

MINNEHAHA CREEK WATERSHED DISTRICT

Rulemaking Task Force

January 24th 2008

6:30 pm

City of Minnetonka Community Center

14600 Minnetonka Blvd

Minnetonka, MN 55345

(952) 939-8390

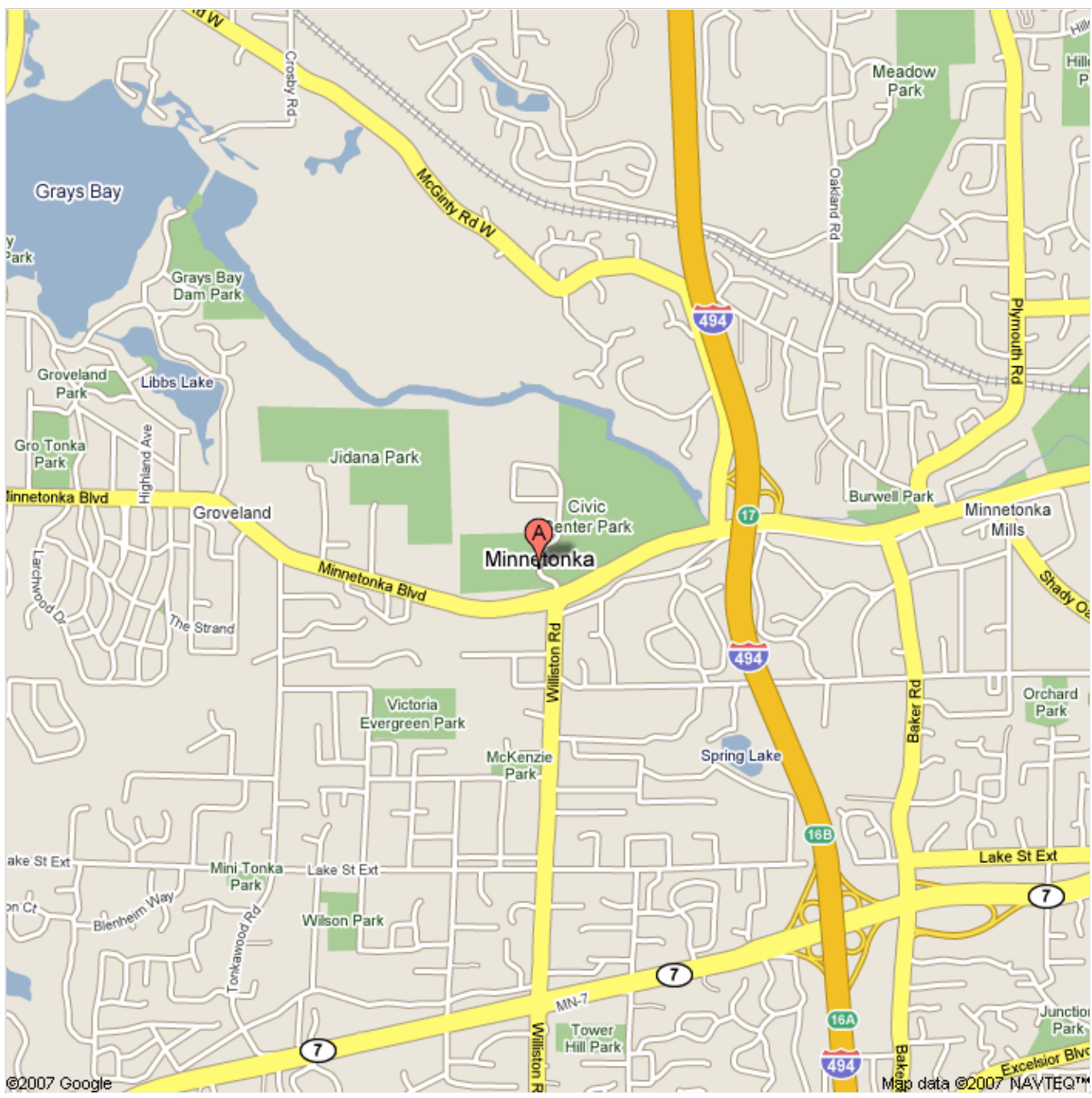
Minnetonka Mills Room (Lower Level)

AGENDA

- | | | |
|----|---|--------|
| 1. | Discuss additional meeting dates for February – April | 10 min |
| 2. | Discuss Rule B: Erosion Control draft language | 30 min |
| 3. | Discuss Rule C: Floodplain Alteration draft language | 30 min |
| 4. | Discuss Rule G: Waterbody Crossing draft language | 30 min |
| 5. | Additional items/questions | 20 min |



Results 1-1 of about 1 for community center near Minnetonka, MN



A. Minnetonka **Community Center**
14600 Minnetonka Blvd, Minnetonka, MN
(952) 939-8390

Memorandum

DATE: January 14th 2008
TO: MCWD Rulemaking Task Force
FROM: James Wisker
RE: January 24th Meeting Materials

The January 24th Meeting will be dedicated to the discussion of draft language developed for three regulations previously discussed by the Rulemaking Task Force, Technical Advisory Committee and the MCWD Board of Managers:

1. Rule B: Erosion Control
2. Rule C: Floodplain Alteration
3. Rule G: Waterbody Crossings

During the January meeting the Rulemaking Task Force will step through each regulation change and discuss how each amendment addresses the recommendations previously made by the group. As evident from the draft rule language, many Task Force recommendations were fully incorporated into the draft language while other recommendations were either modified or omitted.

As needed, District staff will provide additional discussion on how the comments made by the Technical Advisory Committee and the MCWD Board of Managers shaped the draft rule language.

In addition, District staff will outline some areas within the draft rule language which are still undergoing some technical research. Any subsequent language changes resulting from additional technical information will be resubmitted to both the Rulemaking Task Force and Technical Advisory Committee for further review/comment before being incorporated into final draft rule language.

Following the January 24th meeting, both the Rulemaking Task Force and the Technical Advisory Committee will be provided 30 days to submit comments regarding the draft rule language to the District in writing.

These written comments will then be presented with the latest draft rule language to the Board of Managers for consideration before final draft language is presented to the Rulemaking Task Force and Technical Advisory Committee.

As always, please feel free to contact me prior to the meeting with any questions.

MINNEHAHA CREEK WATERSHED DISTRICT

Technical Advisory Committee

Summary of July 26th, 2007 Meeting RULE B: EROSION CONTROL

Committee Members Present: Laura Adler, Liz Stout, Tony Brough, Wayne Houle, Jesse Struve, Dave Taylor, Mike Kelly, Aaron Snyder, Dave Poggi, John Barten, Tim Brown, Jack Frost, Jill Crafton, Brad Wozney, Lois Eberhart, Holly Kreft, Cara Geheren, Deb Pilger, Krista Torgerson

MCWD Managers Present: Lee Keeley

MCWD Staff Present: James Wisker, Mike Panzer, Steve Christopher, Nathaniel Kale.

James Wisker provided an overview of the erosion control recommendations developed by the MCWD Rulemaking Task Force at its May 24th 2007 meeting. Mr. Wisker acknowledged the letter from Committee member Derek Ashe from the City of Plymouth which provided written feedback on the recommendations. The committee discussed each recommendation making the following comments to each:

1. Erosion control practices at small sites are a significant concern. There is no need to revise the threshold for erosion control requirements, as 5,000 square feet or 50 cubic yards of soil disturbance captures most construction projects including single family homes. The concerns at small sites center on a lack of familiarity and best practices compliance among small contractors and subcontractors.

The Technical Advisory Committee accepted this recommendation.

2. The District should explore some form of training certification among contractors and subcontractors. Training offered or required by MnDOT, the Minnesota Erosion Control Association, or the Builders Association of the Twin Cities may be valuable in this regard. Contractors who are certified in best practices instruction could perhaps qualify for a lesser surety amount given the relationship between such instruction and greater likelihood of compliance.

It was generally accepted that promoting additional erosion control education and certification would help promote increased compliance. The District and/or cities could pursue the feasibility of implementing licensing requirements on contractors similar to those placed on professional engineers. However reduced sureties or other incentives should not be based on attending training certification programs but rather on past performance and compliance within the District. In addition, training programs recommended should be consistent with the standards identified in the District's regulations.

3. The District should endeavor to integrate its erosion control requirements with those of the Minnesota Pollution Control Agency wherever possible in order to promote consistency in compliance with best practices.

Not all requirements of the MPCA should be integrated into District rules. Specifically, it was identified as being particularly onerous to require isolated single family home owners to develop a Stormwater Pollution Prevention Plan to the same level of detail as is required by a commercial developer or builder. However, soil stabilization practices, slope break requirements and other field implemented erosion control practices could be applied on a District wide basis.

4. The District should consider a 'performance-based' approach to erosion control, such that land alteration projects that are located in closer proximity to water resources, involve grading on steep slopes, construction during high precipitation months, or other factors would trigger more intensive requirements.

The District should not limit a performance based approach geographically or by proximity to sensitive water resources. Many sites in urban areas are removed from direct contact with surface waters, however, the discharge of sediment from a site may have the same or more potential for impact once it reaches a conveyance system such as the City storm sewer. Therefore, catch basins should be protected with the same diligence as would be applied to Minnehaha Creek or Lake Minnetonka. A copy of the City of Minneapolis Erosion Control ordinance was submitted to the group which is performance based and states "A construction project shall be considered in conformance with Chapter 52 if soils have been prevented from being deposited onto adjacent properties, right-of-ways, public storm drainage system, or wetland or watercourse." The consensus was that erosion control standards should be applied equally to each site with the focus being placed on the correct implementation and field inspection of BMP's.

5. Given the scarcity of staff resources for inspection and enforcement, a 'self-inspection' approach should be considered where the permittee maintains an accessible self-inspection log on site.

This should only be required if it will make MCWD enforcement proceedings easier as it may simply be another component of the regulation which is difficult to enforce.

6. The District should explore greater use of sureties to establish strong financial incentives for erosion control compliance. The surety could be released in partial amounts based on completion in good standing of various stages of project construction that are closely integrated with other construction inspection practices. The District should consider establishing sureties in higher amounts that more closely follow the scale of the project, and are based on a percentage of value.

Sureties should be scaled based on the cost of potential site corrections which the District may have to undertake and not on the cost of the project. Also, sureties should not be released at various stages of the project but after successful

completion of the project. This provides the District with increased leverage throughout the length of the project and ensures that final site corrections will be completed in a timely manner. In addition, the additional work generated by releasing partial sureties may not be a cost effective use of District staff.

7. The contractor liability form used by the Board of Water and Soil Resources should be reviewed for possible adaptation to the District's needs in promoting greater compliance by subcontractors

The Technical Advisory Committee would review this document and provide additional feedback at a later date if necessary.

8. The District should develop a requirement to prevent or minimize soil compaction and require de-compaction where necessary and feasible.

Compaction was identified as being a long term erosion and stormwater management issue which needs addressing. Concerns were raised regarding the practicality of requiring de-compaction on single family or commercial properties. Utilities such as gas, cable, electric and irrigation are installed prior to final stabilization, de-compaction practices such as deep ripping of the soil would likely disrupt in place utilities. Specifically requiring de-compaction of proposed wetland buffers, infiltration areas and proposed pervious areas was discussed and determined to warrant further investigation. Also, it was recommended that if specific practices to minimize compaction and provide de-compaction are not identified in the planning phase, the hydrologic soil group in the submitted stormwater model would be revised to reflect the additional runoff generated from compacted soils.

9. The District should explore a sequencing approach, involving explicit incentives, to minimize disturbance of natural soil cover and vegetation; minimize work in and adjacent to water bodies and wetlands; and avoid steep slopes and the need for high cuts and fills.

Incentives were not thought to be a feasible method of minimizing soil or vegetation disturbance. Contractors and developers do not generally disturb an area unless it is proposed to be developed due to increased excavation costs. Additional sureties could be required based on the potential cost of corrective actions when grading adjacent to wetlands etc.

10. The District should require the identification of a single individual responsible for implementing erosion control plans on permitted sites.

The individual identified should also provide a 24 hour emergency contact number to ensure a timely response to erosion control issues.

11. The District should require that soil disturbance should specifically be avoided within the drip line of trees.

The District should avoid "absolutely" requiring that all disturbance should be avoided in order to minimize the need for variances from the erosion control

rule. The language should require practices identified on the plan and implemented to prevent grading and compaction within the drip line.

12. The District should pursue more explicit erosion control maintenance requirements and integrate these requirements with the MPCA – NPDES permit requirements, including use of a self-inspection log.

The Technical Advisory Committee generally accepted this recommendation. It was suggested that accepted temporary stabilization (seed mixes) should be identified as invasive species have been used to provide temporary stabilization in the past.

RULE B: EROSION CONTROL

1. POLICY. It is the policy of the Board of Managers to require preparation and implementation of erosion control plans for land disturbing activities, in order to limit erosion from wind and water; reduce flow volumes and velocities of stormwater moving off-site; reduce sedimentation into water bodies; and protect soil stability during and after site disturbance. These measures should reflect the following principles:

- (a) Minimize, in area and duration, exposed soil and unstable soil conditions.
- (b) Minimize disturbance of natural soil cover and vegetation.
- (c) Protect receiving water bodies, wetlands and storm sewer inlets.
- (d) Retain sediments from disturbed properties on site.
- (e) Minimize off-site sediment transport on trucks and equipment.
- (f) Minimize work in and adjacent to water bodies and wetlands.
- (g) Maintain stable slopes.
- (h) Avoid steep slopes and the need for high cuts and fills.
- (i) Minimize disturbance to the surrounding soils, root systems and trunks of trees adjacent to site activity that are intended to be left standing.

(j) ~~Prevent and/or mitigate~~ the compaction of site soils.

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2. PERMIT REQUIREMENT. Unless specifically excepted by section 3 of this rule, land-disturbing activity shall require a permit incorporating an erosion control plan approved by the District and shall be conducted in accordance with that plan. A fast-track permit may be issued for routine erosion control projects on a finding that the application:

- (a) Complies with the submission requirements of section 4 of this rule;
- (b) Includes an erosion control plan that:
 - (1) Complies with section 5 of this rule;
 - (2) Provides for maintenance and inspection in accordance with section 9 of this rule; and
 - (3) Provides that there will be no stockpiling of more than 50 cubic yards of soil or other material subject to erosion by wind or water that is not covered, vegetated, enclosed, fenced on the

down gradient side or otherwise effectively protected from erosion.

Any request for a variance from a requirement of this rule must be decided by the Board of Managers.

3. EXCEPTIONS. The following land-disturbing activity shall not be subject to the requirements of this rule:

(a) Activity that: (1) disturbs an area of less than 5,000 square feet; and (2) involves the grading, excavating, filling, or storing on site of less than 50 cubic yards of soil or earth material.

(b) ~~Agricultural Activity.~~

(c) Emergency activity immediately necessary to protect life or prevent substantial physical harm to person or property provided that erosion control measures, including any necessary remedial action, are implemented as soon as possible.

(d) Activity otherwise subject to this rule, where the District has entered into a written agreement with the municipality where the activity takes place providing that the District will not exercise erosion control permitting authority within the City under the circumstances in question.

4. PERMIT APPLICATION. A written application for an erosion control permit shall be submitted by the owner of a site or an authorized representative. The application shall contain the following:

(a) Site address.

(b) Property owner's name, address and telephone number.

(c) Names, addresses, telephone numbers and responsibilities of all contractors, subcontractors and other persons who will engage in the land-disturbing activities.

(d) ~~Name, address and telephone number of a single individual responsible for implementing the erosion control plan on site.~~

(e) Documentation of all applicable county, municipal or township approvals for the proposed action or a statement that no such approvals are required.

(f) Application date.

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~~*(included on the permit application form)*[NOTE: this language should be inserted in Rule A and apply to all permits; may also provide for District cost recovery if violations not cured.](h) Signature of each property owner with a certification that he or she understands that the proposed activity must be conducted in compliance with this rule and the approved erosion control plan, and that the application is complete and accurate to the best of his or her belief. When a property owner is not a natural person, the application shall bear a signature of one authorized to act on the owner's behalf and documentation of the signatory's authority.~~

Deleted: (g) A statement that the applicant: (a) consents to site inspection by the District and its authorized agents at reasonable times as necessary to evaluate the permit application or determine compliance with the requirements of this rule; and (b) will notify the District and afford access for District inspection as set forth at paragraph 10.

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(i) An erosion control plan as described at paragraph 5 of this rule.

(j) A soils engineering report as described at paragraph 6 of this rule, if requested by the District.

(k) A geological report as described at paragraph 6 of this rule, if requested by the District.

(l) A statement that the applicant is aware of fee requirements set forth at Rule J of the District's rules and agrees to pay that fee as determined due by the District.

~~(m) A Storm Water Pollution Prevention Plan for projects that require an NPDES Permit from the Minnesota Pollution Control Agency.~~

~~(n) An erosion control inspection plan for all projects disturbing ¼ acre or greater in accordance with paragraph 10 of this rule.~~

5. EROSION CONTROL PLAN. The erosion control plan is a stand-alone document that shall include the following:

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(a) A Site Evaluation:

(1) The site location in relation to surrounding roads, steep slopes, other significant geographic features, buildings and other significant structures.

(2) Identify any surface waters within 2000 feet of the site, and all impaired waters, stormwater ponds, ditches, storm sewer catch basins and other stormwater conveyances that may receive a discharge from the site. Note whether any are listed as "impaired waters".

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(b) Site plans for existing and final proposed conditions drawn to appropriate scale. The plans shall contain:

(1) Existing and final grades and the direction of flow for all pre and post construction stormwater runoff from the site.

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(2) Site property lines.

(3) Identification and location of all on-site water features and facilities including any lake, stream or wetland; any natural or artificial water diversion or detention area; any surface or subsurface drainage facility or stormwater conveyance; and any storm sewer catch basin.

(4) Location of all trees and vegetation on site, with identification of that which is intended to be retained. Tree protection fencing shall be installed around such vegetation so as to prevent all fill, equipment and compaction within the critical root zone or drip line whichever is larger.

(5) Location of buildings and structures on site.

(6) Proposed grading or other land-disturbing activity including areas of grubbing, clearing, tree removal, grading, excavation, fill and other disturbance; areas of soil or earth material storage; quantities of soil or earth material to be removed, placed, stored or otherwise moved on site; and delineated limits of disturbance.

(7) Locations of proposed runoff control, erosion prevention, sediment control and temporary and permanent soil stabilization measures.

(8) Location of all areas on site where compaction is to be prevented and/or minimized.

(c) Plans and specifications for all proposed runoff control, erosion prevention, sediment control, and temporary and permanent soil stabilization measures.

(1) Plans and specifications shall conform to the provisions of the manual, ""Stormwater Compliance Assistance Toolkit for Small Construction Operators"" (Minnesota Pollution Control Agency, 2004).

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(2) All erosion and sedimentation controls proposed for compliance with this rule will be in place before any land-disturbing activity commences.

(3) Plans shall provide that stockpiles of soil or other materials subject to erosion by wind or water shall be covered, vegetated, enclosed, fenced on the downgradient side or otherwise

effectively protected from erosion in accordance with the amount of time the material will be on site and the manner of its proposed use.

(4) Plans shall detail the location of all areas where compaction is to be prevented and/or minimized. These areas shall be protected from construction vehicle traffic where practical and feasible. If compacted, these soils shall be de-compacted by deep ripping to a depth of 18 inches and organic matter incorporated before revegetation.

Deleted: include measures and procedures to reasonably minimize site soil compaction and shall provide that all compacted soil shall be broken up to a depth of at least six inches before revegetation.

(5) Silt fence shall conform to Sections 3886.1 and 3886.2, Standard Specifications for Construction, Minnesota Department of Transportation (2000 ed.), as it may be amended.

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(6) Plans shall provide that all fabric fences used for erosion and sedimentation control and all other temporary controls shall not be removed until the District has determined that the site has been permanently restabilized and shall be removed within 30 days thereafter.

(7) Plans shall provide for permanent stabilization of all areas subject to land disturbance and specify at least four inches of topsoil spread during final site treatment wherever topsoil has been removed.

(d) A detailed schedule indicating dates and sequence of land alteration activities; implementation, maintenance and removal of erosion and sedimentation control measures; and permanent site stabilization measures.

(e) A detailed description of how erosion control, sediment control and soil stabilization measures implemented pursuant to the plan will be monitored, maintained and removed. (f) On the request of an applicant proposing to landscape an improved residential property and a finding that certain required information is not needed to assess the characteristics of the property and the adequacy of proposed control measures, the District may reduce the submittal requirements of this section.

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6. SOILS ENGINEERING AND GEOLOGY REPORTS. On a determination that the condition of the soils is unknown or unclear and that additional information is required to find that an applicant's proposed activity will meet the standards and purposes of this rule, the District may require soil borings or other site investigation to be conducted and may require submission of a soils engineering or geology report. The report shall include the following as requested by the District:

(a) Data and information obtained from the requested site investigation.

(b) A description of the types, composition, permeability, stability, erodibility and distribution of existing soils on site.

(c) A description of site geology.

(d) Conclusions and revisions, if any, to the proposed land-disturbing activity at the site or the erosion control plan, including revisions of plans and specifications.

7. ADDITIONAL INFORMATION. The District may require any additional information or data, as it finds relevant and necessary to evaluate and act on an application.

8. SURETY. The District may require the applicant to file a bond or other surety in accordance with Rule K. For a fast-track permit, the surety must be in the form of a performance bond, a letter of credit or a cash escrow. The surety shall be maintained until:

(a) Final site stabilization and removal of erosion and sedimentation controls, as determined by the District, and the payment of all fees and amounts due to the District;

(b) Forty-five (45) days after written notification to the District under paragraph 11(d), if the District has failed to respond in writing; or

(c) Such earlier time as the District may advise the applicant in writing.

9. MAINTENANCE. The permittee shall be responsible at all times for the maintenance and proper operation of all erosion and sediment control facilities. On any property on which land-disturbing activity has occurred pursuant to a permit issued under this rule, the permittee shall, at a minimum, inspect, maintain and repair all disturbed surfaces and all erosion and sediment control facilities and soil stabilization measures every day work is performed on the site. Specific maintenance requirements are as follows:

(a) EROSION PREVENTION & SEDIMENT CONTROL PRACTICES:

(1) All exposed soils areas with a continuous positive slope within 200 feet of a surface water or stormwater conveyance must have temporary erosion protection or permanent cover for the exposed soil areas year round. The table below serves as guidance for the maximum time an area can remain open when not actively being worked:

Type of Slope	Time
Steeper than 3:1	7 days
10:1 to 3:1	14 days
Flatter than 10:1	21 days

(2) The normal wetted perimeter of any temporary or permanent stormwater conveyance that drains water from the site, or diverts water around a site must be

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stabilized within 200 feet from the point of discharge to a surface water. Stabilization must be completed within 24 hours of connecting to a surface water.

(3) Pipe outlets must be provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water.

(4) In order to maintain sheet flow and minimize rills and/or gullies, there shall be no unbroken slope length of greater than 75 feet for slopes with a grade of 3:1 or steeper.

(a) DEWATERING OR BASIN DRAINING:

(1) Dewatering or basin draining (e.g. pumped discharges, trench/ditch cuts for drainage) related to the construction activity that may have turbid or sediment laden discharge water must be discharged to a temporary or permanent sedimentation basin on the site whenever possible. If water cannot be discharged to a sedimentation basin prior to entering the surface water, it must be treated with the appropriate best management practices, such that the discharge does not adversely affect the receiving water or downstream landowners.

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10. NOTIFICATION AND INSPECTION. The applicant or its authorized agent shall notify the District in writing at the following points:

(a) INSPECTION:

(1) The individual identified as being responsible for implementing the erosion control plan must routinely inspect the construction site once every 7 days during active construction and within 24 hours after a rainfall event greater than 0.5 inches in 24 hours.

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(2) All inspections and maintenance conducted during construction must be recorded in writing and these records must be retained with the erosion control plan. If the inspection records are not retained on site they must be made available at the District's request within 24 hours. The complete inspection log for the project must be submitted to the District upon project completion.

Records of each inspection and maintenance activity shall include:

(i) Date and time of inspections;

(ii) Name of person conducting inspections;

(iii) Findings of inspections, including recommendations for corrective actions;

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(iv) Corrective actions taken (including dates, times and party completing maintenance activities)

(v) Date and amount of all rainfall events greater than 0.5 inches in 24 hours.

(b) NOTIFICATION

(1) On completing installation of perimeter erosion and sedimentation controls.

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(2) On completing land-disturbing activities and putting into place measures for final soil stabilization and revegetation.

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(3) Whenever any site dewatering is proposed to take place.

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(4) When the site has been permanently stabilized and revegetated.

(5) When all temporary erosion and sedimentation controls have been removed from the site.

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Deleted: At each stage indicated, the applicant shall not proceed with site activity until the District has been notified. At the stage indicated at paragraph 10(a), the applicant shall not proceed with site activity until the District has been notified and allowed two full business days to inspect the site and, as necessary, confer with the applicant. Within the two days specified, the District may advise the applicant that it is extending the period for inspection by up to five additional business days.¶

MINNEHAHA CREEK WATERSHED DISTRICT

Technical Advisory Committee

Summary of August 23rd, 2007 Meeting RULE C: FLOODPLAIN ALTERATION

Committee Members Present: Lois Eberhart, Jack Frost, Jesse Struve, Tim Brown, Derek Asche, Laura Adler, Michael Schmidt, Kate Drewery, Sarah Apilowski

MCWD Managers Present: None

MCWD Staff Present: James Wisker, Eric Evenson

James Wisker provided a brief status report on the rulemaking process. The group then proceeded to discuss the recommendations put forth by the citizen based rulemaking task force. Outlined below are the technical advisory committee's response to those recommendations.

1. Certain projects within the 100 year floodplain of a waterbody have the potential to increase the 100 year flood stage up to six inches under the existing regulation. These cumulative impacts increase potential flooding along moving bodies of water within the District. Therefore, documentation should be submitted with any permit application to demonstrate that the proposed project will not increase the flood stage.

Kate Drewery indicated that the public works rules have been interpreted to allow a 0.004' increase in flood stage. However, no increase is allowed within a mapped floodway. Eric Evenson commented that the Hydraulic and Hydrology study mapped the majority of floodways within the District. The group also mentioned that flood fringe can increase up to ½ a foot in each community where the floodway is unmapped. Derek Asche stated that the floodplain policy is important enough to establish a no net loss policy. The group also thought it would be prudent to clarify the floodplain storage must be created on either the same waterbody or within the same reach of a stream. In addition, while the existing rule language which states a project may not aggravate flooding or unduly restrict flood flow is consistent with the DNR rules, it could be clarified to state no net increase.

2. Where feasible, required compensatory storage should be created before any fill is placed within the 100 year floodplain. Where impractical, an applicant may place fill concurrent with the creation of compensatory storage. Placement of fill prior to creation of storage should require an engineer's analysis to ensure that high water conditions will not be aggravated.

The group did not feel that requiring compensatory storage to be created prior to floodplain fill would provide a greater level of resource or flood protection.

3. To ensure adequate compensatory storage was created, an as-built survey should be submitted to the District upon project completion.

The group commented that requiring as-built surveys for small scale projects could become onerous and cost prohibitive for property owners. The group suggested administratively asking for as built surveys in order to accommodate small projects or requiring that projects of a certain magnitude trigger the need for an as built. Derek Asche suggested requiring as built surveys for, projects larger than 1 acre, projects requiring a bond or based on the cubic yards of fill proposed.

4. The goal of mitigating historical losses in floodplain volume and promoting the conservation and restoration of floodplain habitat where feasible as stated in the Water Resource Management Plan may best be pursued through incentives and District projects rather than through regulatory requirements.

RULE C: FLOODPLAIN ALTERATION

1. POLICY. It is the policy of the [Board of Managers](#) to:

- (a) Preserve existing water storage capacity below 100-year high water elevations on all waterbodies in the watershed to minimize the frequency and severity of high water;
- (b) Minimize development below projected 100-year high water elevations that will unduly restrict flood flows or aggravate known high water problems.

2. REGULATION. No person shall alter or fill land below the projected 100-year high water elevation of a waterbody without a permit from the District. A Fast Track permit may be issued for 1" or less of organic fill material to be incorporated into existing soil in preparation for sodding or seeding.

3. CRITERIA.

(a) The filling shall not cause a net decrease in storage capacity below the projected 100-year high water elevation unless it is shown that the proposed filling, together with the filling of all other properties on the affected reach of the waterbody to the same degree of encroachment as proposed by the applicant, will not cause high water or aggravate flooding on other properties and will not unduly restrict flood flows. The allowable fill area shall be calculated by a professional engineer registered in the State of Minnesota. Creation of floodplain storage capacity to offset fill shall occur before any fill is placed in the floodplain, unless the applicant demonstrates that doing so is impractical and that placement of fill and creation of storage capacity can be achieved concurrently. Any placement of fill prior to creation of floodplain storage capacity will only be allowed upon a demonstration by a registered professional engineer that such work will not aggravate high water conditions.

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(b) The filling shall not cause an increase in the 100 year flood stage elevation of the waterbody.

(c) Ice ridge regrading within the floodplain must conform to the original cross-section of the lakebed. Approval for ice ridge regrading or removal of ice ridge material from the floodplain requires the applicant to demonstrate that the ice ridge resulted from ice action during the previous winter. No additional material may be placed within the floodplain except in accordance with this Rule.

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(d) All new residential, commercial, industrial and institutional structures shall be constructed such that all door and window openings are at a minimum of two feet above the 100-year high water elevation.

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4. REQUIRED EXHIBITS. The following exhibits shall accompany the permit application. One set - full size; one set - reduced to maximum size of 11"x17".

(a) Site plan showing property lines, delineation of the work area, existing elevation contours of the work area, ordinary high water elevation (OHW), and regional flood elevation. All elevations must be reduced to NGVD (1929 datum).

(b) Grading plan showing any proposed elevation changes.

(c) Preliminary plat of any proposed land development.

(d) Determination by a professional engineer of the 100-year high water elevation before and after the project.

(e) Computation by a professional engineer of cut, fill and change in water storage capacity resulting from proposed grading.

(f) Soil boring results if available.

(g) If not otherwise subject to District Rule B (Erosion Control), an erosion control plan conforming to paragraphs 5(b) through (f) and section 9 of Rule B.

(h) Any project resulting in greater than 50 cubic yards of fill is required to provide an as-built survey upon project completion which documents the location and volume of both fill and compensatory storage.

5. EXCEPTION.

If the 100-year elevation of a waterbasin is entirely within a municipality, the waterbasin does not outlet during the 100-year event, and ~~that~~ the municipality has adopted a floodplain ordinance prescribing an allowable degree of floodplain encroachment, the ordinance governs the allowable degree of encroachment and no permit is required under this rule.

MINNEHAHA CREEK WATERSHED DISTRICT

Technical Advisory Committee

Summary of September 27th, 2007 Meeting RULE G: WATERBODY CROSSINGS

Committee Members Present: John Barten, Lois Eberhart, Mike Eastling, Jesse Struve, Derek Asche, Laura Adler, Liz Stout, Rachel Crabb, Michael Schmidt

MCWD Managers Present: None

MCWD Staff Present: James Wisker, Eric Evenson

James Wisker and Eric Evenson provided a brief introduction to Rule G: Waterbody Crossings and outlined concerns with the interpretation and implementation of the current rule. The Technical Committee then proceeded to discuss the recommendations developed by the Rulemaking Task Force.

Discussion of Water Body Crossings & Structures

1. Certain small scale projects, such as projects that involve small crossings on non-public waters, should be permitted by staff without requiring a demonstration of public benefit. All crossings of Minnehaha Creek and other important public waters should demonstrate a public benefit.

The Technical Advisory Committee agreed that circumstances exist where the demonstration of public benefit is not necessary if the wetland is isolated on private property and not a public water. Eric Evenson echoed comments made by the Rulemaking Task Force, that applicant's not required to demonstrate a public benefit would still be required to document no adverse impacts and minimal impact.

2. Including the specific design parameters for directional boring projects would serve to provide applicants with increased direction and improve consistency within the District. Specifically, requiring a minimum depth of the boring below the bed of the waterbody, including consideration of allowable dredging depths, and a preliminary soils analysis would be useful.

The Task Force agreed that the District should adopt industry accepted standards for directional bore projects. Comments were made that several utilities bored beneath Minnehaha Creek have begun to surface due in part to erosion and sediment transport. The group agreed that by adopting standards, these utilities could be located at a depth where surfacing would be minimized.

3. Requiring no net increase in the flood stage for a waterbody will ensure adequate hydraulic capacity while minimizing incremental flood stage increases. This is particularly important on moving bodies of water such as Minnehaha Creek.

The Technical Advisory Committee agreed with the recommendation to require no net increase in flood stage as a result of a waterbody crossing project.

4. Including the DNR general permit standards and applying them District-wide to all waterbodies will ensure the consistent application for all relevant waterbody crossings within the District regardless of DNR classification. For bridges over public watercourses, three feet over the calculated 50 year flood will ordinarily satisfy navigational requirements. For bridges over public waters and wetlands (either public waters wetlands or WCA wetlands where some navigation or related recreational activity occurs), three feet over the ordinary high water elevation will ordinarily satisfy navigational requirements.

The Technical Advisory Committee commented that while expanding the DNR's standards to non Public Water Wetlands would provide a consistent standard, the DNR's vertical clearance requirements were established for Public Water Wetlands as they are often navigable waters of the state or adjacent to a navigable public water. Therefore, expanding these requirements to non public waters could create an unreasonable standard.

The TAC agreed however, that the District could base navigation requirements on a "waterbody classification system". By creating a range of waterbody classifications, the District could better tailor the navigation requirements for each waterbody to its intended use.

Eric Evenson stated that the District had previously performed a Functional Assessment of Wetlands within the District and that this could be amended to include management classifications for Navigation, Public Benefit and Wildlife Passage. The TAC agreed with this approach versus universally adopting the DNR's navigation standards.

5. The performance standard approach in the current rule concerning wildlife passage is a sound method to consider the needs of particular wildlife in a given crossing. It is also important for District rules and policies to increase awareness, improved design for wildlife passage, and the preservation and enhancement of ecological integrity. Larger roadway projects involving culverts and public right of way can lend themselves to opportunities not just to maintain, but to *improve* wildlife passage and habitat, due to their proximity to natural corridors, and the District rules should provide for these opportunities to be identified and reasonably pursued.

The TAC believed that by matching the Navigation, Wildlife Passage and Public Benefit criteria to the management classification for a particular waterbody, existing wildlife corridors would be sufficiently protected and historic corridors would receive improvements over time as waterbody crossings are replaced.

MINNEHAHA CREEK WATERSHED DISTRICT

DRAFT RULE REVISIONS
October 24, 2007

RULE G: WATERBODY CROSSINGS & STRUCTURES

1. POLICY. It is the policy of the Board of Managers to discourage the use of beds and banks of waterbodies for the placement of roads, highways, and utilities, and to encourage improvement of wildlife passage and habitat, especially for larger projects involving culverts and public right of way that are in or near natural corridors.

2. REGULATION. No person shall place a road, highway, utility or associated structure in contact with the bed or bank of any waterbody within the District without first securing a permit from the District.

3. CRITERIA. Use of the bed or bank:

(a) Shall meet a demonstrated public benefit for projects involving crossings or structures in public waters;

(b) Shall retain adequate hydraulic capacity and assure no net increase in the flood stage of the pertinent waterbody;

(c) Shall retain adequate navigational capacity pursuant to any requirements of the waterbody's classification by the District;

(d) Shall preserve wildlife passage along each bank by means that: (i) account for wildlife that are native to the site or may be present; (ii) are approved by a qualified wildlife biologist; (see <http://www.wildlifecrossings.info> for more information, which will open in a new browser window); and (iii) conform to any requirements of the waterbody's classification by the District;

Deleted: and

(e) Shall not adversely affect water quality;

Deleted: and

(f) Shall represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives. The term "minimal impact" shall refer to all resources protected under the purposes of the District set forth at Sections 103B.201 and 103D.201 of the Minnesota Statutes; and

Deleted: .

(g) Shall provide for minimum clearance of 3 feet below the bed of a waterbody, and a minimum setback of 100 feet from any stream bank for pilot, entrance, and exit holes, for projects involving horizontal directional drilling.

4. REQUIRED EXHIBITS. The following exhibits shall accompany the permit application. One set - full size; one set - reduced to maximum size of 11"x17".

(a) Construction plans and specifications.

(b) Analysis prepared by a professional engineer or qualified hydrologist showing the effect of the project on hydraulic capacity and water quality.

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(c) An erosion control and restoration plan.

(d) The written approval required by paragraph 3(d).

(e) Information necessary to evaluate impacts under paragraph 3(f), as

determined by District staff in consultation with the applicant.

5. MAINTENANCE. A declaration or other recordable instrument stating terms for maintenance of hydraulic and navigational capacity and approved by the District shall be recorded in the office of the county recorder or registrar before activity under the MCWD permit commences. In lieu of recordation, a public permittee or a permittee without a property interest sufficient for recordation may assume the maintenance obligation by means of a written agreement with the District. The agreement shall state that if the ownership of the structure is transferred, the public body shall require the transferee to comply with this subsection.