LOWER MINNESOTA RIVER
WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting
Wednesday, October 19, 2022

Agenda Item
Item 5. A. Public Hearing for adoption of Rules

Prepared By
Linda Loomis, Administrator

Summary
The LMRWD adopted rules in 2020. After implementation LMRWD staff and consultants documented where clarification was needed to make the requirements of the LMRWD clearer to partners and the public. In February 2022, the LMRWD begin the process to updates its rules. The Board of Managers should convene a public hearing to receive comments from the public. Notice of the public hearing was published in the October 9, 2022, and the October 16, 2022 Editions of the Minneapolis Star Tribune. A copy of the Notice that was published is attached.

In addition, a Technical Memorandum prepared by Young Environmental Consulting Group dated October 14, 2022, is attached, along with a red-lined version of the rules and a log that summarizes all the comments received and the LMRWD's response to those comments.

At the close of the public hearing the LMRWD Board of Managers, may adopt the Resolution 22-10 – Adopting Revisions to the Lower Minnesota River Watershed District Rules

Attachments
Technical memorandum – LMRWD Rule Revision Process Completion dated October 14, 2022
Red-lined revised draft October 19, 2022
LMRWD Rule Comment & response Log
Resolution 22-10 – Adopting revisions to the LMRWD Rules

Recommended Action
Open Public Hearing, accept comments, close Public Hearing and motion to adopt Resolution 22-10 – Adopting revisions to the LMRWD Rules

Young Environmental Consulting Group, LLC

Technical Memorandum

To: Linda Loomis, Administrator
Lower Minnesota River Watershed District

From: Meghan Litsey, CPESC
Della Schall Young, CPESC, PMP

Date: October 14, 2022

Re: Lower Minnesota River Watershed District (LMRWD) Rule Revision Process Completion

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In February 2022, with the consent of the Board of Managers, Young Environmental Consulting Group (Young Environmental) initiated a rule revision process to complete administrative changes to the District's permitting program. The proposed rule changes are critical to eliminating potential confusion and streamlining the District's permitting process for applicants, managers, and staff.

Below are the suggested modifications for consideration, the rule revision process, and Young Environmental's recommended next steps.

Suggested Modifications

Attached is the redlined version of the rules highlighting the suggested changes (Attachment 1).

Rule Revision Process

The draft rules were submitted in writing on August 11, 2022, to the Board of Water and Soil Resources (BWSR) and all public transportation authorities for review and comment. All comments received during the comment period and a corresponding response from Young Environmental are summarized in Attachment 2. There were no recurring comments received during this period, and the comments generally requested clarification of various scenarios within High Value Resource Areas and the floodplain.

The LMRWD has completed the necessary notice requirements to amend the rules as outlined in MS 103D.341. The notification process completed by the LMRWD is summarized as follows:

- The draft rules were submitted to the LMRWD's Technical Advisory Committee (TAC) on June 15, 2022, for review and comment. All comments received from the TAC and a corresponding response from Young Environmental were summarized at the board meeting on July 15, 2022.
- The draft rules were submitted in writing to managers, the BWSR, and all public transportation authorities for review and comment on August 11, 2022, allowing a minimum of 45 days for review.
- The comments received during the public notice and 45-day review period were collected and summarized (Attachment 2).
- The draft rules and public hearing were noticed in at least one newspaper within each county in advance of the public hearing meeting scheduled on October 19, 2022.

Recommendations

Following completion of the public hearing, we recommend the adoption of the rules pending the outcome of the public hearing.

Attachments:

1. Draft Rules
2. 45-Day Review Period Comment/Response Log

Lower Minnesota River Watershed District

Rules

February 19, 2020

Revised Draft ~~July 15~~October 19, 2022

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1 Definitions

Regarding these Rules, unless the context otherwise requires, the following terms are defined below. References in these Rules to specific sections of the Minnesota Statutes or Minnesota Rules include amendments, revisions, or recodifications of such sections. The words "shall" and "must" indicate a mandatory rule, and the word "may" indicates a permissive rule. The following definitions and acronyms apply to the District rules and accompanying guidance materials.

Abstraction~~s~~: Removal of stormwater from runoff by such methods as infiltration; evaporation; transpiration by vegetation; and capture and reuse, such as capturing runoff for use as irrigation water.

Agricultural Activity: The use of land for the growing and/or production of agronomic, horticultural, or silvicultural crops, including nursery stock, sod, fruits, vegetables, flowers, cover crops, grains, forestry activities~~Christmas trees~~, and grazing.

Alteration or Alter: When used in connection with public waters or wetlands, is any activity that will change or diminish the supply, course, current, or cross section of an existing drainage way, ~~-~~public waters or wetlands, or a District overlay district.

Appropriations: For the purposes of these Rules, "appropriations" means the withdrawal, removal, or transfer of water from its source, regardless of how the water will be used.

Atlas 14: Precipitation frequency estimates released by the National Oceanic and Atmospheric Administration's National Weather Service Hydrometeorological Design Studies Center. The information supersedes precipitation frequency estimates in Technical Paper No. 40 (1961), National Weather Service HYDRO-35 (1977), and Technical Paper No. 49 (1964).

Base Flood Elevation: The computed elevation to which floodwater is anticipated to rise during the base flood. Base flood elevations are shown on flood insurance rate maps (FIRMs) and on the flood profiles.

Best Management Practices~~, or~~ (BMPs): Structural or nonstructural methods used to treat runoff, including, but not limited to, such diverse measures as ponding, street sweeping, filtration through a rain garden, and infiltration to a gravel trench.

Bioengineering: Various shoreline and stream bank stabilization techniques using aquatic vegetation and native upland plants along with techniques such as willow wattling, brush layering, and willow posts.

Buffer Zone: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to a waterbody that protects water resources from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

Channel: A perceptible natural or artificial depression, with a defined bed and banks that confines and conducts water flowing either continuously or periodically.

Compensatory Storage: Excavated volume of material below the 100-year floodplain elevation required to offset floodplain fill.

Conditional Approval: Approval of a District permit application that requires the applicant to provide further information or plan changes, or meet other stated conditions, prior to the District issuance of the permit. See Rule A.

Construction Activity: Disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and nonvegetative), or existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and the movement of sediment into surface waters or drainage systems.

Conveyance System: The drainage facilities, both natural and manmade, which collect, contain, and provide for the flow and treatment of surface and stormwater from multiple properties the highest points on the land down to a receiving water. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes, and wetlands. The humanmade elements of the conveyance system include gutters, ditches, pipes, channels, and retention/detention facilities.

Criteria: Specific details, methods and specifications that apply to all permits and reviews and that guide implementation of the District's goals and policies.

Crossing: Any crossing over a water conveyance either supported by a structural span or culvert.

Development: The construction of any public or private improvement project, infrastructure, structure, street, or road or the subdivision of land. Normal farming practices part of an ongoing farming operation shall not be considered development.

Dewatering: The removal of water for construction activity.

Diffuse or Diffusion: To spread out or disperse stormwater or runoff over a larger area to reduce the concentration of flow.

District: The Lower Minnesota River Watershed District (LMRWD) established under the Minnesota Watershed Law, Minnesota Statutes Chapter 103D.

Drain or Drainage: Any method for removing or diverting water from waterbodies, including excavation of an open ditch and installation of subsurface drainage tile, filling, diking, or pumping.

Dredging: The removal of sediment or other materials from the beds, banks, or shores of a waterbody by means of hydraulic suction, mechanical excavation or any other means.

Easement: The perpetual right to use another owner's land for a specified use, which may be granted for the purpose of constructing and maintaining walkways, roadways, subsurface sewage treatment systems, utilities, drainage, driveways, and other uses.

Erosion: The wearing away of the ground surface as a result of wind, flowing water, ice movement, or land-disturbing activities.

Erosion and Sediment Control Plan: A plan of BMPs or equivalent measures designed to control runoff and erosion and to retain or control sediment on land during the period of land-disturbing activities in accordance with the applicable Rule.

Excavation: The intentional removal or displacement of soil, sediment, vegetation, or other earth material.

Existing Conditions: Site conditions at the time of application consideration by the LGU or District before any of the work has commenced, except that, when impervious surfaces have been fully or partially removed from a previously developed parcel but no intervening use has been legally or practically established, "existing conditions" denotes the parcel's previously established developed use and condition.

FEMA: Federal Emergency Management Agency.

Fen or Calcareous Fens: Rare and distinctive wetlands characterized by a substrate of nonacidic peat and dependent on a constant supply of cold, oxygen-poor groundwater rich in calcium and magnesium bicarbonates.

Fill: Any rock, soil, gravel, sand, debris, plant cuttings, or other material placed onto land or into water.

Filtration: A series of processes that physically removes constituents from stormwater.

Floodplain: The area adjacent to a waterbody that is inundated ~~during~~ by the~~a~~ 100-year flood elevation.

Floodway: The channel of ~~the river or streama~~ watercourse, the bed of waterbasins and the adjacent land that must remain free from obstruction so that the 100-year flood can be conveyed downstream.

Fully Reconstructed: The reconstruction of an existing impervious surface that involves site grading and subsurface excavation so that soil is exposed. Mill and overlay and other resurfacing activities are not considered fully reconstructed.

Groundwater-Dependent Natural Resource (GDNR): A feature with surface emergence of groundwater at a spring or seepage area~~, sufficiently mineral rich~~ to support a plant community or aquatic ecosystem.

Groundwater Recharge: The replenishment of groundwater storage through infiltration of surface runoff into subsurface aquifers.

High Value Resources Area~~, or~~ (HVRA): Portion of land (or a watershed) that contributes direct surface runoff to a trout water and/or fen within the ~~Lower Minnesota River Watershed District~~District. Those areas within the District but not contained within the HVRA are referred to as General areas.

Hot Spot: A point source or potential pollution-generating land use, such as a gas station or chemical storage facility.

~~**H:V:** horizontal:vertical.~~

Impervious Surface: A constructed or compacted hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than before development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, concrete, asphalt, and gravel roads or other areas of compacted ~~gravel~~surfaces.

Infiltration: A passage of water into the ground through the soils.

Infrastructure: The system of public works for a county, state, or municipality, including but not limited to structures, roads, bridges, culverts, and sidewalks; stormwater management facilities, conveyance systems, and pipes; pump stations, sanitary sewers, and interceptors; hydraulic structures, permanent erosion control, and stream bank protection measures; water lines, gas lines, electrical lines, and associated facilities; and phone lines and supporting facilities.

Land-Disturbing Activity: Any change of the land surface ~~to~~ including but not limited to:~~e~~ removing vegetative cover, excavating, fill, grading, stockpiling soil, and constructing any structure that may cause or contribute to increases in the flow of water off of a property, ~~eroding~~ erosion downstream, or moving sediment into water bodies. Land use for new and continuing agricultural activities shall not constitute a land-disturbing activity under these Rules.

Landlocked ~~Basin~~: A water basin~~localized depression~~ that does not have a natural outlet at or below ~~the~~ its 100-year flood elevation.

Linear Project: Construction or reconstruction of a public road, sidewalk, or trail or construction, repair, or reconstruction of a utility or utilities that is not a component of a larger contemporaneous development or redevelopment project. A linear project does not include ancillary structures or facilities.

Local Government Unit (LGU): The municipality or other public body within the Lower Minnesota River Watershed District and subject to these Rules~~Entity such as a city or county~~.

Local Water Plan (LWP): A plan adopted by each municipality pursuant to Minnesota Statutes 103B.235.

~~**MNDOT:** Minnesota Department of Transportation.~~

~~**MPCA:** Minnesota Pollution Control Agency.~~

~~**MPCA General Construction Permit**~~**Construction Stormwater General Permit: The** ~~G~~general ~~P~~permit Authorization to Discharge Storm~~w~~ ~~W~~ater Associated with Construction Activity under the National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS)~~Permit~~ Program, ~~Permit MN R100001 (~~also known as the NPDES General Construction Permit or NPDES Permit~~)~~, issued by the Minnesota Pollution Control Agency (MPCA) on~~,~~ August 1, 2018, and as amended.

Municipality: Any city or township wholly or partly within the Lower Minnesota River Watershed District.

Natural Vegetation: Any combination of ground cover, understory, and tree canopy that, although human activity may have altered it, continues to stabilize soils, retain and filter runoff, provide habitat, and recharge groundwater.

~~**NAVD:** North American Vertical Datum.~~

~~**Nested:** A hypothetical precipitation distribution whereby the precipitation depths for various durations within a storm have the same exceedance probabilities. This distribution maximizes the rainfall intensities by incorporating selected short-duration intensities within those needed for longer durations~~

~~at the same probability level. As a result, the various storm durations are "nested" within a single hypothetical distribution. Nested-storm distribution (or frequency-based hyetograph) development must be completed using the most recent applicable National Weather Service reference data (e.g., Atlas 14), in accordance with~~

~~a. the alternating block methodology, as outlined in Chapter 4 of the *HEC-HMS (Hydrologic Engineering Center Hydrologic Modeling System) Technical Reference Manual* (USACE, 2000);~~

~~b. methods in HydroCAD;~~

~~c. methods established by the Natural Resources Conservation Service; or~~

~~d. otherwise as approved by the District.~~

~~Reference: US Army Corps of Engineers. 2000. *Hydrologic Modeling System: HEC-HMS Technical Reference Manual.*~~

~~**Nondegradation:** For purposes of these rules, nondegradation refers to the regulatory policy stated in Minnesota Administrative Rules 7050.0185, and as amended.~~

~~**NOT:** Notice of Termination.~~

~~**NPDES:** National Pollutant Discharge Elimination System.~~

Official Controls: Defined and enacted policies, standards, maps and other criteria which control the physical development of the LGU and are the means of translating into ordinances all or any part of the general objectives of the comprehensive plan.

Ordinary High Water Level (OHWL): ~~Ordinary high water level, as defined by the Minnesota Department of Natural Resources, m~~Means the boundary of water basins, watercourses, public waters, ~~and public~~or ~~waters~~ wetlands, and ~~the OHWL~~ is an elevation ~~delineating~~ indicating the highest water level maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.~~;~~ ~~f~~For watercourses, the OHWL is the elevation of the top of bank of the channel bank. ~~; and~~ F~~f~~or ~~reservoirs~~ basins and flowages, the OHWL is the operating elevation of the normal summer pool.

Outfall: A constructed point source where water discharges to a receiving water.

Overlay District: A district established by Lower Minnesota River Watershed District rules/regulations that may be more or less restrictive than the primary District's rules/regulations. Where a property is located within an overlay district, it is subject to the provisions of both the primary rules/regulations and those of the overlay district.

Owner: Any individual, firm, association, partnership, corporation, trust, or other legal entity having proprietary interest in the land.

Parcel: A lot of record in the office of the county recorder or registrar or that otherwise has a defined legal existence.

Person: Any individual, trustee, partnership, unincorporated association, limited liability company, or corporation.

Pervious: Surfaces that are readily penetrated or permeated by rainfall or runoff resulting in infiltration of surface water to the groundwater.

Pollutant: A pollutant is a substance or energy introduced that has undesired effects, or adversely affects the usefulness of a resource. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

~~**Practical Difficulties:** As defined in Minnesota Statutes section 462.357, subdivision 6.~~

Professional Engineer: a licensed engineer registered under the laws of the state of Minnesota.

Public Drainage System: Any drainage system as defined in Minnesota Statutes 103E.005, subdivision 12.

Public Project: Land development or redevelopment or other land-disturbing activity conducted or sponsored by a federal, state, or local governmental entity, for which a permit from the Lower Minnesota River Watershed District, or its designee is required.

Public Waters: Waters as defined in Minnesota Statutes 103G.005, subdivision 15, and included in the public waters inventory.

Qualified Professional: A person, compensated for her/his service, possessing the education, training, experience, or credential to competently perform or deliver the service provided.

Reconstruction: Removal of an impervious surface such that the underlying structural aggregate base is effectively removed and the underlying native soil exposed. The following do not constitute "reconstruction" for the purposes of these rules: impervious surface mill, reclamation, overlay, or paving of an existing rural section gravel road.

Redevelopment: Any construction or improvement performed on sites where the existing land use is commercial, industrial, institutional, or residential.

Regional System: A surface water storage or conveyance system used at a regional scale.

Runoff: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

Seasonally Saturated Soils: The highest known seasonal elevation of groundwater, or seasonal high water table, as indicated by redoximorphic features such as mottling within the soil.

Sediment: The solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by erosion and deposited at another location.

~~**Sedimentation:** The process or action of depositing sediment.~~

Semi-Pervious: Land cover or surfaces which include both pervious and impervious features that allow for some infiltration, but are directed to a conveyance system, such as synthetic turf and capped or lined systems at landfills.

Shoreland ~~District~~: ~~Shoreland a~~Areas regulated by a local municipal or county shoreland ordinance or by Minnesota Statutes 103F. Generally, a shoreland district consists of land located within a floodplain, within 1,000 feet of the ordinary high-water level of a public water or public waters wetland, or within 300 feet of a stream or river.

Shoreline: The lateral measurement along the contour of the ordinary high water level of waterbodies other than watercourses, the top of the bank of the channel of watercourses, and the area waterward thereof.

Single-Family Home: A free-standing residential building designed for and to be occupied as a single-dwelling unit on its own land.

Site: A contiguous area of land under common ownership, designated and described in official public records and separated from other lands, see Parcel.

Standard: A preferred or desired level of quantity, quality, or value.

Steep Slope: A natural topographic feature having average slopes of 18 percent or greater measured over a horizontal distance of 25 feet or more.

Steep Slopes Overlay District (SSOD): A ~~district~~ subarea within the District containing steep slopes ~~areas~~ established by Lower Minnesota River Watershed District ~~rules/regulations~~Watershed Management Plan that is subject to the provisions of ~~both the primary rules/ regulations and those of the overlay district~~these Rules.

Storage System: The drainage facilities, both natural and manmade, which collect, contain, and provide for the flow and treatment of surface and stormwater from multiple properties the highest points on the land down to a receiving water. The natural elements of the storage system include lakes and wetlands. The humanmade elements of the storage system include retention or detention facilities.

Stormwater: Water discharged to natural and artificial conveyance or holding systems resulting from precipitation, including rainfall and snowmelt.

Structure: Anything manufactured, constructed, or erected that is normally attached to or positioned on land, including portable structures, earthen structures, water and storage systems, drainage facilities, and parking lots.

~~**Subsurface Sewage Treatment System, or SSTS:** A sewage treatment system or part thereof serving a dwelling, other establishment, or group thereof and using sewage tanks followed by soil treatment and~~

~~disposal or using advanced treatment devices that discharge below final grade. A subsurface sewage treatment system includes holding tanks and privies.~~

Subwatershed: A portion of land (or a watershed) contributing runoff to a particular point ~~of discharge~~.

Surface Water: All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, ~~waterways~~water basins, watercourses, and irrigation systems regardless of whether natural or artificial, public or private.

~~**Thalweg:** A line following the lowest points of a valley, river, stream, or creek bed.~~

Total Phosphorus (TP): ~~Total phosphorus~~A measure of all forms of phosphorus, dissolved or particulate, in a given water sample or flow.

Trout Waters: Lakes or streams that currently support or historically have supported a population of stocked or naturally ~~-produced~~ occurring trout.

Total Suspended Solids (TSS): ~~Total suspended solids~~Refers to the dry-weight of waterborne particles, that are not dissolved and can be trapped by a filter, in a given water sample or flow.

Waterbody: All surface waters, watercourses, and wetlands as defined in these ~~Policies~~Rules.

Water Basin: An enclosed depression with definable banks capable of containing water.

Watercourse: A channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Watershed: A region draining to a specific watercourse or water basin.

Wellhead Protection Plan: A document that provides for the protection of a public water supply, submitted to the Minnesota Department of Health, that is implemented by the public water supplier and complies with (a) the wellhead protection elements specified in the 1986 amendments to the Federal Safe Drinking Water Act, United States Code, title 42, chapter 6A, subchapter XII, part C, section 300h-7 (1986 and as subsequently amended) and (b) Minnesota Rules parts 4720.5200 to 4720.5290.

Wetland: Any land as defined in Minnesota Statutes 103G.005, subdivision 19.

2 Rule A: Administrative and Procedural Requirements Rule

Minnesota Statutes 103D.341 requires the Lower Minnesota River Watershed District (District) to adopt rules. Pursuant to Minnesota Statutes chapter 103D, on October 24, 2018, the District adopted its Board of Water and Soil Resources–approved watershed management plan (Plan). The Plan establishes management standards that form the foundation of these R~~r~~ules.

These ~~r~~Rules are primarily applied by a local governmental unit (LGU) under a Municipal ~~(LGU)~~ Permit (Section 1.1) or by the District through an Individual Permit (Section 1.2)

Implementation by municipalities or LGUs of these R~~r~~ules is required on all projects within their jurisdiction and by the District on projects within unincorporated and ungoverned areas of the Fort Snelling Historic District, ~~and~~ on Minnesota Department of Transportation (MnDOT) right-of-way, and within municipalities that have not obtained a Municipal Permit.

2.1 Municipal ~~(LGU)~~ Permit

The M~~m~~unicipal ~~(LGU) p~~Permit allows local municipalities to issue permits and manage actions as the primary permitting authority and allows the District to act in the event the LGUs are unable to permit.

2.1.1 Policy

It is the policy of the District to:

A. R~~r~~ecognize that control and determination of appropriate land use is the responsibility of LGUs;

B. H~~h~~old LGUs to the requirement of Minnesota Statutes section 103G.235, subdivision 1, that each adopt the official controls necessary to bring local water management into conformance with the Plan;

C. P~~p~~resent minimum threshold requirements and allow LGUs to adopt more restrictive requirements;

D. R~~r~~ecognize that the authorities and procedures that LGUs use in implementing these R~~r~~ules will not be identical and that, therefore, some LGUs may occasionally need language and procedures that vary from the language and procedures outlined herein; and

E. C~~e~~oordinate with and provide a ~~m~~Municipal ~~p~~Permit to all LGUs with compliant local controls.

2.1.2 Regulation

~~All~~ Those LGUs that wish to~~must~~ obtain a municipal permit must highlight~~ing~~ how they intend to implement and enforce these ~~r~~Rules through official controls, in accordance with Minnesota Statutes 103B.235~~, on or before May 1, 2020~~.

2.1.3 Application

The District established these Rules on February 2020 and all LGUs were required to submit their ~~An LGU must submit an~~ application packets to the District to obtain a M~~m~~unicipal ~~p~~Permit under these ~~r~~Rules on or before February 7, 2020, with the intent of LGUs receiving their Municipal Permits before the implementation deadline of May 1, 2020. All Municipal Permit applications thereafter will follow

the timeline below. The submitted permit application must address how the LGU's official controls adhere to these ~~r~~Rules. LGUs are encouraged to contact the District ~~on or~~ before ~~January 1, 2020, to begin~~ beginning this process; this allows for nonbinding, informal review of the official controls~~to conform with the District's rules before the May 1, 2020, implementation deadline~~.

A. ~~The municipal permit application packets are due on or before February 7, 2020.~~ The District has up to 60 business days to take action on a submitted permit application that is considered complete.

B. The ~~m~~Municipal ~~p~~Permit may be applied for using ~~application forms can be obtained from the District office or downloaded on~~ the District website at www.lowermnriverwd.org/.

C. The ~~m~~Municipal ~~p~~Permit applications must be signed by the City Administrator, a licensed professional engineer under the laws of the state of Minnesota (professional engineer), or designated City staff upon authorizing action of the LGU's governing board or council.

D. All ~~m~~Municipal ~~p~~Permit application packets must include a completed application form and all required exhibits. These documents must be electronically submitted to the District in .pdf format. Compliance with these specifications will be used to determine whether the municipal permit application is complete. The District will not act on an incomplete ~~m~~Municipal ~~p~~Permit application and will notify LGUs within 15 business days of receiving the application if it is not complete.

2.1.4 Municipal Permit Approval, Renewal and Assignment

A. Approval. Municipal P~~p~~ermit approval is valid for five calendar years from the approval date, with or without conditions, unless otherwise specified. This does not include suspended or revoked municipal permits. Substantive changes, such as updates to these Rules and LGU official controls that affect the specific standards identified in the Plan, require a new municipal permit application.

B. Renewal. To renew ~~or assign~~ a municipal permit, the original permittee must notify and provide an explanation to the District, in writing, at least 60 days before the expiration date.

C. Assignment. When approved by the District, the permittee may assign a municipal permit to another LGU; however t~~T~~he assignment of a permit does not extend the term~~.~~. Approval may be granted if:

i. ~~t~~The ~~proposed assignee~~current permittee first notifies and provides and explanation to the District, in writing, before the permit expiration date.

~~i.~~ii. The proposed assignee agrees in writing to assume responsibility for compliance of all terms and conditions of the municipal permit as issued; and

~~ii.~~iii. ~~a~~At the time of the request, there are no pending violations of the municipal permit or conditions of approval.

iv. If the District finds that the proposed assignee has not demonstrated the ability to fulfill the municipal permit terms, it may impose new or additional conditions or deny the permit renewal or assignment. ~~The assignment of a permit does not extend the term.~~

D. Amendments. When approved by the District, the permittee may modify its municipal permit, however amendment of a permit does not extend the term. Approval may be granted if:

i. The current permittee first notifies and provides an explanation to the District, in writing, before the permit expiration date.

ii. The proposed assignee agrees in writing to assume responsibility for compliance of all terms and conditions of the municipal permit as issued; and

iii. At the time of the request, there are no pending violations of the municipal permit or conditions of approval.

iv. If the District finds that the proposed assignee has not demonstrated the ability to fulfill the municipal permit terms, it may impose new or additional conditions or deny the permit renewal or amendment.

2.1.5 Audit Process

The District reserves the right to conduct periodic audits and/or inspections of LGU programs, project approvals, issued municipal permits, and other processes to assess conformance with the municipal permit, the standards identified in the Plan, and these Rules.

2.1.6 Enforcement

LGUs are responsible for implementing and enforcing local water plans ~~(LWPs)~~ covering their jurisdictions. To avoid unnecessary duplication of permitted programs, the District anticipates providing oversight to confirm that LWPs, including these Rules and local controls, are properly implemented and enforced. Oversight will include spot checks of municipal projects and program audits. If the LGU is found noncompliant, the District will work with the LGU to correct the issue. However, if problems persist, the District may revoke or suspend the municipal permit and require individual permits, issued by the District, for all activities covered by these Rules. The District may also pursue remedies as provided by law to ensure compliance with these Rules.

The District will not be responsible for liabilities, costs, and damages caused by the LGU's lack of proper implementation.

2.1.7 Suspension or Revocation

The District may revoke or suspend an issued municipal permit if it was issued based upon inaccurate information provided by the permittee, the permittee has not demonstrated the ability to fulfill the terms, or the permittee fails an audit.

2.1.8 Variance

It is the District's policy to allow LGUs to grant variances and issue conditional use permits according to processes for such actions contained in existing local controls, except for the professional certification

requirement for steep slopes. At least thirty days before municipal consideration of a variance or conditional use permit request, the District shall be notified of the requested action and be allowed to provide comment on the requested action. Variances that would circumvent the intent and purposes of these ~~r~~Rules shall not be granted.

2.1.9 Permits Subject to Rule F: Steep Slope Rule

Upon showing, to the satisfaction of the District, that the LGU has enacted and is following official controls necessary to meet the intent of these R~~r~~ules, the District may issue an exception to the rule for projects with land-disturbing activities that require a municipal grading, building, parking lot, or foundation permit that impact less than 50 cubic yards or less than 5,000 square feet of surface area or vegetation. The exception, if issued, will be documented in the M~~m~~unicipal ~~p~~Permit, wherein the LGU must agree: (1) that it will enforce its official controls; (2) that the exception will terminate if the LGU amends its official controls such that they no longer meet the intent of these R~~r~~ules; and (3) that the LGU will provide notice to the District of all permits issued under the exception.

2.2 INDIVIDUAL PERMIT

The Individual Permit allows the District to act as regulatory body in those areas not regulated by a municipality with an approved Municipal Permit. These generally include unincorporated and ungoverned areas of the Fort Snelling Historic District, Minneapolis-St. Paul International Airport, and on MnDOT right-of-way.

2.2.1 Policy

An individual permit is required for projects proposed by the MnDOT and all projects occurring in the Fort Snelling Historic District unincorporated area of the District (i.e., where there is no LGU exercising official controls).

Except where a ~~m~~Municipal ~~p~~Permit has been issued and remains in effect (i.e., has not been revoked or suspended), a person undertaking an activity for which these R~~r~~ules require a permit must obtain the required permit from the District before commencing the regulated activity.

2.2.2 Application

An application must be submitted to the District to obtain a permit for all projects subject to these R~~r~~ules. Applicants are strongly advised to contact the District early in the project development process. This will allow for a nonbinding, informal review to assess conformity with District rules.

Complete p~~P~~ermit applications are due 20 business days before the monthly board meeting to be considered at that board meeting. The District will act on permit applications in a manner consistent with Minnesota Statutes section 15.99.

A. Application forms can be obtained from the District office or downloaded on the District website at www.lowermnriverwd.org/.

B. The project/property owner must sign all permit applications.

C. All permit application packets must include a completed application form, all required exhibits, and a check (if applicable). These documents can be electronically submitted to the District in .pdf format. Applicable fees should be mailed to the District office. See the District website for the most current fee schedule. Compliance with the~~se~~ required exhibits outlined in the applicable Rules~~specifications~~ will be used to determine whether an application is complete.

~~C.~~D. The District will not act on an incomplete permit application. If the application is not complete, the District will notify applicants within 15 business days of receiving it.

~~D.~~E. Any entity undertaking emergency activity immediately necessary to protect life or prevent substantial physical harm to persons or property must submit an application within 30 days of commencing the work. The emergency activity must be brought into compliance with District rules in a timely manner.

2.2.3 Administrative Review and Approval

It is administratively burdensome for the Board to review every Individual Permit application. Therefore, the District Administrator and Engineering/Technical Consultant shall review all applications

and make recommendations for approval or denial, including proposed conditions. Certain Individual Permit applications may be reviewed and approved administratively by the District Administrator with concurrence of the Engineering/Technical Consultant.

A. The following Individual Permit applications may be approved administratively, provided all required, local permits have been secured:

v. Rule B: Erosion control permit applications under Rule B that involve the disturbance of less than 10,000 square feet of surface area or vegetation or the excavation of less than 100 cubic yards of earth within the HVRA or SSOD Overlay Districts, as shown on the Lower Minnesota River Watershed District Overlay District Maps (Figures 1 and 2).

vi. Rule C: No administrative approval authorized.

vii. Rule D: Stormwater permit applications under Rule D, including development, redevelopment, and drainage alternations (including roads) creating new impervious areas of less than 20,000 square feet ~~within the HVRA Overlay District, as shown on the Lower Minnesota River Watershed District – High Value Resources Area Overlay District Map (Figure 1)~~.

viii. Rule F: Steep Slope area permit applications under Rule F, including land-disturbing activities that involve the excavation of less than 100 cubic yards of earth or displacement or removal of less than 10,000 square feet of surface area or vegetation within the Steep Slopes Overlay District, as shown on the Lower Minnesota River Watershed District—Steep Slopes Overlay District Map (Figure 2)

B. The District Administrator may work with consultants on the administrative review of a permit.

C. If a permit meets the administrative approval requirements but the District Administrator determines that administrative approval is inappropriate due to an unusual circumstance, the permit application shall be brought before the Board for approval.

D. All administratively approved permits shall be deemed issued when signed by the District Administrator, or other Board-designated staff or consultant, and all conditions of the permit have been satisfied.

E. The District Administrator shall provide reports to the Board of all administratively approved permits.

F. District Staff may not deny a permit. District Staff must instead bring the permit application before the Board with a recommendation to deny the permit application including proposed written reasons for denial.

~~2.2.3~~2.2.4 Conditional Approval

The District may conditionally approve an application; however, it will not issue the permit until the applicant has met all approval conditions. The applicant must demonstrate clear intent to comply with these Rules and all conditional approval requirements that the District has outlined. All conditions must

be met within twelve (12) months from the date conditional approval was granted. If conditions are not satisfied within the specified period~~After this timeframe~~, the conditional approval will expire and the applicant will be required to reapply for a permit and pay applicable permit fees. For conditionally approved permits, the permit term does not begin until all conditions have been met and the permit has been issued.

~~2.2.4~~2.2.5 Reconsideration

An applicant aggrieved by the District's decision regarding a permit application may file a notice of reconsideration.

A. A notice of reconsideration must be filed with the District within 10 business days of the board meeting at which the original decision was made. The notice must include a statement identifying the specific conditions and findings to be reconsidered.

B. The District will schedule a reconsideration of the matter by the Board of Managers. The applicant will receive a notice of the reconsideration date at least 20 business days in advance.

C. The applicant may supplement existing permit exhibits with additional documentation and submit all additional exhibits to the District no later than 10 business days before the date of the reconsideration.

D. In accordance with Minnesota Statutes section 103D.345, subdivision 2, an applicant will assume the analytical costs incurred by the District while conducting a reconsideration. Costs will not be recovered when the applicant is a local, state, or federal governmental body.

E. Once an applicant has filed a notice for reconsideration, the underlying permit decision will be suspended until the Board of Managers issues a final decision on the reconsideration.

F. The District's decision on the reconsideration constitutes the final decision on the application.

~~2.2.5~~2.2.6 Appeal

Pursuant to Minnesota Statutes section 103D.537, an applicant may appeal a permit decision or order made by the Board of M~~m~~anagers by a declaratory judgment action brought under Minnesota Statutes chapter 555. An applicant must file an appeal of a permit decision or order within 30 days of the Board of M~~m~~anagers' decision. An applicant may request a meeting with the dispute resolution committee of the Board of Water and Soil Resources to informally resolve a dispute before initiating a declaratory judgment action.

~~2.2.6~~2.2.7 Permit Renewal ~~and Assignment~~

Permit approval is valid for one calendar year from the date the permit was approved, with or without conditions, unless otherwise specified. This does not include suspended or revoked permits. To renew or assign permit approval, the original permittee must ~~notify and~~ provide notification, an explanation of the requested action, ~~document~~documentation of plan changes, and ~~provide~~ supporting information to the District, in writing, at least sixty (60) days prior to~~before~~ the permit expiration date. The District may impose different or additional conditions on the permit renewal or deny the renewal in the event of a

material change in circumstances~~if there is a significant change in the work proposed~~. The first renewal request will not be subject to new or additional requirements solely because of a change in the District's rules where substantial progress has been made toward the completion of the permitted project.

Applicants wishing to continue projects for which permit approval has expired must reapply for a permit and pay associated fees. All District rules in effect at the time of the reapplication will apply.

2.2.8 Permit Assignment

When approved by the District, the permittee may assign a permit to another party. Approval may be granted if, all of the following conditions are met:

A. ~~t~~The proposed assignee agrees in writing to assume responsibility for compliance with all terms, ~~and~~ conditions and obligations of the permit as originally issued to the permittee; ~~and~~

~~A.~~ The proposed assignee has the ability to satisfy the terms and conditions of the permit as originally issued;

B.

~~B.~~C. A~~a~~t the time of the request, there are no current or pending violations of the permit or conditions of approval as originally issued; and

~~C.~~D. ~~t~~The proposed assignee has provided any required financial assurance necessary to complete the permitted project.

If the District finds that the proposed assignee has not demonstrated the ability to fulfill the permit terms, it may impose new or additional conditions or deny the permit assignment. The assignment of a permit does not extend the term of the permit.

2.2.9 Permit Amendments

Permits may be amended after approval but before the initiation of work or construction activities. The permittee must notify the District of proposed amendments as soon as possible. The District reserves the right to review and adjust any financial sureties as part of the amendment process. Permits may not be amended after the initiation of work, in this case applicants must reapply for a District permit.

~~2.2.7~~2.2.10 Suspension or Revocation

~~The~~ District staff may ~~revoke or~~ suspend an issued permit if the permit was issued based upon inaccurate information provided by the permittee, or the permittee has failed to meet the requirements of a conditional approval. A special meeting of the Board of Managers may be called to revoke an issued permit or recommend other enforcement actions under section 2.2.15.

~~2.2.8~~2.2.11 Variance

The Board of Managers may consider a request for a variance from compliance with these R~~r~~ules. To grant a variance, the applicant must demonstrate the following:

~~A.~~ Practical Difficulties.

A. ~~"~~Practical difficulties~~"~~ is a legal standard set forth in ~~law~~ Minnesota Statutes Section 462.357, Subdivision 6 that regulatory authorities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied:~~.~~

i. The applicant proposes to use the property in a reasonable manner. This factor means that the applicant would like to use the property in a particular reasonable way but cannot do so under the regulatory rule. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. Activities causing environmental degradation, creating increased risk of damage to property or public or private infrastructure, or unable to be certified as suitable for site conditions may not be considered reasonable.

ii. The applicant's problem is caused by circumstances unique to the property and are not caused by the applicant. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not to personal characteristics or preferences of the landowner.

iii. The variance, if granted, will not alter the locality's essential character. Under this factor, consider whether the resulting structure or land modification will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

B. Additional Considerations

i. The activity for which the variance is sought will not adversely affect water resources, flood levels, or drainage in the District.

ii. A better natural resource protection or enhancement can be achieved by the proposed project if a variance is approved.

C. Term and Revocation. A variance granted by the District remains valid as long as the activity for which the variance was granted remains consistent with the conditions of the underlying permit. A variance may be revoked if the activity for which the variance was granted is abandoned.

~~2.2.9~~2.2.12 After-the-Fact Permits

Any work requiring a permit that is performed without a permit is subject to enforcement and restoration under Minnesota Statutes 103D. The District may grant an after-the-fact permit in certain situations. The work sought to be permitted by an after-the-fact permit must have been capable of receiving a permit before the work was performed or must be capable of correction to meet the intent or performance standards of these Rules. Because an after-the-fact permit will require increased investigation of the conditions of the unauthorized work, an increased inspection fee may be required before processing the after-the-fact permit. After-the-fact inspection fees may be incurred and will be the sole responsibility of the applicant~~are found District website at www.lowermnriverwd.org/~~.

If the work does not qualify for a permit, no after-the-fact permit shall be issued, and corrective actions may be sought pursuant to Minnesota Statutes 103D.545 and 103D.551. Before considering an after-the-fact permit application, the District may require that the property be returned to the condition that existed before the unpermitted work was performed.

A. Completed Work

If, after inspection, the unauthorized work is found to comply with these Rules or the performance standards herein, the after-the-fact permit shall be issued to the applicant without further cost. If, after inspection, the unauthorized work is found not to comply with these Rules or the performance standards herein, further inspection and permit processing may be required, including additional inspection fees. An after-the-fact permit may require correction work and be subject to additional conditions.

B. Incomplete Work

For work in progress, work must cease and the work site must be stabilized until a permit is issued. Standard administrative procedures shall apply to the application, except for increased inspection fees as described above. For any portion of work completed that does not meet performance standards herein, deficiencies must be corrected as a condition of permit issuance.

C. Emergency Work

An after-the-fact permit may be required after emergency work. If the work is deemed an emergency and otherwise performed in compliance with these Rules or the performance standards herein, the after-the-fact permit shall be issued to the applicant without cost. If the work is deemed an emergency but is not otherwise performed in compliance with these Rules or the performance standards herein, the after-the-fact permit shall be issued to the applicant without any increased cost, rather than that required for a before-the-fact permit. If the work is not deemed an emergency, the standard after-the-fact permit requirements will apply. In all cases, an after-the-fact permit may include conditions to correct any damage caused by the emergency work.

D. Enforcement

The District may pursue remedies as provided by law to ensure compliance with an issued permit, variance, or permit condition.

~~2.2.10~~2.2.13 Permit and Inspection Fees

A. Policy

It is the determination of the Board of Managers that:

i. charging a minimal permit application fee will increase public awareness of and compliance with District permitting requirements and will reduce enforcement and inspection costs;

ii. the public interest will benefit from inspection by District staff of certain large-scale projects in locations presenting particular risk to water resources to provide the Board of

Managers with sufficient information to evaluate compliance with District rules and applicable law; and

iii. from time to time, persons perform work requiring a permit from the District without a permit, and persons perform work in violation of an issued District permit. The Board of Managers determines that its costs of inspection and analysis in such cases will exceed costs incurred where an applicant has complied with District requirements.

B. Requirement

The District will charge applicants permit and inspection fees in accordance with a schedule that will be maintained and revised from time to time by resolution of the Board of Managers to ensure that permit fees cover the District's actual costs of administrating and enforcing permits and the actual costs related to field inspections of permitted projects, such as investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after permit issuance. The fee schedule may be obtained from the District office or the District's website at http://lowermnriverwd.org/. A permit applicant must submit the required permit fee to the District at the time it submits the relevant permit application. The fee provided by this rule will not be charged to any agency of the United States or any governmental unit or political subdivision of the State of Minnesota.

~~2.2.11~~2.2.14 Financial Assurances

A. Policy

It is the District's policy to protect and preserve the water resources within the District by requiring financial performance assurances with a permit application. Such assurances will ensure adequate adherence to District rules when performing authorized activities.

B. Requirement

The District may require a performance bond, letter of credit, or other financial assurance in a form approved by the District for an activity permitted under these R~~r~~ules. A financial assurance will not be required of any agency of the United States or any governmental unit of the State of Minnesota.

C. Criteria

Financial assurances required pursuant to this rule must be issued in compliance with the following District criteria:

i. The financial assurance must be a performance bond, letter of credit, cash deposit, or other form acceptable to the District. Commercial financial assurances must be from an issuer licensed and doing business in the State of Minnesota.

ii. Any bond issued under this section shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570

(amended) by the Financial Management Service, Surety Bond Branch, US Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

iii. Financial assurances must be issued in favor of the District and are contingent upon the applicant's compliance with the issued permit and payment of District fees. The financial assurance must state that, in the event of financial assurance conditions not being met, the District may make a claim against it. If the District makes a claim against a financial assurance, the full amount of the financial assurance required must be restored within 20 business days.

iv. The financial assurance must be effective for a minimum of three years from the date it was issued. The District may require the financial assurance to be extended or remain in place until all project components are stabilized and verified to be functioning to permitted specifications. The financial assurance must contain a provision that it may not be released without the District's consent.

v. The permit applicant must submit the financial assurance. The financial assurance principal may be the landowner or the individual or entity undertaking the proposed activity.

vi. Financial assurance will be released only under the terms of section ~~1~~2.2.13.D~~.2.11.4~~

vii. No interest will be paid on financial assurances held by the District.

viii. The District Board of Managers will set the amount of financial assurances by resolution. Financial assurance amounts are set to cover potential liabilities to the District, including but not limited to the following:

a. Field inspections and monitoring
b. Maintaining and implementing erosion and sediment control and other protections as the permit requires
c. Planting and establishing buffer area
d. Remediation of damages resulting from noncompliance with the permit or for which the permittee is otherwise responsible

D. Financial Assurance Release

Once the District has received written notification of project completion, it will promptly inspect the project to determine whether the project was constructed in accordance with the issued permit and District rules. If the project is found in compliance, all practices and project components are stabilized, all practices and project components are verified to be functioning to permitted specifications, all required documentation has been submitted and approved by the District, and all permit fees have been paid, the District Board of Managers will authorize the release of the financial assurance.

Further, upon written notice, a portion of the assurance may be released if the District finds that the entire amount is not needed to ensure compliance. After inspection, the District will determine what portion, if any, of the financial assurance can be released. If a portion of the financial assurance is not released, the District will notify the permittee of the outstanding compliance matters to address.

E. Financial Assurances by Rule

Financial assurance required for a particular permit will include a 10 percent contingency and a 30 percent administrative costs in addition to the amounts calculated according to the criteria found in section ~~1.2.11.3.h.~~2.2.14.C.viii . No financial assurance is required for a project undertaken by or for a resident owner on a single-family home site requiring only a permit under Erosion and Sediment Control, unless the Board of Managers determines that the project presents a significant risk of damage to water resources from erosion. See the fee schedule policy on the District's website for additional information.

2.2.15 Enforcement

A. Investigation of Noncompliance

District staff, agents, and contractors may enter and inspect a property within the watershed to determine if a violation of permit conditions or District rules has occurred.

B. Informal Resolution of Noncompliance

Before initiating formal proceedings (see below), the District and its staff shall attempt to informally resolve incidences of noncompliance (i.e., by voluntary corrective actions or after-the-fact permitting).

C. Board Hearing; Administrative Compliance Order

The District will provide the permittee or landowner with reasonable notice when a compliance hearing will take place. An opportunity to be heard by the Board of Managers will be allotted at the compliance hearing, during which the permittee or landowner can address the finding of probable violation. At the hearing's conclusion, the District may issue a compliance order.

D. District Court Enforcement

The District Board of Managers may seek judicial enforcement of an order and recovery of associated legal costs and fees, as provided by Minnesota Statutes chapter 103D.

E. Liability for Enforcement Costs

The permittee or owner of a property subject to the District's enforcement action will be liable for associated costs incurred by the District. Such costs include but are not limited to inspection and monitoring, engineering, technical analysis, and legal and administrative expenses.

2.2.16 Permit Close-Out

Upon written notification from permittee of the completion of the permitted project and submittal of actual "as-built" plans for any stormwater management practices or improvements located on site after

final construction is completed, the District will inspect the project to determine if it is constructed in accordance with the terms of the permit and District Rules. Final inspection compliance includes, but is not limited to, confirmation that all erosion and sediment control BMPs and stormwater management features have been constructed or installed as designed and are functioning properly. The District may return a portion of the surety if it finds that a portion of the surety is no longer warranted to assure compliance with District Rules per section 2.2.14.D. Upon determination that the project is complete, the District will notify the permittee, surety, and municipality that the individual permit has been closed out.

3 Rule B: Erosion and Sediment Control Rule

3.1 Policy

It is the District's policy to

A. minimize erosion and sediment transport to lakes, streams, fens, and the Minnesota River;

B. retain or control sediment on land and during land-disturbing activities;

C. prevent resource degradation and loss or damage to property from erosion and sedimentation;

D. protect receiving water bodies, wetlands, and storm sewer inlets; and

E. require the preparation and implementation of erosion and sediment control plans to control runoff and erosion.

3.2 Regulation

A ~~m~~Municipal or Individual Project ~~District erosion and sediment control~~ permit must be obtained for any land-disturbing work in overlay districts or other areas within the watershed as defined below:

A. General: Land-disturbing activities of one (1) acre or more

B. HVRA: Land-disturbing activities that involve the displacement or removal of 5,000 square feet or more of surface area or vegetation or the excavation of 50 cubic yards or more of earth within the HVRA Overlay District, as shown on the Lower Minnesota River Watershed District—High Value Resources Area Overlay District Map (Figure 1)

3.3 Exceptions

An erosion and sediment control permit is not required for the following land-disturbing activities:

A. Minor land-disturbing activities, such as home gardens contained within a residential lot, landscape repairs, and maintenance work

B. Installation of any fence, sign, telephone or electric poles, or other kinds of posts or poles

C. Emergency activity necessary to protect life or prevent substantial harm to persons or property

D. All maintenance, repair, resurfacing, and reconditioning activities of existing road, bridge, and highway systems that do not involve land-disturbing activities outside of the existing surfaced roadway

E. Agricultural activity

3.4 Criteria

Permit approval for activities that meet the general threshold must demonstrate that the implementation of their erosion and sediment control will meet the following criteria:

3.4.1 Erosion and Sediment Control

Erosion and sediment control ~~plan~~ during and after the proposed activities that provides the following:

A. Protection of natural topography and soil conditions

B. Temporary erosion and sediment control practices consistent with the Minnesota Pollution Control Agency's "Protecting Water Quality in Urban Areas," as amended or updated, and the "Minnesota Stormwater Manual," as amended or updated

C. Minimization of the disturbance's intensity and duration

D. Provide adequate stabilization measures on slopes of 3:1 (H:V) or steeper

E. Protection of all stormwater conveyance systems during construction activities

F. Final site stabilization measures

3.4.2 Waste Management

All waste generated by project activities will be properly managed and disposed of to avoid adverse impacts on water quality.

~~3.4.1~~3.4.3 Site Stabilization

A. Establish sediment control BMPs on all downgradient perimeters of the site and downgradient areas of the site that drain to any surface water, including curb and gutter systems, locate sediment control practices upgradient of any buffer zones, install sediment control practices before any upgradient land-disturbing activities begin and must keep the sediment control practices in place until permanent vegetative cover is established.

B. All soil surfaces that are compacted during construction and remain compacted upon construction completion must be decompacted. Decompaction can be achieved through soil amendment and/or ripping to a depth of 18 inches. All decompaction measures should be completed before final stabilization.

C. All temporary erosion and sediment control BMPs must be maintained until construction is completed and permanent vegetative cover is established, where appropriate, to a consistent, uniform density of 70 percent of its expected final growth.

D. When final stabilization is achieved, all temporary erosion and sediment control BMPs must be removed from the project site.

E. All disturbed areas must be finally stabilized within 14 days of completing land-altering activities.

~~3.4.2~~3.4.4 Inspection and Maintenance during Construction

The permit holder is responsible for inspecting and maintaining the project site until final stabilization is complete, ~~including ensuring~~to ensure that all erosion and sediment control measures are effective.

~~F. Inspection~~

A. Routine inspections shall be conducted at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 0.5 inch in 24 hours by the owner or the owner's representative. Following a rainfall inspection, the next inspection shall be

conducted within seven (7) days. The inspection schedule will be modified for the following conditions:

i. Where parts of the construction site have permanent cover, but work remains on other parts of the site, inspections shall be reduced to once per month.

ii. Where construction sites have permanent cover on all exposed soil areas and no construction activity is occurring anywhere on the site, monthly inspections shall be performed for 12 months (except during frozen ground conditions). After the 12th month of permanent cover and no construction activity, inspections may cease until construction activity resumes or sooner if notified by the District or the LGU.

iii. Where frozen ground conditions have resulted in suspension of work, the inspection and maintenance schedule shall resume within 24 hours after runoff occurs at the site or upon resuming construction, whichever comes first.

B. Routine inspections shall include the following:

i. All areas disturbed by construction activity and areas used for storage of materials exposed to precipitation

ii. Discharge locations, inaccessible locations, and nearby downstream locations where inspections are practicable

iii. Locations where vehicles enter or exit the site for evidence of off-site sediment tracking

C. Records for each inspection and maintenance activity shall be kept on file with the owner and shall contain the following information:

i. Date and time of inspection

ii. Name, title, and qualifications of person(s) conducting inspection

iii. Date, duration, and amount of all rainfall events that produce more than 0.5 inch of rain in a 24-hour period and whether any discharges occurred

iv. Inspection findings, including corrective action recommendations and implementation dates

v. Locations of the following:

a. Sediment discharges or other pollutants from the site
b. BMPs that need to be maintained
c. BMPs that have failed to operate as designed or have proven inadequate for a particular location
d. Needed BMPs that did not exist at the time of inspection

vi. Documented changes to the erosion and sediment control plan

vii. Inspector's signature

D. The owner shall keep an inspection log with the erosion and sediment control plan for a period of three (3) years following the completion of the project and filing of the Notice of Termination (NOT).

~~3.4.3~~3.4.5 Maintenance

All maintenance conducted during construction must be recorded in writing, and these records must be kept. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs within 24 hours after discovery or as soon as field conditions allow access, unless another period is specified below. Maintenance will include the following:

A. Excess sediment behind silt fences and biorolls shall be removed and properly disposed of when sediments reach one third the height of the structure. Such sedimentation shall be corrected by the next business day following discovery.

B. Construction site vehicle exit locations shall be inspected for evidence of off-site sediment tracking onto paved surfaces. Tracked sediment will be removed from all paved surfaces within 24 hours of discovery or, if applicable, within a shorter time.

C. Surface waters, including drainage ditches and conveyance systems, shall be inspected for evidence of erosion and sediment deposition. Evidence of erosion and/or sediment deposition will be addressed within seven (7) calendar days.

D. Infiltration areas shall be maintained to ensure that no compaction or sedimentation occurs.

E. Construction entrances shall be maintained daily.

F. Turf shall be maintained until final stabilization is established.

The maintenance of temporary erosion and sediment controls and implementation of additional controls shall be performed as soon as possible and before the next storm event, whenever practicable. All remaining temporary erosion and sediment controls and accumulated sediments from silt fences will be removed within 30 days of achieving final stabilization at the site.

3.5 Required Information and Exhibits

The following exhibits must accompany the permit application (one hardcopy set of plans [11 inches by 17 inches] and one set as electronic files in a format acceptable to the District):

3.5.1 Narrative

A cover letter and narrative that includes the following:

A. Total project area and area of proposed disturbance. If within the HVRA, the narrative must include the excavated volume, in addition to the total area disturbed.

B. An explanation of existing and proposed conditions

~~G.~~C. The name, address, and telephone number(s) of all property owners

~~H.~~D. The name, address, and telephone number(s) for all contractors undertaking land-disturbing activities as part of the proposed project

~~I.~~E. The property owner's signature

~~J.~~F. A statement granting the District and its authorized representatives' access to the site for inspection purposes

~~K.~~G. Designation of an individual who will remain liable to the District for performance under this Rule from the time the permitted activities commence until vegetative cover is established and the District has certified satisfaction with erosion and sediment control requirements

3.5.2 Erosion and Sediment Control Plan

An erosion and sediment control plan that includes the following:

A. Topographic maps of existing and proposed conditions that clearly indicate all hydrologic features and areas where grading will expose soils to erosive conditions as well as the flow direction of all runoff (single-family home construction or reconstruction projects may comply with this provision by providing satellite imagery or an oblique map acceptable to the District)

B. Tabulation of the construction implementation schedule for all projects except construction or reconstruction of a single-family home

C. Name, address, and phone number of the individual responsible for inspection and maintenance of all erosion and sediment control measures

D. Temporary erosion and sediment control measures that will remain in place until vegetation is established

E. All final erosion control measures and their locations

F. Staging areas, as applicable

G. Delineation of any floodplain and/or wetland area changes

H. Documentation of the project's NPDES Construction Stormwater Permit status, if applicable

4 Rule C: Floodplain and Drainage Alteration Rule

4.1 Policy

It is the District's policy to

A. regulate alterations within the floodplain and drainageways within the watershed to provide flood protection to natural resources, permanent structures, and private lands, in accordance with Minnesota Statutes 103F;

B. preserve existing water storage capacity below the 100-year high-water elevation of all public waters, wetlands subject to the Wetland Conservation Act, and public drainage systems subject to Minnesota's buffer law in the watershed to minimize the frequency and severity of high water; and

C. minimize development below the Federal Emergency Management Agency (FEMA) 100-year flood elevation that will unduly restrict flood flows or aggravate known high water problems.

4.2 Regulation

A ~~m~~Municipal or ~~District~~ Individual Project permit is required for any alteration to or filling of land below the 100-year flood elevation of any wetland, public water, or landlocked subwatershed (as identified by municipalities) in accordance with state-approved floodplain management and shoreland ordinances.

4.3 Exceptions

A floodplain and drainage alternation permit is not required if all of the following conditions exist:

A. The 100-year flood elevation of a waterbody is entirely within a municipality.

B. The water basin is landlocked.

C. The municipality has adopted a floodplain ordinance regulating floodplain encroachment.

D. The proposed project is entirely within the water basin drainage area.

4.4 Criteria

All permitted projects under this rule shall be subject to the following criteria and shall be completed in accordance with state-approved floodplain management and shoreland ordinances:

A. Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody.

   i. A no rise certification to the 0.00-foot by a professional engineer satisfies this requirement.

   ii. Compensatory storage may be used to offset proposed fill in the floodplain, but does not take the place of a no rise certification for watercourses that convey water. If used, the compensatory storage shall be created before the proposed fill is placed in the floodplain,

unless the permit applicant demonstrates that doing so is impractical and that placement of fill and creation of compensatory storage can be achieved concurrently.

B. All new residential, commercial, industrial, and institutional structures shall be constructed such that the lowest floor of the lowest enclosed area (including basement or crawl space) is at a minimum of two (2) feet above the 100-year high water elevation, unless they have protection through floodproofing or by another approved construction technique.

C. No permanent structure, except for FEMA and National Flood Insurance Program approved structures and uses, may be constructed in the floodway.

D. No person shall install or remove a ~~culvert~~crossing, or other artificial means to remove or drain surface water, create artificial pond areas, or obstruct the natural flow of waters without demonstrating that the activity has no adverse impact on upstream or downstream landowners or water quality, habitat, or fisheries.

E. Temporary placement of fill within the floodway for river dredge, including facilities for such activity, shall be allowed when it is conducted in agreement with the United States under the Rivers and Harbors Act and it meets requirements of the LGU.

Temporary placement of fill, other than in Section 4.4.E, is not allowed without prior approval by the District.

4.5 Required Information and Exhibits

The following exhibits must accompany the permit application (one hardcopy set of plans [11 inches by 17 inches] and one set as electronic files in a format acceptable to the District):

4.5.1 Narrative

A cover letter and narrative that includes the following:

A. Total project area and locations of proposed floodplain or drainage alterations.

B. An explanation of existing and proposed conditions

C. The name, address, and telephone number(s) of all property owners

D. The name, address, and telephone number(s) for all contractors undertaking land-disturbing activities as part of the proposed project

E. The property owner's signature

~~E.~~F. A statement granting the District and its authorized representatives' access to the site for inspection purposes

4.5.2 Site Plan:

A site plan showing the following information:

A. Property lines

B. Delineation of the work area

C. Existing elevation contours of the work area

~~C.~~D. Proposed elevation contours

~~D.~~E. Ordinary high water level or normal water elevation and existing and proposed 100-year flood elevations determined by a professional engineer. ~~(a~~All elevations must reference the North American Vertical Datum of~~NAVD~~ 1988 (NAVD88)~~datum)~~.

~~4.5.1 Grading plan showing proposed elevation changes~~

~~4.5.2 Preliminary plat of proposed land development~~

~~4.5.3 Determination by professional engineer of the 100-year flood elevations for the parcel before and after the project~~

4.5.3 Floodplain Fill Calculations

Determination by a professional engineer of the 100-year flood elevations for the parcel before and after the project, including:

A. Tabulation ~~Computation by a professional engineer~~ of cut, fill, and compensatory storage resulting from the proposed activity.

B. ~~e~~Tabulation and documentation of the change in water storage capacity and conveyance resulting from proposed activity in a format acceptable to the District.

~~E.~~C. A no-rise certification, including supporting hydraulic modeling files or calculations, workmaps, and reports.

4.5.4 Erosion and Sediment Ce~~o~~ntrol ~~p~~Plan

An erosion and sediment control plan including the following:

A. Topographic maps of existing and proposed conditions that clearly indicate all hydrologic features and areas where grading will expose soils to erosive conditions as well as the flow direction of all runoff (single-family home construction or reconstruction projects may comply with this provision by providing satellite imagery or an oblique map acceptable to the District)

B. Tabulation of the construction implementation schedule for all projects, except construction or reconstruction of a single-family home

C. Name, address, and phone number of the individual responsible for inspection and maintenance of all erosion and sediment control measures

D. Temporary erosion and sediment control measures that will remain in place until vegetation is established

E. All final erosion control measures and their locations

F. Staging areas, as applicable

G. Delineation of any floodplain and/or wetland area changes

H. Documentation of the project's NPDES Construction Stormwater Permit status, if applicable

~~4.5.4 Soil boring information, if requested by the municipal or District engineer~~

4.5.5 Easements

Documentation that drainage and flowage easements over all land and facilities below the 100-year flood elevation, if required by the municipality with jurisdiction, have been conveyed and recorded. For public entities, this requirement may be satisfied by a written agreement executed with the District in lieu of a recorded document. The agreement must state that, if the land within the 100-year floodplain is conveyed, the public body will require the buyer to comply with this subsection.

5 Rule D: Stormwater Management Rule

5.1 Policy

It is the District's policy to

A. manage new development, redevelopment, and drainage alternations by requiring each development or land-disturbing activity to manage its stormwater effectively, either on- or off-site;

B. promote and encourage a reduction in runoff rates to encourage infiltration and to promote groundwater recharge;

C. encourage infiltration and stormwater storage in the District's upland areas;

D. maximize groundwater recharge as a means of maintaining drinking water supplies, preserving base flows in streams and water levels in fens, and limiting discharges of stormwater to downstream receiving waters;

E. protect and maintain existing groundwater flow, promote groundwater recharge, and improve groundwater quality and aquifer protection;

F. require that property owners control the rate and volume of stormwater runoff originating from their property so that surface water and groundwater quantity and quality is protected or improved, soil erosion is minimized, and flooding potential is reduced; and

G. protect and improve natural resources within the watershed to prevent further degradation.

5.2 Regulation

A Mmunicipal ~~or District p~~Permit that incorporates an approved stormwater management plan or an Individual Project Permit is required under this rule prior to the commencement of any activities to which this rule applies. The District may review a stormwater management plan at any point in the development of a regulated project and encourages project proposers to seek the District's early review of plans.

The requirements of this rule apply to any land-disturbing activity that will involve the following:

A. General: Development, redevelopment, reconstruction, and drainage alterations ~~(including roads)~~ creating new impervious areas greater than one (1) acre

B. HVRA: Development, redevelopment, reconstruction, and drainage alternations ~~(including roads)~~ creating new impervious areas greater than 10,000 square feet in an HVRA Overlay District, as shown on the Lower Minnesota River Watershed District—High Value Resources Area Overlay District Map (Figure 1)

5.3 Exceptions

A stormwater management permit is not required for ~~The requirements of this rule do not apply to~~ the following activities:

A. Construction or remodeling on a single-family homesite consistent with a subdivision, development, or redevelopment plan implemented in accordance with a District permit issued after May 1, 2020, and an approved erosion control prevention and sediment control plan

B. Rehabilitation of paved surfaces, such as impervious surface mill, reclamation, overlay, or paving of an existing rural section gravel road, where the underlying structural aggregate base is not removed.

~~B.~~C. Maintenance activities or in-kind replacements, such as catch basin repair and replacement, utility repair and replacement, pipe repair and replacement, lighting, and pedestrian ramp improvements.

~~C.~~D. Trails, sidewalks, and retaining walls that do not exceed 10 feet in width and are bordered down gradient by a pervious area extending at least half the trail width

~~D.~~E. Land-disturbing activities that do not involve creation of new impervious surface, reconstruction of existing impervious surface, or grading that materially alter stormwater flow at a site boundary

5.4 CRITERIA

Permit approval for activities that meet the ~~general~~ regulation thresholds must demonstrate that the implementation of their stormwater management plan will meet the following criteria:

5.4.1 Rate Control

Stormwater runoff rate from development, redevelopment, and drainage alterations shall not exceed the existing runoff rates for the 1 or 2-year, 10-year, and 100-year 24-hour events using NOAA Atlas 14 values, as amended, and using a nested rainfall distribution (e.g. MSE 3).

5.4.2 Volume Reduction

To the maximum extent practicable, volume control shall be fully met on-site. Site conditions may make infiltration undesirable or impossible. Determining the feasibility of infiltration on the site shall be in accordance with this Rule and the "Minnesota Stormwater Manual", as updated or amended. The owner must make soil corrections and/or investigate other locations on the site for feasible infiltration locations. Infiltration of stormwater must avoid areas of contaminated soil.

If the permittee claims that infiltration is not feasible or allowed on-site, sufficient supporting documentation must be provided with the permit application. Filtration technologies are an acceptable alternative for types C and D soils and other sites where infiltration is infeasible given the criteria ~~above~~ in section 5.4.2.C below.

A. General: For projects that create one (1) acre or more of new impervious surface on sites without restrictions (such as factors that prevent attainment of the performance goal, like shallow depth to bedrock, presence of contaminated soils, and lack of access because utilities are present [*Minnesota Stormwater Manual*, 2019]), the post-construction stormwater runoff volume retained on-site shall be equivalent to one (1) inch of runoff from the new and/or reconstructed

impervious surfaces or the MPCA's Construction General Permit ~~abstraction~~ volume reduction requirements (as amended), whichever is greater.

B. HVRA: Projects that create new impervious areas greater than 10,000 square feet in an HVRA Overlay District have the following volume requirements:

i. New development: For new, nonlinear developments that create 10,000 square feet or more of new impervious surface on sites without restrictions, the post-construction stormwater runoff volume retained on-site shall be equivalent to 1.0 inch of runoff from new and/or reconstructed impervious surfaces.

ii. Redevelopment: Nonlinear redevelopment projects on sites without restrictions that create 10,000 square feet or more of new and/or fully reconstructed impervious surfaces shall capture and retain on-site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.

iii. Linear projects: Linear projects on sites without restrictions that create 10,000 square feet or greater of new and/or fully reconstructed impervious surfaces shall capture and retain the larger of the following:

a. 0.55 inch of runoff from the new and fully reconstructed impervious surfaces
b. 1.1 inches of runoff from the net increase in impervious area

~~To the maximum extent practicable, volume control shall be fully met on-site. Site conditions may make infiltration undesirable or impossible. The owner must make soil corrections and/or investigate other locations on the site for feasible infiltration locations. Infiltration of stormwater must avoid areas of contaminated soil.~~

C. Infiltration practices are not allowed in the following areas:

i. Areas that receive discharges from vehicle fueling and maintenance facilities

ii. Areas with less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock

iii. Areas that receive discharges from industrial facilities that are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit issued by the MPCA

iv. Areas where infiltrating stormwater will mobilize high levels of contaminants in soil or groundwater

v. Areas of predominately Hydrologic Soil Group D (clay) soils, unless allowed by an LGU with a current NPDES/SDS Municipal Separate Storm Sewer Systems (MS4) permit

vi. Areas within 1,000 feet up gradient or 100 feet down gradient of active karst features, unless allowed by an LGU with a current MS4 permit

vii. Areas within a Drinking Water Supply Management Area (DWSMA), as defined in Minnesota Administrative Rules 4720.5100, subpart 13., unless allowed by an LGU with a current MS4 permit

viii. Areas where soil infiltration rates are more than 8.3 inches per hour, unless soils are amended to slow the infiltration rate below 8.3 inches per hour or as allowed by an LGU with a current MS4 permit

ix. Areas within the ~~LMRWD~~ District Steep Slopes Overlay District (See Rule F)

~~If the permittee claims that infiltration is not feasible or allowed on-site, sufficient supporting documentation must be provided with the permit application. Filtration technologies are an acceptable alternative for types C and D soils and other sites where infiltration is infeasible given the criteria above.~~

~~5.4.2~~5.4.3 Water Quality

A. General: Projects that create one (1) acre or more of new impervious surface shall have no net increase from existing conditions in total phosphorus (TP) and total suspended solids (TSS) to receiving waterbodies.

B. HVRA: Projects that create new impervious areas greater than 10,000 square feet in an HVRA Overlay District have the following water quality requirements:

i. Total phosphorus and total suspended solids: All projects shall have a net decrease TP and TSS to receiving waterbodies from existing conditions. For new development projects, the decrease in TP and TSS shall be 60 percent and 80 percent, respectively, from existing conditions.

ii. Buffer zone: An undisturbed buffer zone of 100 linear feet from trout waters shall be maintained at all times, both during construction and as a permanent feature after construction, except where a water crossing, or other encroachment is necessary to complete the project.

a. Exceptions: The replacement of existing impervious surfaces within the buffer zone is allowed provided that the use of additional or redundant BMPs minimizes all potential water quality, scenic, and other environmental impacts of the activity. Buffer encroachments (circumstance and reason) and minimization activities must be documented.

iii. Temperature controls: Permanent stormwater management facilities shall be designed to minimize any increase in the temperature of trout waters receiving waters resulting from the 1 and 2-year 24-hour precipitation events. This includes all tributaries of designated trout streams within the Public Land Survey System (PLSS) section where a trout water is located. Projects that discharge to trout waters must minimize the impact using one or more of the following measures, in order of preference:

b. Minimize new impervious surfaces
c. Minimize the discharge from connected impervious surfaces by discharging to vegetated areas or grass swales and using other nonstructural controls
d. Use infiltration or other volume reduction practices to reduce stormwater runoff in excess of pre-project conditions (up to the 2-year, 24-hour precipitation event)
e. Design an appropriate combination of measures, such as shading, filtered bottom withdrawal, vegetated swale discharges, or constructed wetland treatment cells, that will limit temperature increases when incorporating ponding. Also, design the pond to be drawn down in 24 hours or less.
f. Use other methods that will minimize any increase in trout water temperature

iv. Diffusion of runoff: stormwater discharge points in the HVRA shall incorporate BMPs to diffuse stormwater entering the HVRA and avoid concentrated discharges.

~~5.4.3~~5.4.4 Maintenance and Easement

The permittee is responsible for developing and adhering to a maintenance plan for the permitted project, including the acquisition of all necessary easements.

A. All stormwater management structures and facilities must be designed for maintenance access and properly maintained in perpetuity so that they continue to function as designed.

B. A maintenance plan shall identify and protect the design, capacity, and functionality of on-site and off-site stormwater management facilities; specify the methods; and schedule responsible parties for maintenance for every stormwater management facility.

C. The maintenance agreement shall be recorded with the applicable county (Carver, Dakota, Hennepin, Scott, or Ramsey) as part of the LGU or other development approval process. The District may require that stormwater management structures and facilities be publicly dedicated or placed in a conservation easement, giving rights of enforcement to an LGU, the District, or other appropriate public authority.

D. A public entity assuming a maintenance obligation may submit a written executed agreement in lieu of the recorded maintenance agreement.

~~5.4.4~~5.4.5 Alternative Measures

At sites where infiltration is infeasible, an applicant must comply with the NPDES General Construction Permit, issued by the MPCA, August 1, 2018, as amended.

5.5 Required Information and Exhibits

The following exhibits must accompany the permit application (one hardcopy set of plans [11 inches by 17 inches] and one set as electronic files in a format acceptable to the District):

5.5.1 Narrative

A cover letter and narrative that includes the following:

A. An explanation of existing and proposed conditions including:

i. Total amount of disturbance proposed by project, both in terms of surface area (square feet) and volume (cubic feet)

ii. Total amount of existing impervious surfaces, proposed new impervious surfaces, and fully-reconstructed impervious surfaces proposed by the project.

B. The name, address, and telephone number(s) of all property owners

C. The name, address, and telephone number(s) for all contractors undertaking land-disturbing activities as part of the proposed project

D. The signature of the property owner

E. A statement granting the District and its authorized representative's access to the site for inspection purposes

F. Designation of an individual who will remain liable to the District for performance under this rule from the time the permitted activities commence until vegetative cover is established and the District has certified its satisfaction with erosion and sediment control requirements.

5.5.2 Stormwater Modeling

Stormwater management system modeling in a form acceptable to the District that utilizes the most recent applicable precipitation reference data (e.g., Atlas 14), for example, HydroCAD, SWMM, MIDS calculator, or P8.

5.5.3 Site Plan

A site plan showing the following:

A. Property lines and delineation of lands under ownership of the applicant

B. Existing and proposed elevation contours

C. Identification of existing and proposed normal and ordinary high- and 100-year water elevations on-site.

5.5.4 Stormwater Management Plan

A stormwater management plan that includes, at a minimum, the following:

A. Proposed and existing stormwater facility locations, alignment, and elevation

B. Delineation of existing wetlands, marshes, shoreland, and/or floodplain areas on-site or to which any portion of the project parcel drains; except where a project will not alter or change the hydrology of a wetland, the plan need only identify the wetland.

C. Geotechnical analysis, including soil borings, at all proposed stormwater management facility locations

D. If infiltration of runoff is proposed, data must be submitted showing the following:

i. No evidence of groundwater or redoximorphic soil conditions within three (3) feet of the bottom of the facility, practice, or system

ii. Soil conditions within five (5) feet of the bottom of any stormwater treatment facility, practice, or system

iii. If requested by the engineer, site-specific infiltration capacity of soils at the bottom of the facility, practice, or system. In addition, the District engineer may require submission of a phase I environmental site assessment and/or other documentation to facilitate analysis by the District of the suitability of the site for infiltration.

E. If filtration of runoff is proposed due to site constraints listed in Section 5.4.2.C, the application must include a discussion why filtration was selected and provide an exhibit documenting all active karst features, DWSMA, contamination, soils, and any other infiltration-limiting features.

~~E.~~F. Construction plans and specifications for all proposed stormwater management facilities, including design details for outlet control structures

~~F.~~G. Stormwater runoff volume and rate analyses for the 2-, 10-, and 100-year 24-hour critical events, existing and proposed conditions, using Atlas 14 nested distribution

~~G.~~H. All hydrologic, water quality, and hydraulic computations completed to design the proposed stormwater management facilities

~~H.~~I. Narrative addressing incorporation of retention BMPs

~~I.~~J. Platting or easement documents showing sufficient drainage and ponding/flowage easements over hydrologic features, such as floodplains, storm sewers, ponds, ditches, swales, wetlands, and waterways, if required by the municipality with jurisdiction

~~J.~~K. Documentation of the project's NPDES Construction Stormwater Permit status, if applicable

~~K.~~L. If a stormwater harvest and reuse practice is proposed to meet applicable requirements, the following materials must be submitted:

i. An analysis using a stormwater reuse calculator or equivalent methodology approved by the District engineer

ii. Documentation of the adequacy of soils, storage capacity, and delivery systems

iii. Delineation of green space area to be irrigated, if applicable

iv. A detailed irrigation or usage plan showing compliance with the District's volume-retention requirements.

5.5.5 Off-Site Stormwater Facilities

If off-site stormwater or regional conveyance systems are proposed, the applicant must provide d~~D~~ocumentation demonstrating that the applicant holds the legal rights necessary to discharge to any off-site stormwater facility/facilities used for compliance, that the proposed design is in compliance with

the original off-site stormwater facility design assumptions and capacity, and that the facility/facilities are subject to a maintenance document satisfying the requirements of this ~~r~~Rule

5.5.6 Erosion and Sediment Control Plan

An erosion and sediment control plan complying with the District's Erosion and Sediment Control Rule, including the following:

A. Topographic maps of existing and proposed conditions that clearly indicate all hydrologic features and areas where grading will expose soils to erosive conditions as well as the flow direction of all runoff (single-family home construction or reconstruction projects may comply with this provision by providing satellite imagery or an oblique map acceptable to the District)

B. Tabulation of the construction implementation schedule for all projects, except construction or reconstruction of a single-family home

C. Name, address, and phone number of the individual responsible for inspection and maintenance of all erosion and sediment control measures

D. Temporary erosion and sediment control measures that will remain in place until vegetation is established

E. All final erosion control measures and their locations

F. Staging areas, as applicable

G. Delineation of any floodplain and/or wetland area changes

5.5.7 Maintenance

A maintenance plan and applicable maintenance agreements (note that in many cases a municipal stormwater agreement may be acceptable in lieu of a separate agreement with the District).

6 Rule E: Shoreline and Streambank Alteration Rule (Reserved)

7 Rule F: Steep Slopes Rule

7.1 Policy

It is the District's policy to

A. protect water quality down gradient of steep slopes from sediment, nutrients, bacteria, and other contaminant pollutant loadings;

B. maintain stability of steep slopes, shorelines, and other areas prone to erosion;

C. sustain and enhance the biological and ecological functions of noninvasive vegetation on steep slopes as outlined in the Lower Minnesota River Watershed District Vegetation Management Plan;

D. minimize impacts to and preserve the natural character and topography of steep slopes;

E. protect properties and waterbodies adjacent to steep slopes from erosion, sedimentation, flooding, and other damage; and

F. promote public safety by requiring certification from qualified individuals before land-disturbing activities and other changes to land on steep slopes.

7.2 Regulation

A M~~m~~unicipal or Individual Project ~~District p~~Permit must be obtained for the following activities within the Steep Slopes Overlay District, as shown on the Lower Minnesota River Watershed District—Steep Slopes Overlay District Map (Figure 2):

A. Land-disturbing activities that involve the excavation of 50 cubic yards or more of earth or displacement or removal of 5,000 square feet or more of surface area or vegetation ~~within the Steep Slopes Overlay District, as shown on the Lower Minnesota River Watershed District—Steep Slopes Overlay District Map (Figure 2)~~

B. Activities requiring municipal/LGU permits for grading, building, parking lot, and foundation~~s~~ ~~permits~~ construction that result in a net increase in impervious surface within or stormwater runoff ~~within~~ to the Steep Slopes Overlay District, as illustrated on Figure 2

7.3 Exceptions

A steep slopes permit is not required for the following activities:

A. New impervious areas associated with driveway widenings that drain to the street where a municipal storm sewer system manages runoff water

B. Maintenance, repair, or in-kind replacement of existing structures, public roads, utilities, and drainage systems within the Steep Slopes Overlay District

C. Disturbances that are part of an approved ~~LWP~~ local water plan to repair, grade, or reslope existing steep slopes that are eroding or unstable to establish stable slopes and vegetation

D. Native plantings that enhance natural vegetation of steep slopes

E. Selective removal of noxious, exotic, or invasive vegetation, using locally recognized methods to control and/or minimize their spread

F. Pruning of trees or vegetation that are dead or diseased or pose a public hazard and removal of vegetation in emergency situations from steep slopes

G. Maintenance of existing lawns, landscaping, and gardens

H. Agricultural and forestry activities

7.4 CRITERIA

All permitted projects under the Steep Slopes Rule must comply with the following regulations:

7.4.1 Land-Disturbing Activities

Land-disturbing activities as regulated in this section may occur within the Steep Slopes Overlay District provided that a qualified professional/professional engineer registered in the state of Minnesota certifies the area's suitability for the proposed activities, structures, or uses resulting from the proposed activities and that the following requirements are addressed:

A. Minimum erosion and sediment control BMPs include site stabilization and slope restoration measures to ensure the proposed activity will not result in:

i. adverse impacts to adjacent and/or downstream properties or water bodies;

ii. unstable slope conditions; and

iii. degradation of water quality from erosion, sedimentation, flooding, and other damage.

B. Preservation of existing hydrology and drainage patterns.

C. Land-disturbing activities may not result in any new water discharge points on steep slopes or along the bluff.

7.4.2 Soil Saturation-Type Features

Stormwater ponds, swales, infiltration basins, or other soil saturation–type features shall not be constructed within a Steep Slopes Overlay District.

7.4.3 Maintenance and Easement

The permittee is responsible for developing and adhering to a maintenance plan for the permitted project, including the acquisition of all necessary easements.

A. All stormwater management structures and facilities must be designed for maintenance access and properly maintained in perpetuity so that they continue to function as designed.

B. A maintenance plan shall identify and protect the design, capacity, and functionality of on-site and off-site stormwater management facilities; specify the methods; and schedule responsible parties for maintenance for every stormwater management facility.

C. The maintenance agreement shall be recorded with the applicable county (Carver, Dakota, Hennepin, Scott, or Ramsey) as part of the LGU or other development approval process. The District may require that stormwater management structures and facilities be publicly dedicated or placed in a conservation easement, giving rights of enforcement to an LGU, the District, or other appropriate public authority.

D. A public entity assuming a maintenance obligation may submit a written executed agreement in lieu of the recorded maintenance agreement.

7.5 Required Information and Exhibits

The following exhibits must accompany the permit application (one hardcopy set of plans [11 inches by 17 inches] and one set as electronic files in a format acceptable to the District):

7.5.1 Narrative

A cover letter and narrative that includes the following:

A. Total amount of disturbance proposed by project, both in terms of surface area (SF) and volume (CY)

B. An explanation of existing and proposed conditions

~~D.~~C. The name, address, and telephone number(s) of all property owners

~~E.~~D. The name, address, and telephone number(s) for all contractors undertaking land-disturbing activities as part of the proposed project

~~F.~~E. The signature of the property owner

~~G.~~F. A statement granting the District and its authorized representatives' access to the site for inspection purposes

~~H.~~G. Designation of an individual who will remain liable to the District for performance under this rule from the time the permitted activities commence until vegetative cover is established and the District has certified its satisfaction with erosion and sediment control requirements

~~I. An explanation of existing and proposed conditions~~

7.5.2 Erosion and Sediment Control Plan

An erosion and sediment control plan including the following:

A. Topographic maps of existing and proposed conditions that clearly indicate all hydrologic features and areas where grading will expose soils to erosive conditions as well as the flow direction of all runoff (single-family home construction or reconstruction projects may comply with this provision by providing satellite imagery or an oblique map acceptable to the District)

B. Tabulation of the construction implementation schedule for all projects, except construction or reconstruction of a single-family home

C. Name, address, and phone number of the individual responsible for inspection and maintenance of all erosion and sediment control measures

D. Temporary erosion and sediment control measures that will remain in place until vegetation is established

E. All final erosion control measures and their locations

F. Staging areas, as applicable

G. Delineation of any floodplain and/or wetland area changes

H. Documentation of the project's NPDES Construction Stormwater Permit status, if applicable

7.5.3 Stormwater Modeling

Stormwater management system modeling in a form acceptable to the District and that uses the most recent applicable precipitation reference data (e.g., Atlas 14), for example, HydroCAD, SWMM, MIDS calculator, or P8 for all discharge locations ~~and clearly demonstrates no changes to existing drainage patterns, rates, and volumes.~~.

7.5.4 Site Plan

A site plan showing the following:

A. Property lines and delineation of lands under ownership of the applicant

B. Existing and proposed elevation contours

C. Identification of existing and proposed normal and ordinary 100-year and high water elevations on-site

7.5.5 Stormwater Management Plan

A stormwater management plan, including, at a minimum:

A. Proposed and existing stormwater facilities location, alignment, and elevation

B. Delineation of existing wetlands, marshes, shoreland, and/or floodplain areas on-site or to which any portion of the project parcel drains; except that where a project will not alter or change the hydrology of a wetland, the wetland need only be identified on the plan.

C. Geotechnical analysis, including soil borings, at all proposed stormwater management facility locations

D. If infiltration of runoff is proposed, data must be submitted showing the following:

i. No evidence of groundwater or redoximorphic soil conditions within three (3) feet of the bottom of the facility, practice, or system

ii. Soil conditions within five (5) feet of the bottom of any stormwater treatment facility, practice, or system

iii. If requested by the engineer, site-specific infiltration capacity of soils at the bottom of the facility, practice, or system. In addition, the District engineer may require submission of a phase I environmental site assessment and/or other documentation to facilitate analysis by the District of the suitability of the site for infiltration.

E. Construction plans and specifications for all proposed stormwater management facilities, including design details for outlet control structures

F. Stormwater runoff volume and rate analyses for the 2-, 10-, and 100-year 24-hour critical events, existing and proposed conditions, using Atlas 14 nested distribution

G. All hydrologic, water quality, and hydraulic computations completed to design the proposed stormwater management facilities

H. Narrative addressing incorporation of retention BMPs

I. Platting or easement documents showing sufficient drainage and ponding/flowage easements over hydrologic features, such as floodplains, storm sewers, ponds, ditches, swales, wetlands, and waterways, if required by the municipality with jurisdiction

J. Documentation of the project's NPDES Construction Stormwater Permit status, if applicable

K. If a stormwater harvest and reuse practice is proposed to meet applicable requirements, submission of:

i. ~~a~~An analysis using a stormwater reuse calculator or equivalent methodology approved by the District engineer;

ii. D~~d~~ocumentation of the adequacy of soils, storage capacity, and delivery systems;

iii. D~~d~~elineation of green space area to be irrigated, if applicable; and

iv. A~~a~~ detailed irrigation or usage plan showing compliance with the District volume-retention requirements.

7.5.6 Off-Site Stormwater Facilities

If off-site stormwater or regional conveyance systems are proposed, the applicant must provide d~~D~~ocumentation that the applicant holds the legal rights necessary to discharge to any off-site stormwater facility/facilities used for compliance, that the proposed design is in compliance with the original off-site stormwater facility design assumptions and capacity constraints, and that the facility/facilities are subject to a maintenance document satisfying the requirements of this ~~r~~Rule

7.5.7 Maintenance

For any structural stormwater BMPs that may be constructed as part of the proposed activities, the applicant must provide a ~~A~~ maintenance plan and applicable maintenance agreements (note that in many cases a municipal stormwater agreement may be acceptable in lieu of a separate agreement with the District).

7.5.8 Certification

Construction plans and specifications certifying construction on the steep slope by a registered professional engineer. The certification must indicate that the slope is suitable to withstand proposed construction.

8 Rule G: Water Appropriations Rule (Reserved)

9 Rule H: Water Crossing Rule (Reserved)

Figure 1 Lower Minnesota River Watershed District—High Value Resources Area Overlay District Map

Figure 2 Lower Minnesota River Watershed District—Steep Slopes Overlay District Map

LMRWD Rule Comment & Response Log

Comment No.	Date Received	Organization	Contact Name	Rule	Section & Page No.	Comment	Response
1	8/11/2022	Metropolitan Council	Judy Sventek	-	-	From the Water Planning perspective/group, we have no further comments on this. Joe Mulcahy provided our comments/input earlier this year.	Noted.
2	8/12/2022	City of Shakopee	Kirby Templin	C	4.4.A.ii	City of Shakopee previously provided a comment for Rule C. 4.4.A.ii. The response to Comment No. 8 from the watershed district dated 7-15-2022 provides clarification of the scenarios of when a no-rise analysis is needed versus when it is not. The current Rule C. 4.4.A.ii does not clarify the scenarios when it is needed versus when it is not. It instead requires it for all scenarios. Update Rule 4.4 so a no rise is not needed for compensatory storage in scenarios where compensatory storage is provided in storage/detention scenarios (wetland, pond/basin, lake, etc).	For additional clarity, the text will be updated as follows: "Compensatory storage may be used to offset proposed fill in the floodplain, but does not take the place of a no rise certification **for watercourses that convey water**."
3	9/27/2022	City of Chaska	Brent Alcott	-	Definitions	Definition of "Appropriations": Is it the intent of the LMRWD to regulate water appropriations? Typically, this is regulated by the MN DNR rather than Watershed Districts.	The LMRWD does not currently regulate water appropriations. It may regulate water appropriations, as per Minnesota Statute 103B.211, Subd.4 (b), and incorporate the requirements in Rule G: Water Appropriations Rule (Reserved).
4	9/27/2022	City of Chaska	Brent Alcott	-	Definitions	Definition of "Semi-pervious": This is an unusual definition and is not used elsewhere is the document. Is there a reason this was included?	This definition was included to provide some credit to nontraditional stormwater practices, such as synthetic turf systems.
5	9/27/2022	City of Chaska	Brent Alcott	A	2.2.3.A.vii	Administrative Approval: Can you provide clarification if all stormwater permits under Rule D are approved administratively, or only permits within the HVRA?	The intent was to provide administrative approval for small projects under the specified thresholds. For additional clarity, the text will be updated as follows: "Stormwater permit applications under Rule D, including development, redevelopment, and drainage alternations (including roads) creating new impervious areas of less than 20,000 square feet. ~~within the HVRA Overlay District, as shown on the Lower Minnesota River Watershed District – High Value Resources Area Overlay District Map (Figure 1).~~"
6	9/27/2022	City of Chaska	Brent Alcott	A	2.2.4	Conditional Approval: Under conditional permit approval, is construction allowed to proceed?	Construction activities are not allowed to proceed until all conditional approval items have been fulfilled. As stated in Section 2.2.1 Line 444, "a person undertaking an activity for which these Rules require a permit, must obtain the required permit from the District before commencing the regulated activity."
7	9/27/2022	City of Chaska	Brent Alcott	D	5.4.2.C.v.	Volume Reduction Criteria: Infiltration practices are not allowed in HSG D soils; however, the above section (5.4.2) states that filtration is practices are allowed on HSG C and D soils. Is it the intent of this standard to allow infiltration in HSG C soils, but also allow filtration as an option?	The intent is that infiltration is allowed and encouraged in HSG soils A, B, and C. A soil that is considered HSG C will not be accepted as adequate reasoning as to why infiltration is not allowed. However, if there are other restrictions on-site that do not allow for infiltration (5.4.2.C), then filtration is allowed.
8	9/27/2022	City of Chaska	Brent Alcott	D	5.4.3.B.iv.	Water Quality: A specific definition of "diffusion" would be helpful.	We will add the following definition: Diffuse/Diffusion: To spread out or disperse stormwater or runoff over a larger area to reduce the concentration of flow.
9	9/27/2022	City of Chaska	Brent Alcott	F	7.5.3.	It is a nearly impossible criterion to achieve "no changes to existing drainage patterns, rates, and volumes". It would be more reasonable to state "no increase in rates and volumes". Further, changes in drainage patterns should be more clearly defined as development will most likely result in some degree of change.	We will modify the text as follows: "Stormwater management system modeling in a form acceptable to the District and that uses the most recent applicable precipitation reference data (e.g., Atlas 14), for example, HydroCAD, SWMM, MIDS calculator, or P8 for all discharge locations. ~~and clearly demonstrates no changes to existing drainage patterns, rates, and volumes.~~"

Manager _____ introduced the following resolution and moved its adoption, seconded by Manager _____:

RESOLUTION 22-10

LOWER MINNESOTA RIVER WATERSHED DISTRICT

ADOPTING REVISIONS TO THE LOWER MINNESOTA RIVER WATERSHED DISTRICT RULES

WHEREAS, the Lower Minnesota River Watershed District ("LMRWD") a governmental subdivision with powers set forth in Minnesota Statutes chapters 103B and 103D, is authorized to act to achieve the purposes set forth in those chapters for the protection, conservation and beneficial use of the water resources of the Lower Minnesota River watershed;

WHEREAS, Minnesota Statutes section 103D.341 states that a watershed district board of managers must adopt rules to accomplish the purposes of chapter 103D and implement the powers of the managers as specified by Minnesota Statutes section 103D.335, and LMRWD first adopted rules in accordance with this requirement in 2020 and has had rules in effect since;

WHEREAS, the LMRWD drafted a preliminary set of proposed revisions, most of which were mechanical, “housekeeping” changes that improved operation and clarity of the rules, while others implemented regulatory-policy decisions endorsed by the LMRWD Board of Managers, which were submitted to the LMRWD’s Technical Advisory Committee for initial review, leading to only a couple of minor adjustments to the rule revisions;

WHEREAS, on August 11, 2022, the LMRWD posted to its website and issued proposed the revisions to its rules for review and comment in accordance with Minnesota Statutes section 103D.341, and sent a copy of the materials to state review agencies, public transportation authorities that have jurisdiction within the Lower Minnesota River watershed, and all cities within the watershed and several written comments were submitted before the comment period closed September 26, 2022;

WHEREAS, the LMRWD issued notice of a public hearing on the proposed revisions in accordance with section 103D.341 on October 9, 2022, and October 16, 2022;

WHEREAS, the LMRWD Board of Managers has reviewed and given due consideration to the comments received and changes to the rules in response to comments, as well draft responses to the comments; and

WHEREAS, the LMRWD Board of Managers finds that the rules as revised to be sound, reasonable and fair and to protect, conserve and manage the beneficial use of the water resources in the Lower Minnesota River watershed, and generally to promote the public welfare.

NOW, THEREFORE, BE IT RESOLVED, that the LMRWD Board of Managers approves the responses to comments, and adopts the attached revised rules of the Lower Minnesota River Watershed District, with such non-substantive revisions as the administrator, on advice of counsel, deems necessary to finalize the revised rules;

BE IT FURTHER RESOLVED that that any and all permit applications completed on or after October 19, 2022, will be subject to the rules as amended, and an applicant who has filed

an application prior to October 19, 2022, may affirmatively elect, in writing, to have an application analyzed and permit decision rendered under the rules as amended hereby, so long as LMRWD has not already rendered a decision on the application;

BE IT FURTHER RESOLVED that the LMRWD Board of Managers directs the administrator to post the revised rules, and responses to the comments received on the LMRWD website, and provide the responses to commenters; and

BE IT FINALLY RESOLVED, that LMRWD administrator is directed to publish notice of the adoption of the amended rules, mail a copy of the revised rules to the governing body of each city affected by the revised rules and public transportation authorities with jurisdiction in the watershed, and file a copy of the revised rules in the Office of the Carver County, Dakota County, Hennepin County and Scott County Recorders.

The question was on the adoption of the Resolution and there were ___ yeas and ___ nays as follows:

	Yea	Nay	Absent	Abstain
AMUNDSON	☐	☐	☐	☐
HARTMANN	☐	☐	☐	☐
MRAZ	☐	☐	☐	☐
RABY	☐	☐	☐	☐
SALVATO	☐	☐	☐	☐

Upon vote, the President declared the Resolution adopted.

_____

Jesse Hartmann, President

ATTEST:

_____

Lauren Salvato, Secretary

I, Lauren Salvato, Secretary of the Lower Minnesota River Watershed District, do hereby certify that I have compared the above Resolution with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 19th day of October 2022.

_____

Lauren Salvato, Secretary