, would be overly burdensome and would require additional staff.

The new requirements within the proposed regulations leave many areas open to interpretation with no mechanism provided to address what happens when there is a difference in interpretation between the Cities and LMRWD.

6. Standards in Relation to Rules

There appear to be some differences between the standards established in the WMP and the proposed Rules. LMRWD should provide a comparison to highlight the differences between the existing standards and the Rules we would potentially be expected to enforce.

7. Existing Rules & Regulations

The Rules as written could require that the Cities modify and adopt ordinances in many different areas, such as stormwater, shoreland and/or floodplain management. The MPCA, DNR or FEMA have approved the existing City ordinances that are currently in effect. We would need to investigate the potential impacts of the proposed Rules with respect to their application to locally adopted ordinances as well as what processes may need to be undertaken

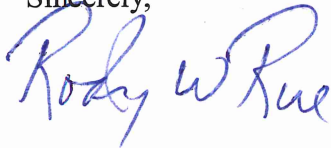
*City of Eden Prairie
LMRWD Proposed Rules Comments
Sept. 17, 2019*

to resolve any conflicts or required updates. This process would include review and approval by other agencies for many of these changes. The effort required to go through these processes would likely be time consuming for City staff and beyond the expectations set in the proposed Rules for timelines.

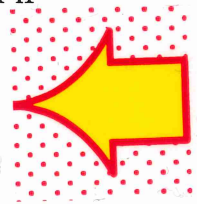
Watershed District Rules have the same effect as state statutes and there is little flexibility once adopted. It is our hope that we can work together as partners during the review process to establish a set of standards that meet the goals provided in your WMP while not being overly burdensome to the Cities.

Thank you for your consideration. Please let us know if you need any additional information or if you have any questions regarding the items provided.

Sincerely,



Rodney Rue, P.E.
City Engineer





LOWER MINNESOTA RIVER
WATERSHED DISTRICT

October 31, 2019

Carver
Vacant

City of Eden Prairie
Rod Rue, City Engineer
City of Eden Prairie, Engineering Division
8080 Mitchell Road
Eden Prairie, MN 55344

Dakota
Vacant

RE: Lower Minnesota River Watershed District—Draft Rules Comments

Hennepin

Dear Rod:

David Raby
Secretary/Treasurer

Thank you and the City of Eden Prairie (City) for your continued involvement in the Lower Minnesota River Watershed District (LMRWD or District) rules development process and your comments on the July 2019 draft rules. Most of the current comments mirror the comments received on the previous draft. Those comments were addressed in a letter dated July 30, 2019, and during the August 13, 2019, technical advisory committee (TAC) meeting.

Adam Frey
Vice President

Below are responses to new comments with some of the responses referring you back to the July 30 letter to the City from the District. As discussed during the TAC meeting, the development of these rules is required by Minnesota State statute, and as such, we look forward to working with each municipality to address its specific question(s).

Scott

Jesse Hartmann
President

Response to Comments

Comment: *Rule Development: It is unclear why the LMRWD is proposing Rules for the Cities in addition to the Watershed Management Plan (WMP) requirements. LMRWD adopted their latest WMP on October 24, 2018 when they do not intend to hire staff to run a permit program as other watershed districts have done. Following this, the city is required to go through a process to develop and submit a Local Water Management Plan (LWMP) to meet the requirements established in the WMP. This process is similar to the other Watershed Districts that we work with and it allows each City to develop criteria and standards that may be unique to their City.*

Throughout the WMP development and review process, LMRWD staff stressed willingness to work with the Cities to address these types of community specific issues. During the TAC process, LMRWD indicated the reason for developing Rules would be to allow the District to have the ability to implement the Plan in unincorporated and MNDOT regulated areas.

Linda Loomis, Administrator
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Cell: (763) 568-9522
email:
naiadconsulting@gmail.com

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Suite 102
Chaska, MN 55318

Response: As noted in the response letter dated July 30, 2019, the development of these Rules is required to comply with Minnesota Statute 103D.341.

Comment: *Implementation of WMP Standards: Up until now, LGU responsibilities with respect to LMRWD was to ensure that an Applicant addressed the District's WMP standards when providing their permit application to the City. However, during the May 14, 2019 TAC meeting, the District Attorney (Mr. Kolb) stated that there were additional reasons that the LMRWD was undertaking the step of developing rules. This included giving the District more authority to obtain municipal compliance with their WMP, providing a mechanism to verify that local ordinances comply with the standards of the plan, and providing a mechanism for the District to conduct compliance audits. However, based on our understanding of the process used to develop a LWMP the District already has the authority to ensure that the City requires implementation of the standards as stated in the WMP to permit applicants. The need for an additional layer of regulation through the General Permit process is still not clearly understood.*

Response: See the previous response. These rules, unlike the standards adopted as part of the District's watershed management plan, in addition to being statutorily required, provide the enforcement path for addressing noncompliance with both the municipal permit and District-administered individual permit.

Comment: *Voluntary Adoption of Permit Authority: The City asks that adoption of all or part of the permit program be voluntary. The ability to keep permitting responsibility with the District or to adopt only those portions of the Rules that fit in the roles Cities traditionally provide for our development or permit review process should be included. Many of us do not have the capabilities, software or number of staff required to implement all of the rule requirements for modeling, inspections, etc.*

It is our opinion that due to the number of LGUs and the complexity of issues within the LMRWD that the rules should implemented by the District to ensure consistency in reviewing permit applications. This is similar to what the other Watershed Districts in our City do.

Response: As noted in the response letter dated July 30, 2019, municipalities can opt in or out of implementing all or a part of the draft Rules. If a municipality cannot implement, we simply ask for an explanation. We have attached the draft municipal permit application again for your review.

Comment: *Adoption of WMP through City Code: Currently the City provides language in our Land Alteration, Tree Preservation and Stormwater Management Regulations that requires Applicants to follow the standards established in the District's WMP. Our intent will be to update this language once the revised LWMP and NPDES MS4 Permit are completed. Many other cities also use this tool to ensure that Applicants for a permit have reviewed and agree to comply with District standards.*

Response: Incorporation by reference or by direct inclusion of the District's Rules in municipal official control is acceptable.

Comment: *Review & Documentation Requirements: The new review and documentation requirements appear to be beyond what is traditionally required for Cities under existing WD rules. There are new and extensive mandates that will require a significant increase in paperwork, inspections, and monitoring.*

The regulations are so extensive that the expectation that the Cities implement the Rules as written, in our opinion, would be overly burdensome and would require additional staff. The new requirements within the proposed regulations leave many areas open to interpretation with no mechanism provided to address what happens when there is a difference in interpretation between the Cities and LMRWD.

Response: See the District's response to this comment in the letter to the City dated July 30, 2019.

Comment: *Standards in Relation to Rules: There appear to be some differences between the standards established in the WMP and the proposed Rules. LMRWD should provide a comparison to highlight the differences between the existing standards and the Rules we would potentially be expected to enforce.*

Response: See the District's response to this comment in the letter to the City dated July 30, 2019.

Comment: *Existing Rules & Regulations: The Rules as written could require that the Cities modify and adopt ordinances in many different areas, such as stormwater, shoreland, and/or floodplain management. The MPCA, DNR or FEMA have approved the existing City ordinances that are currently in effect. We would need to investigate the potential impacts of the proposed Rules with respect to their application to locally adopted ordinances as well as what processes may need to be undertaken to resolve any conflicts or required updates. This process would include review and approval by other agencies for many of these changes. The effort required to go through these processes would likely be time consuming for City staff beyond the expectations set in the proposed Rules for timelines.*

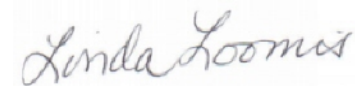
Response: See the District's response to this comment in the letter to the City dated July 30, 2019.

Comment: *Watershed District Rules have the same effect as state statutes and there is little flexibility once adopted. It is our hope that we can work together as partners during the review process to establish a set of standards that meet the goals provided in your WMP while not being overly burdensome to the Cities.*

Response: See the District's response to this comment in the letter to the City dated July 30, 2019.

Thank you for reviewing the draft rules and providing comments. There were several recurring themes and questions; if the comments persist, I invite you to schedule a meeting with me, our technical consultant, and our attorney to clarify outstanding items by contacting me at 763.545.4659 or naiadconsulting@gmail.com with any questions or concerns.

Sincerely,



Linda Loomis, Administrator
LL/ss/dnsy